FAQs About Mental Health and Substance Use Disorder Parity Implementation and the 21st Century Cures Act Part XX
(April 23, 2018)

These FAQs were jointly released by the Departments of the Treasury, Labor, and Health and Human Services and address nonquantitative treatment limitations (“NQTLs”) and health plan disclosure issues under the Mental Health Parity and Addiction Equity Act of 2008 (the “MHPAEA”). Specifically, these FAQs address whether particular plan designs are NQTLs and, if so, whether such plan designs are compliant with the MHPAEA. For example, these FAQs clarify that an exclusion of all benefits for a particular condition or disorder is not a NQTL and does not violate the MHPAEA. In addition, these FAQs (i) confirm that step-therapy protocols and plan or coverage restrictions based on facility type are NQTLs and (ii) outline certain fact situations in which such NQTLs are applied in a manner that does not comply with the MHPAEA. These FAQs also discuss other MHPAEA topics, such as provider reimbursement rates and the scope of benefits provided for emergency room care. Finally, these FAQs include questions related to disclosure requirements for mental health and substance use disorder benefits under ERISA and confirm that ERISA-covered plans using provider networks are permitted to provide a hyperlink or URL address in enrollment or plan summary materials for accessing a directory of mental health and substance use disorder network providers and related information, provided that such directory is up-to-date, accurate, and complete.

(May 14, 2018)

This revenue procedure contains guidance regarding the 2018 HSA contribution limit for individuals electing family coverage. In 2017, the IRS set the HSA contribution limit for family coverage for 2018 as $6,900. Certain provisions of the 2017 Tax Act, however, changed how the HSA contribution limit is to be calculated. Consequently, in March of 2018, the IRS issued a reduced limit for 2018 of $6,850. This revenue procedure provides that taxpayers may continue to treat the 2018 limit as $6,900, and it also provides guidance for taxpayers who already received a distribution of an excess contribution in 2018 based on the reduced $6,850 limit.

This revenue procedure increases the maximum HSA contribution a participant in an HDHP can make in 2019 to $3,500 for self-only coverage (a $50 increase from 2018) and $7,000 for family coverage (a $100 increase from 2018). This revenue procedure also increases the HDHP out-of-pocket maximum limits for 2019 to $6,750 for self-only coverage (a $100 increase from 2018) and $13,500 for family coverage (a $200 increase from 2018). The minimum HDHP annual deductibles for 2019 will remain unchanged at $1,350 for self-only coverage and $2,700 for family coverage.

(May 21, 2018)

This revenue procedure increases the affordability percentage to be used in 2019 to determine whether health care is “affordable” as determined in accordance with the Affordable Care Act. Under the Affordable Care Act, “affordability” is determined based on whether the premium for employee-only coverage is less than a certain percentage of the employee’s household income or a designated safe harbor amount. This revenue procedure increases the affordability percentage for 2019 to 9.86% (up from 9.56% in 2018).

**FAQs Regarding Paid Family and Medical Leave Tax Credit**
(May 22, 2018)

These FAQs provide guidance on (i) the requirements for an employer’s paid leave program to qualify for the paid family and medical leave tax credit established by the 2017 Tax Act, (ii) “qualifying employee” eligibility, and (iii) how the tax credit is calculated. These FAQs also provide that an employer cannot claim the tax credit for providing paid leave while also taking a tax deduction for compensation paid to the affected employee while on leave.

**Final Regulations – Definitions of Qualified Matching Contributions and Qualified Nonelective Contributions**
(July 20, 2018)

These final regulations provide that forfeitures may be used to fund safe harbor contributions, QNECs, and QMACs if they are nonforfeitable and not eligible for early distribution at the time they are allocated to participants’ accounts (rather than at the time they were contributed to the plan as was required under the prior Code Section 401(k) regulations).

**Notice 2018-68 – Guidance on the Application of Code Section 162(m)**
(August 21, 2018)

In this notice, the IRS provides guidance under Code Section 162(m), as amended by the 2017 Tax Act, with respect to grandfathering relief and the expanded scope of who is a “covered employee”. This notice also leaves open for comment several issues, including (i) the rule which allows certain newly public companies to limit the application of Code Section 162(m) during a transition period, (ii) the application of Code Section 162(m) to foreign private issuers, and (iii) the application of the SEC disclosure rules for determining the applicable executives for a taxable year that does not end on the same date as the last completed fiscal year. The IRS anticipates that the guidance in this notice will be incorporated into future regulations that will apply to taxable years ending on or after September 10, 2018.

**Notice 2018-69 – Extension of Nondiscrimination Relief for Closed Defined Benefit Plans**
(August 24, 2018)
In this notice, the IRS extended the temporary nondiscrimination relief for plan years beginning before 2020, which the IRS previously provided in Notice 2014-5, and as subsequently extended by Notice 2015-28, Notice 2016-57, and Notice 2017-45. The temporary relief originally provided in Notice 2014-5 permits certain employers that sponsor a “closed” defined benefit plan (i.e., a plan frozen as to new participants before December 13, 2013) and an “active” defined contribution plan to demonstrate that the aggregated plans comply with the nondiscrimination requirements of Code Section 401(a)(4) on the basis of equivalent benefits, even if the aggregated plans do not satisfy the current conditions for testing on that basis.

**Notice 2018-74 – Amended Model Rollover Notices**
(September 19, 2018)

In this notice, the IRS revised the safe harbor model notices that generally may be used by plan administrators to satisfy the requirement under Code Section 402(f) to provide certain information to individuals who receive eligible rollover distributions from tax qualified retirement plans. The updated model notices have been modified to take into account (i) changes to the requisite period for rolling over qualified plan loan offsets, as made by the 2017 Tax Act, and (ii) changes to rules on self-certification of eligibility for a waiver for completing a plan rollover, as described in Rev. Proc. 2016-47. This notice also made some additional clarifying modifications to the model notices.

**Notice 2018-75 – Tax Treatment of Qualified Moving Expenses Incurred Prior to 2018 But Reimbursed in 2018**
(September 21, 2018)

In this notice, the IRS clarified that qualified moving expense reimbursements that are paid in 2018 remain excludible from an employee’s taxable wages so long as the reimbursements relate to moving expenses incurred prior to 2018. Pursuant to the 2017 Tax Act, qualified moving expense reimbursements incurred between January 1, 2018 and December 31, 2025 are no longer excludible from an employee’s taxable wages. This notice also provides that employers who have already included such reimbursements in an employee’s taxable income for 2018, and withheld and paid federal employment taxes on those amounts, may use the IRS’s standard overpayment adjustment process by filing a Form 941-X (Adjusted Employer’s Quarterly Federal Tax Return or Claim for Refund).

**Notice 2018-76 – Tax Deductibility of Business Meal Expenses**
(October 3, 2018)

In this notice, the IRS provides transition guidance on determining whether a taxpayer may deduct 50% of a business meal expense. The Tax Cuts and Jobs Act (“2017 Tax Act”) passed at the end of 2017 revised Code Section 274 to generally disallow a deduction for expenses with respect to entertainment, amusement, or recreation. However, the 2017 Tax Act does not specifically address the deductibility of expenses for business meals. Consequently, the IRS intends to publish proposed regulations clarifying when business meal expenses are nondeductible entertainment expenses and when they are 50% deductible expenses. Taxpayers may rely on the transitional guidance provided in this notice until such guidance is issued.

**Proposed Regulations - Health Reimbursement Arrangements and Other Account-Based Group Health Plans**
(October 28, 2018)
These proposed regulations would permit employers to offer health reimbursement arrangements ("HRAs") to employees who are enrolled in individual health insurance coverage, which employees could then use to pay the premiums for such individual health insurance coverage. These proposed regulations provide that the same HRA must be offered to an entire “class” of employees and that a traditional group health plan could not be offered to that class. Classes of employees include full-time, part-time, seasonal, union, employees in a waiting period, employees under age 25, non-resident aliens with no U.S. income, employees in the same insurance rating area, or a combination of those classes. These proposed regulations provide that the employer HRA contribution rate could increase based on a participant’s age and that the IRS will provide an approach in the future so that such varying contribution rates would be permissible under the Code Section 105(h) nondiscrimination rules. These proposed regulations also provide that (i) future guidance will be issued describing a “safe harbor” HRA that is integrated with individual health coverage and that could satisfy minimum value and affordability requirements to avoid applicable large employer penalties under the Affordable Care Act and (ii) individual insurance policies purchased using HRAs would not themselves become part of an ERISA plan.

**Notice 2018-83 - Qualified Retirement Plan Limit Increases for 2018**
(November 1, 2018)

In this notice, the IRS announced cost of living increases that apply to qualified retirement plans in the 2019 calendar year. A list of some of those limits for 2019 is below:

- Compensation limit used in calculating a participant’s benefit accruals: increased to $280,000.
- Elective deferrals to 401(k) and 403(b) plans: increased to $19,000.
- Annual additions to a defined contribution plan: increased to $56,000.
- Catch-up contributions for employees aged 50 and over to 401(k) and 403(b) plans: remains unchanged at $6,000.
- Annual benefit limit for a defined benefit plan: increased to $225,000.
- Compensation dollar limit for defining a “key employee” in a top heavy plan: increased to $180,000.
- Compensation dollar limit for defining a “highly compensated employee”: increased to $125,000.

**Notice 2018-85 – PCORI Fee Dollar Amount Basis Increase**
(November 5, 2018)

In this notice, the IRS increased the dollar amount that is the basis of the fee established under the Affordable Care Act to help fund the Patient-Centered Outcomes Research Institute ("PCORI Fee"). This Notice increases that dollar amount for plan and policy years that end on or after October 1, 2018, and before October 1, 2019, from $2.39 to $2.45.

**Final Regulations – Religious and Moral Exemptions and Accommodations for Coverage of Certain Preventive Services under the Affordable Care Act**
(November 8, 2018)

These final regulations expand the religious exemption to the Affordable Care Act’s contraceptive coverage mandate to apply to all types of non-governmental employers, including for-profit corporations (regardless of their size or whether they are publicly or privately held). In addition, these final regulations provide that the moral exemption to the Affordable Care Act’s contraceptive coverage mandate applies to certain non-governmental employers, including privately held for-profit employers, insurers, and individuals. These final regulations maintain the availability of a voluntary accommodation whereby the objecting entity’s insurer or third party administrator would be responsible for providing contraceptive
services to the objecting entity’s plan participants. These final regulations are effective as of January 14, 2019.

**Proposed Regulations – Hardship Distributions of Elective Contributions, QNECs, QMACs, and Earnings**  
(November 9, 2018)

These proposed regulations would address changes enacted by the 2017 Tax Act, the 2018 Budget, and other prior changes to the Code. Specifically, these proposed regulations (i) permit, but do not require, hardship distributions from a participant’s elective contributions, QNECs, QMACs (including safe harbor matching contributions), and any earnings on those amounts, regardless of when they were contributed or earned; (ii) eliminate the requirement that a participant take out all available plan loans before receiving a hardship distribution; and (iii) prohibit plans from containing a requirement that a participant may not contribute to the plan for any period of time following a hardship distribution. In addition, the proposed regulations would modify the safe harbor list of expenses for which a hardship distribution may be taken to include (x) the “primary beneficiary under the plan” as an individual for whom qualifying medical, educational, or funeral expenses may be incurred and (y) expenses incurred because of a federally declared disaster. The changes to the hardship distribution rules are effective as of the first plan year on or after January 1, 2019.

**Notice 2018-91 – 2018 Required Amendments List**  
(November 21, 2018)

This notice includes the Required Amendments List for 2018, which lists statutory and administrative changes in plan qualification requirements that (i) are first effective in the plan year in which the list is published and (ii) may require a plan amendment. This year’s list did not include any such items.

**Notice 2018-94 – Extension of Deadline to Furnish Forms 1094/1095 and Good Faith Transition Relief**  
(November 29, 2018)

In this notice, the IRS extended the due date for furnishing individuals with their 2018 Form 1095-B and Form 1095-C from January 31, 2019, to March 4, 2019. This notice did not extend the due dates applicable to filing Forms 1094-B, 1095-B, 1094-C, and 1095-C with the IRS. In this notice the IRS also extended its good-faith transition relief from penalties that could apply for incorrect or incomplete information reported on such forms furnished to individuals or filed with the IRS. That relief does not apply if the applicable forms were not timely filed or furnished by their respective due dates.

**Notice 2018-97 – Guidance on Deferral of Income Under IRC Section 83(i)**  
(December 7, 2018)

In this notice, the IRS provides guidance under the new Code Section 83(i), which allows certain employees of privately-held corporations to defer the recognition of income (for up to five years) attributable to the vesting or receipt of certain qualified company stock transferred pursuant to the exercise of stock options or the settlement of restricted stock units. Specifically, this notice provides initial guidance on (i) the application of the requirement in Code Section 83(i)(2)(C)(i)(II) that equity grants be made to at least 80% of all employees who provide services to the corporation in the United States, (ii) the application of tax withholdings on the deferred income related to the qualified company stock, and (iii) the ability of an employer to opt out of permitting employees to elect the deferred tax treatment even if the requirements under Code Section 83(i) are otherwise met.
Notice 2018-99 – Guidance on Parking Expenses for Qualified Transportation Fringes under Code Sections 274(a)(4) and 512(a)(7)
(December 10, 2018)

In this notice, the IRS provides changes to Code Section 274 made by the 2017 Tax Act for compensation earned after December 31, 2017, which (i) disallows a deduction for expenses with respect to qualified transportation fringes (“QTFs”) provided to employees by their for-profit employers and (ii) increases the amount of unrelated business taxable income (“UBTI”) attributable to nondeductible parking expenses. This notice also provides interim guidance on permissible methods for determining the amount of parking expenses for QTFs that is nondeductible, which depends on whether the employer pays a third party to provide employee parking or whether the employer owns or leases the employee parking facility, and the increased UBTI amount. Employers that pay third parties to provide employee parking, the disallowance is generally the employer’s total annual cost of such parking, less any amount of such costs that exceed the limit on tax-free employee compensation attributable to a QTF under Section 132 of the Code (which, for 2018, is $260 per employee). For employers that own or lease the employee parking facilities, the disallowance may be calculated using any reasonable method, and this notice provides a safe harbor method for calculating the disallowance. Taxpayers may rely on the transitional guidance provided in this notice until further guidance is issued.

Information Letter 2018-0033 – Health Savings Accounts
(December 28, 2018)

In this information letter, the IRS clarifies that the circumstances in which an employer may recoup contributed amounts from a health savings account (“HSA”) trustee discussed in Notice 2008-59 were not intended to be exclusive. Specifically, if there is clear documentary evidence demonstrating an administrative or process error on the part of the employer or the HSA trustee, an employer may request that the HSA trustee return such amounts to the employer, with any correction needed to put the parties in the same position they would have been in had the error not occurred.

Notice 2019-18 – Guidance on Offering Lump-Sum Payment Option to Retirees Receiving Annuity Payments under a Defined Benefit Plan
(March 6, 2019)

In this notice, the IRS retracted its prior guidance issued in Notice 2015-49 (which announced the IRS’s intent to amend the Treasury Regulations under Code Section 401(a)(9) to expressly prohibit defined benefit plans from offering lump-sum window programs to retirees in pay status) and further stated that until further guidance is issued, the IRS will not assert that a plan amendment providing for such a lump-sum window program causes the plan to violate Code Section 401(a)(9). However, during this period, the IRS will also not issue private letter rulings with regard to retiree lump-sum window programs.

2019 Operational Compliance Checklist
(March 26, 2019)

This checklist, which is only available online, lists changes in qualification requirements that became effective during the 2016 through 2019 calendar years. Examples of items added to the checklist for the 2019 calendar year include, among other things:

- changes to the hardship distribution rules enacted by the Bipartisan Budget Act of 2018, such as eliminating the requirement to first take out all available plan loans and expanding the types of contributions eligible for distribution;
• proposed regulations enacting certain other changes to the hardship distribution rules, such as eliminating the six-month contribution suspension requirement and expanding the safe harbor list of expenses deemed to constitute an immediate and heavy financial need;
• the extension of temporary nondiscrimination relief for closed defined benefit plans.

The checklist does not include routine, periodic changes, such as cost-of-living increases, spot segment rates, and applicable mortality tables.

[Updated through April 12, 2019]