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(Original Signature of Member)

118TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

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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Ms. LEE of California introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_

## **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.