

118TH CONGRESS
1ST SESSION

H. R. 5644

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 HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2023

Ms. LEE of California 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

A BILL

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. GRANTS FOR DIAPER ASSISTANCE, INCLUDING DIA-**
7 **PERING SUPPLIES AND ADULT INCONTI-**
8 **NENCE MATERIALS AND SUPPLIES.**

9 (a) GRANTS.—The Secretary shall make grants to as-
10 sist eligible entities to help low-income families to address
11 the diaper needs of infants and toddlers.

12 (b) RESERVATION OF FUNDS.—

13 (1) TECHNICAL ASSISTANCE AND TRAINING.—

14 The Secretary shall reserve not more than 2 percent
15 of the amount made available pursuant to subsection
16 (a) for each of fiscal years 2024 through 2027 for
17 purposes of entering into an agreement with a na-
18 tional entity described in subsection (c) to assist in
19 providing technical assistance and training, to sup-
20 port effective policy, practice, research, and cross-
21 system collaboration among grantees and sub-
22 grantees, and to assist in the administration of the
23 program described in this section; and

24 (2) EVALUATION.—The Secretary shall reserve
25 not more than \$3,000,000 of the amount made

1 available pursuant to subsection (a) for fiscal year
2 2024 for purposes of conducting an evaluation under
3 subsection (f).

4 (c) NATIONAL ENTITY DESCRIBED.—A national enti-
5 ty described in this subsection is a nonprofit organization
6 described in section 501(c)(3) of the Internal Revenue
7 Code of 1986 and exempt from taxation under section
8 501(a) of such Code, that—

9 (1) has experience in more than 1 State in the
10 area of—

11 (A) community distributions of basic need
12 services, including experience collecting,
13 warehousing, and distributing basic necessities
14 such as diapers, food, or menstrual products;

15 (B) child care;

16 (C) child development activities in low-in-
17 come communities; or

18 (D) motherhood, fatherhood, or parent
19 education efforts serving low-income parents of
20 young children;

21 (2) demonstrates competency to implement a
22 project, provide fiscal accountability, collect data,
23 and prepare reports and other necessary documenta-
24 tion; and

1 (3) demonstrates a willingness to share infor-
2 mation with researchers, practitioners, and other in-
3 terested parties.

4 (d) USE OF FUNDS.—

5 (1) IN GENERAL.—An eligible entity to which a
6 grant is made under this section shall use the grant
7 in accordance with this subsection.

8 (2) RULES GOVERNING USE OF FUNDS.—

9 (A) IN GENERAL.—Funds are used in ac-
10 cordance with this subsection if—

11 (i) the State, in consultation with rel-
12 evant stakeholders, including agencies, pro-
13 fessional associations, and nonprofit orga-
14 nizations, distributes the funds to eligible
15 entities to—

16 (I) decrease the need for diapers
17 and diapering supplies and adult in-
18 continence materials and supplies in
19 low-income families and meet such
20 unmet needs of infants and toddlers,
21 medically complex children, and low-
22 income adults and adults with disabil-
23 ities in such families through—

24 (aa) the distribution of free
25 diapers and diapering supplies,

1 medically necessary diapers, and
2 adult incontinence materials and
3 supplies; and

4 (bb) improving access to dia-
5 pers and diapering supplies,
6 medically necessary diapers, and
7 adult incontinence materials and
8 supplies;

9 (II) carry out community out-
10 reach to assist in participation in dia-
11 per distribution programs or pro-
12 grams that distribute medically nec-
13 essary diapers or adult incontinence
14 materials and supplies; and

15 (III) increase the ability of com-
16 munities and low-income families in
17 such communities to provide for the
18 need for diapers and diapering sup-
19 plies, medically necessary diapers, and
20 adult continence materials and sup-
21 plies, of infants and toddlers, medi-
22 cally complex children, and low-income
23 adults and adults with disabilities;

1 (ii) the funds are used subject to the
2 limitations in section 2005 of the Social
3 Security Act (42 U.S.C. 1397d); and

4 (iii) the funds are used to supplement,
5 not supplant, State general revenue funds
6 provided for the purposes described in
7 clause (i).

8 (B) ADMINISTRATIVE COSTS.—A State re-
9 ceiving funds made available under subsection
10 (a) may use not more than 5 percent of the
11 funds for State administrative costs, which may
12 include costs of contracting, monitoring, and re-
13 porting.

14 (C) ALLOWABLE USES BY ELIGIBLE ENTI-
15 TIES.—An eligible entity receiving funds made
16 available under subsection (a) shall use the
17 funds for any of the following:

18 (i) To pay for the purchase and dis-
19 tribution of diapers and diapering supplies,
20 medically necessary diapers, and funding
21 diaper (including medically necessary dia-
22 pers) distribution that serves low-income
23 families with—

24 (I) 1 or more children 3 years of
25 age or younger; or

1 (II) 1 or more medically complex
2 children.

3 (ii) To pay for the purchase and dis-
4 tribution of adult incontinence materials
5 and supplies and funding distribution of
6 the materials and supplies for low-income
7 families with 1 or more low-income adults,
8 adults with disabilities, or children with a
9 disability who have attained 3 years of age
10 and have not attained 19 years of age, who
11 rely on adult incontinence materials and
12 supplies.

13 (iii) To integrate activities carried out
14 under clause (i) with other basic needs as-
15 sistance programs serving eligible children
16 and their families, including the following:

17 (I) Programs funded by the tem-
18 porary assistance for needy families
19 program under part A of title IV of
20 the Social Security Act (42 U.S.C.
21 601 et seq.), including the State
22 maintenance of effort provisions of
23 such program.

24 (II) Programs designed to sup-
25 port the health of eligible children,

1 such as the Children’s Health Insur-
2 ance Program under title XXI of the
3 Social Security Act, the Medicaid pro-
4 gram under title XIX of such Act, or
5 State funded health care programs.

6 (III) Programs funded through
7 the special supplemental nutrition
8 program for women, infants, and chil-
9 dren under section 17 of the Child
10 Nutrition Act of 1966.

11 (IV) Programs that offer early
12 home visiting services, including the
13 maternal, infant, and early childhood
14 home visiting program (including the
15 Tribal home visiting program) under
16 section 511 of the Social Security Act
17 (42 U.S.C. 711).

18 (V) Programs to provide im-
19 proved and affordable access to child
20 care, including programs funded
21 through the Child Care and Develop-
22 ment Fund, the temporary assistance
23 for needy families program under part
24 A of title IV of the Social Security

1 Act (42 U.S.C. 601 et seq.), or a
2 State-funded program.

3 (VI) Programs funded under part
4 C of the Individuals with Disabilities
5 Education Act (20 U.S.C. 1431 et
6 seq.).

7 (D) AVAILABILITY OF FUNDS.—

8 (i) FUNDS DISTRIBUTED TO ELIGIBLE
9 ENTITIES.—Funds made available under
10 subsection (a) that are distributed to an el-
11 igible entity by a State for a fiscal year
12 may be expended by the eligible entity only
13 in such fiscal year or the succeeding fiscal
14 year.

15 (ii) EVALUATION.—Funds reserved
16 under subsection (b)(2) to carry out the
17 evaluation under subsection (f) shall be
18 available for expenditure during the 3-year
19 period that begins on the date of enact-
20 ment of this Act.

21 (E) NO EFFECT ON OTHER PROGRAMS.—

22 Any assistance or benefits received by a family
23 through funds made available under subsection
24 (a) shall be disregarded for purposes of deter-
25 mining the family's eligibility for, or amount of,

1 benefits under any other Federal needs-based
2 programs.

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

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

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

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

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

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

9 (6) Such other information as the Secretary
10 may specify.

11 (f) EVALUATION.—The Secretary, in consultation
12 with States, the national entity described in subsection (c),
13 and eligible entities receiving funds made available under
14 this section, shall—

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

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

1 per dermatitis, urinary tract infections, and pa-
2 rental and child depression and anxiety;

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

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

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

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

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

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

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

25 (h) DEFINITIONS.—In this section:

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

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

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

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

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

21 (A) is washable or disposable that may be
22 worn by an infant or toddler who is not toilet-
23 trained; and

24 (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 (42 U.S.C. 9902(2)) applicable to a family of
7 the size involved.

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

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

17 (10) MEDICALLY NECESSARY DIAPER.—The
18 term “medically necessary diaper” means an absorb-
19 ent garment that is—

20 (A) washable or disposable;

21 (B) worn by a medically complex child who
22 has been diagnosed with bowel or bladder incon-
23 tinence, a bowel or bladder condition that
24 causes excess urine or stool (such as short gut
25 syndrome or diabetes insipidus), or a severe

1 skin condition that causes skin erosions (such
2 as epidermolysis bullosa) and needs such gar-
3 ment to correct or ameliorate such condition;
4 and

5 (C) if disposable—

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

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

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

14 (II) Waterproof outer cover.

15 (III) Flexible leg openings.

16 (IV) Refastening closures.

17 (11) STATE.—The term “State” means the 50
18 States, the District of Columbia, the Commonwealth
19 of Puerto Rico the United States Virgin Islands,
20 Guam, the Commonwealth of the Northern Mariana
21 Islands, American Samoa, the Republic of the Mar-
22 shall Islands, the Federated States of Micronesia,
23 and the Republic of Palau.

24 (i) LIMITATIONS ON AUTHORIZATION OF APPROPRIA-
25 TIONS.—To carry out this section, there is authorized to

1 be appropriated \$200,000,000 for each of fiscal years
2 2024 through 2027.

3 (j) EXEMPTION OF PROGRAM FROM SEQUESTRA-
4 TION.—

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

10 “Targeted funding for States for diaper assist-
11 ance, including diapering supplies and adult inconti-
12 nence materials and supplies.”.

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

18 **SEC. 3. IMPROVING ACCESS TO DIAPERS FOR MEDICALLY**

19 **COMPLEX CHILDREN.**

20 Section 1915(c) of the Social Security Act (42 U.S.C.
21 1396n(c)) is amended by adding at the end the following
22 new paragraph:

23 “(11)(A) In the case of any waiver under this sub-
24 section that provides medical assistance to a medically
25 complex child who has been diagnosed with bowel or blad-

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

13 “(B) For purposes of this paragraph:

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

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

20 “(I) washable or disposable;

21 “(II) worn by a medically complex child
22 who has been diagnosed with a condition de-
23 scribed in subparagraph (A) and needs such
24 garment to correct or ameliorate such condition;
25 and

1 “(III) if disposable—

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

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

8 “(AA) Absorbency (with accept-
9 able rates for first and second wet-
10 ting).

11 “(BB) Waterproof outer cover.

12 “(CC) Flexible leg openings.

13 “(DD) Refastening closures.

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

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

22 **AS QUALIFIED MEDICAL EXPENSES.**

23 (a) HEALTH SAVINGS ACCOUNTS.—Section
24 223(d)(2) of the Internal Revenue Code of 1986 is amend-
25 ed—

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

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

6 “(E) MEDICALLY NECESSARY DIAPERS
7 AND DIAPERING SUPPLIES.—For purposes of
8 this paragraph—

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

1 diagnosed by a licensed health care pro-
2 vider, and, if disposable—

3 “(I) does not use any latex or
4 common allergens; and

5 “(II) meets or exceeds the quality
6 standards for diapers commercially
7 available through retail sale in the fol-
8 lowing categories:

9 “(aa) Absorbency (with ac-
10 ceptable rates for first and sec-
11 ond wetting).

12 “(bb) Waterproof outer
13 cover.

14 “(cc) Flexible leg openings.

15 “(dd) Refastening closures.

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

23 (b) ARCHER MSAs.—The last sentence of section
24 220(d)(2)(A) of such Code is amended by inserting “,
25 medically necessary diapers (as defined in section

1 223(d)(2)(E)), and diapering supplies (as defined in sec-
2 tion 223(d)(2)(E))” after “menstrual care products (as
3 defined in section 223(d)(2)(D))”.

4 (c) HEALTH FLEXIBLE SPENDING ARRANGEMENTS
5 AND HEALTH REIMBURSEMENT ARRANGEMENTS.—Sec-
6 tion 106(f) of such Code is amended—

7 (1) by inserting “, medically necessary diapers
8 (as defined in section 223(d)(2)(E)), and diapering
9 supplies (as defined in section 223(d)(2)(E))” after
10 “menstrual care products (as defined in section
11 223(d)(2)(D))”; and

12 (2) in the heading, by inserting “, MEDICALLY
13 NECESSARY DIAPERS, AND DIAPERING SUPPLIES”
14 after “MENSTRUAL CARE PRODUCTS”.

15 (d) EFFECTIVE DATES.—

16 (1) DISTRIBUTIONS FROM CERTAIN AC-
17 COUNTS.—The amendments made by subsections (a)
18 and (b) shall apply to amounts paid after December
19 31, 2024.

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

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