

Congress of the United States
Washington, DC 20515

September 1, 2025

The Honorable Lori Chavez-DeRemer
Secretary
U.S. Department of Labor
200 Constitution Ave NW
Washington DC, 20210

Re: Proposed Rule on Application of the Fair Labor Standards Act to Domestic Service, RIN 1235-AA51

Dear Secretary Chavez-DeRemer:

We are writing to strongly oppose the proposed rule that would strip away federal minimum wage and overtime protections for nearly 4 million home care workers across the country who finally secured this right just over a decade ago.¹ The proposed rule would jeopardize our nation's care economy, destabilize an already underpaid workforce, and harm the more than 9 million older adults and people with disabilities who depend on home care workers to continue living in their communities.² This is not only unconscionable and bad policy, but it also diminishes the dignity of home care workers, jeopardizes their economic stability, and exacerbates existing challenges to attract and retain workers in this crucial and in-demand field.

Congress extended the protections of the Fair Labor Standards Act (FLSA) to "domestic service" employees in 1974. However, employees that provided "companionship services" to elderly or disabled individuals were exempted from the FLSA's minimum wage and overtime provisions, including those employed by third-party employers. Companionship services were defined as care, fellowship, and protection. General household work was also allowed, so long as household work did not exceed 20 percent of working hours.³ In 2013, the Department of Labor narrowed the definition of companionship services, stating that the minimum wage and overtime exemptions would only apply to employees who spent less than 20 percent of their time providing care, including assisting with activities of daily living, that were directly by a disabled or elderly individual or their family.⁴ The Department is now proposing to revert to the 1975 regulations, allowing employers, including home health agencies and other third-party employers, to pay direct care workers less than minimum wage and deny them overtime pay.

Home care workers are a critical part of the direct care workforce and include some direct support professionals, home health aides, personal care aides, and certified nursing assistants who provide necessary, skilled care and assistance with daily tasks extending far beyond "companionship." When

¹ Application of the Fair Labor Standards Act to Domestic Service, 90 Fed. Reg. 28976 (July 2, 2025) (to be codified at 29 CFR Part 552).

² Georgetown University Center for Children and Families. *How Medicaid Supports Seniors and People with Disabilities and Their Caregivers*. Georgetown University Center for Children and Families, 11 Mar. 2025.

³ Application of the Fair Labor Standards Act to Domestic Service, 40 Fed. Reg. 7404 (Feb. 20, 1975)

⁴ Application of the Fair Labor Standards Act to Domestic Service, 78 Fed. Reg. 60454 (Oct. 1, 2013).

Congress passed the 1974 amendment to the Fair Labor Standards Act, the intention was to exclude “elder sitters,” similar to the casual babysitter exemption, not dedicated professionals.⁵ Home care workers are a professional workforce and provide assistance with activities of daily living such as bathing, dressing, eating, transferring, and toileting, along with medical tasks including administering medications and assessing vital signs.

Providing direct home care is physically and emotionally demanding. The workload is heavy and beset with scheduling challenges, inadequate support, and limited training and career advancement prospects.⁶ This long-term care is an essential part of our health care and home and community-based services (HCBS) system, allowing individuals to remain in their homes and communities rather than in institutional settings. Care workers empower family members, particularly women, to remain in the workforce.

Despite the enormous contributions of home care workers and the advances made by the 2013 rule, home care workers remain among the country’s lowest-paid workers with limited access to workplace benefits and protections. Direct care workers’ median wages are lower than all other occupations with similar or lower entry-level requirements in all 50 states plus the District of Columbia, which has led to a crisis in attracting and retaining workers to provide these critical services.⁷ As noted in the Notice of Proposed Rulemaking, the Bureau of Labor Statistics (BLS) projects demand for this workforce will increase by more than 20 percent in the next decade.

Given the recently passed one trillion dollars in cuts to Medicaid in H.R. 1 and years-long wait times for home-based care, we are deeply concerned about how this rule would impact access to care by potentially creating greater protections for workers in facility settings than those providing HCBS. This is a move in the wrong direction because states are obligated under the Americans with Disabilities Act (ADA) to provide services in the most integrated setting that will meet a disabled person’s needs.⁸ This obligation has led to an increase in demand for HCBS and a decrease in demand for institutional care. Revoking the 2013 rule will make it harder for workers to remain in the profession and provide consistent care.

Moreover, we are deeply concerned about the process through which this rule change has been rolled out. The issuance of FAB 2025-4, Home Care Enforcement Guidance, on July 25 suspends enforcement of the 2013 rule, discontinues any open investigations, and bars investigation or enforcement actions against home care agencies. This could have immediate impacts on home care workers’ livelihoods without offering prior notice. The Department should not cease enforcement of the 2013 rule before workers have the opportunity to submit comments through the rulemaking process.

Excluding the care workforce, which is overwhelmingly made up of women of color and immigrants, from the same basic labor protections that cover the vast majority of U.S. workers is unconscionable, especially given the historic devaluation of this work stemming from the legacy of slavery. Currently,

⁵ Application of the Fair Labor Standards Act to Domestic Service 78 FR 60454 (Oct. 01, 2013).

⁶ PHI National, *Understanding the Direct Care Workforce*, <https://www.phinational.org/policy-research/key-facts-faq/> (last visited August 13, 2025).

⁷ *Id.*

⁸ *Olmstead v. L. C. by Zimring*, 527 U.S. 581, 119 S. Ct. 2176 (1999).

two in five direct care workers live at or near poverty, and nearly half are forced to rely on government assistance to make ends meet.⁹ Denying care workers basic labor protections and allowing them to be paid subminimum wages below \$7.25 per hour devalues their essential work and undermines the care sector and care workers' contributions to our society, economy, and communities.

If this rule goes into effect, it will cause lasting harm to our care workforce and leave many families without the services they rely on to work, go to school, and care for their loved ones. Additionally, it will harm an already strained workforce and exacerbate the critical shortage of direct care workers, a shortage that is expected to worsen as the need for long term care grows over the next decade. We urge you to withdraw this proposed rule, immediately resume enforcement of the 2013 rule, and instead refocus your efforts to improve the wages and conditions of the home care workforce.

Sincerely,

[[SIGNATURES]]

⁹ PHI National, *Caring for the Future The Power and Potential of America's Direct Care Workforce*
<https://www.phinational.org/wp-content/uploads/2021/01/Caring-for-the-Future-2021-PHI.pdf> (last visited Aug. 13, 2025).