

118TH CONGRESS
1ST SESSION

S. 2879

To provide targeted funding for States and other eligible entities through the Social Services Block Grant program to address the increased burden that maintaining the health and hygiene of infants and toddlers, medically complex children, and low-income adults or adults with disabilities who rely on adult incontinence materials and supplies place 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 diapering supplies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2023

Ms. DUCKWORTH (for herself, Mr. CRAMER, Ms. SMITH, Mr. CASEY, and Mr. KELLY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide targeted funding for States and other eligible entities through the Social Services Block Grant program to address the increased burden that maintaining the health and hygiene of infants and toddlers, medically complex children, and low-income adults or adults with disabilities who rely on adult incontinence materials and supplies place 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 diapering supplies, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “End Diaper Need Act
5 of 2023”.

6 **SEC. 2. TARGETED FUNDING FOR DIAPER ASSISTANCE (IN-**
7 **CLUDING DIAPERING SUPPLIES AND ADULT**
8 **INCONTINENCE MATERIALS AND SUPPLIES)**
9 **THROUGH THE SOCIAL SERVICES BLOCK**
10 **GRANT PROGRAM.**

11 (a) INCREASE IN FUNDING FOR SOCIAL SERVICES
12 BLOCK GRANT PROGRAM.—

13 (1) IN GENERAL.—The amount specified in
14 subsection (c) of section 2003 of the Social Security
15 Act (42 U.S.C. 1397b) for purposes of subsections
16 (a) and (b) of such section is deemed to be
17 \$1,900,000,000 for each of fiscal years 2024
18 through 2027. Each State shall use the increase in
19 funding the State receives as a result of this section
20 in accordance with subsection (b) of this section.

21 (2) APPROPRIATION.—

22 (A) IN GENERAL.—Out of any money in
23 the Treasury of the United States not otherwise
24 appropriated, there is appropriated

1 \$200,000,000 for each of fiscal years 2024
2 through 2027, to carry out this section.

3 (B) RESERVATIONS.—

4 (i) PURPOSES.—The Secretary shall
5 reserve, from the amount appropriated
6 under subparagraph (A) to carry out this
7 section—

8 (I) for each of fiscal years 2024
9 through 2027, not more than 2 per-
10 cent of the amount appropriated for
11 the fiscal year for purposes of enter-
12 ing into an agreement with a national
13 entity described in subparagraph (C)
14 to assist in providing technical assist-
15 ance and training, to support effective
16 policy, practice, research, and cross-
17 system collaboration among grantees
18 and subgrantees, and to assist in the
19 administration of the program de-
20 scribed in this section; and

21 (II) for fiscal year 2024, an
22 amount, not to exceed \$3,000,000, for
23 purposes of conducting an evaluation
24 under subsection (d).

1 (ii) NO STATE ENTITLEMENT TO RE-
2 SERVED FUNDS.—The State entitlement
3 under section 2002(a) of the Social Secu-
4 rity Act (42 U.S.C. 1397a(a)) shall not
5 apply to the amounts reserved under clause
6 (i).

7 (C) NATIONAL ENTITY DESCRIBED.—A na-
8 tional entity described in this subparagraph is
9 a nonprofit organization described in section
10 501(c)(3) of the Internal Revenue Code of 1986
11 and exempt from taxation under section 501(a)
12 of such Code, that—

13 (i) has experience in more than 1
14 State in the area of—

15 (I) community distributions of
16 basic need services, including experi-
17 ence collecting, warehousing, and dis-
18 tributing basic necessities such as dia-
19 pers, food, or menstrual products;

20 (II) child care;

21 (III) child development activities
22 in low-income communities; or

23 (IV) motherhood, fatherhood, or
24 parent education efforts serving low-
25 income parents of young children;

1 (ii) demonstrates competency to im-
2 plement a project, provide fiscal account-
3 ability, collect data, and prepare reports
4 and other necessary documentation; and

5 (iii) demonstrates a willingness to
6 share information with researchers, practi-
7 tioners, and other interested parties.

8 (b) RULES GOVERNING USE OF ADDITIONAL
9 FUNDS.—

10 (1) IN GENERAL.—Funds are used in accord-
11 ance with this subsection if—

12 (A) the State, in consultation with relevant
13 stakeholders, including agencies, professional
14 associations, and nonprofit organizations, dis-
15 tributes the funds to eligible entities to—

16 (i) decrease the need for diapers and
17 diapering supplies and adult incontinence
18 materials and supplies in low-income fami-
19 lies and meet such unmet needs of infants
20 and toddlers, medically complex children,
21 and low-income adults and adults with dis-
22 abilities in such families through—

23 (I) the distribution of free dia-
24 pers and diapering supplies, medically

1 necessary diapers, and adult inconti-
2 nence materials and supplies; and

3 (II) improving access to diapers
4 and diapering supplies, medically nec-
5 essary diapers, and adult incontinence
6 materials and supplies;

7 (ii) carry out community outreach to
8 assist in participation in diaper distribu-
9 tion programs or programs that distribute
10 medically necessary diapers or adult incon-
11 tinence materials and supplies; and

12 (iii) increase the ability of commu-
13 nities and low-income families in such com-
14 munities to provide for the need for dia-
15 pers and diapering supplies, medically nec-
16 essary diapers, and adult continence mate-
17 rials and supplies, of infants and toddlers,
18 medically complex children, and low-income
19 adults and adults with disabilities;

20 (B) the funds are used subject to the limi-
21 tations in section 2005 of the Social Security
22 Act (42 U.S.C. 1397d); and

23 (C) the funds are used to supplement, not
24 supplant, State general revenue funds provided
25 for the purposes described in subparagraph (A).

1 (2) ADMINISTRATIVE COSTS.—A State receiving
2 funds made available under subsection (a) may use
3 not more than 5 percent of the funds for State ad-
4 ministrative costs, which may include costs of con-
5 tracting, monitoring, and reporting.

6 (3) ALLOWABLE USES BY ELIGIBLE ENTI-
7 TIES.—An eligible entity receiving funds made avail-
8 able under subsection (a) shall use the funds for any
9 of the following:

10 (A) To pay for the purchase and distribu-
11 tion of diapers and diapering supplies, medically
12 necessary diapers, and funding diaper (includ-
13 ing medically necessary diapers) distribution
14 that serves low-income families with—

15 (i) 1 or more children 3 years of age
16 or younger; or

17 (ii) 1 or more medically complex chil-
18 dren.

19 (B) To pay for the purchase and distribu-
20 tion of adult incontinence materials and sup-
21 plies and funding distribution of the materials
22 and supplies for low-income families with 1 or
23 more low-income adults, adults with disabilities,
24 or children with a disability who have attained
25 3 years of age and have not attained 19 years

1 of age, who rely on adult incontinence materials
2 and supplies.

3 (C) To integrate activities carried out
4 under subparagraph (A) with other basic needs
5 assistance programs serving eligible children
6 and their families, including the following:

7 (i) Programs funded by the temporary
8 assistance for needy families program
9 under part A of title IV of the Social Secu-
10 rity Act (42 U.S.C. 601 et seq.), including
11 the State maintenance of effort provisions
12 of such program.

13 (ii) Programs designed to support the
14 health of eligible children, such as the Chil-
15 dren's Health Insurance Program under
16 title XXI of the Social Security Act, the
17 Medicaid program under title XIX of such
18 Act, or State funded health care programs.

19 (iii) Programs funded through the
20 special supplemental nutrition program for
21 women, infants, and children under section
22 17 of the Child Nutrition Act of 1966.

23 (iv) Programs that offer early home
24 visiting services, including the maternal,
25 infant, and early childhood home visiting

1 program (including the Tribal home vis-
2 iting program) under section 511 of the
3 Social Security Act (42 U.S.C. 711).

4 (v) Programs to provide improved and
5 affordable access to child care, including
6 programs funded through the Child Care
7 and Development Fund, the temporary as-
8 sistance for needy families program under
9 part A of title IV of the Social Security
10 Act (42 U.S.C. 601 et seq.), or a State-
11 funded program.

12 (vi) Programs funded under part C of
13 the Individuals with Disabilities Education
14 Act (20 U.S.C. 1431 et seq.).

15 (4) AVAILABILITY OF FUNDS.—

16 (A) FUNDS DISTRIBUTED TO ELIGIBLE
17 ENTITIES.—Funds made available under sub-
18 section (a) that are distributed to an eligible en-
19 tity by a State for a fiscal year may be ex-
20 pended by the eligible entity only in such fiscal
21 year or the succeeding fiscal year.

22 (B) EVALUATION.—Funds reserved under
23 subsection (a)(2)(B)(i)(II) to carry out the eval-
24 uation under subsection (d) shall be available

1 for expenditure during the 3-year period that
2 begins on the date of enactment of this Act.

3 (5) NO EFFECT ON OTHER PROGRAMS.—Any
4 assistance or benefits received by a family through
5 funds made available under subsection (a) shall be
6 disregarded for purposes of determining the family’s
7 eligibility for, or amount of, benefits under any other
8 Federal needs-based programs.

9 (c) ANNUAL REPORTS.—A State shall include in the
10 annual report required under section 2006 of the Social
11 Security Act (42 U.S.C. 1397e) covering each of fiscal
12 years 2022 through 2025, information detailing how eligi-
13 ble entities, including subgrantees, used funds made avail-
14 able under subsection (a) to distribute diapers and dia-
15 pering supplies and adult incontinence materials and sup-
16 plies to families in need. Each such report shall include
17 the following:

18 (1) The number and age of infants, toddlers,
19 medically complex children, and low-income adults
20 and adults with disabilities who received assistance
21 or benefits through such funds.

22 (2) The number of families that have received
23 assistance or benefits through such funds.

24 (3) The number of diapers, medically necessary
25 diapers, or adult incontinence materials and supplies

1 (such as adult diapers, briefs, protective underwear,
2 pull-ons, pull-ups, liners, shields, guards, pads, un-
3 dergarments), and the number of each type of dia-
4 pering or adult incontinence supply, distributed
5 through the use of such funds.

6 (4) The ZIP Code or ZIP Codes where the eli-
7 gible entity (or subgrantee) distributed diapers and
8 diapering supplies and adult incontinence materials
9 and supplies.

10 (5) The method or methods the eligible entity
11 (or subgrantee) uses to distribute diapers and dia-
12 pering supplies and, adult incontinence materials
13 and supplies.

14 (6) Such other information as the Secretary
15 may specify.

16 (d) EVALUATION.—The Secretary, in consultation
17 with States, the national entity described in subsection
18 (a)(2)(C), and eligible entities receiving funds made avail-
19 able under this section, shall—

20 (1) not later than 2 years after the date of en-
21 actment of this Act—

22 (A) complete an evaluation of the effective-
23 ness of the assistance program carried out pur-
24 suant to this section, such as the effect of ac-
25 tivities carried out under this Act on mitigating

1 the health and developmental risks of unmet di-
2 aper need among infants, toddlers, medically
3 complex children, and other family members in
4 low-income families, including the risks of dia-
5 per dermatitis, urinary tract infections, and pa-
6 rental and child depression and anxiety;

7 (B) submit to the relevant congressional
8 committees a report on the results of such eval-
9 uation; and

10 (C) publish the results of the evaluation on
11 the internet website of the Department of
12 Health and Human Services;

13 (2) not later than 3 years after the date of en-
14 actment of this Act, update the evaluation required
15 by paragraph (1)(A); and

16 (3) not later than 120 days after completion of
17 the updated evaluation under paragraph (2)—

18 (A) submit to the relevant congressional
19 committees a report describing the results of
20 such updated evaluation; and

21 (B) publish the results of such evaluation
22 on the internet website of the Department of
23 Health and Human Services.

24 (e) GUIDANCE.—Not later than 180 days after enact-
25 ment of this Act, the Secretary shall issue guidance re-

1 garding how the provisions of this section should be car-
2 ried out, including information regarding eligible entities,
3 allowable use of funds, and reporting requirements.

4 (f) DEFINITIONS.—In this section:

5 (1) ADULT INCONTINENCE MATERIALS AND
6 SUPPLIES.—The term “adult incontinence materials
7 and supplies” means those supplies that are used to
8 assist adults or adults with disabilities and includes
9 adult diapers, briefs, protective underwear, pull-ons,
10 pull-ups, liners, shields, guards, pads, undergar-
11 ments, disposable wipes, over-the-counter adult dia-
12 per rash cream products, intermittent catheteriza-
13 tion, indwelling catheters, condom catheters, urinary
14 drainage bags, external collection devices, wearable
15 urinals, and penile clamps.

16 (2) ADULTS WITH DISABILITIES.—The term
17 “adults with disabilities” means individuals who—

18 (A) have attained 18 years of age; and

19 (B) have a disability (as such term is de-
20 fined, with respect to an individual, in section
21 3 of the Americans with Disabilities Act of
22 1990 (42 U.S.C. 12102)).

23 (3) DIAPER.—The term “diaper” means an ab-
24 sorbent garment that—

1 (A) is washable or disposable that may be
2 worn by an infant or toddler who is not toilet-
3 trained; and

4 (B) if disposable—

5 (i) does not use any latex or common
6 allergens; and

7 (ii) meets or exceeds the quality
8 standards for diapers commercially avail-
9 able through retail sale in the following
10 categories:

11 (I) Absorbency (with acceptable
12 rates for first and second wetting).

13 (II) Waterproof outer cover.

14 (III) Flexible leg openings.

15 (IV) Refastening closures.

16 (4) DIAPERING SUPPLIES.—The term “dia-
17 pering supplies” means items, including diaper wipes
18 and diaper cream, necessary to ensure that—

19 (A) an eligible child using a diaper is prop-
20 erly cleaned and protected from diaper rash; or

21 (B) a medically complex child who uses a
22 medically necessary diaper is properly cleaned
23 and protected from diaper rash.

24 (5) ELIGIBLE CHILD.—The term “eligible
25 child” means a child who—

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

2 (B) is a member of a low-income family.

3 (6) ELIGIBLE ENTITIES.—The term “eligible
4 entity” means a State or local governmental entity,
5 an Indian tribe or tribal organization (as defined in
6 section 4 of the Indian Self-Determination and Edu-
7 cation Assistance Act), or a nonprofit organization
8 described in section 501(c)(3) of the Internal Rev-
9 enue Code of 1986 and exempt from taxation under
10 section 501(a) of such Code that—

11 (A) has experience in the area of—

12 (i) community distributions of basic
13 need services, including experience col-
14 lecting, warehousing, and distributing basic
15 necessities such as diapers, food, or men-
16 strual products;

17 (ii) child care;

18 (iii) child development activities in
19 low-income communities; or

20 (iv) motherhood, fatherhood, or par-
21 ent education efforts serving low-income
22 parents of young children;

23 (B) demonstrates competency to implement
24 a project, provide fiscal accountability, collect

1 data, and prepare reports and other necessary
2 documentation; and

3 (C) demonstrates a willingness to share in-
4 formation with researchers, practitioners, and
5 other interested parties.

6 (7) FEDERAL POVERTY LINE.—The term “Fed-
7 eral poverty line” means the Federal poverty line as
8 defined by the Office of Management and Budget
9 and revised annually in accordance with section
10 673(2) of the Omnibus Budget Reconciliation Act of
11 1981 (42 U.S.C. 9902(2)) applicable to a family of
12 the size involved.

13 (8) LOW-INCOME.—The term “low-income”,
14 with respect to a family, means a family whose self-
15 certified income is not more than 200 percent of the
16 Federal poverty line.

17 (9) MEDICALLY COMPLEX CHILD.—The term
18 “medically complex child” means an individual who
19 has attained 3 years of age and for whom a licensed
20 health care provider has provided a diagnosis of 1 or
21 more significant chronic conditions.

22 (10) MEDICALLY NECESSARY DIAPER.—The
23 term “medically necessary diaper” means an absorb-
24 ent garment that is—

25 (A) washable or disposable;

1 (B) worn by a medically complex child who
 2 has been diagnosed with bowel or bladder incon-
 3 tinence, a bowel or bladder condition that
 4 causes excess urine or stool (such as short gut
 5 syndrome or diabetes insipidus), or a severe
 6 skin condition that causes skin erosions (such
 7 as epidermolysis bullosa) and needs such gar-
 8 ment to correct or ameliorate such condition;
 9 and

10 (C) if disposable—

11 (i) does not use any latex or common
 12 allergens; and

13 (ii) meets or exceeds the quality
 14 standards for diapers commercially avail-
 15 able through retail sale in the following
 16 categories:

17 (I) Absorbency (with acceptable
 18 rates for first and second wetting).

19 (II) Waterproof outer cover.

20 (III) Flexible leg openings.

21 (IV) Refastening closures.

22 (11) STATE.—The term “State” means the 50
 23 States, the District of Columbia, the Commonwealth
 24 of Puerto Rico the United States Virgin Islands,
 25 Guam, the Commonwealth of the Northern Mariana

1 Islands, American Samoa, the Republic of the Mar-
 2 shall Islands, the Federated States of Micronesia,
 3 and the Republic of Palau.

4 (g) EXEMPTION OF PROGRAM FROM SEQUESTRA-
 5 TION.—

6 (1) IN GENERAL.—Section 255(h) of the Bal-
 7 anced Budget and Emergency Deficit Control Act of
 8 1985 (2 U.S.C. 905(h)) is amended by inserting
 9 after “Supplemental Security Income Program (28-
 10 0406-0-1-609).” the following:

11 “Targeted funding for States for diaper assist-
 12 ance (including diapering supplies and adult inconti-
 13 nence materials and supplies) through the Social
 14 Services Block Grant Program.”.

15 (2) APPLICABILITY.—The amendment made by
 16 this subsection shall apply to any sequestration
 17 order issued under the Balanced Budget and Emer-
 18 gency Deficit Control Act of 1985 (2 U.S.C. 900 et
 19 seq.) on or after the date of enactment of this Act.

20 **SEC. 3. IMPROVING ACCESS TO DIAPERS FOR MEDICALLY**
 21 **COMPLEX CHILDREN.**

22 Section 1915(c) of the Social Security Act (42 U.S.C.
 23 1396n(c)) is amended by adding at the end the following
 24 new paragraph:

1 “(11)(A) In the case of any waiver under this sub-
2 section that provides medical assistance to a medically
3 complex child who has been diagnosed with bowel or blad-
4 der incontinence, a bowel or bladder condition that causes
5 excess urine or stool (such as short gut syndrome or diabe-
6 tes insipidus), or a severe skin condition that causes skin
7 erosions (such as epidermolysis bullosa), such medical as-
8 sistance shall include, for the duration of the waiver, the
9 provision of 200 medically necessary diapers per month
10 and diapering supplies. Such medical assistance may in-
11 clude the provision of medically necessary diapers in
12 amounts greater than 200 if a licensed health care pro-
13 vider (such as a physician, nurse practitioner, or physician
14 assistant) specifies that such greater amounts are nec-
15 essary for such medically complex child.

16 “(B) For purposes of this paragraph:

17 “(i) The term ‘medically complex child’ means
18 an individual who has attained age 3 and for whom
19 a licensed health care provider has provided a diag-
20 nosis of 1 or more significant chronic conditions.

21 “(ii) The term ‘medically necessary diaper’
22 means an absorbent garment that is—

23 “(I) washable or disposable;

24 “(II) worn by a medically complex child
25 who has been diagnosed with a condition de-

1 scribed in subparagraph (A) and needs such
2 garment to correct or ameliorate such condition;
3 and

4 “(III) if disposable—

5 “(aa) does not use any latex or com-
6 mon allergens; and

7 “(bb) meets or exceeds the quality
8 standards for diapers commercially avail-
9 able through retail sale in the following
10 categories:

11 “(AA) Absorbency (with accept-
12 able rates for first and second wet-
13 ting).

14 “(BB) Waterproof outer cover.

15 “(CC) Flexible leg openings.

16 “(DD) Refastening closures.

17 “(iii) The term ‘diapering supplies’ means
18 items, including diaper wipes and diaper creams,
19 necessary to ensure that a medically complex child
20 who has been diagnosed with a condition described
21 in subparagraph (A) and uses a medically necessary
22 diaper is properly cleaned and protected from diaper
23 rash.”.

1 **SEC. 4. INCLUSION OF DIAPERS AND DIAPERING SUPPLIES**
 2 **AS QUALIFIED MEDICAL EXPENSES.**

3 (a) HEALTH SAVINGS ACCOUNTS.—Section
 4 223(d)(2) of the Internal Revenue Code of 1986 is amend-
 5 ed—

6 (1) by inserting “, medically necessary diapers,
 7 and diapering supplies” after “menstrual care prod-
 8 ucts” in the last sentence of subparagraph (A); and

9 (2) by adding at the end the following new sub-
 10 paragraph:

11 “(E) MEDICALLY NECESSARY DIAPERS
 12 AND DIAPERING SUPPLIES.—For purposes of
 13 this paragraph—

14 “(i) MEDICALLY NECESSARY DIA-
 15 PERS.—The term ‘medically necessary dia-
 16 per’ means an absorbent garment which is
 17 washable or disposable and which is worn
 18 by an individual who has attained 3 years
 19 of age because of medical necessity, such
 20 as someone who has been diagnosed with
 21 bowel or bladder incontinence, a bowel or
 22 bladder condition that causes excess urine
 23 or stool (such as short gut syndrome or di-
 24 abetes insipidus), or a severe skin condi-
 25 tion that causes skin erosions (such as
 26 epidermolysis bullosa) and needs such gar-

1 ment to correct or ameliorate such condi-
 2 tion, to serve a preventative medical pur-
 3 pose, or to correct or ameliorate defects or
 4 physical or mental illnesses or conditions
 5 diagnosed by a licensed health care pro-
 6 vider, and, if disposable—

7 “(I) does not use any latex or
 8 common allergens; and

9 “(II) meets or exceeds the quality
 10 standards for diapers commercially
 11 available through retail sale in the fol-
 12 lowing categories:

13 “(aa) Absorbency (with ac-
 14 ceptable rates for first and sec-
 15 ond wetting).

16 “(bb) Waterproof outer
 17 cover.

18 “(cc) Flexible leg openings.

19 “(dd) Refastening closures.

20 “(ii) DIAPERING SUPPLIES.—The
 21 term ‘diapering supplies’ means items, in-
 22 cluding diaper wipes and diaper creams,
 23 necessary to ensure that an individual
 24 wearing medically necessary diapers is

1 properly cleaned and protected from diaper
2 rash.”.

3 (b) ARCHER MSAs.—The last sentence of section
4 220(d)(2)(A) of such Code is amended by inserting “,
5 medically necessary diapers (as defined in section
6 223(d)(2)(E)), and diapering supplies (as defined in sec-
7 tion 223(d)(2)(E))” after “menstrual care products (as
8 defined in section 223(d)(2)(D))”.

9 (c) HEALTH FLEXIBLE SPENDING ARRANGEMENTS
10 AND HEALTH REIMBURSEMENT ARRANGEMENTS.—Sec-
11 tion 106(f) of such Code is amended—

12 (1) by inserting “, medically necessary diapers
13 (as defined in section 223(d)(2)(E)), and diapering
14 supplies (as defined in section 223(d)(2)(E))” after
15 “menstrual care products (as defined in section
16 223(d)(2)(D))”; and

17 (2) in the heading, by inserting “, MEDICALLY
18 NECESSARY DIAPERS, AND DIAPERING SUPPLIES”
19 after “MENSTRUAL CARE PRODUCTS”.

20 (d) EFFECTIVE DATES.—

21 (1) DISTRIBUTIONS FROM CERTAIN AC-
22 COUNTS.—The amendments made by subsections (a)
23 and (b) shall apply to amounts paid after December
24 31, 2024.

1 (2) REIMBURSEMENTS.—The amendment made
2 by subsection (c) shall apply to expenses incurred
3 after December 31, 2024.

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