



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