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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>HCPAC</u>	<b>LAST UPDATED</b> <u>2/26/23</u>	<b>ORIGINAL DATE</b> <u>2/20/23</u>
<b>SHORT TITLE</b> <u>Biomarker Testing Insurance Requirements</u>	<b>BILL NUMBER</b> <u>73/HCPACS/aHFI#1</u>	<b>ANALYST</b> <u>Esquibel</u>

### 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	\$72.9 - \$559.8	Recurring	Healthcare Benefits Administration Fund
<b>GSD Risk Management costs</b>		\$24.3-\$936.6	\$48.6-\$1,873.2	\$72.9-\$2,809.8	Recurring	General Fund, Healthcare Benefits Fund
<b>Total</b>		\$48.6-\$2,023.2	\$97.2-\$3,896.4	\$145.8-\$5,919.6	Recurring	General Fund, Healthcare Benefits Funds

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 HFI#1 Amendment

The House Floor amendments to the House Consumer and Public Affairs Committee Substitute for House Bill 73 remove “consensus statements” from the list of medical and scientific evidence supporting biomarker testing. The amendments remove the definition of “consensus statements” including statements that are: (a) developed by an independent, multidisciplinary panel of experts using a transparent methodology and reporting structure and with a conflict-of-interest policy; and (b) aimed at specific clinical circumstances and based on the best available evidence for the purpose of optimizing the outcomes of clinical care.

### **Synopsis of HCPAC Substitute for House Bill 73**

The House Consumer and Public Affairs Committee Substitute for House Bill 73 (HB73) would require nonprofit coverage, Medicaid, individual, group, and blanket commercial health plans, and public employee health insurance plans to cover biomarker testing. This coverage would include biomarker testing for purposes of medically necessary diagnosis, treatment, appropriate disease management, and ongoing monitoring of the health condition. Medical necessity would include:

- Labeled indications for Food and Drug Administration (USFDA) approved tests and drugs,
- Federal Centers for Medicare and Medicaid coverage determinations for Medicare, and
- 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 appeal of a benefit denial by the insurer and that those processes be accessible on the insurer’s websites.

The legislation defines “biomarker testing” as analysis of a patient’s tissue, blood, or other biospecimens for the presence of a biomarker and includes single-analytic tests, multi-plex panel tests, protein expression and whole exome, whole genome, and whole transcriptome 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, but an estimated cost range would be between projected costs for NMPSIA and RHCA. 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, 54,138 lives covered by RHCA, 57,560 lives covered by GSD Risk Management, and 44,423 lives cover by NMPSIA.

## **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**

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 under the New Mexico health insurance exchange. 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.