

116TH CONGRESS
2D SESSION

S. 4221

To provide for grants to support the provision of child care by reopening and maintaining the operation of child care programs.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2020

Ms. ERNST (for herself, Mr. ALEXANDER, Mr. CORNYN, Ms. MCSALLY, Mr. YOUNG, Mr. TILLIS, Ms. COLLINS, Mr. DAINES, Mr. GARDNER, and Mr. BOOZMAN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide for grants to support the provision of child care by reopening and maintaining the operation of child care programs.

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 “Back to Work Child
5 Care Grants Act of 2020”.

6 **SEC. 2. BACK TO WORK CHILD CARE GRANTS.**

7 (a) PURPOSE.—The purpose of this section is to sup-
8 port the recovery of the United States economy by pro-
9 viding assistance to aid in reopening child care programs,

1 and maintaining the availability of child care in the United
 2 States, so that parents can access safe care and return
 3 to work.

4 (b) DEFINITIONS.—In this section:

5 (1) COVID–19 PUBLIC HEALTH EMERGENCY.—

6 The term “COVID–19 public health emergency”
 7 means the public health emergency declared by the
 8 Secretary of Health and Human Services under sec-
 9 tion 319 of the Public Health Service Act (42
 10 U.S.C. 247d) on January 31, 2020, with respect to
 11 COVID–19, including any renewal of such declara-
 12 tion.

13 (2) ELIGIBLE CHILD CARE PROVIDER.—The
 14 term “eligible child care provider” means—

15 (A) an eligible child care provider as de-
 16 fined in section 658P(6)(A) of the Child Care
 17 and Development Block Grant Act of 1990 (42
 18 U.S.C. 9858n(6)(A)); and

19 (B) a child care provider that—

20 (i) is license-exempt and operating le-
 21 gally in the State;

22 (ii) is not providing child care services
 23 to relatives; and

24 (iii) satisfies State and local require-
 25 ments, including those referenced in sec-

1 tion 658E(c)(2)(I) of the Child Care and
 2 Development Block Grant Act of 1990
 3 ((42 U.S.C. 9858c)(c)(2)(I)).

4 (3) INDIAN TRIBE; TRIBAL ORGANIZATION.—
 5 The terms “Indian tribe” and “tribal organization”
 6 have the meanings given the terms in section 658P
 7 of the Child Care and Development Block Grant Act
 8 of 1990 (42 U.S.C. 9858n).

9 (4) LEAD AGENCY.—The term “lead agency”
 10 has the meaning given the term in section 658P of
 11 the Child Care and Development Block Grant Act of
 12 1990 (42 U.S.C. 9858n).

13 (5) QUALIFIED CHILD CARE PROVIDER.—The
 14 term “qualified child care provider” means an eligi-
 15 ble child care provider with an application approved
 16 under subsection (g) for the program involved.

17 (6) SECRETARY.—The term “Secretary” means
 18 the Secretary of Health and Human Services.

19 (7) STATE.—The term “State” has the mean-
 20 ing given the term in section 658P of the Child Care
 21 and Development Block Grant Act of 1990 (42
 22 U.S.C. 9858n).

23 (c) GRANTS FOR CHILD CARE PROGRAMS.—From
 24 the funds appropriated to carry out this section, the Sec-
 25 retary shall make Back to Work Child Care grants to

1 States, Indian tribes, and tribal organizations, that submit
2 notices of intent to provide assurances under subsection
3 (d)(2). The grants shall provide for subgrants to qualified
4 child care providers, for a transition period of not more
5 than 9 months to assist in paying for fixed costs and in-
6 creased operating expenses due to COVID–19, and to re-
7 enroll children in an environment that supports the health
8 and safety of children and staff.

9 (d) PROCESS FOR ALLOCATION OF FUNDS.—

10 (1) ALLOCATION.—Any funds that are appro-
11 priated to carry out this section shall be distributed
12 by the Secretary to the Administration for Children
13 and Families for distribution under the Child Care
14 and Development Block Grant Act of 1990 (42
15 U.S.C. 9857 et seq.) in accordance with subsection
16 (e)(2) of this Act.

17 (2) NOTICE.—Not later than 7 days after funds
18 are appropriated to carry out this section, the Sec-
19 retary shall provide to States, Indian tribes, and
20 tribal organizations a notice of funding availability,
21 for Back to Work Child Care grants under sub-
22 section (c) from allotments and payments under sub-
23 section (e)(2). The Secretary shall issue a notice of
24 the funding allocations for each State, Indian tribe,

1 and tribal organization not later than 14 days after
2 funds are appropriated to carry out this section.

3 (3) NOTICE OF INTENT.—Not later than 14
4 days after issuance of a notice of funding allocations
5 under paragraph (1), a State, Indian tribe, or tribal
6 organization that seeks such a grant shall submit to
7 the Secretary a notice of intent to provide assur-
8 ances for such grant. The notice of intent shall in-
9 clude a certification that the State, Indian tribe, or
10 tribal organization will repay the grant funds if such
11 State, Indian tribe, or tribal organization fails to
12 provide assurances that meet the requirements of
13 subsection (f) or to comply with such an assurance.

14 (4) GRANTS TO LEAD AGENCIES.—The Sec-
15 retary may make grants under subsection (c) to the
16 lead agency of each State, Indian tribe, or tribal or-
17 ganization, upon receipt of the notice of intent to
18 provide assurances for such grant.

19 (5) PROVISION OF ASSURANCES.—Not later
20 than 15 days after receiving the grant, the State, In-
21 dian tribe, or tribal organization shall provide assur-
22 ances that meet the requirements of subsection (f).

23 (e) FEDERAL RESERVATION; ALLOTMENTS AND PAY-
24 MENTS.—

1 (1) RESERVATION.—The Secretary shall reserve
2 not more than 1 percent of the amount appropriated
3 to carry out this section to pay for the costs of the
4 Federal administration of this section. The amount
5 appropriated to carry out this section and reserved
6 under this paragraph shall remain available through
7 fiscal year 2021.

8 (2) ALLOTMENTS AND PAYMENTS.—The Sec-
9 retary shall use the remaining portion of such
10 amount to make allotments and payments, to States,
11 Indian tribes, and tribal organizations that submit
12 such a notice of intent to provide assurances, in ac-
13 cordance with paragraphs (1) and (2) of subsection
14 (a), and subsection (b), of section 658O of the Child
15 Care and Development Block Grant Act of 1990 (42
16 U.S.C. 9858m), for the grants described in sub-
17 section (c).

18 (f) ASSURANCES.—A State, Indian tribe, or tribal or-
19 ganization that receives a grant under subsection (c) shall
20 provide to the Secretary assurances that the lead agency
21 will—

22 (1) require as a condition of subgrant funding
23 under subsection (g) that each eligible child care
24 provider applying for a subgrant from the lead agen-
25 cy—

1 (A) has been an eligible child care provider
2 in continuous operation and serving children
3 through a child care program immediately prior
4 to March 1, 2020;

5 (B) agree to follow all applicable State,
6 local, and tribal health and safety requirements
7 and, if applicable, enhanced protocols for child
8 care services and related to COVID–19 or an-
9 other health or safety condition;

10 (C) agree to comply with the documenta-
11 tion and reporting requirements under sub-
12 section (h); and

13 (D) certify in good faith that the child care
14 program of the provider will remain open for
15 not less than 1 year after receiving such a
16 subgrant, unless such program is closed due to
17 extraordinary circumstances, including a state
18 of emergency declared by the Governor or a
19 major disaster or emergency declared by the
20 President under section 401 or 501, respec-
21 tively, of the Robert T. Stafford Disaster Relief
22 and Emergency Assistance Act (42 U.S.C.
23 5170, 5191);

24 (2) ensure eligible child care providers in urban,
25 suburban, and rural areas can readily apply for and

1 access funding under this section, which shall in-
2 clude the provision of technical assistance either di-
3 rectly or through resource and referral agencies or
4 staffed family child care provider networks;

5 (3) ensure that subgrant funds are made avail-
6 able to eligible child care providers regardless of
7 whether the eligible child care provider is providing
8 services for which assistance is made available under
9 the Child Care and Development Block Grant Act of
10 1990 (42 U.S.C. 9857 et seq.) at the time of appli-
11 cation for a subgrant;

12 (4) through at least December 31, 2020, con-
13 tinue to expend funds provided under the Child Care
14 and Development Block Grant Act of 1990 (42
15 U.S.C. 9857 et seq.) for the purpose of continuing
16 payments and assistance to qualified child care pro-
17 viders on the basis of applicable reimbursements
18 prior to March 2020;

19 (5) undertake a review of burdensome State,
20 local, and tribal regulations and requirements that
21 hinder the opening of new licensed child care pro-
22 grams to meet the needs of the working families in
23 the State or tribal community, as applicable;

1 (6) make available to the public, which shall in-
2 clude, at a minimum, posting to an internet website
3 of the lead agency—

4 (A) notice of funding availability through
5 subgrants for qualified child care providers
6 under this section; and

7 (B) the criteria for awarding subgrants for
8 qualified child care providers, including the
9 methodology the lead agency used to determine
10 and disburse funds in accordance with subpara-
11 graphs (D) and (E) of subsection (g)(4); and

12 (7) ensure the maintenance of a delivery system
13 of child care services throughout the State that pro-
14 vides for child care in a variety of settings, including
15 the settings of family child care providers.

16 (g) LEAD AGENCY USE OF FUNDS.—

17 (1) IN GENERAL.—A lead agency that receives
18 a Back to Work Child Care grant under this sec-
19 tion—

20 (A) shall use a portion that is not less
21 than 94 percent of the grant funds to award
22 subgrants to qualified child care providers as
23 described in the lead agency's assurances pur-
24 suant to subsection (f);

1 (B) shall reserve not more than 6 percent
2 of the funds to—

3 (i) use not less than 1 percent of the
4 funds to provide technical assistance and
5 support in applying for and accessing
6 funding through such subgrants to eligible
7 child care providers, including to rural pro-
8 viders, family child care providers, and
9 providers with limited administrative ca-
10 pacity; and

11 (ii) use the remainder of the reserved
12 funds to—

13 (I) administer subgrants to quali-
14 fied child care providers under para-
15 graph (4), which shall include moni-
16 toring the compliance of qualified
17 child care providers with applicable
18 State, local, and tribal health and
19 safety requirements; and

20 (II) comply with the reporting
21 and documentation requirements de-
22 scribed in subsection (h); and

23 (C)(i) shall not make more than 1
24 subgrant under paragraph (4) to a child care
25 provider, except as described in clause (ii); and

1 (ii) may make multiple subgrants to a
2 qualified child care provider, if the lead agency
3 makes each subgrant individually for 1 child
4 care program operated by the provider and the
5 funds from the multiple subgrants are not
6 pooled for use for more than 1 of the programs.

7 (2) ROLE OF THIRD PARTY.—The lead agency
8 may designate a third party, such as a child care re-
9 source and referral agency, to carry out the respon-
10 sibilities of the lead agency, and oversee the activi-
11 ties conducted by qualified child care providers
12 under this subsection.

13 (3) OBLIGATION AND RETURN OF FUNDS.—

14 (A) OBLIGATION.—

15 (i) IN GENERAL.—The lead agency
16 shall obligate at least 50 percent of the
17 grant funds in the portion described in
18 paragraph (1)(A) for subgrants to quali-
19 fied child care providers by the day that is
20 6 months after the date of enactment of
21 this Act.

22 (ii) WAIVERS.—At the request of a
23 State, Indian tribe, or tribal organization,
24 and for good cause shown, the Secretary
25 may waive the requirement under clause (i)

1 for the State, Indian tribe, or tribal orga-
2 nization.

3 (B) RETURN OF FUNDS.—Not later than
4 the date that is 12 months after a grant is
5 awarded to a lead agency in accordance with
6 this section, the lead agency shall return to the
7 Secretary any of the grant funds that are not
8 obligated by the lead agency by such date. The
9 Secretary shall return any funds received under
10 this subparagraph to the Treasury of the
11 United States.

12 (4) SUBGRANTS.—

13 (A) IN GENERAL.—A lead agency that re-
14 ceives a grant under subsection (c) shall make
15 subgrants to qualified child care providers to
16 assist in paying for fixed costs and increased
17 operating expenses, for a transition period of
18 not more than 9 months, so that parents have
19 a safe place for their children to receive child
20 care as the parents return to the workplace.

21 (B) USE OF FUNDS.—A qualified child
22 care provider may use subgrant funds for—

23 (i) sanitation and other costs associ-
24 ated with cleaning the facility, including
25 deep cleaning in the case of an outbreak of

1 COVID–19, of a child care program used
2 to provide child care services;

3 (ii) recruiting, retaining, and compen-
4 sating child care staff, including providing
5 professional development to the staff re-
6 lated to child care services and applicable
7 State, local, and tribal health and safety
8 requirements and, if applicable, enhanced
9 protocols for child care services and related
10 to COVID–19 or another health or safety
11 condition;

12 (iii) paying for fixed operating costs
13 associated with providing child care serv-
14 ices, including the costs of payroll, the con-
15 tinuation of existing (as of March 1, 2020)
16 employee benefits, mortgage or rent, utili-
17 ties, and insurance;

18 (iv) acquiring equipment and supplies
19 (including personal protective equipment)
20 necessary to provide child care services in
21 a manner that is safe for children and
22 staff in accordance with applicable State,
23 local, and tribal health and safety require-
24 ments;

1 (v) replacing materials that are no
2 longer safe to use as a result of the
3 COVID–19 public health emergency;

4 (vi) making facility changes and re-
5 pairs to address enhanced protocols for
6 child care services related to COVID–19 or
7 another health or safety condition, to en-
8 sure children can safely occupy a child care
9 facility;

10 (vii) purchasing or updating equip-
11 ment and supplies to serve children during
12 nontraditional hours;

13 (viii) adapting the child care program
14 or curricula to accommodate children who
15 have not had recent access to a child care
16 setting;

17 (ix) carrying out any other activity re-
18 lated to the child care program of a quali-
19 fied child care provider; and

20 (x) reimbursement of expenses in-
21 curred before the provider received a
22 subgrant under this paragraph, if the use
23 for which the expenses are incurred is de-
24 scribed in any of clauses (i) through (ix)

1 and is disclosed in the subgrant application
2 for such subgrant.

3 (C) SUBGRANT APPLICATION.—To be
4 qualified to receive a subgrant under this para-
5 graph, an eligible child care provider shall sub-
6 mit an application to the lead agency in such
7 form and containing such information as the
8 lead agency may reasonably require, includ-
9 ing—

10 (i) a budget plan that includes—

11 (I) information describing how
12 the eligible child care provider will use
13 the subgrant funds to pay for fixed
14 costs and increased operating ex-
15 penses, including, as applicable, pay-
16 roll, employee benefits, mortgage or
17 rent, utilities, and insurance, de-
18 scribed in subparagraph (B)(iii);

19 (II) data on current operating
20 capacity, taking into account previous
21 operating capacity for a period of time
22 prior to the COVID–19 public health
23 emergency, and updated group size
24 limits and staff-to-child ratios;

1 (III) child care enrollment, at-
2 tendance, and revenue projections
3 based on current operating capacity
4 and previous enrollment and revenue
5 for the period described in subclause
6 (II); and

7 (IV) a demonstration of how the
8 subgrant funds will assist in pro-
9 moting the long-term viability of the
10 eligible child care provider and how
11 the eligible child care provider will
12 sustain its operations after the ces-
13 sation of funding under this section;

14 (ii) assurances that the eligible child
15 care provider will—

16 (I) report to the lead agency, be-
17 fore every month for which the
18 subgrant funds are to be received,
19 data on current financial characteris-
20 tics, including revenue, and data on
21 current average enrollment and at-
22 tendance;

23 (II) not artificially suppress rev-
24 enue, enrollment, or attendance for

1 the purposes of receiving subgrant
2 funding;

3 (III) provide the necessary docu-
4 mentation under subsection (h) to the
5 lead agency, including providing docu-
6 mentation of expenditures of subgrant
7 funds; and

8 (IV) implement all applicable
9 State, local, and tribal health and
10 safety requirements and, if applicable,
11 enhanced protocols for child care serv-
12 ices and related to COVID-19 or an-
13 other health or safety condition; and

14 (iii) a certification in good faith that
15 the child care program will remain open
16 for not less than 1 year after receiving a
17 subgrant under this paragraph, unless
18 such program is closed due to extraor-
19 dinary circumstances described in sub-
20 section (f)(1)(D).

21 (D) SUBGRANT DISBURSEMENT.—In pro-
22 viding funds through a subgrant under this
23 paragraph—

24 (i) the lead agency shall—

1 (I) disburse such subgrant funds
 2 to a qualified child care provider in
 3 installments made not less than once
 4 monthly;

5 (II) disburse a subgrant install-
 6 ment for a month after the qualified
 7 child care provider has provided, be-
 8 fore that month, the enrollment, at-
 9 tendance, and revenue data required
 10 under subparagraph (C)(ii)(I) and, if
 11 applicable, current operating capacity
 12 data required under subparagraph
 13 (C)(i)(II); and

14 (III) make subgrant installments
 15 to any qualified child care provider for
 16 a period of not more than 9 months;
 17 and

18 (ii) the lead agency may, notwith-
 19 standing subparagraph (E)(i), disburse an
 20 initial subgrant installment to a provider
 21 in a greater amount than that subpara-
 22 graph provides for, and adjust the suc-
 23 ceeding installments, as applicable.

24 (E) SUBGRANT INSTALLMENT AMOUNT.—

25 The lead agency—

1 (i) shall determine the amount of a
2 subgrant installment under this paragraph
3 by basing the amount on—

4 (I)(aa) at a minimum, the fixed
5 costs associated with the provision of
6 child care services by a qualified child
7 care provider; and

8 (bb) at the election of the lead
9 agency, an additional amount deter-
10 mined by the State, for the purposes
11 of assisting qualified child care pro-
12 viders with, as applicable, increased
13 operating costs and lost revenue, asso-
14 ciated with the COVID-19 public
15 health emergency; and

16 (II) any other methodology that
17 the lead agency determines to be ap-
18 propriate, and which is disclosed in
19 reporting submitted by the lead agen-
20 cy under subsection (f)(6)(B);

21 (ii) shall ensure that, for any period
22 for which subgrant funds are disbursed
23 under this paragraph, no qualified child
24 care provider receives a subgrant install-
25 ment that when added to current revenue

1 for that period exceeds the revenue for the
2 corresponding period 1 year prior; and

3 (iii) may factor in decreased operating
4 capacity due to updated group size limits
5 and staff-to-child ratios, in determining
6 subgrant installment amounts.

7 (F) REPAYMENT OF SUBGRANT FUNDS.—

8 A qualified child care provider that receives a
9 subgrant under this paragraph shall be required
10 to repay the subgrant funds if the lead agency
11 determines that the provider fails to provide the
12 assurances described in subparagraph
13 (C)(ii)(II), or to comply with such an assur-
14 ance.

15 (5) SUPPLEMENT NOT SUPPLANT.—Amounts

16 made available to carry out this section shall be used
17 to supplement and not supplant other Federal,
18 State, tribal, and local public funds expended to pro-
19 vide child care services, including funds provided
20 under the Child Care and Development Block Grant
21 Act of 1990 (42 U.S.C. 9857 et seq.) and State and
22 tribal child care programs.

23 (h) DOCUMENTATION AND REPORTING REQUIRE-

24 MENTS.—

1 (1) DOCUMENTATION.—A State, Indian tribe,
2 or tribal organization receiving a grant under sub-
3 section (c) shall provide documentation of any State
4 or tribal expenditures from grant funds received
5 under subsection (c) in accordance with section
6 658K(b) of the Child Care Development Block
7 Grant Act of 1990 (42 U.S.C. 9858i(b)), and to the
8 independent entity described in that section.

9 (2) REPORTS.—

10 (A) LEAD AGENCY REPORT.—A lead agen-
11 cy receiving a grant under subsection (c) shall,
12 not later than 12 months after receiving such
13 grant, submit a report to the Secretary that in-
14 cludes for the State or tribal community in-
15 volved a description of the program of sub-
16 grants carried out to meet the objectives of this
17 section, including—

18 (i) a description of how the lead agen-
19 cy determined—

20 (I) the criteria for awarding sub-
21 grants for qualified child care pro-
22 viders, including the methodology the
23 lead agency used to determine and
24 disburse funds in accordance with

1 subparagraphs (D) and (E) of sub-
2 section (g)(4); and

3 (II) the types of providers that
4 received priority for the subgrants, in-
5 cluding considerations related to—

6 (aa) setting;

7 (bb) average monthly reve-
8 nues, enrollment, and attendance,
9 before and during the COVID-19
10 public health emergency and
11 after the expiration of State,
12 local, and tribal stay-at-home or-
13 ders; and

14 (cc) geographically based
15 child care service needs across
16 the State or tribal community;
17 and

18 (ii) the number of eligible child care
19 providers in operation and serving children
20 on March 1, 2020, and the average num-
21 ber of such providers for March 2020 and
22 each of the 11 months following, disaggre-
23 gated by age of children served, geography,
24 region, center-based child care setting, and
25 family child care setting;

(iii) the number of child care slots, in the capacity of a qualified child care provider given applicable group size limits and staff-to-child ratios, that were open for attendance of children on March 1, 2020, the average number of such slots for March 2020 and each of 11 months following, disaggregated by age of children served, geography, region, center-based child care setting, and family child care setting;

(iv)(I) the number of qualified child care providers that received a subgrant under subsection (g)(4), disaggregated by age of children served, geography, region, center-based child care setting, and family child care setting, and the average and range of the amounts of the subgrants awarded; and

(II) the percentage of all eligible child care providers that are qualified child care providers that received such a subgrant, disaggregated as described in subclause (I); and

1 (v) information concerning how quali-
2 fied child care providers receiving sub-
3 grants under subsection (g)(4) used the
4 subgrant funding received, disaggregated
5 by the allowable uses of funds described in
6 subsection (g)(4)(B).

7 (B) REPORT TO CONGRESS.—Not later
8 than 90 days after receiving the lead agency re-
9 ports required under subparagraph (A), the
10 Secretary shall make publicly available and pro-
11 vide to the Committee on Health, Education,
12 Labor, and Pensions of the Senate and the
13 Committee on Education and Labor of the
14 House of Representatives a report summarizing
15 the findings of the lead agency reports.

16 (i) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated such sums as may be
18 necessary to carry out the activities under this Act.

○