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Fiscal Note

Drafting Number:	LLS 24-0481	Date:	February 20, 2024
Prime Sponsors:	Sen. Michaelson Jenet; Rich Rep. Hartsook	Bill Status:	Senate Health & Human Services
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Bill Topic: **HEALTH-CARE COVERAGE FOR BIOMARKER TESTING**

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

The bill requires Medicaid and state-regulated health plans to cover certain biomarker tests. The bill increases state expenditures on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 24-124

		Budget Year FY 2024-25	Out Year FY 2025-26
Revenue		-	-
Expenditures¹	General Fund	-	\$2,257,595
	Cash Funds	-	\$555,903
	Federal Funds	-	\$7,046,499
	Centrally Appropriated	-	\$10,194
	Total Expenditures	-	\$9,870,191
	Total FTE	-	0.5 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	-	\$338,639

¹ Total costs may range between \$5.5 million and \$9.9 million, depending on the exact increase in utilization of biomarker testing. Table 1 reflects the upper cost range.

Summary of Legislation

The bill requires Medicaid and state-regulated health 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 purpose of guiding treatment decisions.

The new requirement applies to Medicaid starting July 1, 2025 and to private insurance plans starting January 1, 2026. HCPF is allowed to conduct prior authorizations for these tests. The bill requires HCPF to provide notice of the authorization review results 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 current allowable biomarker tests total around \$19 million per year.

Tests covered under the federal Medicare program. Medicare, which frequently expands 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 FY 2023-24 levels.

State Expenditures

The bill increases state expenditures in HCPF by \$10 million in FY 2025-26 and each year thereafter, paid from the General Fund, Healthcare Affordability and Sustainability Cash Fund, and federal funds. Expenditures for a 50 percent increase in biomarker testing costs (the upper range, as discussed in the Assumptions section above) 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 SB 24-124**

	FY 2024-25	FY 2025-26
Department of Health Care Policy and Financing		
Personal Services	-	\$47,404
Operating Expenses	-	\$640
Capital Outlay Costs	-	\$6,670
Biomarker Testing Costs ¹	-	\$9,539,948
Prior Authorization Review	-	\$265,335
Centrally Appropriated Costs ²	-	\$10,194
Total Cost	-	\$9,870,191
Total FTE	-	0.5 FTE

¹ Biomarker testing costs are estimated to range between \$4.8 million and \$9.5 million per year. The fiscal note reflects the upper cost range.

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

Department of Health Care Policy and Financing

Staffing. Starting in FY 2025-26, the department requires 0.5 FTE 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. Standard operating and capital outlay costs are included.

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 2025-26. 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 72 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 2026-27. 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 \$33 per authorization, resulting in total costs of \$265,000 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. 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.

Effective Date

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

State and Local Government Contacts

Health Care Policy and Financing
Personnel

Information Technology
Regulatory Agencies

Law

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 the [General Assembly website](#).