

116TH CONGRESS  
1ST SESSION

# H. R. 1846

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.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 2019

Ms. LEE of California (for herself, Ms. MOORE, Mr. KHANNA, Ms. OMAR, Mr. HASTINGS, Ms. NORTON, Ms. JACKSON LEE, Mr. MCNERNEY, Mr. NADLER, Mr. RUSH, Mr. COHEN, Mrs. CAROLYN B. MALONEY of New York, Ms. PRESSLEY, Mrs. KIRKPATRICK, Mr. GRIJALVA, Mr. TAKANO, Ms. WILD, Mr. POCAN, Ms. OCASIO-CORTEZ, Ms. JAYAPAL, Ms. MCCOLLUM, Ms. SCHAKOWSKY, Mr. PETERS, Ms. SEWELL of Alabama, and Ms. DELAURO) 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

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## 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,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “End Diaper Need Act  
5 of 2019”.

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

7       Part P of title III of the Public Health Service Act  
8 (42 U.S.C. 280g et seq.) is amended by adding at the end  
9 the following:

10 **“SEC. 399V-7. DIAPER DISTRIBUTION DEMONSTRATION**  
11 **PROGRAM.**

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

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

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

22               “(2) design the program in such a way that the  
23 program—

1           “(A) decreases diaper need in low-income  
2 families and meets the unmet diaper needs of  
3 infants and toddlers in such families through—

4                   “(i) the distribution of free diapers  
5 and diapering supplies;

6                   “(ii) community outreach to assist in  
7 participation in existing diaper distribution  
8 programs; or

9                   “(iii) improving access to diapers and  
10 diapering supplies as part of a comprehen-  
11 sive service; and

12           “(B) increases the abilities of communities  
13 and low-income families in those communities  
14 to provide for the diaper needs of infants and  
15 toddlers in those communities.

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

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

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

1           “(A) community distributions of basic need  
2 services, including experience collecting,  
3 warehousing, and distributing basic necessities  
4 such as diapers, food, or menstrual products;

5           “(B) child care;

6           “(C) child development activities in low-in-  
7 come communities; or

8           “(D) motherhood, fatherhood, or parent-  
9 education efforts serving low-income parents of  
10 young children;

11          “(3) demonstrate competency to implement a  
12 project, provide fiscal accountability, collect data,  
13 and prepare reports and other necessary documenta-  
14 tion;

15          “(4) demonstrate a willingness to share infor-  
16 mation with researchers, practitioners, and other in-  
17 terested parties; and

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

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

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

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

20               “(3) To integrate activities under paragraph (1)  
21 with other basic needs assistance programs serving  
22 eligible children and their families, including the fol-  
23 lowing:

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

4           “(B) Programs designed to support the  
5 health of eligible children, such as the Chil-  
6 dren’s Health Insurance Program under title  
7 XXI of the Social Security Act, the Medicaid  
8 program under title XIX of such Act, or State-  
9 funded health care programs.

10           “(C) Programs funded through the Special  
11 Supplemental Nutrition Program for Women,  
12 Infants, and Children.

13           “(D) Programs that offer early home vis-  
14 iting services, including the Nurse-Family Part-  
15 nership and the Maternal, Infant, and Early  
16 Childhood Home Visiting (MIECHV) Program  
17 (including the Tribal Home Visiting Program).

18           “(E) Programs to provide improved and  
19 affordable access to child care, including pro-  
20 grams funded through the Child Care and De-  
21 velopment Fund, the Temporary Assistance for  
22 Needy Families program, or a State-funded  
23 program.

24           “(e) NO EFFECT ON OTHER PROGRAMS.—Any as-  
25 sistance or benefits received by a family as a result of a

1 project established pursuant to this section shall be dis-  
2 regarded for purposes of determining the family's eligi-  
3 bility for, or amount of, benefits under any other Federal  
4 needs-based programs.

5 “(f) REPORTS.—As a condition of receiving a grant  
6 under this section for a fiscal year, the grantee shall sub-  
7 mit to the Secretary, not later than 6 months after the  
8 end of the fiscal year, a report that specifies, by month  
9 and fiscal year, the following:

10 “(1) The number of infants and toddlers and  
11 the age of the infant and toddlers who received as-  
12 sistance from the grantee's diaper distribution  
13 project.

14 “(2) The number of families that have received  
15 assistance from the grantee's diaper distribution  
16 project.

17 “(3) The number of diapers, and the number of  
18 each type of diapering supply, distributed under the  
19 grantee's diaper distribution project.

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

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

24 “(6) Such other information as the Secretary  
25 may specify.

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

3               “(1) not later than 2 years after the date of en-  
4 actment of the End Diaper Need Act of 2019—

5                       “(A) complete an evaluation of the effec-  
6 tiveness of the program carried out pursuant to  
7 this section;

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

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

14               “(2)(A) not later than 3 years after the date of  
15 enactment of the End Diaper Need Act of 2019, up-  
16 date the evaluation required by paragraph (1)(A);  
17 and

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

20                               “(i) submit to the relevant congressional  
21 committees a report describing the results of  
22 such updated evaluation; and

23                               “(ii) publish the results of such evaluation  
24 on the internet website of the Department of  
25 Health and Human Services.



1 “(h) DEFINITIONS.—In this section:

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

4 “(A) is washable or disposable that may be  
5 worn by an infant or toddler who is not toilet-  
6 trained; and

7 “(B) if disposable—

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

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

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

16 “(II) Waterproof outer cover.

17 “(III) Flexible leg openings.

18 “(IV) Refastening closures.

19 “(2) DIAPERING SUPPLIES.—The term ‘dia-  
20 pering supplies’ means items, including diaper wipes  
21 and diaper cream, necessary to ensure that a child  
22 using a diaper is properly cleaned and protected  
23 from diaper rash.

24 “(3) 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 family whose self-  
3 certified income is not more than 200 percent  
4 of the Federal poverty line.

5           “(4) FEDERAL POVERTY LINE.—The term  
6 ‘Federal poverty line’ means the Federal poverty line  
7 as defined by the Office of Management and Budget  
8 and revised annually in accordance with section  
9 673(2) of the Omnibus Budget Reconciliation Act of  
10 1981 applicable to a family of the size involved.

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

15           “(i) AUTHORIZATION OF APPROPRIATIONS.—

16           “(1) IN GENERAL.—To carry out this section,  
17 there is authorized to be appropriated \$100,000,000  
18 for each of fiscal years 2020 through 2023.

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

1 **SEC. 3. IMPROVING ACCESS TO DIAPERS FOR MEDICALLY**  
2 **COMPLEX CHILDREN.**

3 Section 1915(c) of the Social Security Act (42 U.S.C.  
4 1396n(c)) is amended by adding at the end the following  
5 new paragraph:

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

21 “(B) For purposes of this paragraph—

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

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

3                   “(I) washable or disposable; and

4                   “(II) worn by a medically complex child  
5 who has been diagnosed with a condition de-  
6 scribed in subparagraph (A) and needs such  
7 garment to correct or ameliorate such condition;  
8 and

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

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

16 **AS QUALIFIED MEDICAL EXPENSES.**

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

20           (1) by adding at the end of subparagraph (A)  
21 the following: “For purposes of this subparagraph,  
22 amounts paid for medically necessary diapers and  
23 diapering supplies shall be treated as paid for med-  
24 ical care.”; and

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

3           “(D) MEDICALLY NECESSARY DIAPERS  
4 AND DIAPERING SUPPLIES.—For purposes of  
5 this paragraph—

6           “(i) MEDICALLY NECESSARY DIA-  
7 PERS.—The term ‘medically necessary dia-  
8 per’ means an absorbent garment that is  
9 washable or disposable worn by an indi-  
10 vidual who has attained 3 years of age and  
11 needs diapers because they are medically  
12 necessary, serve a preventative medical  
13 purpose, or are needed to correct or ame-  
14 liorate defects or physical or mental ill-  
15 nesses or conditions which are diagnosed  
16 by a licenced health care provider.

17           “(ii) DIAPERING SUPPLIES.—The  
18 term ‘diapering supplies’ means items, in-  
19 cluding diaper wipes and diaper creams  
20 necessary to ensure that a child using a  
21 medically necessary diaper is properly  
22 cleaned and protected from diaper rash.”.

23           (b) ARCHER MSAs.—Section 220(d)(2)(A) of such  
24 Code is amended by adding at the end the following: “For  
25 purposes of this subparagraph, amounts paid for medically

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

4 (c) HEALTH FLEXIBLE SPENDING ARRANGEMENTS  
5 AND HEALTH REIMBURSEMENT ARRANGEMENTS.—Sec-  
6 tion 106 of such Code is amended by adding at the end  
7 the following new subsection:

8 “(f) REIMBURSEMENTS FOR MEDICALLY NECESSARY  
9 DIAPERS AND DIAPERING SUPPLIES.—For purposes of  
10 this section and section 105, expenses incurred for medi-  
11 cally necessary diapers and diapering supplies (as defined  
12 in section 223(d)(2)(D)) shall be treated as incurred for  
13 medical care.”.

14 (d) EFFECTIVE DATES.—

15 (1) DISTRIBUTIONS FROM HEALTH SAVINGS AC-  
16 COUNTS.—The amendments made by subsections (a)  
17 and (b) shall apply to amounts paid after December  
18 31, 2020.

19 (2) REIMBURSEMENTS.—The amendment made  
20 by subsection (c) shall apply to expenses incurred  
21 after December 31, 2020.

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