

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 73

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

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 shall

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1 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;

7 (2) indicated tests for a United States food  
8 and drug administration-approved drug;

9 (3) warnings and precautions on United States  
10 food and drug administration labels;

11 (4) federal centers for medicare and medicaid  
12 services national coverage determinations or medicare  
13 administrative contractor local coverage determinations; or

14 (5) nationally recognized clinical practice  
15 guidelines and consensus statements.

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

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

21 (2) a patient and a practitioner who  
22 prescribes biomarker testing have clear, accessible and  
23 convenient processes to request an appeal of a benefit denial  
24 by the insurer and that those processes are accessible on the  
25 insurer's website.

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1           D. Coverage for biomarker testing may be subject to  
2 deductibles and coinsurance consistent with those imposed on  
3 other benefits under the same group health care coverage,  
4 including any form of self-insurance.

5           E. The provisions of this section do not apply to  
6 accident-only or limited or specified disease policies, plans  
7 or certificates of health insurance.

8           F. 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, including  
13 known gene-drug interactions for medications being considered  
14 for use or already being administered. "Biomarker" includes  
15 gene mutations, characteristics of genes or protein expression;

16                   (2) "biomarker testing" means analysis of a  
17 patient's tissue, blood or other biospecimen for the presence  
18 of a biomarker and includes single-analyte tests, multi-plex  
19 panel tests, protein expression and whole exome, whole genome  
20 and whole transcriptome 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 risks of alternative care options and  
15 include recommendations intended to optimize patient care."

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

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

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

22 B. A medical assistance plan providing coverage  
23 pursuant to this section shall be for the purposes of  
24 diagnosis, treatment, appropriate management or ongoing  
25 monitoring of an enrollee's disease or condition when the test

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1 is supported by medical and scientific evidence, including:

2 (1) labeled indications for a United States  
3 food and drug administration-approved or -cleared test;

4 (2) indicated tests for a United States food  
5 and drug administration-approved drug;

6 (3) warnings and precautions on United States  
7 food and drug administration labels;

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

11 (5) nationally recognized clinical practice  
12 guidelines and consensus statements.

13 C. Medicaid contractors delivering services to  
14 enrollees shall provide biomarker testing at the same scope,  
15 duration and frequency as the medical assistance plan otherwise  
16 provides to enrollees.

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

19 (1) coverage is provided in a manner that  
20 limits disruptions in care, including coverage for multiple  
21 biopsies or biospecimen samples; and

22 (2) a patient and a practitioner who  
23 prescribes biomarker testing have clear, readily accessible and  
24 convenient processes to request an appeal of a benefit denial  
25 by the insurer and that those processes are accessible on the

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1 medical assistance division of the department's website.

2 E. As used in this section:

3 (1) "biomarker" means a characteristic that is  
4 objectively measured and evaluated as an indicator of normal  
5 biological processes, pathogenic processes or pharmacologic  
6 responses to a specific therapeutic intervention, including  
7 known gene-drug interactions for medications being considered  
8 for use or already being administered. "Biomarker" includes  
9 gene mutations, characteristics of genes or protein expression;

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

15 (3) "consensus statements" means statements  
16 that are:

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

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

24 (4) "nationally recognized clinical practice  
25 guidelines" means evidence-based clinical practice guidelines

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1 that are:

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

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

10 SECTION 3. A new section of Chapter 59A, Article 22 NMSA  
11 1978 is enacted to read:

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

13 A. An individual or group health insurance policy,  
14 health care plan or certificate of health insurance that is  
15 delivered, issued for delivery or renewed in this state shall  
16 provide coverage for insureds to receive biomarker testing for  
17 the purposes of diagnosis, treatment, appropriate management or  
18 ongoing monitoring of an insured's disease or condition when  
19 the test is supported by medical and scientific evidence.

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 insured'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

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1 food and drug administration-approved or -cleared test;

2 (2) indicated tests for a United States food  
3 and drug administration-approved drug;

4 (3) warnings and precautions on United States  
5 food and drug administration labels;

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

9 (5) nationally recognized clinical practice  
10 guidelines and consensus statements.

11 C. An individual or group health policy, health  
12 care plan or certificate of health insurance providing coverage  
13 for biomarker testing pursuant to this section shall ensure  
14 that:

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

18 (2) a patient and a practitioner who prescribe  
19 biomarker testing have clear, accessible and convenient  
20 processes to request an appeal of a benefit denial by the  
21 insurer and that those processes are accessible on the  
22 insurer's website.

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

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1 E. The provisions of this section do not apply to  
2 short-term travel, accident-only or limited or specified  
3 disease policies, plans or certificates of health insurance.

4 F. As used in this section:

5 (1) "biomarker" means a characteristic that is  
6 objectively measured and evaluated as an indicator of normal  
7 biological processes, pathogenic processes or pharmacologic  
8 responses to a specific therapeutic intervention, including  
9 known gene-drug interactions for medications being considered  
10 for use or already being administered. "Biomarker" includes  
11 gene mutations, characteristics of genes or protein expression;

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

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

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

23 (b) aimed at specific clinical  
24 circumstances and based on the best available evidence for the  
25 purpose of optimizing the outcomes of clinical care; and

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

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

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

12 SECTION 4. A new section of Chapter 59A, Article 23 NMSA  
13 1978 is enacted to read:

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

15 A. A blanket or group health insurance policy,  
16 health care plan or certificate of health insurance that is  
17 delivered, issued for delivery or renewed in this state shall  
18 provide coverage for insureds to receive biomarker testing.

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

24 (1) labeled indications for a United States  
25 food and drug administration-approved or -cleared test;

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1                   (2) indicated tests for a United States food  
2 and drug administration-approved drug;

3                   (3) warnings and precautions on United States  
4 food and drug administration labels;

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

8                   (5) nationally recognized clinical practice  
9 guidelines and consensus statements.

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

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

16                   (2) a patient and a practitioner who  
17 prescribes biomarker testing have clear, accessible and  
18 convenient processes to request an appeal of a benefit denial  
19 by the insurer and that those processes are accessible on the  
20 insurer's website.

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

24                  E. The provisions of this section do not apply to  
25 accident-only or limited or specified disease policies, plans

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1 or certificates of health insurance.

2 F. As used in this section:

3 (1) "biomarker" means a characteristic that is  
4 objectively measured and evaluated as an indicator of normal  
5 biological processes, pathogenic processes or pharmacologic  
6 responses to a specific therapeutic intervention, including  
7 known gene-drug interactions for medications being considered  
8 for use or already being administered. "Biomarker" includes  
9 gene mutations, characteristics of genes or protein expression;

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

15 (3) "consensus statements" means statements  
16 that are:

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

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

24 (4) "nationally recognized clinical practice  
25 guidelines" means evidence-based clinical practice guidelines

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1 that are:

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

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

10 SECTION 5. A new section of the Health Maintenance  
11 Organization Law is enacted to read:

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

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

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

22 (1) labeled indications for a United States  
23 food and drug administration-approved or -cleared test;

24 (2) indicated tests for a United States food  
25 and drug administration-approved drug;

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1 (3) warnings and precautions on United States  
2 food and drug administration labels;

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

6 (5) nationally recognized clinical practice  
7 guidelines and consensus statements.

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

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

14 (2) a patient and a practitioner who  
15 prescribes biomarker testing have clear, accessible and  
16 convenient processes to request an appeal of a benefit denial  
17 by the carrier and that those processes are accessible on the  
18 carrier's website.

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

22 E. The provisions of this section do not apply to  
23 accident-only or limited or specified disease policies, plans  
24 or certificates of health insurance.

25 F. As used in this section:

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1 (1) "biomarker" means a characteristic that is  
2 objectively measured and evaluated as an indicator of normal  
3 biological processes, pathogenic processes or pharmacologic  
4 responses to a specific therapeutic intervention, including  
5 known gene-drug interactions for medications being considered  
6 for use or already being administered. "Biomarker" includes  
7 gene mutations, characteristics of genes or protein expression;

8 (2) "biomarker testing" means analysis of a  
9 patient's tissue, blood or other biospecimen for the presence  
10 of a biomarker and includes single-analyte tests, multi-plex  
11 panel tests, protein expression and whole exome, whole genome  
12 and whole transcriptome 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 risks of alternative care options and  
7 include recommendations intended to optimize patient care."

8 SECTION 6. A new section of the Nonprofit Health Care  
9 Plan Law is enacted to read:

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

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

14 B. Coverage provided pursuant to this section  
15 shall be for the purposes of diagnosis, treatment, appropriate  
16 management or ongoing monitoring of a subscriber's disease or  
17 condition when the test is supported by medical and scientific  
18 evidence, including:

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

21 (2) indicated tests for a United States food  
22 and drug administration-approved drug;

23 (3) warnings and precautions on United States  
24 food and drug administration labels;

25 (4) federal centers for medicare and medicaid

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1 services national coverage determinations or medicare  
2 administrative contractor local coverage determinations; or  
3 (5) nationally recognized clinical practice  
4 guidelines and consensus statements.

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

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

10 (2) a patient and a practitioner who  
11 prescribes biomarker testing have clear, accessible and  
12 convenient processes to request an appeal of a benefit denial  
13 by the health care plan and that those processes are accessible  
14 on the health care plan's website.

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

18 E. The provisions of this section do not apply to  
19 short-term travel, accident-only or limited or specified  
20 disease policies, plans or certificates of health insurance.

21 F. As used in this section:

22 (1) "biomarker" means a characteristic that is  
23 objectively measured and evaluated as an indicator of normal  
24 biological processes, pathogenic processes or pharmacologic  
25 responses to a specific therapeutic intervention, including

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1 known gene-drug interactions for medications being considered  
2 for use or already being administered. "Biomarker" includes  
3 gene mutations, characteristics of genes 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, protein expression and whole exome, whole genome  
8 and whole transcriptome sequencing;

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

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

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

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

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

25 (b) used to establish standards of care

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1 informed by a systematic review of evidence and an assessment  
2 of the benefits and risks of alternative care options and  
3 include recommendations intended to optimize patient care."

4 SECTION 7. APPLICABILITY.--The provisions of this act  
5 apply to health insurance policies, health care plans,  
6 certificates of health insurance or health maintenance  
7 organization contracts that are delivered, issued for delivery  
8 or renewed in this state on or after January 1, 2024.

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