

**HOUSE SUBSTITUTE FOR**  
**SENATE BILL NO. 790**

A bill to create the home help caregiver council and to prescribe its powers and duties; to designate certain individuals as public employees for certain purposes; to require collective bargaining of certain terms and conditions of employment for certain public employees; to provide for the mediation and arbitration of grievances; to provide for the deduction of wages; and to provide for the powers and duties of certain state and local governmental officers and entities.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**1**           Sec. 1. This act may be cited as the "home help caregiver  
**2** council act".

**3**           Sec. 2. As used in this act:

**4**           (a) "Activities of daily living" includes eating, toileting,

1 bathing, grooming, dressing, mobility, and transferring.

2 (b) "Agency provider" means any of the following:

3 (i) A current Medicare certified home health agency.

4 (ii) An entity, other than the department, with a federal  
5 employer identification number that directly employs or contracts  
6 with caregivers to provide home or community-based services.

7 (iii) A community mental health services program under section  
8 202 of the mental health code, 1974 PA 258, MCL 330.1202, that  
9 works with clients who use arrangements that support self-  
10 determination.

11 (c) "Bargaining representative" means that term as defined in  
12 section 1 of 1947 PA 336, MCL 423.201.

13 (d) "Board" means the board of directors of the council.

14 (e) "Council" means the home help caregiver council created in  
15 this act.

16 (f) "Department" means the department of health and human  
17 services.

18 (g) "Individual home help caregiver" means a caregiver,  
19 selected by a participant or the participant's representative, who  
20 provides individual home help services to a participant. Individual  
21 home help caregiver does not include a caregiver who provides  
22 services through an agency provider, an integrated care  
23 organization, or other similar entity.

24 (h) "Individual home help service" means services under the  
25 Home Help Program that provides assistance with 1 or more  
26 activities of daily living or instrumental activities of daily  
27 living through caregivers in a home or community-based setting.

28 (i) "Instrumental activities of daily living" includes, but is  
29 not limited to, tasks such as laundry, light housework, shopping,

1 meal preparation or clean up, and medication administration.

2 (j) "Integrated care organization" means a managed care entity  
3 under 42 CFR part 438 that has contracted with the department and  
4 the Centers for Medicare and Medicaid Services to provide Medicare  
5 and Medicaid covered services to individuals who are dually  
6 eligible for full Medicare and Medicaid.

7 (k) "Interested parties advisory group" means the individuals  
8 described in section 3(14) that make recommendations concerning  
9 adequate payments and other workforce supports for personal care  
10 attendants providing services under the state Medicaid program.

11 (l) "Participant" means a person who receives individual home  
12 help services.

13 (m) "Participant's representative" means a participant's legal  
14 guardian or an individual having the authority and responsibility  
15 to act on behalf of a participant with respect to the provision of  
16 individual home help services.

17 Sec. 3. (1) The home help caregiver council is created within  
18 the department. The council possesses the powers, duties, and  
19 jurisdictions vested in the council under this act and other laws.

20 (2) The council is directed and governed by a board of  
21 directors consisting of the following 7 members:

22 (a) The director of the department or the director's  
23 designated representative from within the department.

24 (b) The director of the department of labor and economic  
25 opportunity or the director of the department of labor and economic  
26 opportunity's designated representative.

27 (c) The director of the department of treasury or the director  
28 of the department of treasury's designated representative.

29 (d) Two members appointed by the director of the department to

1 represent participants or participant representatives.

2 (e) Two members appointed by the director of the department  
3 who represent nonprofit organizations that advocate on behalf of  
4 older adults or people with disabilities.

5 (3) Except as otherwise provided in this subsection, board  
6 members of the council must be appointed for a term of 4 years. Of  
7 the board members initially appointed by the director, the  
8 following board members' terms must be as follows:

9 (a) One member who represents participants or participant  
10 representatives must be appointed for a term that expires on July  
11 31, 2025.

12 (b) One member who represents nonprofit organizations that  
13 advocate on behalf of older adults or people with disabilities must  
14 be appointed for a term that expires on July 31, 2026.

15 (c) One member who represents participants or participant  
16 representatives must be appointed for a term that expires on July  
17 31, 2027.

18 (d) One member who represents nonprofit organizations that  
19 advocate on behalf of older adults or people with disabilities must  
20 be appointed for a term that expires on July 31, 2028.

21 (4) After the initial appointments under subsection (3), if a  
22 vacancy occurs among the board members described in subsection (2)  
23 by expiration of a term, the director of the department shall  
24 appoint an individual satisfying the requirements of subsection (2)  
25 to a new 4-year term. If a vacancy occurs on the board among the  
26 board members described in subsection (2) other than by expiration  
27 of a term, the vacancy must be filled by the director of the  
28 department for the remainder of the term of the unexpired term.  
29 Board members may continue to serve until a successor is appointed.

1 Unless otherwise specified, a board member's resignation is  
2 effective upon written notice received by the director.

3 (5) Appointments under this section must be filed with the  
4 secretary of state. Upon appointment to the board described in  
5 subsection (2), and upon taking and filing the oath of office  
6 required by section 1 of article XI of the state constitution of  
7 1963, the board member shall enter office and exercise the duties  
8 of the office of the board member.

9 (6) Not less than 60 days following the appointment of a  
10 majority of the members of the board, the board described in  
11 subsection (2) shall hold its first meeting at a date and time  
12 determined by the director of the department. The board members  
13 shall elect from among the board members an individual to serve as  
14 a chairperson of the board and may elect other officers as the  
15 board considers necessary. All officers must be elected annually by  
16 the board.

17 (7) The business of the board described in subsection (2) must  
18 be conducted at a public meeting of the board held in compliance  
19 with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.  
20 Public notice of the time, date, and place of a meeting of the  
21 board must be given in the manner required by the open meetings  
22 act, 1976 PA 267, MCL 15.261 to 15.275. The board shall adopt  
23 bylaws consistent with the open meetings act, 1976 PA 267, MCL  
24 15.261 to 15.275, governing its procedures and the holding of  
25 meetings. After organization, the board shall adopt a schedule of  
26 regular meetings and adopt a regular meeting date, place, and time.  
27 A special meeting of the board may be called by the chairperson of  
28 the board or as provided in bylaws adopted by the board. Notice of  
29 a special meeting must be given in the manner required by the open

1 meetings act, 1976 PA 267, MCL 15.261 to 15.275.

2 (8) The board described in subsection (2) shall organize and  
3 make its own policies and procedures and shall adopt bylaws not  
4 inconsistent with this act governing its operations. A majority of  
5 the members of the board serving constitute a quorum for  
6 transaction of business. The board shall meet at the call of the  
7 chairperson and as may be provided in the bylaws.

8 (9) The board described in subsection (2) shall keep a written  
9 or printed record of each meeting, which record and any other  
10 document or record prepared, owned, used, in the possession of, or  
11 retained by the council in the performance of an official function  
12 must be made available to the public in compliance with the freedom  
13 of information act, 1976 PA 442, MCL 15.231 to 15.246.

14 (10) The council shall do all of the following:

15 (a) Provide for additional and relevant training and  
16 educational opportunities for individual home help caregivers,  
17 including opportunities for individual home help caregivers to  
18 obtain certification that documents additional training and  
19 experience in areas of specialization.

20 (b) Provide for a mandatory orientation program related to  
21 employment in providing individual home help services. All of the  
22 following requirements apply to the orientation program described  
23 in this subdivision:

24 (i) The orientation program is conducted on paid time.

25 (ii) An individual home help caregiver must attend an initial  
26 orientation not more than 45 days after the date the individual  
27 begins to provide individual home help services.

28 (iii) A bargaining representative of individual home help  
29 caregivers must be allowed to attend each orientation. The

1 bargaining representative must be allowed to distribute materials  
2 to and collect materials from attendees and make a presentation to  
3 attendees that is not more than 30 minutes long during the  
4 orientation.

5 (iv) The council shall provide a bargaining representative of  
6 individual home help caregivers who attends an orientation a list  
7 of the individual home help caregivers who are registered for the  
8 orientation not less than 24 hours before the start of the  
9 orientation.

10 (c) The council may contract with organizations with expertise  
11 in providing training and workforce development services to develop  
12 and deliver orientations and any additional trainings.

13 (d) By not later than September 30, 2025, and then semi-  
14 annually thereafter, compile and maintain a list of the names, home  
15 addresses, home telephone numbers, personal cellular telephone  
16 numbers, and personal email addresses, if known, of all individual  
17 home help caregivers who have been paid to provide individual home  
18 help services within the immediately preceding 6 months. In  
19 fulfilling this obligation, the council must follow all applicable  
20 laws and regulations related to the protection of personally  
21 identifiable information. The list described in this subdivision  
22 must not include the name or private data of any participant or  
23 participant's representative or indicate that an individual home  
24 help caregiver is a relative of a participant or has the same  
25 address as a participant.

26 (e) Maintain a registry of individuals qualified to be  
27 individual home help caregivers to promote and coordinate effective  
28 and efficient individual home help services. Individual home health  
29 caregivers may request to opt out of having the individual's

1 information maintained in the registry created under this section.

2 (f) Espouse, support, and work to preserve participant  
3 selection and self-direction of individual home help caregivers.

4 (g) Provide support to individual home help caregivers through  
5 a variety of methods aimed at encouraging competence, achieving  
6 quality services for participants, and improving individual home  
7 help caregiver retention through improved job satisfaction.

8 (h) Collect statewide information and data related to the home  
9 help caregiver workforce, including, but not limited to, individual  
10 home help caregiver pay, retention and turnover rates, individual  
11 home help caregiver job satisfaction, service gaps caused by  
12 individual home health caregiver shortages, and other relevant  
13 information as requested by the interested parties advisory group.

14 (i) Serve as a communications hub for the home help caregiver  
15 workforce to disperse information relevant to individual home help  
16 caregivers.

17 (11) Any funds allocated for the provision of relevant  
18 training and education opportunities as described in subsection  
19 (10) may be used to provide career education, wraparound support  
20 services, and job skills training in areas of specialization for  
21 individual home help caregivers. Funds may also be used for program  
22 expenses, including, but not limited to, hiring instructors,  
23 marketing and recruitment efforts, space rental, and supportive  
24 services to help individual home help caregivers attend trainings.

25 (12) The council shall convene and support an interested  
26 parties advisory group at least every 2 years and as often as the  
27 council's members determine to be necessary to meet the council's  
28 obligations in accordance with federal Medicaid requirements or any  
29 other requirements. For purposes of this subsection, the interested



1 parties advisory group membership must include Home Help  
2 participants, individual home help caregivers, representatives of  
3 the department, and the bargaining representative of individual  
4 home help caregivers.

5 (13) Except as otherwise provided in this act, the council may  
6 do all things necessary or convenient to implement the purposes and  
7 provisions of this act and the purposes, objectives, and  
8 jurisdictions vested in the council or the board by this act or  
9 other law.

10 (14) The council may receive local, state, federal, and other  
11 funds to pay for individual home help services and to accomplish  
12 the purposes and provisions of this act. Funds to support the  
13 operation of the council may be provided by the department.

14 (15) The council may employ, appoint, engage, and compensate  
15 employees to accomplish the purposes and provisions of this act.

16 (16) The council may enter into contracts and agreements, and  
17 contract for the services of persons or entities, to accomplish the  
18 purposes and provisions of this act.

19 (17) The departments and agencies of this state shall  
20 cooperate with and assist the council in the performance of its  
21 powers and duties under this act and in the implementation of any  
22 agreements entered into by the council as authorized by the act.

23 (18) The council and the department shall immediately commence  
24 all necessary steps to ensure that individual home help services  
25 are offered in conformity with this act, to seek any necessary  
26 federal approval for program modifications from the Centers for  
27 Medicare and Medicaid Services, and to gather all information that  
28 may be needed for promptly compiling lists required under this act.  
29 The council and the department shall complete the steps described

1 in this subsection by not later than September 30, 2025.

2       Sec. 4. (1) Solely for the purposes of collective bargaining,  
3 and as expressly limited under this section, individual home help  
4 caregivers are considered, by virtue of this section, public  
5 employees of the director of the department of health and human  
6 services or the director's representative. This act does not  
7 require or provide for the treatment or classification of  
8 individual home help caregivers as public employees for any other  
9 purpose, and the department's role as employer solely for the  
10 purposes of collective bargaining does not serve as a basis to  
11 establish an employer-employee relationship. Individual home help  
12 caregivers are not employees of the state or political subdivisions  
13 of this state for any other purpose and are not subject to the  
14 provisions of section 5 of article XI of the state constitution of  
15 1963. 1947 PA 336, MCL 423.201 to 423.217, applies to the  
16 governance of the collective bargaining relationship between the  
17 department and the bargaining representative of a bargaining unit  
18 composed of individual home help caregivers as provided in this  
19 section.

20       (2) Except for the limited purposes described in subsection  
21 (1), participants or participants' representatives are the sole  
22 employer of individual home help caregivers and retain the rights  
23 to select, hire, direct, schedule, supervise, or terminate the  
24 services of any individual home help caregiver who provides  
25 individual home help services for the participant in accordance  
26 with the laws and regulations governing the Home Help Program. This  
27 act does not alter those rights. A provision of any agreement  
28 reached between the department and any bargaining representative of  
29 individual home help caregivers does not interfere with the rights

1 of a participant or participant's representatives to select, hire,  
2 direct, schedule, supervise, or terminate the employment of the  
3 participant or participant's representative's individual home help  
4 caregivers in accordance with the laws and regulations governing  
5 the Home Help Program.

6 (3) Without limiting any bargaining obligations under 1947 PA  
7 336, MCL 423.201 to 423.217, except for those identified as rights  
8 of participants or participants' representatives, at the request of  
9 the exclusive bargaining representative, the board or the board's  
10 chosen representative on behalf of the department shall engage in  
11 collective bargaining with the exclusive bargaining representative  
12 concerning the terms and conditions of employment that are within  
13 the state's control. Once an exclusive bargaining representative is  
14 selected by a majority of individual home help caregivers under  
15 1947 PA 336, MCL 423.201 to 423.217, or other applicable collective  
16 bargaining statute or regulation, that representative continues to  
17 be recognized by the director, and any other state entity or body  
18 charged with regulating individual home help caregivers' conditions  
19 of employment, unless and until the representative is decertified  
20 by a vote of the majority of individual home help caregivers.

21 (4) This section does not modify the department's authority to  
22 deny participation in the Medicaid program to individuals who do  
23 not or will not comport with program requirements under state and  
24 federal law and regulation, or to terminate the participation of  
25 individual providers. This act must not be construed as modifying  
26 or limiting this authority.

27 (5) Notwithstanding an individual home help caregiver's status  
28 as a public employee under subsection (1), the individual home help  
29 caregiver is not a government actor and the state, the department,

1 the council, and the board bear no liability for any actions  
2 undertaken by the individual home help caregiver in the performance  
3 of the individual home help caregiver's duties. The state, the  
4 department, or contractors of the state or department are not  
5 vicariously or jointly liable for the action or inaction of any  
6 individual home help caregiver, whether or not that individual home  
7 help caregiver was included on any referral registry maintained by  
8 the state, department, or contractors of the state or department,  
9 or referred to a consumer or prospective consumer by the state,  
10 department, or contractors of the state or department. The  
11 existence of a collective bargaining agreement, the placement of an  
12 individual home help caregiver on any referral registry, or the  
13 development or approval of a plan of care for a consumer who  
14 chooses to use the services of an individual home help caregiver  
15 and the provision of case management services to that consumer, by  
16 the department, does not constitute a special relationship with the  
17 consumer. The state, the department, or contractors of the state or  
18 department shall not indemnify any home help caregiver for claims  
19 against them arising from actions taken during the course of the  
20 home help caregiver's employment.

21 (6) Individual home help caregivers may, in accordance with  
22 the procedures set forth in sections 12 and 14 of 1947 PA 336, MCL  
23 423.212 and 423.214, choose a bargaining representative to bargain  
24 collectively and enter into collective bargaining agreements with  
25 the department under sections 9, 11, and 15 of 1947 PA 336, MCL  
26 423.209, 423.211, and 423.215. If a bargaining representative of  
27 individual home help caregivers is certified, the mutual rights and  
28 obligations of the department and the bargaining representative to  
29 bargain collectively over the terms and conditions of individual

1 home help caregivers' employment extend to the subjects covered  
2 under section 15 of 1947 PA 336, MCL 423.215, but do not include  
3 those subjects reserved to participants and participants'  
4 representatives under subsection (2). If there is not an agreement  
5 between the bargaining representative and the department, the  
6 department has no obligation to engage in effects or impact  
7 bargaining with respect to the subjects reserved to participants  
8 and participants' representatives under subsection (2).

9 (7) Notwithstanding section 13 of 1947 PA 336, MCL 423.213,  
10 the only appropriate unit for individual home help caregivers is a  
11 statewide unit of all individual home help caregivers. Individual  
12 home help caregivers who are related to their participant or their  
13 participant's representative must not be excluded from the unit  
14 described in this subsection for that reason.

15 (8) Any aspects of a collective bargaining agreement entered  
16 into under this act requiring appropriation by the federal  
17 government, this state, or revisions to statutes or regulations  
18 must be subject to passage of those appropriations and any  
19 necessary statutory and regulatory revisions. If any such  
20 appropriations or revisions are not adopted, the council or the  
21 bargaining representative may reopen negotiations on all or part of  
22 the collective bargaining agreement.

23 (9) Acts made unlawful under section 10 of 1947 PA 336, MCL  
24 423.210, are prohibited and considered unlawful if carried out by  
25 either of the following parties:

26 (a) The department.

27 (b) A labor organization representing or seeking to represent  
28 individual home help caregivers.

29 (10) Any alleged violation of subsection (9) may be filed with

1 the employment relations commission as an unfair labor practice and  
2 considered and ruled upon in accordance with sections 10 and 16 of  
3 1947 PA 336, MCL 423.210 and 423.216, and the commission's rules  
4 and regulations.

5 (11) As provided for under sections 2, 3, and 6 of 1947 PA  
6 336, MCL 423.202, 423.203, and 423.206, an individual home help  
7 caregiver shall not strike.

8 (12) Whenever in the course of mediation of a bargaining  
9 representative dispute, except a dispute concerning the  
10 interpretation or application of an existing agreement, if the  
11 dispute has not been resolved to the agreement of both parties  
12 within 30 days of the submission of the dispute to mediation, or  
13 within such further additional periods to which the parties agree,  
14 the exclusive bargaining representative or the department may  
15 initiate binding arbitration proceedings by prompt request, in  
16 writing, to the other, with copy to the employment relations  
17 commission. Except as otherwise provided in this subsection, an  
18 arbitration described in this subsection must be conducted in the  
19 same manner and under the same procedures as a binding arbitration  
20 under 1969 PA 312, MCL 423.231 to 423.247. Notwithstanding the  
21 procedures of binding arbitration under 1969 PA 312, MCL 423.231 to  
22 423.247, the majority decision of the arbitration panel is binding  
23 on the parties only with respect to those economic issues  
24 identified by the arbitration panel as described in section 8 of  
25 1969 PA 312, MCL 423.238. The arbitration panel is not required to  
26 adopt the last offer of settlement from either party as to each  
27 economic issue, but may render an award that falls between the  
28 parties' last offers of settlement on each economic issue, so long  
29 as such award is based on the applicable factors described under

1 section 9 of 1969 PA 312, MCL 423.239. Without limiting any of the  
2 department's obligations as described under section 10 of 1969 PA  
3 312, MCL 423.210, the department may implement its last best offer  
4 of settlement on each economic issue 60 days after the decision of  
5 the arbitration panel. Nothing in this act is intended to curtail  
6 or infringe on the legislature's constitutional appropriation  
7 authority.

8 (13) The council shall, upon request and agreement by the  
9 requesting party to protect the data described in this subsection  
10 and use it only in furtherance of the purposes outlined in this  
11 section or 1947 PA 336, MCL 423.201 to 423.217, provide lists  
12 compiled under section 3 of this act to both of the following  
13 parties:

14 (a) Any labor organization wishing to represent the  
15 appropriate unit of individual home help caregivers.

16 (b) A bargaining representative of individual home help  
17 caregivers.

18 (14) Negotiations between the board or the board's chosen  
19 representative on behalf of the department and the bargaining  
20 representative of individual home help caregivers must begin not  
21 later than July 1 of any year before the year in which an existing  
22 collective bargaining agreement expires.

23 Sec. 5. The department shall make any deductions from the  
24 wages of individual home help caregivers that are authorized under  
25 section 7 of 1978 PA 390, MCL 408.477, or otherwise authorized by  
26 law. Those deductions include, but are not limited to, deductions  
27 of the dues of a bargaining representative where authorized by the  
28 individual home help caregiver. As described in section 7 of 1978  
29 PA 390, MCL 408.477, this act expressly allows deductions from the

1 wages of individual home help caregivers in writing or pursuant to  
2 any form of authorization given by the caregiver that is permitted  
3 and valid under the uniform electronic transactions act, 2000 PA  
4 305, MCL 450.831 to 450.849. A deduction for a bargaining  
5 representative may only be revoked pursuant to the terms of the  
6 individual home help caregiver's authorization. A bargaining  
7 representative that certifies that it has and will maintain  
8 individual home help caregivers' authorizations must not be  
9 required to provide a copy of an individual authorization to the  
10 department unless a dispute arises about the existence or terms of  
11 the authorization. An individual home help caregiver's request to  
12 cancel or change deductions for bargaining representatives must be  
13 directed to the labor organization and not to the department. The  
14 labor organization is responsible for processing the request to  
15 cancel or change deductions. The department shall rely on  
16 information provided by the bargaining representative regarding  
17 whether deductions for a labor organization were properly canceled  
18 or changed, and the labor organization shall indemnify the council  
19 for any claims made by the individual home help caregiver for  
20 deductions made in reliance on that information.

21 Enacting section 1. This act does not take effect unless  
22 Senate Bill No. 791 of the 102nd Legislature is enacted into law.