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SOUTH DAKOTA
LEGISLATURE
LEGISLATIVE RESEARCH COUNCIL

November 19, 2020

Filed this 20th day of

November 2020

Steve Barnett
SECRETARY OF STATE

Ms. Laurie Jensen Wunder
5213 S. Sweetbriar Ct.
Sioux Falls, SD 57108

Dear Ms. Jensen Wunder:

The Legislative Research Council (LRC) 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, the LRC 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 constitutional amendment, the LRC has the following suggestions:

- Remove the requirement that the Department of Social Services promulgate rules and replace it with the requirement that the Legislature provide by law provisions necessary to implement this section of the Constitution, which would include any necessary delegation of rulemaking authority. Agency rulemaking authority exists when the Legislature statutorily delegates a portion of its legislative function to an administrative agency. Regardless of the language used, any proposed rule arising from agency rulemaking authority is governed by the South Dakota Administrative Procedures Act (SDCL Chapter 1-26) and subject to review by the Legislature's Interim Rules Review Committee; and
- In the last paragraph of the draft, remove the language regarding severability. South Dakota courts have long recognized the doctrine of severability, also known as the doctrine of separability, and therefore that language is not necessary in the Constitution.

Against this backdrop, we have prepared and attached a copy of the proposed amendment with our suggested style and form changes, which are based upon the Guide to Legislative Drafting (<https://mylrc.sdlegislature.gov/api/Documents/127102.pdf>). We have overstricken material that we suggest be removed. Additions are underscored. Should you have any questions about these changes, or about the suggestions made in this letter, please feel free to contact this office.

In addition, it has been determined during this review that this amendment may have an impact on revenues, expenditures, or fiscal liability of the state and its agencies and political subdivisions. Please provide the LRC a copy of the amendment as submitted in final form to the Attorney General, so we can develop any fiscal note required by SDCL 2-9-30.

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This letter constitutes neither an endorsement of the proposed amendment nor a guarantee of its sufficiency. It is a recognition that your responsibility to submit your draft to the LRC for review and comment, as required by SDCL 12-13-25, has been fulfilled. 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,



Reed Holwegner
Director

RH/DO/ct

Enclosures

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

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BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

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

§ 10 Beginning July 1, 2023, the State of South Dakota shall provide Medicaid benefits to any person over eighteen and under sixty-five whose income is at or below one hundred thirty-three percent of the federal poverty level plus five percent of the federal poverty level for the applicable family size, as authorized by federal law as of January 1, 2021. Such ~~persons~~ person shall receive coverage that meets or exceeds the benchmark or benchmark-equivalent coverage requirements, as such terms are defined by federal law as of January 1, 2021.

~~No~~ The State of South Dakota may not impose greater or additional burdens or restrictions on eligibility or enrollment standards, methodologies, or practices ~~shall be imposed~~ on ~~persons~~ any person eligible under this section than on any ~~individuals~~ person otherwise eligible for Medicaid under South Dakota law.

No later than March 1, 2023, the Department of Social Services shall submit all state plan amendments necessary to implement this section to the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

The State of South Dakota shall take all actions necessary to maximize the federal financial medical assistance percentage in funding medical assistance pursuant to this section.

~~The Department of Social Services shall promulgate any rules that are necessary to implement this section. The Legislature shall provide by law any provisions necessary to implement this section, including any necessary delegation of rulemaking authority.~~

This section shall be broadly construed to accomplish its purposes and intents. ~~If any provision in this section or the application thereof to any person or circumstance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of the section that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this section are severable.~~

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