

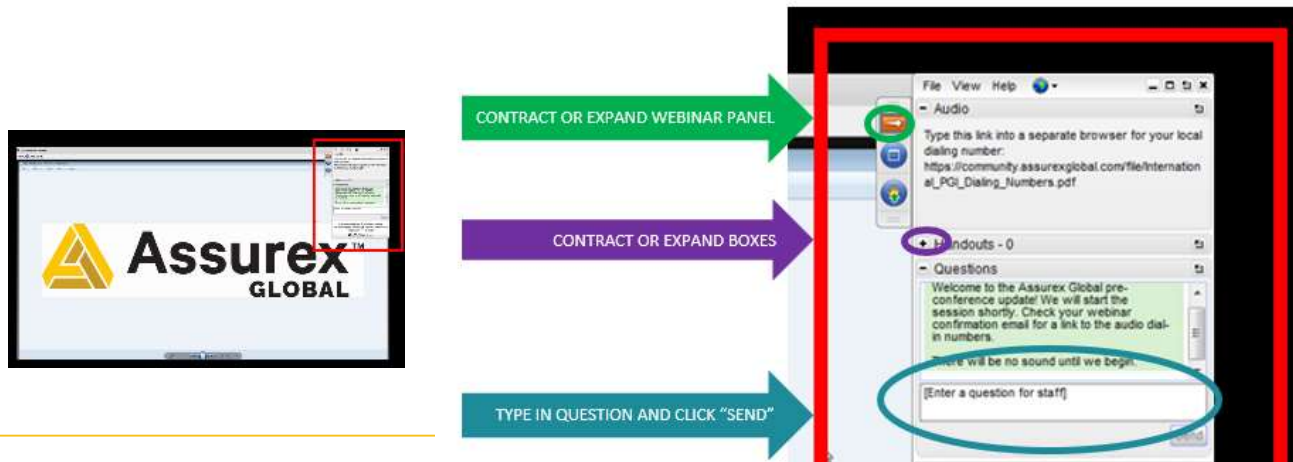
2022

Medicare & Employee Benefits

Presented by Benefit Comply

Medicare & Employee Benefits

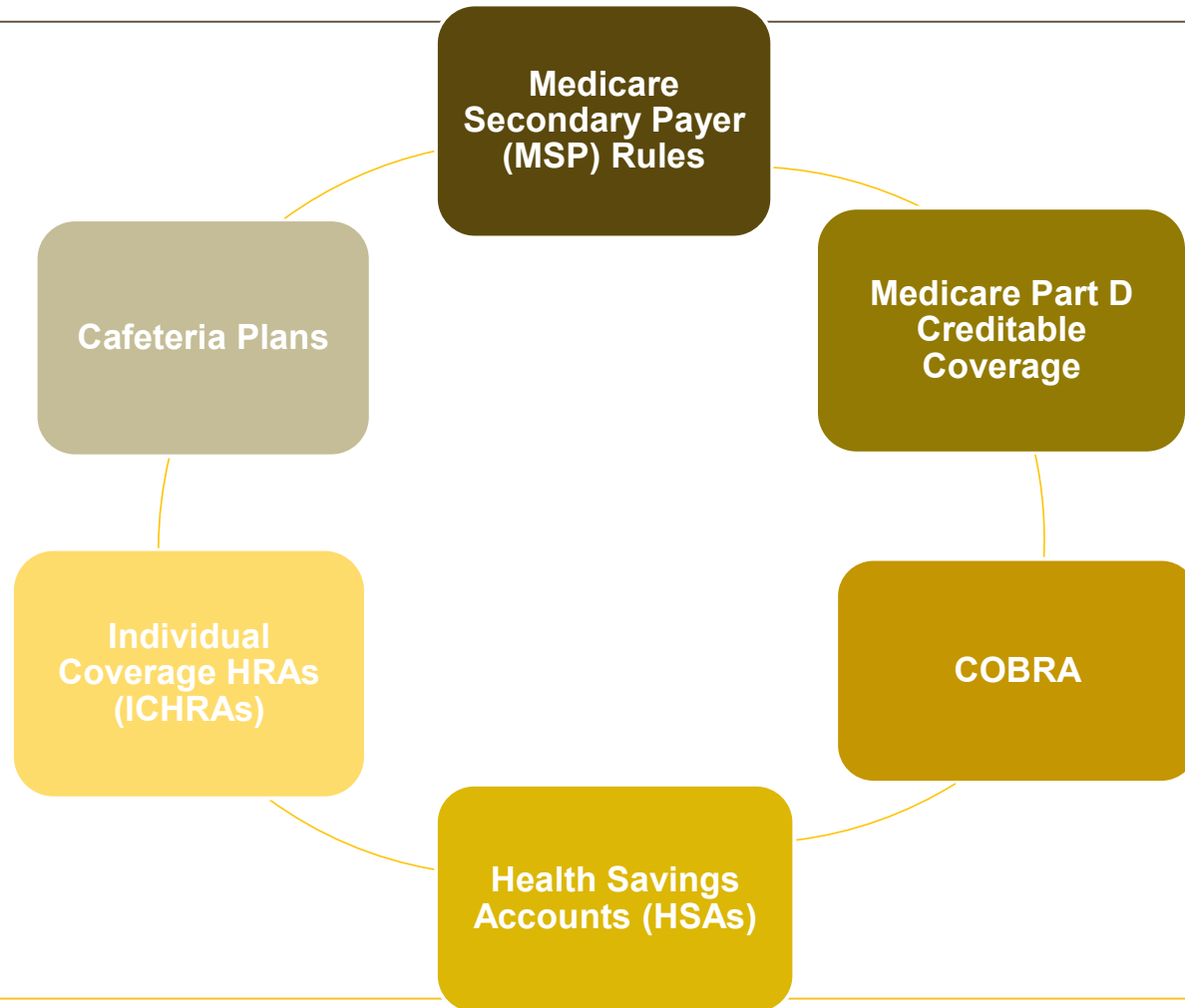
- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” or “Chat” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



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Agenda



Medicare Secondary Payer (MSP) Rules

Medicare Secondary Payer (MSP) Rules

- Coordination of Benefits Between Group Health Plan & Medicare

Size of Employer	Age-Based Medicare	Disability-Based Medicare	ESRD-Based Medicare
<20 employees	Secondary Payer	Secondary Payer	Primary payer first 30 months
20+ employees	Primary Payer	Secondary Payer	Primary payer first 30 months
100+ employees	Primary Payer	Primary Payer	Primary payer first 30 months

****For retiree or COBRA coverage, Medicare is primary (except for ESRD-based Medicare)*

- Enforcement → MSP Mandatory Reporting (§111)
 - Helps identify situations where another payer may be primary to Medicare
 - Required quarterly for group health plans with 20 or more employees
 - Typically handled by insurance carrier (if fully-insured) or TPA (if self-funded)

Medicare Secondary Payer (MSP) Rules

- Counting Employees
 - Count all common law employees, including part-time employees
 - Aggregate for employers who are part of a controlled group due to common ownership, or an affiliated service group due to shared management or services
 - Determination is made based on the claim date of service
 - Did the employer have 20 (or 100) or more employees each working day for at least 20 weeks in either the current or the preceding calendar year?

Medicare Secondary Payer (MSP) Rules

- Examples

- Claim with 9/8/2021 date of service for an individual enrolled in the employer's group medical plan and age-based Medicare

Example 1: In 2020, there were 23 weeks with 20 or more employees

Group health plan is primary for all of 2021

Example 2: In 2020, there were 17 weeks with 20 or more employees, but in 2021, there were 28 weeks with 20 or more employees

Group health plan is primary for the remainder of 2021 and all of 2022

Example 3: In 2020, there were 17 weeks for with 20 or more employees, and in 2021, there were 9 weeks so far with 20 or more employees

Group health plan is secondary

Medicare Secondary Payer (MSP) Rules



Prohibited from “taking into account” the Medicare entitlement of a current employee or a current employee's spouse or family member

Primary Payer Status Rules

Required to provide a current employee or a current employee's spouse who is age 65 or older with the **same benefits, under the same conditions**, as are provided to employees and spouses who are under age 65

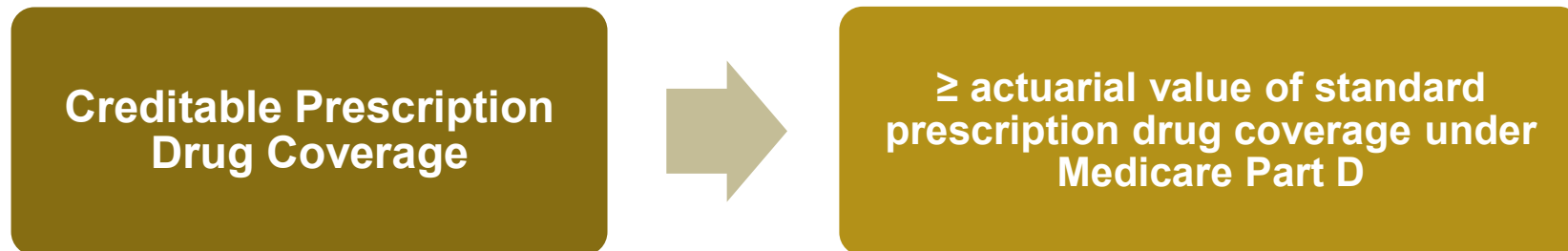
Cannot incent individuals who are eligible for Medicare not to enroll in the group health plan by paying for Medicare or otherwise

Medicare Secondary Payer (MSP) Rules

- Noncompliance
 - Civil penalties of up to \$5,000 per violation
 - Excise tax penalty of 25% of employer's expenses incurred during the calendar year for each group health plan (both conforming and non-conforming)

Medicare Part D – Creditable Coverage

Medicare Part D Creditable Coverage



- How is Creditable Coverage Determined?
 - Carrier or TPA may provide creditable status; or
 - Employer must use simplified method or obtain actuarial determination

Medicare Part D Creditable Coverage

- Simplified Method
 - Plans meeting the following criteria are creditable:
 - Coverage for generic and brand-name
 - Reasonable access to providers
 - Coverage for 60% or more of participant prescription drug costs
 - Minimum annual benefit and maximum deductible requirements
 - Simplified method not available for HDHPs due to maximum deductible requirements, but HDHPs can still be creditable

Medicare Part D Creditable Coverage

- Employer Notice Requirements

Notice to Eligible Individuals Provide it various times to Medicare-eligible individuals

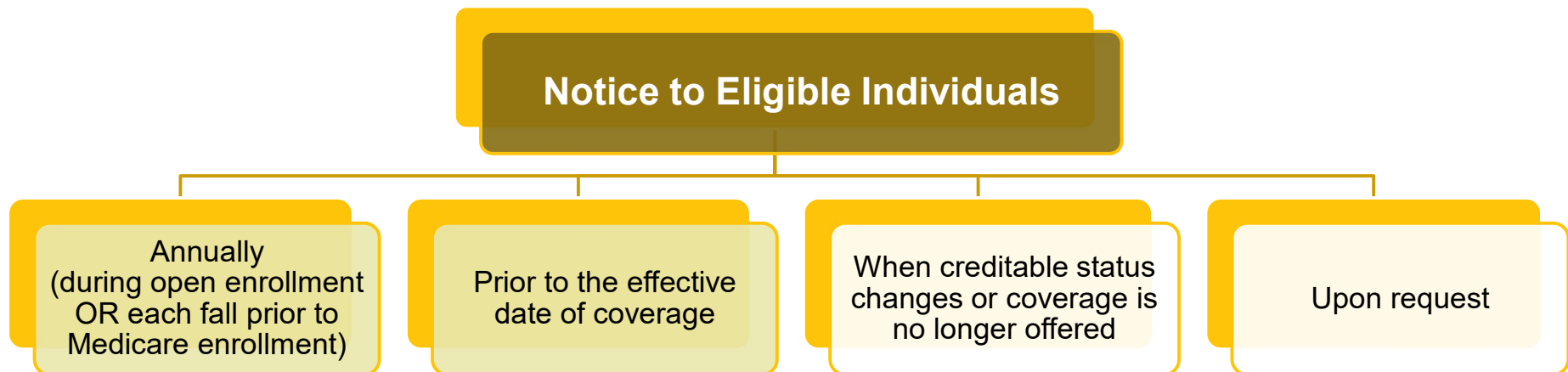
- Electronic delivery is permitted, but CMS prefers mailed paper notices

Notice to CMS Provide annually within 60 days of beginning of plan year

- Form, guide and instructions can be found here - <https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/CCDisclosure>
- Employer responsibility (not generally handled by the carrier or TPA)

Medicare Part D Creditable Coverage

- Employer Notice Requirements



Medicare Part D Creditable Coverage

- Penalty for Non-Compliance

Employer/Plan
Consequences

- No specific civil or criminal penalty, but is required
- Could result in a loss of the retiree subsidy

Individual
Consequences

- Could result in Medicare-eligible individuals missing enrollment opportunities and paying late enrollment penalties

COBRA & Medicare

COBRA & Medicare

- Loss of Coverage Triggered by a Qualifying Event → COBRA Continuation


COBRA Qualifying Events

- Termination of employment
- Reduction in hours
- Death of covered employee
- Divorce / Legal separation
- **Employee's Medicare entitlement**
- Dependent child ceases to be a dependent


- Employee's Medicare Entitlement
 - Qualifying event for spouse and dependent children only if there is a loss of coverage for covered employee (loss of eligibility, not a voluntary termination)
 - Medicare entitlement will rarely cause a loss of coverage (due to MSP rules), so **generally not a qualifying event (or second qualifying event)**
 - More likely to be a qualifying event for retiree coverage

COBRA & Medicare


- Example – Employer with 100+ Employees



- Employee, spouse and children enrolled in employer's group health plan



- Employee enrolls in Medicare and voluntarily chooses to terminate employer's group health plan



- No COBRA option for the spouse and children

- Many employers and TPAs mistakenly offer COBRA to the spouse and children
 - Carrier (or stop-loss vendor) could choose not to provide coverage since COBRA is not required

COBRA & Medicare

Qualified beneficiary is entitled to Medicare after electing COBRA coverage

- COBRA coverage can be terminated early for the individual enrolled in Medicare
- Does not affect the COBRA rights of other qualified beneficiaries in a family unit

Qualified beneficiary is entitled to Medicare before electing COBRA coverage

- COBRA offer must be available for the maximum coverage period
- Special extension for spouse and dependents (when employee's termination of employment or reduction in hours occurs within 18 months after enrollment in Medicare)
 - Spouse and dependent children entitled to up to 36 months from the date of Medicare enrollment or 18 months from the qualifying event, whichever is greater

COBRA & Medicare

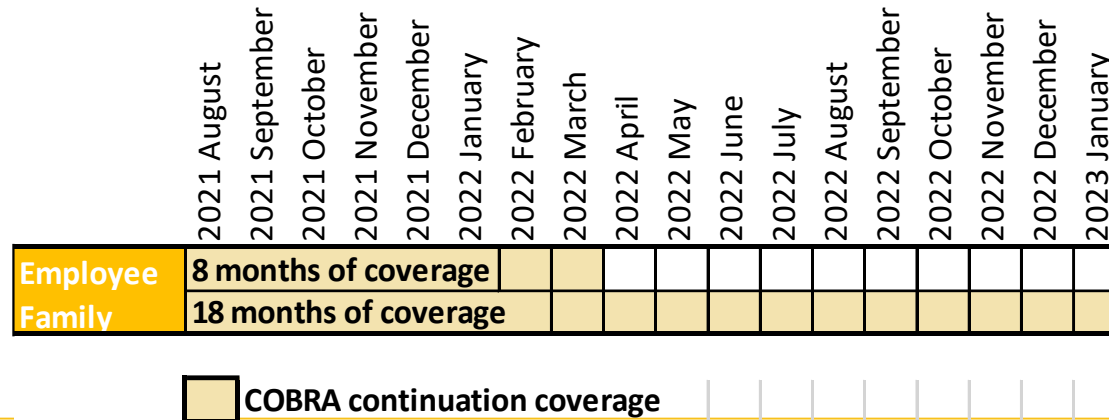
- Example 1

Employee (age 64) retires at the end of July 2021

Employee turns 65 in mid-March 2022 and enrolls in Medicare



- Employee's COBRA coverage may be terminated upon enrollment in Medicare
- COBRA coverage for family members remains available for the full 18 months



COBRA & Medicare

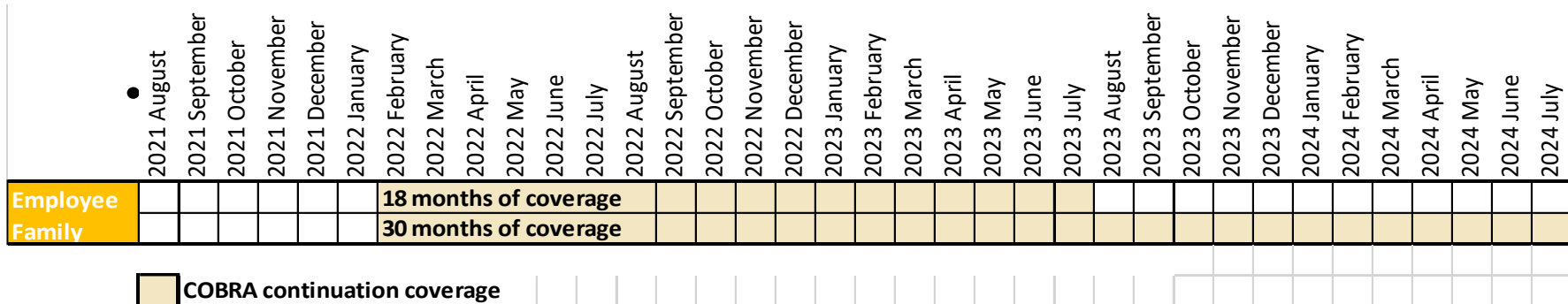
- Example 2

Employee enrolls in Medicare in August 2021 and remains enrolled in employer's group health plan

Employee retires at the end of January 2022



- Employee must be offered COBRA for up to 18 months upon retirement
 - Family must be offered COBRA for up to 36 months from Medicare enrollment (30 months because 6 months already expired)



COBRA & Medicare

- **Delaying Medicare Enrollment**
 - If an individual does not enroll in Medicare first entitled to it, the individual may:
 - Only be permitted to enroll during Medicare's annual open enrollment period
 - Pay more upon enrolling
 - A special enrollment period is available for those who delayed enrollment because of coverage under a group health plan due to current employment status
 - Individuals enrolling during a special enrollment period do not have to pay penalties or increased premiums
 - COBRA coverage is not coverage based upon current employment
- **New COBRA Model Notices**
 - Explain options for those choosing between Medicare and COBRA

Health Savings Accounts (HSAs) & Medicare

Health Savings Accounts (HSAs) & Medicare

- HSA Eligibility Requirements

Must be enrolled in a qualified high deductible health plan (HDHP)

May not have any other “disqualifying coverage” – e.g., Medicare

Cannot be claimed as another’s tax dependent

- HSAs and Medicare

- Individuals enrolled in (“entitled” to) Medicare are ineligible to contribute to an HSA
 - Mere eligibility for Medicare doesn’t cause HSA ineligibility
 - Spouse’s enrollment in Medicare doesn’t cause HSA ineligibility
- Ineligible individuals may continue using HSA funds until funds are exhausted

Health Savings Accounts (HSAs) & Medicare

- HSA Contribution Limit (Include Employer & Employee Contributions)



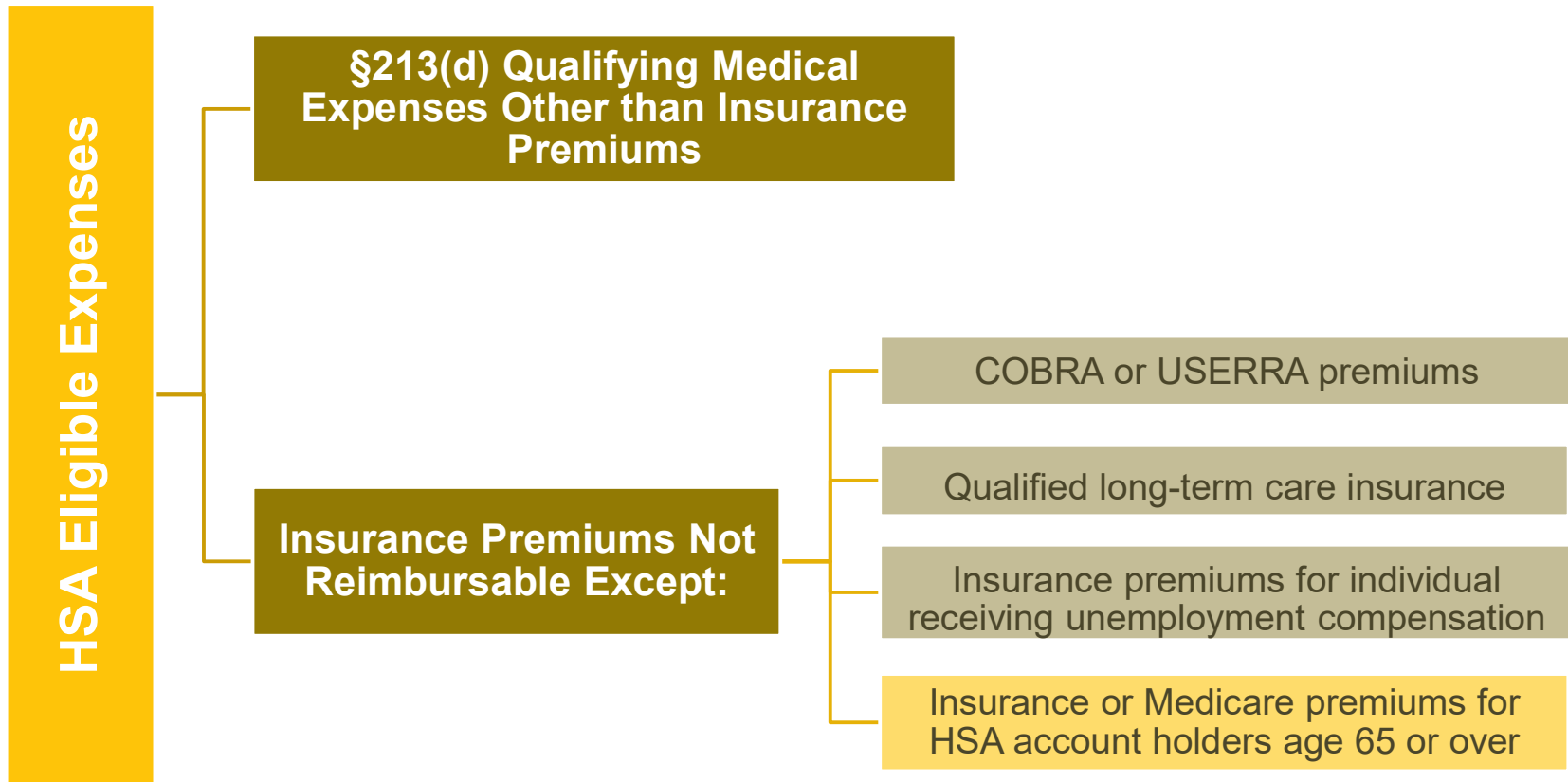
- Example

Enrolled in single HDHP January 1, 2022

Enrolled in Medicare August 1, 2022

$$\$3,650 \times (7/12) = \$2,129.16$$

Health Savings Accounts (HSAs) & Medicare



Individual Coverage HRAs (ICHRAs) & Medicare

Individual Coverage HRAs (ICHRAs)

- ICHRA Basics

Funded solely with employer contributions (like all other HRAs)	Must be available only to those <u>enrolled</u> in individual health coverage or Medicare	Same employees cannot be offered both a group medical plan and an ICHRA	Must offer uniform ICHRA coverage to all employees within a “class
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- Permitted Classes (Medicare is not a permitted class)

Full-time employees	Part-time employees
Salaried employees	Non-Salaried employees
Seasonal employees	Union employees
Employees by geographic location	Employees in a waiting period
Non-resident aliens with no U.S. income	Temporary employees of staffing firms

Individual Coverage HRAs (ICHRAs)

- ICHRA Reimbursement
 - Individual coverage premiums
 - Medicare premiums
 - Other §213(d) qualifying medical expenses

Cafeteria Plans & Medicare

Cafeteria Plans & Medicare

- Premiums for Medicare Part B or Part D or Medicare supplement policies generally cannot be paid pre-tax through a cafeteria plan
 - MSP, health care reform (employer payment plans), HIPAA, ADA and ADEA rules
- Health FSAs cannot be used to reimburse insurance premiums, including Medicare
- Election Changes
 - Entitlement to (enrollment in) Medicare allows a prospective election change to cancel or reduce pre-tax contributions for the individual enrolled in the plan
 - Loss of Medicare eligibility allows a prospective election to commence or increase pre-tax contributions for the individual who lost coverage

2022

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