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Final Fiscal Note

Drafting Number:	LLS 23-0195	Date:	July 26, 2023
Prime Sponsors:	Rep. Michaelson Jenet; Hartsook Sen. Mullica; Rich	Bill Status:	Deemed Lost
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Bill Topic: HEALTH CARE COVERAGE FOR BIOMARKER TESTING

Summary of Fiscal Impact:	<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill would have required Medicaid and state-regulated plans to cover specified biomarker tests. The bill would have increased state expenditures on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill would have required an appropriation of \$42,622 to the Department of Health Care Policy and Financing.

Fiscal Note Status: This fiscal note reflects the introduced bill, as amended by the House Health and Insurance Committee. The bill was deemed postponed indefinitely in the House Appropriations Committee on May 9, 2023; therefore, the impacts identified in this analysis do not take effect.

**Table 1
State Fiscal Impacts Under HB 23-1110**

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	General Fund	\$21,311	up to \$2,322,074
	Cash Funds	-	up to \$547,131
	Federal Funds	\$21,311	up to \$6,937,840
	Centrally Appropriated	\$8,811	\$9,112
	Total Expenditures	\$51,433	up to \$9,816,157
	Total FTE	0.5 FTE	0.5 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$3,197	up to \$348,311

¹ Expenditures in Table 1 represent the maximum costs estimated under the bill, assuming a 50 percent increase in biomarker testing. As described in the State Expenditures section, total costs are expected to range between \$4.9 million and \$9.8 million per year beginning in FY 2024-25.

Summary of Legislation

The bill requires Medicaid and state-regulated insurance plans to cover certain biomarker tests outlined in the bill. Under the bill, all tests supported by medical and scientific evidence must be covered for the use of diagnosis, treatment, appropriate management, or ongoing monitoring of a disease or condition.

The bill requires the Department of Health Care Policy and Financing (HCPF) to seek federal approval to cover these additional tests under Medicaid starting by July 1, 2024. The new requirement applies to private insurance plans starting January 1, 2025. HCPF is allowed to conduct prior authorizations for these tests. The bill requires HCPF to provide notice of the authorization review results within 24 and 72 hours and to provide a readily accessible online appeals process for denied claims.

Background and Assumptions

Current Medicaid coverage. The Department of Health Care Policy and Financing (HCPF) currently covers 216 tests assumed to fall under the bill's definition of biomarker tests. They are used for a wide range of purposes and rates range from \$37 per test to \$3,873 per test. Program costs for biomarker tests total around \$19 million per year.

Tests covered under the federal Medicare program. Medicare, which recently expanded its biomarker testing, currently covers a wider variety of biomarker tests, with around 600 tests assumed to fall under the bill's definition of biomarker tests. Covered tests under Medicare are used for a wide range of purposes and rates range from \$8 per test to \$12,000 per test. According to a 2019 report, 85 percent of Medicare expenditure on genetic testing (a subcategory of biomarker testing) was generated by 25 covered tests.

Assumptions. The fiscal note assumes that federal approval for biomarker testing will be granted. Based on the experience of the federal Medicare program in recent years, the fiscal note assumes that costs for Medicaid biomarker testing will increase by up to 50 percent. However, increased costs will depend on a variety of factors, including which tests become newly covered under the bill, their costs, and how often Medicaid members utilize these tests. Given the limited information on specific tests that will be covered and their potential costs and utilization, as well as the fact that recent increases in federal Medicare testing may have been affected by several other factors, the fiscal note includes cost estimates for increased biomarker testing between 25 percent and 50 percent compared to current levels.

State Expenditures

The bill increases state expenditures in the Department of Health Care Policy and Financing (HCPF) by about \$51,000 in FY 2023-24. Once expanded biomarker testing is implemented, costs will increase by between \$4.9 million and \$9.8 million in FY 2024-25 and ongoing. Costs are shared between General Fund, cash funds (including the Healthcare Affordability and Sustainability Fee Cash Fund and the Breast and Cervical Cancer Prevention and Treatment Fund), and federal funds. Expenditures for the high-end scenario are shown in Table 2. In addition, the bill will increase workload in the Department of Regulatory Agencies related to the review of private insurance plans, and costs may increase for state employee insurance. These costs and impacts are outlined in more detail below.

**Table 2
Expenditures Under HB 23-1110**

	FY 2023-24	FY 2024-25
Department of Health Care Policy and Financing		
Personal Services	\$35,277	\$38,484
Operating Expenses	\$675	\$675
Capital Outlay Costs	\$6,670	-
Biomarker Testing Costs ¹	-	up to \$9,539,948
Prior Authorization Review	-	\$227,939
Centrally Appropriated Costs ²	\$8,811	\$9,112
Total Cost	\$51,433	up to \$9,816,157
Total FTE	0.5 FTE	0.5 FTE

¹ This cost represents an increase of up to 50 percent over current testing costs. Additional detail on the potential range of costs is outlined below.

² Centrally appropriated costs are not included in the bill's appropriation.

Department of Health Care Policy and Financing

Staffing. The department requires 0.5 FTE Administrator to seek federal program approval initially, and then to ensure that Medicaid members are accessing the appropriate level of treatment related to biomarker testing. This staff will monitor biomarker and genetic testing claims and conduct data analysis to prevent overpayments, ensure compliance, and make policy recommendations. Staffing costs are prorated in the first year for the General Fund pay date shift and include standard operating and capital outlay costs.

Biomarker testing costs. Assuming that costs for biomarker testing increase by between 25 percent and 50 percent above current levels, costs to the Medicaid program will increase by between \$4.8 million and \$9.5 million per year starting in FY 2024-25. These costs may vary depending on which tests become newly authorized, their costs, and Medicaid member utilizations. It is assumed that costs for Medical Service Premiums will be adjusted through the annual budget process based on actual costs. Biomarker testing is eligible for a 71.3 percent federal match.

Prior authorization review. Based on the projected increase in the number of biomarker testing covered by Medicaid, the number of prior authorizations conducted is expected to increase by up to 3,500 in FY 2024-25. To perform this work, it is assumed that HCPF will use a utilization management contractor at an annual rate of \$150,000 per year plus a cost of \$22.30 per authorization, resulting in total costs of \$237,000 per year.

Medicaid savings. Increased access to biomarker testing may generate savings in the long term resulting from earlier interventions. This fiscal note only looks at the direct costs to implement the bill, as potential savings will depend on numerous factors and data/information are not available to provide such an estimate. It is assumed that any savings realized will be reflected in future budget requests for the Medicaid program based on actual program costs and utilization.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

Department of Regulatory Agencies

The Division of Insurance in the Department of Regulatory Agencies will have increased workload to review rates and coverage to ensure that state-regulated health plans are providing the required coverage. It is assumed that this work will occur as part of the regular annual rate filing for plan year 2025. On an ongoing basis, the division will have additional workload to address consumer complaints and inquiries regarding the required coverage. It is assumed that this workload can be accomplished within existing resources.

State Employee Insurance

By requiring coverage for certain biomarker testing, the bill may result in increased costs for state employees health care, which may result in higher insurance premiums. State employee health premiums are shared by state agencies and employees. Given that insurance premiums are affected by a large number of factors and that future cost sharing between the state and employees is unknown, it is assumed that any cost increase in the state share of employee health insurance premiums will be addressed through the annual budget process.

Technical Note

Appeals process. The bill requires HCPF to provide a readily accessible online system to appeal denied biomarker testing. Currently prior authorization denial appeals are not conducted online and not considered “easily accessible”. It is impractical to design a separate appeals process for biomarker testing. If the appeals process requirements are not modified the fiscal note will be adjusted to include the cost of redesigning the current appeals process for all prior authorization denials.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2023-24, the bill requires an appropriation of \$42,622 to the Department of Health Care Policy and Financing, split evenly between General Fund and federal funds, and 0.5 FTE.

State and Local Government Contacts

Health Care Policy and Financing	Information Technology	Law
Regulatory Agencies	Personnel	

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit: leg.colorado.gov/fiscalnotes.