

117TH CONGRESS
1ST SESSION

S. 199

To authorize the Director of the Centers for Disease Control and Prevention to award grants to eligible State, Tribal, and territorial public health agencies to develop and administer a program for digital contact tracing for COVID–19, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 2021

Mr. SCHATZ (for himself and Ms. BALDWIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To authorize the Director of the Centers for Disease Control and Prevention to award grants to eligible State, Tribal, and territorial public health agencies to develop and administer a program for digital contact tracing for COVID–19, 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 “Secure Data and Pri-
5 vacy for Contact Tracing Act of 2021”.

1 **SEC. 2. GRANT PROGRAM FOR DIGITAL CONTACT TRACING**
2 **FOR COVID-19.**

3 (a) IN GENERAL.—The Director of the Centers for
4 Disease Control and Prevention shall award grants to eli-
5 gible State, Tribal, and territorial public health agencies
6 to—

7 (1) establish a contact-tracing program that im-
8 plements traditional contact-tracing protocols with
9 the assistance of digital contact-tracing technology
10 to track and prevent the spread of COVID-19;

11 (2) incorporate digital contact-tracing tech-
12 nology into a contact-tracing program that imple-
13 ments traditional contact-tracing protocols to track
14 and prevent the spread of COVID-19; and

15 (3) expand or maintain an existing program as
16 described in subparagraph (1).

17 (b) USE OF FUNDS.—

18 (1) IN GENERAL.—Funds received through a
19 grant under this section, may be used for—

20 (A) the development, maintenance, or
21 staffing of digital contact-tracing programs;

22 (B) associated outreach and marketing; or

23 (C) other activities identified by a State,
24 Tribal, or territorial public health agency as ad-
25 vancing the effectiveness and reach of digital
26 contact-tracing technologies.

1 (2) EDUCATION AND OUTREACH.—Of the funds
2 received by a State, Tribal, or territorial public
3 health agency through a grant under this section,
4 the agency may use not more than 10 percent of
5 such funds to integrate education and outreach re-
6 lated to vaccines for COVID–19 into digital contact-
7 tracing programs.

8 (c) FUNDING DISQUALIFICATION.—If a State, Trib-
9 al, or territorial public health agency develops or procures
10 any digital contact-tracing technology with respect to
11 COVID–19 that does not meet each of the requirements
12 listed in subsection (d), such State, Tribal, or territorial
13 public health agency shall be ineligible to receive or con-
14 tinue to receive—

15 (1) any funds through a grant under this sec-
16 tion; and

17 (2) any other Federal funds, including under
18 the CARES Act (Public Law 116–136), for any dig-
19 ital contact-tracing technology with respect to
20 COVID–19.

21 (d) DIGITAL CONTACT-TRACING REQUIREMENTS.—
22 A State, Tribal, or territorial public health agency may
23 use a grant under this section for digital contact-tracing
24 technology, as described in subsections (a) and (b), only
25 if the technology meets each of the following requirements:

1 (1) The technology shall be voluntary for the
2 user and provide to the user complete and clear in-
3 formation on the intended use and processing of
4 data collected by the technology. To be voluntary for
5 the user, the technology shall meet requirements in-
6 cluding each of the following:

7 (A) Use of the technology and of contact-
8 tracing data collected using the technology shall
9 be predicated on the user's affirmative consent.

10 (B) Use of the technology shall not be a
11 condition for the reception of government bene-
12 fits.

13 (C) Use of the technology shall not be
14 made a condition of employment or employment
15 status.

16 (2) The technology shall limit the collection of
17 data by the technology to only the data that is nec-
18 essary to meet contact-tracing objectives, includ-
19 ing—

20 (A) the status of any person as an infected
21 or potentially infected person; and

22 (B) the proximity of a person to someone
23 who is symptomatic or has tested positive.

24 (3) The technology—

1 (A) shall delete or de-identify any contact-
2 tracing data that is individually identifiable in-
3 formation not later than the date that is 30
4 days after the end of the COVID–19 emergency
5 declaration; and

6 (B) shall include notifications to prompt
7 users to disable or completely remove any dig-
8 ital contact-tracing technology where practical.

9 (4) The technology shall have robust contact
10 detection specifications, including for distance and
11 time, that allow for detection consistent with guid-
12 ance of the Centers for Disease Control and Preven-
13 tion on COVID–19.

14 (5) The technology shall ensure that the storing
15 of proximity and any contact-tracing data is
16 encrypted to the maximum extent possible.

17 (e) PLAN FOR INTEROPERABILITY.—As a condition
18 on receipt of a grant under this section, a State, Tribal,
19 or territorial public health agency shall—

20 (1) develop and make publicly available a plan
21 for how the digital contact-tracing technology of the
22 agency with respect to COVID–19 augments—

23 (A) traditional contact-tracing efforts, if
24 applicable; and

1 (B) statewide efforts to prevent, prepare
2 for, and respond to COVID–19; and

3 (2) include in such plan a description of the
4 agency’s efforts to ensure that the digital contact-
5 tracing technologies of the agency with respect to
6 COVID–19 are interoperable with the digital con-
7 tact-tracing technology and public health agency
8 databases of other jurisdictions with respect to
9 COVID–19; and

10 (3) ensure that data collected by the digital
11 contact-tracing technology of the agency—

12 (A) is accessed and processed only by pub-
13 lic health authorities (or their designees); and

14 (B) is not shared with any person, or
15 accessed or used by any person, for any purpose
16 other than diagnosis, containment, treatment,
17 or reduction of, or research into, COVID–19.

18 (f) INDEPENDENT SECURITY ASSESSMENTS.—

19 (1) IN GENERAL.—As a condition on receipt of
20 a grant under this section, a State, Tribal, or terri-
21 torial public health agency shall—

22 (A) establish procedures for completing or
23 obtaining independent security assessments of
24 digital contact-tracing infrastructure to ensure

1 that physical and network security is resilient
2 and secure; and

3 (B) develop a process to address the miti-
4 gation or remediation of the security
5 vulnerabilities discovered during such inde-
6 pendent security assessments.

7 (2) SOURCE CODE.—A State, Tribal, or terri-
8 torial public health agency should consider making
9 public the source code of the digital contact-tracing
10 technology used by the agency.

11 (g) APPLICATION.—To seek a grant under this sec-
12 tion, an eligible State, Tribal, or territorial public health
13 agency shall submit an application in such form, in such
14 manner, and containing such information and assurances
15 as the Director may require.

16 (h) SECURING DIGITAL CONTACT-TRACING DATA.—

17 (1) IN GENERAL.—The provisions of the
18 HIPAA privacy and security law (as defined in sec-
19 tion 3009(a)(2) of the Public Health Service Act (42
20 U.S.C. 300jj–19(a)(2))) shall apply to a State, Trib-
21 al, or territorial public health agency receiving a
22 grant under subsection (a) with respect to individ-
23 ually identifiable health information (as defined in
24 section 1171(a)(6) of the Social Security Act (42
25 U.S.C. 1320d(a)(6))) received by, maintained on, or

1 transmitted through a contact-tracing program de-
2 scribed in such subsection (a) in the same manner
3 as such provisions apply with respect to such infor-
4 mation and a covered entity (as defined in section
5 13400(3) of the HITECH Act (42 U.S.C.
6 17921(3))).

7 (2) BUSINESS ASSOCIATES.—

8 (A) IN GENERAL.—Any entity with a con-
9 tract in effect with an agency described in para-
10 graph (1) for the development, maintenance, or
11 operation of a program described in such para-
12 graph shall be deemed to be a business asso-
13 ciate of such agency for purposes of subtitle D
14 of the HITECH Act (42 U.S.C. 17921 et seq.).

15 (B) REVISION OF SAMPLE AGREEMENT.—

16 Not later than 180 days after the date of the
17 enactment of this Act, the Secretary shall revise
18 the sample business associate agreement provi-
19 sions published on January 25, 2013, to take
20 account of the provisions of this subsection.

21 (C) EFFECTIVE DATE.—The provisions of

22 subparagraph (A) shall apply beginning on the
23 day after the Secretary revises the provisions
24 described in subparagraph (B).

1 (i) LIMITATION ON USE OF DATA.—Data generated
2 in connection with the operation of digital contact-tracing
3 technology funded pursuant to this section may not be
4 used for any punitive purpose, including law enforcement,
5 immigration enforcement, or criminal prosecution. Such
6 data and any information derived from it, whether in
7 whole or in part, may not be received as evidence in any
8 trial, hearing, or other proceeding in or before any court,
9 grand jury, department, officer, agency, regulatory body,
10 legislative committee, or other authority of the United
11 States, a State, or a political subdivision thereof.

12 (j) REPORT TO CONGRESS.—Not later than 24
13 months after the date of enactment of this Act, the Comp-
14 troller General of the United States shall—

15 (1) evaluate the outcome of the grants awarded
16 under this section, including an assessment of the
17 impact of the implementation of digital contact-trac-
18 ing programs funded through such grants on the
19 spread of COVID–19; and

20 (2) submit to the Congress a report on the re-
21 sults of such evaluation.

22 (k) DEFINITIONS.—In this section:

23 (1) AFFIRMATIVE EXPRESS CONSENT.—The
24 term “affirmative express consent” means an affirm-
25 ative act by an individual that clearly and conspicu-

1 ously communicates the individual’s authorization
2 for an act or practice, in response to a specific re-
3 quest that—

4 (A) is provided to the individual in a clear
5 and conspicuous disclosure that is separate
6 from other options or acceptance of general
7 terms;

8 (B) includes a description of each act or
9 practice for which the individual’s consent is
10 sought and—

11 (i) is written clearly and unmistakably
12 stated; and

13 (ii) includes a prominent heading that
14 would enable a reasonable individual to
15 identify and understand the act or prac-
16 tice; and

17 (C) cannot be inferred from inaction.

18 (2) CONTACT-TRACING DATA.—The term “con-
19 tact-tracing data” means information linked or rea-
20 sonably linkable to a user or device, that—

21 (A) concerns the COVID–19 pandemic;

22 and

23 (B) is gathered, processed, or transferred
24 by digital contact-tracing technology.

1 (3) COVID–19 EMERGENCY DECLARATION.—
2 The term “COVID–19 emergency declaration” has
3 the meaning given to such term in section
4 1135(g)(1)(B) of the Social Security Act (42 U.S.C.
5 1320b–5).

6 (4) DE-IDENTIFY.—The term “de-identify”
7 means to ensure that information cannot reasonably
8 identify, relate to, describe, be capable of being asso-
9 ciated with, or be linked, directly or indirectly, to a
10 particular individual.

11 (5) DESIGNEE.—The term “designee”—

12 (A) subject to subparagraph (B), means
13 any person or entity, other than a public health
14 agency, that collects, processes, or transfers
15 contact-tracing data in the course of performing
16 a service or function on behalf of, for the ben-
17 efit of, under instruction of, and under contrac-
18 tual agreement with a public health authority;
19 and

20 (B) excludes any Federal, State, Tribal,
21 territorial, or local law (including immigration
22 law) enforcement personnel or entity.

23 (6) DIGITAL CONTACT-TRACING TECH-
24 NOLOGY.—

1 (A) IN GENERAL.—The term “digital con-
2 tact-tracing technology” means a website, on-
3 line application, mobile application, mobile oper-
4 ating system feature, or smart device applica-
5 tion that is designed, in part or in full, for the
6 purpose of—

7 (i) determining that a contact incident
8 has occurred relating to the COVID–19
9 pandemic; and

10 (ii) taking consequent steps such as
11 reporting the incident to a public health
12 authority or user, or providing guidance or
13 instructions to the user of the mobile de-
14 vice or the user’s household.

15 (B) LIMITATIONS.—Such term does not in-
16 clude any technology to assist individuals to
17 evaluate whether they are experiencing COVID–
18 19 symptoms to the extent the technology is not
19 used as described in subparagraph (A).

20 (7) DIRECTOR.—The term “Director” means
21 the Director of the Centers for Disease Control and
22 Prevention.

23 (8) MOBILE APPLICATION.—The term “mobile
24 application” means a software program that runs on
25 the operating system of a mobile device.

1 (9) MOBILE DEVICE.—The term “mobile de-
2 vice” means a smartphone, tablet computer, or simi-
3 lar portable computing device that transmits data
4 over a wireless connection.

5 (10) SOURCE CODE.—The term “source code”
6 is the programming instruction for a computer pro-
7 gram in its original form and saved in a file.

8 (11) TRADITIONAL CONTACT TRACING.—The
9 term “traditional contact tracing” means contact
10 tracing by traditional means prior to contemporary
11 digital contact tracing.

12 (12) USER.—The term “user” means a member
13 of the public who utilizes the software or hardware
14 product.

15 (l) AUTHORIZATION OF APPROPRIATIONS.—To carry
16 out this section, there are authorized to be appropriated
17 \$75,000,000, to remain available until expended.

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