

2022 Regular Session

SENATE BILL NO. 394

BY SENATOR BERNARD

INSURANCE POLICIES. Requires coverage for drugs under certain conditions and the drug is approved by the United States Food and Drug Administration. (1/1/23)

1 AN ACT

2 To enact R.S. 22:1060.8, relative to coverage of drugs under certain conditions when the  
3 drug is approved by the United States Food and Drug Administration; to require a  
4 health benefit plan to cover drugs for off-label use with certain terms and conditions;  
5 to require a health benefit plan to cover drugs for minors under certain terms and  
6 conditions; to provide exclusions and limitations; to provide definitions; and to  
7 provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 22:1060.8 is hereby enacted to read as follows:

10 **§1060.8. Coverage of drugs approved by the United States Food and Drug**

11 **Administration; exclusions; definitions**

12 **A. No health coverage plan delivered or issued for delivery in this state**

13 **shall limit or exclude coverage involving a minor for a drug on the basis that the**

14 **drug is prescribed for a use that is different from the use for which that drug**

15 **has been approved by the United States Food and Drug Administration and all**

16 **of the following items apply:**

17 **(1) The drug has been approved by the United States Food and Drug**

1           Administration.

2                   (2) The drug is prescribed by a licensed health care provider for the  
3                   treatment of a life threatening, chronic, or seriously debilitating disease or  
4                   condition in a minor and the drug has been approved by the United States Food  
5                   and Drug Administration for the same condition or disease in an adult and the  
6                   drug is medically necessary to treat the disease or condition.

7                   (3) The drug has been recognized for the treatment of the disease or  
8                   condition in pediatric application by one of the following:

9                           (a) The American Medical Association Drug Evaluations.

10                           (b) The American Hospital Formulary Service Drug Information.

11                           (c) The United States Pharmacopoeia Dispensing Information, Volume 1,  
12                   "Drug Information for the Health Care Professional".

13                           (d) Recognized in two articles from major peer-reviewed medical  
14                   journals that present data supporting the proposed off-label use or uses as  
15                   generally safe and effective unless there is clear and convincing contradictory  
16                   evidence presented in a major peer reviewed journal.

17                           (4) The drug is on the insurer's formulary or preferred drug list, if any.

18                   B. If requested by the health insurance insurer, the prescriber shall be  
19                   responsible for submitting to the health insurance insurer documentation  
20                   supporting compliance with the provision of this Section.

21                   C. Any coverage required by this Section shall include medically  
22                   necessary services associated with the administration of a drug that is subject  
23                   to the conditions of the health coverage plan.

24                   D. The provisions of this Section shall not require coverage for any of the  
25                   following:

26                           (1) The treatment of a condition or disease that is excluded under the  
27                   terms of the health coverage plan.

28                           (2) An experimental drug not approved by the United States Food and  
29                   Drug Administration.

1                   **(3) A drug not listed on the health coverage plan formulary or preferred**  
 2                   **drug list, if any.**

3                   **E. The coverage provided in this Section may be subject to annual**  
 4                   **deductibles, coinsurance, and copayment provisions as are consistent with those**  
 5                   **established under the health coverage plan and may be subject to prior**  
 6                   **authorization.**

7                   **F. For purposes of this Section, "health coverage plan" means any**  
 8                   **hospital or medical expense insurance policy, hospital or medical service**  
 9                   **contract, employee welfare benefit plan, contract, or other agreement with a**  
 10                   **health maintenance organization or a preferred provider organization, health**  
 11                   **and accident insurance policy, or any other insurance contract of this insurance**  
 12                   **plan, and the office of group benefits programs. "Health coverage plan" shall**  
 13                   **not include a plan providing coverage for excepted benefits defined in R.S.**  
 14                   **22:1061, limited benefit health insurance plans, and short-term policies that**  
 15                   **have a term of less than twelve months.**

16                   Section 2. This Act shall become effective on January 1, 2023; if vetoed by the  
 17                   governor and subsequently approved by the legislature, this Act shall become effective on  
 18                   the day following the approval by the legislature.

---

The original instrument was prepared by Beth O'Quin. The following digest,  
 which does not constitute a part of the legislative instrument, was prepared  
 by Cheryl Serrett.

---

SB 394 Reengrossed

DIGEST  
 2022 Regular Session

Bernard

Proposed law prohibits a health benefit plan delivered or issued for delivery in this state to limit or exclude coverage involving a minor for a drug approved by the United States Food and Drug Administration (FDA) based on the drug if prescribed for a use different from what the drug was approved for and all of the following applies:

- (1) The drug is approved by the FDA.
- (2) The drug is prescribed by a contracting licensed health care professional and it is medically necessary for the treatment of a life threatening, chronic, or seriously debilitating disease or condition in a minor and the drug has been approved by the United States Food and Drug Administration for the same condition or disease in an adult and the drug is medically necessary to treat that disease or condition.
- (3) The drug is recognized for treatment of that disease or condition in pediatric

application by one of the following:

- (a) The American Medical Association Drug Evaluations.
  - (b) The American Hospital Formulary Service Drug Information.
  - (c) The United States Pharmacopoeia Dispensing Information, Volume 1, "Drug Information for the Health Care Professional".
  - (d) Two articles from major peer reviewed medical journals presented data supporting the proposed off-label use or uses as generally safe and effective unless there is clear and convincing contradictory evidence presented in a major peer reviewed journal.
- (4) The drug is on the insurer's formulary or preferred drug list, if any.

Proposed law requires the prescriber is responsible for submitting documentation to support compliance with the proposed law if requested by the health insurance insurer.

Proposed law provides the health coverage plan is not required to provide coverage for all of the following:

- (1) A treatment for a condition or disease that is excluded under the terms of the health coverage plan.
- (2) Experimental drugs not approved by the FDA.
- (3) A drug not listed on the health coverage plan formulary or preferred drug list, if any.

Proposed law provides coverage can be subject to annual deductibles, coinsurance, and copayment provisions established under the health coverage plan and coverage can be subject to prior authorization.

Proposed law defines "health coverage plan".

Effective January 1, 2023.

(Adds R.S. 22:1060.8)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Insurance to the original bill

- 1. Limits application of the bill to minors.
- 2. Deletes definitions for "chronic and seriously debilitating" and "life-threatening".

##### Senate Floor Amendments to engrossed bill

- 1. Provides an effective date of 1/1/2023.