

MEDICAID EXPANSION IN MISSOURI, 2020

Six Concerns for Missourians

Missouri Right to Life Political Action Committee

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Initiative 2020-063 would add a new section to the Missouri State Constitution, known as Article IV, Section 36(c) (the “proposed Amendment”). A copy of the proposed Amendment is appended as the last page of this article. There are six subsections of the proposed Amendment, of which two are of primary concern to pro-life citizens. Subsection 1 is designed to increase the roll of persons entitled to Medicaid for their health coverage. Such maximization would enlarge the pool of persons who could obtain the abortion services that are allowed under Medicaid, especially if the Hyde Amendment were to be terminated, as many politicians are now demanding. Subsection 4 would require the State to maximize the federal share of Medicaid expenditures in Missouri, which would negate efforts to create pro-life health programs with the State's own money. This paper provides a summary of concerns raised by the proposed Amendment that all Missourians should carefully consider.

General Background of Medicaid

Medicaid (called “MO HealthNet” in this state) was created and is largely controlled by the federal government. The federal government provides a majority of the funding in every state, and the state has to come up with the remaining funds, directly or indirectly. In February, 2019, the Missouri Department of Social Services (DSS) reported that in State Fiscal Year (SFY) 2018, ending June 30, 2018, total Medicaid spending in Missouri was approximately \$10 billion. MO DSS, Rapid Response Review – Assessment of Missouri Medicaid Program, Final Report (Feb. 11, 2019), p. 3. (All data in this paragraph are taken from this DSS Report.) Fifty-three percent of that money came from the Federal Government, 21% from Missouri general tax revenues, and 26% from Missouri provider taxes, tobacco settlement funds, and miscellaneous sources.

As of the end of SFY 2018, there were over 975,000 Missourians on the Medicaid rolls, almost 1 out of every 6 Missouri residents. Of those enrollees, 620,294 (almost 64%) were low-income children. (The data in this paragraph are taken from Missouri Foundation for Health, *Missouri Medicaid Basics* (Spring 2019).) The number of enrolled children comes from p. 12.) Another 97,582 people were low-income custodial parents. (Ibid. p. 4.) Medicaid also served over 236,000 adults in programs for Old Age Assistance, Aid to the Blind, and Permanently and Totally Disabled. (Ibid.) Another approximately 27,750 uninsured women and their unborn babies who did not qualify under the usual standards were assisted by special Missouri programs under Medicaid. (Ibid. p. 6.)

The Initiative seeks to add to the Medicaid rolls persons between ages 19-64 who are childless and have household incomes of under 138% of the federal poverty level. Certain persons would be enrolled who could qualify for other medical assistance programs. Estimates vary in how many people would be added; numbers range from over

100,000 to over 250,000. The federal government would reimburse Medicaid expenses at 90% of the total for the new enrollees, with the State liable for 10%, compared to the 53% federal reimbursement of current categories of recipients noted above.

There is great controversy on how much Medicaid expansion will cost. Estimates vary according to the assumptions that are made about very uncertain variables, beginning with how many persons will be newly-eligible and will actually sign up for the program. Moreover, the federal government can change its 90% reimbursement rate in the future at any time. It was 100% when the expansion program was created as part of Obamacare.

Missouri Right to Life does not focus so much on fiscal concerns as on a more fundamental question: what would the Initiative cost in terms of human lives?

PRO-LIFE CONCERNS

Concern #1. The Hyde Amendment (“Hyde”) prevents Medicaid from paying for surgical abortions. If the pro-abortion forces succeed in terminating Hyde, then the proposed Amendment would greatly increase the number of persons who could obtain Medicaid payments for surgical abortions. It was estimated in the past that Medicaid nationwide would pay for approximately 300,000 abortions a year without the Hyde Amendment. In that case, several thousand of them would be abortions on Missouri residents. The number would be much greater if eligibility for Medicaid services were to be increased as much as the proposed Amendment provides.

It does no good to say that the Hyde Amendment has been around for 40 years and so there is nothing to worry about. Times have changed. In 2016, one of the two major parties declared war on Hyde in its official platform. In 2019, former Vice President Joe Biden was so heavily criticized for voting for Hyde in his 36 years as a U. S. Senator from Delaware that he repudiated his former position. The threat is real, whether it comes to a head in 2021 or later. To have the proposed Amendment cemented into the Missouri Constitution before then may well prove lethal for many unborn children.

Moreover, some say that if the Hyde Amendment is terminated, pro-life states like Missouri “would pursue every legal avenue to prevent public funding for abortion through the state Medicaid programs.” Unfortunately, Missouri has been down that road twice, in 1979 and in 1994, unsuccessfully defending a statute that provides more pro-life protections than federal Medicaid law. Missouri is still under a permanent injunction against enforcing that statute, § 208.152.1(12). The federal court decisions in Missouri are in accord with decisions of the federal courts of appeals from all over the country. The best and the brightest pro-life lawyers in the country have not turned the tide. To declare that if the Hyde Amendment is repealed Missouri will send lawyers to ride to the rescue is an example of weak wishful thinking that seeks to avoid legal reality.

Concern #2. The proposed Amendment would greatly increase the number of young adult women who would qualify for Medicaid payments for “morning after” pills. One federal Medicaid regulation provides for mandatory Medicaid payment of prescription drugs or devices “to prevent implantation of the fertilized ovum.” The “fertilized ovum” constitutes a

new human being, as leading embryologists agree. Implantation usually occurs 6-7 days after conception. By the time of implantation, a young human has over 100 cells and has already begun the process of differentiation into separate bodily structures and systems. So-called “morning after” pills often cause abortions by preventing implantation of a week-old embryo, causing its death. That is an abortion. Under the proposed Amendment, taxpayers would pay for many more of these abortions by greatly increasing the number of women whose “morning after” pills will be paid for by Medicaid.

Concern #3. Subsection 4 requires the State “to maximize federal financial participation in funding medical assistance pursuant to this section.” As a consequence, it would bar the State from forgoing programs that are optional under federal Medicaid law, even if the State set up its own self-funded programs in their place. It would not matter whether the state program was better, more efficient, or even just more consistent with Missouri’s pro-life principles than the federal program. To bypass federal optional programs would be to forgo federal dollars in violation of the proposed Amendment’s command.

An example has been provided in recent history. About twelve years ago, Missouri created a special Medicaid program for women's health under a federal “waiver.” (A federally-authorized “waiver” program suspends certain Medicaid technicalities in order to test a creative way to address a medical need.) In 2016, the Missouri General Assembly prohibited abortionists from receiving any money from that program, after which federal officials apparently pointed out that the prohibition violated federal law.

In order to remain in compliance with Missouri law while not violating federal law, Missouri’s HealthNet officials terminated the Medicaid waiver program in 2017 and created a similar program funded 100% by state funds. They submitted documentation in the termination process indicating that Missouri was forgoing approximately 8.5 million federal dollars to do this. Under subsection 4 of the proposed Amendment, such an act would be forbidden. This handcuffs state government’s attempts to run the best Medicaid services possible. It is a huge problem, and not just for pro-life reasons.

Concern #4. Another result of the requirement to maximize federal dollars would be to preclude efforts to increase pro-life protections in Medicaid if the Hyde Amendment is terminated. Remember the suggestion that Missouri would send the legal cavalry to the rescue to obtain pro-life protection if that happened? Subsection 4 would prevent that. After all, one of the goals of sending lawyers to court to obtain pro-life protection for babies would be to reduce the amount of taxpayer money available to pay for abortions. That would mean reducing federal Medicaid dollars coming into Missouri. But that would also mean that initiating an effort to try to reduce Medicaid funding for abortions could violate subsection 4. The legal cavalry would not save the day; they could not even saddle up to make the attempt.

Concern #5. The more that Medicaid is expanded, the more taxpayers’ money is paid to Planned Parenthood and other abortionists. The federal Medicaid statute forbids disqualification of any providers as a class. A provider may be dropped only by failing a standard of medical or financial performance. This means that Planned Parenthood cannot

be disqualified from Medicaid by the State of Missouri because it commits abortions. Other governmental programs might allow such cutoffs (e.g., the Title Ten family planning program), but not Medicaid. Expanding Medicaid to include the adults targeted by the Initiative would shovel more money into Planned Parenthood's coffers just when Missouri has put the surgical abortion business on the ropes. This explains why Planned Parenthood so energetically supports Initiative 2020-063.

Concern #6. Initiative no. 2020-063 proposes a state constitutional Amendment that, if adopted, cannot be amended by the legislature, but only by another vote of the people. If the state's budget were unable to keep up with the new costs of Medicaid, the State Legislature could not reduce Medicaid expenses. If the state found that because of unforeseen prosperity, it no longer really needed to subsidize medical costs for a population of young, relative healthy adults, then the State Legislature could not trim the Medicaid rolls. An amendment in the state constitution would be needed to change anything that is found in the proposed Amendment. Missouri's Medicaid law is not in the state constitution now. It is foolish to put a portion of it into the state constitution where it would be locked beyond the power of the Legislature to change no matter what exigencies may arise in the future. This is especially true when so many life-threatening consequences are contained in the locked-in parts.

CONCLUSION

As the proposed Amendment is further studied, there may be more to be said about Initiative 2020-063. But it is not too soon for concerned pro-life citizens to study the provisions of the Initiative for themselves. No one should be satisfied with the "spin" that the media put on it. There are implications of the proposed Amendment that will probably raise questions outside of pro-life concerns, too. To encourage everyone to give it some study, the text of the proposed Amendment is appended to the end of this article. Every pro-life voter should give its provisions close examination for attacks on the unborn and possibly other vulnerable persons.

Abortion is not medical care, and it has no legitimate place in programs, such as Medicaid, that are supposed to address the health care needs of Missourians.

TEXT OF CONSTITUTIONAL AMENDMENT PROPOSED BY INITIATIVE 2020-063

(Note: This is not what voters will see on the ballot; the ballot contains only a summary.)

Be it resolved by the people of the State of Missouri that the Constitution be amended:

Article IV of the Constitution is revised by adding one new section to be known as Article IV, Section 36(c) to read as follows:

Section 36(c). 1. Notwithstanding any provision of law to the contrary, beginning July 1, 2021, individuals nineteen years of age or older and under sixty-five years of age who qualify for MO HealthNet services under 42 U.S.C. Section 1396a(a)(10)(A)(i)(VIII) and as set forth in 42 C.F.R. 435.119, and who have income at or below one hundred thirty-three percent of the federal poverty level plus five percent of the applicable family size as determined under 42 U.S.C. Section 1396a(c)(14) and as set forth in 42 C.F.R. 435.603, shall be eligible for medical assistance under MO HealthNet and shall receive coverage for the health benefits service package.

2. For purposes of this section, “health benefits service package” shall mean benefits covered by the MO HealthNet program as determined by department of social services to meet the benchmark or benchmark-equivalent coverage requirement under 42 U.S.C. Section 1396a(k)(1) and any implementing regulations.

3. No later than March 1, 2021, the Department of Social Services and the MO HealthNet Division 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.

4. The Department of Social Services and the MO HealthNet Division shall take all actions necessary to maximize federal financial participation in funding medical assistance pursuant to this section.

5. No greater or additional burdens or restrictions on eligibility or enrollment standards, methodologies, or practices shall be imposed on persons eligible for MO HealthNet services pursuant to this section than on any other population eligible for medical assistance.

6. All references to federal or state statutes, regulations, or rules in this section shall be to the version of those statutes, regulations or rules that existed on January 1, 2019.