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August 28, 2025

Donald M. Harrison, III
Acting Administrator
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

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

Dear Acting Administrator Harrison,

On behalf of LeadingAge, I am submitting comments in opposition to the Department of Labor's (Department) proposed rescission and replacement of the Department's 2013 final rule concerning Application of the Fair Labor Standards Act to Domestic Service (2013 Rule).¹

About LeadingAge: We represent more than 5,400 nonprofit aging services providers and other mission-driven organizations that touch millions of lives every day. Alongside our members and 36 partners in 41 states, we use advocacy, education, applied research, and community-building to make America a better place to grow old. Our membership encompasses the entire continuum of aging services, including skilled nursing, assisted living, memory care, affordable housing, retirement communities, adult day programs, community-based services, hospice, and home-based care. We bring together the most inventive minds in the field to lead and innovate solutions that support older adults wherever they call home. For more information visit leadingage.org.

Put simply, we oppose the proposed rule because it is incongruent with and in fundamental opposition to our organizational vision for "An America that values older adults and those who serve them."

We urge the Department to withdraw the proposed rule that would eliminate Fair Labor Standards Act (FLSA) minimum wage and overtime protections from our country's largest occupation—home care workers. As we explain below, the home care sector's challenges with recruitment and retention are driven by systemic demographic and policy issues — not the FLSA requirements themselves. The 2013 Rule was correct to apply the 1974 FLSA amendments to most home care workers, including those employed by third parties.

To be clear, LeadingAge shares and deeply appreciates the Department's concerns regarding the home care workforce and the ongoing crisis it faces. However, the repeal of the 2013 Rule would undermine the efforts of LeadingAge and other advocates to improve and further professionalize jobs in this sector. We must invest in this workforce, not further destabilize it—which is what we believe this rule would do by defining and devaluing home care work as that of casual, intermittent companions.

¹ U.S. Department of Labor. (2013). *Application of the Fair Labor Standards Act to Domestic Service*. Federal Register, 78(190), 60454–60507.

“Companionship Services” Exemption Interpretation

LeadingAge supports the 2013 Rule’s interpretation of the FLSA’s “companionship services” exemption. The last decade of growth and professionalization of the home care workforce further reinforced distinctions between this workforce and any workforce meant to be exempted by the 1974 law and 1975 regulations.

In the proposed rule, the Department argues that allowing third-party employers to claim the “companion services” exemption is the correct application of 1974 FLSA amendments because the statutory provisions do not explicitly or implicitly exclude third-party employers and because doing so would be consistent with the Department’s contemporaneous 1975 regulations that permitted third-party employers to do so.

For the reasons set out below, we disagree with the Department and believe returning to the 1975 rule would wrongly exclude many home care workers from FLSA protections. In our view, the 2013 Rule establishes the more appropriate application of the statutory text, by limiting the companionship services exemption to workers who are performing only casual and intermittent services and not including the professional and increasingly skilled services that home care workers provide today and precluding third party employers from claiming the exemption.

For the current workforce employed by third-party employers of home care services, the work is not casual; it is a primary occupation. According to an October 2020 Government Accountability Office (GAO) report, for example, after the implementation of the 2013 Rule, the proportion of home care workers who reported working full-time increased 11% from 2010 to 2019 to about 49% of workers.²

Furthermore, the 1975 rule’s definition of “companionship services,” which the Department is proposing to return to, has an explicit exclusion for “trained professionals.”

Specifically, the original rule, [29 CFR 552.6\(d\)](#) stated: *The term “companionship services” does not include services related to the care and protection of the aged or infirm which require and are performed by trained professional, such as a registered or practical nurse. While such trained personnel do not qualify as companions, this fact does not remove them from the category of covered domestic service employees when employed in or about a private household.*

The examples provided include registered or practical nurses—and we would argue that over the last 50 years since the promulgation of the original rules, the definition of “trained personnel” has evolved so that it now applies to certified nursing assistants, home health aides, and personal care aides. Home care workers have undergone transformative professionalization since 1975—a transformation that will and should, we believe, continue.

Federal statute and regulations have since 1989 required Medicare-certified home health agencies employing home health aides to comply with specific training and evaluation standards approved by their state.³ Also, for the second most common professionals in home care, personal care aides, the consistency of training requirements have expanded, and currently all but seven states have

² U.S. Government Accountability Office. (2020). *Home care workforce: Recent trends and policy considerations* (GAO-21-72). <https://www.gao.gov/assets/gao-21-72.pdf>

³ Centers for Medicare & Medicaid Services. (2012). *Conditions of participation: Home health services* (42 CFR § 484.36). <https://www.govinfo.gov/app/details/CFR-2012-title42-vol5/CFR-2012-title42-vol5-sec484-36>

implemented training requirements.⁴ This is because state governments and federal regulators recognize these individuals as trained professionals, not casual companions.

We argue that under the original definition of companion services, by virtue of their federal and state training and certification requirements, home care workers now fall under the exclusion granted to trained professionals such as registered and practical nurses. Given the long-standing and ongoing professionalization of this workforce, third-party employers of these employees should not be granted the exemptions for these workers.

The Proposed Rule Will Negatively Affect Access to Home Care

Among other policy considerations, the Department states that it expects the proposed rule, if adopted, will expand access to home care. We respectfully disagree.

The demographic realities of our nation are inescapable. As the Department notes in the proposed rule, to meet the demands of the aging population, in which will be one in every five Americans will be over the age of 65 by 2030, the demand for “home health and personal care aide” workers will grow by 21% in the next decade, faster than all other occupations.⁵

According to the Department’s own cost analysis of the proposal, while there does not seem to be a significant risk regarding minimum wage protections due to strong competition in wages from other sectors for similarly skilled workers, there is significant risk in the loss of overtime protections. Working longer work hours, and/or receiving lower pay for those hours, could negatively impact the retention of home care workers and lead to increased employee turnover and difficulty attracting skilled workers to the sector.

Particularly at a time when the home care sector and its workers and consumers are facing serious threats from Medicaid cuts, changing immigration policies, and lack of realistic long-term services and supports (LTSS) options, removing basic labor protections from home care workers will only exacerbate the crisis.

Adequate Medicaid Financing

There are significant concerns that recently passed federal legislation will exacerbate the shortage of home care workers, at a time when we believe the Department’s proposed rule will do the same. The Congressional Budget Office released estimates that roughly 10 million people will lose health insurance and a trillion dollars will be cut from Medicaid spending with the passage of H.R. 1.⁶ Medicaid is the largest payer for home care workers through optional home and community-based services waivers.⁷ These optional services are likely to be cut first, leading to fewer job opportunities for home care professionals.

In the past when states faced budgetary shortfalls, they responded by cutting Medicaid eligibility, benefits, and provider payments. From 2010 to 2012, during the height of the Great Recession, every single state and the District of Columbia cut spending to at least one of its home and community-based

⁴ PHI. (n.d.). *Personal care aide training requirements by state*. <https://www.phinational.org/advocacy/personal-care-aide-training-requirements/>

⁵ U.S. Bureau of Labor Statistics. (2025). *Home health and personal care aides*. Occupational Outlook Handbook. <https://www.bls.gov/ooh/healthcare/home-health-aides-and-personal-care-aides.htm#tab-6>

⁶ Congressional Budget Office. (2025). *Budgetary effects of H.R. 1*. <https://www.cbo.gov/publication/61570>

⁷ KFF. (n.d.). *What is Medicaid home care (HCBS)?* <https://www.kff.org/medicaid/what-is-medicaid-home-care-hcbs/>

programs.⁸ Most often these cuts were made by capping or cutting benefits, such as hours of in-home care a beneficiary could receive. While overtime requirements may be waived, the implications of the cuts to Medicaid would cancel out any opportunities for more care provided by these professionals.

Immigration Restrictions and Enforcement

Waiving wage and overtime protections would negatively impact recruitment and retention of home care workers at a time when other factors, including immigration policy, are adversely affecting this workforce.

The administration's policy of terminating certain temporary immigration statuses like Temporary Protected Status and humanitarian parole are adversely impacting the home care workforce by stripping hundreds of thousands of individuals of their status and legal work authorization. LeadingAge made very clear our opposition to these policy changes and concerns about the resulting uncertainty and impact on both our nonprofit and mission-driven provider members as employers and their workers. On April 30, 2025, we sent a letter to Secretary Kristi Noem at the Department of Homeland Security elevating our concerns and noting that one member was at risk of losing 35 members of their team—all valued staff, working legally in the U.S..⁹

Long Term Care Financing Reform

While ensuring a living wage for home care workers is one of our overall goals, it is unachievable if Medicaid remains the default long-term care funding option of this nation and Medicaid reimbursement rates continue to underpay providers for their services delivered. As we have presented above, the financial situation Medicaid faces in the next decade is tenuous at best, catastrophic at worst. There is no doubt that our country's approach to financing long-term care is failing millions of families daily. And with the impending growth of older adults who will need comprehensive LTSS in the next decade, it is essential that the federal government support a comprehensive and equitable long-term care financing system.

The Department Can Play a Valuable Role in Growing and Supporting the Home Care Workforce

Both the Department and LeadingAge recognize the same mounting demographic crisis. The older adult population is expanding exponentially but the pool of available workers to support their complex needs is declining at a dangerous rate. Actions can and must be taken to recruit and retain these critical workers and change the perception of these roles through investment.

Immigration Reform

In June 2025, a new Office of Immigration Policy (OIP) within the Department's Office of the Secretary was announced with the intent to streamline legal, employment-based immigration processes, and also enhance coordination across federal agencies.¹⁰ We believe this can be a positive opportunity to better support the home care workforce. With the creation of OIP, the Department has the opportunity to positively address the foreign-born worker demographic makeup of the home care workforce and

⁸ Health Affairs. (2023). *History repeats: Faced with Medicaid cuts, states reduced support for older adults and disabled*. <https://www.healthaffairs.org/content/forefront/history-repeats-faced-medicaid-cuts-states-reduced-support-older-adults-and-disabled>

⁹ LeadingAge. (2025, April 30). *Letter to DHS regarding TPS and humanitarian parole*. <https://leadingage.org/wp-content/uploads/2025/04/LeadingAge-to-DHS-re-TPS-and-Parole-4.30.25.pdf>

¹⁰ U.S. Department of Labor. (2025). *Memorandum: Office of Immigration Policy*. <https://www.dol.gov/sites/dolgov/files/OPA/memorandum/Memorandum-Office-of-Immigration-Policy.pdf>

inform the broader policy discussion, including with Congress, concerning immigration pathways. As was mentioned above, immigrants make up nearly a third of the home care workforce.

Last September, we issued a white paper, “The Immigration Imperative,” which mirrors the mission of the OIP, reforming America’s outdated and inefficient immigration system to improve access to employment-based visa programs. We would welcome the opportunity to work with the Department to address four key challenges identified in the paper:

- A Shortage of Professional Caregivers
- A Restrictive Immigration System
- Lack of Support for Workers
- Lack of Worker Protections

Apprenticeships

LeadingAge supports the Administration’s April 23, 2025, executive order Preparing Americans for High-Paying Skilled Trade Jobs of the Future and the efforts to protect and strengthen Registered Apprenticeships programs while building on their successes to invest in upskilling workers.¹¹

Apprenticeships are proven to grow the workforce in many sectors—developing highly skilled workers, reducing turnover, increasing productivity, and offering a pathway to career advancement which is exactly what home care needs.

A 2010 report from the Department of Health and Human Services found apprenticeship programs for long-term care under the Department’s own models had the potential to “improve the productivity of workers and reduce turnover, thereby making wage increases possible without adding to the costs.”¹² Apprenticeship programs hold great potential for strengthening the professional caregiving field. To help boost the role that apprenticeships can play in helping direct care professionals advance in their careers, the Department and its state counterparts should work with providers and educational institutions to develop comprehensive apprenticeship programs that provide didactic and on-the-job training and career advancement opportunities for direct care professionals. These programs could attract veterans, high school students interested in LTSS careers, or the large number of retail, hospitality, and other service workers who were displaced from their jobs during the COVID-19 pandemic.

On August 12, the administration made public its plan to overhaul the federal government’s approach to workforce development.¹³ [America’s Talent Strategy: Building the Workforce for the Golden Age](https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/2025/08/Americas-Talent-Strategy-Building-the-Workforce-for-the-Golden-Age.pdf) outlines a comprehensive vision for transforming the U.S. workforce system to better align with industry needs and national economic priorities. Drafted jointly by the departments of Labor, Commerce, and Education, the strategy is built around five pillars—Industry-Driven Strategies, Worker Mobility, Integrated Systems, Accountability, and Flexibility & Innovation—that aim to modernize how the U.S. prepares its workforce, particularly in the face of labor market changes due to AI innovation and

¹¹ The White House. (2025, April 23). *Preparing Americans for high-paying skilled trade jobs of the future*. <https://www.whitehouse.gov/presidential-actions/2025/04/preparing-americans-for-high-paying-skilled-trade-jobs-of-the-future/>

¹² Urban Institute. (2010). *A descriptive analysis of the U.S. Department of Labor’s long-term care registered apprenticeship programs*. <https://www.urban.org/sites/default/files/publication/77931/2000617-A-Descriptive-Analysis-of-the-US-Department-of-Labor's-Long-Term-Care-Registered-Apprenticeship-Programs.pdf>

¹³ U.S. Department of Labor, U.S. Department of Commerce, & U.S. Department of Education. (2025, August). *America’s talent strategy: Building the workforce for the golden age*. <https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/2025/08/Americas-Talent-Strategy-Building-the-Workforce-for-the-Golden-Age.pdf>

reindustrialization efforts. In particular, LeadingAge sees potential to help shape workforce development models that reflect the realities of caregiving roles and career advancement in aging services. The strategy's emphasis on licensing and credentialing reform could also support efforts to improve recruitment and retention in our sector, particularly related to home care workers.

Thank you for your consideration of these comments concerning the impacts of this proposed rule on aging services. We would welcome the opportunity to share data or stories from our members about the importance of the home care workforce.

Sincerely,

A handwritten signature in black ink that reads "Katie Smith Sloan". The signature is written in a cursive, flowing style.

Katie Smith Sloan
President and CEO