



Pennsylvania
Department of Labor & Industry
The Secretary

September 2, 2025

Via Federal eRulemaking Portal (<http://www.regulations.gov>)

The Honorable Lori Chavez-DeRemer
Secretary
United States Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Daniel Navarrete
Director
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor, Room S-3502
200 Constitution Avenue, NW
Washington, DC 20210

Re: Notice of Proposed Rulemaking, *Application of the Fair Labor Standards Act to Domestic Service*, 90 Fed. Reg. 28,976 (Jul. 2, 2025), RIN 1235-AA51

Dear Secretary Chavez-DeRemer and Director Navarrete:

We write on behalf of the Commonwealth of Pennsylvania's Department of Labor & Industry and the States of California (Labor Commissioner; Attorney General), Colorado (Attorney General), Connecticut (Attorney General), District of Columbia (Attorney General), Hawai'i (Attorney General), Illinois (Dep't of Labor), Maine (Dep't of Labor), Maryland (Dep't of Labor; Attorney General), Massachusetts (Commonwealth of Massachusetts' Office of the Attorney General), Michigan (Attorney General), Minnesota (Dep't of Labor and Industry; Attorney General), Nevada (Attorney General), New Jersey (Attorney General), New York (Attorney General), Oregon (Bureau of Labor and Industries; Attorney General), Rhode Island (Attorney General), Vermont (Attorney General), and Washington (Dep't of Labor and Industries; Attorney General), (collectively, States) to oppose the U.S. Department of Labor's (USDOL or Department) Notice of Proposed Rulemaking (NPRM) entitled *Application of the Fair Labor Standards Act to Domestic Service*, 90 Fed. Reg. 28,976 (Jul. 2, 2025) (proposed rule or proposal). This proposed rule would take away federal minimum wage and overtime pay protections under the Fair Labor Standards Act (FLSA) for millions of domestic service employees, primarily home health care workers employed by agencies. The States strongly oppose USDOL'S proposal to

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rescind the current regulations and revert to 1975 regulations that denied labor protections to this vulnerable workforce who provide essential home care services to seniors and individuals with disabilities.

The experiences of the undersigned States in enforcing labor laws and protecting workers, particularly home care workers, make clear that finalizing the proposed rule would harm the type of at-risk employees USDOL should be protecting. USDOL proposes to take away the most fundamental of labor protections—minimum wage and overtime pay—for a low-wage workforce that has been covered by the FLSA for the last decade. The proposed rule ignores both Congressional intent in ensuring FLSA protections for workers for whom domestic service work is a vocation, as well as the growth and professionalization of the home care workforce since the 1974 FLSA amendments. By back-tracking to the 1975 regulations, USDOL proposes to make millions of workers more susceptible to wage theft and other related violations. This proposal, if finalized, will also increase costs to States and consumers, undermine recruitment, retention, and workforce development, weaken the quality and stability of care, and make labor law enforcement more difficult in our jurisdictions.

Additionally, the proposal, if finalized, would violate the Administrative Procedure Act (APA), which requires an agency to “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.”¹ USDOL fails to provide any colorable explanation for changing its position and reverting to 50-year-old regulations. Rather, in fewer than ten pages in the Federal Register, USDOL proposes to take away federal minimum wage protections from more than 3.7 million low-wage workers² with unsupported assertions that the proposed rule will save employers money and increase access to services. This unsubstantiated justification facially contradicts USDOL’s mandate to protect workers by failing to consider any impacts on workers and offers no substantive explanation, data, or evidence in support of removing minimum wage and overtime protections from this workforce.³ As such, the proposed rule, if finalized, would be arbitrary and capricious under the APA.

¹ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quotation omitted).

² 90 Fed. Reg. 28,980 (“According to available data from the Bureau of Labor Statistics (BLS), in 2023, there were approximately 3.7 million ‘Home Health and Personal Care Aides’ employees in the United States.”)

³ This proposed rule, published two days before a federal holiday, was also published amid a tranche of over 60 other regulatory actions by USDOL, all with 30- or 60-day comment periods. See Press Release, “Secretary Chavez-DeRemer unveils aggressive deregulatory efforts in push to put the American worker first” (July 1, 2025) available at <https://www.dol.gov/newsroom/releases/ossec/ossec20250701-0> (“The Department of Labor’s

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For these reasons, the States urge USDOL to withdraw this NPRM.

I. The States Oppose the Department’s Proposal to Strip Minimum Wage and Overtime Compensation Protections from this Professionalized, Essential, and Growing Workforce (proposed 29 C.F.R. § 552.109).

A. The States are interested parties with deep expertise in wage and hour issues impacting home care workers.

The undersigned State Attorneys General and Labor Secretaries enforce laws that protect workers’ economic security, health, and welfare. Although processes vary by state, the undersigned either directly investigate and prosecute violators of wage and hour laws or defend enforcement actions by state departments of labor in administrative or judicial appeals. The States have each observed or handled a high volume of cases on behalf of workers in the home care industry. For example, in Pennsylvania, home care cases represent the industry with the greatest number of wage and hour complaints—nearly 40 percent. Similarly, since January 1, 2021, the Maine Department of Labor has received 57 complaints of labor standard violations from home health care workers and determined that \$355,000 in wages were owed to health care employees in that time. There is not only a high volume of violations within this industry, but also a high amount of back wages owed. For example, since 2019 the Office of the New York State Attorney General has collected more than \$16 million from seven home health aide companies in unpaid wages.⁴ Despite these enforcement efforts, there remains a high prevalence of labor standards violations in this industry—even with FLSA and state labor protections—creating significant

actions are unprecedented, slashing more than 60 obsolete and burdensome regulations impacting American workers.”).

⁴ See, e.g., Press Release, *Attorney General James and NYC Department of Consumer and Worker Protection Recover Up to \$18.8 Million in Unpaid Wages for 12,000 Home Health Aides* available at <https://ag.ny.gov/press-release/2021/attorney-general-james-and-nyc-department-consumer-and-worker-protection-recover#:~:text=The%20agreement%20is%20the%20result,Law%20by%20failing%20to%20pay>; Press Release, *Attorney General James Secures Nearly \$7 Million From Home Health Agencies for Cheating Workers and Medicaid Fraud* available at <https://ag.ny.gov/press-release/2022/attorney-general-james-secures-nearly-7-million-home-health-agencies-cheating>; Press Release, *Attorney General James and U.S. Attorney Peace Secure Over \$17 Million From Home Health Agencies for Cheating Workers and Defrauding Medicaid in Landmark Wage Parity Agreement* available at <https://ag.ny.gov/press-release/2024/attorney-general-james-and-us-attorney-peace-secure-over-17-million-home-health>.

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economic impacts on an essential yet vulnerable workforce. As an example, according to a recent report, 57 percent of domestic workers in New Jersey were subject to wage theft.⁵

Although some States have their own wage and overtime laws that cover domestic workers, they also rely on robust federal enforcement of the FLSA's protections to protect workers in this industry. Without that federal enforcement, States will be forced to bear a substantially greater burden to monitor and enforce compliance with state laws. Many wage violations that otherwise would be handled by USDOL for investigation and enforcement will instead be channeled to State regulators with limited enforcement resources. Losing this federal-state partnership would be harmful to workers as well as State labor enforcement agencies; it may be particularly problematic in enforcing against repeat offenders. As an example of federal and state enforcers working in tandem, the Minnesota Department of Labor and Industry instituted an enforcement action against Minnesota Living Assistance, Inc., which resulted in an order requiring "pay[ment] of \$557,713.44 in unpaid overtime wages and an equal amount in liquidated damages."⁶ That same employer was also ordered to pay \$800,000 in unpaid overtime compensation and \$800,000 in liquidated damages in a later case brought by USDOL.⁷

B. Home care workers are professionals in a rapidly expanding industry that is rife with labor violations.

While USDOL generically states that its proposal to roll back minimum wage and overtime protections is intended to make home care services more accessible, it ignores the realities of the industry. The home care workforce has become a highly professionalized and essential workforce over the last 50 years and home care is among the fastest growing occupational sectors in the country. Yet wages remain low and labor violations remain high in this industry.⁸

As a threshold matter, we note that domestic service employees who may be considered exempt companions under this proposal may hold a number of different job titles, including home health aides, personal care aides, personal attendants, direct care workers, or companions. We use

⁵ See Rutgers Center for Women and Work, Domestic Workers in New Jersey, September 2020 available at <https://tinyurl.com/RutgersCWW>.

⁶ *In re Minn. Living Assistance, Inc.*, 934 N.W.2d 300, 303 (Minn. 2019).

⁷ See *Walsh v. Minn. Living Assistance, Inc.*, No. 21-cv-02213 (KMM-TNL) (D. Minn. Jan. 19, 2023).

⁸ See, e.g., PHI Personal Care Aide Training Standards Across the United States: 2025 Update (August 2025), available at <https://www.phinational.org/personal-care-aide-training-standards-across-the-united-states-2025-update/> ("Personal care aides and home health aides make up the largest occupational group in the U.S. workforce.").

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the term “home care workers” in this comment to broadly include all employees performing this work in private homes.⁹

1. *Professionalization of home care workers*

In the five decades since the 1975 regulations were promulgated, home care work has transitioned from a largely informal side arrangement to a professionalized vocation dominated by third-party employers. Industry leaders themselves—who have sometimes opposed labor protections for their employees¹⁰—recognize the professionalism of this workforce. The Home Care Association of America calls home care a “vital and growing” segment of the workforce who should be referred to as “home care professionals” or “professional caregivers,” noting that such workers must have “a breadth of clinical observational skills, as well as the emotional intelligence” to manage “nutrition, activity, and medication adherence” and increasingly provide complex assistance such as “advanced dementia management, transferring bedbound patients using lifts, and assisting with oxygen management.”¹¹ There is a 75-hour federal training requirement for home health aides and the majority of states (31 states plus the District of Columbia) have training and licensing standards across Medicaid programs for personal care aides.¹²

Home care work has become an especially important professional pathway for women, particularly those without a college education.¹³ These professionals are working in this industry

⁹ Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, Home Health and Personal Care Aides, available at <https://www.bls.gov/ooh/healthcare/home-health-aides-and-personal-care-aides.htm> (“Home health and personal care aides monitor the condition of people with disabilities or chronic illnesses and help them with daily living activities.”).

¹⁰ See, e.g., *Home Care Assoc. v. Weil*, 799 F.3d 1084 (D.C. Cir. 2015) (challenging USDOL’s 2013 final rule providing minimum wage and overtime protections to home care workers).

¹¹ Home Care Association of America, *State of Home Care: Industry at a Crossroads* (2022), at 3-4, available at https://www.hcaoa.org/uploads/1/3/3/0/133041104/2022homecareatcrossroadslow_3.pdf (“Employer-based home care ensures quality, safety, and accountability. Agencies provide background checks and comprehensive training to ensure care recipients and families have a peace of mind about their caregivers. Training opportunities offer continuous growth for employees as well as professional career pathways, access to new technology, and administrative support.”).

¹² See, e.g., PHI Personal Care Aide Training Standards Across the United States: 2025 Update (August 2025), available at <https://www.phinational.org/personal-care-aide-training-standards-across-the-united-states-2025-update/>.

¹³ Home care workers are overwhelmingly female, disproportionately women of color, and approximately one-third are immigrants. Most have a high school education or less. See PHI, *Direct Care Workforce State Index 2024*, at 3,12 available at <https://www.phinational.org/wp->

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as a vocation, not a casual side-arrangement. Yet they do not have the same supports and protections as their counterparts in institutional settings (who are covered by the FLSA and are not impacted by the proposal). Home care workers contend with exposure to infectious disease, patient lifting, and potential violence in private homes that are not designed to minimize these hazards,¹⁴ though some States, such as Washington, have sought to mitigate these risks to workers.¹⁵ This NPRM will only exacerbate this imbalance.

The COVID-19 pandemic drew further attention to the critical services professional home care workers provide. During the pandemic, home care workers were designated as essential workers nationwide, recognizing the vital role that these workers play in supporting public health.¹⁶ The pandemic, however, also “laid bare the wide gap between the value that health care support, service, and direct care workers bring to the society and the extremely low wages they earn in return.”¹⁷

content/uploads/2024/07/PHIs-DCW-State-Index_report_web.pdf.; Bandini, J. et al., *Home Care Aide Safety Concerns and Job Challenges During the COVID-19 Pandemic*, NEW SOLUTIONS: A Journal of Environmental and Occupational Health Policy 31(1):20-29 (2021).

¹⁴ See Derk, Susan J., et al., *National Estimates of Home Care Workers Nonfatal Emergency Department–Treated Injuries, United States 2015–2020*, Journal of Occupational and Environmental Medicine 66(1):26-31, January 2024; National Institute of Occupational Safety and Health, Centers for Disease Control, *The Unique Occupational Environment of the Home Healthcare Worker*, September 29, 2020, available at <https://blogs.cdc.gov/niosh-science-blog/2020/09/29/hhcws/>.

¹⁵ Washington state is a national leader in providing long-term care in home and community-based settings and increasing the professionalization of the home care industry to meet growing demand for long-term care services. State standards include robust training and certification standards, and the passage of the Consumer Direct Employer Program in 2024 (RCW 74.39A.500). The City of Seattle, Washington also approved a local ordinance recognizing the professionalization of domestic work and providing additional protections like minimum wage and meal and rest breaks.

¹⁶ Home Care Association of America, *State of Home Care: Industry at a Crossroads* (2022), at 16, available at https://www.hcaoa.org/uploads/1/3/3/0/133041104/2022homecareatcrossroadslow_3.pdf.

¹⁷ Kinder, Molly, *Essential but Undervalued: Millions of Health Care Workers Aren’t Getting the Pay or Respect They Deserve in the COVID-19 Pandemic*, May 28, 2020, available at <https://www.brookings.edu/articles/essential-but-undervalued-millions-of-health-care-workers-arent-getting-the-pay-or-respect-they-deserve-in-the-covid-19-pandemic/>.

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2. Rapidly expanding occupational sector with labor shortages.

Despite inconsistent statements in the NPRM, this professionalized workforce is expanding rapidly.¹⁸ The Bureau of Labor Statistics projects that employment of home health and personal care aides will grow 21 percent from 2023-2033—more than three times the average growth rate for all occupations.¹⁹ Nationally, employment is expected to rise from approximately 3.96 million workers to 4.78 million workers over the next decade.²⁰ This growth is fueled by the aging of the “baby boomer” generation coupled with a systemic shift from institutional care to home- and community-based services, which was acknowledged and discussed in USDOL’s 2013 final rule and has continued its upward trajectory since.²¹ These are not casual, peripheral workers. Rather, they comprise the backbone of home- and community- based services. The Government Accountability Office (GAO) has concluded that the home care sector faces recruitment and retention challenges that threaten service availability and continuity.²² Removing FLSA wage floor and overtime protection will only exacerbate turnover, deepen shortages, and undermine continuity of care. In Pennsylvania, for example, there is already a crisis in finding workers to fill

¹⁸ 90 Fed. Reg. 28,981 (“...[G]rowth in the home care workforce ‘slowed’ in the years following the 2013 rule.”); *see also* 90 Fed. Reg. 28,981 (“The home care workforce is projected to experience rapid growth in future years . . . [the] workforce has already doubled in size over the past ten years, growing from 1.4 million home care workers in 2014 to more than 2.9 million in 2023.”).

¹⁹ Bureau of Labor Statistics, *Occupational Outlook Handbook*, Home Health and Personal Care Aides, available at <https://www.bls.gov/ooh/healthcare/home-health-aides-and-personal-care-aides.htm>.

²⁰ This growth is evident in individual states as well; for example, in Pennsylvania employment is projected to increase from 188,340 in 2022 to 216,220 in 2032. In New York, similar growth is projected with 551,740 workers estimated in 2022 and 710,140 projected in 2032. In Washington state, forecasters estimate a 16 percent increase in jobs in the home health and personal care occupation over the next decade. In New Jersey there has been a 22.2% increase in the last two years alone (2022-2024). And in Maryland, the Home Health and Personal Care Aide occupation is projected to grow 18.7 percent over the next decade, and this rate of growth is in the top 10 percent of all occupations in Maryland. *See generally* U.S. Bureau of Labor Statistics, *Employment Projections*, available at <https://www.bls.gov/emp/>; *see also* Projections Managing Project, available at <https://projectionscentral.org/longterm> (linked from the BLS *Occupational Outlook Handbook*).

²¹ *Application of the Fair Labor Standards Act to Domestic Service*, 78 Fed. Reg. 60,454, 60,512 (Oct. 1, 2013).

²² Government Accountability Office, *Long-term Care Workforce: Better Information Needed on Nursing Assistants, Home Health Aides, and Other Direct Care Workers* (GAO-16-718) (Aug. 2016) available at <https://www.gao.gov/assets/gao-16-718.pdf>.

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these positions, particularly in view of the aging population.²³ The proposed rule—which recognizes that wages may be reduced and turnover increased—will further deplete the number of individuals willing to perform this crucial work, exacerbating shortages.²⁴

3. *Low wages, high labor violation rates*

The proposed rollback of minimum wage and overtime pay protections for home care and other domestic service workers would inflict harm on a vulnerable workforce. These workers already earn low wages for physically and emotionally demanding labor and denying these workers a wage floor of \$7.25/hour and no overtime pay for hours worked over 40 will only worsen these working conditions, leading to increased turnover in an industry already experiencing high turnover rates and labor shortages that are resulting in increased risk to clients.²⁵ Working largely in isolation in private homes, these workers lack the same opportunities for collective action and rely heavily on wage laws to establish minimum standards.

Although not discussed in detail in the NPRM, a significant portion of home care is funded through public funds, with home care agencies taking a cut of public reimbursement before the workers are paid wages earned.²⁶ In 2023 in Pennsylvania, for example, the median hourly wage

²³ See, e.g., Esposito, Laura “Pennsylvania leaders warn of workforce crisis in state’s home care system,” Pittsburgh Post-Gazette, May 29, 2025 available at <https://www.post-gazette.com/news/social-services/2025/05/29/pennsylvania-home-care-shortage/stories/202505290093>.

²⁴ 90 Fed. Reg. 28,982 (“These potential effects—longer work hours and/or less pay—could negatively impact the morale of affected home care workers and lead to increased employee turnover and difficulty attracting skilled workers to the industry.”).

²⁵ See, e.g., Stedman, Nancy, *Home Health Care Workforce Not Keeping Up with Community Needs*, June 9, 2023 available at <https://ldi.upenn.edu/our-work/research-updates/home-health-care-workforce-not-keeping-up-with-community-needs/>; see also *Home Care Turnover Rate Jumps to 80%...HCAOA is Here to Help Members!*, Home Care Association of America, July 17, 2024, available at <https://www.hcaoa.org/newsletters/home-care-turnover-rate-jumps-to-80hcaoa-is-here-to-help-members>.

²⁶ 90 Fed. Reg. 28,982, n.80 citing Alice Burns, Maiss Mohamed, & Molly O’Malley Watts, *What is Medicaid Home Care (HCBS)?*, KFF (Feb. 18, 2025) available at <https://www.kff.org/medicaid/issue-brief/what-is-medicaid-home-care-hcbs/> (explaining that Medicaid covered two-thirds of all home care spending in the United States in 2022). Relatedly, funding cuts to Medicaid will further complicate the home care workforce issues. See *id.* (“House Republicans’ proposals to reduce federal Medicaid spending by \$2.3 trillion over 10 years . . . would put states at financial risk, forcing them to raise new revenues or reduce Medicaid spending by eliminating coverage for some people, covering fewer services, and (or) cutting rates paid to home care workers and other providers.”).

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for home health and personal care aides was \$14.70²⁷ which was far below the average hourly public reimbursement rate that home care agencies receive, which is \$20.44 per hour.²⁸ In 2024, in Illinois the median hourly wage was \$17.57 per hour,²⁹ far below the public reimbursement rate for older adults of \$28.07 per hour.³⁰ In 2024 in Maine, home health and personal care aides made a median hourly wage of \$18.11 for a full-time employment, which is 53% of the \$34.08 MaineCare reimburses for an hour of Personal Care Services to seniors or individuals with disabilities.³¹

Nationally, average annual earnings hover around \$20,000³² and nearly half of home care aides in many states rely on public assistance to meet basic needs, despite often working full-

²⁷ Bureau of Labor Statistics, Occupational Employment and Wage Statistics, Pennsylvania—Home Health and Personal Care Aides, May 2023, available at <https://www.bls.gov/oes/2023/may/oes311120.htm>.

²⁸ United Homecare Workers of Pennsylvania, *Where Does the Money Go?* (April 5, 2023) available at <https://uhwp.org/wp-content/uploads/2023/04/REPORT%E2%80%94Where-Does-the-Money-Go-2023.04.05.pdf>. (noting, among other things, that the “vast majority of home care agencies in Pennsylvania are for-profit businesses, and four of the five largest agencies are owned by private equity firms”); Tachibana, C., *Worker Wages Stagnate as Medicaid Home Care Spending Rises*, Dec. 10, 2024, available at <https://ldi.upenn.edu/our-work/research-updates/worker-wages-stagnate-as-medicare-home-care-spending-rises/#:~:text=The%20money%20could%20be%20going,for%20labor%20costs%20or%20wage;> Bureau of Labor Statistics, Occupational Employment and Wage Statistics, Pennsylvania—Home Health and Personal Care Aides, May 2024, available at <https://data.bls.gov/oes/#/area/3400000>.

²⁹ Bureau of Labor Statistics, Occupational Employment and Wage Statistics, Illinois—Home Health and Personal Care Aides, May 2024, available at <https://data.bls.gov/oes/#/area/1700000>.

³⁰ 20 ILCS 105/4.02.

³¹ Maine Department of Labor Center for Workforce Research and Information, 2024 Annual Occupational Employment and Wage Estimates, available at [https://www.maine.gov/labor/cwri/dashboards/occupational-employment-and-wage-estimates;MaineCare Section 19 Home and Community Benefits for Elderly and Adults with Disabilities, Rates/Fee Schedule \(July 1, 2025\), available at https://mainecare.maine.gov/Provider%20Fee%20Schedules/Forms/Publication.aspx?RootFolder=%2FProvider%20Fee%20Schedules%2FRate%20Setting%2FSection%20019%20%2D%20Home%20and%20Community%20Benefits%20for%20the%20Elderly%20and%20for%20Adults%20with%20Disabilities&FolderCTID=0x012000264D1FBA0C2BB247BF40A2C571600E81&View=%7B69CEE1D4%2DA5CC%2D4DAE%2D93B6%2D72A66DE366E0%7D](https://www.maine.gov/labor/cwri/dashboards/occupational-employment-and-wage-estimates;MaineCare%20Section%2019%20Home%20and%20Community%20Benefits%20for%20Elderly%20and%20Adults%20with%20Disabilities&FolderCTID=0x012000264D1FBA0C2BB247BF40A2C571600E81&View=%7B69CEE1D4%2DA5CC%2D4DAE%2D93B6%2D72A66DE366E0%7D).

³¹ State Occupational Employment and Wage Estimates, Massachusetts, May 2023, available at https://www.bls.gov/oes/2023/may/oes_ma.htm.

³² Bandini, *supra* n. 12.

time.³³ In Massachusetts, the median rate of \$18.54 for home care workers is on par with or lower than rates for many occupations with notoriously high incidences of labor violations: fast food cooks (\$18.33), retail salespersons (\$19.49), housekeepers and janitors (about \$20).³⁴ In the District of Columbia, the median hourly wage for home health and personal care aides is just \$18.95 per hour,³⁵ below the living wage for a single adult with no children.³⁶ Starting wages for direct care workers barely exceed the D.C. minimum wage of \$17.95 per hour.³⁷

These poverty-level wages are compounded by pervasive wage law violations. PHI's Direct Care Workforce State Index (2024) found that over 80 percent of home care workers report unpaid overtime or other forms of wage theft.³⁸ USDOL has identified the home care industry as a chronic violator of both minimum wage and overtime requirements, and has devoted substantial enforcement resources to recovering unpaid wages for these workers.³⁹ For example, from January 2021 to March 2022, the Philadelphia office of USDOL concluded 38 investigations of home health-care firms in Southeastern Pennsylvania and found that 35 had violated federal minimum wage and overtime requirements.⁴⁰ In fact, within the Pennsylvania Department of Labor & Industry, home health care is the industry with the highest number of minimum wage and overtime compensation claims—nearly forty percent of the total claims received—with several of the

³³ *Id.*

³⁴ State Occupational Employment and Wage Estimates, Massachusetts, May 2023, available at https://www.bls.gov/oes/2023/may/oes_ma.htm.

³⁵ Bureau of Labor Statistics, *May 2024 OEWS Profiles*, available at <https://data.bls.gov/oesprofile>.

³⁶ The living wage for a single adult with no children in D.C. is \$25.98. Amy K. Glasmeier & Massachusetts Institute of Technology, *Living Wage Calculation for District of Columbia* (February 10, 2025), available at <https://livingwage.mit.edu/counties/11001>.

³⁷ D.C. Coalition on Long Term Care, *DC Must Invest in the Care Economy!* 1, available at <https://www.dclongtermcare.org/wp-content/uploads/2024/04/Talking-Points-4.9.24-docx.pdf>.

³⁸ PHI, Direct Care Workforce State Index 2024, *supra* note 4.

³⁹ See Press Release *US Department of Labor finds increased number of care industry employers engaged in wage theft, recovers \$735K in wages, damages in recent cases* (December 30, 2024) available at <https://www.dol.gov/newsroom/releases/whd/whd20241230> (explaining that in fiscal year 2024 more than 2,300 health care industry investigations recovered \$37.8 million in back wages owed; *US Department of Labor obtains judgment requiring Pennsylvania in-home care agency to pay \$1M to 193 employees denied minimum wage, overtime*, September 4, 2024, available at <https://www.dol.gov/newsroom/releases/whd/whd20240904-0>).

⁴⁰ Ravitch, Lizzy McClellan, “Willow Grove-based health-care company that dodged overtime pay now owes workers \$3.8M,” *Philadelphia Inquirer*, January 11, 2023, available at <https://www.inquirer.com/business/health/home-health-care-wages-overtime-labor-department-20230112.html#loaded>.

Commonwealth's largest enforcement actions taken against home health care agencies.⁴¹ Similarly, the New York State Department of Labor (NYDOL) Wage Theft Investigation Dashboard reflects that since 2017, Home Health Care was the industry with the third highest with respect to penalties assessed (behind Restaurant Table Service and Construction). From 2017 to June 30, 2025, NYDOL returned \$13,666,910 in wages to workers and assessed \$5,658,643 in penalties.⁴²

Additionally, some of Massachusetts' largest wage enforcements against home health agencies have coincided with enforcement for Medicaid fraud.⁴³ And in Washington state, FLSA protections have provided a critical protection for care workers generally. As recently as 2024, USDOL recovered \$195,000 in back wages and damages from two adult family homes for failure to pay overtime and failing to pay some workers the federal minimum wage of \$7.25 per hour.⁴⁴ Removing FLSA coverage for these workers will eliminate an important tool to address wage theft—without coverage, there will be no recourse under the FLSA when, for example, an employer decides retroactively to pay workers \$5 per hour, or decides to not pay for certain hours of work.

⁴¹ Since January 2023 there have been 747 minimum wage and overtime claims filed with the Pennsylvania Department of Labor & Industry, with 38% being against home health care agencies; *see also* Press Release, *Shapiro Administration Secures \$74,000 in Unpaid Wages*, April 4, 2025 available at pa.gov/agencies/dli/newsroom/shapiro-administration-secures--74-000-in-unpaid-wages.

⁴² *See* New York State Department of Labor (NYDOL) Wage Theft Investigation Dashboard available at <https://dol.ny.gov/wage-theft-dashboard>.

⁴³ Press Release, *Home Health Agency Agrees to Pay \$6.53 Million to MassHealth to Resolve Allegations of Fraud*, March 4, 2022, available at <https://www.mass.gov/news/home-health-agency-agrees-to-pay-653-million-to-masshealth-to-resolve-allegations-of-fraud> (announcing the that Massachusetts Attorney General's Office also secured \$375,000 in back wages secured from repeat-offender home health care agency); Press Release, *AG Healey Secures \$430,000 From Springfield Home Health Agency To Resolve Fraudulent Billing Allegations*, October 5, 2022, available at <https://www.mass.gov/news/ag-healey-secures-430000-from-springfield-home-health-agency-to-resolve-fraudulent-billing-allegations>; Fair Labor Division Enforcement Database, Citations 20-05-58413-001 through -004, August 28, 2024, available at <https://massago.hylandcloud.com/231dashboards/Viewer.aspx>.

⁴⁴ Drewes, Emerson, *Auburn adult care home to pay \$195k in back wages, damages to 22 workers*, Seattle Times, June 28, 2024 available at <https://www.seattletimes.com/business/auburn-adult-care-home-to-pay-195k-in-back-wages-damages-to-22-workers/>.

II. If Finalized, the NPRM Would Violate the Administrative Procedure Act Because It Is Contrary to Law and Arbitrary and Capricious.

A. The proposal ignores Congressional intent.

Courts have cautioned that “a complete failure to . . . grapple with contrary evidence . . . disregard[s] entirely the need for reasoned decisionmaking.”⁴⁵ Although the proposed rule repeatedly states that reversion to the 1975 regulations would comport with “Congress’s intent to exempt home care employees from FLSA coverage”⁴⁶ these statements are belied by the Congressional record and the Department’s own 2013 rulemaking record. Indeed, the House and Senate Reports, floor debate, USDOL’s 2013 analysis and recent enforcement litigation all flatly contradict such statements. Yet the NPRM does not grapple with this contrary evidence.

The NPRM’s proposed changes are contrary to Congress’s intent in 1974 to expand coverage to domestic service employees for whom domestic service work was a vocation.⁴⁷ As USDOL explained in a brief before the Sixth Circuit Court of Appeals just five weeks before this proposed rule was published, the third-party regulation “ensures that where . . . home care workers are employed by third party agencies rather than solely by the recipients of care (or their families), the workers receive the same minimum wage and overtime protections as other professional domestic service employees—**just as Congress intended.**” *Chavez-DeRemer vs. Americare*, Case. No. 25-3128, *Br. of the Secretary of Labor*, Dkt. No. 22-1 (6th Cir. May 28, 2025) (emphasis added). USDOL fails to provide any lawful or evidence-based explanation for its regulatory about-face.

Prior to 1974, the FLSA’s minimum wage and overtime compensation provisions did not apply to domestic workers unless those workers were employed by covered enterprises (i.e. the business had an annual dollar threshold over a certain amount, currently \$500,000). Congress amended the FLSA in 1974 in order to explicitly expand coverage for domestic service employees who were engaged in their work as a vocation.⁴⁸ The Senate Report explained that it was “the intent of the committee to include within the coverage of the Act all employees whose vocation is domestic service.”⁴⁹ The House Report further noted that Congress intended to protect workers who were “regular breadwinners or responsible for the families’ support” and not casual workers such as occasional babysitters (vs. nannies) and companions, or elder-sitters.⁵⁰ The floor debates further emphasized Congress’s understanding that professional domestic service employees would

⁴⁵ *Fred Meyer Stores, Inc. v. NLRB*, 865 F.3d 630, 638 (D.C. Cir. 2017).

⁴⁶ 90 Fed. Reg. 28,977, 28,980.

⁴⁷ At the time of the promulgation of the 1975 regulations, and as explained *infra* p.13, the industry of workers for whom home care was a vocation was virtually nonexistent.

⁴⁸ 29 U.S.C. 202(a).

⁴⁹ S. Rep. No. 93-690, at 20 (1974).

⁵⁰ H.R. Rep. No. 93-913, at 36 (1974).

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be covered with narrow carveouts for casual arrangements. Senator Williams described an exempt companion as someone “in the same role” as a babysitter—present to watch over an older person.”⁵¹ In explaining who would be considered an exempt companion, Senator Burdick distinguished a “professional domestic who does this as a daily living” from a “neighbor” who “comes in and sits with” a senior citizen.⁵²

The Department discussed the aforementioned legislative history in great detail in its 2013 final rule, concluding that “the 1974 amendments were intended only to expand coverage to include more workers, and were not intended to roll back coverage for employees of third parties who already have FLSA protections” because they worked for a covered employer.⁵³ The Department’s 2013 preamble thus concluded that the legislative history “made clear” that the companionship and live-in domestic service employee exemptions “were not intended to apply to workers who have domestic service as their vocation or who earn their livelihood from such work”—a position that USDOL has maintained until a few weeks ago.⁵⁴

At the time the 1975 regulations were promulgated, the “vast majority” of domestic service workers were employed by households, and “no more than two percent” worked for a third-party employer such as a home care agency.⁵⁵ In crafting those regulations, USDOL likely did not envision the robust, professionalized home care sector flooded with third party employers that exists today. In the intervening half-century, the home care industry has transformed into a multi-billion-dollar sector employing a professionalized workforce—far from the neighborly elder-sitter envisioned in 1975. USDOL’s 2013 final rule documented this transformation in great detail—tracing the evolution from institutional settings to the expansion of home- and community-based services in private homes.⁵⁶ The NPRM’s primary rationale—possibly reducing costs for private businesses and consumers and increasing profits—mirrors policy considerations Congress rejected in 1974 when it chose to provide minimum wage and overtime protection to domestic service employees generally, notwithstanding industry cost objections.⁵⁷ Home care workers of today—

⁵¹ 119 Cong. Rec. 24,801 (statement of Sen. Williams).

⁵² *Id.* (statement of Sen. Burdick).

⁵³ 78 Fed. Reg. 60,480, 60,544.

⁵⁴ *Id.* at 60,454-56; *see also Su v. WiCare Home Care Agency*, Case No. 24-2565, *Br. of the Secretary of Labor*, Dkt. No. 21 pp. 20-30 (3d Cir. Jan. 15, 2025) (“...home care had expanded dramatically over several decades, evolving from what were often casual relationships between neighbors into a lucrative, agency-based, largely government-funded industry employing a professionalized workforce.”).

⁵⁵ Emp’t Standard Admin., U.S. Dep’t of Labor, Minimum Wage and Maximum Hours Standards Under the Fair Labor Standards Act at 28 (Jan. 19, 1973).

⁵⁶ *Id.* at 60,458; *see also Olmstead v. L.C.*, 527 U.S. 581 (1999).

⁵⁷ 78 Fed. Reg. 60,481 (rejecting cost-burden arguments in view of Congressional intent).

particularly those employed by home care agencies—fit precisely within the “vocational” category of domestic service workers Congress sought to protect.

B. The proposal fails to offer a reasoned explanation for its change in position as required by law.

Under the APA, “when an agency changes its interpretation of a particular statutory provision, this change . . . will be set aside if the agency has failed to provide a ‘reasoned explanation . . . for disregarding facts and circumstances that underlay or were engendered by the prior policy.’”⁵⁸ An agency action is arbitrary and capricious where the agency “has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem [or] offered an explanation for its decision that runs counter to evidence before the agency.”⁵⁹ Additionally, the agency “must also be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.”⁶⁰ As explained by the Supreme Court, “[i]t would be arbitrary and capricious to ignore such matters.”⁶¹

Here, the proposed rule provides only the most superficial justification for USDOL’s changed position, falling far short of the legal requirements set forth by the Supreme Court for an agency to make such a significant regulatory change; the thin analysis in this rulemaking stands in contrast to the extensive and reasoned factual analysis of the 2013 regulations. The APA requires agencies to engage in reasoned decision making, explaining why an agency has changed course. An explanation is particularly important here, where the Department proposes to take away minimum wage and overtime protections from millions of low-wage, vulnerable, and essential workers.

For example, the Department asserts that “some of the expected benefits of the 2013 rule have failed to fully materialize” and points to GAO’s 2020 report finding no statistically significant increase in home care workers’ wages or weekly earnings compared to similar occupations. The NPRM, however, omits GAO’s concurrent findings that 1) overtime hours decreased after the 2013 rule, likely due to the spreading of employment, a goal of the FLSA; 2) most states reported cost increases of less than 5% of their LTSS budgets; and 3) there was zero evidence of increased institutionalization of the consumers of home care services following the 2013 rule’s implementation.⁶² Moreover, USDOL’s proposal to combat low wages by removing all wage

⁵⁸ *Catskill Mountains Chapter of Trout Unlimited, Inc. v. Env’tl. Prot. Agency*, 846 F.3d 492, 523 (2d Cir. 2017) (quoting *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009)).

⁵⁹ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

⁶⁰ *Encino Motorcars v. Navarro*, 579 U.S. 211, 222 (2016).

⁶¹ *Fox*, 556 U.S. at 515.

⁶² See Government Accountability Office, GAO-21-72, *Observations on the Effects of the Home Care Rule* 8 (October 2020), available at <https://www.gao.gov/assets/gao-21-72.pdf>.

protections—including minimum wage—defies logic. Rather, the bulk of available data indicates over and over that raising wages and labor protections are beneficial for addressing labor shortages.⁶³

The NPRM also relies on unsubstantiated accounts of administrative burdens (“complicated definition and reporting regime”) without providing any detail, data, or analysis regarding those burdens, or considering what new burdens will be created for workers, States, and consumers as a result of the new rule. The NPRM further claims that rescinding the 2013 regulations “may encourage more providers to enter or expand operations” but provides no data or analysis of provider elasticity or the potential magnitude of gains.⁶⁴ These speculative assertions without any empirical support fall short of the APA’s requirement that agencies “examine the relevant data and articulate a satisfactory explanation for its action.” The absence of analysis is especially glaring when contrasted with the 2013 rule’s detailed cost-benefit assessment, which addressed multiple scenarios and their projected impacts on workers, consumers, and employers.

Additionally, the NPRM is silent as to any potential reliance interests engendered by the 2013 rule. For a decade, States have adjusted home- and community-based services as needed, including modification of provider contracts, compliance measures, and recordkeeping systems to ensure workers are paid in compliance with the FLSA. Providers have similarly restructured staffing patterns, invested in scheduling and payroll systems, and trained employees. Workers themselves have worked with a decade-long assurance of federal minimum wage and overtime protections, choosing to enter this field as their vocation and relying upon a legal framework that guaranteed minimum wage and overtime for this work. USDOL fails to consider and address these reliance interests in its proposal, as required by law.⁶⁵

USDOL’s emphasis on potential cost savings for businesses is speculative and unquantified while the NPRM’s real harm to workers—loss of minimum wage protection, loss of overtime compensation, loss of any federal recourse for nonpayment of wages, loss of federal enforcement

⁶³ See, e.g., Dao, Ngoc, *Federal minimum wage expansion to homecare workers: Employment and income effects*, Labour Economics, Volume 87, 2024, available at <https://doi.org/10.1016/j.labeco.2024.102511> (explaining that the 2013 Home Care Rule did not reduce the overall employment among homecare workers in affected states, especially among lower-educated workers, and concluding that “[h]igher wages and better legal protection might improve the quality of home health care services.”).

⁶⁴ Moreover, “[t]he claim that the added cost of paying overtime to home care workers will result in significantly increased costs to employers and/or consumers is not supported by the available statistical evidence.” PHI, *Value the Care*, Vol. 6 (2013) available at <https://www.phinational.org/wp-content/uploads/legacy/phi-value-the-care-06.pdf>.

⁶⁵ *Encino Motorcars, LLC v. Navarro*, 579 U.S. at 220.

capacity—are well-established. The NPRM’s failure to weigh these considerations in a balanced or evidence-based manner renders the proposal arbitrary and capricious.

C. The proposal fails to consider its costs to workers.

The FLSA is a remedial statute designed to abolish substandard labor conditions by protecting workers from low wages and oppressive hours.⁶⁶ The FLSA was enacted in 1938 as “part of the large body of humanitarian and remedial legislation enacted during the Great Depression.”⁶⁷ The Department’s proposal ignores this statutory purpose and fails to address the scope of the impact on workers and provides only a cursory economic analysis. What is clear from the economic analysis and proposal generally is that businesses, not workers, are the central focus of this rulemaking. The proposal explains that there will be direct costs savings *for* home care agencies and admits that there will be economic transfers *from* workers *to* businesses, yet it does not meaningfully explain why such transfers are appropriate or consistent with the Act’s statutory objectives and makes no attempt to quantify the losses that workers will sustain if this proposal is finalized.

The NPRM recognizes that “many home care workers presently employed by third-party agencies would become newly exempt and lose the right to receive minimum wage and overtime pay under the FLSA.”⁶⁸ There is, however, no meaningful assessment of the many negative economic effects this proposal would have on workers if finalized. There is no discussion of the amount of transfers away from workers, no estimates of aggregate wage loss, and no evaluation of how these losses will affect this vulnerable workforce’s economic stability. This lack of analysis is not the “reasoned decisionmaking” required when an agency is proposing such action.⁶⁹

Rather than providing a satisfactory explanation, the Department dismisses the rule as not “economically significant” despite proposing to take away wage protections from more than three million workers and potentially disrupting a multi-billion-dollar industry.⁷⁰ While there is an acknowledgement of lost wages and lower pay generally, there is no quantitative or thoughtful qualitative analysis of any economic aspect of the proposal. The Department has, in other recent

⁶⁶ 29 U.S.C. 202(a); *A.H. Phillips, Inc. v. Walling*, 324 U.S. 490, 493 (1945); *Brooklyn Sav. Bank v. O’Neil*, 324 U.S. 697, 706-07 (1945).

⁶⁷ *Brock v. Richardson*, 812 F.2d 121, 123 (3d Cir. 1987).

⁶⁸ 90 Fed. Reg. 28,983.

⁶⁹ See *State Farm*, 463 U.S. at 43 (agencies must “examine the relevant data and articulate a satisfactory explanation for its action”).

⁷⁰ Golinkin, W., *Healthcare is Heading Home, and That’s a Good Thing*, Forbes, Nov. 19, 2024 available at <https://www.forbes.com/sites/forbesbooksauthors/2024/11/19/healthcare-is-heading-home-and-thats-a-good-thing/> (“The U.S. home healthcare market has experienced exponential growth, projected to reach nearly \$510 billion by 2027.”)

rulemakings, quantified projected losses or gains when minimum wage or overtime protections were altered.⁷¹ Here, by contrast, the Department offers no wage-loss estimate despite the availability of American Community Survey and BLS wage surveys, PHI’s Direct Care Workforce State Index, and Medicaid reimbursement data. This omission violates the APA and falls short of the Wage and Hour Division’s stated mission to “protect and enhance the welfare of this nation’s workforce.”

The proposal also fails to consider impacts on worker turnover and employment rates. The NPRM states that without the 2013 regulations, workers may be required to work additional overtime hours without overtime compensation, resulting in “less pay for the overtime work they would perform.”⁷² This will undoubtedly exacerbate already high turnover rates in the home care industry, which PHI estimates exceed 60% annually and which GAO has identified as a barrier to stable provision of home care services.⁷³ Moreover, the loss of overtime protections will incentivize third-party employers to consolidate scheduled hours across fewer workers rather than hiring additional staff—as the NPRM acknowledges⁷⁴—leading to increased worker fatigue and higher risk of injury for workers. The 2013 rule explained and the NPRM reaffirms that one of the benefits and purposes of overtime compensation is to spread employment such that, in this instance, several workers cover needed hours rather than one worker being scheduled for prolonged shifts; this “spreading” improves both worker well-being and the quality of care provided.⁷⁵

The NPRM similarly ignores the potential detrimental impact to patient safety and quality of care. While the NPRM speculates that removing any wage protections from the home care workforce “may encourage more providers to enter or expand operations” and this may “expand access,” it does not address how reliance on a workforce made more vulnerable by this proposal may harm seniors and individuals with disabilities. For recipients of home care services, continuity and quality of care are paramount. As the Department explained in its 2013 rule, continuity of services is jeopardized when a single employee works excessive hours.⁷⁶ Worker fatigue and burnout are directly correlated with high rates of patient injuries, missed medication,

⁷¹ See, e.g., *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees*, 89 Fed. Reg. 32,842 (Apr. 26, 2024); *Employee or Independent Contractor Classification Under the Fair Labor Standards Act*, 89 Fed. Reg. 1638 (Jan. 10, 2024).

⁷² 90 Fed. Reg. 28,983.

⁷³ Government Accountability Office, *Long-term Care Workforce: Better Information Needed on Nursing Assistants, Home Health Aides, and Other Direct Care Workers* (GAO-16-718) (Aug. 2016) at 19, available at <https://www.gao.gov/assets/gao-16-718.pdf>.

⁷⁴ *Id.* at 28,982.

⁷⁵ 78 Fed. Reg. 60,474; 90 Fed. Reg. 28, 979.

⁷⁶ 78 Fed. Reg. 60,547.

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and hospitalizations.⁷⁷ The NPRM does not address any of these risks or provide analysis for the scale of their potential effects.

If finalized, the proposal will result in home care workers working more hours for less pay, which is the type of regressive policy that undermines recruitment and retention in a workforce that already has labor shortages, as noted in the NPRM. For example, although the NPRM cites to a *Health Affairs* article to support its contention that growth in the home care industry has slowed, it ignores the same article's emphasis that "[w]hen directing future investments to sustain the home care workforce, policy makers should first and foremost prioritize improving wages and benefits." USDOL's proposal disregards the nexus between labor, workforce stability, and quality of home care, and as such has failed to consider "important aspects of the issue."

D. The proposal, if finalized, will make enforcement more difficult for States and increase labor violations.

1. The proposal will increase stakeholder confusion.

The Department's proposal will create confusion for workers, employers, and state labor enforcers. For more than a decade, stakeholders have been complying with the 2013 rule. Rescinding those regulations and returning to the outdated 1975 regulations will fracture compliance expectations around the country, particularly in states that maintain their own wage and hour protections for home care workers. Employers that operate in different states will face a patchwork of differing standards, increasing the likelihood of both intentional and unintentional noncompliance. Workers will be uncertain of their rights, particularly those who work for consumers across state lines. And state agencies that administer Medicaid-funded home and community-based waivers will need to re-train and re-orient their programs around new federal expectations.⁷⁸

The proposal, if finalized, also re-introduces confusion for agencies that send workers to both private homes and nursing homes. Home care workers who provide their services outside of a private home, such as a rehabilitation facility or nursing home, would remain covered under the Act, while workers providing the exact same services in a private home would not be covered.

⁷⁷ See generally *Addressing Health Worker Burnout: The U.S. Surgeon General's Advisory on Building a Thriving Health Workforce* (2022) available at <https://www.hhs.gov/sites/default/files/health-worker-wellbeing-advisory.pdf>.

⁷⁸ There are more than 250 Medicaid-funded waivers serving seniors and individuals with disabilities nationwide. See, e.g., Watts, Molly O'Malley et al., *State Policy Choices About Medicaid Home and Community-Based Services Amid the Pandemic*, KFF (Mar. 4, 2022) available at <https://www.kff.org/medicaid/state-policy-choices-about-medicaid-home-and-community-based-services-amid-the-pandemic/#55887a65-861d-41b2-b055-fdabc7cda292>.

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Due to stakeholder confusion about differing federal and State standards, there will also likely be increased misclassification of workers under State law, which will lead to decreased state revenues from various funding streams. In sum, instead of clear and consistent coverage across the country, employers and workers will face an assortment of different regulations, increasing enforcement challenges and encouraging a race to the bottom between states.

2. *The proposal would shift burdens to States.*

By removing federal minimum wage and overtime protections from such a large swath of the workforce, the proposal dramatically shifts the responsibility for safeguarding these workers onto states. In Pennsylvania, for example, the Department of Labor & Industry will have primary responsibility for protecting over 188,000 home care workers—projected to grow to more than 216,000 in the next decade—without the benefit of federal partners.⁷⁹ While Pennsylvania has its own wage and hour requirements, the loss of federal coverage for so many workers will require additional outreach, investigations, and enforcement actions across the Commonwealth, straining finite resources. Notably, in Pennsylvania, the home health care sector generates more wage claims than any other single industry—nearly 40% of all such claims in the Commonwealth.⁸⁰

Other states with strong worker protections, such as California, Illinois, Maine, Massachusetts and New York, for example, will face similar challenges and will have to similarly increase enforcement resources and enhance education campaigns, making for difficult decisions about where and how to divert resources from other critical enforcement.⁸¹ This shift in enforcement burdens will also take resources away from enforcing other important state labor laws such as, for example, child labor statutes.

New Jersey provides a specific case study of how a State with strong domestic worker protection laws will nevertheless be materially harmed by this proposal, and its concerns mirror those of other partner States as well. Despite robust state protections, USDOL's proposed rollback

⁷⁹ Under the Pennsylvania Minimum Wage Act, domestic service employees of third parties are not exempt from minimum wage and overtime protections. *See Bayada Nurses v. Commonwealth of Pennsylvania*, 607 Pa. 527 (Pa. 2010); 34 Pa. Code 231.1. However, the Department's enforcement capacities are finite and the FLSA provides a broader range of remedies for Pennsylvania workers.

⁸⁰ Since January 2023, 747 minimum wage and overtime claims have been filed, with 38% being against home care agencies.

⁸¹ Relatedly, on July 25, 2025, USDOL's Wage and Hour Division issued Field Assistance Bulletin (FAB) No. 2025-4, stating that enforcement of the 2013 Home Care rule would cease immediately and remain suspended until any final rule takes effect. As a result, Pennsylvania's Department of Labor & Industry anticipates that cases being investigated by USDOL will be referred to Pennsylvania imminently.

would harm New Jersey and its workers by: (1) removing the federal floor and federal co-enforcement partner for a large home care workforce, imposing greater enforcement burdens on the State; (2) increasing misclassification and recordkeeping noncompliance risks in Medicaid Home and Community-Based Services (HCBS) (such as, for example, NJ’s use of electronic visit information that records and verifies data on in-home service visits); (3) raising the volume and complexity of state-only enforcement where federal enforcement avenues would otherwise deter wage theft and retaliation; and (4) undermining recruitment and continuity of care. These are all outcomes contrary to NJ’s policy objectives regarding domestic service workers. Moreover, New Jersey has invested in a compliance infrastructure premised on the 2013 rule’s protections. A sudden reversion to the 1975 framework would force costly retraining and guidance for providers, cause confusion (particularly for multi-state agencies), and divert limited enforcement resources from other priorities.

States with worker protections that mirror the FLSA will experience even greater harms. For example, Oregon’s Domestic Workers’ Protection Act, which was enacted in 2015, excludes individuals performing companionship services who are exempt from the provisions of FLSA. If the federal regulations are rolled back, this will likely expand the number of individuals who fall within the companionship exemption and are thus excluded from the protections under this act in Oregon. And finally, workers in states without any state worker protections for home care workers will have virtually no recourse for wage violations, including not being paid at least the minimum wage of \$7.25/hour hours worked.

Additionally, state workforce and Medicaid programs will experience harms if this proposal is finalized. There may be increased administrative costs for home- and community-based services due to service disruptions as a result of increased turnover, worker shortages, and burnout. Other additional resources will need to be expended in workforce development programs to address anticipated workforce instability.

III. Other Specific Regulatory Provisions Are Problematic.

A. 29 C.F. R. § 552.3, Domestic service employment.

USDOL proposes to revert to the 1975 definition of domestic service employment. The States oppose reversion to this outdated and inconsistent definition. Using examples of domestic service employees such as “governesses, laundresses, valets, butlers, footman, grooms, and chauffeurs” is outdated, confusing, and unhelpful to the regulated community. Additionally, reverting to this definition re-introduces an inconsistency into the regulations by describing domestic service employment as taking place in the private home “of the person by whom he or she is employed.” Under such a definition, any worker employed by anyone outside the home should thus not be considered a domestic service employee.

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B. 29 C.F.R. § 552.6, Companionship services.

The States oppose reversion to this 1975 definition of companionship services, which includes “the performance of general household work” that “does not exceed 20 percent of the total weekly hours worked.” Including general household work is not consistent with the Congressional intent in creating a narrow exemption for companions who were “elder sitters.” The current regulatory definition—with its emphasis on fellowship and protection with a provision for assistance with activities of daily living and incidental activities of daily living—is more aligned with Congressional intent. It ensures coverage of professional home care workers while continuing to exempt informal workers who are truly “companions.” Reverting to the 1975 regulatory definition would create the illogical situation in which a housekeeper would be a covered domestic service employee entitled to minimum wage and overtime compensation but a home care worker who spends 20% of her time housekeeping would not be entitled to the same minimum wage or overtime protections.

Additionally, the 1975 regulation also “does not include services relating to the care and protection of the aged or infirm which require and are performed by trained personnel, such as a registered or practical nurse.” With the increasing professionalization of the home care workforce that has taken place since 1975, and in view of the 75-hour federal training requirement for home health aides and additional training and licensing standards across Medicaid programs for personal care aides, it is unclear from this outdated regulatory text which home care workers would be considered “trained personnel” not subject to the exemption, creating additional confusion.

C. 29 C.F.R. § 552.101, Domestic Service employment.

USDOL proposes to revert to the 1975 definition of “domestic service employment” that states that “the term includes persons who are frequently referred to as ‘private household workers’” and requires that the “domestic service must be performed in or about the private home of the employer.” The States oppose this definition to the extent that it reintroduces confusion into the regulations by again referencing domestic service employment as taking place only in the private home “*of the employer*.”

D. 29 C.F. R. § 552.102, Live-in domestic service employees.

The States oppose reversion to the 1975 regulation. Regardless of the applicability of the live-in domestic service employee exemption from overtime, live-in domestic service employees are still entitled to the applicable minimum wage for all hours worked. Accordingly, employers should still maintain records of actual hours worked to ensure compliance with the Act’s minimum wage requirements, rather than an agreement that “generally coincides” with the employee’s hours worked, as proposed by USDOL.

21 | *Comment of Pennsylvania Dep’t of Labor & Industry and States of California (Labor Commissioner; Attorney General), Colorado (Attorney General), Connecticut (Attorney General), District of Columbia (Attorney General), Hawai’i (Attorney General), Illinois (Dep’t of Labor), Maine (Dep’t of Labor), Maryland (Dep’t of Labor; Attorney General), Massachusetts (Commonwealth of Massachusetts’ Office of the Attorney General), Michigan (Attorney General), Minnesota (Dep’t of Labor and Industry; Attorney General), Nevada (Attorney General), New Jersey (Attorney General), New York (Attorney General), Oregon (Bureau of Labor and Industries; Attorney General); Rhode Island (Attorney General), Vermont (Attorney General), and Washington (Dep’t of Labor and Industries; Attorney General).*

E. 29 C.F.R. § 552.109, Third party employment.

In addition to the States' strenuous objections to stripping minimum wage and overtime protections from home care workers in proposed 552.109(a), the States also oppose the proposed revisions to 552.109(c) concerning live-in domestic service employees. This proposal would remove overtime compensation protection for all live-in domestic service employees employed by third parties; not only home care workers, but live-in nannies, au pairs, housekeepers, and other workers employed by third parties.

As a threshold matter, while USDOL has statutory authority to "define and delimit" the term "companionship services" it does not have such authority to "define and delimit" the live-in domestic service employee exemption at 29 U.S.C. 213(b)(21) and thus any regulations pertaining to live-in domestic service employees should align with Congressional intent. It is indisputable, for example, that live-in domestic service employees who worked for a covered enterprise prior to 1974 were not exempt from the Act's overtime requirements, and that the 1974 amendments were intended to broaden coverage for domestic service employees. Accordingly, the 2013 regulation prohibiting third-party employers of live-in domestic service employees from claiming an overtime exemption is a better reflection of the FLSA's purpose, both generally and specifically in view of the 1974 amendments, and the proposed rule does not reflect reasoned decision making within the boundaries of the delegation of authority to USDOL regarding the live-in exemption.

F. 29 C.F.R. § 552.110, Recordkeeping requirements.

The States oppose reversion to the 1975 limited recordkeeping requirements. The 2013 final rule required employers to keep work records that are vital to detecting wage theft and other labor violations. If finalized, employers who have exempt workers will no longer be required to maintain the same type of records for workers. The absence of reliable time and wage records makes it far more difficult and time-consuming for state agencies enforcing state labor laws to investigate complaints. Without a federal requirement, the likelihood that employers will not keep accurate records will increase, making enforcement more challenging. In addition to promoting compliance with applicable labor standards, these recordkeeping requirements are not burdensome for home care agencies to maintain in view of the anti-fraud requirements already attached to the use of public money for home care.⁸²

⁸² See, e.g., "Monitoring Fraud, Waste, & Abuse in HCBS Personal Care Services" Centers for Medicare and Medicaid Services, available at Slide 1 <https://www.medicaid.gov/medicaid/home-community-based-services/downloads/hcbs-3a-fwa-in-pcs-training.pdf> ("Improper Medicaid PCS [personal care service] payments costs taxpayers, strains state budgets, and could result in PCS waiver programs becoming limited and ultimately, discontinued.").

22 | *Comment of Pennsylvania Dep't of Labor & Industry and States of California (Labor Commissioner; Attorney General), Colorado (Attorney General), Connecticut (Attorney General), District of Columbia (Attorney General), Hawai'i (Attorney General), Illinois (Dep't of Labor), Maine (Dep't of Labor), Maryland (Dep't of Labor; Attorney General), Massachusetts (Commonwealth of Massachusetts' Office of the Attorney General), Michigan (Attorney General), Minnesota (Dep't of Labor and Industry; Attorney General), Nevada (Attorney General), New Jersey (Attorney General), New York (Attorney General), Oregon (Bureau of Labor and Industries; Attorney General), Rhode Island (Attorney General), Vermont (Attorney General), and Washington (Dep't of Labor and Industries; Attorney General).*

IV. Conclusion

USDOL's proposed rule undermines Congressional intent, fails basic APA standards, leaves a critical workforce without basic labor protections and burdens States in various ways. The States urge the Department to rescind the NPRM and maintain the current regulations, which provide minimum wage and overtime compensation to the domestic service employees that Congress intended to cover with the 1974 amendments.

Sincerely,



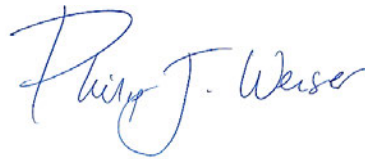
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California Attorney General



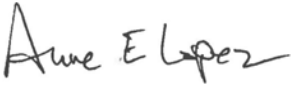
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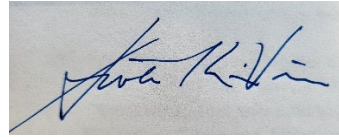
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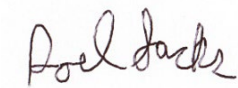
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