

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas As Engrossed: H2/15/23 H2/28/23

2 94th General Assembly

A Bill

3 Regular Session, 2023

HOUSE BILL 1121

4

5 By: Representatives F. Allen, K. Brown, Dalby, Evans, K. Ferguson, L. Johnson, Nicks, Pilkington, J.

6 Richardson, Warren

7 By: Senators D. Wallace, J. Boyd, Irvin, M. Johnson, R. Murdock

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For An Act To Be Entitled

10 AN ACT CONCERNING COVERAGE FOR BIOMARKER TESTING FOR
11 EARLY DETECTION AND MANAGEMENT FOR CANCER DIAGNOSES;
12 AND FOR OTHER PURPOSES.

13

14

15

Subtitle

16

CONCERNING COVERAGE FOR BIOMARKER TESTING

17

FOR EARLY DETECTION AND MANAGEMENT FOR

18

CANCER DIAGNOSES.

19

20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22

23 SECTION 1. Arkansas Code Title 23, Chapter 79, is amended to add an
24 additional subchapter to read as follows:

25

26 Subchapter 24 – Coverage for Biomarker Testing for Early Detection and

27 Management for Cancer Diagnoses

28

29 23-79-2401. Definitions.

30 As used in this subchapter:

31

(1)(A) "Biomarker" means a characteristic that is objectively
32 measured and evaluated as an indicator of normal biological processes,
33 pathogenic processes, or pharmacologic responses to a specific therapeutic
34 intervention, including known gene-drug interactions for medications being
35 considered for use or already being administered.

36

(B) "Biomarker" includes without limitation gene mutations



1 or protein expression;

2 (2)(A) "Biomarker testing" means the analysis of a patient's
3 tissue, blood, or other biospecimen for the presences of a biomarker.

4 (B) "Biomarker testing" includes without limitation
5 single-analyte tests, multiplex panel tests, protein expression, and whole
6 exome, whole genome, and whole transcriptome sequencing;

7 (3) "Consensus statement" means a statement that:

8 (A) Is developed by an independent, multidisciplinary
9 panel of experts that uses a transparent methodology and reporting structure
10 that includes a conflict of interest policy;

11 (B) Is based on the best available evidence for the
12 purpose of optimizing clinical care outcomes; and

13 (C) Is aimed at specific clinical circumstances;

14 (4)(A) "Health benefit plan" means an individual, blanket, or
15 group plan, policy, or contract for healthcare services issued, renewed, or
16 extended in this state by a healthcare insurer, health maintenance
17 organization, hospital medical service corporation, or self-insured
18 governmental or church plan in this state.

19 (B) "Health benefit plan" includes indemnity and managed
20 care plans.

21 (C) "Health benefit plan" does not include:

22 (i) A plan that provides only dental benefits or eye
23 and vision care benefits;

24 (ii) A disability income plan;

25 (iii) A credit insurance plan;

26 (iv) Insurance coverage issued as a supplement to
27 liability insurance;

28 (v) Medical payments under an automobile or
29 homeowners insurance plan;

30 (vi) A health benefit plan provided under Arkansas
31 Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et
32 seq., and the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;

33 (vii) A plan that provides only indemnity for
34 hospital confinement;

35 (viii) An accident-only plan;

36 (ix) A specified disease plan;

1 (x) The Arkansas Medicaid Program; or
2 (xi) A program established by the Arkansas Health
3 and Opportunity for Me Act of 2021, § 23-61-1001 et seq.;

4 (5)(A) "Healthcare insurer" means any insurance company,
5 hospital and medical service corporation, or health maintenance organization
6 that issues or delivers health benefit plans in this state and is subject to
7 any of the following laws:

8 (i) The insurance laws of this state;

9 (ii) Section 23-75-101 et seq., pertaining to
10 hospital and medical service corporations; or

11 (iii) Section 23-76-101 et seq., pertaining to
12 health maintenance organizations.

13 (B) "Healthcare insurer" does not include an entity that
14 provides only dental benefits or eye and vision care benefits;

15 (6) "Healthcare professional" means a person who is licensed,
16 certified, or otherwise authorized by the laws of this state to administer
17 health care in the ordinary course of the practice of his or her profession;

18 (7) "Nationally recognized clinical practice guidelines" means
19 evidence-based clinical practice guidelines that:

20 (A) Are developed by independent organizations or medical
21 professional societies using a:

22 (i) Transparent methodology and reporting structure;
23 and

24 (ii) Conflict of interest policy; and

25 (B) Establish standards of care that are informed by:

26 (i) A systemic review of evidence; and

27 (ii) An assessment of the benefits and costs of
28 alternative care options that includes recommendations intended to optimize
29 patient care;

30 (8)(A) "Subscriber" means an individual eligible to receive
31 coverage of healthcare services by a healthcare professional under a health
32 benefit plan.

33 (B) "Subscriber" includes a subscriber's legally
34 authorized representative;

35 (8) "Urgent healthcare service" means a healthcare service for a
36 non-life-threatening condition that, in the opinion of a physician with

1 knowledge of a subscriber's medical condition, requires prompt medical care
2 in order to prevent:

3 (A) A serious threat to life, limb, or eyesight;

4 (B) Worsening impairment of a bodily function that
5 threatens the body's ability to regain maximum function;

6 (C) Worsening dysfunction or damage of any bodily organ or
7 part that threatens the body's ability to recover from the dysfunction or
8 damage; or

9 (D) Severe pain that cannot be managed without prompt
10 medical care; and

11 (10)(A) "Utilization review entity" means an individual or
12 entity that performs prior authorization for at least one (1) of the
13 following:

14 (i) A healthcare insurer;

15 (ii) A preferred provider organization or health
16 maintenance organization; or

17 (iii) Any other individual or entity that provides,
18 offers to provide, or administers hospital, outpatient, medical, or other
19 health benefits to a person treated by a healthcare provider in this state
20 under a policy, health benefit plan, or contract.

21 (B) A healthcare insurer is a utilization review entity if
22 the healthcare insurer performs prior authorization.

23 (C) "Utilization review entity" does not include an
24 insurer of automobile, homeowners, or casualty and commercial liability
25 insurance or the insurer's employees, agents, or contractors.

26
27 23-79-2402. Coverage for biomarker testing for early detection and
28 management for cancer diagnoses.

29 (a) A health benefit plan that is offered, issued, or renewed in this
30 state shall provide coverage for biomarker testing.

31 (b) The evidence of coverage document provided with a health benefit
32 plan under this subchapter shall include biomarker testing for the purpose of
33 diagnosis, treatment, appropriate management, or ongoing monitoring of a
34 subscriber's disease or condition to guide treatment decisions when the
35 biomarker test is supported by medical and scientific evidence, including
36 without limitation:

1 (1) Labeled indications for tests that are approved or cleared
2 by the United States Food and Drug Administration;

3 (2) Indicated tests for a drug that is approved by the United
4 States Food and Drug Administration;

5 (3) Warnings and precautions on United States Food and Drug
6 Administration-approved drug labels;

7 (4) Centers for Medicare & Medicaid Services national coverage
8 determinations or Medicare administrative contractor local coverage
9 determinations; or

10 (5) Nationally recognized clinical practice guidelines and
11 consensus statements.

12 (c) A health benefit plan shall ensure that coverage is provided in a
13 manner that limits disruptions in care, including the need for multiple
14 biopsies and biospecimen samples as determined by a healthcare professional.

15 (d)(1) A subscriber and a subscriber's healthcare professional shall
16 have access to a clear, readily available, and convenient process to request
17 an exception to a health benefit plan under this subchapter.

18 (2) The process under subdivision (d)(1) of this section shall
19 be readily accessible on the health benefit plan's website.

20 (3) This section shall not be construed to require a separate
21 process if the health benefit plan's existing process complies with
22 subdivision (d)(1) of this section.

23 (e) A utilization review entity shall make a determination on a
24 request for coverage of biomarker testing at the same scope, duration, and
25 frequency as the health benefit plan otherwise provides to subscribers.

26 (f) If prior authorization is required for biomarker testing, the
27 utilization review entity shall approve or deny a prior authorization request
28 and notify the subscriber, the subscriber's healthcare professional, and any
29 entity requesting prior authorization of the healthcare service:

30 (1) Within seventy-two (72) hours for request for nonurgent
31 healthcare services; or

32 (2) Within twenty-four (24) hours for requests for urgent
33 healthcare services.

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36 /s/F. Allen