

House Concurrent Resolution No. 19

93RD GENERAL ASSEMBLY

4907L.031

Whereas, it is the state's right to control spending its own tax dollars; and

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3 **Whereas**, the Congressional Budget Office (CBO) estimates the additional cost
4 to states created by the Medicare Modernization Act of 2003 will total \$124 billion from 2006
5 to 2015; and

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7 **Whereas**, these additional costs will result from the Medicare Modernization Act
8 reimbursement mechanism, popularly known as the "clawback provision", by which states are
9 required to repay the federal government for dual-eligible enrollees who qualify for both
10 Medicaid and Medicare; and

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12 **Whereas**, our state dual-eligible program costs have been efficiently managed in
13 the past two years with the implementation of cost-saving measures that include negotiated
14 rebates and a pharmacy providers' tax; and

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16 **Whereas**, the extra cost to the state of Missouri resulting from the "clawback
17 provision" is estimated at approximately \$90 million in the first twelve months of the program;
18 and

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20 **Whereas**, our state is in a budgetary crisis and significant moneys have been taken
21 from health care to balance last year's budget; and

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23 **Whereas**, these moneys need to be redirected to improve the health of Missourians;
24 and

25 **Whereas**, some members of Congress have attempted to respond to this
26 controversial provision of the Medicare Modernization Act of 2003 with legislation introduced
27 to delay or improve the implementation of the prescription drug portion of the Act; and

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29 **Whereas**, at least nineteen other states are arguing that the "clawback provision"
30 operates as an unconstitutional tax on state treasuries; and

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32 **Whereas**, a number of these nineteen states have announced their intent, either
33 individually or collectively, to actively pursue a challenge to the constitutionality of the
34 "clawback provision"; and

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36 **Whereas**, the legal challenges to the "clawback provision" are not limited to the
37 argument that the provision operates as an unconstitutional tax upon the states. The legal
38 arguments include claims that the provision is an unconstitutional assumption of a state's
39 sovereign function to raise revenue for a federal program and that the provision is an
40 unconstitutionally coercive exercise of Congress' spending authority:

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42 **Now, therefore, be it resolved** that the members of the House of
43 Representatives of the Ninety-third General Assembly, Second Regular Session, the Senate
44 concurring therein, hereby support the Attorney General's intent to file a constitutional complaint
45 regarding the clawback provision; and

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47 **Be it further resolved** that the Missouri General Assembly make reasonable
48 restorations to Medicaid recipients, particularly Missouri Assistance for Working Disabled
49 (MAWD), Missouri Assistance to Families, the elderly, and disabled, and to make a total
50 restoration of the funding for optional services, such as dental, optometric, and durable medical
51 equipment; and

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53 **Be it further resolved** that the Missouri General Assembly calls on its
54 Congressional delegation to revisit the funding mechanism for the Medicare Modernization Act
55 of 2003 to allow adversely affected states to opt out of the "clawback provision" requirement,

56 based on individual state circumstances that may include budget constraints, state pharmaceutical
57 cost-saving measures and state excludable costs; and

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59 **Be it further resolved** that the Chief Clerk of the Missouri House of
60 Representatives be instructed to prepare properly inscribed copies of this resolution for Governor
61 Matt Blunt and each member of the Missouri Congressional delegation.