

117TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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.

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IN THE SENATE OF THE UNITED STATES

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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 \_\_\_\_\_

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**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 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; and

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 DIAPERS  
5                   .—The term ‘medically necessary diaper’  
6                   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.