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HOUSE BILL 73

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

Meredith A. Dixon and Joy Garratt

AN ACT

RELATING TO HEALTH INSURANCE COVERAGE; ENACTING SECTIONS OF THE HEALTH CARE PURCHASING ACT, THE PUBLIC ASSISTANCE ACT, THE NEW MEXICO INSURANCE CODE, THE HEALTH MAINTENANCE ORGANIZATION LAW AND THE NONPROFIT HEALTH CARE PLAN LAW TO REQUIRE COVERAGE OF BIOMARKER TESTING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Health Care Purchasing Act is enacted to read:

"[NEW MATERIAL] BIOMARKER TESTING INSURER COVERAGE.--

A. Group health coverage, including self-insurance, offered, issued, amended, delivered or renewed under the Health Care Purchasing Act shall provide coverage for insureds to receive biomarker testing.

B. Coverage provided pursuant to this section

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1 shall be for the purposes of diagnosis, treatment, appropriate  
2 management or ongoing monitoring of an insured's disease or  
3 condition when the test is supported by medical and scientific  
4 evidence, including:

5 (1) labeled indications for a United States  
6 food and drug administration-approved or -cleared test or  
7 indicated tests for a United States food and drug  
8 administration-approved drug;

9 (2) federal centers for medicare and medicaid  
10 services national coverage determinations or medicare  
11 administrative contractor local coverage determinations; or

12 (3) nationally recognized clinical practice  
13 guidelines and consensus statements.

14 C. An insurer providing coverage for biomarker  
15 testing pursuant to this section shall ensure that:

16 (1) coverage is provided in a manner that  
17 limits disruptions in care, including coverage for multiple  
18 biopsies or biospecimen samples; and

19 (2) a patient and a practitioner who  
20 prescribes biomarker testing have clear, accessible and  
21 convenient processes to request an exception to a coverage  
22 policy of a health insurer and that those processes are  
23 accessible on the insurer's website.

24 D. Coverage for biomarker testing may be subject to  
25 deductibles and coinsurance consistent with those imposed on

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1 other benefits under the same group health care coverage,  
2 including any form of self-insurance.

3 E. As used in this section:

4 (1) "biomarker" means a characteristic that is  
5 objectively measured and evaluated as an indicator of normal  
6 biological processes, pathogenic processes or pharmacologic  
7 responses to a specific therapeutic intervention and includes  
8 gene mutations or protein expressions;

9 (2) "biomarker testing" means analysis of a  
10 patient's tissue, blood or other biospecimen for the presence  
11 of a biomarker and includes single-analyte tests, multi-plex  
12 panel tests and whole genome sequencing;

13 (3) "consensus statements" means statements  
14 that are:

15 (a) developed by an independent,  
16 multidisciplinary panel of experts using a transparent  
17 methodology and reporting structure and with a conflict-of-  
18 interest policy; and

19 (b) aimed at specific clinical  
20 circumstances and based on the best available evidence for the  
21 purpose of optimizing the outcomes of clinical care; and

22 (4) "nationally recognized clinical practice  
23 guidelines" means evidence-based clinical practice guidelines  
24 that are:

25 (a) developed by independent

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1 organizations or medical professional societies using a  
2 transparent methodology and reporting structure and with a  
3 conflict-of-interest policy; and

4 (b) used to establish standards of care  
5 informed by a systematic review of evidence and an assessment  
6 of the benefits and costs of alternative care options and  
7 include recommendations intended to optimize patient care."

8 SECTION 2. A new section of the Public Assistance Act is  
9 enacted to read:

10 "[NEW MATERIAL] BIOMARKER TESTING COVERAGE.--

11 A. In accordance with federal law, the secretary  
12 shall adopt and promulgate rules that provide medical  
13 assistance coverage for enrollees to receive biomarker testing.

14 B. A medical assistance plan providing coverage  
15 pursuant to this section shall be for the purposes of  
16 diagnosis, treatment, appropriate management or ongoing  
17 monitoring of an enrollee's disease or condition when the test  
18 is supported by medical and scientific evidence, including:

19 (1) labeled indications for a United States  
20 food and drug administration-approved or -cleared test or  
21 indicated tests for a United States food and drug  
22 administration-approved drug;

23 (2) federal centers for medicare and medicaid  
24 services national coverage determinations or medicare  
25 administrative contractor local coverage determinations; or

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1 (3) nationally recognized clinical practice  
2 guidelines and consensus statements.

3 C. Medicaid contractors delivering services to  
4 enrollees shall provide biomarker testing at the same scope,  
5 duration and frequency as the medical assistance plan otherwise  
6 provides to enrollees.

7 D. A medical assistance plan providing coverage for  
8 biomarker testing pursuant to this section shall ensure that:

9 (1) coverage is provided in a manner that  
10 limits disruptions in care, including coverage for multiple  
11 biopsies or biospecimen samples; and

12 (2) a patient and a practitioner who  
13 prescribes biomarker testing have clear, readily accessible and  
14 convenient processes to request an exception to a coverage  
15 policy of a health insurer and that those processes are  
16 accessible on the medical assistance division of the  
17 department's website.

18 E. As used in this section:

19 (1) "biomarker" means a characteristic that is  
20 objectively measured and evaluated as an indicator of normal  
21 biological processes, pathogenic processes or pharmacologic  
22 responses to a specific therapeutic intervention, including  
23 gene mutations or protein expressions;

24 (2) "biomarker testing" means analysis of a  
25 patient's tissue, blood or other biospecimen for the presence

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1 of a biomarker and includes single-analyte tests, multi-plex  
2 panel tests and whole genome sequencing;

3 (3) "consensus statements" means statements  
4 that are:

5 (a) developed by an independent,  
6 multidisciplinary panel of experts using a transparent  
7 methodology and reporting structure and with a conflict-of-  
8 interest policy; and

9 (b) aimed at specific clinical  
10 circumstances and based on the best available evidence for the  
11 purpose of optimizing the outcomes of clinical care; and

12 (4) "nationally recognized clinical practice  
13 guidelines" means evidence-based clinical practice guidelines  
14 that are:

15 (a) developed by independent  
16 organizations or medical professional societies using a  
17 transparent methodology and reporting structure and with a  
18 conflict-of-interest policy; and

19 (b) used to establish standards of care  
20 informed by a systematic review of evidence and an assessment  
21 of the benefits and costs of alternative care options and  
22 include recommendations intended to optimize patient care."

23 SECTION 3. A new section of Chapter 59A, Article 23 NMSA  
24 1978 is enacted to read:

25 "[NEW MATERIAL] BIOMARKER TESTING COVERAGE.--

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1           A. A blanket or group health insurance policy,  
2 health care plan or certificate of health insurance that is  
3 delivered, issued for delivery or renewed in this state shall  
4 provide coverage for insureds to receive biomarker testing.

5           B. Coverage provided pursuant to this section  
6 shall be for the purposes of diagnosis, treatment, appropriate  
7 management or ongoing monitoring of an insured's disease or  
8 condition when the test is supported by medical and scientific  
9 evidence, including:

10                   (1) labeled indications for a United States  
11 food and drug administration-approved or -cleared test or  
12 indicated tests for a United States food and drug  
13 administration-approved drug;

14                   (2) federal centers for medicare and medicaid  
15 services national coverage determinations or medicare  
16 administrative contractor local coverage determinations; or

17                   (3) nationally recognized clinical practice  
18 guidelines and consensus statements.

19           C. A blanket or group health policy, health care  
20 plan or certificate of health insurance providing coverage for  
21 biomarker testing pursuant to this section shall ensure that:

22                   (1) coverage is provided in a manner that  
23 limits disruptions in care, including coverage for multiple  
24 biopsies or biospecimen samples; and

25                   (2) a patient and a practitioner who

1 prescribes biomarker testing have clear, accessible and  
2 convenient processes to request an exception to a coverage  
3 policy of a health insurer and that those processes are  
4 accessible on the insurer's website.

5 D. Coverage for biomarker testing may be subject to  
6 deductibles and coinsurance consistent with those imposed on  
7 other benefits under the same policy, plan or certificate.

8 E. As used in this section:

9 (1) "biomarker" means a characteristic that is  
10 objectively measured and evaluated as an indicator of normal  
11 biological processes, pathogenic processes or pharmacologic  
12 responses to a specific therapeutic intervention and includes  
13 gene mutations or protein expressions;

14 (2) "biomarker testing" means analysis of a  
15 patient's tissue, blood or other biospecimen for the presence  
16 of a biomarker and includes single-analyte tests, multi-plex  
17 panel tests and whole genome sequencing;

18 (3) "consensus statements" means statements  
19 that are:

20 (a) developed by an independent,  
21 multidisciplinary panel of experts using a transparent  
22 methodology and reporting structure and with a conflict-of-  
23 interest policy; and

24 (b) aimed at specific clinical  
25 circumstances and based on the best available evidence for the



1 purpose of optimizing the outcomes of clinical care; and

2 (4) "nationally recognized clinical practice  
3 guidelines" means evidence-based clinical practice guidelines  
4 that are:

5 (a) developed by independent  
6 organizations or medical professional societies using a  
7 transparent methodology and reporting structure and with a  
8 conflict-of-interest policy; and

9 (b) used to establish standards of care  
10 informed by a systematic review of evidence and an assessment  
11 of the benefits and costs of alternative care options and  
12 include recommendations intended to optimize patient care."

13 SECTION 4. A new section of the Health Maintenance  
14 Organization Law is enacted to read:

15 "[NEW MATERIAL] BIOMARKER TESTING COVERAGE.--

16 A. An individual or group health maintenance  
17 organization contract that is delivered, issued for delivery or  
18 renewed in this state shall provide coverage for eligible  
19 enrollees to receive biomarker testing.

20 B. Coverage provided pursuant to this section  
21 shall be for the purposes of diagnosis, treatment, appropriate  
22 management or ongoing monitoring of an enrollee's disease or  
23 condition when the test is supported by medical and scientific  
24 evidence, including:

25 (1) labeled indications for a United States

1 food and drug administration-approved or -cleared test or  
2 indicated tests for a United States food and drug  
3 administration-approved drug;

4 (2) federal centers for medicare and medicaid  
5 services national coverage determinations or medicare  
6 administrative contractor local coverage determinations; or

7 (3) nationally recognized clinical practice  
8 guidelines and consensus statements.

9 C. A health maintenance organization contract  
10 providing coverage for biomarker testing pursuant to this  
11 section shall ensure that:

12 (1) coverage is provided in a manner that  
13 limits disruptions in care, including coverage for multiple  
14 biopsies or biospecimen samples; and

15 (2) a patient and a practitioner who  
16 prescribes biomarker testing have clear, accessible and  
17 convenient processes to request an exception to a coverage  
18 policy of a carrier and that those processes are accessible on  
19 the carrier's website.

20 D. Coverage for biomarker testing may be subject to  
21 deductibles and coinsurance consistent with those imposed on  
22 other benefits under the same contract.

23 E. As used in this section:

24 (1) "biomarker" means a characteristic that is  
25 objectively measured and evaluated as an indicator of normal

1 biological processes, pathogenic processes or pharmacologic  
2 responses to a specific therapeutic intervention and includes  
3 gene mutations or protein expression;

4 (2) "biomarker testing" means analysis of a  
5 patient's tissue, blood or other biospecimen for the presence  
6 of a biomarker and includes single-analyte tests, multi-plex  
7 panel tests and whole genome sequencing;

8 (3) "consensus statements" means statements  
9 that are:

10 (a) developed by an independent,  
11 multidisciplinary panel of experts using a transparent  
12 methodology and reporting structure and with a conflict-of-  
13 interest policy; and

14 (b) aimed at specific clinical  
15 circumstances and based on the best available evidence for the  
16 purpose of optimizing the outcomes of clinical care; and

17 (4) "nationally recognized clinical practice  
18 guidelines" means evidence-based clinical practice guidelines  
19 that are:

20 (a) developed by independent  
21 organizations or medical professional societies using a  
22 transparent methodology and reporting structure and with a  
23 conflict-of-interest policy; and

24 (b) used to establish standards of care  
25 informed by a systematic review of evidence and an assessment

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1 of the benefits and costs of alternative care options and  
2 include recommendations intended to optimize patient care."

3 SECTION 5. A new section of the Nonprofit Health Care  
4 Plan Law is enacted to read:

5 "[NEW MATERIAL] BIOMARKER TESTING COVERAGE.--

6 A. An individual or group health care plan that is  
7 delivered, issued for delivery or renewed in this state shall  
8 provide coverage for subscribers to receive biomarker testing.

9 B. Coverage provided pursuant to this section  
10 shall be for the purposes of diagnosis, treatment, appropriate  
11 management or ongoing monitoring of a subscriber's disease or  
12 condition when the test is supported by medical and scientific  
13 evidence, including:

14 (1) labeled indications for a United States  
15 food and drug administration-approved or -cleared test or  
16 indicated tests for a United States food and drug  
17 administration-approved drug;

18 (2) federal centers for medicare and medicaid  
19 services national coverage determinations or medicare  
20 administrative contractor local coverage determinations; or

21 (3) nationally recognized clinical practice  
22 guidelines and consensus statements.

23 C. Health care plans providing coverage for  
24 biomarker testing pursuant to this section shall ensure that:

25 (1) coverage is provided in a manner that

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1 limits disruptions in care, including coverage for multiple  
2 biopsies or biospecimen samples; and

3 (2) a patient and a practitioner who  
4 prescribes biomarker testing have clear, accessible and  
5 convenient processes to request an exception to a coverage  
6 policy of a health care plan and that those processes are  
7 accessible on the health care plan's website.

8 D. Coverage for biomarker testing may be subject to  
9 deductibles and coinsurance consistent with those imposed on  
10 other benefits under the same policy, plan or certificate.

11 E. As used in this section:

12 (1) "biomarker" means a characteristic that is  
13 objectively measured and evaluated as an indicator of normal  
14 biological processes, pathogenic processes or pharmacologic  
15 responses to a specific therapeutic intervention and includes  
16 gene mutations or protein expressions;

17 (2) "biomarker testing" means analysis of a  
18 patient's tissue, blood or other biospecimen for the presence  
19 of a biomarker and includes single-analyte tests, multi-plex  
20 panel tests and whole genome sequencing;

21 (3) "consensus statements" means statements  
22 that are:

23 (a) developed by an independent,  
24 multidisciplinary panel of experts using a transparent  
25 methodology and reporting structure and with a conflict-of-

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1 interest policy; and

2 (b) aimed at specific clinical  
3 circumstances and based on the best available evidence for the  
4 purpose of optimizing the outcomes of clinical care; and

5 (4) "nationally recognized clinical practice  
6 guidelines" means evidence-based clinical practice guidelines  
7 that are:

8 (a) developed by independent  
9 organizations or medical professional societies using a  
10 transparent methodology and reporting structure and with a  
11 conflict-of-interest policy; and

12 (b) used to establish standards of care  
13 informed by a systematic review of evidence and an assessment  
14 of the benefits and costs of alternative care options and  
15 include recommendations intended to optimize patient care."

16 SECTION 6. APPLICABILITY.--The provisions of this act  
17 apply to health insurance policies, health care plans,  
18 certificates of health insurance or health maintenance  
19 organization contracts that are delivered, issued for delivery  
20 or renewed in this state on or after January 1, 2024.

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