

September 2, 2025

Submitted via <https://www.federalregister.gov/documents/2025/07/02/2025-12316/application-of-the-fair-labor-standards-act-to-domestic-service#open-comment>

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Comments on RIN 1235-AA51: Application of the Fair Labor Standards Act to Domestic Service.

Dear Mr. Navarrete:

The National Employment Law Project (“NELP”) submits this comment in opposition to the proposed rule, Application of the Fair Labor Standards Act, by the Department of Labor (“Department” or “DOL”). NELP is a non-profit research and advocacy organization that works to advance the rights and interests of working people. For over 55 years, NELP has worked with advocates around the country, including community-based groups, labor organizations, and federal, state and local agencies to achieve strong workplace protections for low-wage and unemployed workers. We have represented and supported home care workers in fair pay matters across the country, and advocate at the state and federal level for better working conditions and the attendant quality of care and services for this vital workforce.

Consequently, we have a strong interest in the government’s role and responsibility in safeguarding workers’ statutory rights, including the right to a minimum wage and overtime, particularly as it impacts the homecare industry. We appreciate the opportunity to comment on the proposed regulations.

Implementing the proposed rule would produce harmful consequences for both home care workers and care recipients. This proposal comes at a time when demand for home care is expected to rapidly increase, due to a growing aging population relying on the industry to receive vital services and support. Home care workers are the backbone of this in-demand industry. Stripping minimum wage and overtime protections would worsen difficult working conditions in a sector already affected by low wages and challenging working conditions that lead to high burnout. Suddenly reverting to the 1975 regulations after more than a decade of a wage floor would worsen staffing vacancies, shortages, and high turnover rates, undermining access to quality care.

Furthermore, the Department has not identified any compelling change in circumstances that would justify the rescission of the carefully-considered and long-developed 2013 Home Care

Rule (hereinafter referred to as the “2013 Home Care Rule” or “2013 Rule”).¹ The issues the 2013 Home Care Rule sought to address, such as exploitation and undervaluation of care work, resulting in shortages and a declining quality of care, persist, and nothing in the NPRM shows that those challenges are now overcome. The proposed rollback risks restoring the very conditions that prompted the 2013 Rule in the first place. In the interest of stability and the need for growth of this vital industry and its workforce, the drastic changes outlined in the proposed rule should not be adopted.

These failures are arbitrary and capricious, are contrary to the statutory and Congressional intent, and wreak severe harm on a sector and on communities that have relied on federal protection for more than a decade. Those protections not only promise federal minimum wage and overtime pay, but they also serve as foundational rights that allow workers to combat wage theft, child labor, retaliation, and other rights protected under the Fair Labor Standards Act (FLSA).

Our comments cover three primary areas:

- The purposes and context behind the 2013 Home Care Rule.
- The implications of rescinding the 2013 Home Care Rule for workers and consumers.
 - A rollback of the 2013 Rule would eliminate progress made for home care workers.
 - Home care work is characterized by low wages and high turnover, despite well-documented high growth in the sector by larger companies.
 - Rescinding the 2013 Rule will lead to more turnover and shortages, hurting workers and consumers alike.
 - DOL fails to provide adequate economic support for the deregulation.
- The specific provisions in the Notice of Proposed Rulemaking (NPRM).
 - We are opposed to the agency allowing third-party employers to claim the “companionship services” exemption and exemption for “live-in” domestic service workers given the growth of the provider sector.
 - We are also opposed to the agency restoring the pre-2013 definition of “companionship services” to include “care” alongside “fellowship” and “protection.”

Purpose and Context of the Home Care Rule

Congress amended FLSA in 1974 to clarify that domestic workers were covered by the minimum wage and overtime provisions, with two narrow exemptions: “any employee employed on a casual basis in domestic service employment to provide babysitting services” or “any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves.”² The year after the amendments, the DOL issued regulations defining these exemptions.³

¹ 78 FR 60454.

² 29 U.S. Code § 213(15).

³ Application of the Fair Labor Standards Act to Domestic Service, 40 Fed. Reg. 7404 (codified as 29 C.F.R. Pt. 552).

As the domestic service employment sector grew, the number of workers excluded from the FLSA also increased. By the early 2010's, as many as 2.5 million home care workers were excluded from coverage of the FLSA.⁴

The 2013 Rule, first proposed in 2011, aimed to address the exclusion of home care workers from federal minimum wage and overtime protections, in light of the increasing “professionalization of home care work.”⁵ Noting the emergence of a “professionalized workforce for whom home care is a vocation,” the Department aimed to “better reflect Congressional intent given the changes to the home care industry and workforce” since 1975.⁶ The 2013 Rule narrowed the exemption’s definition of “companionship services” to only encompass “workers...providing...limited, non-professional services,” and precluded home care agencies (also called “third-party agencies”) from claiming the companionship-services or live-in domestic service employee exemptions.⁷ After the Rule’s finalization, home care workers in 29 states gained minimum wage and overtime protections for the first time.⁸ Providers, workers, and care recipients have been operating under the 2013 Rule for over a decade; undoing the Rule would cause disruption and worsen working and care conditions in this essential sector.

Consequences of Rescinding the 2013 Home Care Rule.

A rollback of the 2013 Rule would eliminate progress made for home care workers.

The direct care workforce, which encompasses personal care aides, home health aides, and nursing assistants, has experienced substantive growth over the last decade, “growing from 3.5 million workers in 2014 to just over 5 million in 2023.”⁹ This growth is only expected to continue as the home care workforce is projected to add “over 738,100 new jobs from 2022 to 2032—more new jobs than any other occupation in the U.S.”¹⁰ Given the importance of this workforce, it is crucial to understand the impact that rescinding the 2013 Rule would have on the industry’s workers and the population they serve.¹¹

⁴ National Employment Law Project, Comment Letter on Proposed Revisions to the Companionship Exemption Regulations (Mar. 21, 2012), <https://nelp.app.box.com/file/1934897550169>.

⁵ Application of the Fair Labor Standards Act to Domestic Service, 78 Fed. Reg. 60454 (codified as 29 C.F.R. Pt. 552).

⁶ *Id.*

⁷ *Id.*

⁸ NELP, Home Care Worker Rights in the States After the Federal Companionship Rule Change, <https://www.nelp.org/app/uploads/2015/03/Home-Care-State-by-State.pdf>.

⁹ PHI, *Direct Care Workers in the United States: Key Facts 2024*, Sep. 2, 2024, at 3, <https://www.phinational.org/resource/direct-care-workers-in-the-united-states-key-facts-2024/>. The total number of home care workers who would be adversely impacted by the deregulation in the NPRM is just over 3 million workers, according to estimates in comments submitted by the Economic Policy Institute and a recent report by the Center for American Progress. https://www.americanprogress.org/article/the-trump-administration-is-quietly-gutting-minimum-wage-protections-for-millions-of-workers/?utm_medium=email&hsenc=p2ANqtz--3ZCK8Y-VM9qb1jqVxUVNt0YSdIDHxJN1BmoEMs4k3MX-R3sZLCrpsGq0vZ5angt1XeDv1osjmlQkFleVmaKr_uqo8RA&hsmi=377805378&utm_content=377805378&utm_source=hs_email.

¹⁰ *Id.* at 11

¹¹ The DOL’s assertion in the Notice of Proposed Rulemaking at 90 Fed. Reg. 28979 that there are shortages of workers due to higher wages in the 2013 Rule does not follow; as shown below, it is an increase in demand and not the required minimum wage and overtime that is generating the shortages.

The DOL's NPRM claims that in contrast, growth has slowed because the number of home care workers per 100 individuals receiving care has declined between 2013 and 2019, and then asserts without logic that higher wages is the cause of fewer workers per demand. And yet, the declining ratio of home care workers per 100 individuals needing care and the accompanying increase in demand means that the number of people needing care is growing fast—which will make the ratio fall — and that shows how the demand has increased and home care workers are needed.

The proposed deregulation would erase the progress achieved and to come for workers and care recipients under the 2013 Rule and create confusion and compliance turmoil in the states. Although wages and working conditions in the home care industry remain far from ideal, the 2013 Rule produced measurable improvements. According to the GAO report cited by the Department, following the implementation of the 2013 Rule, home care workers were more likely to work full-time than other occupations with similar education and training requirements.¹² Further evidence establishes that the 2013 Rule led to increased employment for home health aides, particularly in counties with less competitive markets where there is a lower market share of home health agencies.¹³ In states with higher minimum wages, the Rule was also significantly associated with increased wages.¹⁴ These improvements suggest that the 2013 Rule helped to stabilize the workforce by instituting baseline requirements that made home care work more financially viable for employees. Reinstating the 1975 rule would reverse the gains in employment made over the last decade and worsen outcomes for workers.

Home care work is characterized by low wages and high turnover, despite high growth in the sector for larger companies, and the proposed deregulation will exacerbate these tendencies.

Despite the essential services they provide, non-union home care workers experience high rates of economic insecurity. The 2013 Rule establishes an important wage floor for the industry, but much remains to be done to shore up industry compliance. The 2013 Rule's enforcement relies on U.S. Department of Labor actions, of which there have been thousands¹⁵ even before the 2013 Rule, and on individual workers, who fear retaliation and too often are isolated and may not feel able to come forward to complain of violations. The 2013 Rule and its enforcement must remain in place to support those employers that are complying with minimum wage and overtime, and to send a message to those that are not that subminimum pay is not acceptable.

As described below, the home care industry was valued at \$100.95 billion in 2024, and it is projected to grow from \$107.07 billion in 2025 to \$176.30 billion by 2032.¹⁶ Yet, as of 2023,

¹² U.S. Government Accountability Office, GAO-21-72, Fair Labor Standards Act: Observations on the Effects of the Home Care Rule, at 17 (2000).

¹³ Di Yan, *Did Minimum Wage Policy Changes Impact Home Health Workforce?*, Home Health Care Management & Practice, 35, 206-212 (2022).

¹⁴ *Id.*

¹⁵ U.S. Government Accountability Office, GAO-21-72, Fair Labor Standards Act: Observations on the Effects of the Home Care Rule, at 38-39 (2000) (measuring the number of DOL compliance actions in the home care industry, finding that the vast majority are initiated by complaints and result in violations identified).

¹⁶ Fortune Business Insights, U.S. Home Healthcare Services Market Size, Share & Industry Analysis, <https://www.fortunebusinessinsights.com/u-s-home-healthcare-services-market-105568> (last updated Jul. 7, 2025).

“almost one-quarter of home care aides live below the federal poverty line, and over half participate in programs such as SNAP.”¹⁷ Wages for direct care workers are lower than entry level roles in other industries that require similar trainings or qualifications.¹⁸ The median wage for home care workers is \$16.13 per hour; these workers have a median annual income of just \$21,889.¹⁹ While the median wage for these workers is higher than the federal minimum wage, the federal minimum wage serves as an important baseline, particularly for part-time home care workers in rural or non-unionized areas. In states that have not adopted their own minimum wage or have a minimum wage below \$7.25 an hour, home care workers would face increased risks of economic insecurity because of a rollback of the 2013 Rule.²⁰

Due to limited oversight of home health agencies and worker fears of retaliation and experience with isolation, agencies too often violate federal overtime and minimum wage protections by failing to compensate for all hours worked, unlawful deductions, and improper classification.²¹ Home care workers experience high levels of wage theft violations. For example, in 2024, the Department of Labor recovered “\$735,762 in back wages and damages from five care industry employers whose illegal pay practices deprived 173 workers’ rights to be paid their full-earned wages.”²² Rescinding the 2013 Home Care Rule would embolden unscrupulous employers to continue to take advantage of workers, underpay them, and result in increased turnover and shortages.

In addition, without the 2013 Rule, racial and gender inequality between home care and other sectors will likely increase. Women and people of color make up most of the home care workforce. While people of color constitute 38% of the total labor force in the country, they make up 67% of all home care workers.²³ The disproportionate representation of these communities in this industry is not new. Historically, home care has been dominated by women and people of color, leading to a devaluation of this crucial workforce. The initial exclusion of home care workers from the FLSA in 1938 was shaped by racism and sexism, as proven by statements

¹⁷ Leonard Davis Institute of Health Economics, *Home Health Care Workforce Not Keeping Up with Community Needs*, Jun. 9, 2023, <https://ldi.upenn.edu/our-work/research-updates/home-health-care-workforce-not-keeping-up-with-community-needs/>.

¹⁸ Assistant Secretary for Planning and Evaluation, *Wages of Direct Care Workers Continue to Be Lower In Most States Relative to Other Entry-Level Jobs* (Dec. 2024), <https://aspe.hhs.gov/sites/default/files/documents/9f37d617a1b21bf0c2dfad433b1c95af/dcw-entry-level-wages-continue-lower.pdf>

¹⁹ Report, *Direct Care Workers in the United States: Key Facts 2024*, PHI, Sep. 2, 2024, at 3, <https://www.phinational.org/resource/direct-care-workers-in-the-united-states-key-facts-2024/>

²⁰ National Conference of State Legislatures, *State Minimum Wages* (Jul. 1, 2025) (“Five states have not adopted a state minimum wage: Alabama, Louisiana, Mississippi, South Carolina and Tennessee. Three states, Georgia, Oklahoma and Wyoming, have a minimum wage below \$7.25 per hour”).

²¹ U.S. Dep’t. of Labor, Department of Labor initiative finds violations in 80% of care industry investigations; recovers \$28.6M for nearly 25K workers, mostly women (Nov. 16, 2022), <https://www.dol.gov/newsroom/releases/whd/whd20221ex116> (finding “since its 2021 launch, the [DOL] initiative has completed more than 1,600 investigations and identified violations in 80 percent of its reviews”).

²² U.S. Dep’t. of Labor, US Department of Labor finds increased number of care industry employers engaged in wage theft, recovers \$735K in wages, damages in recent cases (Dec. 30, 2024), <https://www.dol.gov/newsroom/releases/whd/whd20241230>

²³ Report, *Direct Care Workers in the United States: Key Facts 2024*, PHI, Sep. 2, 2024, at 6, https://www.phinational.org/wp-content/uploads/2024/09/PHI_Key_Facts_Report_2024.pdf

made by members of Congress during legislative debate.²⁴ The harmful impacts of rescinding the 2013 Rule would disproportionately affect historically marginalized communities, reinforcing the systemic devaluation of care work and occupational segregation.

Rescinding the 2013 Rule will lead to more turnover and shortages, hurting workers and consumers alike.

A return to the 1975 regulations would exacerbate existing employee turnover and retention issues, thereby limiting access to critical services to care recipients. The home care industry already has high turnover rates, with one estimate saying it reached 80 percent in 2024.²⁵ Due to the physically demanding nature of caregiving, home care workers frequently suffer injuries on the job. In 2018, there were 49,040 reported injuries and illnesses among home care workers.²⁶ The prevalence of injuries relative to the low earning potential in this profession deters individuals from seeking employment in home care and staying in the industry. Concerns about job quality “drive high turnover in home care and cause widespread job vacancies.”²⁷ Removing federal minimum wage and overtime protections would exacerbate these concerns for workers.

For care recipients, high turnover affects the quality of care they will receive. From 2022 to 2060, it is projected that the population of adults age 65 and older in the U.S. will increase substantially, from 57.8 million to 88.8 million. More adults are seeking to “age in place” with 77 percent of adults 50 and older wanting to remain in their homes for the long term.²⁸ Between 2020 and 2035, the demand for direct care workers is projected to increase by “48 percent for nursing assistants, 43 percent for personal care aides, and 42 percent for home health aides.”²⁹ Increased turnover would exacerbate staffing shortages, making it difficult for the industry to keep up with demand. Moreover, the rollback of the 2013 Rule would affect employee retention. A 2022 study found that the 2013 Rule “may help retain current workers since workers earn higher wages after the FLSA extension.”³⁰ The proposed rollback will likely result in workers

²⁴ Ariela Migdal, Home Health Care Workers Aren’t Guaranteed Minimum Wage or Overtime, and the Legacies of Slavery and Jim Crow Are the Reason Why (May 6, 2015), <https://www.aclu.org/news/womens-rights/home-health-care-workers-arent-guaranteed-minimum-wage-or>

²⁵ Home Care Association of America, *Home Care Turnover Rate Jumps to 80%...HCAOA is Here to Help Members* (July 7, 2024), <https://www.hcaoa.org/newsletters/home-care-turnover-rate-jumps-to-80hcaoa-is-here-to-help-members#:~:text=The%20median%20turnover%20rate%20for,COVID%2D19%20pandemic%20and%20beyond.>

²⁶ Report, Home Health Care Aides: Occupational Health and Safety Challenges and Opportunities, <https://www.hfes.org/Portals/0/Documents/Home-Health-Care-Aides-Occupational-Health-and-Safety-Challenges-and-Opportunities-White-Paper.pdf?ver=2021-08-18-091632-413×tamp=1629296210565#:~:text=Themostfrequentinjurytype>

²⁷ Report, *Direct Care Workers in the United States: Key Facts 2024*, PHI, Sep. 2, 2024, at 11, <https://www.phinational.org/resource/direct-care-workers-in-the-united-states-key-facts-2024/>

²⁸ Michelle R. Davis, Despite Pandemic, Percentage of Older Adults Who Want to Age in Place Stays Steady, AARP (Nov. 18, 2021), <https://www.aarp.org/home-living/home-and-community-preferences-survey-2021/#:~:text=%EF%BB%BF%22%20Data%20%EF%BB%BFshows%20that,for%20more%20than%20a%20decade.>

²⁹ Health Resources and Services Administration, Long-Term Services and Support: Demand Projections, 2020-2035 (Nov. 2022), <https://bhw.hrsa.gov/sites/default/files/bureau-health-workforce/LTSS-Projections-Factsheet.pdf>.

³⁰ Di Yan, Did Minimum Wage Policy Changes Impact Home Health Workforce? <https://journals.sagepub.com/doi/10.1177/10848223221140502>

choosing to pursue employment in other industries that provide FLSA protections, are less demanding, or pay more. Home care agencies and consumers would also bear the financial burden of poor retention and staffing shortages.

Recent cuts to Medicaid spending would directly affect the home care workforce. When federal funding for Medicaid decreases, states have historically tended to cut Home and Community-based Services (HCBS) first because they are optional services.³¹ In turn, states would have to reduce provider payment rates, compounding workforce shortages and accessibility issues in the home care industry.³² This can have serious implications for care recipients who want and have a right to receive services and supports in their home.

Finally, worsening staffing shortages and high turnover rates would directly affect care recipients. High levels of turnover disrupt the quality of care for recipients.³³ Turnover can hinder the continuity of care, eroding trust between caregivers and care recipients and diminishing consumer satisfaction.³⁴ In contrast, wage and overtime protections can positively impact the quality of care. In a study of nursing homes, “the cost of increased wages were partially offset by improvements in care, such as fewer pressure ulcers and urinary tract infections, and the cost was completely offset when the social value of longevity is considered.”³⁵ If fewer workers are willing to work in the substandard conditions created by the proposed rule, recipients and their families may have to turn to alternatives, like nursing homes, to seek care. By restricting their ability to choose an often preferred and cost-effective mode of care that best serves their needs, the shift would significantly impair care recipient autonomy and limit access to care.

DOL does not provide adequate economic analysis to support the change.

Beyond a weak reference to *Loper Bright*, the Department has not offered substantive reasoning as to why it is reconsidering the third-party exemption at this time. To determine if an agency action is arbitrary and capricious, a court will examine “the relevant data” and see if the agency articulated “a satisfactory explanation for [its] decision,” “including a rational connection between the facts found and the choice made.”³⁶ The Department has not pointed to specific facts showing that the exemption directly contributes to the issues it identifies in the industry.³⁷

³¹ Allie Gardner, *Medicaid Cuts Would Reduce Access to Health Care for Entire Communities*, Center on Budget and Policy Priorities, May 6, 2025, <https://www.cbpp.org/blog/medicaid-cuts-would-reduce-access-to-health-care-for-entire-communities>.

³² Natalie Kean, *Cutting Medicaid Harms Older Adults No Matter How It’s Sliced*, Justice in Aging, Dec. 18, 2024, at 2, <https://justiceinaging.org/cutting-medicaid-harms-older-adults/>

³³ Karen Shen, *Health Care Staff Turnover and Quality of Care at Nursing Homes*, <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2810616> (finding that staff turnover in nursing homes was associated with lower quality of care).

³⁴ Leonard Davis Institute of Health Economics, *Home Health Care Workforce Not Keeping Up with Community Needs*, Jun. 9, 2023, <https://ldi.upenn.edu/our-work/research-updates/home-health-care-workforce-not-keeping-up-with-community-needs/>.

³⁵ Krista Ruffini, *Worker earnings, service quality, and firm profitability: Evidence from nursing homes and minimum wage reforms*, Washington Center for Equitable Growth (Jun. 4, 2020).

³⁶ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted) (“an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise”).

³⁷ Application of the Fair Labor Standards Act to Domestic Service, 90 Fed. Reg. 28976 (proposed Jul. 2, 2025) (to be codified at 29 C.F.R. pt. 552).

To support its rollback of the 2013 Rule, the Department relies primarily on one GAO report, without addressing the important limitations of this source that render it contestable. Notably, the report acknowledges that it did not control for several key factors beyond the 2013 Home Care Rule itself that influences worker outcomes.³⁸ These factors include differences in state responses to the Rule and economic conditions at the state or local level, like unemployment rates and disability prevalence. This limitation weakens the Department's reliance on this report to establish that the 2013 Rule's predicted impact on worker outcomes "have failed to fully materialize."³⁹ As discussed above, there is an abundance of evidence contrary to the GAO report. Moreover, the Department does not offer any substantive analysis demonstrating the 1975 regulations would yield comparatively better or more preferable outcomes for workers or consumers. In fact, it defies logic that taking away minimum wage and overtime protections for a growing workforce will increase quality of care and services and support home care provision. Lacking firm evidence to justify the proposed rule, the Department proposes an unworkable rollback that will wreak havoc and create an unstable landscape for stakeholders across the home care industry.

Comments on Specific Provisions in the NPRM

Restoring the Ability of Third-Party Employers to claim the "Companionship Services" Exemption and Exemption for "Live-In" Domestic Service Workers.

The language of 1974 FLSA Amendments did not explicitly include or exclude third-party employers. This is because at that time, home care was provided informally by family members and friends ("elder sitters,") and later, by physicians doing house visits.⁴⁰ It was only "beginning in the late 1980s and continuing through much of the 1990s, [that] home care became big business."⁴¹ Through the late 1990s, home care was the fastest growing component of Medicare's overall budget, with expenditures increasing at a rate of approximately 20% per year, from \$3.5 billion in 1989 to \$19 billion by 1997.⁴² The exponential growth of the home care industry has led to for-profit companies dominating the market. As of 2023, home health care agencies employed 83.2% of home health aides nationwide.⁴³ The 2013 Home Care Rule recognized the transformation of home care into a formal industry with a widespread network of third-party employers managing millions of workers. Since the adoption of the rule, the industry has only continued growing in size and revenue. Rescinding the 2013 Rule ignores the deep

³⁸ U.S. Government Accountability Office, GAO-21-72, Fair Labor Standards Act: Observations on the Effects of the Home Care Rule, at 33 (2000) ("Our regression results do not directly evaluate the effect of the Home Care Rule. Rather, we describe trends that may provide insights into the effects of the rule, though there are other factors that may influence these trends and that we cannot control for, such as differences in state policies in response to the Home Care Rule").

³⁹ Application of the Fair Labor Standards Act to Domestic Service, 90 Fed. Reg. 28976 (proposed Jul. 2, 2025) (to be codified at 29 C.F.R. pt. 552).

⁴⁰ A.E. Benjamin, "An Historical Perspective on Home Care Policy," in *The Milbank Quarterly*, Vol. 71, <https://www.milbank.org/wp-content/uploads/mq/volume-71/issue-01/71-1-An-Historical-Perspective-on-Home-Care-Policy.pdf>

⁴¹ Bruce Leff, John R. Burton, The Future History of Home Care and Physician House Calls in the United States, *The Journals of Gerontology: Series A*, Vol. 56, Issue 10, 1 October 2001, Pages M603–M608, <https://pubmed.ncbi.nlm.nih.gov/11584032/>.

⁴² *Id.*

⁴³ Data USA, Home Health Aides, <https://datausa.io/profile/soc/home-health-aides>.

analysis undertaken prior to the 2013 Rule, where the industry growth and sophistication was well-documented.⁴⁴

Before 1974, domestic service employees, including those providing personal care or home health assistance, were covered by the FLSA's minimum wage and overtime pay provisions if those employees were "employed in an enterprise engaged in commerce or in the production of goods for commerce." 29 U.S.C. §§ 206(a), 207(a)(1) (1970). There were not many of those large-enough agencies to confer enterprise coverage for a home care worker, however. Enterprise-wide coverage existed only if the employer had an annual gross volume of sales or business of \$250,000 or more for enterprise coverage to apply. 29 U.S.C. § 203(s)(1) (1970).

The Department of Labor well documented the growth and size of the home care industry leading up to the 2013 Rule.⁴⁵ It recognized that permitting third-party employers to claim the companionship services exemption would be inconsistent with Congress's intent behind the FLSA. "[B]readth of coverage was vital to [the FLSA's] mission." ⁴⁶ Accordingly, the 1974 Amendments were intended to expand FLSA's coverage to include more workers, including "all employees whose vocation is domestic service."⁴⁷ The 2013 Rule was well-supported by the 1974 amendment's legislative history. As noted in the DOL's 2013 rulemaking, the legislative record reveals that policymakers contemplated a distinction between "casual" employees and employees whose "vocation is domestic service."⁴⁸ One legislator notably drew a contrast between assistance provided by a "neighbor" or an "elder sitter" with "the professional domestic who does this as a daily living."⁴⁹ There is nothing "casual" about the work or demands of this work. These distinctions reflect the current reality of the home care industry.

Third-party agencies employ home care workers whose vocation is domestic service. Federal regulations stipulate that home health care aides must complete at least 75 hours of training which includes at least 16 hours of supervised practical or clinical training.⁵⁰ Even beyond this subset of the workforce, across the industry, home care work is becoming increasingly professionalized. For example, in 26 states and Washington D.C., personal care aides (PCAs), must fulfill a minimum number of training hours in at least one set of training requirements; of these, "15 states and Washington D.C. require 40 or more hours of training."⁵¹ And most home care workers receive some type of training, even when not required by law. This reinforces the reality that employees working for home care agencies resemble the "professional domestic" doing this work as "daily living" that Congress did not intend to exempt from FLSA coverage. The Department has not refuted this legislative history or provided justification for reconsidering the 2013 Rule, especially given the longstanding benefits and protections it has provided for workers across the country.

⁴⁴ Application of the Fair Labor Standards Act to Domestic Service, 78 Fed. Reg. 190 (Oct. 1, 2013) (amending as 29 C.F.R. Pt. 552).

⁴⁵ Application of the Fair Labor Standards Act to Domestic Service, 78 Fed. Reg. 190 (Oct. 1, 2013) (amending as 29 C.F.R. Pt. 552).

⁴⁶ *Powell v. United States Cartridge Co.*, 339 U.S. 497, 515 (1950).

⁴⁷ S. Report No. 93-690, p. 20; H.R. Report No. 93-913, pp. 36.

⁴⁸ S. Rep. No. 93-690, at 20; H.R. Rep. No. 93-913, at 33-34, 36.

⁴⁹ 119 Cong. Rec. 24,801 (July 19, 1973) (statement of Sen. Burdick).

⁵⁰ PHI, "Home Health Aide Training Requirements by State,"

<https://www.phinational.org/advocacy/home-health-aide-training-requirements>.

⁵¹ PHI, Personal Care Aide Training Requirements, <https://www.phinational.org/advocacy/personal-care-aide-training-requirements/>

The proposed rule suggests that *Loper Bright* may indicate that the third-party employer provision is no longer valid.⁵² However, *Loper Bright* does not justify the agency's rollback of the 2013 Rule. First, even after *Loper Bright* was issued in June of last year, the Department continued to treat the Rule as valid.⁵³ Additionally, under *Loper Bright*, the Court held that courts must exercise "independent judgment" to determine the "best reading of a statute" and "agency interpretations of statutes are not entitled to deference."⁵⁴ The Court emphasizes judicial deference by directing "how courts are to interpret a statute when an agency has issued its own interpretation."⁵⁵ The Department of Labor itself has responded to recent *Loper Bright* challenges to the 2013 in the context of enforcement actions against home care employers, stating that *Loper Bright* does not affect the validity of the 2013 Rule, and supports its assertions with at least two recent federal court decisions⁵⁶.

Lastly, under *Loper Bright*, the Court did not compel agencies to rescind existing regulations that were previously upheld under Chevron deference.⁵⁷ Importantly, when a challenge was raised against the third-party exemption in *Home Care Ass'n of Am. v. Weil*, the D.C. Circuit court affirmed the validity of the exemption.⁵⁸ The court did not solely rely on Chevron deference to guide its rationale. Rather, it examined the text of the FLSA and its legislative history and concluded that the Department's interpretation to be consistent with Congressional intent.⁵⁹ Given a federal appellate court has already reviewed and affirmed the validity of this exemption on statutory interpretation grounds, the Department's suggestion that the 2013 Home Care Rule may no longer reflect the best reading of the FLSA is unfounded and unsupported.

Restoring the pre-2013 definition of "companionship services."

The Department justified its implementation of the 2013 Home Care Rule by a careful review of the statutory language and by its well-substantiated legislative history of the 1974 Amendments. The 2013 Rule defines companionship services as "the provision of fellowship and protection for an elderly person or person with an illness, injury, or disability who requires assistance in caring for himself or herself."⁶⁰ It defines "the provision of fellowship" as "engaging the person in social, physical, and mental activities, such as conversation, reading, games, crafts, or accompanying the person on walks, on errands, to appointments, or to social events."⁶¹ In the legislative record for the 1974 Amendments, a companion is described as someone who "sits with [an elderly person]," provides "constant attendance," and renders services similar to a babysitter, i.e., "someone to be there and watch an older person," or an "elder sitter."⁶² The legislative history also shows that the companionship services exemption was not intended to exclude "trained

⁵² Application of the Fair Labor Standards Act to Domestic Service, 90 Fed. Reg. 28976 (proposed Jul. 2, 2025) (to be codified at 29 C.F.R. pt. 552).

⁵³ *Id.*

⁵⁴ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 371.

⁵⁵ *Id.*

⁵⁶ See, e.g., *Dep't of Labor v. Americare Healthcare Servs., LLC, et al.*, 2025 WL 71671 (S.D. Ohio Jan. 9, 2025); *Dept of Labor v. Wicare Home Care Agency, LLC*, 2024 WL 3598826 (M.D. Pa. July 31, 2024).

⁵⁷ Jack Jones and Max Sarinsky, What Loper Bright and Statutory Stare Decisis Mean for Deregulation, *Yale Journal of Regulation*, Jun. 30, 2025, <https://www.yalejreg.com/nc/what-loper-bright-and-statutory-stare-decisis-mean-for-deregulation-by-jack-jones-max-sarinsky/>.

⁵⁸ *Home Care Ass'n of Am. v. Weil*, 799 F.3d 1084, 1090 (2015), *cert. denied*, 579 U.S. 927 (2016).

⁵⁹ *Id.* at 1094.

⁶⁰ 29 CFR 552.6 (2).

⁶¹ *Id.*

⁶² See 119 Cong. Rec. S24773, S24801 (daily ed. July 19, 1973).

personnel such as nurses, whether registered or practical,” from the coverage of the FLSA.⁶³ The 1974 Amendments created the narrow exemption for informal, unprofessional care by babysitters and elder sitters. In contrast, modern direct care workers are professional caregivers constituting the “trained personnel” that Congress did not intend to be excluded from minimum wage and overtime protections. By grounding its justification of the 2013 Rule in the statutory language and its legislative history, the Department provided ample evidence that the regulation reflected Congressional intent.

Rescinding the 2013 Rule would undermine the remedial purpose of the FLSA. The FLSA aims to mitigate “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.”⁶⁴ A return to the 1975 regulations would enable employers to exempt millions of workers providing substantial personal care or physical assistance and evade paying them minimum wage and overtime. Home care workers provide assistance for a variety of daily activities, including personal care, mobility, and housework.⁶⁵ The 2013 Rule modernizes the definitions of “fellowship,” “protection,” and “care” in practical and precise terms. Whereas the 1975 regulation broadly defined “companionship services” as including “household work,” the 2013 Rule creates a clearer and more administrable definition by defining “care” as “assisting with activities of daily living” and listing multiple examples of what this constitutes.

The 1975 approach to the exemption for “companion services” is outdated and fails to take into account the current state of the industry and the work provided. As motivation for rescinding the 2013 definition, the DOL cites its belief that “the regulation for exempt companions should not be any more restrictive.”⁶⁶ By reducing the scope of permissible job duties for exempt companions, the 2013 Home Care Rule is narrowly tailored for workers providing “companionship services” to prevent the overuse of the exemption by employers in a way that Congress did not intend. Expanding the exemption to encompass professional caregiving would impede the narrow tailoring of the exemption envisioned by Congress.

The importance of home care services and supports cannot be overstated. As need and demand grow, it is essential that the government safeguard existing protections for the workers whose services shape the lives of countless older adults and people with disabilities and their families. By eliminating basic federal protections for this workforce, the proposed rule would create devastating harm that will reverberate across the industry. We urge the Department not to enact the proposed rule.

Sincerely,

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⁶³ See Senate Report No. 93-690, 93rd Cong., 2d Sess., p. 20 (1974); House Report No. 93-913, 93rd Cong., 2d Sess., p. 36 (1974).

⁶⁴ 29 U.S.C. 202(a).

⁶⁵ National Institute on Aging, *Services for Older Adults Living at Home*, <https://www.nia.nih.gov/health/caregiving/services-older-adults-living-home> (last reviewed Oct. 12, 2023).

⁶⁶ Application of the Fair Labor Standards Act to Domestic Service, 90 Fed. Reg. 125 (Jul. 2, 2025) (amending as 29 C.F.R. Pt. 552).

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