Adding Sexual Orientation and Gender Identity Questions to the MHC Application

Presentation for Stakeholder Feedback
Maryland Health Benefit Exchange & Maryland Department of Health
Fall 2023

MARYLAND
HEALTHBENEFIT
EXCHANGE

Maryland
DEPARTMENT OF HEALTH

Purpose of Collecting Data on Sexual Orientation and Gender Identity

- Support health equity efforts
  - Sexual and gender minorities face health inequities*
  - Lack of data limits ability to analyze experiences of these consumers
- Affirm applicants' gender identities
  - Application currently forces choice of male or female. This particular question cannot be removed because of federal requirements, but adding questions and explanatory text may counteract discomfort caused by the required binary question for gender-diverse consumers
  - Having data on gender identity can inform future discussions on the necessity of collecting binary sex data for health insurance purposes
- Improve consumer experience

* https://pubmed.ncbi.nlm.nih.gov/33985698/

Current Maryland Health Connection Application

Member 1 (Primary Applicant)

In most cases, the primary applicant should be the household member you want as the contract holder with your insurance company. Learn more here about choosing the primary applicant.

First Name:
Mary

Middle Name: (Optional)

Last Name:
Doe

Suffix: (Optional)
Select

Date of Birth

Gender
MALE   FEMALE

Is Mary Doe applying for health coverage?
YES   NO

A response to this question is required for the consumer to move forward in the application. This question is required for federal reporting and for transmittal to insurers.

Timeline

- **September 2023:** MDH and MHBE begin discussions on adding sexual orientation and gender identity (SOGI) questions to the Maryland Health Connection application

- **October 12, 2023:** The Centers for Medicare and Medicaid Services (CMS) [announces](#) addition of three questions (sex assigned at birth, gender identity, sexual orientation) to the model application used by state marketplaces that use the Federal eligibility and enrollment platform beginning November 1, 2023

- **November 9, 2023:** CMS releases an [informational bulletin](#) announcing that **state Medicaid programs adding SOGI questions to their applications must use the same design used by CMS on the Federal platform, or work with CMS to obtain approval for a different design**

- **December 2023 - February 2024:** Stakeholder feedback period

- **February - May 2024:** Work with CMS for approval if necessary; iterate and finalize question design

- **July 2024:** Anticipated launch of SOGI questions on the MHC application

CMS Format

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

Question	Responses
Sex *(existing question, required, single select)*	• Male *(does not trigger pregnancy question)* • Female *(triggers pregnancy question)*
What was [First Name]'s sex assigned at birth? You can find this on an original birth certificate or similar document. *(new question, optional, single select)*	• Female • Male • A sex that's not listed: [free text] • Not sure • Prefer not to answer
What's [First Name]'s gender identity? *(new question, optional, single select)*	• 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? *(new question, optional, single select)*	• Lesbian or gay • Straight • Bisexual • A sexual orientation that is not listed: [free text] • Not sure • Prefer not to answer

CMS Guidance: Other Considerations

- SOGI responses will have **no impact** on eligibility determinations and will not be shared with insurers

- CMS is newly including explanatory text with the existing, required, binary sex question (see next slide for draft explanatory text for MD)

- CMS currently has no requirement that states report SOGI data at the federal level

- SOGI questions must be optional, even with a "prefer not to say" answer option

- Questions must only asked for individuals ages 12 and up

- Question order may be changed without CMS approval

- CMS approval may or may not involve a State Plan Amendment, depending on how the state plans to deviate from the CMS format

Explanatory text for required "sex" question

We share responses to "Sex" with the insurance company or Medicaid Managed Care Organization when you enroll in coverage. This information may also be shared with other state entities like Medicaid, if anyone in the household is eligible. If a person is pregnant, be sure to select "Female" so that they can tell us about the pregnancy later in the application. That way, we'll make sure they're eligible for coverage to keep them and their baby healthy. Get more information on https://www.marylandhealthconnection.gov/policies-accessibility/ about MHC's privacy policy and how we use your data.

Adapted from CMS' explanatory text

Proposed Designs

Design Process

- There is no national standard for collecting SOGI data
- MHBE reviewed several question design approaches to develop options.
  - Sexual orientation:
    - Option 1 is from the LGBTQIA+ Health Education Center Recommendations
    - Option 2 is from Oregon Health Authority
    - Option 3 is the CMS design
  - Gender identity:
    - Option 1 was adapted from the LGTBQIA+ Health Education Center recommendation. The Oregon Health Authority's answer options for "woman, girl" and "man, boy," are presented as the first options for the first two responses and the LGTBQIA+ Health Education Center's options of "female" and "male" are presented as the second options for the first two options. Female and male may be considered to describe sex rather than gender. An additional adaptation from the LGTBQIA+ Health Education Center recommendation was to remove "female" and "male" from the transgender answer options which already include the words "woman" and "man."
    - Option 2 adapts Oregon's two-question approach so that only one question is needed to capture both gender and transgender status. The answer options are the same as OHA's gender question with "transgender woman" and "transgender man" added.
    - Option 3 is the CMS design

Proposal Summary

- Adopt three SOGI questions, in the order listed here:
  - Sexual orientation (see options on slide 11)
  - Gender identity (see options on slides 12)
  - Sex assigned at birth (conforming to CMS' design on slide 5)
- Add explanatory text to the required, binary sex question (see slides 3 and 7)
- MHBE will adhere to other federal requirements as listed on slide 6:
  - Questions will be optional
  - Questions will only appear for applicants ages 12+

Sexual Orientation

OPTION 1: LIMITED ANSWERS

Does [First Name] think of themselves as (check one):

- Straight or heterosexual
- Lesbian, gay, or homosexual
- Bisexual
- Something else (e.g., queer, pansexual, asexual): [free text]
- Don't know
- Choose not to disclose

OPTION 2: EXPANDED ANSWERS

How does [First Name] describe their sexual orientation or sexual identity? (Check all that apply)

- Same-gender loving
- Same-sex loving
- Lesbian
- Gay
- Bisexual
- Straight (attracted mainly to or only to other gender(s)
- Pansexual
- Asexual
- Queer
- Questioning
- Don't know
- Not listed: [free text]
- I don't know what this question is asking
- I don't want to answer

OPTION 3: CMS DESIGN

What's [First Name's] sexual orientation? (optional, single select)

- Lesbian or gay
- Straight
- Bisexual
- A sexual orientation that is not listed: [free text]
- Not sure
- Prefer not to answer

Gender Identity

OPTION 1: LIMITED ANSWERS

What is [First Name's] gender? (check one)

- *Option 1:* Girl, woman | *Option 2:* Female
- *Option 1:* Boy, man | *Option 2:* Male
- Transgender woman
- Transgender man
- Something else (e.g., non-binary, genderqueer, gender-diverse, or genderfluid). Please specify: [free text]
- Choose not to disclose

OPTION 2: EXPANDED ANSWERS

What is [First Name's] gender? (check all that apply)

- *Option 1:* Girl, woman | *Option 2:* Female
- *Option 1:* Boy, man | *Option 2:* Male
- Transgender woman
- Transgender man
- Non-binary
- Agender/no gender
- Questioning
- Not listed, please specify: [free text]
- Don't know
- Don't know what this question is asking
- Don't want to answer

OPTION 3: CMS DESIGN

What is [First Name's] gender identity? (optional, single select)

- Female
- Male
- Transgender female
- Transgender male
- A gender identity that's not listed: [free text]
- Not sure
- Prefer not to answer

MARYLAND
HEALTH BENEFIT
EXCHANGE

Maryland
DEPARTMENT OF HEALTH

Questions for Stakeholder Feedback
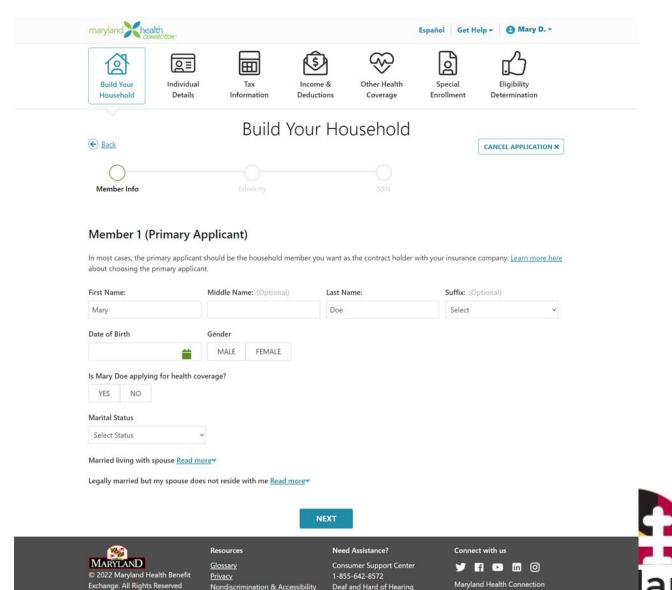
Questions for Stakeholder Feedback

- Overall SOGI question design

  - Are the proposed design options acceptable, and if so, which option (1, 2, or 3) is preferred?

  - Is there anything about the proposed design that should be modified?

  - Is there a source of model questions we missed, and that you prefer?

  - Do you agree with the proposed question sequence? (1. sexual orientation, 2. gender identity, 3. sex assigned at birth)

- Response terminology

  - Should MD include "nonbinary" as an answer option for the gender identity question, in addition to the "other"/free text option? Massachusetts, California, and Oregon do, but CMS and NASEM do not. LGBTQIA+ Health Education Center combines the approaches. The Census Bureau included "nonbinary" in their proposed question.

  - Is "nonbinary" the right term to use for such an answer option? Should MD use a different term, and if so, what?

  - Is the terminology in the other answer options acceptable?

- Explanatory text: Is the explanatory text for the required sex question acceptable? How might MD improve it?

- Any other feedback?

Appendix

Full Application Screenshot with Question

Source Designs

National Academies of Science, Engineering, & Medicine Consensus Report Recommendation

RECOMMENDATION 2: The panel recommends that the National Institutes of Health use the following question for assessing sexual orientation identity:

Which of the following best represents how you think of yourself? [Select ONE]:
- ○ Lesbian or gay
- ○ Straight, that is, not gay or lesbian
- ○ Bisexual
- ○ [If respondent is AIAN:] Two-Spirit
- ○ I use a different term [free-text]

(Don't know)
(Prefer not to answer)

RECOMMENDATION 4: The panel recommends that the National Institutes of Health use the following pair of questions for assessing sex assigned at birth and gender identity:

Q1: What sex were you assigned at birth, on your original birth certificate?
- ○ Female
- ○ Male

(Don't know)
(Prefer not to answer)

Q2: What is your current gender? [Mark only one]
- ○ Female
- ○ Male
- ○ Transgender
- ○ [If respondent is AIAN:] Two-Spirit
- ○ I use a different term: [free text]

(Don't know)
(Prefer not to answer)

https://nap.nationalacademies.org/catalog/26424/measuring-sex-gender-identity-and-sexual-orientation

MARYLAND
HEALTHBENEFIT
EXCHANGE

Maryland
DEPARTMENT OF HEALTH

18

LGBTQIA+ Health Education Center recommendations

Do you think of yourself as (Check one):
- ☐ Straight or heterosexual
- ☐ Lesbian, gay, or homosexual
- ☐ Bisexual
- ☐ Something else (e.g., queer, pansexual, asexual.)
  Please specify: _____
- ☐ Don't know
- ☐ Choose not to disclose

What is your current gender identity? (Check one):
- ☐ Female
- ☐ Male
- ☐ Transgender Woman/Transgender Female
- ☐ Transgender Man/Transgender Male
- ☐ Other* (e.g., non-binary, genderqueer, gender-diverse or genderfluid)
  Please specify: _____
- ☐ Choose not to disclose

What sex were you assigned at birth? (Check one):
- ☐ Male
- ☐ Female

* You may replace the term "other" on patient-facing forms with the term that is most affirming for the communities you serve (e.g., "something else," or "additional category.")

LGBTQIA+ Health Education Center Recommendation

MARYLAND
HEALTH BENEFIT EXCHANGE

Maryland
DEPARTMENT OF HEALTH

Oregon Medicaid - Paper Application

2. **Birthdate:** ☐☐ / ☐☐ / ☐☐☐☐

For data matching purposes, what was your sex assigned at birth?: ☐ Male ☐ Female

3. **Gender identity:** ☐ Male ☐ Female ☐ Trans Male (FTM) ☐ Trans Female (MTF) ☐ Not listed
☐ Gender Non-Binary/Two Spirit ☐ Decline to answer ☐ Other: _____

Oregon Medicaid Gender Identity Question

1. Please describe your gender in any way you prefer _____

2. What is your gender? (check all that apply)

   ☐ Girl, Woman

   ☐ Boy, Man

   ☐ Non-binary

   ☐ Agender/No gender

   ☐ Questioning

   ☐ Not listed. Please specify: _____

   ☐ Don't know

   ☐ I don't know what this question is asking

   ☐ I don't want to answer

Are you transgender?

   ☐ Yes

   ☐ No

   ☐ Don't know

   ☐ I don't know what this question is asking

   ☐ I don't want to answer

MARYLAND
HEALTHBENEFIT
EXCHANGE

Maryland
DEPARTMENT OF HEALTH

Oregon Medicaid Sexual Orientation Question

How do you describe your sexual orientation or sexual identity? (check all that apply)

- ☐ Same-gender loving ☐ Same-sex loving
- ☐ Lesbian ☐ Gay ☐ Bisexual
- ☐ Straight (attracted mainly to or only to other gender(s) or sex(s))
- ☐ Pansexual ☐ Asexual ☐ Queer
- ☐ Questioning
- ☐ Don't know
- ☐ Not listed. Please specify: _____
- ☐ I don't know what this question is asking
- ☐ I don't want to answer