

Date of Hearing: April 1, 2025

ASSEMBLY COMMITTEE ON HEALTH
Mia Bonta, Chair
AB 636 (Ortega) – As Amended March 13, 2025

SUBJECT: Medi-Cal: diapers.

SUMMARY: Requires Medi-Cal to cover diapers for children under certain conditions. Specifically, **this bill:**

- 1) Requires the Medi-Cal program to cover diapers under the following circumstances, notwithstanding any other law:
 - a) For any child greater than three years of age who has been diagnosed with a physical, mental, neurological, or behavioral health condition that contributes to incontinence.
 - b) For individuals under 21 years of age if necessary to correct or ameliorate a condition pursuant to the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) standards set forth under federal law, as specified.
- 2) Limits diapers to an appropriate supply based on the diagnosed condition and the age of the Medi-Cal beneficiary.
- 3) Requires the Department of Health Care Services (DHCS) to seek any necessary federal approvals, and conditions implementation on necessary federal approvals, federal matching funds, and a legislative appropriation.

EXISTING FEDERAL LAW requires state Medicaid programs to cover, under EPSDT, periodic and as-needed medical, vision, hearing and dental screening and services, as well as any other Medicaid service, if the service is needed to “correct or ameliorate” defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the state plan. [42 United States Code § 1396d(r)]

EXISTING STATE LAW:

- 1) Establishes the Medi-Cal Program, administered by DHCS, to provide comprehensive health benefits to low-income individuals who meet specified eligibility criteria. [Welfare and Institutions Code (WIC) § 14000 *et seq.*]
- 2) Establishes a schedule of benefits under the Medi-Cal program, which includes federally required and optional Medicaid benefits, subject to utilization controls. [WIC § 14132]
- 3) Establishes EPSDT as a Medi-Cal benefit for any individual under 21 years of age is covered, consistent with the requirements of federal law, as specified. [WIC § 14132(v)]
- 4) Establishes Medi-Cal coverage of medical supplies, including those for treating incontinence. [WIC § 14125.1]
- 5) Establishes medical necessity standards in Medi-Cal for individuals both under and over the age of 21. [WIC § 14059.5]

- 6) Establishes the California Advancing and Innovating Medi-Cal (CalAIM) Act, and requires the implementation of CalAIM to support the following goals:
 - a) Identify and manage the risk and needs of Medi-Cal beneficiaries through whole-person-care approaches and addressing social determinants of health;
 - b) Transition and transform the Medi-Cal program to a more consistent and seamless system by reducing complexity and increasing flexibility; and,
 - c) Improve quality outcomes, reduce health disparities, and drive delivery system transformation and innovation through value-based initiatives, modernization of systems, and payment reform. [WIC § 14184.100]
- 7) Authorizes Community Supports, under CalAIM, that a Medi-Cal managed care plan may elect to cover. Specifies Community Supports are provided “in lieu of” typical Medi-Cal covered services, in accordance with the federally approved CalAIM Terms and Conditions. [WIC § 14184.206]
- 8) Establishes, within the Department of Health Care Access and Information (HCAI), the California Affordable Drug Manufacturing Act of 2020, also known as CalRx, to manufacture drugs or partner with drug manufacturers to lower pharmaceutical costs. [Health and Safety Code § 127690 *et seq.*]

FISCAL EFFECT: Unknown. This bill has not yet been analyzed by a fiscal committee.

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, it is unacceptable that in California in 2024, families are having to choose between feeding their families and buying diapers for their infants—especially since there is already a federal program such as EPSDT that addresses the exact issue of medically necessary diaper access. The author indicates this bill simply utilizes an existing federal program to expand access to much-needed diaper assistance for California children and families stuck in the endless loop of poverty.

- 2) **BACKGROUND.**

- a) **Diaper Need.** According to the Center for Budget and Policy Priorities (CBPP), diaper need is the struggle to afford a sufficient supply of diapers required to keep a child clean, dry, and healthy. On average, CBPP notes, diapers cost nearly \$100 per month. According to the First 5 Center for Children’s Policy, diaper access and affordability are essential components of a child’s basic needs. Without consistent diaper changes, babies run the risk of infection, diaper rashes, urinary tract infections, and other significant health problems that may require medical attention. The federal Administration for Children and Families (AFDC) notes geographic barriers worsen diaper need for low-income families in California, most commercial laundry facilities do not allow cloth diapers, and cost-saving measures like buying in bulk are infeasible due to the distance needed to travel to big box stores.

According to a study by the National Diaper Bank Network, “*Diaper Check 2023: Diaper Insecurity among U.S. Children and Families: Major Findings*.”

- i) **Diaper need forces families to cut back on other essentials.** Forty-six percent of families with diaper need reported reducing other expenditures to afford diapers, with most of those households cutting back in multiple areas. The most common cutback was entertainment outside the home (56%). Other common areas for cutbacks included food (35%) and utilities (19%);
 - ii) **Diaper need is associated with stress and worry.** Seventy percent of the respondents reporting diaper need said that they were stressed or anxious about their responsibilities as a parent or caregiver. Fifty-three percent said they felt judged as a bad parent/caregiver because they could not afford diapers;
 - iii) **Diaper need impacts daily life.** Families with diaper need reported more instances of unmet health needs; stress and anxiety; limitations on free time and social contact; and barriers to work;
 - iv) **Diaper need intersects with food insecurity.** More than a quarter of respondents (28%) who reported diaper need said that they skipped meals so that they could afford more diapers; and,
 - v) **Diaper need results in parents missing work and losing wages.** One in four parents and caregivers with diaper need reported having to miss work or school because they did not have enough diapers to drop their child off at childcare, and reported missing, on average, more than five workdays in the past 30 days.
- b) **Solutions for Diaper Need.** A patchwork of programs and initiatives address diaper need. These programs are generally not universally accessible to those experiencing diaper need, and are often not adequately resourced to cover the total cost of diapers.
- i) **Diaper Banks.** Similar to food banks and often administered in tandem with or by food banks, diaper banks provide diapers to families who need them, based on the supply, capacity, and policies of the distributing entity. For instance, the Sacramento Food Bank and Family Services is a participant in the National Diaper Bank Network. Its website lists 18 distribution locations in the Sacramento region, which all have various policies, including some that require appointments, registration, or photo ID. County-administered distribution locations in the Sacramento region require participation in assistance programs such as CalFresh, Medi-Cal, or CalWORKS. According to the Legislative Analyst’s Office (LAO), the state also periodically has provided one-time General Fund support for these banks—most recently, \$9 million in 2024-25.
 - ii) **Federal Grant.** California was awarded \$1.2 million from the federal AFDC in the second cohort of grantees for the Diaper Distribution Pilot, which was launched in 2022. Under the pilot, the California Community Action Partnership Association partnered with the National Diaper Bank Network and five local agencies to distribute diapers and connect families with other anti-poverty programs.
 - iii) **Cash Assistance Programs.** The CBPP published a fact sheet in 2021 titled, “*End Diaper Need and Period Poverty: Families Need Cash Assistance to Meet Basic Needs.*” As it pertains to diapers, the fact sheet recommends policymakers should expand Temporary Assistance for Needy Families, increasing benefits and easing

accessibility, to ensure families can afford personal care products, as well continue the expansion of the Child Tax Credit that provided an increased credit as a monthly cash benefit to the lowest-income families. California has added a diaper benefit to the CalWORKS program, as described below.

- iv) **Medicaid Managed Care Plan Programs.** Some health insurers have programs to address diaper need. For instance, Priority Health, a Medicaid managed care plan in Michigan, offers a perk for mothers who participate in the state's Maternal Infant Health Program and attend their postpartum appointment. Participants receive two free bags of diapers delivered to their home and are eligible for additional diaper discounts.
- c) **Diaper Assistance in CalWORKS and 2017 Report.** Pursuant to a Supplemental Reporting Language requirement included in the 2016-17 Budget Act, the California Department of Social Services (DSS) released a report, "*Summary of Options for the Provision of Diaper Assistance to Low-Income Families.*" The report summarized seven potential delivery methods that were considered by DSS. Ultimately, AB 480 (Gonzalez Fletcher), Chapter 690, Statutes of 2017, implemented one of the options: a diaper benefit as a welfare-to-work supportive service within the CalWORKS program. The benefit provides \$30 per month to assist with diaper cost for children under 36 months of age. According to the LAO, the benefit, which has not been adjusted for inflation since its inception, supports around 50,000 children, at a cost of \$18 million in 2024-25.

In the report, Medi-Cal coverage was reviewed and the option was dismissed, per the following analysis in the report:

"California currently allows for diapers to be prescribed and funded under Medi-Cal for children five and older when a doctor has verified a medically necessary reason for the diaper. Many other states allow for children three and older to receive this benefit funded (mostly) by federal Medicaid dollars. While it may be possible for the state to lower the age restriction, **this delivery option would only benefit children with a medically-based need for diapers and not infants.** Given this limitation, this method was not further evaluated."

- d) **Medi-Cal Coverage of Benefits and Medical Necessity.** Medi-Cal provides a comprehensive set of health benefits, which may be accessed as medically necessary. Medi-Cal covers a core set of federally required health care benefits as well as a number of optional benefits. The overwhelming majority of benefits are federally approved and covered under California's Medi-Cal State Plan, which means the state can receive federal financial participation (FFP), or federal matching funds, for the services. The state can add or remove benefits by filing an amendment to the state plan, called a State Plan Amendment (SPA). A SPA is reviewed and must be approved by the federal Centers for Medicare and Medicaid Services (CMS) for a change to Medicaid benefits to be effectuated.

As noted, Medi-Cal benefits are covered when medically necessary. For many benefits, medical necessity is determined by the health care provider. For some benefits, a beneficiary must meet predefined criteria defined by DHCS to establish medical necessity. Medical necessity may also be established on a case-by-case basis through the Treatment Authorization Review process in the Fee-for-Service Medi-Cal program, or

through the utilization review process of a Medi-Cal managed care plan.

For individuals 21 years of age or older, a service is “medically necessary” or a “medical necessity” when it is reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain.

- e) **Medical Necessity under EPSDT.** A different, more generous medical necessity standard applies for children under 21 years of age under the EPSDT benefit. For children under 21, state law references the standards set forth under the federal law establishing EPSDT (see Existing Federal Law, above). This law requires coverage of any benefit or service that can be covered under Medicaid that is necessary to “correct or ameliorate” a child’s health condition. The EPSDT benefit also requires a comprehensive array of prevention, diagnostic, and treatment services for individuals under the age of 21 who are enrolled in Medicaid.

This bill mirrors language in federal law that establishes EPSDT, by covering diapers through Medi-Cal “if necessary to correct or ameliorate a condition.”

- f) **Urinary Incontinence (UI) in Children.** According to the National Kidney and Urologic Diseases Information Clearinghouse of the National Institutes of Health, UI is the loss of bladder control, which results in the accidental loss of urine. In children under age three, it’s normal to not have full bladder control. As children get older, they become more able to control their bladder. Wetting in younger children is common and not considered UI, so daytime UI is not usually diagnosed until age five or six, and nighttime UI is not usually diagnosed until age seven. Incontinence in children over the age of three may be caused by a wide range of underlying medical conditions, mental health conditions such as anxiety, and behavioral factors such as infrequent voiding (hold urine for prolonged periods of time).
- g) **Current Medi-Cal Policy on Coverage of Diapers.** Medi-Cal covers incontinence products as medical supplies, including diapers, when prescribed by a physician, nurse practitioner, clinical nurse specialist, or a physician assistant within their scope of practice, for use in chronic pathologic conditions that cause the recipient’s incontinence.

The Medi-Cal Provider Manual, “Incontinence Medical Supplies,” was last updated in April 2022, and states clearly that Medi-Cal does not reimburse for incontinence supplies for recipients younger than age five. However, it also states, paradoxically, that Medi-Cal **may** reimburse for incontinence supplies through EPSDT, where the incontinence is due to a chronic physical or mental condition, including cerebral palsy and developmental delay, and at an age when the child would normally be expected to achieve continence. Therefore, although circumstances exist where coverage of diapers may be required under EPSDT, and DHCS coverage policy acknowledges this eventuality, it is unclear how this EPSDT entitlement can be effectuated for children under five even if medically necessary, based on the policy statement that Medi-Cal does not reimburse for incontinence supplies for children under five and the lack of clear billing guidance for this situation. Current DHCS policy also does not acknowledge the possibility of coverage based on conditions related to inadequate diaper hygiene, as the author intends to be covered under EPSDT. Under certain circumstances, such as diaper rash, it appears reasonable that diapers could potentially be considered a medical supply necessary to correct or ameliorate a health condition under EPSDT.

- h) Health-Related Social Needs (HRSN) and Community Supports under Medi-Cal Waivers.** Beyond coverage of diapers as medical necessity to address an individual child's health condition under EPSDT, diaper need could potentially be considered a HRSN. According to CMS, HRSN are an individual's unmet, adverse social conditions that contribute to poor health. However, the extent to which California could receive federal approval to cover diapers as a HRSN is unclear. Although CMS issued guidance related to HRSN in November 2023 and December 2024, this guidance was rescinded on March 4, 2025. CMS indicates it will still, however, consider states' applications to cover HRSN on a case-by-case basis, without reference to the prior HRSN Framework.

Medi-Cal already covers some services to address HRSN through federal waivers authorizing the CalAIM initiative, a wide-ranging project that includes two federally approved waivers to improve the Medi-Cal program across many dimensions. In general, coverage of services under Medicaid/Medi-Cal is limited to medically necessary health care services, supplies, drugs, and equipment. However, the federal government allows various flexibilities to cover other types of benefits. Since the time DSS reviewed the option to cover diapers under Medi-Cal, the state has added coverage of 14 supportive services that address HRSN, through implementation of CalAIM. These so-called Community Supports include, for example, housing support services, medically tailored meals, and physical modifications to the home to reduce the risk of asthma or falls. DHCS has a pre-approved list of Community Supports that can be provided by Medi-Cal managed care plans.

Community Supports, as defined through CalAIM, are alternative services to those covered under the Medi-Cal State Plan, but are delivered by a different provider or in a different setting than is described in the State Plan. Importantly, the Community Supports can only be covered if the state determines they are medically appropriate and cost-effective substitutes or settings for services covered under the state's Medicaid State Plan. As the author and co-sponsors of this bill point out, there is a mechanism by which providing diapers for children suffering from certain conditions could reduce health care expenditures, for instance, for treatment of skin rashes and UTIs—potentially offsetting costs for providing diapers.

- i) Other States.** According to Georgetown Center for Children and Families, in 2024, two other state Medicaid programs (in Tennessee and Delaware) have obtained federally approved waivers for limited coverage of diapers for infants. These approvals mark the first time a state has been authorized to cover diapers for infants in Medicaid regardless of medical necessity due to incontinence issues. Tennessee's waiver amendment includes similar arguments as those made by this bill's author and co-sponsors, including that diaper need has been associated with increased health care utilization for UTIs and that a recent analysis estimated annual savings of nearly \$4.3 million in medical treatments because of diapers provided by the Diaper Bank of Connecticut.
- j) DHCS May 2024 Update on Medi-Cal Coverage of Diapers.** Supplemental Reporting Language included in the 2023-24 Budget Act required DHCS to provide an update to staff in the relevant budget and policy committees of the Legislature and the LAO on potential options for a federal Medicaid 1115 waiver to reimburse the cost of diapers for infants and toddlers under the age of three in Medi-Cal. DHCS's analysis (which was presented to staff but not published) provided a wide range of estimated costs, depending

on how the benefit would be implemented. No further action was taken based on this update.

k) New Proposed Diaper Initiative. The Governor's January 2024-25 Budget proposes a new, two-year diaper access initiative administered by HCAI. According to the administration, the new initiative would aim to make diapers more affordable, improve access to diapers, and mitigate infant health risks associated with limited diaper access. According to the LAO, the initiative contains two key phases:

- i) Phase 1: Three Month Supply of Diapers for All Newborns.** In the first phase, the state would work with a private partner to purchase a three month supply of diapers (400 diapers) for each newborn baby in California. The diapers would be available to families for free. HCAI envisions distributing diapers to households through hospitals that voluntarily participate in the initiative. However, HCAI also emphasizes that it plans to work out key implementation details, including distribution, with the private partner. As part of this effort, HCAI has already initiated a nonbinding request for information from potential partners.
- ii) Phase 2: Market Intervention to Lower Costs.** In the second phase, the state would explore a new commercial distribution model to lower costs for the remaining months of diapers. According to the administration, it envisions a mechanism that will enable the state to leverage its purchasing power and directly negotiate for the price of diapers. The state would begin exploring how this mechanism works through a request for information in fall 2025, with implementation potentially beginning in 2026-27. The administration indicates HCAI would leverage personnel and experience from the CalRX initiative which has, among other activities, negotiated with a manufacturer of Naloxone, an opioid reversal medication, to procure the drugs at a reduced cost.

The LAO find several weaknesses with this proposal, including that it is not well targeted and that key details remain conceptual. The LAO recommends that, if diaper access is a legislative priority, the Legislature instead build upon existing programs that are better targeted and pose fewer implementation challenges. For example, the LAO notes the Legislature could increase the CalWORKs diaper assistance subsidy or further support the state's existing diaper banks. The LAO also notes that, to the extent the Legislature would like to pursue longer term ways to improve diaper access and affordability, it could take related actions in this year's budget. For example, the Legislature could adopt Supplemental Reporting Language directing HCAI to report back on potential market interventions, following HCAI's exploratory work in fall 2025.

3) SUPPORT. GRACE/End Child Poverty in California and the California Association of Food Banks, co-sponsors of this bill, note diaper need is a human rights issue and also an issue of equity, as Latino and Black households face poverty at much higher rates than white households. Co-sponsors argue this bill will help address this inequity by enacting a policy to support diaper needs for low-income families on Medi-Cal. Co-sponsors assert many other states have more expansive definitions of who qualifies for diapers, allowing more children to get the help they need without a total cost burden on the state, given Medicaid is partially federally funded. Western Center on Law and Poverty (WCLP) writes in support that the inability to afford diapers has painful consequences for an entire family, and that when

diapers are kept on longer than suggested, babies can have painful conditions like UTI or severe diaper rash. WCLP also notes diaper need is linked with food insecurity, parental stress, and lost wages or time at school for caregivers.

4) PREVIOUS LEGISLATION.

- a) AB 2446 (Ortega) of 2024 was vetoed in a form that was nearly identical to this bill. The Governor thanked the author for her focus on this important issue and noted that, although he deeply appreciated and shared the author's commitment to assisting low-income Californians with access to affordable diapers, the bill would expand coverage beyond EPSDT and would result in costs that should be evaluated as a part of the annual budget process.
- b) SB 953 (Menjivar) of 2024 would have added menstrual products as a covered Medi-Cal benefit, subject to federal approval and FFP, and required DHCS to seek any necessary federal approvals to implement the benefit. SB 953 was held on the suspense file of the Senate Appropriations Committee.
- c) AB 480 created a \$30 per month diaper benefit as a welfare-to-work supportive service within the CalWORKS program, for children under 36 months of age.
- d) AB 492 (Gonzalez), of 2016, proposed a \$50 diaper supportive service per child two years old or younger in a CalWORKs, Welfare-to-Work family. AB 492 was vetoed by Governor Brown, who voiced concern about the bill's cost and a desire to consider spending proposals through the budget process.
- e) AB 1516 (Gonzalez), of 2014, proposed adding an \$80 cash aid supplement per child under two in a CalWORKs family. AB 1516 was held on the Suspense File of the Senate Appropriations Committee.

5) POLICY COMMENTS.

- a) **Scope is Limited to Health-Related Coverage of Diapers.** Given Medi-Cal is a health care program with specific requirements, it is not designed, under current law and policy, to address the economic burden of diaper need broadly. As the bill is presented as one approach to addressing overall diaper need, it should be emphasized this bill would cover diapers under the current Medi-Cal benefit structure only for the population of children for whom diapers could correct or ameliorate a health condition, and for children greater than three years of age who have been diagnosed with a health condition that contributes to incontinence. The state could pursue a federal waiver to cover diapers more broadly, which two states have successfully done. However, pursuing a waiver could require the state to generate savings by making other program changes and use the savings to fund a diaper benefit, as those two other states have.

In contrast, the administration's proposed diaper access initiative is broader in scope, but would only provide diapers for the first three months of life.

- b) **Veto Message.** A similar bill last year, AB 2446 (Ortega), was vetoed. The Governor noted the bill would expand coverage beyond EPSDT by including "...conditions that contribute to incontinence." The Governor noted this change results in significant and

ongoing General Fund costs for the Medi-Cal program that should be evaluated as a part of the annual budget process. The current bill, AB 636, does not appear to address the veto message's cost concerns.

It should be noted that the veto message also says "children under 5 years old may receive medically necessary diapers as a covered EPSDT benefit," contradicting the plain language still included in the Medi-Cal provider manual that "Medi-Cal does not reimburse for incontinence supplies for recipients younger than age five." This bill would require DHCS to update the Medi-Cal provider manual related to diaper coverage, which would hopefully address these inconsistencies.

REGISTERED SUPPORT / OPPOSITION:**Support**

Grace - End Child Poverty in California (co-sponsor)
California Association of Food Banks (co-sponsor)
National Diaper Bank Network (co-sponsor)
Central California Food Bank
Community Foodbank of San Benito
First 5 California
Food Bank of Contra Costa and Solano
Food for People, the Food Bank for Humboldt County
Food in Need of Distribution Food Bank
Glide
Help a Mother Out
Jacobs & Cushman San Diego Food Bank
Los Angeles Regional Food Bank
Placer Food Bank
Redwood Empire Food Bank
Sacramento Food Bank & Family Services
Second Harvest Food Bank of Orange County
Second Harvest Food Bank of Santa Cruz County
Second Harvest of Silicon Valley
Western Center on Law & Poverty, INC.

Opposition

None on file.

Analysis Prepared by: Lisa Murawski / HEALTH / (916) 319-2097