

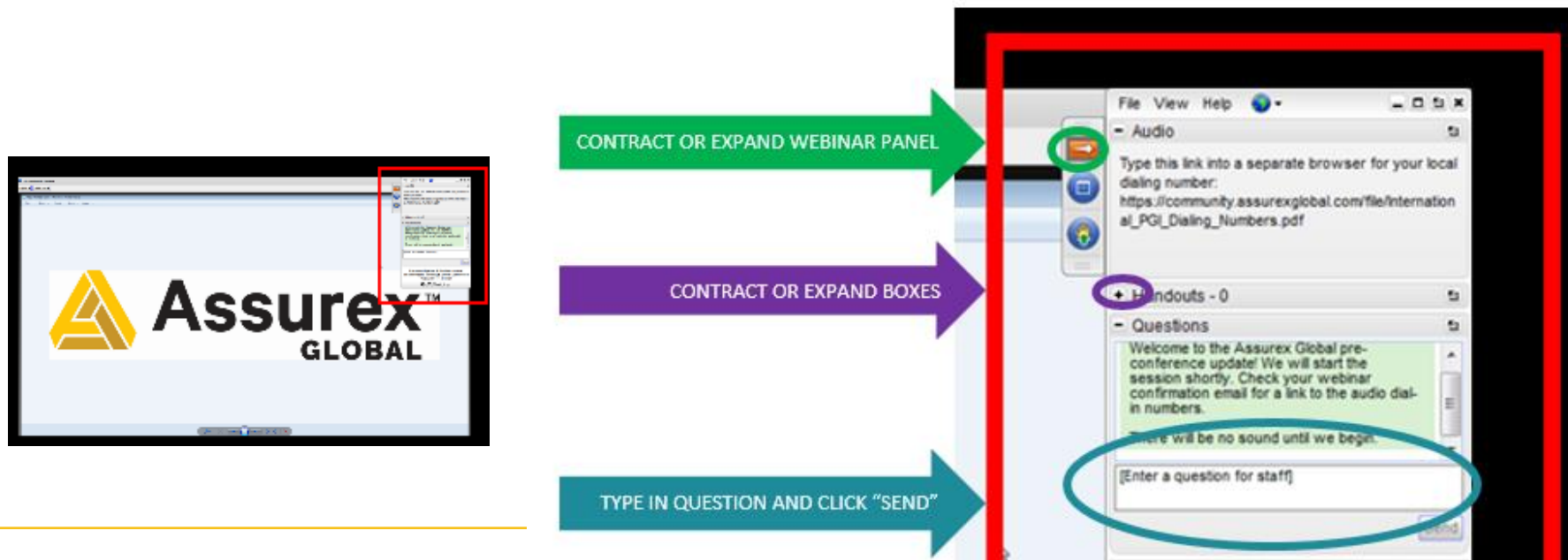
September 24, 2020

Medicare & Employee Benefits

Presented by Benefit Comply

Medicare & Employee Benefits

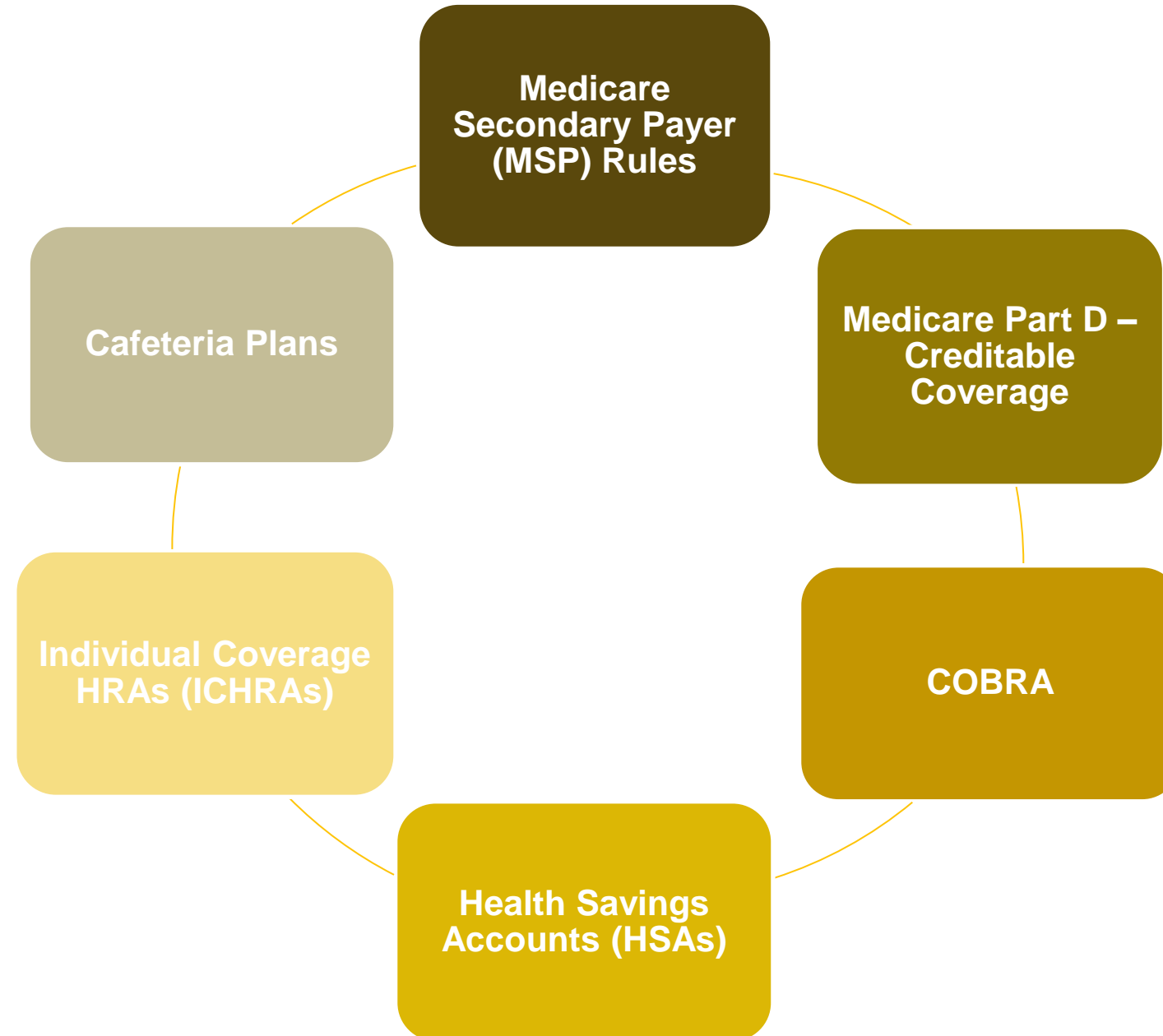
- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions 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

- MSP Rules – Coordination of Benefits Between Group Health Plan & Medicare
 - Group health plan status:

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 coverage or COBRA coverage, Medicare is the primary payer (except for ESRD-based Medicare)*

- 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 counts for employers who are part of a controlled group or affiliated service group (§414 rules)
 - 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?**

Examples - Claim with 9/24/2020 date of service for an individual enrolled in the employer's group medical plan and age-based Medicare

Example A: In 2019, there were 23 weeks for which there were 20 or more employees

Employer's group health plan is primary to Medicare for all of 2020

Example B: In 2019, there were only 17 weeks for which there were 20 or more employees
But in 2020, there were already 28 weeks with 20 or more employees

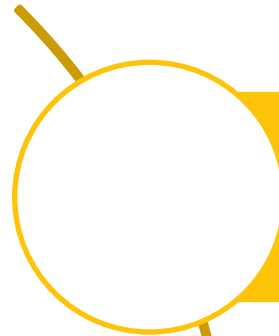
Employer's group health plan is primary for the remainder of 2020 and all of 2021

Example C: In 2019, there were only 17 weeks for which there were 20 or more employees
And in 2020, there were only 9 weeks so far with 20 or more employees

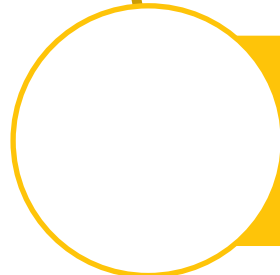
Employer's group health plan is secondary

Medicare Secondary Payer (MSP) Rules

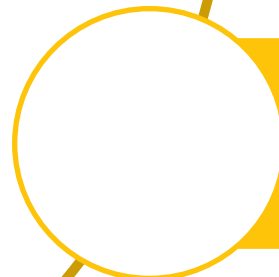
Primary Payer Status Rules



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



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

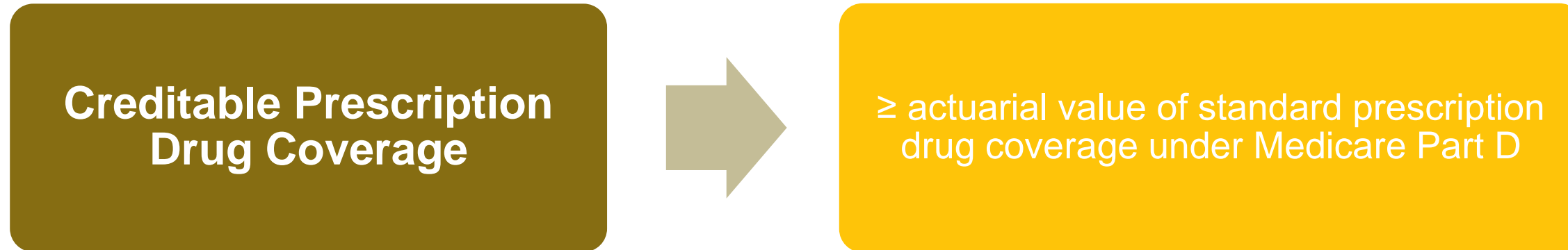


Cannot incent individuals who are eligible for Medicare not to enroll in the group health plan by paying for Medicare or otherwise

Employer Poll

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 the simplified method or obtain an actuarial determination
 - Simplified method = coverage for generic and brand-name, reasonable access to providers, 60% or better coverage, minimum annual benefit and maximum deductible requirements
 - Simplified method not available for HDHPs

Medicare Part D Creditable Coverage

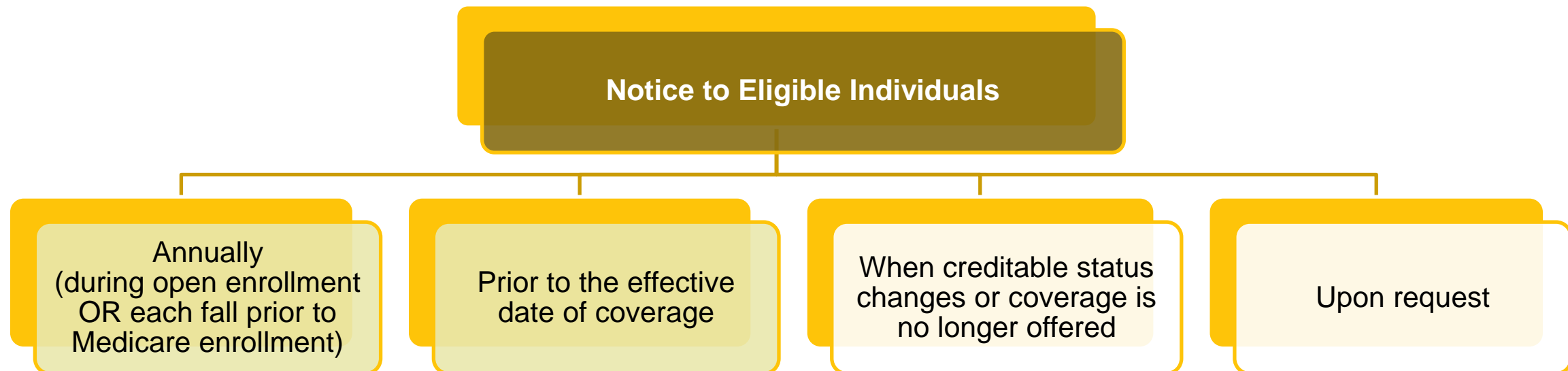
- Employer Notice Requirements

1 - Notice to Eligible Individuals Provide it various times to Medicare-eligible individuals (see below)

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

2 - Notice to CMS Provide it annually within 60 days of the beginning of the plan year

- Form, guide and instructions can be found here - <https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/CCDisclosure>



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

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


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 only for the spouse and dependent children, and **only if there is a loss of coverage for the covered employee**
 - Medicare entitlement will only infrequently cause a loss of coverage under a group health plan (due to MSP rules), so **it will rarely be a COBRA 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

- Maximum Coverage Periods

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 cannot be withheld because of Medicare entitlement
- Does not affect maximum coverage period

- Special Extension for Spouse & Dependent Children

- Employee's qualifying event (termination of employment or reduction in hours) occurs within 18 months after enrollment in Medicare
- Spouse and dependent children are entitled to up to 36 months from the date of Medicare enrollment

COBRA & Medicare

- Example 1



	2019 August	2019 September	2019 October	2019 November	2019 December	2020 January	2020 February	2020 March	2020 April	2020 May	2020 June	2020 July	2020 August	2020 September	2020 October	2020 November	2020 December	2021 January
Employee	8 months of coverage																	
Family	18 months of coverage																	
	<div style="display: flex; align-items: center;"> <div style="width: 15px; height: 15px; background-color: #f0e68c; border: 1px solid black; margin-right: 5px;"></div> COBRA continuation coverage </div>																	

COBRA & Medicare

- Delaying Medicare Enrollment
 - Generally, if an individual does not enroll in Medicare first entitled to it, the individual must pay more when eventually enrolling
 - A special enrollment period is available for those who delayed enrollment because they had coverage under a group health plan due to their current (or their spouse's current) employment status
 - Individuals enrolling during a special enrollment period do not have to pay penalties or increased premiums
 - COBRA coverage is not considered a group health plan based upon current employment individuals
- 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

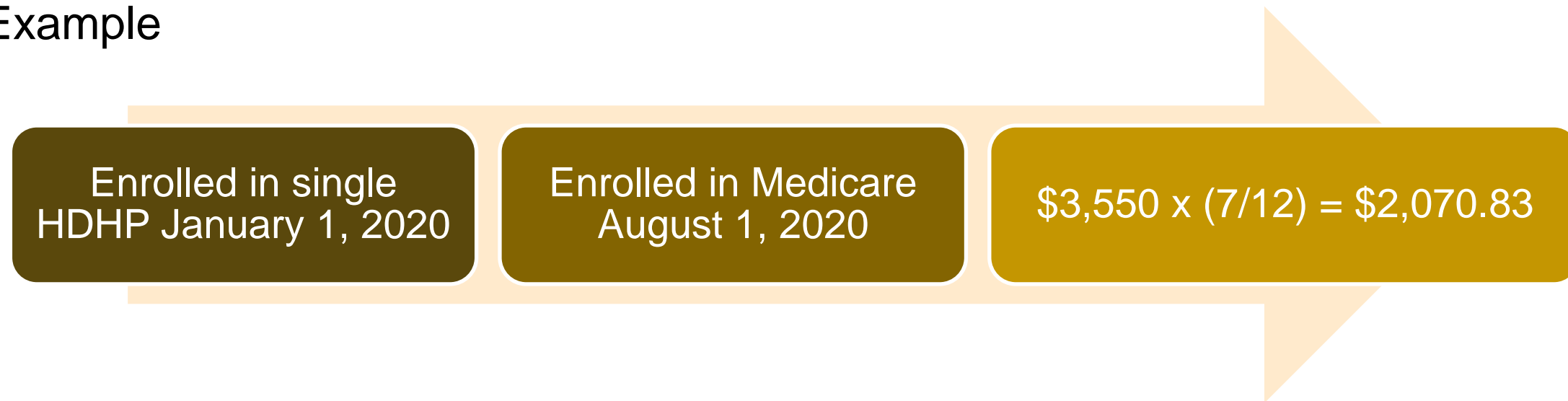
- Individuals enrolled in (“entitled” to) Medicare are ineligible to contribute to an HSA
 - Mere eligibility for Medicare doesn’t cause HSA ineligibility
 - Spouse’s enrollment in Medicare doesn’t cause HSA ineligibility
- Ineligible individuals may continue using HSA funds until funds are exhausted

Health Savings Accounts (HSAs) & Medicare

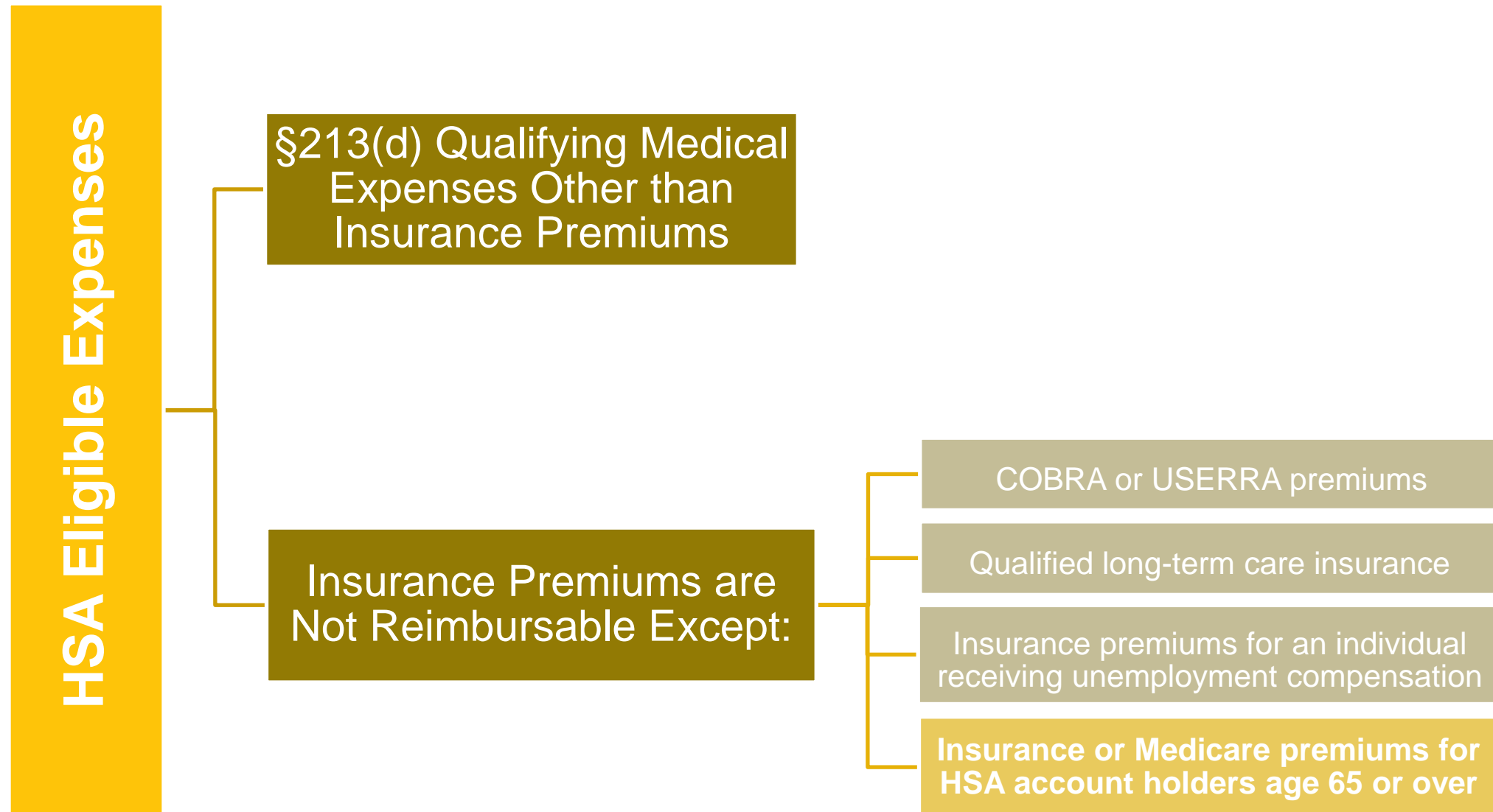
- HSA Contribution Limit (Include Employer & Employee Contributions)



- Example



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 enrolled 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”

- Permitted Classes

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

NOTE: Medicare is not one of the permitted “classes”

Cafeteria Plans & Medicare

Cafeteria Plans & Medicare

- Premiums for Medicare Part B or Part D or Medicare supplement policies generally cannot be offered on a pre-tax basis 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 coverage for the individual enrolled in the plan
 - Loss of Medicare eligibility allows a prospective election to commence or increase coverage for the individual who lost coverage

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