



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

May 16, 1988

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ATTORNEY GENERAL

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OPINION LETTER NO. 124-88

The Honorable Roy D. Blunt
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

This letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the amendment of the Missouri Constitution by adopting a new article thereto, to be known as Article XIV and entitled "Health Care." A copy of the initiative petition and the proposed amendment are attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. See Moore v. Brown, 165 S.W.2d 657 (Mo. banc 1942). Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,


WILLIAM L. WEBSTER
Attorney General

Enclosure

It is a class A misdemeanor for anyone to sign any initiative petition with any name other than his own, or knowingly to sign his name more than once for the same measure for the same election, or to sign a petition when he knows he is not a registered voter.

INITIATIVE PETITION

To the Honorable Roy D. Blunt, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ county (or "city of St. Louis"), respectfully order that the following proposed amendment to the Constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 8th day of November, 1988, and each for himself says: "I have personally signed this petition; I am a registered voter of the state of Missouri and _____ county (or "city of St. Louis"); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

CIRCULATOR'S AFFIDAVIT, STATE OF MISSOURI, COUNTY (where being notarized) OF _____.

I, (Petitioner print your name here) _____, a Missouri registered voter and resident of the state of Missouri, being first duly sworn, say

NAME (Signature)	DATE SIGNED	REGIS. VOTING ADDRESS (Street) (City, Town or Village)	ZIP CODE	CONG. DIST.	PRINT YOUR NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
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signed this page of the foregoing petition, and each of them signed his name thereto in my presence; I believe that each has stated his name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the State of Missouri and _____ county (or "city of St. Louis").

Signature of affiant (Person obtaining signatures)

Street address of affiant (where registered to vote)

Subscribed and sworn to before me this _____ day of _____ A.D., 1988

Signature of Notary Public

City, state and zip code of affiant

My commission expires _____
(Use notary stamp here, if available)

THE PROPOSED AMENDMENT

Shall the Constitution of Missouri be amended by adding a new Article entitled "Health Care," creating a trust fund to provide health care coverage to persons suffering from catastrophic or high-risk illnesses, assist certain elderly persons with Medicare premiums, provide health insurance coverage to certain uninsured persons, and expand coverage under the state's medical assistance program to persons not presently covered thereunder; establishing an earnings tax of six-tenths of one percent to provide funds for the trust and limiting expenditures of state funds to provide coverage under the trust to funds raised by such tax and interest thereon?

BE IT RESOLVED BY THE PEOPLE OF THE STATE OF MISSOURI THAT THE CONSTITUTION BE AMENDED:

The Constitution of Missouri is amended adding a new Article thereto, to be known as Article XIV and entitled "Health Care".

Section 1. There is hereby established a Missouri health care trust fund. The trust shall provide health care coverage to persons specified herein. No taxes or funding scheme other than the tax imposed by section 11 of this article, the interest thereon, and participant contributions shall be imposed or used by the general assembly or the board of directors of the trust to provide health care coverage by or through the trust. The trust shall provide health care coverage for catastrophic and high-risk illnesses to persons as provided for by sections 14 and 15 of this article. The trust shall also provide health care coverage to: (a) uninsured persons who are unemployed and unable to qualify for or afford continuation of medical insurance coverage benefits, and dependents of such persons; (b) qualified medicare beneficiaries for whom the state may elect to make medical assistance available to pay for medicare cost-sharing obligations; (c) persons who are uninsured, whose household income is not more than one-hundred fifty percent of the poverty level and who meet resource limits to be established by law; (d) qualified pregnant women and children in households with incomes below an amount as defined by law; (e) qualified disabled children between the ages of five and seventeen; (f) qualified persons eligible to receive benefits under the medical assistance program under the eligibility criteria in effect therefor on the effective date of this section, but for the fact that they fail to meet the resource criteria due to ownership of a home; and (g) such other qualified categories of persons to which the general assembly elects to provide benefits pursuant to this article. As used in this section, "qualified" means persons to whom the state may elect to provide benefits under its medical assistance program and for whom, in such event, the federal government will provide financial participation to the state pursuant to the federal medicaid statute or under any other federal program providing financing for health care coverage.

Section 2. To the full extent that the coverage may be provided to persons specified in subparagraphs (a) through (g) of section 1 of this article by revising the eligibility criteria for participation in the medical assistance program so as to expand the coverage thereof, including establishment of a medically needy program to extend medical assistance benefits to all persons with incomes of no more than one-hundred thirty-three percent of the payment standard established by the state for purposes of its aid to families with dependent children program who meet all non-financial eligibility requirements for participation in the medical assistance program, except receipt of cash assistance payments under a state or federal program, such coverage shall be provided in such manner. Provided, however, that this article shall not require that cash assistance benefits be made available to any person or category of persons. The state's cost of expanding the medical assistance program as mandated by this section shall be paid from the trust. In no event shall the eligibility guidelines for the medical assistance program be revised pursuant to this section to make eligible for benefits thereunder any person for whom the federal government will not provide financial participation.

Section 3. Coverage shall also be made available to persons specified in subparagraphs (a) through (c) of section 1 of this article who are not eligible to receive benefits under the medical assistance program through a program of health care coverage funded solely by funds from the Missouri health care trust fund including premiums which shall be paid by covered persons or by a political subdivision on behalf of covered persons, as provided in section 7 of this article.

Section 4. The trust shall be administered by a board of directors appointed by the governor with the advice and consent of the senate. The number and qualifications of directors shall be as provided by law, however one-third of the membership of the board of directors, but no more than one-third thereof, shall consist of health care providers, or persons employed by health care providers, or associations representing health care providers. The majority of the remaining members of the board shall be persons involved in the purchase or provision of medical insurance, or other health care coverage, for a minimum of twenty-five persons. The board shall, in addition to the powers conferred to it under the provisions of this article, have such other powers and duties as provided by law.

Section 5. Eligibility criteria, benefits, contributions, premiums, copayments, deductibles, reimbursements, and quality and utilization controls shall be established by the board of directors. The trust shall provide coverage for all health care services for which health care providers are reimbursed under the medical assistance program and shall not provide coverage for any other services. Reimbursement for services provided under this article to persons who do not qualify for federal financial participation, shall be made to providers at the same rate at which reimbursement is made to providers for the same services by the medical assistance program, unless otherwise provided by this article. Providers shall accept reimbursement under the benefit plan established pursuant to this article as payment in full for services for which such reimbursement is made. As used in this section, "reimbursement" includes any amount which eligible persons may be required to pay as a copayment or deductible under any benefit plan established by the board of directors pursuant to this article. Only providers participating in the medical assistance program shall be eligible to receive reimbursements from the trust.

Section 6. Persons with incomes of not more than one-hundred thirty-three percent of the payment standard established by the state for purposes of administering the aid to families with dependent children program, but who do not meet eligibility criteria for receipt of benefits from the medical assistance program, shall receive health care coverage under this section without payment of premiums, contributions, copayments or other deductibles, other than such copayments or deductibles paid by beneficiaries of the medical assistance program. Premiums, contributions,

copayments and deductibles to be paid by or on behalf of other persons qualified to receive coverage under the trust shall be calculated according to a progressive schedule of assessment based on such person's income as a percentage of the poverty level, with persons having an income of one-hundred and fifty percent of the poverty level paying one-hundred percent of the average cost of coverage under the trust and persons having an income of one-hundred percent of the poverty level paying fifty percent of such average cost. Such assessment schedule shall be promulgated by the board of directors so as to assure the actuarial soundness of the trust.

Section 7. Any political subdivision may elect to pay premiums, copayments, or deductibles for its eligible residents and the general assembly shall enact legislation to allow political subdivisions the option of either individually or collectively enrolling such residents for coverage by the trust. If a political subdivision pays premiums for its residents, it may require that such residents participate in a capitation or managed care program chosen by the political subdivision and approved by the board of directors.

Section 8. The board of directors shall ensure that the benefit plan for the health care coverage program established pursuant to this article is actuarially sound based on projected funding levels, is consistent with the state plan for medical assistance, and is within the limits of the funds provided by the general assembly for the operation of the trust, including such participant contributions which the board of directors may establish. The board shall, prior to the beginning of each fiscal year, review the benefit plan and adjust premium rates and copayment and deductible requirements so as to assure that the plan is actuarially sound based on projected funding levels and that it will operate within the limits of the funds provided by the general assembly, including participant contributions. Notwithstanding any other provision of this article, should the board determine during the course of a fiscal year that the funds available to the trust are insufficient to allow the benefit plan to operate within the limits of the funds available to the trust, the board may increase the amount which persons receiving coverage under the trust are required to pay as copayments or deductibles and/or reduce reimbursements to health care providers for services, provided that the board gives providers a minimum of thirty days notice prior to reducing reimbursements. However, the board may not reduce reimbursements for services provided to persons receiving health care coverage under the medical assistance program nor may it increase copayments or deductibles applicable to such persons or to persons whose household income is less than one-hundred-thirty-three percent of the payment standard established by the state for purposes of administering its aid to families with dependent children program. If the board reduces reimbursements made to providers, pursuant to the provisions of this section, it shall adjust premium rates and/or copayment and deductible requirements effective at the beginning of the following fiscal year, so that, based on the actuarial projections available to the board, the trust will be able to make reimbursement to providers at the same rate at which the medical assistance program makes reimbursement to providers for the same services.

Section 9. No provider who is required to file a medicare cost report with the federal government for reimbursement purposes shall be required to submit such report to the board if it has submitted such report to another state agency. Where such reports have been submitted to another state agency, such agency shall make a copy of the report available to the board. Providers shall submit claims for payment to the trust on the same form used to submit such claims under the federal medicare program. The board may analyze the data contained in the medicare cost report together with the utilization and charge data recorded on uniform billing documents submitted to the trust for payment by providers. The general assembly may by law require health care providers to submit such additional information to the board of directors as it deems appropriate to ensure proper administration of the trust.

Section 10. The general assembly shall establish by law a method of calculating a person's income for purposes of this article. Such method shall not be more restrictive than the method used by the state for calculating a person's income for purposes of determining initial eligibility for the aid to families with dependent children program. As used in this article, "poverty level" means the federal non-farm poverty level as established annually by the Bureau of Labor Statistics of the federal Department of Labor or its successor agency.

Section 11. (1) To provide funds for the health care trust fund, there is hereby imposed, effective April 15, 1989, an earnings tax of six-tenths of one percent on the salaries, wages, commissions and other compensation earned by residents of the state; on the salaries, wages, commissions and other compensation earned by non-residents of the state for work done or services performed or rendered in the state; on the net profits of associations, business or other activities conducted by residents of the state; on the net profits of associations, business or other activities conducted in the state by non-residents; and on the net profits earned by all corporations as the result of work done or services performed or rendered and business or other activities conducted in the state.

(2) As used in this section:

(a) "Association" means a partnership, limited partnership, or any other form of unincorporated business or enterprise, owned by two or more persons.

(b) "Business" means an enterprise, activity, profession, trade or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, association, or other entity other than a corporation.

(c) "Corporation" means a corporation or joint stock association organized under the laws of the United States, this state, or any other state, territory, or foreign country or dependency, except for those corporations or organizations which are exempt from taxation under the state income tax code.

(d) "Employer" means an individual, association, corporation

(including a corporation not for profit), governmental administration, agency, arm, authority, board, body, bureau, department, division, subdivision, section or unit, or any other entity, that employs one or more persons on a salary, wage, commission, or other compensation basis, whether or not such employer is engaged in business.

(e) "Net Profits" means the net income of any individual, association, business, or corporation remaining after deducting from the gross profits or earnings the necessary expenses of operation exclusive of payments of federal and state income taxes.

(f) "Non-resident" means an individual, association, business, corporation, fiduciary or other entity domiciled outside the state.

(g) "Person" means every natural person, association, business or fiduciary.

(h) "Resident" means an individual, association, business, corporation, fiduciary or other entity domiciled within the state.

(i) "Taxpayer" means a person, whether an individual, association, business, corporation, fiduciary, or other entity required by this section to file a return of earnings or net profits, or to pay a tax thereon.

(3) Unless another method of allocation is provided by the general assembly, the earnings of individuals and the net profits of businesses attributable to work done or business conducted partly within the state and partly outside of the state shall be allocated to the state in the same manner as is income for purposes of the state income tax.

(4) The tax hereby imposed shall be collected and administered by the director of revenue. The general assembly shall enact laws pertaining to the collection and administration of such tax. The director of revenue may promulgate rules and regulations consistent with such laws and this section pertaining to such tax. The tax hereby imposed shall be payable on or before the fifteenth day of the fourth month following the close of the taxpayer's fiscal year. The department of revenue shall prepare appropriate returns. All employers maintaining an office or transacting any business within this state shall deduct and withhold from the wages of their employees the tax imposed by the section. Every employer withholding any amount from the wages of an employee shall, for each calendar quarter, file a withholding return as prescribed by the director of revenue and pay over to the director of revenue the taxes so withheld.

(5) The general assembly shall, by law, provide for a credit against the tax imposed by this section to employers who provide medical insurance, or other health care coverage, meeting minimal standards, as defined by law, to their employees. The general assembly shall provide that the credit shall be calculated based upon a graduated scale, so that employers who provide the most comprehensive health care coverage shall be entitled to a credit in the amount of the tax due and employers providing less comprehensive coverage shall receive a lesser credit. The general assembly may provide by law for a penalty to be imposed on employers who reduce or eliminate health insurance coverage for their employees solely for the purpose of causing such employees to be eligible for coverage under the benefit plan established pursuant to the provision of this article.

(6) The general assembly shall by law provide civil and criminal penalties for the failure to pay the tax hereby imposed, late payment thereof, failure to make a timely or correct return thereof, and failure to withhold any such tax as required by law. Until the effective date of such law, the penalties provided by law for like violations or delinquencies with respect to the state income tax shall be applicable to such violations or delinquencies with respect to the tax hereby imposed.

Section 12. Any provision of law to the contrary notwithstanding, all funds and tax revenues collected pursuant to the provisions of this article and all participant contributions shall be deposited in the State Treasury to the credit of the "Missouri Health Care Trust Fund" which is hereby established in the office of the state treasurer and shall be used only for the purpose of providing health care coverage pursuant to the provisions of this article and no other. Interest and other income derived from the investment of funds collected pursuant to this article shall be credited to the same account for the purposes provided in this article. The general assembly shall appropriate to the trust for each year an amount equal to the revenue raised pursuant to this article, together with the interest thereon. The general assembly shall appropriate sufficient funds from the trust for administration thereof so as to make coverage under the trust available to all persons eligible to receive such coverage.

Section 13. The general assembly shall appropriate twenty-two percent of the annual revenues raised by the tax provided for by section 11 of this article to enhance reimbursements made to health care providers under the medical assistance program and to expand the list of prescription medications for which reimbursement is provided under the medical assistance program's pharmaceutical formulary as of the effective date of this article.

Section 14. There is hereby established a "catastrophic illness pool" within the health care trust fund. The general assembly shall appropriate an amount not to exceed eighteen percent of the annual revenues raised by the tax provided for by section 11 of this article to fund the catastrophic illness pool.

Section 15. There is hereby established a "high-risk illness pool" within the health care trust fund. The general assembly shall appropriate an amount not to exceed two percent of the annual revenues raised by the tax provided for by section 11 of this article to fund the high-risk illness pool. Such pool shall provide coverage to persons unable to purchase medical insurance due to their medical history or that of their family. Persons eligible to participate in the pool shall pay premiums of not less than one hundred and fifty percent nor more than two hundred percent of the standard risk rate. Such premiums shall be established by the board of directors.

Section 16. Payment of expenses and charges pursuant to this article to any person is not the granting of public money or property or the giving, spending, granting or pledging of public credit to a private person within the meaning of any section of this constitution. Revenues from any tax imposed pursuant to this article shall not be a part of "total state revenues" or "state revenues" within the meaning of section 18 of article X or section 3(b) of article IX of this constitution and the expenditure of such revenue shall not be an "expense of state government" within the meaning of section 20 or article X of this constitution.

Section 17. The board may contract with any entity for administration of coverage under the trust.

Section 18. Moneys in the trust fund shall be available to provide health care for covered persons in addition to and not in lieu of other moneys appropriated from general revenue by the general assembly for the provision of health care under any state or federal program existing on the effective date of this article. Revenues raised under the provisions of this article shall not be used to provide or pay for health care services, other than to increase reimbursements as provided in section 13, for persons who would qualify to receive benefits from the medical assistance program if the eligibility criteria in effect on the effective date of this section were applied to them, unless such persons become ineligible to receive benefits from the medical assistance program because the eligibility criteria imposed by the federal government for participation in the Medicaid program or related cash assistance programs are made more restrictive than those imposed by the state on that date.

Section 19. If the state increases the aid to families with dependent children payment standard above the standard in effect on January 1, 1989, as measured as a percentage of the poverty level, the general assembly may by law require the trust to pay the state's share of the cost of providing medical assistance benefits to any additional persons who qualify to receive such benefits as a result of such increase.

Section 20. Should the federal government establish a national health care plan which provides health care coverage similar to that provided by this article, or abolish or replace the existing Medicaid program, the general assembly shall eliminate any coverage hereunder which duplicates any federal coverage and may use the revenues raised by this article to: (a) provide a state match or to pay any premiums, copayments, or deductibles or any other contribution required for residents of the state to participate in any federal plan, or (b) to otherwise provide health care coverage to persons provided coverage by this article. In the event of either of the occurrences set out above, the general assembly shall have the authority to redistribute the revenues raised by this article to provide health care services to persons provided health care coverage under this article or to increase reimbursements under the medical assistance program, regardless of any other provisions of this article.

Notice: You are advised that the proposed constitutional amendment changes, repeals, or modifies by implication, or may be construed to change, repeal, or modify by implication, in addition to the provisions of the Constitution which are specifically added, the following provisions of the Constitution of Missouri: Article III, sections 36 and 38(a); Article IV, Section 27; Article IX, Section 3(b); and Article X, Sections 3, 17, 18, 19, and 20.