

HOME HELP CAREGIVER COUNCIL ACT (EXCERPT)
Act 144 of 2024

***** 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 423.201 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).