AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 6823
OFFERED BY Ms. Brownley

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Elizabeth Dole Home- and Community-Based Services for Veterans and Caregivers Act of 2022” or the “Elizabeth Dole Home Care Act”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Increase of expenditure cap for noninstitutional care alternatives to nursing home care.
Sec. 3. Coordination with Program of All-Inclusive Care for the Elderly.
Sec. 4. Home- and community-based services: programs.
Sec. 5. Coordination with assistance and support services for caregivers.
Sec. 6. Development of centralized website for program information.
Sec. 7. Improvements relating to Homemaker and Home Health Aide program.
Sec. 8. Reviews and other improvements relating to home- and community-based services.
Sec. 9. Definitions.

SEC. 2. INCREASE OF EXPENDITURE CAP FOR NONINSTITUTIONAL CARE ALTERNATIVES TO NURSING HOME CARE.

(a) INCREASE OF EXPENDITURE CAP.—Section 1720C(d) of title 38, United States Code, is amended—
(1) by striking “The total cost” and inserting “(1) Except as provided in paragraph (2), the total cost”;

(2) by striking “65 percent” and inserting “100 percent”; and

(3) by adding at the end the following new paragraph:

“(2) The total cost of providing services or in-kind assistance in the case of any veteran for any fiscal year under the program may exceed 100 percent of the cost that would otherwise have been incurred as specified in paragraph (1) if the Secretary determines, based on a consideration of clinical need, geographic market factors, and such other matters as the Secretary may prescribe through regulation, that such higher total cost is in the best interest of the veteran.”.

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply with respect to fiscal years beginning on or after the date of the enactment of this Act.

SEC. 3. COORDINATION WITH PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY.

Section 1720C of title 38, United States Code, as amended by section 2, is further amended by adding at the end the following new subsection:
“(f) In furnishing services to a veteran under the program conducted pursuant to subsection (a), if a medical center of the Department through which such program is administered is located in a geographic area in which services are available to the veteran under a PACE program (as such term is defined in sections 1894(a)(2) and 1934(a)(2) of the Social Security Act (42 U.S.C. 1395eee(a)(2); 1396u–4(a)(2))), the Secretary shall seek to enter into an agreement with the PACE program operating in that area for the furnishing of such services.”

SEC. 4. HOME- AND COMMUNITY-BASED SERVICES: PROGRAMS.

(a) PROGRAMS.—Chapter 17 of title 38, United States Code, is amended by inserting after section 1720J the following new section (and conforming the table of sections at the beginning of such chapter accordingly):

“§ 1720K. Home- and community-based services: programs

“(a) IN GENERAL.—In furnishing noninstitutional alternatives to nursing home care pursuant to the authority of section 1720C of this title (or any other authority under this chapter or other provision of law administered by the Secretary of Veterans Affairs), the Secretary shall carry out each of the programs specified in this section in ac-
cordance with such relevant authorities except as other-
wise provided in this section.

“(b) VETERAN-DIRECTED CARE PROGRAM.—(1) The
Secretary of Veterans Affairs, in collaboration with the
Secretary of Health and Human Services, shall carry out
a program to be known as the ‘Veteran-Directed Care pro-
gram’ under which the Secretary of Veterans Affairs may
enter into agreements with the providers described in
paragraph (2) to provide to eligible veterans funds to ob-
tain such in-home care services and related items as may
be determined appropriate by the Secretary of Veterans
Affairs and selected by the veteran, including through the
veteran hiring individuals to provide such services and
items or directly purchasing such services and items.

“(2) The providers described in this paragraph are
the following:

“(A) An Aging and Disability Resource Center,
an area agency on aging, or a State agency.

“(B) A center for independent living.

“(C) An Indian tribe or tribal organization re-
ceiving assistance under title VI of the Older Amer-
cans Act of 1965 (42 U.S.C. 3057 et seq.).

“(3) In carrying out the Veteran-Directed Care pro-
gram, the Secretary of Veterans Affairs shall—
“(A) administer such program through each medical center of the Department of Veterans Affairs;

“(B) seek to ensure the availability of such program in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and any other territory or possession of the United States, to the extent practicable; and

“(C) seek to ensure the availability of such program for eligible veterans who are Native American veterans receiving care and services furnished by the Indian Health Service, a tribal health program, an Urban Indian organization, or (in the case of a Native Hawaiian veteran) a Native Hawaiian health care system, to the extent practicable.

“(4) If a veteran participating in the Veteran-Directed Care program is catastrophically disabled, the veteran may continue to use funds under the program during a period of hospitalization in the same manner that the veteran would be authorized to use such funds under the program if the veteran were not hospitalized.

“(e) HOMEMAKER AND HOME HEALTH AIDE PROGRAM.—(1) The Secretary shall carry out a program to be known as the ‘Homemaker and Home Health Aide pro-
gram’ under which the Secretary may enter into agreements with home health agencies to provide to eligible veterans such home health aide services as may be determined appropriate by the Secretary.

“(2) In carrying out the Homemaker and Home Health Aide program, the Secretary shall ensure the availability of such program—

“(A) in the locations specified in subparagraph (B) of subsection (b)(3); and

“(B) for the veteran populations specified in subparagraph (C) of such subsection.

“(d) HOME-BASED PRIMARY CARE PROGRAM.—The Secretary shall carry out a program to be known as the ‘Home-Based Primary Care program’ under which the Secretary may furnish to eligible veterans in-home health care, the provision of which is overseen by a physician of the Department.

“(e) PURCHASED SKILLED HOME CARE PROGRAM.—The Secretary shall carry out a program to be known as the ‘Purchased Skilled Home Care program’ under which the Secretary may furnish to eligible veterans such in-home care services as may be determined appropriate and selected by the Secretary for the veteran.
“(f) CAREGIVER SUPPORT.—(1) With respect to a resident eligible caregiver of a veteran participating in a program under this section, the Secretary shall—

“(A) if the veteran meets the requirements of a covered veteran under section 1720G(b) of this title, provide to such caregiver the option of enrolling in the program of general caregiver support services under such section;

“(B) provide to such caregiver covered respite care of not less than 30 days annually; and

“(C) conduct on an annual basis (and, to the extent practicable, in connection with in-person services provided under the program in which the veteran is participating), a wellness contact of such caregiver.

“(2) Covered respite care provided to a resident eligible caregiver of a veteran under paragraph (1) may exceed 30 days annually if such extension is requested by the resident eligible caregiver or veteran and determined medically appropriate by the Secretary.

“(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the authority of the Secretary to carry out programs providing home- and community-based services under any other provision of law.

“(h) DEFINITIONS.—In this section:
“(1) The terms ‘Aging and Disability Resource Center’, ‘area agency on aging’, and ‘State agency’ have the meanings given those terms in section 102 of the Older Americans Act of 1965 (42 U.S.C. 3002).

“(2) The terms ‘caregiver’ and ‘family caregiver’, with respect to a veteran, have the meanings given those terms, respectively, under subsection (e) of section 1720G of this title with respect to an eligible veteran under subsection (a) of such section or a covered veteran under subsection (b) of such section, as the case may be.

“(3) The term ‘center for independent living’ has the meaning given that term in section 702 of the Rehabilitation Act of 1973 (29 U.S.C. 796a).

“(4) The term ‘covered respite care’ has the meaning given such term in section 1720G(d) of this title.

“(5) The term ‘eligible veteran’ means any veteran—

“(A) for whom the Secretary determines participation in a specific program under this section is medically necessary to promote, preserve, or restore the health of the veteran; and
“(B) who absent such participation would be at increased risk for hospitalization, placement in a nursing home, or emergency room care.

“(6) The term ‘home health aide’ means an individual employed by a home health agency to provide in-home care services.

“(7) The term ‘in-home care service’ means any service, including a personal care service, provided to enable the recipient of such service to live at home.

“(8) The terms ‘Indian tribe’ and ‘tribal organization’ have the meanings given those terms in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

“(9) The terms ‘Native American’ and ‘Native American veteran’ have the meanings given those terms in section 3765 of this title.

“(10) The terms ‘Native Hawaiian’ and ‘Native Hawaiian health care system’ have the meanings given those terms in section 12 of the Native Hawaiian Health Care Improvement Act (42 U.S.C. 11711).

“(11) The terms ‘tribal health programs’ and ‘Urban Indian organizations’ have the meanings
given those terms in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

“(12) The term ‘resident eligible caregiver’ means an individual who—

“(A) is a caregiver, or a family caregiver, of a veteran and resides with that veteran; and

“(B) has not entered into a contract, agreement, or other arrangement for such individual to act as a caregiver for that veteran unless such individual is a family member of the veteran or is furnishing caregiver services through a medical foster home.”.

(b) DEADLINE FOR IMPROVED ADMINISTRATION.—

The Secretary of Veterans Affairs shall ensure that the Veteran-Directed Care program and the Homemaker and Home Health Aide program are administered through each medical center of the Department of Veterans Affairs in accordance with section 1720K of title 38, United States Code (as added by subsection (a)), by not later than two years after the date of the enactment of this Act.

SEC. 5. COORDINATION WITH ASSISTANCE AND SUPPORT SERVICES FOR CAREGIVERS.

(a) COORDINATION WITH PROGRAM OF COMPREHENSIVE ASSISTANCE FOR FAMILY CAREGIVERS.—
(1) COORDINATION.—Section 1720G(a) of title 38, United States Code, is amended by adding at the end the following new paragraph:

“(14)(A) In the case of a veteran or caregiver who seeks services under this subsection and is denied such services, or a veteran or the family caregiver of a veteran who is discharged from the program under this subsection, the Secretary shall—

“(i) if the veteran meets the requirements of a covered veteran under subsection (b), provide to such caregiver the option of enrolling in the program of general caregiver support services under such subsection;

“(ii) assess the veteran or caregiver for participation in any other available program of the Department for home- and community-based services (including the programs specified in section 1720K of this title) for which the veteran or caregiver may be eligible and, with respect to the veteran, store (and make accessible to the veteran) the results of such assessment in the electronic medical record of the veteran; and

“(iii) provide to the veteran or caregiver written information on any such program identified pursuant to the assessment under clause (ii), including in-
formation about facilities, eligibility requirements, and relevant contact information for each such pro-
gram.

“(B) For each veteran or family caregiver who is dis-
charged from the program under this subsection, a care-
giver support coordinator shall provide for a smooth and personalized transition from such program to an appro-
riate program of the Department for home- and commu-
nity-based services (including the programs specified in section 1720K of this title), including by integrating care-
giver support across programs.”.

(2) APPLICABILITY.—The amendments made by paragraph (1) shall apply with respect to denials and discharges occurring on or after the date that is 180 days after the date of the enactment of this Act.

(3) TECHNICAL AND CONFORMING AMEND-
MENTS.—Section 1720G(d) of such title is amend-
ed—

(A) by striking “or a covered veteran” each place it appears and inserting “, a veteran denied or discharged as specified in paragraph (14) of such subsection, or a covered veteran”; and
(B) by striking “under subsection (a), means” each place it appears and inserting “under subsection (a) or a veteran denied or discharged as specified in paragraph (14) of such subsection, means”.

(b) CONFORMITY OF RESPITE CARE ACROSS PROGRAMS.—Section 1720G of title 38, United States Code, as amended by subsection (a)(3), is further amended—

(1) in subsection (a)(3)—

(A) by amending subparagraph (A)(ii)(III) to read as follows:

“(III) covered respite care of not less than 30 days annually;”; and

(B) by striking subparagraph (B) and redesignating subparagraphs (C) and (D) as subparagraphs (B) through (C), respectively; and

(2) by amending subsection (b)(3)(A)(iii) to read as follows:

“(iii) Covered respite care of not less than 30 days annually.”; and

(3) in subsection (d)—

(A) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively; and
(B) by inserting after paragraph (1) the following new paragraph:

“(2) The term ‘covered respite care’ means, with respect to a caregiver of a veteran, respite care under section 1720B of this title that—

“(A) is medically and age appropriate for the veteran (including 24-hour per day care of the veteran commensurate with the care provided by the caregiver); and

“(B) includes in-home care.”.

(c) Review Relating to Caregiver Contact.—

The Secretary shall conduct a review of the capacity of the Department to establish a streamlined system for contacting all caregivers enrolled in the program of general caregiver support services under section 1720G(b) of title 38, United States Code, to provide to such caregivers program updates and alerts relating to emerging services for which such caregivers may be eligible.

SEC. 6. DEVELOPMENT OF CENTRALIZED WEBSITE FOR PROGRAM INFORMATION.

(a) Centralized Website.—The Secretary shall develop and maintain a centralized and publically accessible internet website of the Department as a clearinghouse for information and resources relating to covered programs.
(b) CONTENTS.—The website under subsection (a) shall contain the following:

(1) A description of each covered program.

(2) An informational assessment tool that—

(A) explains the administrative eligibility, if applicable, of a veteran, or a caregiver of a veteran, for any covered program; and

(B) provides information, as a result of such explanation, on any covered program for which the veteran or caregiver (as the case may be) may be eligible.

(3) A list of required procedures for the directors of the medical facilities of the Department to follow in determining the eligibility and suitability of veterans for participation in a covered program, including procedures applicable to instances in which the resource constraints of a facility (or of a community in which a facility is located) may result in the inability to address the health needs of a veteran under a covered program in a timely manner.

(c) UPDATES.—The Secretary shall ensure the website under subsection (a) is updated on a periodic basis.
SEC. 7. IMPROVEMENTS RELATING TO HOMEMAKER AND HOME HEALTH AIDE PROGRAM.

(a) Pilot Program for Communities With Shortage of Home Health Aides.—

(1) Program.—Beginning not later than 18 months after the date of the enactment of this Act, the Secretary shall carry out a three-year pilot program under which the Secretary shall provide homemaker and home health aide services to veterans who reside in communities with a shortage of home health aides.

(2) Locations.—The Secretary shall select not fewer than five geographic locations in which the Secretary determines there is a shortage of home health aides at which to carry out the pilot program under paragraph (1).

(3) Nursing Assistants.—

(A) In general.—In carrying out the pilot program under paragraph (1), the Secretary may hire nursing assistants as new employees of the Department of Veterans Affairs, or reassign nursing assistants who are existing employees of the Department, to provide to veterans in-home care services (including basic tasks authorized by the State certification of the nursing assistant) under the pilot program,
in lieu of or in addition to the provision of such services through non-Department home health aides.

(B) **Relationship to Home-Based Primary Care Program.**—Nursing assistants hired or reassigned under subparagraph (A) may provide services to a veteran under the pilot program under paragraph (1) while serving as part of a health care team for the veteran under the Home-Based Primary Care program.

(4) **Report to Congress.**—Not later than one year after the date on which the Secretary determines the pilot program under paragraph (1) has terminated, the Secretary shall submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate a report on the result of the pilot program.

(b) **Report on Use of Funds.**—Not later than one year after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate a report containing, with respect to the period beginning in fiscal year 2011 and ending in fiscal year 2022, the following:
(1) An identification of the amount of funds that were included in a budget of the Department of Veterans Affairs during such period for the provision of in-home care to veterans under the Homemaker and Home Health Aide program but were not expended for such provision, disaggregated by medical center of the Department for which such unexpended funds were budgeted (if such disaggregation is possible).

(2) To the extent practicable, an identification of the number of veterans for whom, during such period, the hours during which a home health aide was authorized to provide services to the veteran under the Homemaker and Home Health Aide program were reduced for a reason other than a change in the health care needs of the veteran, and a detailed description of the reasons why any such reductions may have occurred.

(c) Updated Guidance on Program.—Not later than one year after the date of the enactment of this Act, the Secretary shall issue updated guidance for the Homemaker and Home Health Aide program. Such updated guidance shall include the following:
(1) A process for the transition of veterans from the Homemaker and Home Health Aide program to other covered programs.

(2) A requirement for the directors of the medical facilities of the Department to complete such process whenever a veteran with care needs has been denied services from home health agencies under the Homemaker and Home Health Aide program as a result of the clinical needs or behavioral issues of the veteran.

SEC. 8. REVIEWS AND OTHER IMPROVEMENTS RELATING TO HOME- AND COMMUNITY-BASED SERVICES.

(a) OFFICE OF GERIATRIC AND EXTENDED CARE.—

(1) REVIEW OF PROGRAMS.—The Under Secretary for Health of the Department of Veterans Affairs shall conduct a review of each program administered through the Office of Geriatric and Extended Care of the Department, or successor office, to—

(A) ensure consistency in program management;

(B) eliminate service gaps at the medical center level; and
(C) ensure the availability of, and the access by veterans to, home- and community-based services.

(2) ASSESSMENT OF STAFFING NEEDS.—The Secretary of Veterans Affairs shall conduct an assessment of the staffing needs of the Office of Geriatric and Extended Care of the Department of Veterans Affairs, or successor office.

(3) GOALS FOR GEOGRAPHIC ALIGNMENT OF CARE.—

(A) ESTABLISHMENT OF GOALS.—The Director of the Office of Geriatric and Extended Care, or successor office, shall establish quantitative goals to enable aging or disabled veterans who are not located near medical centers of the Department to access extended care services (including by improving access to home- and community-based services for such veterans).

(B) IMPLEMENTATION TIMELINE.—Each goal established under subparagraph (A) shall include a timeline for the implementation of the goal at each medical center of the Department.

(4) GOALS FOR IN-HOME SPECIALTY CARE.—

The Director of the Office of Geriatric and Extended
Care, or successor office, shall establish quantitative
goals to address the specialty care needs of veterans
through in-home care, including by ensuring the
education of home health aides and caregivers of vet-
erans in the following areas:

(A) Dementia care.

(B) Care for spinal cord injuries and dis-
cases.

(C) Ventilator care.

(D) Other specialty care areas as deter-
dined by the Secretary.

(5) REPORT TO CONGRESS.—Not later than one
year after the date of the enactment of this Act, the
Secretary shall submit to the Committees on Vet-
erans’ Affairs of the House of Representatives and
the Senate a report containing the findings of the
review under paragraph (1), the results of the as-
se ssment under paragraph (2), and the goals estab-
lished under paragraphs (3) and (4).

(b) REVIEW OF INCENTIVES AND EFFORTS RELAT-
ING TO HOME- AND COMMUNITY-BASED SERVICES.—

(1) REVIEW.—The Secretary of Veterans Af-
affairs shall conduct a review of the following:

(A) The financial and organizational incen-
tives for the directors of medical centers of the
Department to establish or expand covered programs at such medical centers.

(B) Any incentives for such directors to provide to veterans home- and community-based services in lieu of institutional care.

(C) The efforts taken by the Secretary to enhance spending of the Department for extended care by shifting the balance of such spending from institutional care to home- and community-based services.

(D) The plan of the Under Secretary for Health of the Department to accelerate efforts to enhance spending as specified in subparagraph (C), to match the progress of similar efforts taken by the Administrator of the Centers for Medicare & Medicaid Services with respect to spending of the Centers for Medicare & Medicaid Services for extended care.

(2) REPORT TO CONGRESS.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate a report on the findings of the review under paragraph (1).
(c) Review of Respite Care Services.—Not later than two years after the date of the enactment of this Act, the Secretary of Veterans Affairs shall conduct a review of the use, availability, and effectiveness, of the respite care services furnished by the Secretary under chapter 17 of title 38, United States Code.

(d) Collaboration to Improve Home- and Community-based Services.—

(1) Report on Expansion of Certain Mental Health Services.—

(A) Report.—Not later than two years after the date of the enactment of this Act, the Secretary of Veterans Affairs, in collaboration with the Secretary of Health and Human Services, shall submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate a report containing recommendations for the expansion of mental health services and related support to the caregivers of veterans.

(B) Matters Included.—The report under subparagraph (A) shall include an assessment of the feasibility and advisability of authorizing access to Vet Centers by—
(i) family caregivers enrolled in a pro-
gram under section 1720G of title 38,
United States Code; and

(ii) family caregivers of veterans par-
participating in a program specified in section
1720K of such title, as added by section 4.

(2) RECOMMENDATIONS.—

(A) DEVELOPMENT.—The Secretary of
Veterans Affairs shall develop recommendations
as follows:

(i) With respect to home- and commu-
unity-based services for veterans, the Sec-
etary of Veterans Affairs shall develop
recommendations regarding new services
(in addition to those furnished as of the
date of the enactment of this Act) in col-
laboration with the Secretary of Health
and Human Services.

(ii) With respect to the national short-
age of home health aides, the Secretary of
Veterans Affairs shall develop rec-
ommendations regarding methods to ad-
dress such shortage in collaboration with
the Secretary of Health and Human Serv-
ices and the Secretary of Labor.
(B) Submission to Congress.—The Secretary of Veterans Affairs shall submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate a report containing the recommendations developed under subparagraph (A) and an identification of any changes in existing law or new statutory authority necessary to implement the recommendations, as determined by the Secretary.

(C) Consultation with Secretary of Labor.—In carrying out this paragraph, the Secretary of Veterans Affairs shall consult with the Secretary of Labor.

(3) Feedback and Recommendations on Caregiver Support.—

(A) Feedback and Recommendations.—The Secretary of Veterans Affairs shall solicit from the entities described in subparagraph (B) feedback and recommendations regarding opportunities for the Secretary to enhance home- and community-based services for veterans and the caregivers of veterans, including through the potential provision by the entity of care and respite services to veterans and caregivers who may not be eligible for any pro-
gram under section 1720G of title 38, United States Code, or section 1720K of such title (as added by section 4), but have a need for assistance.

(B) COVERED ENTITIES.—The entities described in this subparagraph are veterans service organizations and nonprofit organizations with a focus on caregiver support (as determined by the Secretary).

(4) COLLABORATION FOR NATIVE AMERICAN VETERANS.—The Secretary of Veterans Affairs shall collaborate with the Director of the Indian Health Service and representatives from tribal health programs and Urban Indian organizations to ensure the availability of home- and community-based services for Native American veterans, including Native American veterans receiving health care and medical services under multiple health care systems.

SEC. 9. DEFINITIONS.

In this Act:

(1) The terms “caregiver” and “family caregiver” have the meanings given those terms under section 1720K(h) of title 38, United States Code (as added by section 4).

(2) The term “covered program”—
(A) means any program of the Department of Veterans Affairs for home- and community-based services; and

(B) includes the programs specified in section 1720K of title 38, United States Code (as added by section 4).

(3) The term “home- and community-based services”—

(A) means the services referred to in section 1701(6)(E) of title 38, United States Code; and

(B) includes services furnished under a program specified in section 1720K of such title (as added by section 4).

(4) The terms “Home-Based Primary Care program”, “Homemaker and Home Health Aide program”, and “Veteran-Directed Care program” mean the programs of the Department of Veterans Affairs specified in subsection (d), (c), and (b) of such section 1720K, respectively.

(5) The terms “home health aide”, “Native American”, “Native American veteran”, “tribal health programs”, and “Urban Indian organizations” have the meanings given those terms in subsection (h) of such section 1720K.
(6) The term “Vet Center” has the meaning given that term in section 1712A(h) of title 38, United States Code.

(7) The term “veterans service organization” means any organization recognized by the Secretary under section 5902 of such title.