

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.

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## 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. GRJALVA, 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

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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,*

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           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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