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## FISCAL IMPACT REPORT

**LAST UPDATED** 1/30/23

**SPONSOR** Dixon/Garratt **ORIGINAL DATE** 1/26/23

**BILL**

**SHORT TITLE** Biomarker Testing Insurance Requirements **NUMBER** House Bill 73

**ANALYST** Esquibel

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>OSI actuarial analyses</b>		\$150.0	\$150.0	\$300.0	Recurring	General Fund
<b>NMPSIA costs</b>		\$750.0	\$1,500.0	\$2,250.0	Recurring	Healthcare Benefits Administration Fund
<b>RHCA costs</b>		\$24.3 - \$186.6	\$48.6 - \$373.2	\$72.6 - \$559.8	Recurring	Healthcare Benefits Administration Fund
<b>GSD Risk Management costs</b>		Indeterminate but substantial	Indeterminate but substantial	Indeterminate but substantial	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent analysis of this legislation.

Relates to House Bills 27 and 102.

### Sources of Information

LFC Files

#### Responses Received From

Attorney General's Office (NMAG)  
Risk Management Division, General Services Department (GSD)  
Public School Insurance Authority (NMPSIA)  
Retiree Health Care Authority (RHCA)  
Office of Superintendent of Insurance (OSI)

#### No Response Received

Albuquerque Public Schools (APS)

## SUMMARY

### Synopsis of House Bill 73

House Bill 73 (HB73) would require Medicaid, individual and group commercial health plans,

and public employee plans to cover biomarker testing. This coverage would include biomarker testing for purposes of medically necessary diagnosis, treatment, and disease management.

Medical necessity would include

- Labeled indications for USFDA approved drugs,
- Federal Centers for Medicare and Medicaid coverage determinations for Medicare,
- Nationally recognized clinical practice guidelines and consensus statements.

The bill would require insurers cover biomarker testing that is least invasive to patients and have a process for requesting exceptions for a coverage policy.

The legislation defines “biomarker testing” as analysis of a patient’s tissue, blood, or other bio specimens for the presence of a biomarker and includes single-analytic tests, multi-plex panel tests, and whole genome sequencing.

The bill is effective January 1, 2024.

## **FISCAL IMPLICATIONS**

The Office of Superintendent of Insurance (OSI) reports it could not accurately estimate what the defrayal costs for biomarker benefits would be across multiple insurance lines. OSI would work with a contract actuary to annually determine defrayal costs for these added benefits and assist with federal reporting. OSI projects the cost of these services at \$150 thousand annually.

The Public School Insurance Authority’s (NMPSIA) estimated budget impact are based on the use of biomarker testing related to cancer diagnoses. Data from the Centers for Disease Control indicate that roughly a quarter of the population obtains cancer screenings (27.4 percent for colorectal cancer screenings in 2012, declining to 21.6 percent in 2020). Under the assumption that 25 percent of those screenings may lead to the need for biomarker testing, this would represent approximately 3,000 NMPSIA members annually. Costs for biomarker testing can vary significantly. A recent study in the *Journal of Medical Economics* indicated 2020 costs for biomarker testing among patients with metastatic lung or thyroid cancer were almost \$500 for preferred provider organizations. Annually, this would represent an expense of approximately \$1.5 million to NMPSIA.

The Retiree Health Care Authority reports its fiscal impact for FY24 is based on six months of coverage in FY24. The projection for FY25 is based on a full year and 2022 claims paid data. A range in cost is provided as various factors can influence the projected amounts. The fiscal impact assumes federal Centers for Medicare and Medicaid coverage and billing rules.

The Risk Management Division of the General Services Department reports its fiscal impact is indeterminate at this time. GSD requested cost estimates from Blue Cross Blue Shield of New Mexico (BCBS) and Presbyterian Health Services (PHS). The state and public employees’ group benefits plan currently includes coverage for select genetic testing that requires prior authorization.

Additional mandated coverages will have an impact on health insurer costs, and those costs can only be defrayed by premium increases. There are approximately 170 thousand New Mexicans covered by private health insurance.

## SIGNIFICANT ISSUES

NMPSIA reports disease-related biomarkers give an indication of the probable effect of treatment on a patient (predictive biomarkers), if a disease already exists (diagnostic biomarker), or how such a disease may develop in an individual case regardless of the type of treatment (prognostic biomarker). This bill appears to focus on testing for diagnostic and prognostic biomarkers. Given the relatively new use of biomarker testing and ongoing discovery and development of innovative and more effective biomarkers, there is the potential for significant research and development costs to be built into the amounts for such testing and the development of new technologies in this area may result in additional fiscal impact beyond the estimates provided above.

## TECHNICAL ISSUES

OSI notes this legislation does not include individual health plans covered in Chapter 22 of the insurance code, technically excluding for-profit individual plans that are not organized as health maintenance organizations (e.g., preferred provider organizations or PPOs). There is a duplicative statement of applicability in the bill.

OSI recommends following standard processes and consistently duplicating the bill as a separate section in Chapters 22, 23, 46, and 47. If the intent is to apply the requirements of the bill in the Healthcare Purchasing Act, Section 2 of the proposed act should be duplicated in full in Article 13 (Healthcare Purchasing Act). Alternatively, the bill language could adopt the phrasing of the applicability section of the Surprise Billing Protection Act. (See N.M.S.A. 1978, § 59A-57A-12.)

Applying for a coverage exception usually means that a benefit is not covered under an insured's contract. It is unclear what "readily accessible and convenient processes to request an exception to a coverage policy of a health insurer" means when the legislation mandates coverage of biomarker coverage.

The Attorney General's Office notes the bill includes language that insurers must ensure "coverage is provided in a manner that limits disruptions in care." This phrase may be ambiguous.

## OTHER SUBSTANTIVE ISSUES

OSI notes the Affordable Care Act and New Mexico's benchmark plan do not specifically cover biomarker testing. This legislation would be a newly mandated benefit for individual and small group plans regulated by the federal Affordable Care Act. Federal law would require cost-defrayal for these benefits by the state. Specifically, the state would be required to pay for the increase in premiums for adding these benefits to health plans sold through New Mexico's health insurance marketplace, BeWellNM.

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