



March 22, 2022

William N. Parham
Centers for Medicare & Medicaid Services
Office of Strategic Operations and Regulatory Affairs
Division of Regulations Development
Attention: Document Identifier/OMB Control Number: 0938-0568
Room C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Comment Request on the Medicare Current Beneficiary Survey, CMS-P-0015A

Dear Mr. Parham:

The Movement Advancement Project (MAP) is dedicated to advancing equality and opportunity for all. We appreciate the opportunity to comment on the Medicare Current Beneficiary Survey (MCBS). Our comments focus on strengthening the survey to capture critical information on the lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI) population.

The MCBS is the most comprehensive and complete survey of Medicare populations, and it is vital to understanding and evaluating the Medicare program. We applaud the addition to the survey of questions designed to assess health equity. In particular, the additions of questions about perceived discrimination by health care providers to include race or ethnicity, gender or gender identity, sexual orientation, and religion, among other characteristics, and the expanded socio-demographic items to include religious affiliation are important.

At the same time, that questions about sexual orientation, gender identity, and variations in sex characteristic are not included in the demographic section of the survey limits the ability of this important survey to understand the ways in which LGBTQI people are accessing Medicare and their experiences with care, including experiences of discrimination that can result in differences in health outcomes and quality of care. This is especially true given that beneficiaries are specifically going to be asked about whether they have been treated in an unfair or insensitive way by medical providers related to their sexual orientation, gender, or gender identity (among other characteristics). **Including questions in the demographic section allowing the identification of LGBTQI participants is critical to understanding how such discrimination may impact different people differently.**

Adding Sexual Orientation, Gender Identity, and Improved Sex Measures Would Improve Data Quality and Inform Decision-Making

As the Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys cogently explained, “there remains a lack of data on the characteristics and well-being” of sexual and gender minority (SGM) populations and

“[i]n order to understand the diverse needs of SGM populations, *more representative and better quality data need to be collected.*”¹ The lack of comprehensive federal data on LGBTQI people’s economic well-being hinders efforts to improve that well-being. Developing and assessing targeted programs to reduce disparities, as has been done for racial and ethnic groups, is “substantially hindered by a lack of data about LGBT disparities.”² As the authors of the report discussing LGB+ health insurance enrollment discussed above explained earlier this year, “Data collection on LGBTQ+ individuals is less consistent in federal and state data sources than other demographic information... As a result, our understanding of healthcare issues faced by this population is more limited than for other groups, a factor which itself can contribute to disparities.”³

It is similarly difficult to assess the effectiveness of antidiscrimination laws and determine enforcement priorities, without baseline data.⁴ To this end, more comprehensive data focused on economic well-being is especially important given the historic myth of gay affluence and power. While available research reveals it to be unfounded, the stereotype of LGBTQ people as politically powerful and wealthy continues. Perniciously, this myth has been used to slow or stop civil rights advancements.⁵

The MCBS is critical as a data collection tool to determine the effectiveness of Medicare and to inform decisions about the way the program is administered. Medicare would be better administered with more complete information about the demographic profile of eligible populations—including LGBTQI people. For example, by comparing the percentage of the eligible population for a particular program that is LGBTQI to the responses to the MCBS, CMS would be able to assess, and when necessary, improve, its ability to serve LGBTQI communities via this program. It may be able to determine whether its services are reaching LGBTQI recipients—including discrete or intersecting subgroups of that population or LGBTQI people outside of urban areas for example—at the same rate as the total population, and it will be able to better target outreach. As the Department of Health and Human Services previously explained, “[f]ully understanding the human service needs of LGBT populations. . . will require expanding the number of survey and administrative data sources that directly and accurately measure sexual orientation and gender identity.”⁶ Adding the SOGI and variations in sex characteristic data collection is accordingly essential to meet the Administration’s mandate to improve equity in the administration of federal programs through better collection and use of data.

¹ *Toward a Research Agenda for Measuring Sexual Orientation and Gender Identity in Federal Surveys: Findings, Recommendations, and Next Steps*, Fed. Interagency Working Grp. on Improving Measurement of Sexual Orientation and Gender Identity in Fed. Surv., 2 (Oct. 20, 2016), https://s3.amazonaws.com/sitesusa/wp-content/uploads/sites/242/2014/04/SOGI_Research_Agenda_Final_Report_20161020.pdf (emphasis added).

² Kyle C. Velte, *Straightwashing the Census*, 61 B.C. L. Rev. 69, 106 (2020), <https://lawdigitalcommons.bc.edu/bclr/vol61/iss1/3>.

³ Bosworth et al., 2, <https://aspe.hhs.gov/sites/default/files/2021-07/lgbt-health-ib.pdf>.

⁴ Kyle C. Velte, *Straightwashing the Census*, 61 B.C. L. Rev. 69, 110-11 (2020); see also Kellan Baker & Laura E. Durso, *Filling in the Map: The Need for LGBT Data Collection*, Ctr. for Am. Progress (Sept. 16, 2015), <https://www.americanprogress.org/issues/Agbt/news/2015/09/16/121128/filling-in-the-map-the-need-for-lgbt-data-collection/>.

⁵ *Id.*

⁶ Andrew Burwick et al., *Human Services for Low-Income and At-Risk LGBT Populations: An Assessment of the Knowledge Base and Research Needs*, OPRE Report 19, https://www.acf.hhs.gov/sites/default/files/documents/opre/lgbt_hsneeds_assessment_reportfinal1_12_15.pdf.

Section 1557 of the Affordable Care Act, for example, prohibits discrimination in health programs or activities receiving Federal financial assistance on the basis of sex—including sexual orientation and gender identity—among other protected characteristics.⁷ While the new questions about discrimination based on sexual orientation, gender, and gender identity are important in assessing the extent to which LGBTQ people who receive Medicare are experiencing such illegal discrimination, without SOGI and intersex data in the demographic series, it is difficult to truly effectuate this mission. As CMS previously explained, “the lack of information on sexual and gender identity prevents the study of whether sexual and gender minorities are experiencing discrimination in the receipt of CMS services.”⁸

The March 2022 National Academies of Science, Engineering, and Medicine (NASEM) consensus report recommends specific questions that can be used within the general adult population to assess sexual orientation identity, sex assigned at birth, and gender identity, and to identify people with transgender experience and intersex traits.⁹ The report also recommends that the National Institutes of Health make standard the collection of data on gender and that such data is reported as default.

Thank you for your consideration. If you have any questions or would like to discuss the information in this comment, please contact me at naomi@lgbtmap.org or 734-277-4575.

Sincerely,



Naomi Goldberg, MPP
Deputy Director
Movement Advancement Project

⁷ 42 U.S.C. § 18116(a).

⁸ Letter from CMS to Census Bureau (June 29, 2016), *available at* <https://www.documentcloud.org/documents/3894328-Letter-from-CMS-to-Census-Bureau-June-29-2016.html>.

⁹ National Academies of Sciences, Engineering, and Medicine. 2022. *Measuring Sex, Gender Identity, and Sexual Orientation*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/26424>.