

SENATE BILL NO. 790

March 14, 2024, Introduced by Senator HERTEL and referred to the Committee on Appropriations.

A bill to create the home help caregiver council and to prescribe its powers and duties; 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,
5 bathing, grooming, dressing, mobility, and transferring.

6 (b) "Agency provider" means any of the following, but does not

1 include a fiscal intermediary:

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

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

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

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

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

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

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

17 (g) "Fiscal intermediary" means a third-party organization
18 under contract with the department or the council that is
19 responsible for performing payroll and other employment-related
20 functions on behalf of the department or council.

21 (h) "Individual home help caregiver" means a caregiver who
22 provides individual home help services for whom the participant
23 performs the employer functions described in section 4(2) and the
24 council performs 1 or more of the employer functions described in
25 section 3(6). Individual home help caregiver does not include a
26 caregiver providing self-directed services who is solely employed
27 by the participant or who is providing services through an agency
28 provider, an integrated care organization, or other similar entity.

29 (i) "Individual home help service" means services under the

1 Home Help Program or any similar Medicaid program that provides
2 assistance with 1 or more activities of daily living or
3 instrumental activities of daily living through caregivers in a
4 home or community-based setting.

5 (j) "Instrumental activities of daily living" includes, but is
6 not limited to, tasks such as laundry, light housework, shopping,
7 meal preparation or clean up, and medication administration.

8 (k) "Integrated care organization" means a managed care entity
9 under 42 CFR part 438 that has contracted with the department and
10 the Centers for Medicare and Medicaid Services to provide Medicare
11 and Medicaid covered services to individuals who are dually
12 eligible for full Medicare and Medicaid.

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

17 (m) "Participant" means a person who receives individual home
18 help services.

19 (n) "Participant's representative" means a participant's legal
20 guardian or an individual having the authority and responsibility
21 to act on behalf of a participant with respect to the provision of
22 individual home help services.

23 Sec. 3. (1) The home help caregiver council is created. The
24 council is a public body that possesses the powers, duties, and
25 jurisdictions vested in the council under this act and other laws.

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

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

1 (b) Six members appointed as provided under subsections (3)
2 and (4) to represent participants or participant representatives.

3 (3) Except as otherwise provided in this subsection, board
4 members of the council must be appointed for a term of 6 years.
5 Initial appointments under subsection (1) must be made by the
6 director of the department within 56 days of the effective date of
7 this act. Of the board members initially appointed by the director,
8 2 members must be appointed for a term expiring on July 31, 2026, 1
9 member must be appointed for a term expiring July 31, 2027, 1
10 member must be appointed for a term expiring on July 31, 2028, and
11 2 members must be appointed for a term expiring on July 31, 2029.

12 (4) After the initial appointments under subsection (2), if a
13 vacancy occurs among the board members described in subsection (1)
14 by expiration of a term, the director of the department shall
15 appoint an individual satisfying the requirements of subsection (1)
16 to a new 6-year term. If a vacancy occurs on the board among the
17 board members described in subsection (1) other than by expiration
18 of a term, the vacancy must be filled by the director of the
19 department for the remainder of the term of the unexpired term.
20 Board members may continue to serve until a successor is appointed.

21 (5) Appointments under this section must be filed with the
22 secretary of state. Upon appointment to the board described in
23 subsection (2), and upon taking and filing the oath of office
24 required by section 1 of article XI of the state constitution of
25 1963, the board member shall enter office and exercise the duties
26 of the office of the board member.

27 (6) Not less than 60 days following the appointment of a
28 majority of the members of the board, the board described in
29 subsection (2) shall hold its first meeting at a date and time

1 determined by the director of the department. The board members
2 shall elect from among the board members an individual to serve as
3 a chairperson of the board and may elect other officers as the
4 board considers necessary. All officers must be elected biannually
5 by the board.

6 (7) The business of the board described in subsection (2) must
7 be conducted at a public meeting of the board held in compliance
8 with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.
9 Public notice of the time, date, and place of a meeting of the
10 board must be given in the manner required by the open meetings
11 act, 1976 PA 267, MCL 15.261 to 15.275. The board shall adopt
12 bylaws consistent with the open meetings act, 1976 PA 267, MCL
13 15.261 to 15.275, governing its procedures and the holding of
14 meetings. After organization, the board shall adopt a schedule of
15 regular meetings and adopt a regular meeting date, place, and time.
16 A special meeting of the board may be called by the chairperson of
17 the board or as provided in bylaws adopted by the board. Notice of
18 a special meeting must be given in the manner required by the open
19 meetings act, 1976 PA 267, MCL 15.261 to 15.275.

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

26 (9) The board described in subsection (2) shall keep a written
27 or printed record of each meeting, which record and any other
28 document or record prepared, owned, used, in the possession of, or
29 retained by the council in the performance of an official function

1 must be made available to the public in compliance with the freedom
2 of information act, 1976 PA 442, MCL 15.231 to 15.246.

3 (10) The board described in subsection (2) shall provide for a
4 system of accounts for the council to conform to a uniform system
5 required by law and for the auditing of the accounts of the
6 council. The board shall obtain an annual audit of the council by
7 an independent certified public accountant and report on the audit
8 and auditing procedures in the manner provided by sections 6 to 13
9 of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.426
10 to 141.433. The audit also must be in accordance with generally
11 accepted government auditing standards.

12 (11) Before the beginning of each fiscal year, the board
13 described in subsection (2) shall prepare a budget for the council.
14 The board shall adopt a budget for the fiscal year in accordance
15 with the uniform budgeting and accounting act, 1968 PA 2, MCL
16 141.421 to 141.440a.

17 (12) The council shall do all of the following:

18 (a) Administer any programs through which individual home help
19 services are provided.

20 (b) Subject to this section, establish compensation rates,
21 payment terms and practices, and any benefit terms for all
22 individual home help caregivers, provided that these rates and
23 terms may permit individual home help caregiver variations based on
24 traditional and relevant factors otherwise permitted by law.

25 (c) Establish and provide, either directly or through
26 contract, centralized payroll services for individual home help
27 caregivers.

28 (d) Pay individual home help caregivers their compensation
29 directly by single-party check, direct deposit, or an equivalent

1 method. In no circumstances shall money payable to individual home
2 help caregivers be issued to the participant or participant's
3 representative.

4 (e) Perform all rights, duties, and obligations of an employer
5 relating to an individual home help caregiver's provision of
6 individual home help services as required for purposes of
7 unemployment compensation, workers' compensation, retirement
8 savings accounts, federal and state income tax, and federal old
9 age, survivors, and disability insurance benefits. Those rights,
10 duties, and obligations include, but are not limited to,
11 withholding amounts required for contributions, premiums, and taxes
12 payable by the individual home help caregiver and its employer and
13 transmitting them to the appropriate person or state or federal
14 agency.

15 (f) Make any deductions from the wages of individual home help
16 caregivers that are authorized under section 7 of 1978 PA 390, MCL
17 408.477, or otherwise authorized by law. Those deductions include,
18 but are not limited to, deductions of the dues of a bargaining
19 representative where authorized by the individual home help
20 caregiver. As described in section 7 of 1978 PA 390, MCL 408.477,
21 this act expressly permits deductions from the wages of individual
22 home help caregivers in writing or pursuant to any form of
23 authorization given by the caregiver that is permitted and valid
24 under the uniform electronic transactions act, 2000 PA 305, MCL
25 450.831 to 450.849. A deduction for a bargaining representative may
26 only be revoked pursuant to the terms of the individual home help
27 caregiver's authorization. A bargaining representative that
28 certifies that it has and will maintain individual home help
29 caregivers' authorizations must not be required to provide a copy

1 of an individual authorization to the council unless a dispute
2 arises about the existence or terms of the authorization.
3 Individual home help caregiver requests to cancel or change
4 deductions for bargaining representatives must be directed to the
5 labor organization, rather than to the council. The labor
6 organization shall be responsible for processing these requests.
7 The council shall rely on information provided by the bargaining
8 representative regarding whether deductions for a labor
9 organization were properly canceled or changed, and the labor
10 organization shall indemnify the council for any claims made by the
11 individual home help caregiver for deductions made in reliance on
12 that information.

13 (g) Establish other appropriate terms and conditions of
14 employment governing the workforce of individual home help
15 caregivers that are within the council's control.

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

21 (i) Provide for a mandatory preservice orientation program
22 regarding employment in providing individual home help services
23 within 1 month of enrollment for all newly enrolled individual home
24 help caregivers, and provide for additional training opportunities
25 for individual home help caregivers. All of the following apply to
26 the orientation program described in this subdivision:

27 (i) Each preservice orientation must be conducted on paid time.

28 (ii) An individual home help caregiver shall not provide
29 individual home help services prior to attending an initial

1 orientation.

2 (iii) A bargaining representative of individual home help
3 caregivers must be permitted to attend each preservice orientation
4 and to distribute to and collect materials from attendees, and must
5 be permitted to make a presentation to attendees of not more than
6 30 minutes during the orientation.

7 (iv) The council shall provide an attending bargaining
8 representative a list of the individual home help caregivers who
9 are registered for the preservice orientation no later than 24
10 hours before the orientation.

11 (j) Select organizations with expertise in providing training
12 and workforce development services to develop and deliver
13 orientations and any additional trainings. The selection process
14 for organizations must prioritize a partnership approach that
15 includes individual home help caregivers, any bargaining
16 representative of individual home help caregivers, organizations,
17 and the council.

18 (k) By not later than September 30, 2025, and then quarterly
19 thereafter, compile and maintain a list of the names, home
20 addresses, home telephone numbers, personal cellular telephone
21 numbers, and personal email addresses, if known, of all individual
22 home help caregivers who have been paid for providing individual
23 home help services within the previous 6 months. The list described
24 in this subdivision must not include the name or private data of
25 any participant or participant's representative or indicate that an
26 individual home help caregiver is a relative of a participant or
27 has the same address as a participant.

28 (l) Maintain a registry of persons qualified to be individual
29 home help caregivers to promote and coordinate effective and

1 efficient individual home help services.

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

4 (n) 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 (o) Ensure that all administration of individual home help
9 services is in conformity with this act, including by establishing
10 or modifying policies and program operations, and promulgating or
11 modifying any regulations, as necessary to implement the
12 requirements of this act.

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

21 (14) The council shall convene and support an interested party
22 advisory group at least every 2 years in accordance with federal
23 Medicaid requirements. For purposes of this subsection, the
24 interested party advisory group membership must include Home Help
25 participants, individual home help caregivers, representatives of
26 the department, and the bargaining representative of individual
27 home help caregivers.

28 (15) Except as otherwise provided in this act, the council may
29 do all things necessary or convenient to implement the purposes and

1 provisions of this act and the purposes, objectives, and
2 jurisdictions vested in the council or the board by this act or
3 other law.

4 (16) The council may receive local, state, federal, and other
5 funds to pay for individual home help services and to accomplish
6 the purposes and provisions of this act. Funds to support the
7 operation of the council may be provided by the department.

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

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

13 (19) The board described in subsection (2) shall select and
14 retain a chief executive officer for the council. The chief
15 executive officer shall administer the council in accordance with
16 the operating budget adopted by the board, general policy
17 guidelines established by the board, other applicable governmental
18 procedures and policies, and this act. The chief executive officer
19 is responsible for the day-to-day operations of the council and
20 supervision of all council employees. All terms and conditions of
21 the chief executive officer's employment by the council must be
22 specified in a written contract between the chief executive and the
23 board. The chief executive officer shall serve at the pleasure of
24 the board.

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

29 (21) The council's authority over the terms and conditions of

1 individual home help caregivers' employment that are within the
2 council's control, including compensation, payment, and benefit
3 terms, employment opportunities, individual home help caregiver
4 orientation, training, and education opportunities are subject to
5 the council's obligations to meet and negotiate under 1947 PA 336,
6 MCL 423.201 to 423.217, and section 4, and to the agreement with
7 any bargaining representative of individual home help caregivers,
8 as authorized by 1947 PA 336, MCL 423.201 to 423.217, and section
9 4.

10 (22) The council and the department shall immediately commence
11 all necessary steps to ensure that individual home help services
12 are offered in conformity with this act, to obtain any necessary
13 federal approval for program modifications from the Centers of
14 Medicare and Medicaid Services, and to gather all information that
15 may be needed for promptly compiling lists required under this act.
16 The council and the department shall complete the steps described
17 in this subsection by not later than September 30, 2025.

18 Sec. 4. (1) For the purposes of 1947 PA 336, MCL 423.201 to
19 423.217, individual home help caregivers are considered, by virtue
20 of this section, public employees employed by the council as
21 defined in section 201 of 1947 PA 336, MCL 423.201. 1947 PA 336,
22 MCL 423.201 to 423.217, applies to individual home help caregivers.

23 (2) The department, the council, or other person acting on
24 behalf of this state shall not exercise any authority or take any
25 action that undermines the council's status as the employer of
26 individual home help caregivers for the purposes specified in
27 subsection (1).

28 (3) Participants or participants' representatives retain the
29 rights to select, hire, direct, supervise, and terminate the

1 services of any individual home help caregiver providing individual
2 home help services for the participant. Nothing in this act must be
3 construed to alter those rights. No provision of any agreement
4 reached between the council and any bargaining representative of
5 individual home help caregivers must interfere with the rights of
6 participants or participants' representatives to select, hire,
7 direct, supervise, and terminate the employment of their individual
8 home help caregivers.

9 (4) Individual home help caregivers may, in accordance with
10 the procedures set forth in sections 12 and 14 of 1947 PA 336, MCL
11 423.212 and 423.214, choose a bargaining representative to bargain
12 collectively and enter into collective bargaining agreements with
13 the council under sections 9, 11, and 15 of 1947 PA 336, MCL
14 423.209, 423.211, and 423.214. If a bargaining representative of
15 individual home help caregivers is certified, the mutual rights and
16 obligations of the council and the bargaining representative to
17 bargain collectively over the terms and conditions of individual
18 home help caregivers' employment extend to the subjects covered
19 under section 15 of 1947 PA 336, MCL 423.215, but do not include
20 those subjects reserved to participants and participants'
21 representatives under subsection (3).

22 (5) Notwithstanding section 13 of 1947 PA 336, MCL 423.213,
23 the only appropriate unit for individual home help caregivers is a
24 statewide unit of all individual home help caregivers. Individual
25 home help caregivers who are related to their participant or their
26 participant's representative must not be excluded from the unit
27 described in this subsection for that reason.

28 (6) Any aspects of a collective bargaining agreement entered
29 into pursuant to this act requiring appropriation by the federal

1 government, this state, or revisions to statutes or regulations
2 must be subject to passage of those appropriations and any
3 necessary statutory and regulatory revisions. If any such
4 appropriations or revisions are not adopted, the council or the
5 bargaining representative may reopen negotiations on all or part of
6 the collective bargaining agreement.

7 (7) Acts made unlawful under section 10 of 1947 PA 336, MCL
8 423.210, are prohibited and considered unlawful if carried out by
9 either of the following parties:

10 (a) The council.

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

13 (8) Any alleged violation of subsection (7) may be filed with
14 the employment relations commission as an unfair labor practice and
15 considered and ruled upon in accordance with sections 10 and 16 of
16 1947 PA 336, MCL 423.210 and 423.216, and the commission's rules
17 and regulations.

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

21 (10) Whenever in the course of mediation of a bargaining
22 representative dispute, except a dispute concerning the
23 interpretation or application of an existing agreement, if the
24 dispute has not been resolved to the agreement of both parties
25 within 30 days of the submission of the dispute to mediation, or
26 within such further additional periods to which the parties agree,
27 the individual home help caregiver or the council may initiate
28 binding arbitration proceedings by prompt request, in writing, to
29 the other, with copy to the employment relations commission. An

1 arbitration described in this subsection should be conducted in the
2 same manner and under the same procedures as a binding arbitration
3 under 1969 PA 312, MCL 423.231 to 423.247.

4 (11) The council shall, upon request, provide lists compiled
5 under section 3 of this act to both of the following parties:

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

8 (b) A bargaining representative of individual home help
9 caregivers.

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

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