From:	Melissa Duffy
To:	EBSA MHPAEA Request for Comments
Subject:	Comments on Technical Release 2023-01P
Date:	Tuesday, October 17, 2023 6:56:41 PM
Attachments:	CGHC WI Comments on DOL Technical Release 2023 01P.pdf

Please see attached comments from Common Ground Healthcare Cooperative in Wisconsin.

Thank you,

Melissa Duffy
(608) 334-0624

October 17, 2023

Submitted electronically to mhpaea.rfc.ebsa@dol.gov

Employee Benefit Security Administration
US Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: Technical Release 2023-01P, Request for Comment on Proposed Relevant Data Requirements for Nonquantitative Treatment Limitations (NQTLs) Related to Network Composition and Enforcement Safe Harbor for Group Health Plans and Health Insurance Issuers Subject to the Mental Health Parity and Addiction Equity Act

Dear Sir or Madam:

Thank you for the opportunity to provide feedback regarding proposed data requirements for Nonquantitative Treatment Limitations (NQTLs) for group health plans and health insurance issuers subject to the Mental Health Parity and Addiction Equity Act.

Common Ground Healthcare Cooperative (CGHC) is a consumer-run, non-profit health insurance cooperative that primarily serves Wisconsin's individual market. Over 90 percent of our approximately 60,000 total members purchase insurance for themselves and their families without the support or assistance from an employer on the individual market. We are not by any means a large insurer, although we serve more individual market consumers than any other health plan in our region that encompasses many rural areas.

As a consumer governed health insurance cooperative, we work hard to ensure the behavioral health needs of our members are met and we are committed to ensuring parity between mental health/substance use disorder (MH/SUD) benefits and medical/surgical (med/surg) benefits. We have just two pieces of feedback to offer regarding the technical release and the data analysis described therein.

First, regarding the collection and evaluation of relevant data on the percentage of covered and submitted out-of-network claims for MH/SUD benefits as compared to med/surg benefits, there seems to be a presumption that high quality out-of-network claims data is available for issuers. But for small plans such as CGHC, there is not sufficient claims data in house, particularly in rural areas, regarding covered and submitted out-of-network claims for MH/SUD benefits versus med/surg benefits. We work very hard to establish agreements with any mental healthcare provider our members wish to use, keeping out of network claims to a minimum.

Further, if the hope is to use aggregated OON claims data from similar providers and payers in the relevant geographical area, CGHC cautions that these data sets are challenging to build and maintain and require a contract with an outside entity. The Federal IDR Process described by the No Surprises Act requires use of similarly amalgamated claims data to calculate the median contracted rate for a particular service in a particular geographical area, known as the qualifying payment amount ("QPA"). The QPA has been at the center of litigation challenging the Federal IDR Process since its inception.

And finally, regarding the collection and evaluation of relevant data on the frequency with which different types of in-network MH/SUD providers and med/surg providers submitted claims for unique participants, beneficiaries, and enrollees, CGHC would like to emphasize the complexity of measuring provider activity within a network. While low numbers of submitted claims might indicate that a provider is not actually available within a network, it could also indicate that the provider's specialty is not actively sought by those in the geographic area the provider serves. To determine whether a "purported" network aligns with the "active" network, the most useful metric is whether an enrollee can schedule an appointment with a purported provider. CGHC suggests that the relevant consideration in determining whether a provider is active within a network should not be submitted claims, but the provider's availability to enrollees.

I hope these suggestions are helpful. If you have any questions, please do not hesitate to contact Melissa Duffy, Government Affairs, at mduffy@dcstrategies.org.

Sincerely,
Common Ground Healthcare Cooperative of Wisconsin