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 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. Grijalva, 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.

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “End Diaper Need Act of 2021”.

SEC. 2. DIAPER DISTRIBUTION DEMONSTRATION PROJECT.

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

“SEC. 399V–7. DIAPER DISTRIBUTION DEMONSTRATION PROGRAM.

“(a) ESTABLISHMENT.—The Secretary shall make grants to assist eligible entities to conduct demonstration projects that implement and evaluate strategies to help low-income families to address the diaper needs of infants and toddlers.

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

“(1) consult with relevant stakeholders, including agencies, professional associations, and nonprofit organizations, on the design of the program; and

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

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

“(i) the distribution of free diapers and diapering supplies;
“(ii) community outreach to assist in participation in existing diaper distribution programs; or
“(iii) improving access to diapers and diapering supplies as part of a comprehensive service; and
“(B) increases the abilities of communities and low-income families in those communities to provide for the diaper needs of infants and toddlers in those communities.
“(c) ELIGIBLE ENTITIES.—To be eligible for a grant under this section, an entity shall—
“(1) be a State or local governmental entity, an Indian Tribe or tribal organization (as defined in section 4 of the Indian Self-Determination and Education Assistance Act), or a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code;
“(2) have experience in the area of—
“(A) community distributions of basic need services, including experience collecting, warehousing, and distributing basic necessities such as diapers, food, or menstrual products;
“(B) child care;
“(C) child development activities in low-income communities; or

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

“(3) demonstrate competency to implement a project, provide fiscal accountability, collect data, and prepare reports and other necessary documentation;

“(4) demonstrate a willingness to share information with researchers, practitioners, and other interested parties; and

“(5) submit to the Secretary a description of the design of the evaluation to be carried out under subsection (d)(2) and receive the Secretary’s approval of such design based on a determination that such design is rigorous and is likely to yield information that is credible and will be useful to other States.

“(d) USE OF FUNDS.—Amounts provided through a grant under this section shall be used to conduct a demonstration project to implement and evaluate strategies to help low-income families to address the diaper needs of infants and toddlers, which use may include any of the following:
“(1) To pay for the purchase of diapers and diapering supplies and fund diaper distribution demonstration projects that serve low-income families with one or more children 3 years of age or younger.

“(2) Using not more than 25 percent of the funds received by the grantee under this section, to evaluate the effect of activities under paragraph (1) on mitigating the health and developmental risks of unmet diaper need among infants, toddlers, and other family members in low-income families, including the risks of diaper dermatitis, urinary tract infections, and parental and child depression and anxiety.

“(3) To integrate activities under paragraph (1) with other basic needs assistance programs serving eligible children and their families, including the following:

“(A) Programs funded by the Temporary Assistance for Needy Families program, including its State maintenance of effort provisions.

“(B) Programs designed to support the health of eligible children, such as the Children’s Health Insurance Program under title XXI of the Social Security Act, the Medicaid
program under title XIX of such Act, or State-funded health care programs.

“(C) Programs funded through the Special Supplemental Nutrition Program for Women, Infants, and Children.

“(D) Programs that offer early home visiting services, including the Nurse-Family Partnership and the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program (including the Tribal Home Visiting Program).

“(E) Programs to provide improved and affordable access to child care, including programs funded through the Child Care and Development Fund, the Temporary Assistance for Needy Families program, or a State-funded program.

“(e) No Effect on Other Programs.—Any assistance or benefits received by a family as a result of a project established pursuant to this section shall be disregarded for purposes of determining the family’s eligibility for, or amount of, benefits under any other Federal needs-based programs.

“(f) Reports.—As a condition of receiving a grant under this section for a fiscal year, the grantee shall submit to the Secretary, not later than 6 months after the
end of the fiscal year, a report that specifies, by month and fiscal year, the following:

“(1) The number of infants and toddlers and the age of the infant and toddlers who received assistance from the grantee’s diaper distribution project.

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

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

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

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

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

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

“(1) not later than 2 years after the date of enactment of the End Diaper Need Act of 2021—

“(A) complete an evaluation of the effectiveness of the program carried out pursuant to this section;
“(B) submit to the relevant congressional committees a report on the results of such evaluation; and

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

“(2)(A) not later than 3 years after the date of enactment of the End Diaper Need Act of 2021, update the evaluation required by paragraph (1)(A); and

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

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

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

“(h) DEFINITIONS.—In this section:

“(1) DIAPER.—The term ‘diaper’ means an absorbent garment that—

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

“(B) if disposable—
“(i) does not use any latex or common allergens; and

“(ii) meets or exceeds the quality standards for diapers commercially available through retail sale in the following categories:

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

“(II) Waterproof outer cover.

“(III) Flexible leg openings.

“(IV) Refastening closures.

“(2) Diapering Supplies.—The term ‘diapering supplies’ means items, including diaper wipes and diaper cream, necessary to ensure that a child using a diaper is properly cleaned and protected from diaper rash.

“(3) Eligible Child.—The term ‘eligible child’ means a child who—

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

“(B) is a member of a family whose self-certified income is not more than 200 percent of the Federal poverty line.

“(4) Federal Poverty Line.—The term ‘Federal poverty line’ means the Federal poverty line as defined by the Office of Management and Budget
and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 applicable to a family of the size involved.

“(5) Low-income.—The term ‘low-income’, with respect to a family, means a family whose self-certified income is not more than 200 percent of the Federal poverty line.

“(i) Authorization of Appropriations.—

“(1) In general.—To carry out this section, there is authorized to be appropriated $100,000,000 for each of fiscal years 2022 through 2025.

“(2) Availability of Funds.—Funds provided to a grantee under this section for a fiscal year may be expended by the grantee only in such fiscal year or the succeeding fiscal year.”.

SEC. 3. IMPROVING ACCESS TO DIAPERS FOR MEDICALLY COMPLEX CHILDREN.

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

“(11)(A) In the case of any waiver under this subsection that provides medical assistance to a medically complex child who has been diagnosed with bowel or bladder incontinence, a bowel or bladder condition that causes excess urine or stool (such as short gut syndrome or diabe-
tes insipidus), or a severe skin condition that causes skin erosions (such as epidermolysis bullosa), such medical assistance shall include, for the duration of the waiver, the provision of 200 medically necessary diapers per month and diapering supplies. Such medical assistance may include the provision of medically necessary diapers in amounts greater than 200 if a licensed health care provider (such as a physician, nurse practitioner, or physician assistant) specifies that such greater amounts are necessary for such medically complex child.

“(B) For purposes of this paragraph—

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

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

“(I) washable or disposable; and

“(II) worn by a medically complex child who has been diagnosed with a condition described in subparagraph (A) and needs such garment to correct or ameliorate such condition; and
“(iii) the term ‘diapering supplies’ means items, including diaper wipes and diaper creams, necessary to ensure that a medically complex child who has been diagnosed with a condition described in sub-paragraph (A) and uses a medically necessary diaper is properly cleaned and protected from diaper rash.”.

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

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

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

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

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

“(i) MEDICALLY NECESSARY DIA-
pers.—The term ‘medically necessary dia-
per’ means an absorbent garment that is washable or disposable worn by an indi-
vidual needs diapers because they are medically necessary, serve a preventative medical purpose, or are needed to correct or ameliorate defects or physical or mental illnesses or conditions which are diagnosed by a licenced health care provider.

“(ii) Diapering Supplies.—The term ‘diapering supplies’ means items, including diaper wipes and diaper creams necessary to ensure that a child using a medically necessary diaper is properly cleaned and protected from diaper rash.”.

(b) Archer MSAs.—Section 220(d)(2)(A) of such Code is amended by adding at the end the following: “For purposes of this subparagraph, amounts paid for medically necessary diapers and diapering supplies (as defined in section 223(d)(2)(D)) shall be treated as paid for medical care.”.

(c) Health Flexible Spending Arrangements and Health Reimbursement Arrangements.—Section 106 of such Code is amended by adding at the end the following new subsection:

“(h) Reimbursements for Medically Necessary Diapers and Diapering Supplies.—For purposes of this section and section 105, expenses incurred
for medically necessary diapers and diapering supplies (as defined in section 223(d)(2)(D)) shall be treated as incurred for medical care.”.

(d) Effective Dates.—

(1) Distributions from Health Savings Accounts.—The amendments made by subsections (a) and (b) shall apply to amounts paid after December 31, 2021.

(2) Reimbursements.—The amendment made by subsection (c) shall apply to expenses incurred after December 31, 2021.