
CMCS Informational Bulletin

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SUBJECT: Guidance on Adding Sexual Orientation and Gender Identity Questions to State Medicaid and CHIP Applications for Health Coverage

Starting November 1, 2023, the Centers for Medicare & Medicaid Service (CMS) began asking three new optional sexual orientation and gender identity (SOGI) questions on the single, streamlined application developed by the Secretary in accordance with 42 CFR 435.907(b)(1) and 457.330 (“model application”).¹ The model application is used by the Marketplaces that use the Federal eligibility and enrollment platform. The purpose of the SOGI questions is to enhance consumer experience by allowing consumers to attest in a way that better reflects and affirms their identities, improve demographic data collection to identify disparities in access to care and, ultimately, to support appropriate and equitable health care. These three new optional questions will complement the existing “sex” question, which will continue to be required (*see Table 1*).

States are not required to add the SOGI questions to their Medicaid and Children’s Health Insurance Program (CHIP) applications but have the option to do so consistent with this guidance. The model application is used by states to guide the development of their Medicaid and CHIP applications. Going forward, State Medicaid and CHIP agencies seeking to ask SOGI questions may add the questions to the model application or an alternative application approved by CMS.² These may include a state’s alternative single, streamlined application, multi-benefit application that includes health coverage, applications or supplemental forms used for determining eligibility on a basis other than Modified Adjusted Gross Income (MAGI), or any other alternative applications used in the state.

For states that wish to incorporate these questions into their applications, this Center for Medicaid & CHIP Services (CMCS) Informational Bulletin (CIB) provides guidance on the processes states should follow to modify their applications and when states may be required to submit for CMS approval changes made to add SOGI questions to a state’s alternative single, streamlined application. This CIB also addresses the safeguards that states must put in place to protect the privacy and security of beneficiary data, including any SOGI data they collect. Finally, this CIB provides an update on the CMS collection of SOGI data as part of future Transformed Medicaid Statistical Information System (T-MSIS) data submissions.

¹ Please refer to <https://www.cms.gov/files/document/sogi-questions-marketplace-application.pdf> for more information.

² 42 CFR 435.907(b) and 457.330.

OVERVIEW OF MODEL APPLICATION SOGI QUESTIONS AND RESPONSES

Prior to the introduction of the SOGI questions, the model application required each individual in the household, regardless of age, to respond to a single binary “Sex” question. This question required a “Male” or “Female” response. No non-binary response options, nor a distinction between gender identity and sex assigned at birth, were available for selection. Additionally, individuals who responded “Female” were subsequently asked and required to provide their pregnancy status.

The “Sex” question on the model application will continue to be a required question on the model application, and *only* individuals who respond “Female” will continue to be asked whether they are pregnant.

The new SOGI questions on the model application include two questions on gender identity (sex assigned at birth and current gender) and one question on sexual orientation. The SOGI questions are optional questions asked about applicants and all individuals in the household ages 12 or older for demographic data collection. Responses to the questions or failure to provide a response must not impact an individual’s eligibility determination or be considered an incomplete application for the purposes of making a determination.

Table 1: Sexual Orientation and Gender Identity Questions on the Model Application

Question	Responses
Sex <i>(existing question, required, single select)</i>	<ul style="list-style-type: none"> • Male <i>(does not trigger pregnancy question)</i> • Female <i>(triggers pregnancy question)</i>
What was [First Name]’s sex assigned at birth? You can find this on an original birth certificate or similar document. <i>(new question, optional, single select)</i>	<ul style="list-style-type: none"> • Female • Male • A sex that’s not listed: [free text] • Not sure • Prefer not to answer
What’s [First Name]’s gender identity? <i>(new question, optional, single select)</i>	<ul style="list-style-type: none"> • Female • Male • Transgender female • Transgender male • A gender identity that’s not listed: [free text] • Not sure • Prefer not to answer
What’s [First Name]’s sexual orientation? <i>(new question, optional, single select)</i>	<ul style="list-style-type: none"> • Lesbian or gay • Straight • Bisexual • A sexual orientation that is not listed: [free text] • Not sure • Prefer not to answer

BACKGROUND ON MEDICAID AND CHIP ALTERNATIVE APPLICATIONS

Section 1413 of the Affordable Care Act establishes a streamlined enrollment system for all insurance affordability programs, including Medicaid, CHIP, and advanced payment of premium tax credit (APTC) for coverage through the Marketplaces. Under section 1413(b) of the Affordable Care Act, insurance affordability programs must use the single streamlined application form developed by the Secretary or an alternative, state developed form, as discussed more fully below. Sections 1943 and 2107 of the Social Security Act (the Act) requires state Medicaid and CHIP agencies to participate in and comply with the requirements for this streamlined enrollment system, including the streamlined application requirements.³

As described in regulations at 42 CFR 435.907(b) and 457.330, the single, streamlined application must be either the model application, or an alternative developed by the state and approved by CMS through a state plan amendment (SPA). In addition to the single, streamlined application, many states have applications or supplemental forms for determining eligibility on a basis other than MAGI, or other alternative applications not subject to CMS approval.

More detailed information on the development, review, and approval of alternative applications is available in the June 18, 2013, joint Center for Consumer Information and Insurance Oversight and Center for Medicaid and CHIP Services guidance entitled “Guidance on State Alternative Applications for Health Coverage.”⁴

STATE OPTION TO ADD SOGI QUESTIONS TO MEDICAID AND CHIP APPLICATIONS

Although not required, states have the opportunity to add optional SOGI questions to their Medicaid and CHIP applications. States that do not wish to include these SOGI questions may continue using their current applications without change.

As discussed in more detail in the next section, states that wish to include the SOGI questions and response options to their alternative single, streamlined application exactly as they are worded on the model application (*as noted above in Table 1*) will not be required to seek CMS approval and will not need to submit Medicaid or CHIP SPAs. For states that wish to use alternative language approaches, Medicaid or CHIP SPAs will not be necessary for all approaches. States will need to work with CMS to determine if CMS approval and a SPA is needed (see additional information about modifications that may require CMS approval below).

DESIGNING AND SUBMITTING SOGI QUESTIONS FOR ALTERNATIVE MEDICAID AND CHIP APPLICATIONS

This section outlines the parameters for adding SOGI questions to the Medicaid and CHIP

³ Section 1943(b)(3) of the Act; Section 2107(e)(1)(S) of the Act

⁴ <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/state-alt-app-guidance-6-18-2013.pdf>

alternative applications and discusses situations when CMS approval may or may not be necessary for the addition of SOGI questions to a state's alternative single, streamlined application that are not identical to the SOGI questions on the model application.

Modifications that Do Not Require CMS Approval

There are several ways that a state may adapt the SOGI questions from the model application without approval from CMS. Examples of changes that would not require CMS approval or a SPA include:

1. Displaying the SOGI questions and response options exactly as they are worded in the model application (*see Table 1, above*).
2. Changing the placement and order of the SOGI questions from the model application, as long as the change does not impede the online application's dynamic nature. However, the state must collect age information prior to asking the SOGI questions to ensure that the SOGI questions are asked only about applicants and all household members ages 12 or older.
3. Making modifications to minimize consumer burden, such as having the SOGI questions from the model application appear after an applicant signs and submits an application or after the state has determined the individual's eligibility.

Modifications that May Require CMS Approval

States that seek to update their Medicaid or CHIP alternative applications to incorporate SOGI questions using alternative language or modified response options will need to work with CMS and may need CMS approval. For example, states that implement only one or two of the three SOGI questions or states that use alternative wording in the SOGI questions and/or response options will need to work with CMS to ensure that the state's proposed SOGI questions are consistent with the applicable statute and regulations and minimize burden on applicants.

Any alternative SOGI questions must be optional and may not be a barrier to completion and submission of an application or to an eligibility determination. States may not require applicants to answer the SOGI questions, even if there is a "prefer not to answer" response option.

Process for Submission and Approval of Alternative Applications

As discussed above, states that wish to add the SOGI questions as written from the model application do not need CMS approval and do not need to submit a Medicaid or CHIP SPA. However, states that seek to update their Medicaid or CHIP alternative, single streamlined applications to incorporate SOGI questions using alternative language or modified response options will need to work with CMS to determine whether CMS approval and a SPA is needed. Such states will need to provide a detailed description of the proposed questions to its paper and online applications, including information about the design and functionality of the online application, or submit design documents and/or online screenshots for CMS' review. States that propose significant deviations from the model application may need to submit a SPA.

Whenever a state submits a SPA to make changes to its alternative single, streamlined application, CMS conducts a full review of the state's application for compliance with federal requirements. Thus, if CMS determines that a SPA is needed to add SOGI questions that differ from the model application questions, the state's amended application will be subject to a full application review.

Regardless of whether a state needs to submit a SPA, states collecting this information using response options that differ from those included in the model application should be prepared to take any necessary steps to ensure their submissions to CMS accord with forthcoming T-MSIS technical specifications, which will align with the response options included in the model application. States should also acquaint themselves with recently issued guidance on collecting SOGI data on administrative forms.⁵

CONFIDENTIALITY OF APPLICANT AND BENEFICIARY INFORMATION

Section 1902(a)(7) of the Act and implementing regulations at 42 C.F.R. part 431, subpart F, require state Medicaid agencies to provide safeguards that restrict the use or disclosure of information concerning Medicaid applicants and beneficiaries to uses or disclosures that are directly connected with the administration of the Medicaid state plan. The same requirements also apply to separate CHIPs through a cross reference at 42 C.F.R. § 457.1110(b).

Purposes that are directly connected to the Medicaid and CHIP State plan administration include: establishing eligibility, determining the amount of medical or child health assistance, providing services for beneficiaries, and conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the plan under 42 C.F.R. § 431.302 for Medicaid and § 457.1110(b) for CHIP. By contrast, state Medicaid or CHIP agency use or disclosure of applicants' or beneficiaries' SOGI or other data for a purpose not directly related to the administration of the state plan is prohibited under section 1902(a)(7) of the Act and regulations at 42 C.F.R. part 431, subpart F and 42 C.F.R. § 457.1110(b). Examples of prohibited use or disclosure of applicants' or beneficiaries' SOGI or other data include to enable child welfare investigations or to pursue criminal charges or civil penalties that are not directly related to the administration of the state plan.⁶

Access to information concerning applicants and beneficiaries must be restricted to individuals or agency representatives who are subject to standards of confidentiality that are comparable to those of the Medicaid or CHIP agency under 42 C.F.R. §§ 431.306(b) and 457.1110(b). Accordingly, state policies that implement required restrictions on the use and release of information must apply to all data sharing with outside sources, including requests from other governmental bodies, the Courts, or law enforcement officials under 42 C.F.R. §§ 431.306(e) and 457.1110(b).

Further, states must obtain permission from applicants, beneficiaries or an applicant or beneficiary's personal representative whenever possible before making a disclosure of their

⁵ <https://www.whitehouse.gov/wp-content/uploads/2023/01/Federal-Evidence-Agenda-on-LGBTQI-Equity.pdf>

⁶ Types of civil or criminal charges that are directly related to the administration of the state plan include charges related to Medicaid or CHIP's program integrity, such as an allegation of fraud.

beneficiary data to an outside source under 42 C.F.R. § 431.306(d) or § 457.1110, unless the information is to be used to verify income, eligibility, and the amount of medical assistance payment under section 1137 of the Act and 42 C.F.R. § 435.940 through § 435.965. Under 42 CFR § 431.306(d) and 457.1110(b), if, because of an emergency situation, time does not permit obtaining consent before release, the agency must notify the family or individual immediately after supplying the information.

SUBMITTING STATE SOGI DATA TO CMS AS PART OF T-MSIS

CMS is targeting calendar year 2025 to begin receiving and accepting SOGI data as part of T-MSIS data submissions from states that opt to add SOGI questions to their application forms. This data will have no impact on a state's Outcome Based Assessment score at that time. More specificity around CMS readiness and state submission will be provided as requirements for receiving and accepting this data are finalized, including instructions for states that are collecting SOGI data before the T-MSIS system is ready to accept this data.

TECHNICAL ASSISTANCE

CMS remains available to provide technical assistance to states that opt to add SOGI data questions to their application. CMS staff are available to review draft materials and participate in discussions with states about proposed changes. Questions from Medicaid and CHIP agencies regarding this guidance can be directed to Karen Matsuoka, Senior Policy Advisor for Health Equity at CMS at Karen.Matsuoka@cms.hhs.gov.