

Assisting Marketplace Consumers in the LGBTQI+ Community

This job aid provides information and guidance that Navigators, Certified Application Counselors (CACs), and Enrollment Assistance Personnel (EAPs) (collectively, assisters) need when working with members of the LGBTQI+ community and their families on enrollment in coverage.

Table of Contents

Overview.....	2
Non-discrimination and Privacy Protections	2
Marketplace Protections	3
Coverage for Same-Sex Couples.....	3
Transgender Health Care.....	4
Consumers with HIV and AIDS	4
Application Assistance.....	5
Sexual Orientation and Gender Identity (SOGI) Questions.....	5
Comparing Plans.....	6
Outreach and Education	6
Additional Resources.....	7

Version 1.0. June 2024. This information is intended only for the use of entities and individuals certified to serve as Navigators, certified application counselors, or non-Navigator assistance personnel in a Federally-facilitated Marketplace. The terms “Federally-facilitated Marketplace” and “FFM,” as used in this document, include FFM’s where the state performs plan management functions. Some information in this manual may also be of interest to individuals helping consumers in State-based Marketplaces, including those using the Federal Platform. This material was produced and disseminated at U.S. tax filer expense.

Overview

Individuals in the Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex (LGBTQI+) community face unique challenges and barriers to health care. Expanding access to health insurance coverage is one important tool in improving access to care for this population. The Affordable Care Act is greatly improving access to affordable, quality health coverage for LGBTQI+ Americans, and assisters play an important role in supporting this underserved community.

Supporting the LGBTQI+ community is consistent with the Centers for Medicare & Medicaid Services Office of Minority Health's (OMH) vision that all individuals CMS serves achieve their highest level of health and OMH's efforts to eliminate disparities in health care quality and access. For more information about some of CMS' efforts to promote equity, please refer to the [CMS Caring for LGBTQTI+ Patients training](#).

Note: Individuals who are part of the LGBTQI+ community may identify as lesbian, gay, bisexual, transgender, queer/questioning, intersex, asexual, or nonbinary, or identify their sexual orientation or gender identity in other ways.

Non-discrimination and Privacy Protections

Section 1557 of the Affordable Care Act prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities, including Medicaid plans and certain plans sold on the Marketplaces. Section 1557's nondiscrimination protections apply to activities such as exploring, applying for, or enrolling in health insurance coverage. In May 2024, the Department of Health and Human Services (HHS) Office for Civil Rights (OCR) published a final rule that defined "sex" in Section 1557 to include discrimination on the basis of sex characteristics, including intersex traits; pregnancy or related conditions; sexual orientation; gender identity; and sex stereotypes.ⁱ The Section 1557 final rule prohibits discrimination in health insurance coverage and other health-related coverage, such as Medicaid, including in benefit design.ⁱⁱ The final rule contains several provisions that prohibit discrimination on the basis of sex, which includes but is not limited to sex characteristics, including intersex traits; sexual orientation; gender identity; and sex stereotypes, and also prohibits discrimination in health services related to gender transition or other gender-affirming care.ⁱⁱⁱ For more information about Section 1557, please visit the HHS [Section 1557 of the Patient Protection and Affordable Care Act webpage](#).

In addition, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule protects against certain disclosures of personal health information, including protected health information related to a person's gender affirming care.^{iv}

These protections are very important because LGBTQI+ consumers have historically faced discrimination in accessing health care and coverage. For more information about legal protections for LGBTQI+ consumers, please visit the HHS [LGBTQI+ Health & Well-being webpage](#).

Marketplace Protections

The following Health Insurance Marketplace^{®v} protections cover all Marketplace consumers but have important implications when working with LGBTQI+ community members.

Protection	Potential Impact on LGBTQI+ Consumers
Elimination of coverage denial or higher premiums based on pre-existing condition exclusions	<ul style="list-style-type: none"> Plans cannot deny coverage because of pre-existing conditions, including behavioral health conditions, HIV, or previous gender-affirming care. Individuals cannot be charged higher premiums just because they identify as part of the LGBTQI+ community or because they have a condition such as HIV.
Essential health benefits	<ul style="list-style-type: none"> All plans sold through the Marketplaces, and most individual and small group plans outside the Marketplaces, must cover the Essential Health Benefits, including mental and substance use disorder services, prescription drugs, and preventive and wellness services. A health insurance issuer can't limit sex-specific recommended preventive services based solely on a consumer's sex assigned at birth, gender identity, or recorded gender.

Coverage for Same-Sex Couples

A health insurance issuer that offers health insurance to opposite-sex spouses must also offer coverage to same-sex spouses. Insurance issuers must also offer the same coverage options to same-sex and opposite-sex spouses.

This is true regardless of the state where:

- The couple lives.
- The insurance issuer is located.
- The plan is sold, issued, renewed, or in effect.

The Marketplace also treats same-sex spouses the same as opposite-sex spouses when they apply for advanced payments of premium tax credits (APTCs) and cost-sharing reductions (CSRs) for private insurance plans.

Rules about family coverage for couples in domestic partnerships or civil unions vary by state and issuer, so consumers should explore their options to ensure that the coverage they buy is appropriate for their family's needs. For more information about health care options for same-sex couples, refer to [HealthCare.gov: Married same-sex couples and the Marketplace](#).

Transgender Health Care^{vi}

One of the 10 categories of essential health benefits (EHB) that Marketplace plans must provide is preventive services. The specified preventive services must be covered without cost sharing when delivered by a doctor or other provider within their plan's network.

A health insurance issuer can't limit sex-specific recommended preventive services solely based on a consumer's sex assigned at birth, gender identity, or recorded gender. If consumers' doctors determine that the preventive service is medically appropriate and the consumer meets the criteria for this recommendation and coverage requirements, the plan must cover the service without a copayment or coinsurance, even if the individual has not met the plan's yearly deductible. For example, a health insurance issuer can't refuse to cover a mammogram or pap smear for a transgender man who has residual breast tissue or an intact cervix if his doctor determined the service is medically appropriate.

Marketplace plans cannot:

- Deny health services related to gender-affirming care based solely on an individual's gender identity.
- Deny coverage because a person is transgender.
- Limit access to "sex-specific" services based on sex assigned at birth, gender identity, or recorded gender.

For more information about transgender health care, refer to [HealthCare.gov: Transgender health care](#).

Consumers with HIV and AIDS

Health insurance issuers cannot refuse to sell a consumer a plan or charge more just because the consumer has a preexisting condition such as HIV. This is true even if the individual has been refused coverage in the past.

There are two required preventive care benefits related directly to HIV and AIDS:

- HIV screening for everyone ages 15 to 65 and other ages at increased risk.
- PrEP (pre-exposure prophylaxis) HIV prevention medication for HIV-negative adults at high risk for getting HIV through sex or injection drug use.

For more information about Health Coverage Options for Consumers With HIV/AIDS, refer to [Health Coverage Options for Consumers with HIV/AIDS](#).

Application Assistance

Sexual Orientation and Gender Identity (SOGI) Questions

Starting on November 1, 2023, Marketplaces on the Federal platform ask three new optional SOGI questions on all applications for coverage starting with Plan Year 2024:

- Sex assigned at birth.
- Gender identity.
- Sexual orientation.

Assisters should ensure consumers are aware that the questions are optional and that an individual's responses to the new SOGI questions will have no impact on the individual's eligibility results, plan pricing, or plan costs. Adding SOGI questions improves the Marketplace consumer experience by allowing consumers to identify themselves in a way that better reflects and affirms their identities. The new SOGI questions will also be used for demographic data reporting for the purposes of analyzing health disparities in access to coverage.

Assisters should clearly outline the purpose of the SOGI questions, as well as applicable 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.
- Clarify that the questions will not change the consumer's enrollment information. The gender listed on the consumer's social security card and birth certificate will still be reflected on the application, enrollment, and insurance plan documents.

For more information on SOGI questions, refer to [New Sexual Orientation and Gender Identity \(SOGI\) Questions on the Marketplace Application webinar](#).

Comparing Plans

Consumers in the LGBTQI+ community and their families may have specific concerns when comparing plans for enrollment. Assisters should explain that there are resources available to all consumers when choosing a plan:

- Every plan sold in the Marketplace must provide a link to its directory of health providers. If a consumer already has an LGBTQI+-friendly provider that they know and trust, the consumer can use this directory to find out if their provider is included in a plan's network before signing up for coverage.
- Every plan sold in the Marketplace must provide a link to its drug formulary (the list of drugs that are covered). If a consumer needs a certain drug, they can check this formulary to find out if it is covered before signing up for coverage. It is also very important to see what cost-sharing "tier" level the drugs are on — those at the higher or specialty tiers may require consumers to pay higher out-of-pocket costs.

Consumers can access more coverage information through a plan's Summary of Benefits and Coverage. If consumers are still not sure about how services would be covered or excluded, they should contact their health plan directly.

Outreach and Education

It is important to recognize that members of the LGBTQI+ population are intersectional and diverse in many ways. While members of the LGBTQI+ community often share the burden of being stigmatized for their sexual orientation or gender identity and expression, their individual experiences vary by gender identity, race, ethnicity, income, and other characteristics.

Keeping cultural and linguistic competence and humility in mind will help assisters provide more effective assistance and outreach and help consumers have a better understanding of the Marketplace so they can make timely and informed decisions about their health coverage. Following the HHS National Culturally and Linguistically Appropriate Services (CLAS) standards can help assisters meet consumers' needs and tailor their approach accordingly. For additional information about providing culturally and linguistically appropriate services to consumers, refer to [OMH: Think Cultural Health](#).

Assisters should consider ways to reach members of the LGBTQI+ community such as:

- Partnering with LGBTQI+ organizations.
- Using inclusive communication, for example images, language, and content tailored to LGBTQI+ consumers. For assistance with using inclusive communication, visit the [CDC's Inclusive Communication Guide](#).
- Participating in LGBTQI+-friendly events, such as Pride month.

Consider sharing these key messages during outreach:

- LGBTQI+ people should not face discrimination in health care or health insurance coverage.
- Plans cannot deny coverage solely because someone is transgender.
- If consumers face discrimination, they should file a complaint with the HHS Office for Civil Rights, the Marketplace Call Center, or their state's insurance department.

The following reminders about language may be helpful when working with LGBTQI+ community members:

- Avoid making assumptions about a person's gender, pronouns, sexual orientation, or body parts.
- When in doubt, politely ask rather than guessing:
 - "How would you like me to refer to you?"
 - "Which pronouns do you use?"
 - "How would you like to be addressed?"
- Write down and consistently use the appropriate name and pronouns.
- In case of a mistake, apologize and ask how you can correct the mistake moving forward.

For more information about developing successful outreach events, refer to [Creating Outreach and Education Events webinar](#).

Additional Resources

Note: This job aid includes references and links to:

- HealthCare.gov:
 - [Health care coverage options for same-sex couples](#)
 - [Transgender health care](#)
- [CMS Training on Caring for LGBTQI+ Patients](#)
- [CMS LGBTQI+ Partners](#)
- [HHS Programs/LGBTQI](#)
- [HHS Office of Civil Rights/LGBTQI](#)
- [HHS Office for Civil Rights – Filing a Civil Rights Complaint](#)
- [Out2Enroll*](#)

- [Health Equity Training](#)
- [Substance Abuse and Mental Health Services Administration \(SAMHSA\) Affordable Care Act Enrollment Assistance for the LGBT Community webinar and Resource Guide](#)
- [Assistant Secretary for Planning and Evaluation \(ASPE\) Issue Brief.](#)

*CMS offers nongovernmental, third-party websites for informational purposes only, and inclusion of these websites should not be construed as an endorsement of any third-party organization's programs or activities.

ⁱ 45 C.F.R. § 92.101(a)(2). See U.S. Dep't of Health & Hum. Servs., Nondiscrimination in Health Programs and Activities, Final Rule, 89 Fed. Reg. 37522 (May 6, 2024), [Federalregister.gov/documents/2024/05/06/2024-08711/nondiscrimination-in-health-programs-and-activities](https://www.federalregister.gov/documents/2024/05/06/2024-08711/nondiscrimination-in-health-programs-and-activities). Note, however, that there have been recent court decisions staying or enjoining provisions of the 2024 Final Rule implementing Section 1557 of the ACA. More information about those court decisions is available on CMS's website at <https://www.cms.gov/about-cms/web-policies-important-links/accessibility-nondiscrimination-disabilities-notice#1557>.

ⁱⁱ 45 C.F.R. § 92.207.

ⁱⁱⁱ 45 C.F.R. § 92.206 (equal program access on the basis of sex); 45 C.F.R. § 92.207 (nondiscrimination in health insurance coverage or other health-related coverage).

^{iv} [HHS.gov/sites/default/files/hhs-ocr-notice-and-guidance-gender-affirming-care.pdf](https://www.hhs.gov/sites/default/files/hhs-ocr-notice-and-guidance-gender-affirming-care.pdf)

^v Health Insurance Marketplace® is a registered service mark of the U.S. Department of Health & Human Services

^{vi} Pursuant to decisions by various district courts regarding the 2024 Final Rule implementing Section 1557, provisions are stayed or enjoined as indicated below:

1. In *Florida v. Department of Health of Human Services*, No. 8:24-cv-1080-WFJ-TGW (M.D. Fla.), the court stayed 45 C.F.R. 92.101(a)(2)(iv), 92.206(b), 92.207(b)(3)-(5), and 42 C.F.R. 438.3(d)(4), in Florida. OCR also may not enforce the interpretation of discrimination “on the basis of sex” in 45 C.F.R. 92.101(a)(2)(iv), 92.206(b), or 92.207(b)(3)-(5) in Florida.
2. In *Tennessee v. Becerra*, No. 1:24cv161-LG-BWR (S.D. Miss.), the court stayed the Final Rule nationwide to the extent it “extend[s] discrimination on the basis of sex to include discrimination on the basis of gender identity” and enjoined HHS from enforcing the Final Rule “to the extent that the final rule provides that ‘sex’ discrimination encompasses gender identity.”
3. In *Texas v. Becerra*, No. 6:24-cv-211-JDK (E.D. Tex.), the court stayed the Final Rule in its entirety in Texas and Montana.

