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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:

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

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

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

(3) warnings and precautions on United

1 States food and drug administration labels;

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

6 (5) nationally recognized clinical practice
7 guidelines.

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

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

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

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

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:

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

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, protein expression and whole exome, whole genome
13 and whole transcriptome sequencing; and

14 (3) "nationally recognized clinical practice
15 guidelines" means evidence-based clinical practice guidelines
16 that are:

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

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

25 **SECTION 2.** A new section of the Public Assistance Act

1 is enacted to read:

2 "BIOMARKER TESTING COVERAGE.--

3 A. In accordance with federal law, the secretary
4 shall adopt and promulgate rules that provide medical
5 assistance coverage for enrollees to receive biomarker
6 testing.

7 B. A medical assistance plan providing coverage
8 pursuant to this section shall be for the purposes of
9 diagnosis, treatment, appropriate management or ongoing
10 monitoring of an enrollee's disease or condition when the
11 test is supported by medical and scientific evidence,
12 including:

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

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

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

19 (4) federal centers for medicare and
20 medicaid services national coverage determinations or
21 medicare administrative contractor local coverage
22 determinations; or

23 (5) nationally recognized clinical practice
24 guidelines.

25 C. Medicaid contractors delivering services to

1 enrollees shall provide biomarker testing at the same scope,
2 duration and frequency as the medical assistance plan
3 otherwise provides to enrollees.

4 D. A medical assistance plan providing coverage
5 for biomarker testing pursuant to this section shall ensure
6 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, readily accessible
12 and convenient processes to request an appeal of a benefit
13 denial by the insurer and that those processes are accessible
14 on the medical assistance division of the department's
15 website.

16 E. As used in this section:

17 (1) "biomarker" means a characteristic that
18 is objectively measured and evaluated as an indicator of
19 normal biological processes, pathogenic processes or
20 pharmacologic responses to a specific therapeutic
21 intervention, including known gene-drug interactions for
22 medications being considered for use or already being
23 administered. "Biomarker" includes gene mutations,
24 characteristics of genes or protein expression;

25 (2) "biomarker testing" means analysis of a

1 patient's tissue, blood or other biospecimen for the presence
2 of a biomarker and includes single-analyte tests, multi-plex
3 panel tests, protein expression and whole exome, whole genome
4 and whole transcriptome sequencing; and

5 (3) "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 3. A new section of Chapter 59A, Article 22
17 NMSA 1978 is enacted to read:

18 "BIOMARKER TESTING COVERAGE.--

19 A. An individual or group health insurance policy,
20 health care plan or certificate of health insurance that is
21 delivered, issued for delivery or renewed in this state shall
22 provide coverage for insureds to receive biomarker testing
23 for the purposes of diagnosis, treatment, appropriate
24 management or ongoing monitoring of an insured's disease or
25 condition when the test is supported by medical and

1 scientific evidence.

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

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

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

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

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

17 (5) nationally recognized clinical practice
18 guidelines.

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

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

1 (2) a patient and a practitioner who
2 prescribe biomarker testing have clear, accessible and
3 convenient processes to request an appeal of a benefit denial
4 by the insurer and that those processes are accessible on the
5 insurer's website.

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

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

12 F. As used in this section:

13 (1) "biomarker" means a characteristic that
14 is objectively measured and evaluated as an indicator of
15 normal biological processes, pathogenic processes or
16 pharmacologic responses to a specific therapeutic
17 intervention, including known gene-drug interactions for
18 medications being considered for use or already being
19 administered. "Biomarker" includes gene mutations,
20 characteristics of genes or protein expression;

21 (2) "biomarker testing" means analysis of a
22 patient's tissue, blood or other biospecimen for the presence
23 of a biomarker and includes single-analyte tests, multi-plex
24 panel tests, protein expression and whole exome, whole genome
25 and whole transcriptome sequencing; and

1 (3) "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
13 NMSA 1978 is enacted to read:

14 "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,
21 appropriate management or ongoing monitoring of an insured's
22 disease or condition when the test is supported by medical
23 and scientific evidence, including:

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

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

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

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

9 (5) nationally recognized clinical practice
10 guidelines.

11 C. A blanket or group health policy, health care
12 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
19 prescribes biomarker testing have clear, accessible and
20 convenient processes to request an appeal of a benefit denial
21 by the insurer and that those processes are accessible on the
22 insurer's website.

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

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

4 F. As used in this section:

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

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

18 (3) "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

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

6 "BIOMARKER TESTING COVERAGE.--

7 A. An individual or group health maintenance
8 organization contract that is delivered, issued for delivery
9 or renewed in this state shall provide coverage for eligible
10 enrollees to receive biomarker testing.

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

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

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

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

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

1 (5) nationally recognized clinical practice
2 guidelines.

3 C. A health maintenance organization contract
4 providing coverage for biomarker testing pursuant to this
5 section shall ensure that:

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

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

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

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

20 F. As used in this section:

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

1 medications being considered for use or already being
2 administered. "Biomarker" includes gene mutations,
3 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; and

9 (3) "nationally recognized clinical practice
10 guidelines" means evidence-based clinical practice guidelines
11 that are:

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

16 (b) used to establish standards of care
17 informed by a systematic review of evidence and an assessment
18 of the benefits and risks of alternative care options and
19 include recommendations intended to optimize patient care."

20 **SECTION 6.** A new section of the Nonprofit Health Care
21 Plan Law is enacted to read:

22 "BIOMARKER TESTING COVERAGE.--

23 A. An individual or group health care plan that is
24 delivered, issued for delivery or renewed in this state shall
25 provide coverage for subscribers to receive biomarker

1 testing.

2 B. Coverage provided pursuant to this section
3 shall be for the purposes of diagnosis, treatment,
4 appropriate management or ongoing monitoring of a
5 subscriber's disease or condition when the test is supported
6 by medical and scientific evidence, including:

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

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

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

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

17 (5) nationally recognized clinical practice
18 guidelines.

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

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

24 (2) a patient and a practitioner who
25 prescribes biomarker testing have clear, accessible and

1 convenient processes to request an appeal of a benefit denial
2 by the health care plan and that those processes are
3 accessible on the health care plan's website.

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

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

10 F. As used in this section:

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

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

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

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 7. APPLICABILITY.--The provisions of this act
11 apply to health insurance policies, health care plans,
12 certificates of health insurance or health maintenance
13 organization contracts that are delivered, issued for delivery
14 or renewed in this state on or after January 1, 2024._____

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