

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.