

April 13, 2022

The Honorable Richard Pan
Chair, Senate Health Committee
1021 O St., Room 3130
Sacramento, CA 95814

RE: SB 1033, An act to amend Sections 1367.04 and 1367.07 of the Health and Safety Code, and to amend Sections 10133.8 and 10133.9 of the Insurance Code, relating to health care coverage.

Dear Senator Pan,

The undersigned are scholars affiliated with the Williams Institute at the UCLA School of Law. The Williams Institute is dedicated to conducting rigorous and independent research on sexual orientation and gender identity (“SOGI”), including on disparities and discrimination experienced by lesbian, gay, bisexual, and transgender (“LGBT”) people. The Williams Institute collects and analyzes original data, as well as analyzes governmental and private data, and has long worked with federal agencies to improve data collection on the U.S. population. These efforts include producing widely-cited best practices for the collection of SOGI information on population-based surveys.¹

We are writing to express our support for SB 1033 (Pan), which would amend existing law on standards and requirements health care service plans and health insurers must follow to provide enrollees and insureds with access to services and covered benefits. More specifically, the bill would charge the Department of Managed Health Care (“DMHC”) with establishing and requiring the use of standardized categories for the collection and reporting of self-reported demographic and health-related social needs, including specifically SOGI measures, to ensure that plans and insurers can “assess the cultural, linguistic, and health-related social needs of the enrollees and insured groups for the purpose of identifying and addressing health disparities, improving health care quality and outcomes, and addressing population health.”

We appreciate that California has been a leader on SOGI data collection for many years, and believe that data currently being collected by covered plans and insurers would be enhanced by the collection and timely reporting of data on individuals’ SOGI. In California, we estimate

¹ See, e.g., GENDER IDENTITY IN U.S. SURVEILLANCE (GENIUSS) GROUP, WILLIAMS INST., BEST PRACTICES FOR ASKING QUESTIONS TO IDENTIFY TRANSGENDER AND OTHER GENDER MINORITY RESPONDENTS ON POPULATION-BASED SURVEYS (2014), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Survey-Measures-Trans-GenIUSS-Sep-2014.pdf>; SEXUAL MINORITY ASSESSMENT RESEARCH TEAM (SMART), WILLIAMS INST., BEST PRACTICES FOR ASKING QUESTIONS ABOUT SEXUAL ORIENTATION ON SURVEYS (2009), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Best-Practices-SO-Surveys-Nov-2009.pdf>.

that approximately 1.6 million adults² and 244,000 youth ages 13 to 17³ identify as LGBT. Williams Institute research shows that LGBT individuals in this state experience health disparities compared to non-LGBT people. For example, we have found that transgender adults are more likely than cisgender adults to have ever thought about or attempted suicide, have serious psychological distress, and have emotions that interfere with their relationships, social life, ability to do chores, and work performance.⁴ Our research also shows that LGBT adults face barriers in accessing health care, despite similar rates of health insurance coverage when compared to heterosexual or cisgender adults.⁵ We therefore commend this bill for expressly requiring the collection of information allowing for the identification of social needs informing the health disparities and other outcomes observed among the LGBT population of this state.

We likewise commend this bill for requiring that the standardizard categories to be established by DMHC “take into account federal standards,” as questions measuring sexual orientation have been included on federal surveys for over two decades,⁶ including in large-scale, population-based surveys administered by the U.S. Census Bureau and the Centers for Disease Control and Prevention.⁷ Questions used to identify transgender respondents have been included on state and investigator-led surveys for some time, with more common use of both sexual orientation and gender identity questions, including in federal surveys, over the last decade.⁸ The federal government has long engaged in its own review of best practices for the measurement of SOGI,⁹ with research on federal implementations of SOGI measures suggesting that respondents are unlikely to consider SOGI information to be particularly sensitive, and

² KERITH J. CONRON & SHOSHANA K. GOLDBERG, WILLIAMS INST., ADULT LGBT POPULATION IN THE UNITED STATES (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Adult-US-Pop-Jul-2020.pdf>.

³ KERITH J. CONRON, WILLIAMS INST., LGBT YOUTH POPULATION IN THE UNITED STATES (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Youth-US-Pop-Sep-2020.pdf>.

⁴ JODY L. HERMAN, BIANCA D.M. WILSON & TARA BECKER, UCLA CTR. FOR HEALTH POL’Y RES. & WILLIAMS INST., DEMOGRAPHIC AND HEALTH CHARACTERISTICS OF TRANSGENDER ADULTS IN CALIFORNIA: FINDINGS FROM THE 2015-2016 CALIFORNIA HEALTH INTERVIEW SURVEY (2017) <https://pubmed.ncbi.nlm.nih.gov/29091375>.

⁵ SUSAN H. BABEY, JOELLE WOLSTEIN, JODY L. HERMAN & BIANCA D.M. WILSON, UCLA CTR. FOR HEALTH POL’Y RES. & WILLIAMS INST., GAPS IN HEALTH CARE ACCESS AND HEALTH INSURANCE AMONG LGBT POPULATIONS IN CALIFORNIA (2022), <https://williamsinstitute.law.ucla.edu/publications/gaps-health-care-lgbt-ca>.

⁶ See FEDERAL INTERAGENCY WORKING GROUP ON IMPROVING MEASUREMENT OF SEXUAL ORIENTATION AND GENDER IDENTITY IN FEDERAL SURVEYS, CURRENT MEASURES OF SEXUAL ORIENTATION AND GENDER IDENTITY IN FEDERAL SURVEYS 3 (2016), https://cpb-us-e1.wpmucdn.com/sites.northwestern.edu/dist/3/817/files/2017/01/WorkingGroupPaper1_CurrentMeasures_08-16-1xnai8d.pdf.

⁷ Thom File & Jason-Harold Lee, *Phase 3.2 of Census Bureau Survey Questions Now Include SOGI, Child Tax Credit, COVID Vaccination of Children*, U.S. Census Bureau (Aug. 05, 2021), <https://www.census.gov/library/stories/2021/08/household-pulse-survey-updates-sex-question-now-asks-sexual-orientation-and-gender-identity.html>; *2019 BRFSS Survey Data and Documentation*, CDC.GOV (Aug. 31, 2020), https://www.cdc.gov/brfss/annual_data/annual_2019.html; *Questionnaires | YBRS*, CDC.GOV (Nov. 17, 2020), <https://www.cdc.gov/healthyyouth/data/yrbs/questionnaires.htm>.

⁸ Williams Institute Scholars, Comment Letter on Proposed Basic Demographic Items for the Current Population Survey (March 22, 2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Comment-NHIS-Jun-2020.pdf>.

⁹ See generally *Measuring Sexual Orientation and Gender Identity Research Group*, FED. COMM. STAT. METHODOLOGY (2018), <https://nces.ed.gov/FCSM/SOGI.asp>.

would therefore provide such information if asked.¹⁰ Similarly, studies suggest that sexual minority people are not a population that is difficult to survey.¹¹

The federal government has supported others' research on this topic, including by funding the research of an ad hoc panel formed by the National Academies of Sciences, Engineering, and Medicine on SOGI-related methodological issues (the "NASEM Panel").¹² The NASEM Panel recently released a consensus study report¹³ offering guidance and best practices for collecting data on SOGI, as well as on variations in sex characteristics, in population-based surveys, as well as on clinical and administrative settings—like those contemplated under this bill. The NASEM Panel's report also provides guiding principles for such data collection, specifically inclusiveness, precision, respecting autonomy, collecting only necessary data, and a dedication to confidentiality.¹⁴ As highlighted in that report, the Panel's recommended measures are consistent with those currently utilized by a number of federal agencies; have undergone extensive testing; and have been observed to improve the "overall measurement quality" of studies.¹⁵ We therefore recommend that DMHC review this report as it effectuates requirements under this bill to ensure the quality of any resulting data.

As scholars with experience in measurement development and testing, we would recommend that DMHC assess the performance of any SOGI measures, and all other demographic items, it establishes and making revisions as needed. Likewise, we note our concern with potential harm to respondents due to breach of confidentiality and request that the California legislature and DMHC ensure that the data contemplated here are collected and reported using all appropriate privacy standards. All entities responsible for data collection ought to ensure confidentiality of respondents' medical and demographic information.

Thank you for your consideration. Please direct any correspondence, including questions, to vasquezl@law.ucla.edu.

Respectfully Submitted,

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¹⁰ See, e.g., Sean Cahill et al., *Do Ask, Do Tell: High Levels of Acceptability by Patients of Routine Collection of Sexual Orientation and Gender Identity Data in Four Diverse American Community Health Centers*, 9 PLOS ONE 1 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4157837/pdf/ponc.0107104.pdf>.

¹¹ See, e.g., Nancy Bates et al., *Are Sexual Minorities Hard-to-Survey? Insights from the 2020 Census Barriers, Attitudes, and Motivators Study (CBAMS) Survey*, 35 J. OFFICIAL STATS. 709 (2019), <https://sciencemag.org/article/10.2478/jos-2019-0030>.

¹² *Measuring Sex, Gender Identity, and Sexual Orientation for the National Institutes of Health*, NAT'L ACADEMIES OF SCIENCES, ENGINEERING, & MED., <https://www.nationalacademies.org/our-work/measuring-sex-gender-identity-and-sexual-orientation-for-the-national-institutes-of-health> (last visited Apr. 6, 2022).

¹³ NAT'L ACADEMIES OF SCIENCES, ENGINEERING, & MED., *MEASURING SEX, GENDER IDENTITY, AND SEXUAL ORIENTATION* (2022), <https://nap.nationalacademies.org/catalog/26424/measuring-sex-gender-identity-and-sexual-orientation>.

¹⁴ *Id.* at S-4.

¹⁵ *Id.* at S-6, 5-9.

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