

# Children's Coverage Technical Advisory Group



**November 28, 2023**

**Division of State  
Coverage Programs,  
Children and Adults  
Health Programs  
Group, CMCS**

# Agenda

## Welcome

*Meg Barry, Director, Division of State Coverage Programs, CMCS*

## Introductions

*Abbie Walsh, Health Insurance Specialist, Division of State Coverage Programs, CMCS*

## Eligibility Expansions for Children

*Stacey Green, Technical Director, Division of State Coverage Programs, CMCS*

## Overview of Vaccine Coverage State Plan Amendments

*Emily King, Deputy Director, Division of State Coverage Programs, CMCS*

# Agenda

## **CMCS Mental Health Parity Request for Comment**

*Kirsten Beronio, Senior Policy Advisor, Office of Center Director, CMCS*

## **New Sexual Orientation and Gender Identity (SOGI) Questions on the Marketplace Application**

*Dr. Karen Matsuoka, Senior Policy Advisor for Health Equity, Office of the Center Director, CMCS, and others*

## **Updates – New Releases, Meetings, and Conferences**

*Shakia Singleton, Health Insurance Specialist, Division of State Coverage Programs, CAHPG, CMCS*

# Eligibility Expansions for Children



*Stacey Green*

*Centers for Medicaid and CHIP  
Services*

# Eligibility Expansions for Children

Centers for Medicare & Medicaid Services  
Center for Medicaid & CHIP Services

November 28, 2023

# Key Objectives

- Overview of the statutory and regulatory provisions that govern eligibility expansion for children through the CHIP state plan
- Present alternative options for child expansions
- Provide some of the key considerations for states interested in expanding children's coverage in the future
- Encourage states to seek technical assistance from CMS well in advance of proposed effective date of expansion

# Overview of Provisions Governing CHIP State Plan Eligibility Level Expansions

- Statutory and regulatory definition of a targeted low-income child:
  - Section 2110 of the Social Security Act and regulations at 42 CFR 457.310 define a targeted low-income child and set the parameters for coverage expansions under CHIP
- Section 2110(b)(1)(B)(ii)(II) and 42 CFR 457.310(b)(1)(iii)(A) specify that eligibility is limited to the higher of 200 percent of the Federal poverty level (FPL) or 50 percentage points above the Medicaid applicable income level (the upper Medicaid eligibility level in place in 1997 before the creation of CHIP)

# Mechanism to Expand CHIP State Plan Eligibility Levels Before and After 1/1/14

- *Prior to January 1, 2014:* States were permitted to use income disregards to effectively expand eligibility to children under age 19 to the income level they chose
  - Income disregards (including block of income disregards) and deductions increase the amount of income a child's family can have and still be eligible for coverage by eliminating a family's countable income of certain expenses, costs, or amounts of income
- *After January 1, 2014:* The Affordable Care Act introduced Modified Adjusted Gross Income (MAGI), which:
  - Established a standardized income disregard equal to five percentage points of the FPL disregard for the purposes of determining income eligibility
  - Eliminated the use of block of income disregards

## Example – State wants to expand to 300% FPL

Age group	Pre-CHIP Medicaid Levels (1997 levels)	Title XXI Separate CHIP or Medicaid Expansion Income Levels	Maximum expansion with title XXI funds (pre-CHIP Medicaid levels plus 50 percentage points or up to 200 percent of the FPL)	Permissible to Expand to 300% of FPL with title XXI funds?
0 up to 1 years	Up to 185% of the FPL	185-210% of the FPL	235% of the FPL (185 plus 50 percentage points)	State may expand from 210 to 235 percent of the FPL
1-6 years	Up to 135% of the FPL	140-210% of the FPL	200% of the FPL (which is greater than 135% + 50 percentage points)	No, already exceeded
6-19 years	Up to 110% of FPL	133-210% of the FPL	200% of the FPL (which is greater than 110% + 50 percentage points)	No, already exceeded

# Implications

- Many states have exceeded the maximum for expansion of children's eligibility with title XXI funds, for most - if not all - age ranges of children under age 19
- This is applicable to both title XXI funded separate CHIPs and Medicaid expansion programs

# Options for Child Eligibility Expansions

- Medicaid state plan authority
- Section 1115 demonstration authority

# Medicaid State Plan Authority Considerations (1 of 2)

- To implement a new eligibility expansion for children, States may submit a Medicaid State plan amendment to cover children in “individuals above 133% FPL under Age 65” optional eligibility group referred to as the “XX Group”. States may either cover:
  - All children, both insured and uninsured, or
  - A reasonable classification of children limited to uninsured children (like CHIP)
- The eligibility hierarchy precludes income levels from being higher in Medicaid than a separate CHIP. This means a child expansion may require a state to transition the majority of its separate CHIP children to Medicaid
  - **Exception:** From conception to end of pregnancy population must remain in a separate CHIP
  - **Match Rate:** *State will receive title XXI match rate for existing separate CHIP children that transition to Medicaid, but XIX match rate for coverage expansion children above the state’s limit for title XXI funds*

# Medicaid State Plan Authority Considerations (Continued) (2 of 2)

- Regular Medicaid rules apply to the XX Group, including the provision of EPSDT and rules related to charging premiums and cost sharing
- Differences between a separate CHIP and Medicaid should be considered, such as:
  - Medicaid only:
    - Ability to negotiate with drug manufacturers to get rebates
    - Participate in vaccines for children
  - Separate CHIP only:
    - Greater flexibility with benefits (EPSDT optional), and cost sharing rules
- This option would require a Medicaid and/or CHIP SPA

# Section 1115 Demonstration Authority Considerations

- States may submit section 1115 proposals to expand coverage to children
- Key considerations include:
  - Objectives of Medicaid/CHIP
  - Monitoring and evaluation obligations
  - Transparency requirements
  - There are no retroactive effective dates; effective date is date of approval of demonstration
  - Allotment neutrality/title XXI funds
- Contact your 1115 demonstration project officer for more information

## Health Service Initiative (HSI)

- CHIP health services initiatives (HSI) funding may be available as a “bridge” until an 1115 is approved
- Please consult your CHIP project officer if interested in this option

# Key Take Aways

- Current statute and regulations make it difficult for most states to expand coverage to children under the CHIP state plan
- States have the option to expand coverage to children under the Medicaid state plan. Need to consider:
  - Program differences between Medicaid and separate CHIP
  - Match rate (title XIX under the Medicaid state plan rather than title XXI)
- States may propose to expand child coverage under a Section 1115 demonstration
- Please reach out to your Medicaid state lead and/or CHIP Project Officer with questions on child expansions
- We encourage states to seek technical assistance from CMS well in advance of proposed effective date of an expansion

A decorative graphic on the left side of the slide, consisting of a large, dark blue arrow-like shape pointing to the right. The interior of this shape is filled with a pattern of smaller, lighter blue triangles, creating a textured, crystalline effect.

## **Questions via Chat**

# Vaccine Coverage SPAs



*Emily King*

*Centers for Medicaid and CHIP  
Services*

# Vaccine Coverage SPAs

- All states with a separate Children’s Health Insurance Program (CHIP) will need to submit a CHIP SPA to demonstrate compliance with the Inflation Reduction Act (IRA) and the longstanding CMS requirement to cover children’s vaccines.
- **Background:** The IRA requires separate CHIPs to provide coverage and payment for approved vaccines recommended by the Advisory Committee on Immunization Practices (ACIP) and their administration, without cost sharing. (Additional information is available in the June 27, 2023, [State Health Official](#) letter.)
- **All states that elect to cover children, the from-conception-to-end-of pregnancy population (previously referred to as the “unborn”), and/or pregnant individuals under the CHIP state plan are required to submit this SPA.**
- The IRA provisions are effective 10/1/23. States must submit a SPA no later than the end of the state fiscal year in which 10/1/23, occurs. For most states, this SPA will need to be submitted no later than **June 30, 2024**.
- **Please submit your SPA via the OneMAC portal at <https://onemac.cms.gov>.**

# *CMCS Mental Health Parity Request for Comment*



***Kirsten Beronio***

***Centers for Medicaid and CHIP  
Services***



# **New Sexual Orientation and Gender Identity (SOGI) Questions on the Marketplace Application**

*What This Means for State Medicaid and CHIP Agencies*

*Dr. Karen Matsuoka*

*Centers for Medicaid and CHIP Services*

# Background: Current Marketplace "Sex" Question

- Currently, the Marketplace application asks a binary "Sex" question with "Male" or "Female" response options.
- Consumer's answer of "Female" is used to trigger questions about pregnancy, which is an eligibility criteria for Medicaid and the Children's Health Insurance Program (CHIP).
- There will be **no changes** to the existing "Sex" question.
  - Consumer's response to this question will continue to be stored in the Marketplace system, shared with issuers if the consumer enrolls in a plan, and shared with state Medicaid/CHIP agencies if the consumer is transferred.

Tell us about yourself

Do you need coverage for yourself?

Yes  
 No

First name  
Gabriella

Middle name  
Optional

Last name  
Lopez

Suffix  
Optional

Date of birth  
For example: 3/4/2018  
Month Day Year  
2 / 21 / 1995

Sex  
 Female  
 Male

Save & continue

Sex

Female  
 Male

# Marketplace "Sex" Question Help Text

**Sex**

[Learn more about why we're asking.](#)

Female

Male

## How this information is used Close

We share responses to "Sex" with the insurance company when you enroll in a plan. This information may also be shared with agencies like your state Medicaid or Children's Health Insurance Program (CHIP), if anyone in the household is eligible for these programs.

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 [HealthCare.gov](#) about the Marketplace [Privacy Policy](#) and [how we use your data](#).

# New Marketplace SOGI Questions

- Starting on **November 1, 2023** the Marketplace will be asking three new SOGI questions on all applications starting with Plan Year 2024
  - New questions will be asked for all individuals on the application ages 12 and older
  - New questions will be *optional* and will be asked alongside existing race/ethnicity questions on Healthcare.gov
- Existing *required* binary "Sex" question will remain on the application

Category	Question	Responses
Sex Assigned at Birth	<p>What was [First Name]'s sex assigned at birth?</p> <p><i>You can find this on an original birth certificate or similar document.</i></p> <p><i>(optional, single select)</i></p>	<ul style="list-style-type: none"> <li>Female</li> <li>Male</li> <li>A sex that's not listed: [free text]</li> <li>Not sure</li> <li>Prefer not to answer</li> </ul>
Gender Identity	<p>What's [First Name]'s gender identity?</p> <p><i>(optional, single select)</i></p>	<ul style="list-style-type: none"> <li>Female</li> <li>Male</li> <li>Transgender female</li> <li>Transgender male</li> <li>A gender identity that's not listed: [free text]</li> <li>Not sure</li> <li>Prefer not to answer</li> </ul>
Sexual Orientation	<p>What's [First Name]'s sexual orientation?</p> <p><i>(optional, single select)</i></p>	<ul style="list-style-type: none"> <li>Lesbian or gay</li> <li>Straight</li> <li>Bisexual</li> <li>A sexual orientation that's not listed: [free text]</li> <li>Not sure</li> <li>Prefer not to answer</li> </ul>

# Catalysts for New SOGI Questions



A Report by the  
Subcommittee on Sexual Orientation, Gender Identity, and  
Variations in Sex Characteristics (SOGI) Data  
Subcommittee on Equitable Data  
of the  
NATIONAL SCIENCE AND TECHNOLOGY COUNCIL

January, 2023

Administration Priorities The Re  
JANUARY 20, 2021  
Executive Order On Advancing Racial  
Equity and Support for Underserved  
Communities Through the  
Federal Government  
BRIEFING ROOM PRESIDENTIAL ACTIONS

Administration Priorities The Re  
JUNE 15, 2022  
Executive Order on Advancing  
Equality for Lesbian, Gay, Bisexual,  
Transgender, Queer, and  
Intersex Individuals  
BRIEFING ROOM PRESIDENTIAL ACTIONS

JANUARY 20, 2021  
Executive Order on Preventing and  
Combating Discrimination on the Basis  
of Gender Identity or  
Sexual Orientation  
BRIEFING ROOM PRESIDENTIAL ACTIONS

2022 Sexual Orientation and Gender Identity  
Data Listening Session Summary

Scott Stare  
DPAG/CMS OMH



**PILLAR:  
HEALTH EQUITY**

# Purpose of SOGI Questions

- The new SOGI questions will be used for demographic data reporting for the purposes of analyzing health disparities in access to coverage.
- Adding SOGI questions improves the Marketplace consumer experience by allowing consumers to attest in a way that better reflects and affirms their identities.



# Best Practices for Asking SOGI Questions of Consumers

CMS has identified the following best practices to promote equitable and accurate data collection from consumers:

- Clearly outline the purpose of the SOGI questions, including privacy and security measures:
  - Explain that the questions will be used to help identify gaps in access to health coverage, similar to how race and ethnicity data are used. Responses to these questions will not impact plan pricing.
  - Emphasize that the new data will be kept private and secure. In other words, the new data will not be shared with issuers, Medicaid and CHIP agencies, or other third parties at this time.
- Use Marketplace recommended question and answer wording to enhance consumers' understanding of SOGI questions and encourage responses:
  - Ensure consumers understand that the questions are optional. They can skip or respond “Prefer not to answer.”
  - Ensure consumers understand that they can use free text response options to enter their own preferred terms.
  - Use help text to provide further context and explanation of the questions and answer options.
  - Clarify that the application filer can skip the questions or respond “Not sure” if they are unsure of how to answer the questions for others on the application. This will help improve data accuracy.
  - Explain that the Marketplace application will ask these questions for household members ages 12 and older.
  - At any time, consumers can update their responses to the new SOGI questions, including changing or removing their previous responses.

# Impact on Marketplace Eligibility Results and Health Care

- An individual's responses to the new SOGI questions will have no impact on their eligibility results, plan pricing, or plan costs.
- At this time, any data received from the three new optional SOGI questions **will not** be shared with downstream systems or agencies, including issuers and state Medicaid/CHIP agencies.
- CMS expects issuers and providers to administer applicable and medically necessary care in admission to, participation in, or receipt of the services and benefits under any of its programs and activities, without regard to Marketplace record of sex, sex assigned at birth, gender identity or sexual orientation.



# **Implications for State Medicaid and CHIP Agencies**

# Implications for Medicaid and CHIP Agencies: Applications

- State Medicaid and Children's Health Insurance Program (CHIP) agencies will have the option to include SOGI questions on applications used by state Medicaid and CHIP agencies but will not be required to do so. States that choose to implement SOGI questions must make them optional for consumers.
  - At state option, it can update their Single Streamlined Application (SSApp), multi-benefit application, 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.
- States that opt to add the SOGI questions to the SSApp or their multi-benefit application *verbatim* can do so without submitting State Plan Amendments (SPA).
- States that seek to update their SSApp or multi-benefit application to incorporate SOGI questions using alternative language or modified response options will need to work with the Center for Medicaid and CHIP Services (CMCS) and may need to submit SPAs if the state proposes significant deviations from the model application SOGI questions.

# Implications for Medicaid and CHIP Agencies: Confidentiality of Applicant and Beneficiary Information and Data Systems

- In accordance with federal law and implementing regulations<sup>1</sup>, state Medicaid and CHIP agencies opting to move forward with SOGI data collection through the application process or any other method must comply with federal law and implementing regulations regarding applicant and beneficiary data, including by:
  - Ensuring appropriate safeguards are in place to protect applicant and beneficiary information,
  - Restricting the use or disclosure of this information to purposes directly connected with the administration of the state plan,
  - Releasing information only to those who are subject to standards of confidentiality that are comparable to those of the Medicaid or CHIP agency, and
  - Obtaining permission from the applicant, beneficiary or their personal representative before making a disclosure of their data to an outside source in accordance with 42 CFR 431.306.

<sup>1</sup>Section 1902(a)(7) of the Social Security Act; 42 CFR part 431, subpart F, and by cross-reference at 42 CFR part 457.1110.

# Implications for Medicaid and CHIP Agencies: Confidentiality of Applicant and Beneficiary Information and Data Systems, *Continued*

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop 50-26-12  
Baltimore, Maryland 21244-1850



## CMCS Informational Bulletin

DATE: November 9, 2023

FROM: Daniel Tsai, Deputy Administrator & Director  
Center for Medicaid and CHIP Services

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").<sup>1</sup> 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.<sup>2</sup> 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.

- 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.
- Examples of prohibited use or disclosure of applicants' or beneficiaries' SOGI or other data include disclosing such data:
  - 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.

Citations: Section 1902(a)(7) of the Social Security Act, 42 C.F.R. part 431, subpart F and 42 C.F.R. §457.1110(b).

<https://www.medicaid.gov/sites/default/files/2023-11/cib11092023.pdf>

<sup>1</sup> Please refer to <https://www.cms.gov/files/document/soqi-questions-marketplace-application.pdf> for more information.  
<sup>2</sup> 42 CFR 435.907(b) and 457.330.

# Implications for Medicaid and CHIP Agencies: Submitting Data to CMCS

- CMCS is targeting 2025 to begin receiving and accepting SOGI data as part of Transformed Medicaid Statistical Information System (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 CMCS readiness and state submissions will be provided as requirements for accepting and receiving this data are finalized.

## Q & A

# Terms Defined

- **Sex:** A multidimensional construct based on a cluster of anatomical and physiological traits (sex traits)
- **Gender:** A multidimensional construct that links gender identity, gender expression, and social and cultural expectations about status, characteristics, and behavior that are associated with sex traits
- **Sexual Orientation:** A multidimensional construct encompassing emotional, romantic, and sexual attraction, identity, and behavior

**Source:** *Measuring Sex, Gender Identity, and Sexual Orientation*. National Academies of Sciences, Engineering, and Medicine. March 2022.

Detailed definitions for SOGI-related terms can be found in the report.

# Resources

- [EO 13988: Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation](#)
- [EO 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#)
- [EO 14075: Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals](#)
- [Federal Evidence Agenda on LGBTQI+ Equity](#)
- [Recommendations on the Best Practices for the Collection of Sexual Orientation and Gender Identity Data on Federal Statistical Surveys](#)
- [Office of the National Coordinator for Health Information Technology: United States Core Data for Interoperability](#)
- [CMS Training: Caring for LGBTQI+ Patients](#)

# News CMS Releases and Resources

- [Section 5112 Requirement for all States to Provide Continuous Eligibility to Children in Medicaid and CHIP under the Consolidated Appropriations Act, 2023](#)
  - [FAQs on Non-Payment of Premiums: Continuous Eligibility September 2023 State Health Official Letter Follow Up](#)
- [Mandatory Medicaid and Children's Health Insurance Program Coverage of Adult Vaccinations under the Inflation Reduction Act](#)
- [Guidance on Adding Sexual Orientation and Gender Identity Questions to State Medicaid and CHIP Applications for Health Coverage](#)

# Updates – Meetings, Webinars, and Conferences

- [CMS Medicaid and CHIP Renewals: What to Know and How to Prepare, A Partner Education Monthly Series](#): December 6<sup>th</sup>, 2023
- [December 2023 MACPAC Public Meeting](#): December 14<sup>th</sup> – December 15<sup>th</sup>, 2023

## *Other Webinars*

- [Improving Data Sharing Across SNAP and Medicaid Agencies: Key Factors for Success During Unwinding and Beyond](#): December 5<sup>th</sup>, 2023
- [State Telehealth Policy Trends: 2023 Year in Review](#): December 5<sup>th</sup>, 2023

# Upcoming CCTAG Call

Next CCTAG call is scheduled on Tuesday January 23, 2024



Questions regarding the CCTAG, including scheduling and other logistical needs should be directed to:

[CCTAG@cms.hhs.gov](mailto:CCTAG@cms.hhs.gov)