

***** Act 144 of 2024 THIS NEW ACT IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE *****

HOME HELP CAREGIVER COUNCIL ACT Act 144 of 2024

AN ACT 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.

History: 2024, Act 144, Eff. (sine die).

The People of the State of Michigan enact:

***** 400.801.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE *****

400.801.new Short title.

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

History: 2024, Act 144, Eff. (sine die).

***** 400.802.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE *****

400.802.new Definitions.

Sec. 2. As used in this act:

(a) "Activities of daily living" includes eating, toileting, bathing, grooming, dressing, mobility, and transferring.

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

(i) A current Medicare certified home health agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 2024, Act 144, Eff. (sine die).

***** 400.803.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE *****

400.803.new Home help caregiver council; membership; term of service; powers and duties.

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

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

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

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

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

(d) Two members appointed by the director of the department to represent participants or participant representatives.

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

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

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

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

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

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

(4) After the initial appointments under subsection (3), if a vacancy occurs among the board members described in subsection (2) by expiration of a term, the director of the department shall appoint an individual satisfying the requirements of subsection (2) to a new 4-year term. If a vacancy occurs on the board among the board members described in subsection (2) other than by expiration of a term, the vacancy must be filled by the director of the department for the remainder of the term of the unexpired term. Board members may continue to serve until a successor is appointed. Unless otherwise specified, a board member's resignation is effective upon written notice received by the director.

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

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

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

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

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

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

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

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

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

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

(iii) A bargaining representative of individual home help caregivers must be allowed to attend each orientation. The bargaining representative must be allowed to distribute materials to and collect materials from attendees and make a presentation to attendees that is not more than 30 minutes long during the orientation.

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

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

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

(e) Maintain a registry of individuals qualified to be individual home help caregivers to promote and coordinate effective and efficient individual home help services. Individual home health caregivers may request to opt out of having the individual's information maintained in the registry created under this section.

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

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

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

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

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

(12) The council shall convene and support an interested parties advisory group at least every 2 years and as often as the council's members determine to be necessary to meet the council's obligations in accordance with federal Medicaid requirements or any other requirements. For purposes of this subsection, the interested parties advisory group membership must include Home Help participants, individual home help caregivers, representatives of the department, and the bargaining representative of individual home help caregivers.

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

(14) The council may receive local, state, federal, and other funds to pay for individual home help services

and to accomplish the purposes and provisions of this act. Funds to support the operation of the council may be provided by the department.

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

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

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

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

History: 2024, Act 144, Eff. (sine die).

***** 400.804.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE *****

400.804.new Collective bargaining; treatment of home help caregivers as public employees; application and limitations.

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

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

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

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

(5) Notwithstanding an individual home help caregiver's status as a public employee under subsection (1), the individual home help caregiver is not a government actor and the state, the department, the council, and the board bear no liability for any actions undertaken by the individual home help caregiver in the performance of the individual home help caregiver's duties. The state, the department, or contractors of the

state or department are not vicariously or jointly liable for the action or inaction of any individual home help caregiver, whether or not that individual home help caregiver was included on any referral registry maintained by the state, department, or contractors of the state or department, or referred to a consumer or prospective consumer by the state, department, or contractors of the state or department. The existence of a collective bargaining agreement, the placement of an individual home help caregiver on any referral registry, or the development or approval of a plan of care for a consumer who chooses to use the services of an individual home help caregiver and the provision of case management services to that consumer, by the department, does not constitute a special relationship with the consumer. The state, the department, or contractors of the state or department shall not indemnify any home help caregiver for claims against them arising from actions taken during the course of the home help caregiver's employment.

(6) Individual home help caregivers may, in accordance with the procedures set forth in sections 12 and 14 of 1947 PA 336, MCL 423.212 and 423.214, choose a bargaining representative to bargain collectively and enter into collective bargaining agreements with the department under sections 9, 11, and 15 of 1947 PA 336, MCL 423.209, 423.211, and 423.215. If a bargaining representative of individual home help caregivers is certified, the mutual rights and obligations of the department and the bargaining representative to bargain collectively over the terms and conditions of individual home help caregivers' employment extend to the subjects covered under section 15 of 1947 PA 336, MCL 423.215, but do not include those subjects reserved to participants and participants' representatives under subsection (2). If there is not an agreement between the bargaining representative and the department, the department has no obligation to engage in effects or impact bargaining with respect to the subjects reserved to participants and participants' representatives under subsection (2).

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

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

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

(a) The department.

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

(10) Any alleged violation of subsection (9) may be filed with the employment relations commission as an unfair labor practice and considered and ruled upon in accordance with sections 10 and 16 of 1947 PA 336, MCL 423.210 and 423.216, and the commission's rules and regulations.

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

(12) Whenever in the course of mediation of a bargaining representative dispute, except a dispute concerning the interpretation or application of an existing agreement, if the dispute has not been resolved to the agreement of both parties within 30 days of the submission of the dispute to mediation, or within such further additional periods to which the parties agree, the exclusive bargaining representative or the department may initiate binding arbitration proceedings by prompt request, in writing, to the other, with copy to the employment relations commission. Except as otherwise provided in this subsection, an arbitration described in this subsection must be conducted in the same manner and under the same procedures as a binding arbitration under 1969 PA 312, MCL 423.231 to 423.247. Notwithstanding the procedures of binding arbitration under 1969 PA 312, MCL 423.231 to 423.247, the majority decision of the arbitration panel is binding on the parties only with respect to those economic issues identified by the arbitration panel as described in section 8 of 1969 PA 312, MCL 423.238. The arbitration panel is not required to adopt the last offer of settlement from either party as to each economic issue, but may render an award that falls between the parties' last offers of settlement on each economic issue, so long as such award is based on the applicable factors described under section 9 of 1969 PA 312, MCL 423.239. Without limiting any of the department's obligations as described under section 10 of 1969 PA 312, MCL 423.210, the department may implement its last best offer of settlement on each economic issue 60 days after the decision of the arbitration panel. Nothing in this act is intended to curtail or infringe on the legislature's constitutional appropriation authority.

(13) The council shall, upon request and agreement by the requesting party to protect the data described in this subsection and use it only in furtherance of the purposes outlined in this section or 1947 PA 336, MCL 423.210 and 423.216, and the commission's rules and regulations.

423.201 to 423.217, provide lists compiled under section 3 of this act to both of the following parties:

- (a) Any labor organization wishing to represent the appropriate unit of individual home help caregivers.
- (b) A bargaining representative of individual home help caregivers.

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

History: 2024, Act 144, Eff. (sine die).

***** 400.805.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE *****

400.805.new Deduction for dues of bargaining representative.

Sec. 5. The department shall make any deductions from the wages of individual home help caregivers that are authorized under section 7 of 1978 PA 390, MCL 408.477, or otherwise authorized by law. Those deductions include, but are not limited to, deductions of the dues of a bargaining representative where authorized by the individual home help caregiver. As described in section 7 of 1978 PA 390, MCL 408.477, this act expressly allows deductions from the wages of individual home help caregivers in writing or pursuant to any form of authorization given by the caregiver that is permitted and valid under the uniform electronic transactions act, 2000 PA 305, MCL 450.831 to 450.849. A deduction for a bargaining representative may only be revoked pursuant to the terms of the individual home help caregiver's authorization. A bargaining representative that certifies that it has and will maintain individual home help caregivers' authorizations must not be required to provide a copy of an individual authorization to the department unless a dispute arises about the existence or terms of the authorization. An individual home help caregiver's request to cancel or change deductions for bargaining representatives must be directed to the labor organization and not to the department. The labor organization is responsible for processing the request to cancel or change deductions. The department shall rely on information provided by the bargaining representative regarding whether deductions for a labor organization were properly canceled or changed, and the labor organization shall indemnify the council for any claims made by the individual home help caregiver for deductions made in reliance on that information.

History: 2024, Act 144, Eff. (sine die).