



# STATE OF CONNECTICUT

## OFFICE OF POLICY AND MANAGEMENT

Friday, March 19, 2021

Testimony from OPM Secretary Melissa McCaw regarding  
**House Bill 5654 An Act Concerning the Updating of State Forms, Applications and Methods of Identification to Include A Nonbinary Gender Option.**

Chairs Flexer & Fox, Vice Chairs Haskell & Thomas, Ranking Members Sampson & Mastrofrancesco, and Esteemed Members of the Government Administration and Elections Committee:

Thank you for the opportunity to submit testimony for the record regarding **House Bill 5654 An Act Concerning the Updating of State Forms, Applications and Methods of Identification to Include A Nonbinary Gender Option**. This legislation would require all state agency forms, applications and methods of identification to be updated with a nonbinary gender option by January 1<sup>st</sup>, 2022. The Administration supports this concept; however, we would like to raise some of the logistical issues that may complicate efforts in this area. We stand ready to collaborate with the bill's proponents as well as federal partners in areas where this change has yet to be made.

OPM last year began asking agencies about this issue and we have compiled some information that the committee may find useful.

At this time, the following agencies already include a nonbinary gender marker on public facing forms and/or licenses or are taking steps to include this marker:

- **Department of Agriculture** can adjust forms to reflect this marker.
- **Office of Early Childhood** is adding "Female," "Male," "Nonbinary," and "Prefer not to answer" gender options to the Background Check Information System (BCIS) and new Care 4 Kids application. OEC plans to establish a working group that will study other areas of gender identification and what options need to be included in their data collection.
- **Department of Education's** data collections have included a nonbinary gender marker for several years.
- **Department of Energy & Environmental Protection** updated their Sportsman's licensing for fishing, hunting & safe boating to include a nonbinary marker to be consistent with the DMV. Their SIMS database does not collect a sex classification for client records relative to permit & enforcement activities.

- **Office of Higher Education** has two programs with forms asking for gender. The form for the Alternative Route to Certification program can be easily be updated. The form for the Minority Teacher Incentive Program asks for gender but the information is not really necessary.
- **Department of Motor Vehicles** implemented this policy for license holders in January 2020.
- **Department of Veterans Affairs** has three forms that are scheduled to be updated in March 2021.

Several agencies cited that they manage many public facing forms and licensures and this adjustment would take significant resources to accomplish:

- **Department of Administrative Services** would need to make updates to software such as Job Aps and CORE CT, and would need to further evaluate how such changes might impact insurance programs and HEP requirements, CHRO requirements such as affirmative action plans, and the women and minority owned business set aside program.
- **Department of Children & Families** adjusted agency forms to include the following genders: “Female,” “Male,” “Choose not to identify,” “Gender Fluid,” “Gender non-conforming,” “Transgender F-T-M,” “Transgender M-T-F,” and “Other” in 2018. The Department is currently transitioning its case management system from LINK TO CT-KIND. Agency Database structures in LINK and other reporting repositories would need to be updated. This would likely involve two or three resources for a period of 2 weeks (80 hours) to go over all reports, all databases, and update the database structures, tables, queries, and reports. It is estimated to be \$25,000 worth of development and an additional 2 testing resources to perform regression testing for 40 hours at a cost of about \$6,000. The federal standards for gender in CT-KIND are male, female, and unknown.
- **Department of Consumer Protection** would need a license and applications specialist to perform approximately 16 hours of overtime in order to update the agencies forms.
- **Department of Correction** uses several systems managed by a private vendor (Electronic Healthcare Records, SYSCON, and their Cobalt-based Inmate Tracking system) that would be costly to update. Their internally developed program, CASE NOTES, could be updated in-house.
- **Department of Economic and Community Development** operates a wide range of programs and applications with varying requirements including those related to state and federal funding. DECD would need to evaluate further the scope of the resources needed to identify and make these changes.
- **Department of Emergency Services and Public Protection** expressed the same fiscal impacts as other agencies in making necessary adjustments on forms and technology systems.

- **Department of Housing** uses the Homeless Management Information System (HMIS) and this software would need to be adjusted by the vendor. Forms used by DOH’s Section 8 and Public Housing Authority programs would also need to be adjusted.
  
- **Connecticut Insurance Department** explained that for licensing, every state insurance department must use NAIC/NIPR’s uniform applications. There would need to be a national agreement among majority of states to adjust these applications. The national database is not conformed to accept another gender option. Additionally, insurance company policy forms are regulated by statute and are often subject to copyright protection for both advisory organizations and insurers.
  
- **Department of Public Health** can adjust vital records forms and the cost would be minimal. There are several other programs under the agency’s purview with varying levels of flexibility:
  - Tumor Registry – Forms and demographic fields for the Youth Risk Behavior Survey (YRBS) and Behavioral Risk Factor Surveillance System (BRFSS) are not issued by a state agency. The Registry’s database does include the following categories: “1: Male,” 2:Female,” “3: Other (intersex, disorders of sexual development/DSD),” “4: Transsexual, NOS,” “5: Transsexual, natal male,” “6: Transsexual, natal female,” and “9: Not stated/Unknown.” There is also a free-text field for genders not listed.
  - Environmental Health – The environmental practitioner individual applications have a blank field for gender. The form could be amended with a dropdown menu to include nonbinary. The e-Licensing programs used by the Environmental Health and Drinking Water programs only has binary options for gender. Adding a third could be done.
  - Women, Infant, and Children Program (WIC) – A nonbinary gender option is not feasible as the program serves “women who are pregnant or have recently given birth.” Women participants cannot be non-female gender. DPH would need more guidance from the USDA. There is a possible workaround in the form of an alert on program files to provide responsive services to parents/guardians of transgender children (i.e. referring to the child as they prefer in counseling), and pregnant participants (i.e. the system would track as “female”) but in counseling or referring to transgender participants, staff would be sensitive to their preference.
  - HIV/STD/TB/HCV Section – TB/Refugee Health has not adjusted their paperwork. The STD Control Program has modified its primary case report form (STD 23) to an electronic provider platform to include this marker. The HIV Case Report forms used for the National HIV Surveillance System are federally developed. Substantial resources would be required to make these adjustments.
  - TB Program (Including Refugee Health) includes some federal reporting and would require resources to include this marker.

There are several agencies that work with federal programs/databases and share data across reporting systems, so they do not have the latitude to add this marker unless the federal system is adjusted, despite

a willingness to do so. We ask for an exception under Section 1(a) and Section 1(b) for situations that are under federal control.

- **Department on Aging and Disabilities** estimates a \$5,000-20,000 cost to add this marker to existing forms under their purview. There are also some complications in making this update as many of their programs derive from and interface with federal forms and systems. The adjustment would need to first happen at the federal level. Some, but not all, federal programs have already made this adjustment.
  - Aging Services – ADS’ State Unit on Aging (SUA) programs operate under federal guidance from the Administration for Community Living (ACL) and they had only been gathering binary data. On October 1, 2021, the ACL will begin to use an “Other” designation. Since this change is required by a federal partner, the agency understands that the vendor will update the software at no cost to the state. When this happens, ADS plans to extend this practice to some of their other Aging Programs where possible.
  - Disability Determination Services (DDS) - Clients are referred from Social Security (SSA) and have already been identified as male or female in SSA documents.
  - Long-Term Care Ombudsman – Uses an intake form for federal reporting with binary options.
  - Living Older Blind/Adult Blind - Overseen by the U.S. Department of Education. The program is in the process of changing their form with a similar “opt-out” alternative to the gender question. The federal Independent Living (IL) program still only uses male and female. The Assistive Technology Loan program does not collect gender information.
  - Vocational Rehabilitation – Another federal program administered in both ADS’ Bureau of Rehabilitation Services (BRS) and Bureau of Education and Services for the Blind (BESB) bureaus. This federal form (RSA-911) was adjusted in 2017 to include a third option “Individual did not self-identify their sex.”
  - Workers’ Rehab Services (WRS) is tied to systems used by the Workers’ Compensation Commission (WCC). The WRS was undergoing a system conversion that is still in development. It has a Male/Female option presently, but ADS can coordinate with WCC to better understand how this option will be handled upon conversion.

On the state program side, ADS noted they have more flexibility, but they currently do not have a contract with a vendor for their case management system, System 7. Obtaining a contract for technical support would range between \$5,000 to \$20,000, maybe even more depending on the scale of changes. Their HR forms are handled in house and could be adjusted.

- **Department of Developmental Services** has not made this adjustment as their federal government partners, specifically Medicaid, would need to initiate so data collection and reporting is compatible.
- **Department of Mental Health and Addiction Services** explained that non-federally funded services are updated as individual funders require it. They also cited differences in data collection between the state and federal level.

- **Department of Labor** is currently completing its Unemployment Insurance Modernization (UIM) project and must proceed with current and future automation efforts for UIM. Any efforts to add additional programming at this time would jeopardize the UIM project. In the first quarter of 2023, they could look at program adjustments, which would then have to be approved by the multi-state UIM consortium.
  - Unemployment Insurance (UI) program has federal reporting requirements associated with Benefit Accuracy Measurement (BAM) including gender. BAM only has binary options. This again could be addressed post-modernization.
  - Employment Services (ES) – The program vendor has already added an “Other” category at no additional cost. It just needs to be activated.
  
- **Department of Social Services** would need federal approval from CMS in order to add a marker other than Male or Female as current federal reports and system do not offer option other than Male or Female. Adding other options without this approval could skew the data. There are tens of thousands of copies of various forms in circulation that would need to be replaced based on the addition of new gender fields. The following areas/programs would need amending:
  - Medicaid/CHIP statistical enrollment database
  - TANF reports
  - The Universal Assessment - a tool used for Long Term Services and Supports, Money Follows the Person and CFC programs
  - Provider credentialing performed by the department
  - HIX and ImpaCT systems
  - ConneCT online application
  - Changes to MMIS, ASO files and possibly the data warehouse
  - Changes to various trading partner interface files on which gender is exchanged

DSS also receives data from outside sources that comes with binary gender coding. An example was the National Data Bank. Despite DSS removing all gender edits from their coverage files four years ago, the data download will occasionally provide coverage codes that are gender specific.

There are four agencies (**Department of Banking, Department of Revenue Services, Military Department, Office of Health Strategy**) that do not collect gender data and therefore this bill would not impact them.

Thank you for your consideration of each agency’s circumstances in reaching this goal. We recommend that a reasonable time frame be provided to accomplish the goals of the bill and that any constraints faced by agencies as a result of their having to comply with federal law be accommodated in the legislation. We look forward to future conversations in working towards this shared goal.