



## ISSUE BRIEF:

**Constitutional Amendment D** expands eligibility for the state Medicaid program.

**The Greater Sioux Falls Chamber of Commerce has taken a position of support of Constitutional Amendment D (CA-D) and urges a “YES” vote on the 2022 general election ballot.**

### Background

Over the last decade the South Dakota legislature has resisted legislation to expand Medicaid. In 2021, two ballot measures were circulated seeking to expand Medicaid eligibility. Both gathered sufficient signatures and were submitted to the Secretary of State. One sought to change state statute (initiated measure) the other sought to change the South Dakota Constitution. Although qualified for the ballot, circulators withdrew the initiated measure. The remaining ballot measure to be considered by the voters for the November 8, 2022 election is Constitutional Amendment D: An initiated amendment to the South Dakota Constitution expanding Medicaid eligibility.

Medicaid is a federal and state funded program to provide health coverage for people who meet certain eligibility requirements. Medicaid provides healthcare coverage, not cash payments, to individuals who are eligible for care. Thirty-nine states (including Washington D.C.) have expanded Medicaid.<sup>1</sup> In South Dakota, eligible groups would include low-income families, pregnant women, children (CHIP)<sup>2</sup>, and elderly, blind or disabled individuals.

The Attorney General's 2022 ballot explanation<sup>3</sup> of CA-D states the following:

*“Medicaid is a program, funded by the State and the federal government, to provide medical coverage for low-income people who are in certain designated categories. This constitutional amendment expands Medicaid eligibility in South Dakota. It requires the State to provide Medicaid benefits to any person over age 18 and under 65 whose income is at or below 133% of the federal poverty level, plus 5% of the federal poverty level for the applicable family size, as provided in federal law. For people who qualify under this amendment, the State may not impose burdens or restrictions that are greater than those imposed on any other person eligible for Medicaid benefits under South Dakota law.”*

<sup>1</sup> SOURCE: “Status of State Action on the Medicaid Expansion Decision,” KFF State Health Facts, updated June 29, 2022. <http://www.kff.org/health-reform/state-indicator/state-activity-around-expanding-medicaid-under-the-affordable-care-act/> (8.18.2022).

<sup>2</sup> South Dakota Children's Health Insurance Program (CHIP). First and foremost, Medicaid or CHIP (Children's Health Insurance Program) covers South Dakota's children – 68% of those covered by Medicaid or CHIP are children. In fact, 50% of South Dakota's children will rely on Medicaid or CHIP during the first year of life. [https://dss.sd.gov/docs/medicaid/reports/2020\\_Medicaid\\_Report.pdf](https://dss.sd.gov/docs/medicaid/reports/2020_Medicaid_Report.pdf) (8.18.2022).

<sup>3</sup> [South Dakota Attorney General 2022 Ballot Explanation of Constitutional Amendment D \(May 11, 2022\)](#).

*The South Dakota Department of Social Services must submit to the federal government all documentation required to implement this amendment and must take all actions necessary to maximize federal funding for this expansion.”*

Constitutional Amendment D seeks to add a subsection to Article XXI of the South Dakota Constitution. If adopted by the voters, the amended section would include:

§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 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.

The State of South Dakota may not impose greater or additional burdens or restrictions on eligibility or enrollment standards, methodologies, or practices on any person eligible under this section than on any 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.

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.

The Legislative Research Council’s (LRC) fiscal note examines the impacts associated with the state providing Medicaid benefits to eligible individuals. LRC’s fiscal note<sup>4</sup> commentary includes:

Due to a temporary change to federal law affecting the first two years of Medicaid expansion, a five-year estimate was determined to be optimal. The estimate includes the costs for additional individuals who

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<sup>4</sup> <https://sdsos.gov/elections-voting/assets/2022CALaurieWunderMedicaidFiscalNote2.pdf> (2022).

would be eligible for Medicaid, additional staffing and upgraded IT systems, and individuals who were always eligible but have never enrolled (commonly referred to as the woodwork effect)<sup>5</sup>.

The estimate includes general fund savings due to expansion, including an offset in funds for correctional healthcare, behavioral healthcare, and Indian Health services, as well as the movement of certain populations from the regular Medicaid group to the expansion group. The general fund savings also reflect a temporary two-year incentive for Medicaid expansion provided under the American Rescue Plan Act. These savings do not necessarily need to be applied to the Medicaid program and could be used for other appropriations.

The proposed expansion of Medicaid could cover an additional 42,500 eligible individuals, with a total estimated cost over the first five years of \$1,515,224,000. For the first five years under current federal law, the state's share of expenses could be \$166,244,000 with the state recognizing additional general fund savings of \$162,473,000.

A breakout by year for the proposed Medicaid expansion is below, based on the current Medicaid budget.

Total	New Individuals	Total Cost	State Share	Total General Fund Savings
Year 1	42,500	\$297,042,000	\$32,565,000	\$63,572,000
Year 2	43,000	\$300,013,000	\$32,904,000	\$64,899,000
Year 3	43,400	\$303,013,000	\$33,245,000	\$11,334,000
Year 4	43,800	\$306,043,000	\$33,590,000	\$11,334,000
Year 5	44,300	\$309,103,000	\$33,939,000	\$11,334,000
<b>Totals</b>		<b>\$1,515,214,000</b>	<b>\$166,244,000</b>	<b>\$162,473,000</b>

**Total state cost over 1<sup>st</sup> five years: \$3.8 million**

Source: Legislative Research Council

<sup>5</sup> Note: In health policy terms the “woodwork effect” describes the increase in enrollment that can occur after programs are expanded or changed, encouraging eligible participants to “come out of the woodwork” to enroll in them.

## Proponent Rationale<sup>6</sup>

Proponents believe the CA-D effort to expand Medicaid is good for workforce and good for business. The majority of the 40,000 adults who would be eligible for health care coverage are already working. Many small businesses cannot afford to offer health insurance to their employees. Expanding Medicaid helps small businesses by helping to keep their employees healthy, productive and on the job. In addition, since South Dakota competes with neighboring states for entry level service and trades workers, expansion will help our state be more competitive. Bottom line: service and trade industry jobs are typically provided by small businesses that need a healthy workforce but the cost of providing a health plan for employees is not feasible<sup>7</sup>.

Proponents explain Medicaid is paid through a cost-sharing mechanism known as the Federal Medical Assistance Percentage (FMAP<sup>8</sup>). FMAP is determined annually using the previous three years of personal income data from each state. The federal government will pay 90% of the costs to expand Medicaid; the state pays 10%. In addition to the increased FMAP, South Dakota would receive an additional temporary 5% federal increase to the state's treasury. Savings to our state is \$128.4 million in the first two years. In subsequent years, South Dakota would save \$11.35 million annually. Total state cost for the first five years is \$3.8 million. After the first five years of Medicaid expansion the state costs would be \$22 million annually. However, over the last decade the state budget has an average annual<sup>9</sup> budget surplus of \$18.7 million each year except for FY21 and FY22<sup>10</sup>. For those two years, the legislature tucked away \$85 million in FY21 and \$115 million in FY22.

Proponents assert individuals with access to health coverage are more likely to get preventative care and follow-up care. They are also less likely to use the emergency room for non-urgent care: the most expensive category of health care. Access to health coverage results in better health outcomes as patients will seek care from their doctor earlier rather than wait. An example is regular cancer screenings. Insured individuals are proactive with seeking screenings<sup>11</sup> before small health issues become big problems. Cancer screenings data indicate a significant difference between the insured and the uninsured:

- Pap in last three years: 88.6% insured v. 61.6% uninsured
- Mammogram in last two years: 76.5% insured v. 36.8% uninsured
- Colorectal screening up to date: 62.5% insured v. 26.5% uninsured

Expanding Medicaid will protect access to rural healthcare. Uninsured South Dakotans are more likely to live in rural areas. A 2021 report<sup>12</sup> indicates 11 South Dakota rural hospitals are at risk of closure. Every second counts in a medical emergency and rural communities need access to care. The only way to ensure

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<sup>6</sup> Detailing "Proponents" and "Opponents" rationale is designed to provide the reader with an understanding of the opinions and talking points from each perspective. They are not intended to reflect the position of the Greater Sioux Falls Chamber of Commerce.

<sup>7</sup> Kaiser Family Foundation did a meta-analysis of research on the impact of expansion and people working and found eleven studies indicating expansion led to higher employment and volunteering among the expansion population, nine studies that showed a neutral impact and one study that showed a negative impact (which reversed after 2 years). <https://www.kff.org/medicaid/report/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review/>

<sup>8</sup> FMAP: Current Medicaid State share in FY23: 42.77%.

<sup>9</sup> Note over \$85 million in FY21 and \$115 million in FY22 were budget surpluses from excess federal dollars the legislature did not appropriate.

<sup>10</sup> Source Legislative Research Council (8.12.2022)

<sup>11</sup> 2016 Department of Health data. In addition, health covered individuals have improved management of chronic conditions<sup>11</sup> including diabetes, mental health and heart disease.

<sup>12</sup> [https://ruralhospitals.chqpr.org/downloads/Pandemic\\_Impact\\_on\\_Rural\\_Hospitals.pdf](https://ruralhospitals.chqpr.org/downloads/Pandemic_Impact_on_Rural_Hospitals.pdf) (8.18.2022).

residents of rural communities have access to affordable, high-quality health care is to pay adequately and appropriately for the services delivered by small rural hospitals.

Proponents believe the constitutional amendment (rather than statute) is necessary because the legislature has failed to act on expanding Medicaid repeatedly over the last decade. Moreover, it is becoming more common for the legislature to legally challenge or significantly change voter approved initiated measures. Proponents shared a story from Nebraska, a neighboring state whose legislature rejected expansion for six legislative sessions. Subsequently, Nebraska voters approved of Medicaid expansion<sup>13</sup> in 2018. Then Governor Ricketts's administration took two years to rollout a two-tier program that left some Nebraskans in health care<sup>14</sup> limbo. Although the legislature did not change the statutes related to the voter approved law, the Governor effectively delayed the program. When the program was finally up and running problems still delayed access for more than an estimated 90,000 Nebraskans<sup>15</sup> residents who could qualify for Medicaid health coverage.

In closing, proponents urged a yes vote on CA-D because it provides health coverage to hardworking South Dakotans; helps our workforce stay healthy and a healthy workforce leads to healthy businesses and a healthy economy. Finally, proponents assert we can afford it.

### **Opponent Rationale<sup>16</sup>**

Opponents argue CA-D would make South Dakota more dependent on the federal government, which is not healthy for business. South Dakota is not the only state to refuse to expand Medicaid. However, it is one of the last states where Medicaid expansion can be approved by a public vote. The second and third largest states in the country, Texas and Florida, have rejected this aspect of the Affordable Care Act (ACA). Other states not expanding Medicaid include Tennessee, Wisconsin, Georgia, Alabama, South Carolina, North Carolina, Wyoming, Mississippi and Kansas.

Opponents also raised concerns about cost overruns. Medicaid expansion has exceeded cost projections in the states that have adopted the expansion concept for able-bodied people. Montana is a neighboring state that has similarities to South Dakota as their legislature would not support expansion. Opponents were concerned that South Dakota may have similarities to Montana in other areas as well. For example, Montana's estimates for expanding Medicaid included 59,000 new Medicaid enrollees. However, the actual number of enrollees was nearly 100,000. The increase in enrollees ballooned costs. The reason for the substantial increase is under ACA low-income Montanans who work part-time get federally funded silver level private plans at no cost to them. The silver level coverage ends when a state expands Medicaid. Only non-expansion states can take advantage of the federal subsidy.

Opponents expressed concern that the federal government prohibited states from setting work requirements and/or adjustments to the program, opting for a one-size-fits-all approach. Because states do not have flexibility to limit the plan eligibility, they believe the legislature will not be able to limit Medicaid in justified cases. This inflexibility will further drive up costs to the taxpayer. In addition, opponents expressed concern the federal government may choose to reimburse states at a lower rate of reimbursement

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<sup>13</sup> <https://apnews.com/article/legislature-campaigns-nebraska-medicaid-572e3ac9bc92b5a88d58654486bcb724> (8.12.2022).

<sup>14</sup> <https://apnews.com/article/ad6a5d4d307d4459849be1b2166dc5e6> (8.12.2022).

<sup>15</sup> <https://apnews.com/article/ad6a5d4d307d4459849be1b2166dc5e6> (8.12.2022).

<sup>16</sup> Detailing "Proponents" and "Opponents" rationale is designed to provide the reader with an understanding of the opinions and talking points from each perspective. They are not intended to reflect the position of the Greater Sioux Falls Chamber of Commerce

(90%/10%). If the federal government determines it will reduce the federal coverage share, it will burden South Dakota. Moreover, South Dakota will need to amend the state constitution. This will require a statewide vote.<sup>17</sup>

In addition, opponents assert the proposed expansion of Medicaid is a genuine distortion of the original concept passed as part of the Great Society in 1965. Medicaid was designed as a joint state and federal program to help those who were genuinely needy or physically disabled. The original program was never intended to fund able-bodied adults with an income above the poverty line.

Lastly, opponents believe the cost of expanding Medicaid will be much higher than the stated and anticipated costs that are being used to justify expansion. In tougher economic times, cuts will need to be made to other vital services such as education and public safety.

## **Chamber Position**

### **The Greater Sioux Falls Chamber of Commerce has taken a position of support of Constitutional Amendment D (CA-D) and urges a “Yes” vote on the 2022 general election ballot.**

The Board of Directors supported Constitutional Amendment D. The group’s rationale was two-fold.

First, Medicaid expansion would provide health services to our most vulnerable residents; 60% of those eligible are working. Expanding Medicaid ensures access to health care for hard working South Dakotans. A healthy workforce leads to healthy businesses and a healthy economy.

Second, expanding Medicaid makes sense economically. Medicaid provides health care coverage, not cash payments, to individuals and protects rural health care for South Dakota. The federal government pays 90%; the state pays 10%. South Dakota will receive a temporary federal 5% increase as a new expansion state. The savings to South Dakota: \$128.4 million for the first two years and \$11.35 million annually. Total state cost for the first five years is \$3.8 million and \$22 million cost annually thereafter. With the expansion of Medicaid, the state will save \$11 million to the state budget<sup>18</sup> every year, which offsets the cost of expansion. Bottom line: South Dakota can afford to expand Medicaid.

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<sup>17</sup> The Chamber Board of Directors indicated support of future action by the state legislature to propose an amendment to the Constitution to be considered by the voters that would provide an out clause for South Dakota if the federal share would drop below 90%.

<sup>18</sup> Includes over \$11 million in savings to the state budget every year that offsets the net cost of expansion. These savings come from 100% state general fund expenditures for state inmate healthcare that would be covered by Medicaid in the future, other state health programs for people with behavioral health issues that would be covered by Medicaid, and the transition of some people currently on Medicaid at the regular match rate that would move to the Expansion population with the 90% federal funding.