

116TH CONGRESS
1ST SESSION

S. 1404

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 SENATE OF THE UNITED STATES

MAY 9, 2019

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

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”.

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

2 Part P of title III of the Public Health Service Act
3 (42 U.S.C. 280g et seq.) is amended by adding at the end
4 the following:

5 **“SEC. 399V-7. DIAPER DISTRIBUTION DEMONSTRATION**
6 **PROGRAM.**

7 “(a) ESTABLISHMENT.—The Secretary shall make
8 grants to assist eligible entities in conducting demonstra-
9 tion projects that implement and evaluate strategies to
10 help low-income families address the diaper needs of in-
11 fants and toddlers.

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

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

17 “(2) design the program in such a way that the
18 program—

19 “(A) decreases diaper need in low-income
20 families and meets the unmet diaper needs of
21 infants and toddlers in such families through—

22 “(i) the distribution of free diapers
23 and diapering supplies;

24 “(ii) community outreach to assist in
25 participation in existing diaper distribution
26 programs; or

1 “(iii) improving access to diapers and
2 diapering supplies as part of a comprehen-
3 sive service; and

4 “(B) increases the ability of communities
5 and low-income families in such communities to
6 provide for the diaper needs of infants and tod-
7 dlers.

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

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

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

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

22 “(B) child care;

23 “(C) child development activities in low-in-
24 come communities; or

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

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

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

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

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

23 “(1) Paying for the purchase of diapers and
24 diapering supplies and funding diaper distribution
25 demonstration projects that serve low-income fami-

1 lies with one or more children 3 years of age or
2 younger.

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

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

16 “(A) Programs funded by the temporary
17 assistance for needy families program under
18 part A of title IV of the Social Security Act, in-
19 cluding the State maintenance of effort provi-
20 sions of such program.

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, in-
5 fants, and children under section 17 of the
6 Child Nutrition Act of 1966.

7 “(D) Programs that offer early home vis-
8 iting services, including the nurse-family part-
9 nership programs and the Maternal, infant, and
10 early childhood home visiting program (includ-
11 ing the Tribal home visiting program) under
12 section 511 of the Social Security Act.

13 “(E) Programs to provide improved and
14 affordable access to child care, including pro-
15 grams funded through the Child Care and De-
16 velopment Fund, the temporary assistance for
17 needy families program under part A of title IV
18 of the Social Security Act, or a State-funded
19 program.

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

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

6 “(1) The number of infants and toddlers and
7 the age of the infants and toddlers who received as-
8 sistance from the grantee’s diaper distribution
9 project.

10 “(2) The number of families that have received
11 assistance from the grantee’s diaper distribution
12 project.

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

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

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

20 “(6) Such other information as the Secretary
21 may specify.

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

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

1 “(A) complete an evaluation of the effec-
2 tiveness of the program carried out pursuant to
3 this section;

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
8 on the internet website of the Department of
9 Health and Human Services; and

10 “(2)(A) not later than 3 years after the date of
11 enactment of the End Diaper Need Act of 2019, up-
12 date the evaluation required by paragraph (1)(A);
13 and

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

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

19 “(ii) publish the results of such evaluation
20 on the internet website of the Department of
21 Health and Human Services.

22 “(h) DEFINITIONS.—In this section:

23 “(1) 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 “(2) DIAPERING SUPPLIES.—The term ‘dia-
17 pering supplies’ means items, including diaper wipes
18 and diaper cream, necessary to ensure that a child
19 using a diaper is properly cleaned and protected
20 from diaper rash.

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

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

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

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

14 “(B) For purposes of this paragraph—

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

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

22 “(I) washable or disposable; and

23 “(II) worn by a medically complex child
24 who has been diagnosed with a condition de-
25 scribed in subparagraph (A) and needs such

1 garment to correct or ameliorate such condition;
2 and

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

9 **SEC. 4. INCLUSION OF DIAPERS AND DIAPERING SUPPLIES**
10 **AS QUALIFIED MEDICAL EXPENSES.**

11 (a) **HEALTH SAVINGS ACCOUNTS.**—Section
12 223(d)(2) of the Internal Revenue Code of 1986 is amend-
13 ed—

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

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

21 “(D) **MEDICALLY NECESSARY DIAPERS**
22 **AND DIAPERING SUPPLIES.**—For purposes of
23 this paragraph—

24 “(i) **MEDICALLY NECESSARY DIA-**
25 **PERS.**—The term ‘medically necessary dia-

1 per' means an absorbent garment which is
2 washable or disposable and which is worn,
3 by an individual who has attained 3 years
4 of age, because of medical necessity, to
5 serve a preventative medical purpose, or to
6 correct or ameliorate defects or physical or
7 mental illnesses or conditions diagnosed by
8 a licensed health care provider.

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

16 (b) ARCHER MSAS.—Section 220(d)(2)(A) of the In-
17 ternal Revenue Code of 1986 is amended by adding at the
18 end the following: “For purposes of this subparagraph,
19 amounts paid for medically necessary diapers and dia-
20 pering supplies (as such terms are defined in section
21 223(d)(2)(D)) shall be treated as paid for medical care.”.

22 (c) HEALTH FLEXIBLE SPENDING ARRANGEMENTS
23 AND HEALTH REIMBURSEMENT ARRANGEMENTS.—Sec-
24 tion 106 of the Internal Revenue Code of 1986 is amended
25 by adding at the end the following new subsection:

1 “(h) REIMBURSEMENTS FOR MEDICALLY NEC-
2 CESSARY DIAPERS AND DIAPERING SUPPLIES.—For pur-
3 poses of this section and section 105, expenses incurred
4 for medically necessary diapers and diapering supplies (as
5 such terms are defined in section 223(d)(2)(D)) shall be
6 treated as incurred for medical care.”.

7 (d) EFFECTIVE DATES.—

8 (1) DISTRIBUTIONS FROM CERTAIN AC-
9 COUNTS.—The amendments made by subsections (a)
10 and (b) shall apply to amounts paid after December
11 31, 2020.

12 (2) REIMBURSEMENTS.—The amendment made
13 by subsection (c) shall apply to expenses incurred
14 after December 31, 2020.

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