



May 28, 2020

Mr. Rick Weiland
Weiland, Samuelson and Roosevelt, LLC
1109 South Phillips Avenue
Sioux Falls, SD 57105

RECEIVED
MAY 28 2020
S.D. SEC. OF STATE

Dear Mr. Weiland:

The Legislative Research Council is required by SDCL 12-13-24 to review each initiated constitutional amendment for the purpose of determining whether the amendment is written in a clear and coherent manner that reflects the style and form of other legislation and for the purpose of ensuring that the amendment is not misleading or likely to cause confusion among the voters. In accordance with SDCL 12-13-25, this office is required to provide written comments for the purpose of assisting the amendment's sponsor in meeting the requirements of SDCL 12-13-24. This includes providing assistance regarding the substantive content of the amendment in order to minimize any conflict with existing law and to ensure the amendment's effective administration. While there is no obligation to accept any of the suggestions contained in this letter, you are asked to keep in mind the legal standards established in SDCL 12-13-24 and 12-13-25.

After reviewing the proposed constitution amendment, this office has the following suggestions:

- The title of the amendment is drafted by the Office of the Attorney General under statute, so the title of this amendment should be removed;
- The definitions are unnecessary. The definition of low-income person is already covered in the proposed section. The definition of state plan amendment is not necessary as the federal law is clear on what the requirements are to expand Medicaid under the Affordable Care Act;
- Specific references to federal law should not be placed in the Constitution as they can change over time;
- You should consider using the allowed percentage of 133%, as provided by federal law. The additional 5% is an "income disregard" applied after the fact, which is why 138% is technically allowed by the federal government. While 138% may be technically correct, this appears to contradict the federal law. This could result in a denial of the state plan amendment or in future litigation; and
- With the current Medicaid program in the state, statutes were passed, and rules promulgated to implement the program. You should consider requiring the Legislature to provide for any provisions to implement this amendment by law.

We have prepared and attached a copy of the proposed amendment with our suggested form and style changes. Should you have any questions about these changes, or about the suggestions made in this letter, please feel free to contact this office.

It has been determined during this review that this proposed initiated amendment may have an impact on revenues, expenditures, or fiscal liability of the state and its agencies and political subdivisions. Please provide the Legislative

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Research Council a copy of the initiated amendment as submitted in final form to the Attorney General, so we can develop any fiscal note required by SDCL 2-9-30.

This letter is a recognition that your responsibility to submit your draft to this office for review and comment, as required by SDCL 12-13-25, has been fulfilled. This letter constitutes neither an endorsement of the proposed amendment nor a guarantee of its sufficiency. If you proceed with your initiated amendment, please ensure neither your statements nor any advertising imply that this office has endorsed or approved the measure.

Sincerely,

A handwritten signature in black ink that reads "Reed Holwegner". The signature is written in a cursive style with a large, prominent initial "R".

Reed Holwegner
Director

RH/do/ct

Enclosure

CC: The Honorable Steve Barnett, Secretary of State
The Honorable Jason Ravnsborg, Attorney General

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

That Article XXI of the Constitution of the State of South Dakota be amended by adding a NEW SECTION to read:

~~MEDICAID COVERAGE FOR LOW INCOME ADULTS.~~

§ 10 The State of South Dakota shall provide Medicaid benefits to ~~Low Income Adults~~ any person over age 18 ~~eighteen~~ and under age 65 ~~sixty-five~~ whose income is one hundred thirty eight percent ~~(138%)~~ of the federal poverty level or less, as provided by federal law and who ~~meet~~ meets other nonfinancial eligibility requirements of the federal Medicaid ~~statute~~ law. The State ~~shall~~ of South Dakota may not impose on ~~Low Income Adults~~ any such person any greater or additional burdens or restrictions on eligibility, enrollment, or benefits than on any other group eligible for medical assistance.

~~DEFINITIONS. As used in this section, the following terms mean:~~

- ~~(1) "Low Income Adults" means people over age 18 and under age 65, whose income is one hundred thirty eight percent (138%) of the federal poverty level or below, using the income methodology of the Medicaid statute at 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII), and who meet nonfinancial eligibility conditions for Medicaid under 42 CFR Part 435, Subpart E.~~
- ~~(2) "State Plan Amendment" means the document the State submits to the federal Centers for Medicare and Medicaid Services for review and approval before making a change to its program policies, including setting forth the groups of people to be covered.~~

~~IMPLEMENTATION: Within 90 ninety days of voter approval of this Initiative, in order to implement it and obtain Federal Medical Assistance Percentage funds section, the State of South Dakota shall submit a State Plan Amendment state plan amendment and all other necessary documents, and~~

take all additional steps necessary to seek required approvals from the Centers for Medicare and Medicaid Services to include ~~Low Income Adults~~ such persons as a coverage group in South Dakota's Medicaid program.

The Legislature shall provide by law any provisions necessary to implement this section.