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May 13, 2021

James G. Scott, Director
Division of Program Operations
Centers for Medicare and Medicaid Services
Federal Office Building, Room 355
601 East 12th Street
Kansas City, MO 64106

Dear Mr. Scott:

The Missouri Department of Social Services (DSS) submitted State Plan Amendment 21-0003 on February 19, 2021, and State Plan Amendments 21-0002 and 21-0004 for your review on February 24, 2021. State Plan Amendment 21-0004 was to establish the eligibility group in Missouri's State Plan for the adult group authorized by section 1902(a)(10)(A)(i)(VIII) of the Social Security Act (expansion population). State Plan Amendment 21-0002 was to modify the Federal Medical Assistance Percentage (FMAP) as that relates to MO HealthNet expansion, and 21-0003 established the Alternative Benefit Plan for the expansion population.

Expanding MO HealthNet coverage in Missouri to the expansion population was the subject of a citizen initiative petition that passed August 4, 2020, and became effective September 4, 2020.¹ The DSS submitted State Plan Amendments 21-0002, 21-0003, and 21-0004 to comply with the requirements of that initiative petition.² Missouri has not opted to expand MO HealthNet coverage through legislative action, but only through the citizen initiative petition process.

The initiative petition must meet certain requirements. Article III, § 51, of the Missouri Constitution prohibits an initiative petition from appropriating funds. Prior to passage of the initiative petition, Missouri taxpayers sued to challenge the initiative petition's ballot language based, in part, on concerns that the initiative petition was improperly appropriating funds.³ As part of this lawsuit, the Missouri Court of Appeals, Western District, held the ballot language was not self-funding, meaning that the ballot language did not "direct or restrict the General Assembly's ability to change the amount of appropriations for the MO HealthNet program, or to increase or

¹ See MO CONST. Art IV, § 36(c).

² See MO CONST. Art. IV, § 36(c)3.

³ See *Cady v. Ashcroft*, 606 S.W.3d 659 (Mo. App. W.D. 2020).

Interpretive services are available by calling the Participant Services Unit at 1-800-392-2161.

Prevodilačke usluge su dostupne pozivom odjela koji učestvuje u ovom servisu na broj 1-800-392-2161.
Servicios Interpretativos están disponibles llamando a la unidad de servicios de los participantes al 1-800-392-2161.

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decrease funding for the program based on healthcare-related costs.”⁴ This left the decision to increase or decrease funding for the expansion population to the General Assembly.


Implementing Article IV, § 36(c) of the Missouri Constitution, otherwise known as MO HealthNet expansion, is not without cost. The DSS estimated that it would cost Missouri approximately \$1.9 billion in state fiscal year 2022. This estimate was included as part of the Governor’s recommended budget to the Missouri General Assembly. On May 7, 2021, the Missouri General Assembly finalized the state’s fiscal year 2022 budget. This budget did not provide funding or appropriation authority to the DSS to expand MO HealthNet coverage to the expansion population.⁵ Because the initiative petition was not self-funding and the General Assembly declined to appropriate any funding, the DSS lacks the authority to proceed with implementing Article IV, § 36(c) of the Missouri Constitution at this time. Therefore, we respectfully withdraw State Plan Amendments 21-0002, 21-0003, and 21-0004 from consideration. Should circumstances change, the DSS will resubmit the necessary state plan amendments.

Please note that by withdrawing State Plan Amendments 21-0002, 21-0003, and 21-0004, the DSS does not intend to modify any other portion of its State Plan or affect any existing eligibility groups already authorized for MO HealthNet benefits in Missouri.

We recognize that both DSS and CMS have expended much time and effort to submit and review these state plan amendments. Please know that we greatly appreciate your time and assistance with these state plan amendments and appreciate the working relationship between the State of Missouri and CMS.

Please feel free to contact Sharie Hahn, General Counsel for the Department of Social Services, at 573-751-3229 if you have any questions regarding this matter. Thank you.

Sincerely,



Jennifer R. Tidball, Acting Director
Missouri Department of Social Services



Kirk Mathews, Acting Director
MO HealthNet Division
Missouri Department of Social Services

⁴ *Id.* at 668.

⁵ The cost to implement Medicaid expansion was removed from DSS’ operating bill, House Bill 11, and placed in its own bill, House Bill 20. Both the Missouri House of Representatives and the Missouri Senate explicitly voted not to appropriate funds for expanding Medicaid coverage in Missouri. See <https://house.mo.gov/billtracking/bills211/hlrbillspdf/0011H.06S.pdf> for HB 11 and <https://house.mo.gov/billtracking/bills211/hlrbillspdf/0020H.01I.pdf> for HB 20.