



May 28, 2020

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

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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.