

117TH CONGRESS
1ST SESSION

S. 304

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

FEBRUARY 8, 2021

Ms. DUCKWORTH (for herself, Mr. CRAMER, Mr. CASEY, Mr. DURBIN, Mrs. GILLIBRAND, and Ms. SMITH) 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 2021”.

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 2022
 18 through 2025, of which, the amount equal to
 19 \$200,000,000, reduced by the amounts reserved
 20 under paragraph (2)(B) for each such fiscal year,
 21 shall be obligated by States in accordance with sub-
 22 section (b).

23 (2) APPROPRIATION.—

24 (A) IN GENERAL.—Out of any money in
 25 the Treasury of the United States not otherwise

1 appropriated, there is appropriated
2 \$200,000,000 for each of fiscal years 2022
3 through 2025, to carry out this section.

4 (B) RESERVATIONS.—

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

9 (I) for each of fiscal years 2022
10 through 2025, not more than 2 per-
11 cent of the amount appropriated for
12 the fiscal year for purposes of enter-
13 ing into an agreement with a national
14 entity described in subparagraph (C)
15 to assist in providing technical assist-
16 ance and training, to support effective
17 policy, practice, research, and cross-
18 system collaboration among grantees
19 and subgrantees, and to assist in the
20 administration of the program de-
21 scribed in this section; and

22 (II) for fiscal year 2022, an
23 amount, not to exceed \$2,000,000, for
24 purposes of conducting an evaluation
25 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;

3 (II) community outreach to assist
4 in participation in existing diaper dis-
5 tribution programs or programs that
6 distribute medically necessary diapers
7 or adult incontinence materials and
8 supplies; or

9 (III) improving access to diapers
10 and diapering supplies, medically nec-
11 essary diapers, and adult incontinence
12 materials and supplies; and

13 (ii) increase the ability of communities
14 and low-income families in such commu-
15 nities to provide for the need for diapers
16 and diapering supplies, medically necessary
17 diapers, and adult continence materials
18 and supplies, of infants and toddlers, medi-
19 cally complex children, and low-income
20 adults and adults with disabilities;

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

24 (C) the funds are used to supplement, not
25 supplant, State general revenue funds provided

1 for the purposes described in subparagraph (A);
2 and

3 (D) the funds are not used for costs that
4 are reimbursable by the Federal Emergency
5 Management Agency, under a contract for in-
6 surance, or by self-insurance.

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

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

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

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

20 (B) To pay for the purchase and distribu-
21 tion of adult incontinence materials and sup-
22 plies and funding distribution of such materials
23 and supplies that serves low-income families
24 with 1 or more low-income adults or adults with

1 disabilities who rely on adult incontinence mate-
2 rials 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 (3) AVAILABILITY OF FUNDS.—

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

19 (B) EVALUATION.—Funds reserved under
20 subsection (a)(2)(B)(i)(II) to carry out the eval-
21 uation under subsection (d) shall be available
22 for expenditure during the 3-year period that
23 begins on the date of enactment of this Act.

24 (4) NO EFFECT ON OTHER PROGRAMS.—Any
25 assistance or benefits received by a family through

1 funds made available under subsection (a) shall be
2 disregarded for purposes of determining the family's
3 eligibility for, or amount of, benefits under any other
4 Federal needs-based programs.

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

14 (1) The number and age of infants, toddlers,
15 medically complex children, and low-income adults
16 and adults with disabilities who received assistance
17 or benefits through such funds.

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

20 (3) The number of diapers, medically necessary
21 diapers, or adult incontinence materials and supplies
22 (such as adult diapers, briefs, protective underwear,
23 pull-ons, pull-ups, liners, shields, guards, pads, un-
24 dergarments), and the number of each type of dia-

1 pering or adult incontinence supply, distributed
2 through the use of such funds.

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

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

11 (6) Such other information as the Secretary
12 may specify.

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

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

19 (A) complete an evaluation of the effective-
20 ness of the assistance program carried out pur-
21 suant to this section, such as the effect of ac-
22 tivities carried out under this Act on mitigating
23 the health and developmental risks of unmet di-
24 aper need among infants, toddlers, medically
25 complex children, and other family members in

1 low-income families, including the risks of dia-
2 per dermatitis, urinary tract infections, and pa-
3 rental and child depression and anxiety;

4 (B) submit to the relevant congressional
5 committees a report on the results of such eval-
6 uation; and

7 (C) publish the results of the evaluation on
8 the internet website of the Department of
9 Health and Human Services;

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

13 (3) not later than 90 days after completion of
14 the updated evaluation under paragraph (2)—

15 (A) submit to the relevant congressional
16 committees a report describing the results of
17 such updated evaluation; and

18 (B) publish the results of such evaluation
19 on the internet website of the Department of
20 Health and Human Services.

21 (e) GUIDANCE.—Not later than 180 days after enact-
22 ment of this Act, the Secretary shall issue guidance re-
23 garding how the provisions of this section should be car-
24 ried out, including information regarding eligible entities,
25 allowable use of funds, and reporting requirements.

1 (f) DEFINITIONS.—In this section:

2 (1) ADULT INCONTINENCE MATERIALS AND
3 SUPPLIES.—The term “adult incontinence materials
4 and supplies” means those supplies that are used to
5 assist low-income adults or adults with disabilities
6 and includes adult diapers, briefs, protective under-
7 wear, pull-ons, pull-ups, liners, shields, guards, pads,
8 undergarments, disposable wipes, over-the-counter
9 adult diaper rash cream products, intermittent cath-
10 eterization, indwelling catheters, condom catheters,
11 urinary drainage bags, external collection devices,
12 wearable urinals, and penile clamps.

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

15 (A) have attained age 18; and

16 (B) have a disability (as such term is de-
17 fined, with respect to an individual, in section
18 3 of the Americans with Disabilities Act of
19 1990 (42 U.S.C. 12102)).

20 (3) 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 (4) DIAPERING SUPPLIES.—The term “dia-
13 pering supplies” means items, including diaper wipes
14 and diaper cream, necessary to ensure that—

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

17 (B) a medically complex child who uses a
18 medically necessary diaper is properly cleaned
19 and protected from diaper rash.

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

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

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

24 (6) ELIGIBLE ENTITIES.—The term “eligible
25 entity” means a State or local governmental entity,

1 an Indian tribe or tribal organization (as defined in
2 section 4 of the Indian Self-Determination and Edu-
3 cation Assistance Act), or a nonprofit organization
4 described in section 501(c)(3) of the Internal Rev-
5 enue Code of 1986 and exempt from taxation under
6 section 501(a) of such Code that—

7 (A) has experience in the area of—

8 (i) community distributions of basic
9 need services, including experience col-
10 lecting, warehousing, and distributing basic
11 necessities such as diapers, food, or men-
12 strual products;

13 (ii) child care;

14 (iii) child development activities in
15 low-income communities; or

16 (iv) motherhood, fatherhood, or par-
17 ent education efforts serving low-income
18 parents of young children;

19 (B) demonstrates competency to implement
20 a project, provide fiscal accountability, collect
21 data, and prepare reports and other necessary
22 documentation; and

23 (C) demonstrates a willingness to share in-
24 formation with researchers, practitioners, and
25 other interested parties.

1 (7) FEDERAL POVERTY LINE.—The term “Fed-
2 eral poverty line” means the Federal poverty line as
3 defined by the Office of Management and Budget
4 and revised annually in accordance with section
5 673(2) of the Omnibus Budget Reconciliation Act of
6 1981 applicable to a family of the size involved.

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

11 (9) MEDICALLY COMPLEX CHILD.—The term
12 “medically complex child” means an individual who
13 has attained age 3 and for whom a licensed health
14 care provider has provided a diagnosis of bowel or
15 bladder incontinence, a bowel or bladder condition
16 that causes excess urine or stool (such as short gut
17 syndrome or diabetes insipidus), or a severe skin
18 condition that causes skin erosions (such as
19 epidermolysis bullosa).

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

23 (A) washable or disposable;

24 (B) worn by a medically complex child who
25 has been diagnosed with bowel or bladder incon-

1 tinence, a bowel or bladder condition that
 2 causes excess urine or stool (such as short gut
 3 syndrome or diabetes insipidus), or a severe
 4 skin condition that causes skin erosions (such
 5 as epidermolysis bullosa) and needs such gar-
 6 ment to correct or ameliorate such condition;
 7 and

8 (C) if disposable—

9 (i) does not use any latex or common
 10 allergens; and

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

15 (I) Absorbency (with acceptable
 16 rates for first and second wetting).

17 (II) Waterproof outer cover.

18 (III) Flexible leg openings.

19 (IV) Refastening closures.

20 (g) EXEMPTION OF PROGRAM FROM SEQUESTRA-
 21 TION.—

22 (1) IN GENERAL.—Section 255(h) of the Bal-
 23 anced Budget and Emergency Deficit Control Act of
 24 1985 (2 U.S.C. 905(h)) is amended by inserting

1 after “Supplemental Security Income Program (28–
2 0406–0–1–609).” the following:

3 “Targeted funding for States for diaper assist-
4 ance (including diapering supplies and adult inconti-
5 nence materials and supplies) through the Social
6 Services Block Grant Program.”.

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

12 **SEC. 3. IMPROVING ACCESS TO DIAPERS FOR MEDICALLY**
13 **COMPLEX CHILDREN.**

14 Section 1915(c) of the Social Security Act (42 U.S.C.
15 1396n(c)) is amended by adding at the end the following
16 new paragraph:

17 “(11)(A) In the case of any waiver under this sub-
18 section that provides medical assistance to a medically
19 complex child who has been diagnosed with bowel or blad-
20 der incontinence, a bowel or bladder condition that causes
21 excess urine or stool (such as short gut syndrome or diabe-
22 tes insipidus), or a severe skin condition that causes skin
23 erosions (such as epidermolysis bullosa), such medical as-
24 sistance shall include, for the duration of the waiver, the
25 provision of 200 medically necessary diapers per month

1 and diapering supplies. Such medical assistance may in-
2 clude the provision of medically necessary diapers in
3 amounts greater than 200 if a licensed health care pro-
4 vider (such as a physician, nurse practitioner, or physician
5 assistant) specifies that such greater amounts are nec-
6 essary for such medically complex child.

7 “(B) For purposes of this paragraph:

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

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

14 “(I) washable or disposable;

15 “(II) worn by a medically complex child
16 who has been diagnosed with a condition de-
17 scribed in subparagraph (A) and needs such
18 garment to correct or ameliorate such condition;
19 and

20 “(III) if disposable—

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

23 “(bb) meets or exceeds the quality
24 standards for diapers commercially avail-

1 able through retail sale in the following
2 categories:

3 “(AA) Absorbency (with accept-
4 able rates for first and second wet-
5 ting).

6 “(BB) Waterproof outer cover.

7 “(CC) Flexible leg openings.

8 “(DD) Refastening closures.

9 “(iii) The term ‘diapering supplies’ means
10 items, including diaper wipes and diaper creams,
11 necessary to ensure that a medically complex child
12 who has been diagnosed with a condition described
13 in subparagraph (A) and uses a medically necessary
14 diaper is properly cleaned and protected from diaper
15 rash.”.

16 **SEC. 4. INCLUSION OF DIAPERS AND DIAPERING SUPPLIES**
17 **AS QUALIFIED MEDICAL EXPENSES.**

18 (a) **HEALTH SAVINGS ACCOUNTS.**—Section
19 223(d)(2) of the Internal Revenue Code of 1986 is amend-
20 ed—

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

24 (2) by adding at the end the following new sub-
25 paragraph:

1 “(E) MEDICALLY NECESSARY DIAPERS
2 AND DIAPERING SUPPLIES.—For purposes of
3 this paragraph—

4 “(i) MEDICALLY NECESSARY DIA-
5 PERS.—The term ‘medically necessary dia-
6 per’ means an absorbent garment which is
7 washable or disposable and which is worn
8 by an individual who has attained 3 years
9 of age because of medical necessity, such
10 as someone who has been diagnosed with
11 bowel or bladder incontinence, a bowel or
12 bladder condition that causes excess urine
13 or stool (such as short gut syndrome or di-
14 abetes insipidus), or a severe skin condi-
15 tion that causes skin erosions (such as
16 epidermolysis bullosa) and needs such gar-
17 ment to correct or ameliorate such condi-
18 tion, to serve a preventative medical pur-
19 pose, or to correct or ameliorate defects or
20 physical or mental illnesses or conditions
21 diagnosed by a licensed health care pro-
22 vider, and, if disposable—

23 “(I) does not use any latex or
24 common allergens; and

1 “(II) meets or exceeds the quality
2 standards for diapers commercially
3 available through retail sale in the fol-
4 lowing categories:

5 “(aa) Absorbency (with ac-
6 ceptable rates for first and sec-
7 ond wetting).

8 “(bb) Waterproof outer
9 cover.

10 “(cc) Flexible leg openings.

11 “(dd) Refastening closures.

12 “(ii) DIAPERING SUPPLIES.—The
13 term ‘diapering supplies’ means items, in-
14 cluding diaper wipes and diaper creams,
15 necessary to ensure that an individual
16 wearing medically necessary diapers is
17 properly cleaned and protected from diaper
18 rash.”.

19 (b) ARCHER MSAs.—The last sentence of section
20 220(d)(2)(A) of such Code is amended by inserting “,
21 medically necessary diapers (as defined in section
22 223(d)(2)(E)), and diapering supplies (as defined in sec-
23 tion 223(d)(2)(E))” after “menstrual care products (as
24 defined in section 223(d)(2)(D))”.

1 (c) HEALTH FLEXIBLE SPENDING ARRANGEMENTS
2 AND HEALTH REIMBURSEMENT ARRANGEMENTS.—Sec-
3 tion 106(f) of such Code is amended—

4 (1) by inserting “, medically necessary diapers
5 (as defined in section 223(d)(2)(E)), and diapering
6 supplies (as defined in section 223(d)(2)(E))” after
7 “menstrual care products (as defined in section
8 223(d)(2)(D))”; and

9 (2) in the heading, by inserting “, MEDICALLY
10 NECESSARY DIAPERS, AND DIAPERING SUPPLIES”
11 after “MENSTRUAL CARE PRODUCTS”.

12 (d) EFFECTIVE DATES.—

13 (1) DISTRIBUTIONS FROM CERTAIN AC-
14 COUNTS.—The amendments made by subsections (a)
15 and (b) shall apply to amounts paid after December
16 31, 2022.

17 (2) REIMBURSEMENTS.—The amendment made
18 by subsection (c) shall apply to expenses incurred
19 after December 31, 2022.

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