

117TH CONGRESS
1ST SESSION

H. R. 259

To amend the Public Health Service Act to address the increased burden that maintaining the health and hygiene of infants and toddlers places on families in need, the resultant adverse health effects on children and families, and the limited child care options available for infants and toddlers who lack sufficient diapers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 11, 2021

Ms. LEE of California (for herself, Mrs. CAROLYN B. MALONEY of New York, Mrs. WATSON COLEMAN, Mr. POCAN, Ms. MENG, Mr. RUSH, Ms. SCHAKOWSKY, Mr. GRIJALVA, Mr. COHEN, Mr. PETERS, Mrs. HAYES, Mr. SIRES, Ms. NORTON, and Ms. CHU) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Public Health Service Act to address the increased burden that maintaining the health and hygiene of infants and toddlers places on families in need, the resultant adverse health effects on children and families, and the limited child care options available for infants and toddlers who lack sufficient diapers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “End Diaper Need Act
3 of 2021”.

4 **SEC. 2. DIAPER DISTRIBUTION DEMONSTRATION PROJECT.**

5 Part P of title III of the Public Health Service Act
6 (42 U.S.C. 280g et seq.) is amended by adding at the end
7 the following:

8 **“SEC. 399V-7. DIAPER DISTRIBUTION DEMONSTRATION**
9 **PROGRAM.**

10 “(a) ESTABLISHMENT.—The Secretary shall make
11 grants to assist eligible entities to conduct demonstration
12 projects that implement and evaluate strategies to help
13 low-income families to address the diaper needs of infants
14 and toddlers.

15 “(b) DESIGN OF PROGRAM.—In carrying out the
16 grant program under subsection (a), the Secretary shall—

17 “(1) consult with relevant stakeholders, includ-
18 ing agencies, professional associations, and nonprofit
19 organizations, on the design of the program; and

20 “(2) design the program in such a way that the
21 program—

22 “(A) decreases diaper need in low-income
23 families and meets the unmet diaper needs of
24 infants and toddlers in such families through—

25 “(i) the distribution of free diapers
26 and diapering supplies;

1 “(ii) community outreach to assist in
2 participation in existing diaper distribution
3 programs; or

4 “(iii) improving access to diapers and
5 diapering supplies as part of a comprehen-
6 sive service; and

7 “(B) increases the abilities of communities
8 and low-income families in those communities
9 to provide for the diaper needs of infants and
10 toddlers in those communities.

11 “(c) ELIGIBLE ENTITIES.—To be eligible for a grant
12 under this section, an entity shall—

13 “(1) be a State or local governmental entity, an
14 Indian Tribe or tribal organization (as defined in
15 section 4 of the Indian Self-Determination and Edu-
16 cation Assistance Act), or a nonprofit organization
17 described in section 501(c)(3) of the Internal Rev-
18 enue Code of 1986 and exempt from taxation under
19 section 501(a) of such Code;

20 “(2) have experience in the area of—

21 “(A) community distributions of basic need
22 services, including experience collecting,
23 warehousing, and distributing basic necessities
24 such as diapers, food, or menstrual products;

25 “(B) child care;

1 “(C) child development activities in low-in-
2 come communities; or

3 “(D) motherhood, fatherhood, or parent-
4 education efforts serving low-income parents of
5 young children;

6 “(3) demonstrate competency to implement a
7 project, provide fiscal accountability, collect data,
8 and prepare reports and other necessary documenta-
9 tion;

10 “(4) demonstrate a willingness to share infor-
11 mation with researchers, practitioners, and other in-
12 terested parties; and

13 “(5) submit to the Secretary a description of
14 the design of the evaluation to be carried out under
15 subsection (d)(2) and receive the Secretary’s ap-
16 proval of such design based on a determination that
17 such design is rigorous and is likely to yield informa-
18 tion that is credible and will be useful to other
19 States.

20 “(d) USE OF FUNDS.—Amounts provided through a
21 grant under this section shall be used to conduct a dem-
22 onstration project to implement and evaluate strategies to
23 help low-income families to address the diaper needs of
24 infants and toddlers, which use may include any of the
25 following:

1 “(1) To pay for the purchase of diapers and
2 diapering supplies and fund diaper distribution dem-
3 onstration projects that serve low-income families
4 with one or more children 3 years of age or younger.

5 “(2) Using not more than 25 percent of the
6 funds received by the grantee under this section, to
7 evaluate the effect of activities under paragraph (1)
8 on mitigating the health and developmental risks of
9 unmet diaper need among infants, toddlers, and
10 other family members in low-income families, includ-
11 ing the risks of diaper dermatitis, urinary tract in-
12 fections, and parental and child depression and anx-
13 iety.

14 “(3) To integrate activities under paragraph (1)
15 with other basic needs assistance programs serving
16 eligible children and their families, including the fol-
17 lowing:

18 “(A) Programs funded by the Temporary
19 Assistance for Needy Families program, includ-
20 ing its State maintenance of effort provisions.

21 “(B) Programs designed to support the
22 health of eligible children, such as the Chil-
23 dren’s Health Insurance Program under title
24 XXI of the Social Security Act, the Medicaid

1 program under title XIX of such Act, or State-
2 funded health care programs.

3 “(C) Programs funded through the Special
4 Supplemental Nutrition Program for Women,
5 Infants, and Children.

6 “(D) Programs that offer early home vis-
7 iting services, including the Nurse-Family Part-
8 nership and the Maternal, Infant, and Early
9 Childhood Home Visiting (MIECHV) Program
10 (including the Tribal Home Visiting Program).

11 “(E) Programs to provide improved and
12 affordable access to child care, including pro-
13 grams funded through the Child Care and De-
14 velopment Fund, the Temporary Assistance for
15 Needy Families program, or a State-funded
16 program.

17 “(e) NO EFFECT ON OTHER PROGRAMS.—Any as-
18 sistance or benefits received by a family as a result of a
19 project established pursuant to this section shall be dis-
20 regarded for purposes of determining the family’s eligi-
21 bility for, or amount of, benefits under any other Federal
22 needs-based programs.

23 “(f) REPORTS.—As a condition of receiving a grant
24 under this section for a fiscal year, the grantee shall sub-
25 mit to the Secretary, not later than 6 months after the

1 end of the fiscal year, a report that specifies, by month
2 and fiscal year, the following:

3 “(1) The number of infants and toddlers and
4 the age of the infant and toddlers who received as-
5 sistance from the grantee’s diaper distribution
6 project.

7 “(2) The number of families that have received
8 assistance from the grantee’s diaper distribution
9 project.

10 “(3) The number of diapers, and the number of
11 each type of diapering supply, distributed under the
12 grantee’s diaper distribution project.

13 “(4) The ZIP Code or ZIP Codes where the
14 grantee distributed diapers and diaper supplies.

15 “(5) The method or methods the grantee uses
16 to distribute diapers and diapering supplies.

17 “(6) Such other information as the Secretary
18 may specify.

19 “(g) EVALUATION.—The Secretary, in consultation
20 with each grantee under this section, shall—

21 “(1) not later than 2 years after the date of en-
22 actment of the End Diaper Need Act of 2021—

23 “(A) complete an evaluation of the effec-
24 tiveness of the program carried out pursuant to
25 this section;

1 “(B) submit to the relevant congressional
2 committees a report on the results of such eval-
3 uation; and

4 “(C) publish the results of the evaluation
5 on the internet website of the Department of
6 Health and Human Services; and

7 “(2)(A) not later than 3 years after the date of
8 enactment of the End Diaper Need Act of 2021, up-
9 date the evaluation required by paragraph (1)(A);
10 and

11 “(B) not later than 90 days after completion of
12 the updated evaluation under subparagraph (A)—

13 “(i) submit to the relevant congressional
14 committees a report describing the results of
15 such updated evaluation; and

16 “(ii) publish the results of such evaluation
17 on the internet website of the Department of
18 Health and Human Services.

19 “(h) DEFINITIONS.—In this section:

20 “(1) DIAPER.—The term ‘diaper’ means an ab-
21 sorbent garment that—

22 “(A) is washable or disposable that may be
23 worn by an infant or toddler who is not toilet-
24 trained; and

25 “(B) if disposable—

1 “(i) does not use any latex or common
2 allergens; and

3 “(ii) meets or exceeds the quality
4 standards for diapers commercially avail-
5 able through retail sale in the following
6 categories:

7 “(I) Absorbency (with acceptable
8 rates for first and second wetting).

9 “(II) Waterproof outer cover.

10 “(III) Flexible leg openings.

11 “(IV) Refastening closures.

12 “(2) DIAPERING SUPPLIES.—The term ‘dia-
13 pering supplies’ means items, including diaper wipes
14 and diaper cream, necessary to ensure that a child
15 using a diaper is properly cleaned and protected
16 from diaper rash.

17 “(3) ELIGIBLE CHILD.—The term ‘eligible
18 child’ means a child who—

19 “(A) has not attained 4 years of age; and

20 “(B) is a member of a family whose self-
21 certified income is not more than 200 percent
22 of the Federal poverty line.

23 “(4) FEDERAL POVERTY LINE.—The term
24 ‘Federal poverty line’ means the Federal poverty line
25 as defined by the Office of Management and Budget

1 and revised annually in accordance with section
2 673(2) of the Omnibus Budget Reconciliation Act of
3 1981 applicable to a family of the size involved.

4 “(5) LOW-INCOME.—The term ‘low-income’,
5 with respect to a family, means a family whose self-
6 certified income is not more than 200 percent of the
7 Federal poverty line.

8 “(i) AUTHORIZATION OF APPROPRIATIONS.—

9 “(1) IN GENERAL.—To carry out this section,
10 there is authorized to be appropriated \$100,000,000
11 for each of fiscal years 2022 through 2025.

12 “(2) AVAILABILITY OF FUNDS.—Funds pro-
13 vided to a grantee under this section for a fiscal
14 year may be expended by the grantee only in such
15 fiscal year or the succeeding fiscal year.”.

16 **SEC. 3. IMPROVING ACCESS TO DIAPERS FOR MEDICALLY**
17 **COMPLEX CHILDREN.**

18 Section 1915(c) of the Social Security Act (42 U.S.C.
19 1396n(c)) is amended by adding at the end the following
20 new paragraph:

21 “(11)(A) In the case of any waiver under this sub-
22 section that provides medical assistance to a medically
23 complex child who has been diagnosed with bowel or blad-
24 der incontinence, a bowel or bladder condition that causes
25 excess urine or stool (such as short gut syndrome or diabe-

1 tes insipidus), or a severe skin condition that causes skin
2 erosions (such as epidermolysis bullosa), such medical as-
3 sistance shall include, for the duration of the waiver, the
4 provision of 200 medically necessary diapers per month
5 and diapering supplies. Such medical assistance may in-
6 clude the provision of medically necessary diapers in
7 amounts greater than 200 if a licensed health care pro-
8 vider (such as a physician, nurse practitioner, or physician
9 assistant) specifies that such greater amounts are nec-
10 essary for such medically complex child.

11 “(B) For purposes of this paragraph—

12 “(i) the term ‘medically complex child’ means
13 an individual who is at least three years of age and
14 for whom a licensed health care provider has pro-
15 vided a diagnosis of one or more significant chronic
16 conditions;

17 “(ii) the term ‘medically necessary diaper’
18 means an absorbent garment that is—

19 “(I) washable or disposable; and

20 “(II) worn by a medically complex child
21 who has been diagnosed with a condition de-
22 scribed in subparagraph (A) and needs such
23 garment to correct or ameliorate such condition;
24 and

1 “(iii) the term ‘diapering supplies’ means items,
 2 including diaper wipes and diaper creams, necessary
 3 to ensure that a medically complex child who has
 4 been diagnosed with a condition described in sub-
 5 paragraph (A) and uses a medically necessary diaper
 6 is properly cleaned and protected from diaper rash.”.

7 **SEC. 4. INCLUSION OF DIAPERS AND DIAPERING SUPPLIES**

8 **AS QUALIFIED MEDICAL EXPENSES.**

9 (a) HEALTH SAVINGS ACCOUNTS.—Section
 10 223(d)(2) of the Internal Revenue Code of 1986 is amend-
 11 ed—

12 (1) by adding at the end of subparagraph (A)
 13 the following: “For purposes of this subparagraph,
 14 amounts paid for medically necessary diapers and
 15 diapering supplies shall be treated as paid for med-
 16 ical care.”; and

17 (2) by adding at the end the following new sub-
 18 paragraph:

19 “(E) MEDICALLY NECESSARY DIAPERS
 20 AND DIAPERING SUPPLIES.—For purposes of
 21 this paragraph—

22 “(i) MEDICALLY NECESSARY DIA-
 23 PERS.—The term ‘medically necessary dia-
 24 per’ means an absorbent garment that is
 25 washable or disposable worn by an indi-

1 vidual needs diapers because they are
 2 medically necessary, serve a preventative
 3 medical purpose, or are needed to correct
 4 or ameliorate defects or physical or mental
 5 illnesses or conditions which are diagnosed
 6 by a licenced health care provider.

7 “(ii) DIAPERING SUPPLIES.—The
 8 term ‘diapering supplies’ means items, in-
 9 cluding diaper wipes and diaper creams
 10 necessary to ensure that a child using a
 11 medically necessary diaper is properly
 12 cleaned and protected from diaper rash.”.

13 (b) ARCHER MSAs.—Section 220(d)(2)(A) of such
 14 Code is amended by adding at the end the following: “For
 15 purposes of this subparagraph, amounts paid for medically
 16 necessary diapers and diapering supplies (as defined in
 17 section 223(d)(2)(D)) shall be treated as paid for medical
 18 care.”.

19 (c) HEALTH FLEXIBLE SPENDING ARRANGEMENTS
 20 AND HEALTH REIMBURSEMENT ARRANGEMENTS.—Sec-
 21 tion 106 of such Code is amended by adding at the end
 22 the following new subsection:

23 “(h) REIMBURSEMENTS FOR MEDICALLY NEC-
 24 ESSARY DIAPERS AND DIAPERING SUPPLIES.—For pur-
 25 poses of this section and section 105, expenses incurred

1 for medically necessary diapers and diapering supplies (as
2 defined in section 223(d)(2)(D)) shall be treated as in-
3 curred for medical care.”.

4 (d) EFFECTIVE DATES.—

5 (1) DISTRIBUTIONS FROM HEALTH SAVINGS AC-
6 COUNTS.—The amendments made by subsections (a)
7 and (b) shall apply to amounts paid after December
8 31, 2021.

9 (2) REIMBURSEMENTS.—The amendment made
10 by subsection (c) shall apply to expenses incurred
11 after December 31, 2021.

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