



PHI QUALITY CARE
THROUGH
QUALITY JOBS

September 2, 2025

Re: PHI Comments on NPRM: Application of the Fair Labor Standards Act to Domestic Service (RIN 1235-AA51)

Thank you for the opportunity to respond to the Notice of Proposed Rulemaking (NPRM) from the Wage and Hour Division of the Department of Labor (DOL) regarding application of the Fair Labor Standards Act (FLSA) to Domestic Service. We urge the DOL to withdraw this effort to strip minimum wage and overtime protections from home care workers.

About Us. PHI is a national organization committed to strengthening the direct care workforce by producing robust research and analysis, leading federal and state advocacy initiatives, and designing groundbreaking workforce interventions and models. For more than 30 years, we have brought a 360-degree perspective on the long-term care sector to our evidence-informed strategies. **As the nation's leading authority on the direct care workforce, PHI promotes quality direct care jobs as the foundation for quality care.**

PHI led extensive research and advocacy in support of the passage and implementation of the 2013 Final Home Care Rule from the Department of Labor, which corrected a long-standing injustice by extending Fair Labor Standards Act protections to home care workers.

PHI respectfully urges the DOL to withdraw this NPRM. The NPRM would remove FLSA protections from our country's largest occupation—home care workers. These essential, skilled workers should never have been excluded from FLSA, which is why Congress amended FLSA in 1974 to ensure their access to basic minimum wage and overtime rights. The DOL's 1975 misinterpretation of this amendment was rightfully corrected by its 2013 Home Care Final Rule ("2013 Rule"), which reinterpreted the 1974 FLSA amendment to apply minimum wage and overtime rights to home care workers. Instead of the current unjust and short-sighted NPRM, the DOL should maintain the 2013 Rule: acknowledging that it is possible and preferable to have a long-term care system that provides

quality, stable care *and* ensures quality jobs with foundational labor rights for home care workers.

In addition, we assert that the DOL should withdraw this NPRM as incompatible with the Administrative Procedure Act because it is arbitrary and capricious, as explained throughout these comments.¹ In short, the NPRM: 1) fails to provide a reasoned explanation for reversing the 2013 Rule; 2) misreads the text of FLSA and the intent of Congress; 3) mischaracterizes and selectively cites available evidence; and 4) ignores the decade-long successful implementation of FLSA rights for home care workers, which has created reliance interests on the part of home care workers, providers, consumers, and state governments.

Background on FLSA’s application to home care workers. In 1938, FLSA created a right to a minimum wage and time-and-a-half overtime pay for most workers in the United States.² In the nine decades since it passed, FLSA has provided essential basic labor protections for millions of workers; thereby ensuring a minimum level of job quality for those it covers and remedies for workers facing wage theft.

Due to intentional discrimination on the basis of race and sex, women and people of color were improperly left out of FLSA’s protections.³ In 1938, Congress intentionally excluded workforces that were composed of majority Black people: domestic workers, including home care workers, as well as agricultural and tipped workers.⁴ The exclusion of home care workers—largely women of color—from basic labor protections is directly linked to efforts to preserve inexpensive domestic labor arrangements that originated in slavery.⁵ To this day, domestic workers, including home care workers, are predominantly women and people of color—both a cause and effect of the intentional devaluing of their labor.⁶

Congress finally addressed this long-standing injustice by amending FLSA in 1974 to cover most domestic workers, including home care workers who provide extensive and essential direct care to older adults and to people with disabilities of all ages. This amendment was an important step toward ending the practice of treating home care workers as a separate class of workers deemed unworthy of basic labor rights. The amendment led to approximately 1.5 million domestic workers receiving FLSA protections.⁷ Yet despite Congress’ intent to extend FLSA to these workers, the DOL’s 1975 Rule (and subsequent court decisions) that guided the application of the FLSA amendment misapplied its narrow

companionship exemption to exclude most home care workers. This serious error perpetuated the original FLSA's historic injustice by excluding a home care workforce that is 85 percent women, 64 percent people of color, and 28 percent immigrants.⁸ It once again devalued home care by placing it in a second-class status devoid of the basic labor rights available to other workers.

The 2013 Rule is the best interpretation of FLSA. In 2011, the DOL began a lengthy rulemaking process that culminated in the 2013 Rule, which extended FLSA protections to home care workers. In carefully considering voluminous stakeholder input, the 2013 Rule was designed to correct the injustice created by FLSA and mistakenly sustained through the 1975 Rule. With the 2013 Rule, the DOL correctly recognized that the 1974 FLSA amendment's narrow companionship exemption should apply only to casual, non-professional providers of fellowship and protection. The 2013 Rule ensured that most home care workers qualified for FLSA's minimum wage and overtime protections—an acknowledgement that they deserve the same basic, fundamental labor rights as other workers.⁹ It was also a recognition that there is no moral or economic argument for why most workers, including other domestic service workers, should receive minimum wage and overtime protections while home care workers should not.

Once the 2013 Rule was implemented in 2015, home care agencies could no longer claim the companionship exemption and private employers could only claim it if the worker: 1) provided primarily “fellowship and protection”; 2) did not provide any medically related tasks; and 3) spent less than 20 percent of their time providing care (i.e., assistance with activities of daily living and instrumental activities of daily living). This has meant the vast majority of home care workers must be paid at least the federal or state minimum wage, whichever is higher, for the first 40 hours of the work week; must be paid overtime at time-and-a-half; and must be paid for travel time between clients that are assigned by a single employer.¹⁰

The 2013 Rule's reading of FLSA was legally correct: it reflects the best interpretation of FLSA's text and Congressional intent. Congress sought only to exclude casual, non-professional providers of fellowship and protection (such as babysitters and informal companions) from FLSA protections. Likewise, FLSA's statutory text and structure call for FLSA protections for agency-employed home care aides. Allowing third-party employers to claim the companionship and live-

in exemptions would recreate precisely the dynamic Congress did not intend—systemic exclusion of a trained, skilled workforce from basic wage and hour protections.

The 2013 Rule’s reading was morally correct: home care workers should never have been excluded from basic labor protections. Rooted in slavery, the exclusion of a predominantly female and person of color workforce from essential protections is an injustice the DOL should not perpetuate.

The 2013 Rule’s reading was correct as a matter of policy: the best way to improve access to home care services is to ensure home care workers have quality jobs. Quality jobs cannot be achieved without a basic set of labor rights that help prevent exploitation—and that apply to home care work just as much as to other jobs. By setting a wage floor and acknowledging the vital work of millions of home care workers, the 2013 Rule was a first step toward strengthening and stabilizing this crucial workforce.¹¹

Home care workers are essential to our long-term care system. There are more than 2.9 million personal care aides and home health aides in the U.S., predominantly employed in private homes and community settings.¹² They assist more than 9.8 million older adults and people with disabilities with activities of daily living, such as eating, dressing, mobility, and bathing.¹³ Their labor allows individuals to live as independently as possible in their homes and communities while avoiding unnecessary hospitalizations and other institutional stays. Their labor also means that many family caregivers—who are disproportionately women—do not have to partially or fully exit the labor force (and their careers) in order to ensure their family members and friends can receive care at home.¹⁴

Home care workers include different occupational groups that have an array of job responsibilities that include and extend beyond assistance with activities of daily living. For instance, personal care aides may also provide household assistance and social support designed to help people engage in their communities; home health aides often perform clinical tasks; direct support professionals (although often counted as personal care aides due to the lack of a distinct occupational code) may provide habilitation services, employment assistance, and other supports to people with intellectual and developmental disabilities.¹⁵

Home care jobs are predominantly government funded, with Medicaid paying 69 percent of the \$284 billion in annual spending on home and community-based services (HCBS).¹⁶ While much of the Medicaid funding for home care goes toward agency-employed home care workers, PHI estimates that at least 1.5 million workers are independent providers paid through Medicaid-funded consumer direction programs.¹⁷ Since they are the largest payors, federal and state governments hold significant leverage over the quality of home care jobs. Yet historically and today, federal and state governments have undervalued the contributions of home care workers and underinvested in the quality of their jobs, leading to a crisis wherein employers and families struggle to recruit and retain home care workers even as the need for their services continues to rapidly expand.

This NPRM seeks to return home care workers to a second-class occupational status, rolling back their basic employment rights as if their work is unskilled and not essential. This could not be further from the truth: home care work is skilled, complex, and sometimes dangerous labor that, in addition to the tasks named above: involves obtaining and synthesizing clinical knowledge, preventing and managing symptoms, ensuring safety and security in a home workplace; requires physical strength and stamina; and necessitates significant communication and problem-solving skills, all with a person-centered orientation toward each client.¹⁸ Home care workers also face a tremendous emotional toll from this work, which can exacerbate their material hardships; one research study on home care workers described them “giving more, staying longer, even paying out of pocket for patient medications or incidentals” because of the disproportionate emotional and interpersonal demands inherent to their work.¹⁹ This NPRM would resuscitate racist and sexist assumptions that have historically devalued home care work while simultaneously failing to achieve its ostensible goal of increasing access to home care services.

In this NPRM, the DOL provides contradictory arguments on the nature of home care work. They assert that home care workers are akin to “casual babysitters” *but also* that they are comparable to “professional employees (particularly teachers).”²⁰ In fact, the home care industry is a complex, commercial industry providing skilled services. The federal government and many states have acknowledged the demands and complexity of the home care role by instituting training and certification requirements for these workers, as for other health care

professionals.²¹ In short, home care is complex, skilled labor—not casual, ad hoc work.

There is a rapidly expanding need for home care workers. Over the last five decades, state and federal policies, consumer preferences, and cost incentives have worked together to move or divert people from nursing homes and other institutional settings into home and community-based services. Known as “rebalancing,” this trend has led to the share of Medicaid long-term services and supports (LTSS) funding for HCBS increasing from 1.1 percent in 1981 to 64.6 percent in 2022.²² As more people have begun receiving LTSS in their own homes and communities, the direct care workforce has shifted accordingly, with the numbers of certified nursing assistants employed in nursing homes contracting while the home care workforce has grown.²³

The need for home care services has also risen dramatically because of our nation’s aging population, and as people live longer with disabilities and serious illnesses. Together, these trends have meant that, over the past decade alone, the home care workforce has more than doubled in size, growing from 1.4 million workers in 2014 to 2.9 million in 2023.²⁴ Growth in the home care workforce outpaced growth in any occupation in our country during that period.²⁵

The need for home care workers will continue to escalate due to our nation’s population aging, coupled with Americans’ overwhelming preference to age in place.²⁶ The number of Americans age 65 and over is projected to reach 88.8 million by 2060, comprising 23 percent of the total U.S. population.²⁷ Accordingly, the home care workforce is expected to add nearly 740,000 new jobs from 2022 to 2032.²⁸ But as we discuss next, the number of home care jobs lags behind the rising need for home care services (even with this record growth); a problem that can only be addressed by strategic investments to improve the quality of home care jobs.

There is a shortage of home care workers, driven by poor job quality.

Even as the home care workforce is growing, retention is an acute challenge. From 2022 to 2032, this workforce is projected to have nearly 4.8 million job openings as existing workers move to other jobs or leave the labor force.²⁹ Combined with expected new jobs, this means there will be an estimated 5.5 million *total* job openings in home care in the decade ahead—the third-highest number of projected job openings across all occupations in the U.S.³⁰ Home care

workers are leaving their jobs in droves not because they receive minimum wage and overtime protections, as the NPRM implies, but because they can find better pay and working conditions with fewer entry-requirements in other industries such as fast food and retail.³¹

Low wages and a high rate of part-time work mean home care workers often struggle to financially support themselves and their families. Median annual earnings in home care are just \$21,889.³² Approximately 40 percent of workers live in low-income households (under 200 percent of the federal poverty level), 58 percent rely on public assistance (i.e., Medicaid, food and nutrition assistance, and/or cash assistance), 39 percent lack access to affordable housing, and only 37 percent have access to employer health insurance.³³ These trends reflect and perpetuate the racial and gender inequities faced by a home care workforce that is majority women and people of color.³⁴ Home care workers also face unique issues since their workplaces are private homes. They are subject to disproportionate amounts of wage theft, including not receiving the minimum wage and overtime pay to which they are entitled.³⁵

Stripping FLSA protections from home care workers will not, as the NPRM asserts, increase the supply of qualified workers. The only way to meet demand is to significantly invest in the quality of home care jobs, including by acknowledging and protecting workers' baseline employment rights. Ensuring home care workers have overtime and minimum wage protections through FLSA is essential *and* it is only one piece of what is needed: comprehensive investment in the quality of home care jobs.

FLSA protections benefit home care workers, people receiving care and support, and family caregivers. FLSA protections have improved the quality of home care jobs as well as the quality and continuity of care provided to older adults and people with disabilities in their homes.³⁶ As already stated, minimum wage and overtime protections alone have not solved and will not solve the home care workforce crisis; but likewise, the workforce crisis will not be resolved *without* these foundational protections in place. Better wages increase recruitment and retention, helping to create a stable, experienced workforce and more continuous, better-quality care.

Enforcement data show the positive effects of FLSA protections for home care workers. Since the 2013 Rule, home care agencies have paid \$157.8 million in

back wages—compared to \$25.6 million in the ten years prior.³⁷ These figures indicate many home care workers have directly benefited from enforcement of the FLSA protections, particularly by receiving overtime pay they wouldn't have otherwise. Many more have certainly benefited by working for employers who have complied with the rule by paying overtime as required.

Opponents of extending minimum wage and overtime protections to home care workers predicted that the 2013 Rule would reduce employment among home care workers and harm their wages and earnings. Yet there is no evidence to support these predictions.³⁸ Instead, data suggest that FLSA's protections, especially when combined with higher state minimum wages, help alleviate workforce shortages and improve wages.³⁹ Additional evidence confirms that the 2013 Rule led to higher hourly wage rates and weekly earnings for agency-employed home care workers, while the effects on consumer-directed workers depended on state policy decisions in implementing the Rule.⁴⁰

FLSA protections do not significantly harm or overly burden the home care industry. Neither the 2013 Rule nor state efforts to apply minimum wage and overtime protections to home care workers have limited the growth of the home care industry or increased institutionalization. In fact, the home care industry's revenue increased more than 50 percent between 2013 and 2020 (from \$68.3 billion to \$102.7 billion).⁴¹

Throughout this growth period, the home care industry has successfully upheld the minimum wage and overtime rules for home care workers established in 2013. Predictions that applying FLSA protections to home care workers would decimate the home care industry have been proven wrong. Despite limited margins for many home care providers—and the need for a broader federal and state strategy for adequately financing the population-level need for and true cost of quality LTSS—the home care industry has nonetheless successfully covered the cost of basic labor protections for workers over the past decade.⁴²

Furthermore, exempting home care employers from FLSA will not, as the NPRM asserts, “significantly reduce regulatory burden for the consumers and providers of home care services.”⁴³ Employers across industries have been able to efficiently comply with FLSA since it was passed and those in the home care industry have done the same for the last decade. It is not onerous to document the hours worked by home care staff nor is it overly complex for providers to make simple

wage calculations for live-in workers.⁴⁴ There are serious challenges and expenses associated with recruiting and retaining home care workers—not because of paperwork burdens, but because of poor job quality driven by a lack of government investment.

The NPRM would not increase the supply of home care workers; instead, it would worsen the shortage. Excluding workers from basic employment protections is unjust and unwise.⁴⁵ We have a critical shortage of home care workers across this country, curtailing access to much-needed care.⁴⁶ Stripping FLSA protections from home care workers will undermine their professional recognition, erode job quality, exacerbate turnover, and make it even harder to recruit new workers to this essential workforce.⁴⁷

Minimum wage and overtime protections for home care workers are essential, but insufficient, for creating quality jobs that recruit and retain the home care workforce our country needs. Providing minimum wage and overtime protections to home care workers improves recruitment, retention, and the quality of care people receive; however, on their own, FLSA's basic protections will not themselves solve the home care worker crisis. Instead, minimum wage and overtime rights are an essential foundation to the considerable work needed to create quality home care jobs with adequate and fair compensation. This is why many states responded to the COVID-19 pandemic home care workforce crisis by using federal and state funds to increase Medicaid reimbursement rates to home care providers and improve home care workers' compensation.⁴⁸

Conversely, taking away minimum wage and overtime protections from home care workers will worsen recruitment, retention, and the quality of care people receive. As noted by the DOL, the home care industry is experiencing a serious retention crisis, with, perhaps, an annual turnover rate near 80 percent.⁴⁹ Home care workers are not leaving their jobs because they currently have overtime and minimum wage protections; instead, they are leaving because of low wages, insufficient hours, limited benefits, high workplace injury rates, and precarious working conditions.⁵⁰ Removing minimum wage and overtime protections will reduce retention and recruitment, worsening the crisis.⁵¹

The costs of the NPRM would outweigh any benefits. As acknowledged by the DOL, this NPRM would transfer income from home care workers to employers, state Medicaid programs, and private consumers who would no

longer have to pay these workers the federal minimum wage or overtime. The costs of the NPRM would fall directly on workers, leading to reduced recruitment and retention at a time when the home care industry desperately needs more qualified workers—not fewer. Reduced workforce retention will reduce access to home care services and put a greater strain on family caregivers (with knock-on effects for their employers and the larger economy). Any short-term advantages to individuals, families, and home care agencies—i.e., temporarily lower out-of-pocket costs—will ultimately be outweighed as recruitment declines and more workers leave the field. Any benefits from this rule would come at the cost of devaluing and reducing the wages of home care workers.

The NPRM would also impose additional costs by undermining the stated goals of the current Administration, namely its pledges to prioritize home care benefits, combat care worker shortages, and support family caregivers.⁵² By stripping basic labor protections from home care workers, this NPRM would make all of these goals harder to achieve.⁵³ Ensuring home care workers have access to minimum wage and overtime is a basic building block for cultivating a strong paid workforce as the foundation of our care infrastructure. Likewise, this NPRM would stymie long-standing federal policy aims of expanding access to HCBS and encouraging consumer direction, an LTSS model that allows consumers to directly employ and supervise their home care workers.

In addition, the upper limit for the NPRM's negative effects will grow increasingly large over time. Home care workers were inappropriately and incorrectly exempted from FLSA protections in 1975; a mistake that ballooned in impact as the home care workforce grew year by year. If the DOL repeats its 1975 mistake, the upper limit estimate of the number of impacted home care workers will again grow over time. While there are currently approximately 2.9 million home care jobs, this number is expected to grow 26 percent by 2032, adding nearly 740,00 jobs to the list of those who could be affected by the NPRM.⁵⁴ While some workers would still have access to state or local wage protections, all exempted home care workers would lose federal avenues for vindicating their rights and all would suffer from, once again, having their work devalued and considered a second-class form of labor.

Lastly, the successful decade-long implementation of FLSA protections for home care workers has engendered reliance interests across the HCBS system. States have aligned Medicaid HCBS policies, rate methodologies, electronic visit

verification (EVV) systems, and program integrity rules to the 2013 Rule; providers have built scheduling and payroll systems; workers have organized their lives and incomes around overtime and minimum wage protections; and consumers have built stable care arrangements premised on continuity of staff. The NPRM does not meaningfully evaluate these reliance interests or the disruption costs of reversal, as required for a lawful policy change. Changing the rules now would create both foreseeable and unforeseeable costs as the HCBS system adjusts to a capricious return to the 1975 Rule's incorrect reading of FLSA.

The negative effects of this NPRM would multiply the harm caused by recent Medicaid and immigration policy changes. In the context of the largest-ever cuts to Medicaid, changes to immigration enforcement, and restrictions on immigration, this NPRM would have particularly serious, negative consequences for the home care workforce, the home care industry, family caregivers, and older and disabled Americans.

On July 4, 2025, President Trump signed a budget reconciliation bill that cuts nearly \$1 trillion from Medicaid over the next decade.⁵⁵ As past Medicaid cuts have shown, states will likely choose to reduce investments in HCBS, potentially leading to lower reimbursement rates for home care providers and reduced compensation for home care workers.⁵⁶ As well as threatening their wages and economic stability, these Medicaid cuts will also directly impact many workers who rely on Medicaid coverage for themselves and their families.⁵⁷

The Administration has also made significant changes to immigration enforcement while simultaneously restricting new immigration. These changes fall disproportionately on home care workers.⁵⁸ Federal data estimates that 32 percent of home care workers are immigrants, including 13 percent who are non-citizens.⁵⁹ However, the actual proportion of home care workers who are immigrants is likely much higher, since these data do not sufficiently account for the “gray market”—which includes home care workers hired directly by individuals and families using private funds. We also know immigration restrictions and deportations hurt the quality of direct care, whereas local increases in immigration lead to higher quality and more person-centered care.⁶⁰ Immigrant workers tend to remain in direct care positions longer than U.S.-born workers, providing stability and improved quality of care over time.⁶¹ Conversely,

harsher restrictions on immigrant workers correlate with reduced staffing levels in care settings.⁶²

Combined with these other acute challenges, stripping home care workers' basic workplace protections will only serve to further reduce workforce recruitment and retention, harming these workers themselves and the older adults, people with disabilities, and families they support.

The DOL should focus on strengthening the direct care workforce, not weakening it. Strengthening the direct care workforce requires investing in and improving job quality, which PHI defines in terms of quality training, fair compensation, supervision and support, respect and recognition, and real opportunity.⁶³ Instead of stripping minimum wage and overtime protections, policymakers should be working toward bolstering these five job quality pillars.⁶⁴ FLSA protections are a foundational requirement for achieving job quality goals and improving access to care.

The home care industry's challenges with recruitment and retention are not driven by FLSA's requirements but by the rising need for services, the poor quality of home care jobs, and the insufficiency of Medicaid reimbursement rates to employees to cover the real costs of labor, including minimum wage and overtime requirements. More action is needed to ensure that all home care providers can cover these full labor costs—for example, through Medicaid rate analyses and adjustments—but rolling back FLSA coverage is not the answer.

Medicaid is the largest payer of home care services, but inadequate reimbursement rates and few wage pass-throughs have failed to guarantee adequate and competitive wages for home care workers. As a result, direct care wages are lagging behind other jobs: in all 50 states and D.C., median wages for home care workers are lower than median wages for similar occupations, a major reason so many home care workers leave for better paying work in other industries.⁶⁵

The U.S. long-term care system needs greater investment in improving the quality of home care jobs, not reduced labor protections for workers. Particularly at a time when the home care industry and its workers and consumers are facing serious threats from Medicaid cuts and immigration restrictions and deportations, removing basic labor protections from home care workers will only exacerbate the crisis.

The home care workforce has been growing significantly since the 2013 Rule, and greater investments are needed to meet demand. The DOL asserts that the 2013 Rule has failed because the supply of home care workers has decreased relative to demand:⁶⁶

Although the Department predicted in 2013 that ‘guarantee[ing] minimum wage and overtime compensation for home care jobs . . . will attract more workers to the home care industry,’ growth in the home care workforce slowed in the years following the 2013 rule, with ‘the number of home care workers per 100 [individuals receiving home and community-based services] declin[ing] by 11.6 percent between 2013 and 2019.’⁶⁷

This argument is incorrect and this framing is misleading for a number of reasons:⁶⁸

- The cited figures reflect workforce capacity, not employment growth. The decline in workers per 100 individuals receiving services is also driven by rapid growth in the aging population.
- Slower employment growth in home care began in 2011—before the rule took effect—and reflects broader labor market trends. Home care employment growth typically accelerates during recessions and slows during recoveries, when low wages make recruitment more difficult. Specifically, average annual growth was 5.4 percent from 2010–2015 and 5.0 percent from 2016–2019.
- More recent data show stronger growth: thanks to public investment through the American Rescue Plan Act, employment in the industry grew by 6.8 percent in 2023 and 8.1 percent in 2024—outpacing pre-pandemic and pre-rule trends.

The shortage of home care workers is not a situation caused by the extension of overtime and minimum wage protections to home care workers, but a reflection of rising need created by rebalancing and an aging population. As discussed previously, in the past decade, the home care workforce has actually added more than 1.5 million new jobs in the past decade, growing from 1.4 million workers in 2014 to 2.9 million in 2023—clearly showing that the workforce is expanding.⁶⁹ This occupational growth—which outstrips job growth in every other single occupation in the U.S.—is projected to continue as our population ages and maintains a preference for aging and receiving services in place.⁷⁰

Furthermore, FLSA's basic labor protections are only a floor or foundation for job quality, not the endpoint. That fact means that many home care workers who received modest wage increases due to the 2013 Rule's application of FLSA to their jobs were likely still drawn to other industries (like retail and fast food) that offer better pay, benefits, and working conditions.⁷¹

The secondary effects of FLSA's overtime requirements should be addressed through appropriate provider reimbursements and higher wages. The DOL notes that the application of FLSA's overtime rights to home care workers has precipitated two related actions in parts of the home care industry: 1) providers using scheduling restrictions to avoid overtime costs; and 2) workers spreading their hours across different employers in order to make enough money without exceeding 40 hours with a single employer. These actions can leave workers without appropriate time-and-a-half compensation for working more than 40 hours in a week while potentially undermining continuity of care.

Yet stripping overtime protections from home care workers will not solve these problems—it will only drive more home care workers from the field. This evidence of hour-capping reflects policy choices about rate-setting and budgeting—not the inevitable consequences of overtime protections. Federal and state governments can and should increase funding via adequate reimbursements to providers with required wage pass-throughs to home care workers, accounting for a living wage and the costs of overtime when needed. This solution would help to ensure that home care workers are adequately paid, providers are properly reimbursed, and consumers receive the continuity of care they need.

Furthermore, the DOL misrepresents evidence from a U.S. Government Accountability Office (GAO) study by stating that “home care providers and states administering Medicaid-financed home care programs responded to the 2013 rule by imposing hours restrictions for home care employees to avoid overtime costs.”⁷² This statement and its broad implications go far beyond the evidence offered by the report, which was that some states restricted home care workers' hours, while other states did not make changes in response to the rule; and that some provider agencies capped hours, but in some cases before the implementation of the 2013 Rule.⁷³ Regardless of state and provider actions to limit the hours worked by home care workers to avoid paying overtime according to the 2013 Rule, the real solution to the cost of overtime is to ensure that

providers receive adequate reimbursements and workers receive living wages that do not require them to work overtime just to make ends meet.

Better access to home care services can be achieved through strategic federal investments built on top of basic labor protections. The DOL argues for exempting FLSA protections from home care workers in order to lower the cost of services for older people and people with disabilities. The argument is that removing minimum wage and overtime protections will enable more people to receive needed services that might otherwise be unaffordable.

The DOL's argument is fundamentally flawed. Undercompensating home care workers to artificially depress the cost of services creates a labor market distortion that will curtail the supply of labor relative to demand for services. When home care employers face increased costs for government-financed care (such as when minimum wage and overtime is required through FLSA), these costs should be met by adjusting Medicaid reimbursement rates to enable employers' compliance. Likewise, if the true cost of home care exceeds consumers' ability to pay, then federal and state governments should provide investments to offset these costs, including by expanding access to Medicaid HCBS, creating a long-term care social insurance program, or providing tax subsidies to offset costs.

In conclusion, PHI appreciates the opportunity to provide comments on the NPRM: Application of the Fair Labor Standards Act to Domestic Service. The NPRM would turn back the clock on nearly a decade of progress by returning to an abhorrent vestige of slavery: the exclusion of home care workers from basic labor protections. This action will harm home care workers and the people they support, along with family caregivers and the broader economy. Home care workers undertake essential, skilled work and deserve basic labor protections—whereas this rule would dehumanize them by perpetuating historically rooted racist and sexist views about whose labor should be valued and protected.

Significantly, the NPRM offers no persuasive textual or evidentiary basis for this arbitrary and capricious reversal of the 2013 Rule. It underweights the reliance interest created by the implementation of the 2013 Rule, while leaning on selective and misapplied evidence. Withdrawing the 2013 Rule would predictably reduce wages and hours stability, degrade continuity of care, and exacerbate HCBS workforce shortages.

The DOL should withdraw this NPRM and uphold the 2013 Rule, which finally recognized that these basic protections apply to home care workers. Rather than stripping their basic, fundamental labor protections, the DOL should collaborate with other federal leaders to focus on strengthening the home care workforce through strategic investments focused on improving job quality built on a foundation of basic labor rights. We look forward to serving as a partner in doing exactly that.

Notes

¹ 5 U.S.C. § 706(2)(A).

² 29 U.S.C. § 203.

³ Perea, Juan F., “The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act.” *Ohio State Law Journal* 72, no. 1 (2011): 95-138.

⁴ Perea, 2011.

⁵ Iezzoni, Lia, Naomi Gallopyn, and Kezia Scales. 2019. “Historical Mismatch Between Home-Based Care Policies and Laws Governing Home Care Workers.” *Health Affairs* 38:6, 973-980.

⁶ Dixon, Rebecca. 2021. “From Excluded to Essential: Tracing the Racist Exclusion of Farmworkers, Domestic Workers, and Tipped Workers from the Fair Labor Standards Act.” New York, NY: National Employment Law Project. <https://www.nelp.org/app/uploads/2021/05/NELP-Testimony-FLSA-May-2021.pdf>.

⁷ Congressional Research Service. 2021. *Exemptions in the Fair Labor Standards Act: Agricultural, Domestic Service, and Tipped Workers*. Washington, DC: Congressional Research Service.

⁸ PHI. 2024a. *Direct Care Workers in the United States: Key Facts 2024*. New York, NY: PHI.

<https://www.phinational.org/resource/direct-care-workers-in-the-united-states-key-facts-2024/>.

⁹ Home care workers perform increasingly skilled, complex, and medically related tasks far beyond “companionship.” For home care workers in the most recent years data are available: median hourly wages were \$16.13 in 2023; median annual earnings were \$21,889 in 2022; 40 percent lived in or near poverty in 2022; and 46 percent worked part time in 2022. PHI, 2024a.

¹⁰ PHI. 2019. *Envisioning the Future of Home Care*. New York, NY: PHI. <https://www.phinational.org/wp-content/uploads/2019/10/The-Future-of-Home-Care-2019-PHI.pdf>.

¹¹ PHI. 2016. “Statement Regarding the U.S. Supreme Court Decision to Decline to Hear Home Care Association of America v. Weil.” *PHI Newsroom*, June 27, 2016. <https://www.phinational.org/news/statement-regarding-the-u-s-supreme-court-decision-to-decline-to-hear-home-care-association-of-america-v-weil/>.

¹² PHI, 2024a.

¹³ PHI, 2024a.

¹⁴ AARP. 2025. *Caregiving in the US Research Report*. Washington, DC: AARP.

<https://www.aarp.org/content/dam/aarp/ppi/topics/ltss/family-caregiving/caregiving-in-us-2025.doi.10.26419-2fpfi.00373.001.pdf>.

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