

116TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

Ms. ERNST (for herself, Mr. ALEXANDER, Mr. CORNYN, Ms. MCSALLY, Mr. YOUNG, and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**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 6580 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—

## 19

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,  
23 disaggregated by age of children served,  
24 geography, region, center-based child care  
25 setting, and family child care setting;

1 (iii) the number of child care slots, in  
2 the capacity of a qualified child care pro-  
3 vider given applicable group size limits and  
4 staff-to-child ratios, that were open for at-  
5 tendance of children on March 1, 2020,  
6 the average number of such slots for  
7 March 2020 and each of 11 months fol-  
8 lowing, disaggregated by age of children  
9 served, geography, region, center-based  
10 child care setting, and family child care  
11 setting;

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

20 (II) the percentage of all eligible child  
21 care providers that are qualified child care  
22 providers that received such a subgrant,  
23 disaggregated as described in subclause  
24 (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.