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Submitted via regulations.gov

Division of Regulations, Legislation, and Interpretation
Wage and Hour Division (WHD), U.S. Department of Labor (DOL)
Room S-3502, 200 Constitution Avenue NW
Washington, DC 20210

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

To Director Daniel Navarrete —

The Autistic Self Advocacy Network (ASAN) opposes the proposed rule, “Application of the Fair Labor Standards Act to Domestic Service” (RIN: 1235-AA51). ASAN is the largest and oldest nonprofit organization run by and for autistic communities. Through policy advocacy and community education, ASAN works to ensure that all people with disabilities, including those with intellectual and developmental disabilities, have equal rights, self-determination, and the support we need to thrive.

There are close to 4 million home health and personal care aides serving 12 million people.^{1,2} High-quality, sustainable, and stable home care for these disabled and elderly populations depends on guaranteed minimum wage and overtime rates for *all* types of domestic workers. This NPRM’s attempt to exclude certain necessary services from labor protections will undermine domestic workers’ earning potential, making it even more unaffordable for them to remain in the field and consequently exacerbating the existing provider shortage.³

Any diminished access to adequate home care can heighten the risks of institutionalization. For states, this creates uncertainty and potential enforcement costs associated with *Olmstead* noncompliance. For disabled and elderly populations, institutionalization leads to abuse and neglect.⁴ We, the consumers, have a right to receive care in our homes. The Department’s proposed rule threatens our independence and survival because it threatens those who support us. ASAN urges the Wage and Hour Division to both withdraw RIN: 1235-AA51 and uphold the 2013 Home Care Rule.

¹ U.S. Bureau of Labor Statistics (BLS), U.S. Department of Labor (DOL). (2025 April 18). *Occupational Outlook Handbook: Home Health and Personal Care Aides*. Retrieved August 27, 2025, from <https://www.bls.gov/ooh/healthcare/home-health-aides-and-personal-care-aides.htm>

² Yardi, S. (2025, January 13). Home Healthcare Statistics 2025 by Demographics, Utilization, Diagnoses. *Market.us Media*. <https://media.market.us/home-healthcare-statistics/>

³ Scales, K., & McCall, S. (2025, March 19). *Key Facts & FAQ: Understanding the Direct Care Workforce*. PHI. <https://www.phinational.org/policy-research/key-facts-faq/>

⁴ Bazelon Center for Mental Health Law. (2025 April 11). *Statement for the Record of the Bazelon Center for Mental Health Law for March 31, 2025 Roundtable Hearing on “Supporting Humane and Trauma-Informed Responses to Behavioral Health Crises” Resolution: D.C. Council Committee on Health*. <https://www.bazelon.org/wp-content/uploads/2025/04/4-11-25-Bazelon-Testimony-for-DC-Roundtable-on-PR26-0108-Final.pdf>

The Fair Labor Standards Act (FLSA) has protected the American workforce for nearly ninety years. 29 U.S.C. § 201. Its original iteration excluded domestic workers. This was a deliberate policy choice designed to garner support for this legislation in the Jim Crow South by avoiding the extension of basic rights given to most other employees to the Black women who cooked, cleaned, and raised children in white Southern households.⁵ These arbitrary and racist exclusions stood for decades.⁶ In 2013, the Department promulgated the regulation it now seeks to revoke in an effort to correct lingering disparities for one group of workers- people providing companionship services. See 29 C.F.R. § 552.3. Because of the critical role home and community based services (HCBS) play in the lives of many disabled people, particularly people with intellectual and developmental disabilities (IDD), the disability community has a strong interest in FLSA enforcement and the wellbeing of the HCBS workforce generally.

Home care workers are paid one-third less than the average U.S. worker, and home care workers are three times more likely to live in poverty than those in other careers.^{7,8} The low wages of home care workers are attributable to poor working conditions and violations of employment laws.⁹ Despite WHD's assertions otherwise, labor protections are an essential part of addressing the poverty experienced by domestic workers, *not* the cause of it.¹⁰ This is reflected by the fact that the 2013 Home Care Final Rule has resulted in home care agencies paying more than six times the amount of back wages to workers since its implementation, compared to the ten years prior.¹¹ These underpayments were corrected in large part due to the 2013 rule's creation of avenues for federal enforcement in the 29 states with exemptions for home care minimum wage and overtime at the time.¹² Workers have materially benefited from the protections in this regulation, and its rescission will roll back industry progress.

The Department of Labor justifies the proposed rescission by blaming the current provider shortage on FLSA enforcement. That is false. It is well-established that the current provider shortage is actually driven, in part, by

⁵ See Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 Ohio St. L.J. 95, 96 ("During the New Deal Era, the statutory exclusion of agricultural and domestic employees was well-understood as a race-neutral proxy for excluding blacks from statutory benefits and protections made available to most whites.") (2011); see also *The Fair Labor Standards Act becomes Law*, African American Registry, <https://aaregistry.org/story/fair-labor-standards-act-becomes-law/> (last visited Sept. 2, 2025) ("Additional changes to the FLSA in the mid-1970s extended the law's protections to include domestic workers, but with a gigantic loophole: 'companionship workers' were still not covered. And that category included many of the very domestic workers that Jim Crow-era legislators wanted to remain unprotected from federal law, including nannies, housekeepers, and companions for the aged.").

⁶ Phyllis Palmer, *Outside the Law: Agricultural and Domestic Workers Under the Fair Labor Standards Act*, 37 J. Policy History 3 (2011) ("In 1966, at the end of almost two decades of civil rights agitation, men and women of color redressed one significant historical injustice—the legislative exemption of tens of thousands of farmworkers from the 1938 Fair Labor Standards Act (FLSA), which guaranteed a minimum wage and maximum hours of work for covered workers. In 1974, after almost a decade of feminist agitation, domestic workers convinced the Congress that even private household service fell within the act's minimum-wage coverage of workers engaged in interstate commerce. The two occupations in which most African Americans and a large number of other nonwhite Americans worked in 1938, and in which significant numbers remained in the 1960s and 1970s, joined the roster of jobs covered by this fundamental legislation.").

⁷ Banerjee, A., deCourcy, K., Moore, K. K., & Wolfe, J. (2022). *Domestic Workers Chartbook 2022*. Economic Policy Institute. epi.org/256483

⁸ *Direct Care Workers in the United States: Key Facts 2024*. (2024). PHI. <https://www.phinational.org/resource/direct-care-workers-in-the-united-states-key-facts-2024/>

⁹ Bernhardt, A., Milkman, R., & Theodore, N. (2009, September 21). *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's cities*. National Employment Law Project (NELP).

<https://www.nelp.org/insights-research/broken-laws-unprotected-workers-violations-of-employment-and-labor-laws-in-americas-cities/>

¹⁰ *Supporting and Sustaining the Home Care Workforce to Meet the Growing Need for Long-Term Care* (No. 202011). (2020). American Public Health Association.

<https://www.apha.org/policy-and-advocacy/public-health-policy-briefs/policy-database/2021/01/13/supporting-and-sustaining-the-home-care-workforce>

¹¹ \$25.6 million versus \$157.8 million. U.S. Department of Labor. 2025. Wage and Hour Compliance Action Data.

https://enforcedata.dol.gov/views/data_summary.php; as cited in PHI. (2025). *Talking Points on the DOL's Proposed Rule: Application of FLSA to Domestic Service*.

<https://aahd.us/wp-content/uploads/2025/08/DOL-July2-2025-rescind-FLSA-to-domestic-workers-PHILandNDWL-08132025-merged.pdf>

¹² Sarah Leberstein, & Ruckelshaus, C. (2013 September). *Home Care Worker Rights In The States After The Federal Companionship Rules Change-2013*. National Employment Law Project (NELP). <https://www.nelp.org/app/uploads/2015/03/Home-Care-State-by-State.pdf>

the relationship between low compensation and high rates of staff turnover.^{13,14,15,16} Even though minimum wage and overtime alone will not solve this crisis, creating lasting repair certainly depends on the foundational protections of the 2013 Home Care Rule. Rescinding it will hurt the providers themselves, the recipients of care, the national economy, and the larger public health system. That is because the Economic Policy Institute projects that 1 million additional home health care workers are needed by 2029 to meet consumer demand, a demand which AARP research substantiates.^{17,18}

Take-it-or-leave-it working conditions make it difficult for highly-skilled domestic workers to exit poverty, afford their basic needs, and stay in the field. The backbone of the home care labor force faces an impossible choice: take on multiple jobs or switch careers. Both outcomes can result in enrollment in high-cost benefits programs and make it difficult to remain financially self-sufficient. The proposed deregulation stands to increase dependence on the social safety net.

If the NPRM is finalized, domestic workers will not earn enough to adequately attend to the health and safety of their disabled and elderly clients.¹⁹ A 2023 meta-analysis of 27 studies conducted from 2000 to 2001 demonstrated that Medicaid Home and Community Based (HCBS) provider turnover was a driver of negative consumer perceptions of quality.²⁰ One of those studies examined more than 10,000 HCBS users across 13 states, and found that those who experienced unmet needs for assistance with self-care or daily activities had consistently worse health and community living outcomes than those who reported no unmet need, after adjusting for key user demographic, functional, and social characteristics.²¹ Because low compensation contributes to high turnover, which in turn leads to lower-quality care, WHD's proposal to weaken wage protections endangers the health and safety of disabled and elderly populations across the country.

A secondary impact that adequate quality of home support has on the workforce is through improved workforce participation of disabled individuals ourselves. Medicaid Home and Community Based Services (HCBS) provide disabled workers the requisite types of care needed to become and stay employed— services ranging from job coaches and employment support staff to life-saving habilitation support for activities of daily living, like eating, dressing, transportation, and bathing.^{22,23} As the Proposed Rule notes, the size of the home care workforce has not kept pace with demand from HCBS participants.²⁴ Job seekers with disabilities have the

¹³ Lewis, J. (2021). *The relationship between low wages, employee turnover and community Well-Being*. Illinois Partners for Human Service. <https://illinoispartners.org/wp-content/uploads/2020/11/The-Relationship-Between-Low-Wages-Employee-Turnover-and-Community-Well-BeingFullReport.pdf>

¹⁴ SEIU Healthcare. (2024, March 13). *Hundreds of Illinois home care workers and seniors rallied to demand higher pay for care workers to address workforce shortage crisis*. <https://seiuhealth.org/2024/03/hundreds-of-illinois-home-care-workers-and-seniors-rallied-to-demand-higher-pay-for-care-workers-to-address-workforce-shortage-crisis/>

¹⁵ Khavjou, O., Suarez, G., Tyler, D., Squillace, M., Dey, J., & Oliveira, I. (2023 Aug 2). *Issue Brief: Wages Of Direct Care Workers Lower Than Other Entry-Level Jobs In Most States*. Office of the Assistant Secretary for Planning and Evaluation (ASPE), U.S. Department of Health and Human Services (HHS). <https://aspe.hhs.gov/sites/default/files/documents/7a611d901c615e5611ea095b1dcf8d08/wages-dcw-lower-ib.pdf>

¹⁶ Banijamali S, Jacoby D, Hagopian A. (2014 June) *Characteristics of home care workers who leave their jobs: a cross-sectional study of job satisfaction and turnover in Washington State*. Home Health Care Serv Quarterly. 33(3):137–158. <https://pubmed.ncbi.nlm.nih.gov/24924829/>

¹⁷ Robertson, C., Sawo, M., & Cooper, D. (2022). *All states must set higher wage benchmarks for home health care workers*. Economic Policy Institute (EPI) & New America. <https://www.epi.org/publication/state-home-health-care-wages>

¹⁸ Binette, Joanne. 2021. *Where We Live, Where We Age: Trends in Home and Community Preferences*: AARP Research. <https://datastories.aarp.org/2021/home-and-community-preferences/>

¹⁹ Brief for Martin J. Walsh as Amicus Curiae, *Martin J. Walsh v. WiCare Home Agency, LLC, et al.* No. 24-2565. 3rd Ct. 2025. <https://www.nelp.org/app/uploads/2025/01/2025-NELP-Amicus-Brief-home-care-Workers-Min-WageOvertime-Protections.pdf>

²⁰ Examining Satisfaction and Quality in Home- and Community-Based Service Programs in the United States: A Scoping Review. (2023). *The Gerontologist*, 63(9), pg. 1437-1455. <https://academic.oup.com/gerontologist/article/63/9/1437/6987579>

²¹ Chong, N., Akobirshoev, I., et. al. (2021). *The relationship between unmet need for home and community-based services and health and community living outcomes*. *Disability and Health Journal*, 15(2), 101222. <https://doi.org/10.1016/j.dhjo.2021.101222>

²² Burns, A., & Cervantes, S. (2025, August 12). *5 Key Facts About Medicaid Coverage for People with Disabilities*. Kaiser Family Foundation (KFF). <https://www.kff.org/medicaid/issue-brief/5-key-facts-about-medicaid-coverage-for-people-with-disabilities>

²³ Coalition to Promote Self-Determination (CPSD). (2025, June 5). *Funding Medicaid Helps More People Work! Autistic Self Advocacy Network (ASAN)*. <https://autisticadvocacy.org/2025/06/cpsds-two-pager-medicaid-cuts-hurt-workforce-participation/>

²⁴ Kreider, A. R., & Werner, R. M. (2023). *The Home Care Workforce Has Not Kept Pace With Growth In Home And Community-Based Services*. *Health Affairs*, 42(5), 650–657. <https://doi.org/10.1377/hlthaff.2022.01351>

most to lose from deregulation that disincentivizes industry retention. As of June 2025, the employment-to-population ratio for PWD was 38% compared to 71.5% for people without disabilities.²⁵ In 2024, the unemployment rate (8.1%) for noninstitutionalized disabled people aged 16-64 was more than double the unemployment rate (3.9%) for people without a disability in that same age range.²⁶ These subpar outcomes cannot be helped by weakening labor protections for the skilled home care professionals who enable us to find and keep our jobs.

An adequately paid and protected home care workforce also reduces burden on the already overstretched public health systems. Amongst those who have recently been discharged from the hospital, availability and robustness of home care reduces the risk of acute hospital readmissions.^{27,28} By negatively impacting both the availability and scope of care provided by home workers, the proposed Rule would remove this protective measure.

An adequately paid home care industry is vital to the financial health of this country. While the size of the home care workforce has not kept up with demand, neither has the industry's growth been meaningfully slowed by the 2013 rule: the home care workforce added more than 1.5 million new jobs in the past decade, and this occupation growth is projected to continue.^{29,30} The value of long-term care in the economy may reach up to \$2.5 trillion by 2030.³¹ In order to meet the demands of this growing industry, and in order to provide quality support for a US population with increased need, we must protect labor protections for this vital workforce.

As previously mentioned, the Department misattributes the challenges with recruitment, retention, and turnover facing the home care industry on FLSA requirements, when the actual culprits are instead low base wages and failure to enforce labor protections. Furthermore, the proposed rule fails to acknowledge or account for the most relevant contributor to the current service provider crisis— inadequate Medicaid reimbursement for worker pay. Inadequate Medicaid payments, compounded by new federal cuts to Medicaid funding, threaten HCBS service delivery at the state level and remains the primary cause of inadequate pay for home care workers.

It is also necessary to acknowledge that this Proposed Rule exists within the current context of a broader administration-wide assault on diversity, equity, inclusion, and accessibility. The roots of racism in the exclusion of domestic workers from labor protection are long-standing. Enslaved Black women were forced to perform domestic work, and even after abolition, employers continued to exclude Black women from other fields while subjecting Black women in domestic work roles to low pay and poor working conditions.³² This racist legacy continued with the 1938 passage of the FLSA, which excluded domestic work and agricultural work as a "proxy

²⁵ Kessler Foundation and University of New Hampshire's Institute on Disability . (2025, July 3). *Lunch & Learn Webinar Series: July 2025 Jobs Report* [Slide show]. National Trends in Disability Employment (nTIDE). Center for Research on Disability.

<https://www.researchondisability.org/ntide-lunch-learn-special-episode-ada-generation-employment-insights-disability-advocate>

²⁶ U.S. Bureau of Labor Statistics. (2025, February 25). *Table 1. Employment status of the civilian noninstitutional population by disability status and selected characteristics, 2024 Annual averages - 2024 A01 results* [Press release]. Bureau of Labor Statistics.

<https://www.bls.gov/news.release/disabl.t01.htm>

²⁷ Wang, S., Temkin-Greener, H., Simning, A., Konetzka, R. T., & Cai, S. (2024). Outcomes after community discharge from skilled nursing facilities: The role of Medicaid Home and Community-Based Services. *Journal of Applied Gerontology*, 43(10), 1536–1543.

<https://doi.org/10.1177/07334648241242942>

²⁸ Carnahan, J. L., & Slaven, J. E. (2017). Transitions From Skilled Nursing Facility to Home: The Relationship of Early Outpatient Care to Hospital Readmission. *JAMDA: The Journal of Post-Acute and Long-Term Care Medical Association*, 18(10), pg. 853-859.

[https://www.jamda.com/article/S1525-8610\(17\)30274-8/abstract](https://www.jamda.com/article/S1525-8610(17)30274-8/abstract)

²⁹ PHI. 2024. Workforce Data Center. <https://www.phinational.org/policy-research/workforce-data-center/#tab=National+Data>

³⁰ Amanda R. Kreider & Rachel M. Warner, *The Home Care Workforce Has Not Kept Pace With Growth In Home and Community-Based Services*, Health Affairs, vol. 42, no. 5, p. 650 (May 2023), <https://www.healthaffairs.org/doi/epdf/10.1377/hlthaff.2022.01351>

³¹ O'Neill Hayes, T., & Kurtovic, S. (2020). *The Ballooning Costs of Long-Term Care*. American Action Forum.

<https://www.americanactionforum.org/research/the-ballooning-costs-of-long-term-care/>

³² Martinez Hickey, S., & Mast, N. (2025). Domestic workers' pay and working conditions in the South reflect racist, gendered notions of care. In *Rooted in Racism and Economic Exploitation: Spotlight*. Economic Policy Institute (EPI).

<https://www.epi.org/publication/domestic-workers-pay-and-working-conditions-in-the-south-reflect-racist-gendered-notions-of-care-rooted-in-racism-and-economic-exploitation-spotlight/>

to deny workers of color basic worker protections.”³³ The proposed rule marks a step back in time and attempts to revert nearly a century of progress for people of color, women, immigrants, people with disabilities, people living in the south, and people who exist across those demographics.³⁴ As noted in the comments submitted by the National Employment Law Project (NELP), excluding the care workforce from the “same basic labor protections that cover the vast majority of U.S. workers is unconscionable, especially given the historic devaluation of this work stemming from the legacy of slavery.” And as noted in the comments submitted by the National Domestic Workers Alliance (NDWA), underinvestment in care work is a byproduct of structural ableism, which “denies disabled communities equitable access to social resources and to disability competent and affirming health services, control over whether their experiences are listened to and believed, autonomy over how their needs are represented and responded to, and justice when they are exposed to harm, discrimination, and violence.”³⁵

Public policy can only meet the needs of disabled people if we are included in the process of shaping public policy. The 60-day notice and comment period for this NPRM interferes with that goal. Two months does not provide stakeholders adequate or meaningful opportunity to share their expertise or conduct their own independent economic analysis of the proposed rules, much less address the Department’s economic analysis. The accelerated deadline is additionally inappropriate in the absence of a timely publication of a unified agenda and in the context of the DOL’s announcement of approximately seventy regulatory actions this summer alone, as well as abrupt and unannounced changes to comment submission procedures that have impeded public stakeholders in submitting comments through established channels.³⁶ The Wage & Hour Division must extend the deadline to give our community adequate opportunity to weigh in on the proposed changes.

The Autistic Self Advocacy Network calls for WHD to withdraw “Application of the Fair Labor Standards Act to Domestic Service” (RIN: 1235-AA51) because it will hurt the communities we serve. We also request that the full text of each of our cited studies, along with the full text of our comments, be considered part of the administrative record in this matter for purposes of the Administrative Procedure Act.

For more information, contact ASAN Legal Director, Larkin Taylor-Parker at ltaylorparker@autisticadvocacy.org.

³³ Dixon, R. (2021). From Excluded to Essential: Tracing the Racist Exclusion of Farmworkers, Domestic Workers, and Tipped Workers from the Fair Labor Standards Act. In *Hearing before the U.S. House of Representatives Education and Labor Committee, Workforce Protections Subcommittee*. National Employment Law Project (NELP). <https://s27147.pcdn.co/wp-content/uploads/NELP-Testimony-FLSA-May-2021.pdf>

³⁴ Martinez Hickey, S., & Mast, N. (2025). Domestic workers’ pay and working conditions in the South reflect racist, gendered notions of care. In *Rooted in Racism and Economic Exploitation: Spotlight*. Economic Policy Institute (EPI). <https://www.epi.org/publication/domestic-workers-pay-and-working-conditions-in-the-south-reflect-racist-gendered-notions-of-care-rooted-in-racism-and-economic-exploitation-spotlight/>

³⁵ Lundberg, D. J., & Chen, J. A. (2024 February). Structural ableism in public health and healthcare: a definition and conceptual framework. *The Lancet Regional Health - Americas*, 30(100650). <https://doi.org/10.1016/j.lana.2023.100650>

³⁶ U.S. General Services Administration (GSA). (n.d.). *Regulations.gov API (Application Programming Interface)*. <https://open.gsa.gov/api/regulationsgov/>