



November 19, 2020

Filed this 20th day of
November 2020

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

Steve Barnett
SECRETARY OF STATE

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S.D. SEC. OF STATE

Dear Ms. Jensen Wunder:

The Legislative Research Council (LRC) is required by SDCL 12-13-24 to review each initiative for the purpose of determining whether the initiative 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 initiative 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 initiative's sponsor in meeting the requirements of SDCL 12-13-24. This includes providing assistance regarding the substantive content of the initiative in order to minimize any conflict with existing law and to ensure the initiative'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 initiative, the LRC has the following suggestion:

- Remove the last paragraph of the draft 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 to be placed in law.

Against this backdrop, we have prepared and attached a copy of the proposed initiative 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 initiative 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 initiative as submitted in final form to the Attorney General, so we can develop any fiscal note required by SDCL 2-9-30.

This letter constitutes neither an endorsement of the proposed initiative 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

Jensen Wunder
November 19, 2020
Page 2

required by SDCL 12-13-25, has been fulfilled. If you proceed with your initiative, 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:

Section 1. That chapter 28-6 be amended by adding a NEW SECTION to read:

~~28-6-1.2~~ Notwithstanding any provision of law to the contrary, beginning July 1, 2023, the state shall provide medical assistance to ~~individuals~~any person nineteen years of age or older and under sixty-five years of age who ~~qualify~~qualifies for medical assistance under 42 U.S.C. ~~Section~~§ 1396a(a)(10)(A)(i)(VIII) and federal regulations as of January 1, 2021, and who ~~have~~has income 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 provided for by 42 U.S.C. ~~Section~~§ 1396a(e)(14) and federal regulations as of January 1, 2021.

~~Individuals~~Any person eligible for medical assistance under this section shall receive coverage that meets the benchmark or benchmark-equivalent coverage requirements, as such terms are defined under 42 U.S.C. ~~Section~~§ 1396a(k)(1) and any ~~implementing federal~~ regulations as of January 1, 2021.

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 Department of Social Services shall take all actions necessary to maximize the federal financial medical assistance percentage in funding medical assistance pursuant to this section.

~~No~~The state 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 medical assistance under this chapter.

The Department of Social Services shall promulgate rules pursuant to chapter 1-26 to authorize ~~individuals~~any person eligible under this section for medical assistance, and any other rule as authorized by §28-6-1 that is necessary to implement this section.

~~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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Steve Barnett
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