

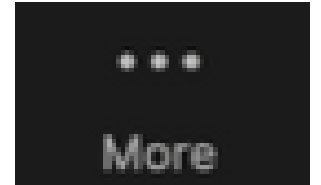
**Beyond**   
**the Basics**

# **Ensuring Equitable Access to Coverage for LGBTQI+ People**

June 11, 2024

# Webinar Logistics

- After the webinar, we'll circulate the slides, a video recording of this presentation, and other resources. We'll also post everything to the Beyond the Basics website.
- Automated captions have been enabled for this webinar. To view them, click on the "more" option with three dots at the bottom of your screen. There you should have the option to turn on closed captioning.
- All participants are muted and in listen-only mode. If you'd like to ask a question:
  - Click on the Q&A icon at the bottom of your webinar screen and type your question into the box.
  - We will be monitoring questions and will pause for Q&A during the presentation.
  - We may not be able to answer every question asked, but we will have a record of all your questions and will use them as a guide for future resources and presentations.
  - You can also email your questions during and after the webinar to [beyondthebasics@cbpp.org](mailto:beyondthebasics@cbpp.org)



# Agenda

- About Us
- LGBTQI+ Inclusion
- Section 1557 of the Affordable Care Act
- LGBTQ-Inclusive Data Collection on HealthCare.gov and State-Specific Enrollment Applications
- Q & A
- Resources

# About Whitman-Walker Institute and Out2Enroll



# About Us

## Whitman-Walker Institute

- A D.C. based organization that combines cutting-edge research, policy, and technical assistance to promote health equity for underserved communities
- We are affiliated with Whitman-Walker Health, an FQHC in D.C. with 50+ years of service to diverse communities in the DMV



## Out2Enroll

- Initiative to connect low- and middle-income LGBTQ+ people with affordable, high-quality health insurance coverage under the Affordable Care Act



# LGBTQI+ Inclusion



# LGBTQI+ People Live in Every Community

- LGBTQI+ people live in all communities in all parts of the country
- LGBTQI+ people face health disparities and a history of underinsurance
- Many LGBTQI+ individuals will qualify for financial assistance under the Affordable Care Act
- The Affordable Care Act protects LGBTQI+ people from discrimination in health insurance coverage and health care
- It's our job to help people connect with coverage that will work for them!

# LGBTQI+ Identities Are Diverse

- **Sexual Orientation** is not just about sexuality or who you're attracted to. It's also who you love and create a family with.
  - Straight or Heterosexual
  - Lesbian or Gay
  - Bisexual or Pansexual
  - Queer
- **Gender Identity** is a person's deeply felt, internal sense of who they are and how they want to be seen by others.
  - Transgender woman (she/her/hers)
  - Transgender man (he/him/his)
  - Genderqueer, non-binary, gender non-conforming (they/them/theirs)



# LGBTQI+ Identities Are Diverse

- **Intersex** is an umbrella term used to describe people born with sex traits that do not fit binary medical definitions of male or female sexual or reproductive anatomy
- There are currently limited data and information available on the population health and overall well-being of people with intersex traits
- However, recent research has found that health disparities among intersex populations are driven largely by stigmatization, prejudice, and discrimination similar to what LGBTQI+ communities experience
- Note on terminology for today's presentation

## Terms to Avoid

No Thank You 🙄	Yes Please 😊
✗ Homosexual	✓ Gay or Lesbian
✗ Transsexual	✓ Transgender or trans
✗ A transgender	✓ A transgender person
✗ Transgendered	✓ Transgender or trans
✗ Sex change	✓ Gender transition
✗ Sex change surgery	✓ Gender-affirming surgeries

# Gender Transition

- The process of socially, legally, and/or medically transitioning to another gender
  - **Social:** clothing, hairstyle, name, pronouns
  - **Legal:** legal name and gender marker on identification documents
  - **Medical:** gender-affirming health care
- What you need to know:
  - Gender-affirming medical services are **medically necessary**
  - Transgender people may use a different name and/or gender pronoun from what is on their legal identification

# How To Be LGBTQI+ Inclusive

- What Name to Use on an Application
- In conversation, use the name and pronouns the person prefers
- On the application, **use the name the person uses to file federal taxes**
- Name and gender on the account can be changed after enrollment by contacting
- HealthCare.gov or your state's marketplace

# How To Be LGBTQI+ Inclusive

- Ask, Don't Assume:
- Don't make assumptions about someone's gender or pronouns based on their voice or what is on their ID
- Instead, ask!
  - "How would you like to be addressed?"
  - "Do you prefer a name that is not listed here?"
  - "What pronouns do you use?"
- If you make a mistake, apologize, correct yourself, and move on
- Use Gender-Inclusive Language:
  - You can use terms like "partner," "spouse," and "parent"

# Section 1557 of the Affordable Care Act



# Section 1557 of the ACA: Overview

LGBTQI+ people continue to face widespread discrimination in health insurance and health care settings, which harms their mental and physical health:

- 23% of LGBTQI+ respondents, including 37% of transgender respondents, reported postponing or avoiding needed medical care in the past year due to disrespect or discrimination from providers ([CAP, 2022](#))
- 28% of transgender adults reported that a health insurance company denied them coverage for gender-affirming hormone therapy ([CAP, 2022](#))
- Nearly half of transgender respondents who saw a provider in the last year had at least one negative health care experience because of their gender identity ([USTS, 2022](#))

# Section 1557 of the ACA: Overview

- Section 1557 of the Affordable Care Act (ACA) prohibits health programs or facilities that receive federal funds from discriminating based on race, color, national origin, age, disability, or sex
- Since the enactment of the ACA in 2010, Section 1557 has undergone regulatory rulemaking numerous times, and litigation related to the rule remains ongoing
- In 2016 the Obama administration issued a rule clarifying that Section 1557 protects LGBTQI+ people from discrimination
- In 2020 the Trump administration issued a rule that eliminated these protections



# Section 1557 of the ACA: Overview

Section 1557 applies to:

- Health programs or activities that receive HHS funding, health programs or activities administered by HHS (such as the Medicare Part D program)
- The health insurance Marketplace (and all plans offered by issuers that participate in those Marketplaces that receive Federal financial assistance)
  - It does apply to federally funded Navigators, as well as to agents, brokers, and web-brokers who sell QHPs
- Those covered by the rule may include hospitals, health clinics, health insurance issuers, state Medicaid agencies, community health centers, physicians' practices, and home health care agencies

# Section 1557 of the ACA: Overview

- In 2024 the U.S. Department of Health and Human Services (HHS) under the Biden-Harris administration issued a final rule to restore and expand nondiscrimination protections for LGBTQI+ communities under Section 1557
- The rule reinstates clear federal nondiscrimination protections on the basis of gender identity, sexual orientation, sex stereotypes, pregnancy status, and intersex status
- Also reinstates stronger protections around disability, primary language, and HIV status
- The new regulation will help address significant challenges that LGBTQI+ and other underserved communities encounter when seeking health care and health insurance coverage

# Section 1557 of the ACA: In Practice

- Under the final rule, a provider cannot deny or limit health services based on a person's sex assigned at birth, gender identity, or gender otherwise recorded
- For example:
  - A hospital that routinely provides gynecological or obstetric care could not deny a transgender man a pelvic exam or pregnancy-related care if that entity typically provides such care to cisgender individuals
- It also requires that transgender people be treated in accordance with their gender identity in hospital room assignments

# Section 1557 of the ACA: In Practice

- The rule also prohibits Medicare, Medicaid, the health insurance marketplaces, and private insurance carriers from discriminating against LGBTQI+ people seeking health insurance coverage
- Plans cannot deny coverage of preventive screenings based on sex
- Plans cannot contain categorical exclusions on gender-affirming
- For example:
  - “Procedures related to sex transformation”
  - “Transsexual surgery, regardless of mental necessity”
  - “Services related to gender dysphoria or gender identity disorder”

# Section 1557 of the ACA: In Practice

For more information, see the *Beyond the Basics Guide* [The Summary of Benefits and Coverage](#)

- Unfortunately, plan exclusions still exist:
  - They will not be evident in the Summary of Benefits and Coverage – you need to look at the actual policy (aka Evidence of Coverage or Certificate of Coverage)
- Check plan formularies to make sure:
  - Medications used to treat conditions such as HIV are not in high or unaffordable cost-sharing tiers
  - Medications for hormone replacement therapy are covered

# 2024 Section 1557 Final Rule: FAQs

- How does this rule interact with the state bans on transgender health care?
  - The rule states clearly that Section 1557 preempts state laws, making the state-level bans illegal
  - However, enforcement of the rule against states is complicated by a variety of factors
- Does the final rule require the coverage of treatment for those with gender dysphoria if prescribed by a doctor?
  - It does not require covered entities to cover a particular service, but prohibits excluding categories of services in a discriminatory way

# Dealing with Denials

- Individuals who encounter a denial of coverage should first **appeal** with the insurance carrier or Medicaid program
- Individuals who experience discrimination in insurance coverage or health care can **file complaints** with the Office for Civil Rights at the U.S. Department of Health and Human Services by visiting [www.hhs.gov/ocr](http://www.hhs.gov/ocr)
- Individuals can also **file complaints** with the state insurance commissioner and the state attorney general
- **Call HealthCare.gov** at 1-800-318-2596 to share information about discrimination or other problems
- Individuals can **sue** in federal court under Section 1557

Questions re: Section 1557 of the ACA?





# LGBTQ-Inclusive Data Collection on HealthCare.gov and State-Specific Enrollment Applications



# SOGI Questions on Enrollment Apps.

- The Marketplace application [now asks](#) optional demographic questions regarding sex assigned at birth, sexual orientation, and gender identity
  - These questions are being asked on all HealthCare.gov applications, online and paper, for all individuals or members of a household over the age of 12
  - They will appear alongside other demographic questions such as those about race and ethnicity
  - **Each question is optional** and offers a free response text box for consumers to describe themselves in their own words
- State-based Marketplaces (SBMs) and State Medicaid/CHIP agencies will also have the option [to include these questions](#) on their applications but are not required to do so

# SOGI Questions on Enrollment Apps.

- The new questions will be used to analyze LGBTQ+ population disparities in access to coverage
- Collecting this information will help to improve the consumer experience by enabling consumers to share information about themselves in a way that better reflects and affirms their identities
- At this time, CMS states that any data received from the new optional questions won't be shared with downstream systems or agencies, including health insurance issuers or state Medicaid and the CHIP agencies

# New Data Collection Questions

Category	Question	Responses
<b>Sex Assigned at Birth</b>	<b>What was [First Name]’s sex assigned at birth?</b> <i>You can find this on an original birth certificate or similar document.</i> <i>(optional, single select)</i>	<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>
<b>Gender Identity</b>	<b>What’s [First Name]’s gender identity?</b> <i>(optional, single select)</i>	<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>
<b>Sexual Orientation</b>	<b>What’s [First Name]’s sexual orientation?</b> <i>(optional, single select)</i>	<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>

# SOGI Questions on Enrollment Apps.

**Optional:** (Providing this information won't impact eligibility, plan options, or costs.)

**Fill in all that apply.**

18. If Hispanic/Latino, ethnicity:

Mexican  Mexican American  Chicano/a  Puerto Rican  Cuban  Other \_\_\_\_\_

19. Race:

White  Black or African American  American Indian or Alaska Native  Filipino  Japanese  Korean  Asian Indian  Chinese  
 Vietnamese  Other Asian  Native Hawaiian  Guamanian or Chamorro  Samoan  Other Pacific Islander  Other \_\_\_\_\_

**Choose one response.**

20. Sex assigned at birth (may be found on your birth certificate):

Female  Male  Other: \_\_\_\_\_  Don't know  Prefer not to answer

21. Current gender:

Female  Male  Transgender female  Transgender male  A different term: \_\_\_\_\_  Don't know  Prefer not to answer

22. Sexual orientation:

Bisexual  Lesbian or gay  Straight (not lesbian or gay)  A different term: \_\_\_\_\_  Don't know  Prefer not to answer

# Existing Binary Sex Question

**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

**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](#).

# Best Practices for Asking SOGI Questions

- Explain that the SOGI questions will be used only to help identify gaps in access to health coverage
- Responses to these questions will not impact eligibility or plan pricing
- Emphasize that answers will not be shared with issuers, Medicaid and CHIP agencies, or other third parties
- Ensure consumers understand that the questions are **optional**, and they can skip any question or respond “Prefer not to answer”
- Ensure consumers understand that they can use free text response options to enter their own preferred terms
- At any time, consumers can update their responses to the new SOGI questions, including changing or removing their previous responses

# Best Practices for Navigators and Assisters

- The questions are optional for the consumers to answer, but Navigators and other Assisters should always ask so consumers can choose whether to answer
- Responses to SOGI questions should always be self-reported by the consumer
- Navigators and other Assisters should not guess the answers to the SOGI questions or make any assumptions, even if they think they know the answers based on their interaction with the consumer



## Summary

- Data collection efforts help LGBTQ communities, and these questions need to be asked of all consumers
- It is okay for consumers to skip the questions or respond “prefer not to answer”
- There are free response text boxes if the given options do not fit
- These answers are private, will not affect eligibility or pricing, and will not be shared with insurers
- Give clients the opportunity to select an answer for themselves: do not do it for them
- Consumers can update their responses at any time

Thank you! Questions?



# Resources

- HHS Office for Civil Rights [FAQ on Section 1557](#) and information on [how to file a complaint](#)
- Out2Enroll [guidance](#) on new SOGI questions and [tutorial video](#) to help assisters address SOGI questions with consumers and
- [CMS slides](#) on “New SOGI Questions on the Marketplace Application”
- National Health Law Program’s Section 1557 [resources](#)
- Beyond the Basics Guide: [The Summary of Benefits and Coverage](#)

# Contact

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For more information and resources, please visit  
[www.healthreformbeyondthebasics.org](http://www.healthreformbeyondthebasics.org)