



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 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, 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 measure in order to minimize any conflict with existing law and to ensure the measure'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 draft initiative, this office has the following suggestions:

- The title of the initiative is drafted by the Office of the Attorney General under statute, so the title of this initiative 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;
- 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 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, there are several rules that were promulgated to implement state statutes. The draft initiative gives the state (Department of Social Services) no authority to implement such a program, but merely directs the state to coordinate with federal authorities and to submit a state plan amendment. You should consider granting rulemaking authority to implement this proposed new section of law.

We have prepared and attached a copy of the proposed initiative 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.

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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 Legislative Research Council 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 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 initiated measure nor a guarantee of its sufficiency. If you proceed with your initiated measure, 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

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

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

~~MEDICAID COVERAGE FOR LOW INCOME ADULTS.~~

~~28-6-1.2~~ The ~~State~~ state 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, using the income methodology of the Medicaid statute at 42 U.S.C. §1396a(a)(10)(A)(i)(VIII) and who ~~meet~~ meets other nonfinancial eligibility requirements of the federal Medicaid statute. The ~~State shall~~ state ~~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 federal medical assistance percentage funds Act,~~ the ~~State~~ state 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 Department of Social Services shall promulgate rules pursuant to chapter 1-26 to authorize low-income persons as an eligible population for Medicaid services in this state and any other necessary rule as authorized by §28-6-1 to implement this section.