



Healthcare Regulations: Insight and Compliance

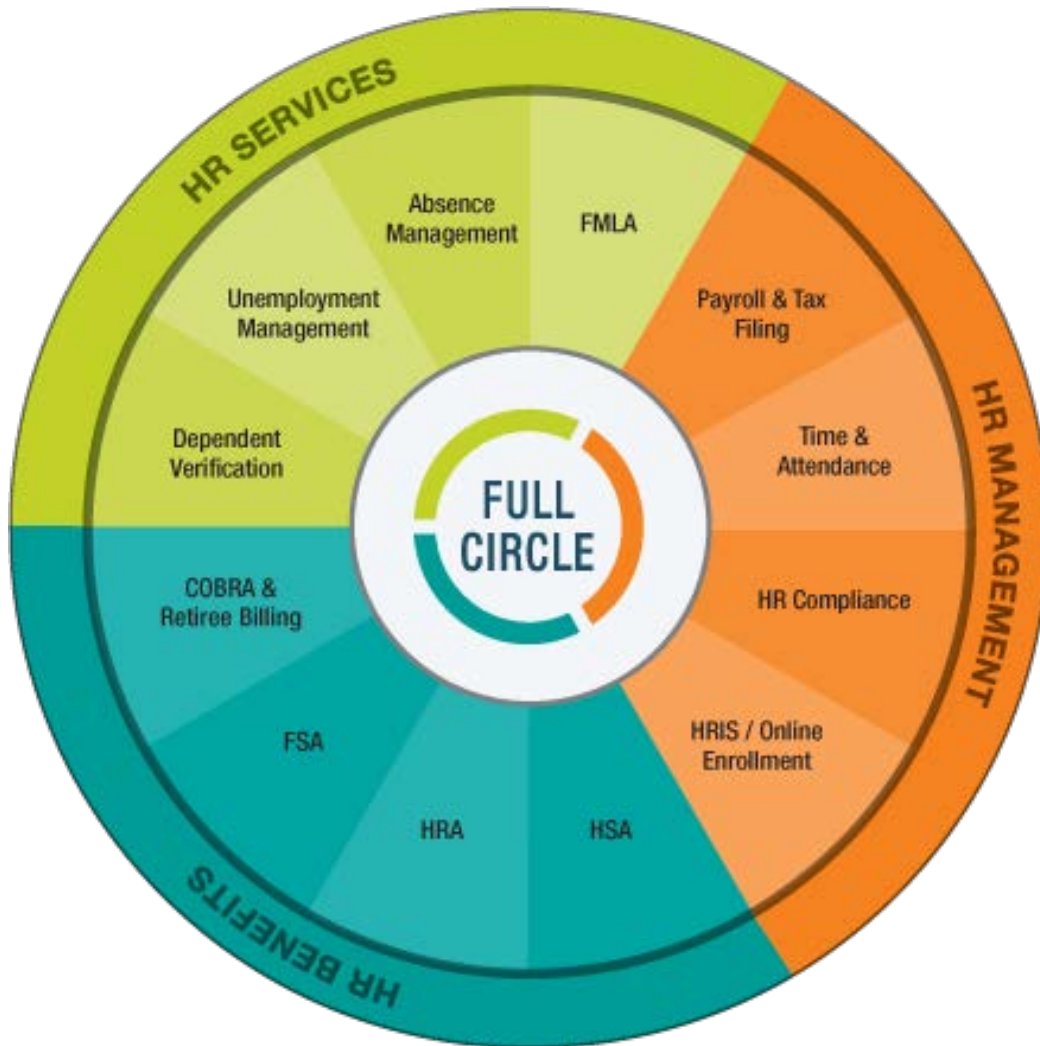
Presented by: Mary Bauman



- HR Benefits
- HR Management
- HR Services

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ACA Update

Legislative Update



- Repeal and replace efforts not successful
- Some bipartisan efforts being pursued
 - Problem Solvers
 - Hearings set for this fall
 - Continued bipartisan opposition to Cadillac tax (to take effect in 2020)

CSR (Cost-Sharing Reduction) Payments



- Certain low-income individuals who enroll in the exchange may be entitled to CSR payments, in addition to premium tax credits
- CSR payments are made directly from federal government to insurers for the purpose of reducing deductibles and copayments for these low-income individuals

CSR (Cost-Sharing Reduction) Payments



- The U.S. House brought a lawsuit (Price v. HHS) claiming that CSR payments are unconstitutional because the funds used for the payments were not “appropriated” by Congress
- A federal court agreed with the House and issued a decision prohibiting HHS from making CSR payments

CSR (Cost-Sharing Reduction) Payments



- However, the district court suspended its decision during appeal by HHS (under the Obama administration)
- Under the Trump administration, it is unclear whether HHS intends to pursue this appeal
- But some states have been allowed to join the case and appeal

CSR (Cost-Sharing Reduction) Payments



- Unclear whether HHS intends to continue making CSR payments in the future
- The Trump administration allowed CSR payments to be made for August 2017, but remained silent on whether these payments will be made in the future
- If HHS stops making CSR payments, it is likely that some insurers will stop offering health insurance policies on the exchange

CSR (Cost-Sharing Reduction) Payments



- For those insurers that continue, it is expected that exchange premiums will increase by 20% in 2018 (compared to 2017)
- These premium increases will increase the corresponding premium tax credits, adding an estimated \$194 billion to the federal deficit over the next 10 years

Enforcement Update



- Enforcement of individual mandate penalty?
 - IRS didn't reject 2016 1040s where individuals didn't complete question regarding health coverage
 - But IRS issued recent information letters:
 - Explaining no exemptions to the individual mandate penalty beyond those included in the ACA, and
 - That Trump executive order doesn't provide penalty relief



- Enforcement of employer pay or play penalty?
 - IRS issued recent information letters:
 - Explaining no exemptions to the pay or play for tax-exempt (or any) large employer, and
 - That any Trump executive order doesn't provide penalty relief

Enforcement Update



- New draft reporting Forms 1094-B, 1095-B, 1094-C and 1095-C for 2017 just released
- New draft instructions also just released
 - No substantive changes
 - Will there be a delayed deadline?



Section 1557 Update

Section 1557 Update



- 2016 regulations apply to insurers and employer group health plans sponsored by health care providers
- One requirement of regulations is a prohibition on blanket exclusions for transgender health benefits in health plans

Section 1557 Update



- In December 2016, a federal court in Texas issued a nationwide injunction on enforcement of this rule
- Last month HHS filed a status report in the case indicating that it has drafted proposed regulations in response to the court's injunction

Section 1557 Update



- Once released, the regulations are expected to roll back this rule under Section 1557
- But even if rolled back, are there other legal reasons to not impose a blanket exclusion health plan exclusion on transgender health benefits?
 - Federal employment discrimination claim based on sex



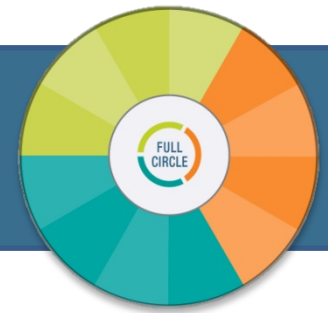
Contraceptive Coverage Update

Contraceptive Coverage Update



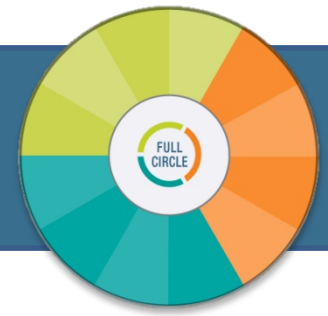
- ACA requires non-grandfathered health plans to provide 100% coverage of contraceptives
- Certain employers including churches, faith-based non-profits and certain private companies pushed back for religious reasons, including filing lawsuits

Contraceptive Coverage Update



- Some objected to the entire mandate, others took issue with the emergency contraceptives portion
- In response to the complaints and litigation, the Obama administration created an accommodation process for employers to escape the requirement

Contraceptive Coverage Update



- Some employers don't believe the accommodation process is sufficient and have continued to object
- Leaked copy of new HHS regulations suggests that process will be broadened to permit any non-public employer objecting on religious or moral grounds to opt out



Wellness Benefits

Wellness Benefits



- HIPAA and the ACA have imposed requirements on employer wellness programs for many years
- These rules only apply to wellness programs where the incentive is connected to the employer's health plan (usually in the form of a premium, deductible or copay differential)

Wellness Benefits



- Further, the HIPAA/ACA rules only apply if the wellness program incentive is based on the employee's participation in an activity or the employee's health status
- The HIPAA/ACA rules do not apply to participation-based only wellness programs

Wellness Benefits



- In 2016 the EEOC issued additional wellness program regulations under the ADA and GINA which are similar to but different than, the HIPAA/ACA rules
- The EEOC regulations apply to all wellness programs offering an incentive regardless of whether connected to the employer's health plan

Wellness Benefits



- Further, they apply to any program asking for health information so it could apply to a participation-based wellness program with components such as an HRA and/or biometric screens
- There is a significant participant notice requirement

Wellness Benefits



- There is also a spousal authorization requirement where the spouse is involved in the program
- The caps on the incentives are not identical to and are potentially more limiting than under the HIPAA/ACA wellness program rules
- Since the EEOC regulations have been issued, there has been a lot of criticism
- The AARP filed a lawsuit challenging the regulations

Wellness Benefits



- Last month, the court agreed with the AARP that the regulations were not reasonable nor supported by the administrative record
- The court remanded the regulations back to the EEOC for further consideration
- However, the current regulations remain in force while the EEOC is undergoing this process



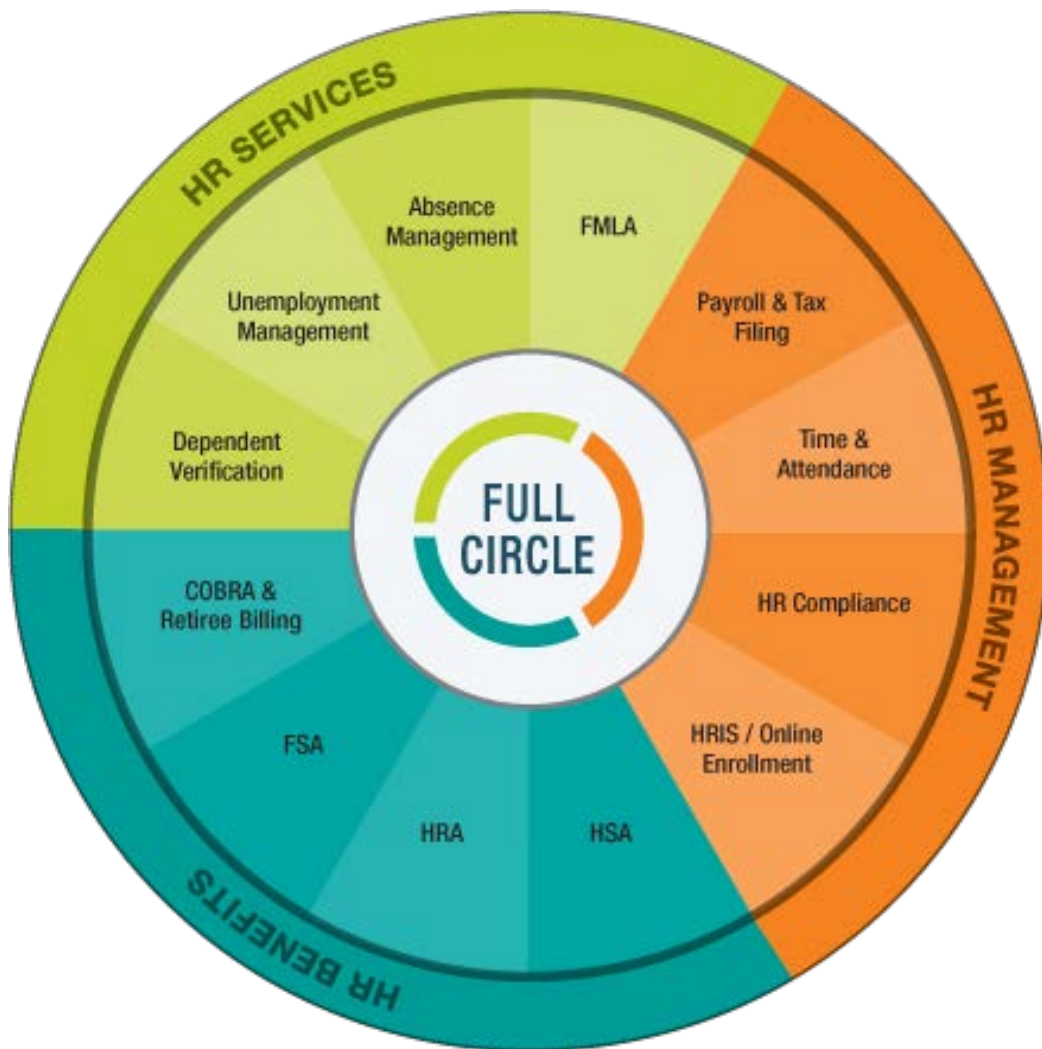
Questions



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