



Transgender Law Center

Making Authentic Lives Possible

Health care update: insurance
and transition-related care

December 5, 2014

Anand Kalra, Health Programs Administrator
Sasha Buchert, Staff Attorney

How to use the webinar software



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The screenshot shows the GoToWebinar control panel with several callouts:

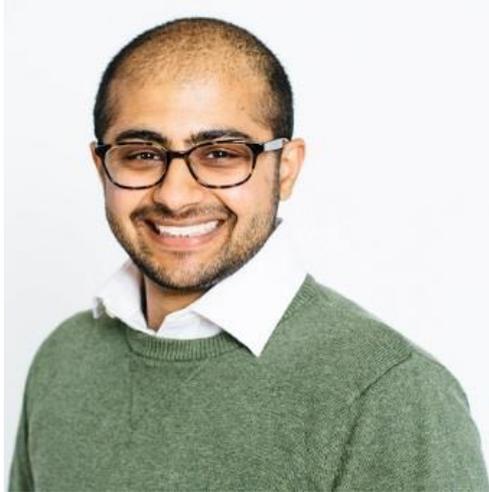
- Show/hide panel:** Points to the top-left corner of the control panel.
- Change audio:** Points to the 'Telephone' and 'Mic & Speakers' options.
- Raise hand to speak:** Points to the 'MUTED' status indicator.
- Type to ask question:** Points to the text input field labeled '[Enter a question for staff]'.

Additional visible text in the screenshot includes: 'File View Help', 'Audio', 'Telephone', 'Mic & Speakers', 'Sound Check', 'MUTED', 'Questions', 'Screenshot prep', 'Webinar ID: 137-763-203', and 'GoToWebinar'.

Agenda

- 1) Introductions
- 2) Background
 - ▣ What is insurance?
 - ▣ How does it work?
- 3) Transition-related care & the law
 - ▣ What laws and public policies are at play?
 - ▣ Where & when do these rules apply?
- 4) Appealing insurance denials
 - ▣ What is an insurance appeal?
 - ▣ How do I make a strong case in my appeal?
- 5) Questions

Getting to Know Us



Anand Kalra

- Health Programs Administrator
- **not** a lawyer, **not** a doctor, just your friendly neighborhood librarian

Sasha Buchert

- Staff Attorney
- Likes Cats



Getting to Know You

By show of hands, who is...

... new to trans stuff?

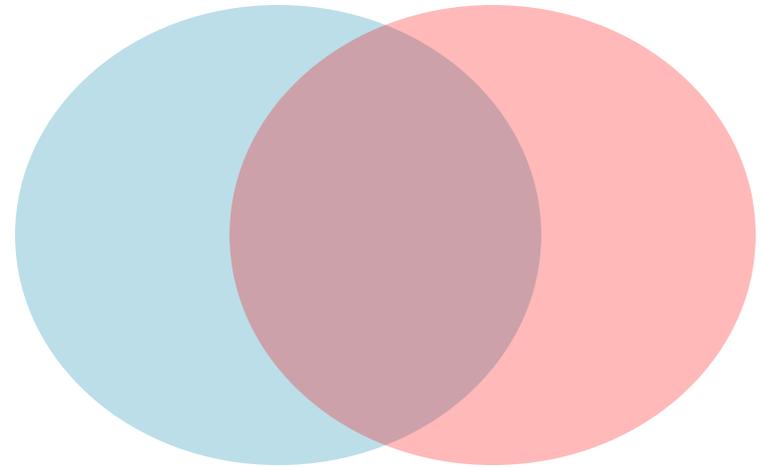
... new to health care?

... new to trans health?

... could be leading this webinar?

... health care provider?

... confident navigating the health care system?



Background

What is insurance and how does it work?

Pop Quiz: True or False?

- Insurance is something that makes me be able to afford going to the doctor. **TRUE**
- Insurance pays my health care costs instead of me. **FALSE**
 - Insurance pays part, you pay part
- If I have insurance, I'll be able to get surgery with the doctor of my choice. **FALSE**
 - Insurance companies will only pay if you go to a doctor they have a contract with (with rare exceptions).

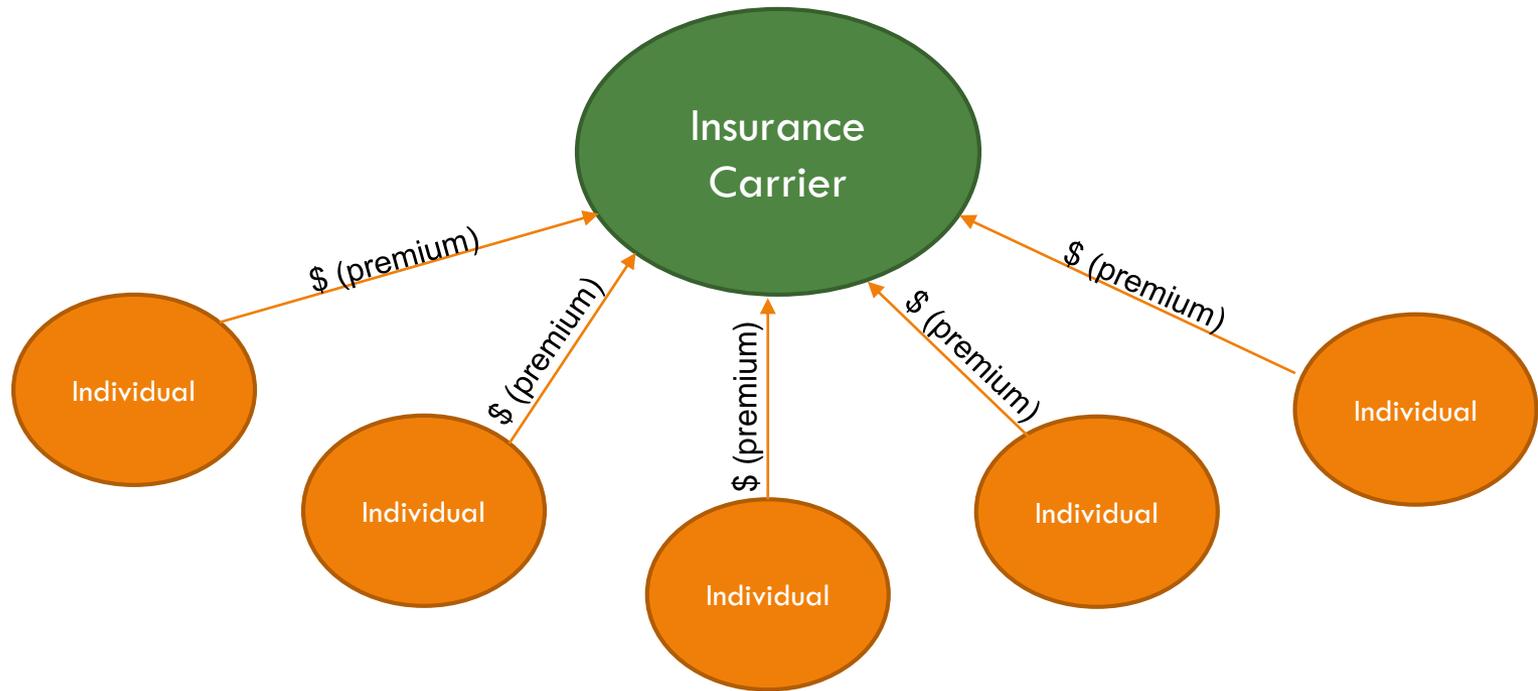
Five types of system barriers

- Cost of health care/health coverage
- Denial of private insurance
 - Pre-existing conditions
- Exclusions of transition-related and gender-specific care
 - Denials of care
- Bureaucracy once you have coverage
- Shortage of educated providers

How does insurance work?

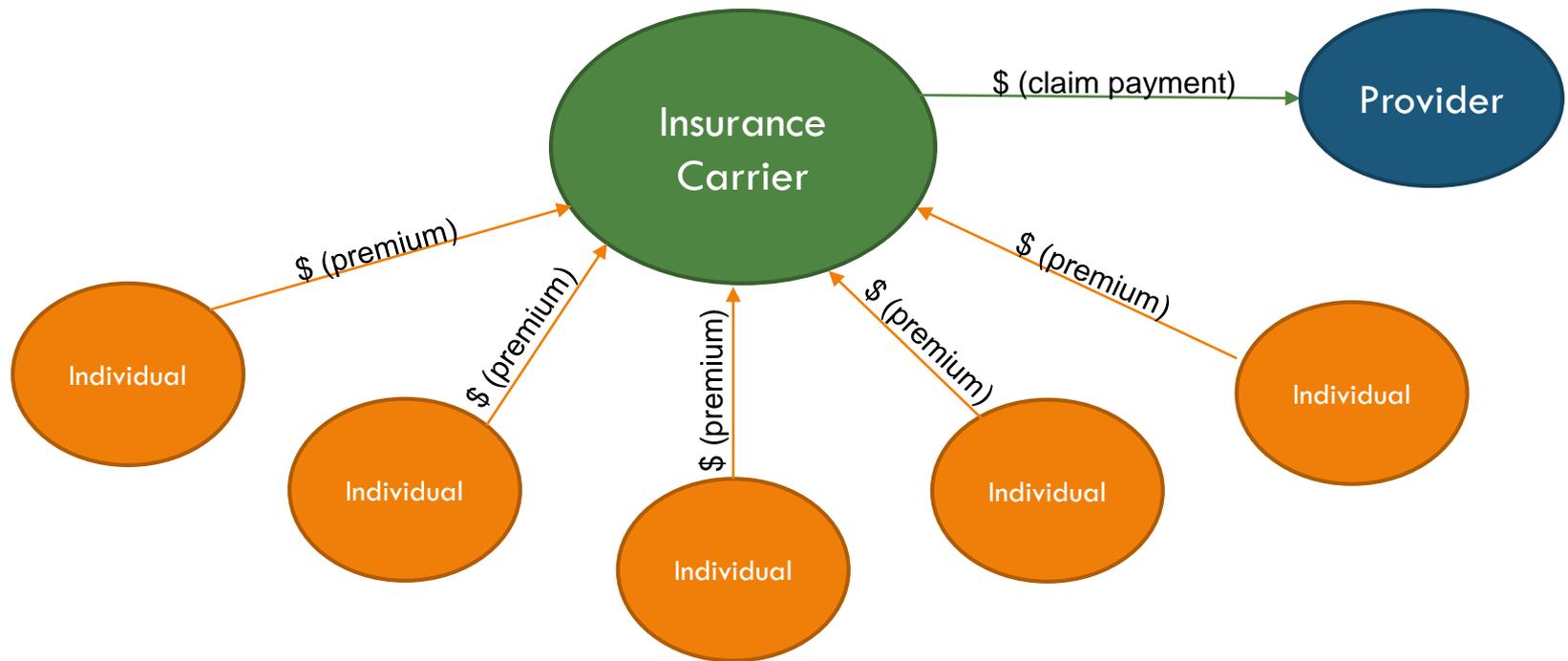


Insurance works by pooling money from many individuals.



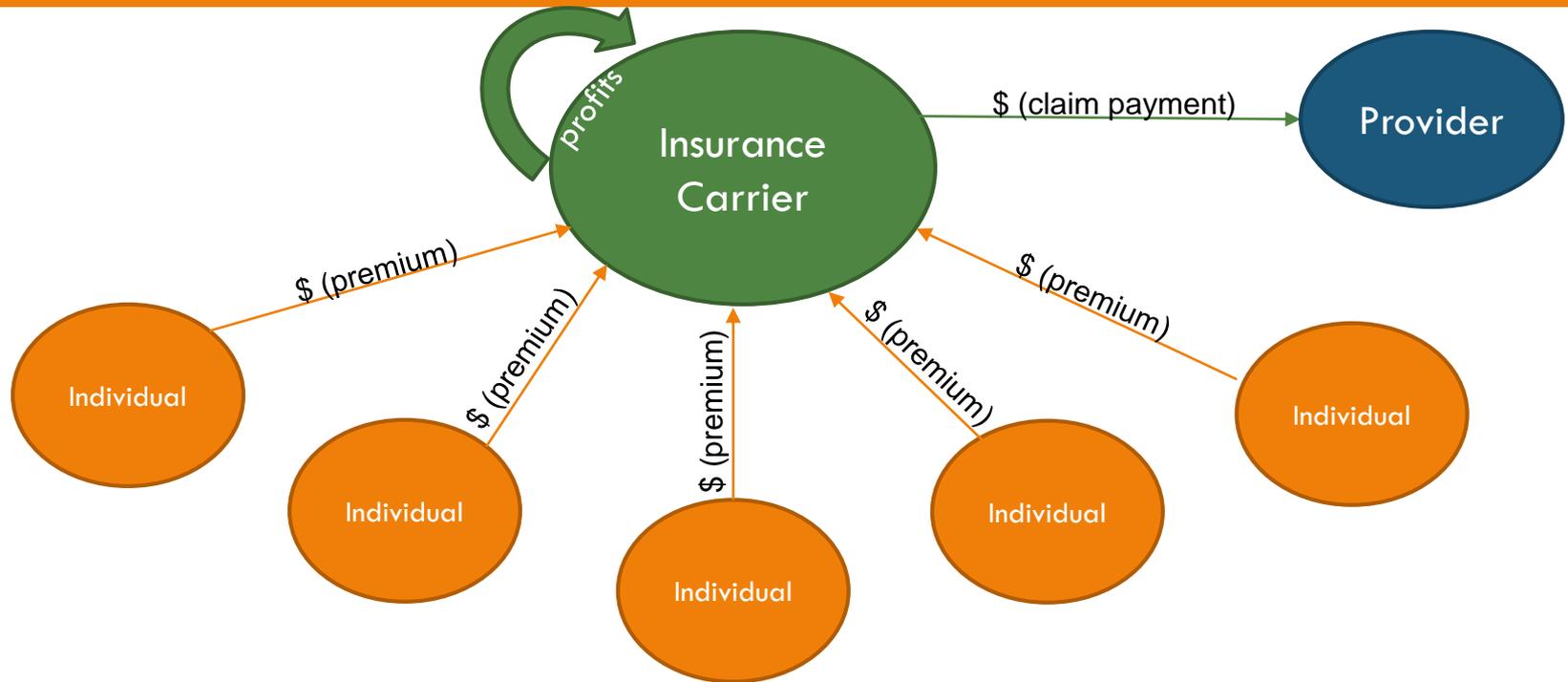
- Each individual pays an **insurance carrier** a monthly **premium**.

Insurance works by pooling money from many individuals.



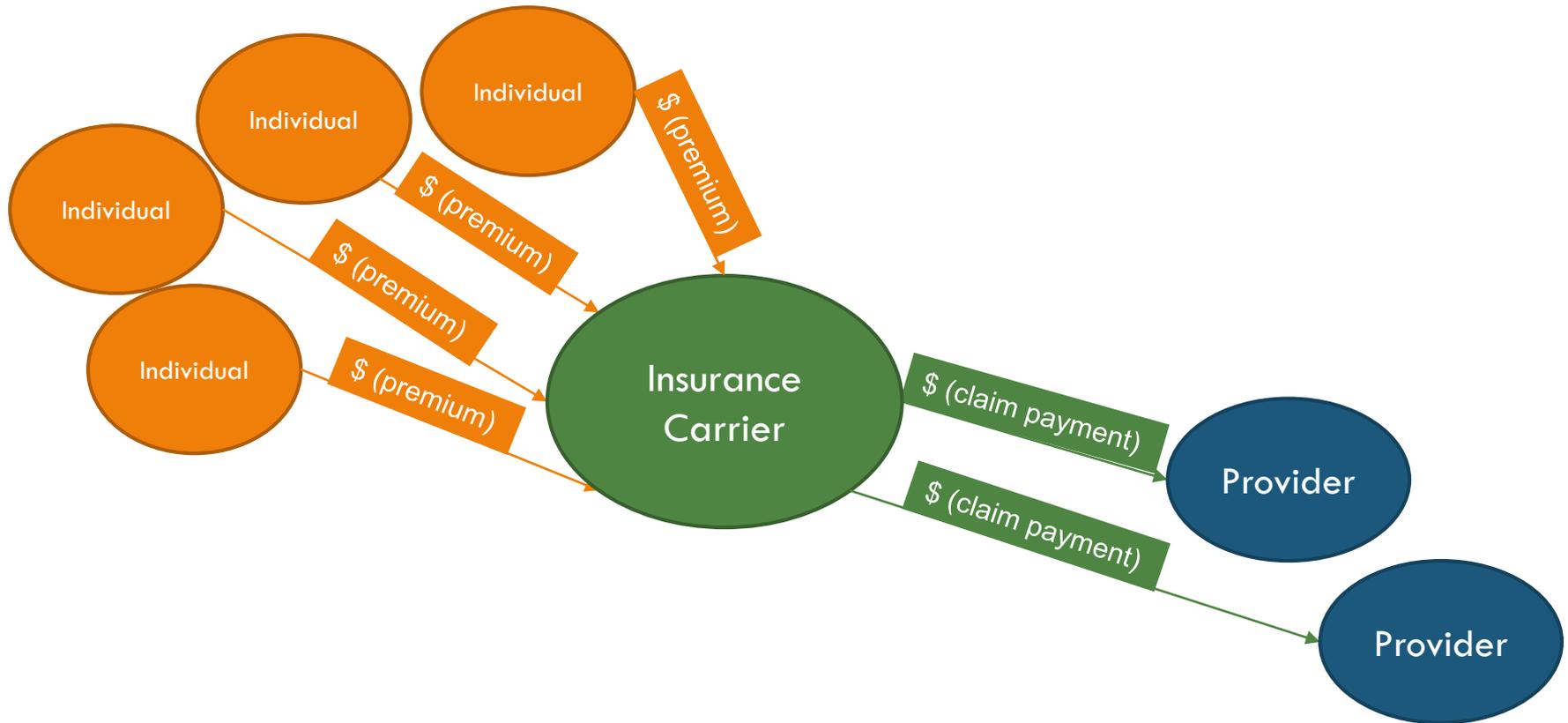
- The insurance carrier uses the revenue from premiums to pay out **claims** for services from the insured individuals.

Insurance works by pooling money from many individuals.



- Whatever's left over after paying out claims is profit for the insurance carrier. The Affordable Care Act requires insurance carriers to spend out at least 80% of premium revenue to pay claims.

Insurance works by pooling money from many individuals.



- To make sure there is enough money coming in from premiums to cover the claim payments going out, the insurance carrier uses a process called **risk management**, using actuarial math (statistics and probability). They consider factors such as the incidence rates of diseases, costs of various treatments, and complication rates from particular surgeries to determine how much to charge as a premium.

Types of Health Insurance

- Public (government sponsored)
 - Medicare
 - Medicaid
 - Local safety net programs
 - Veterans Administration benefits
- Private
 - Employer sponsored
 - Individual
 - State Exchange (Obamacare)

Types of Health Insurance

- Health Maintenance Organization (HMO)
 - *Must* use in-network providers
 - *Must* select Primary Care Physician (PCP)
- Exclusive Provider Organization (EPO)
 - *Must* use in-network providers
 - Do not need to select PCP
- Preferred Provider Organization (PPO)
 - Lower cost to you if use in-network providers

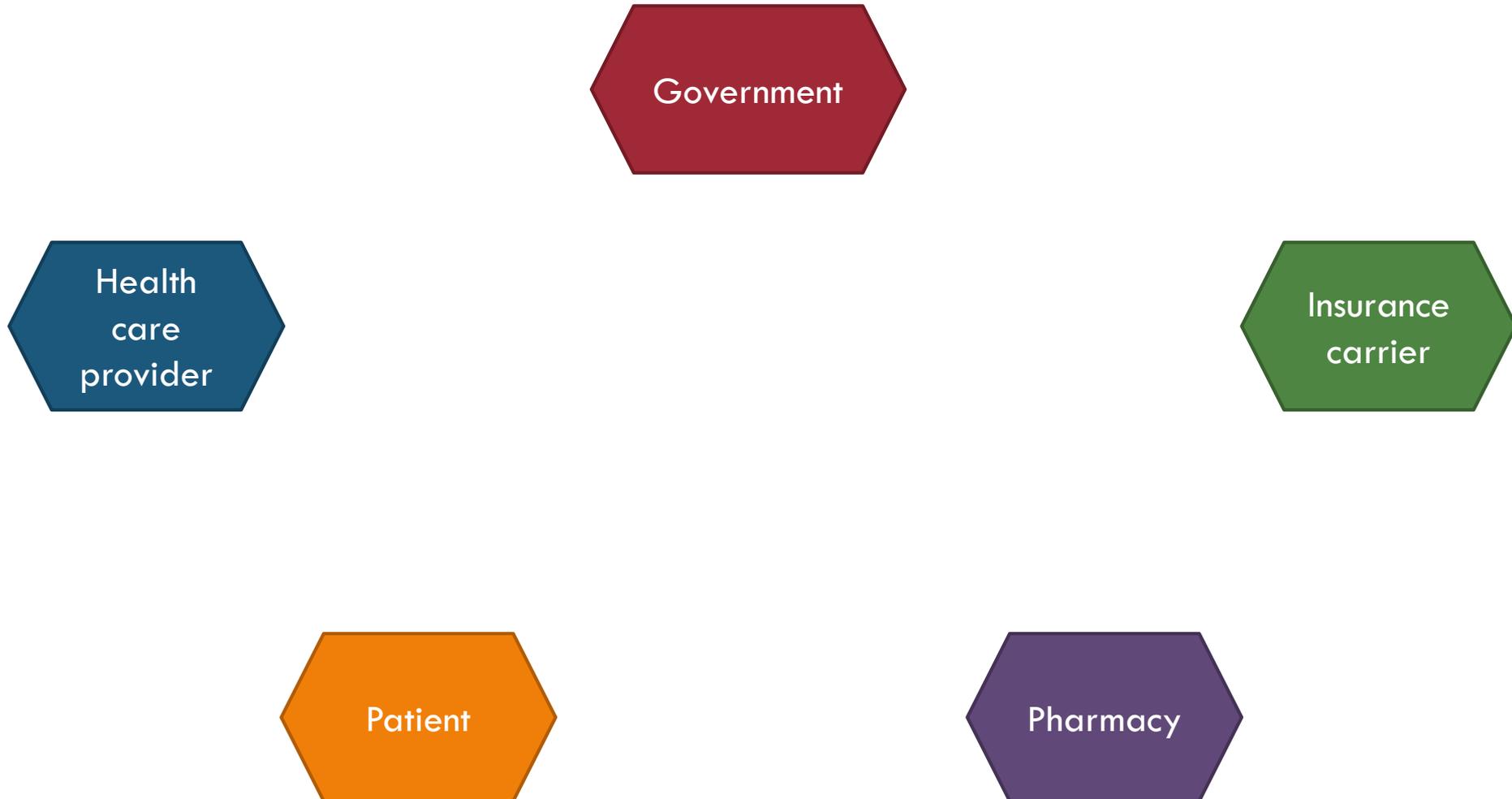
Types of Health Insurance

- Fully insured
 - ▣ Insurance carrier collects premiums and manages risk
 - ▣ Regulated through federal and state insurance law and policy
- Self-funded
 - ▣ Employer/union collects premiums and manages risk, contracts with plan administrator to handle claims and billing
 - ▣ Common with large employers
 - ▣ NOT subject to federal or state insurance law

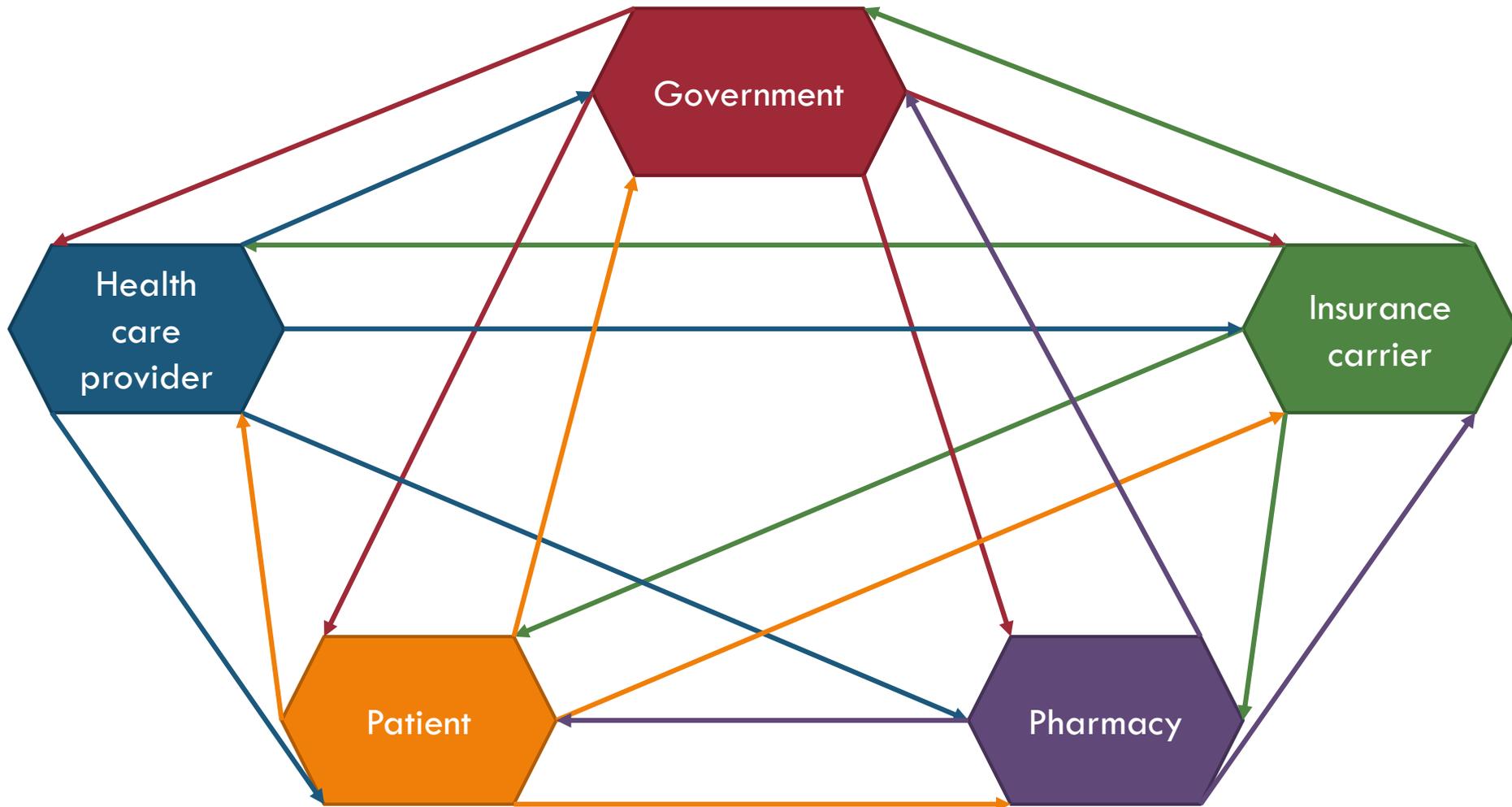
Types of Health Insurance

- These types overlap –
 - ▣ Public HMO
 - ▣ Private, self-funded PPO
 - ▣ Private, fully-insured HMO
 - ▣ Etc.
- Very complicated system
 - ▣ Solution: universal single-payer health care

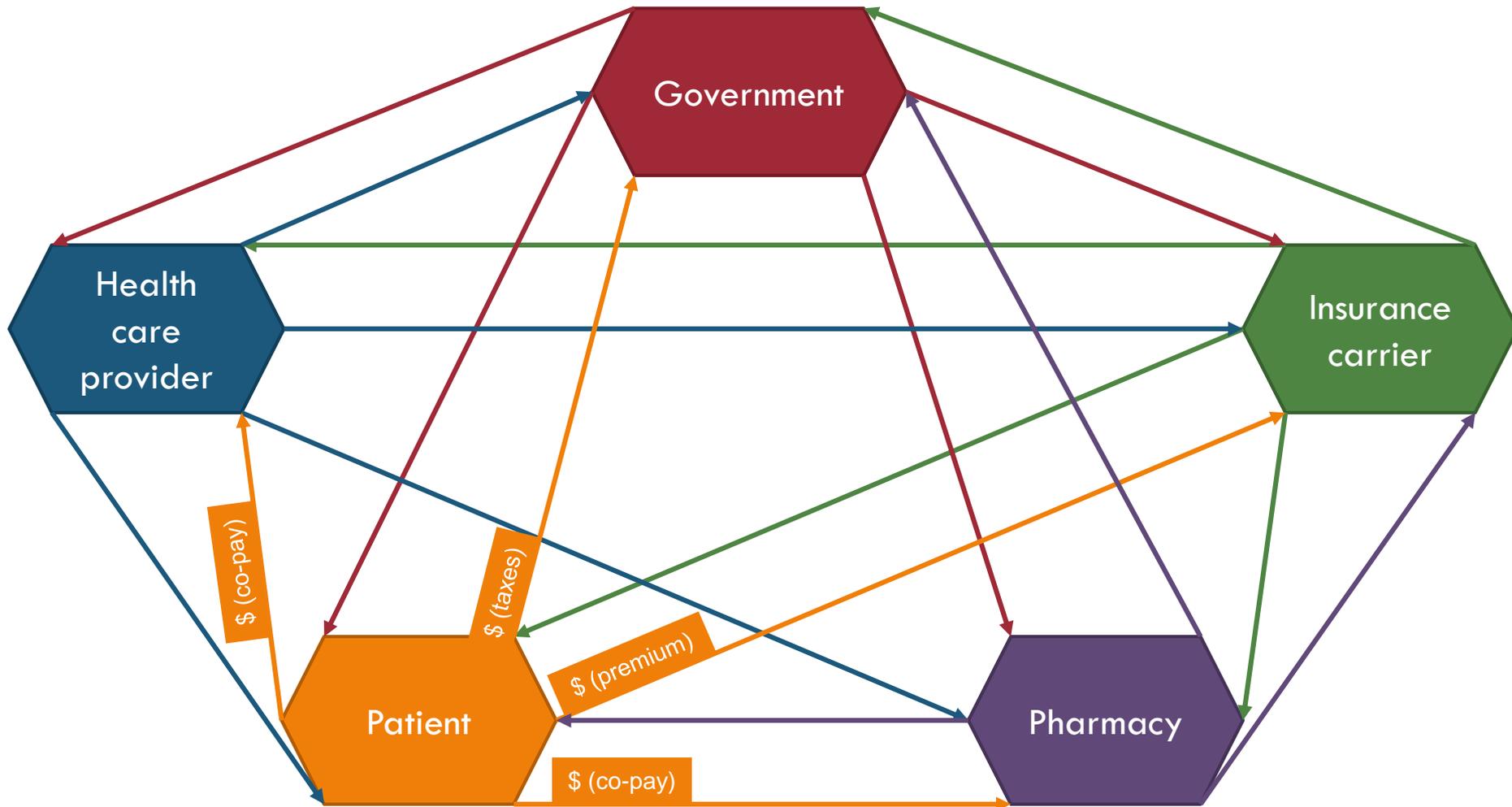
The U.S. Health Care System



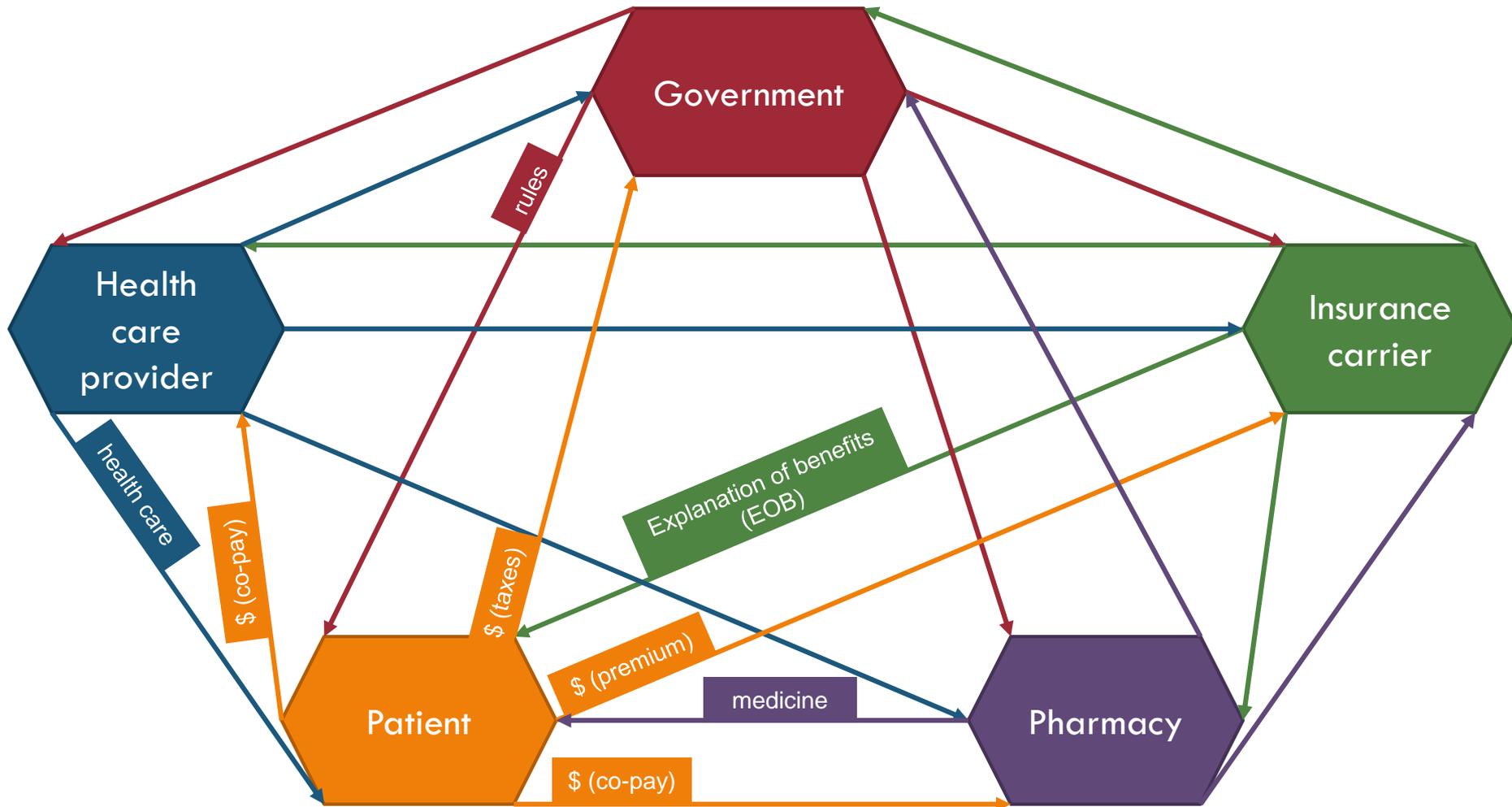
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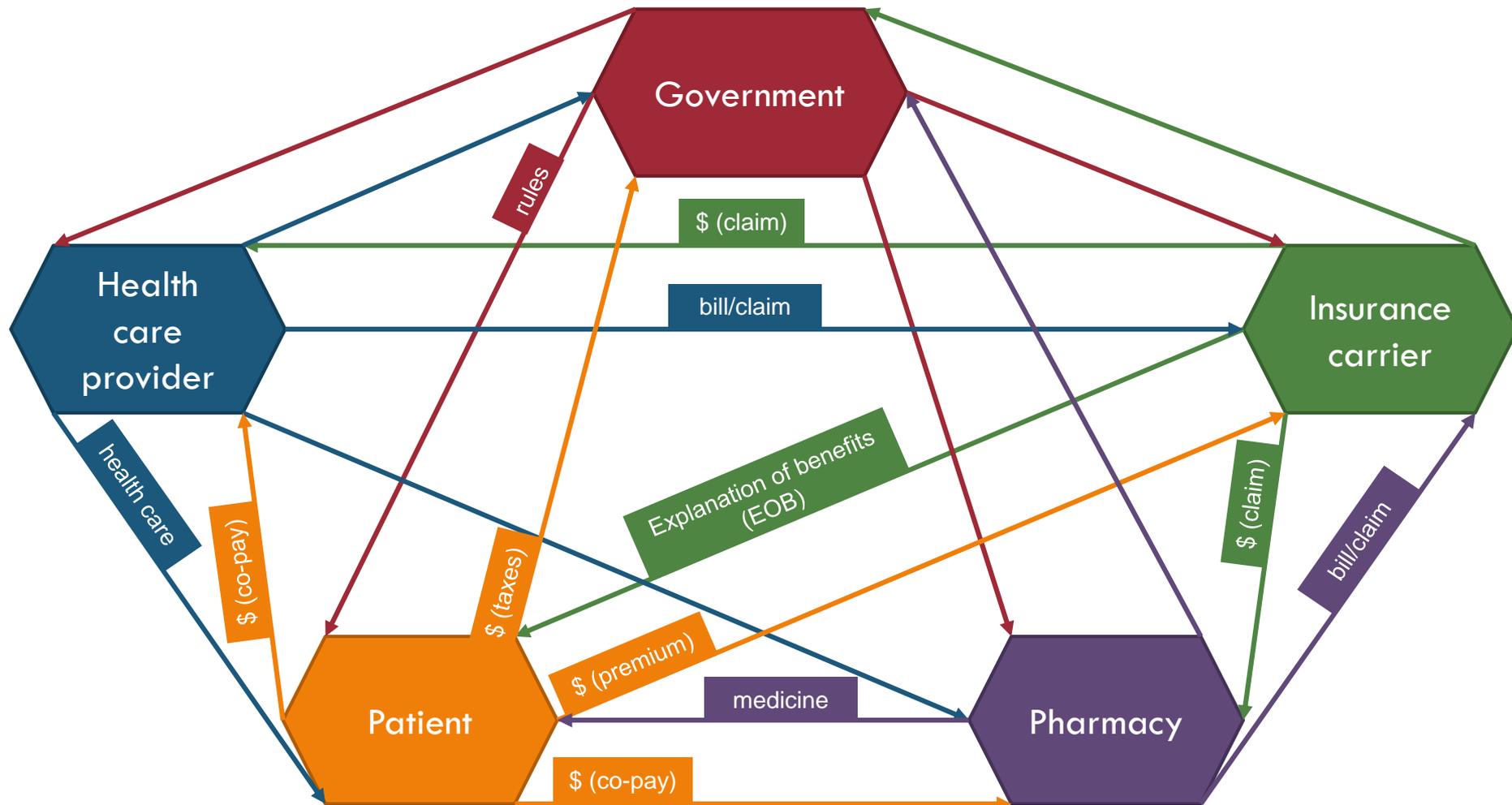
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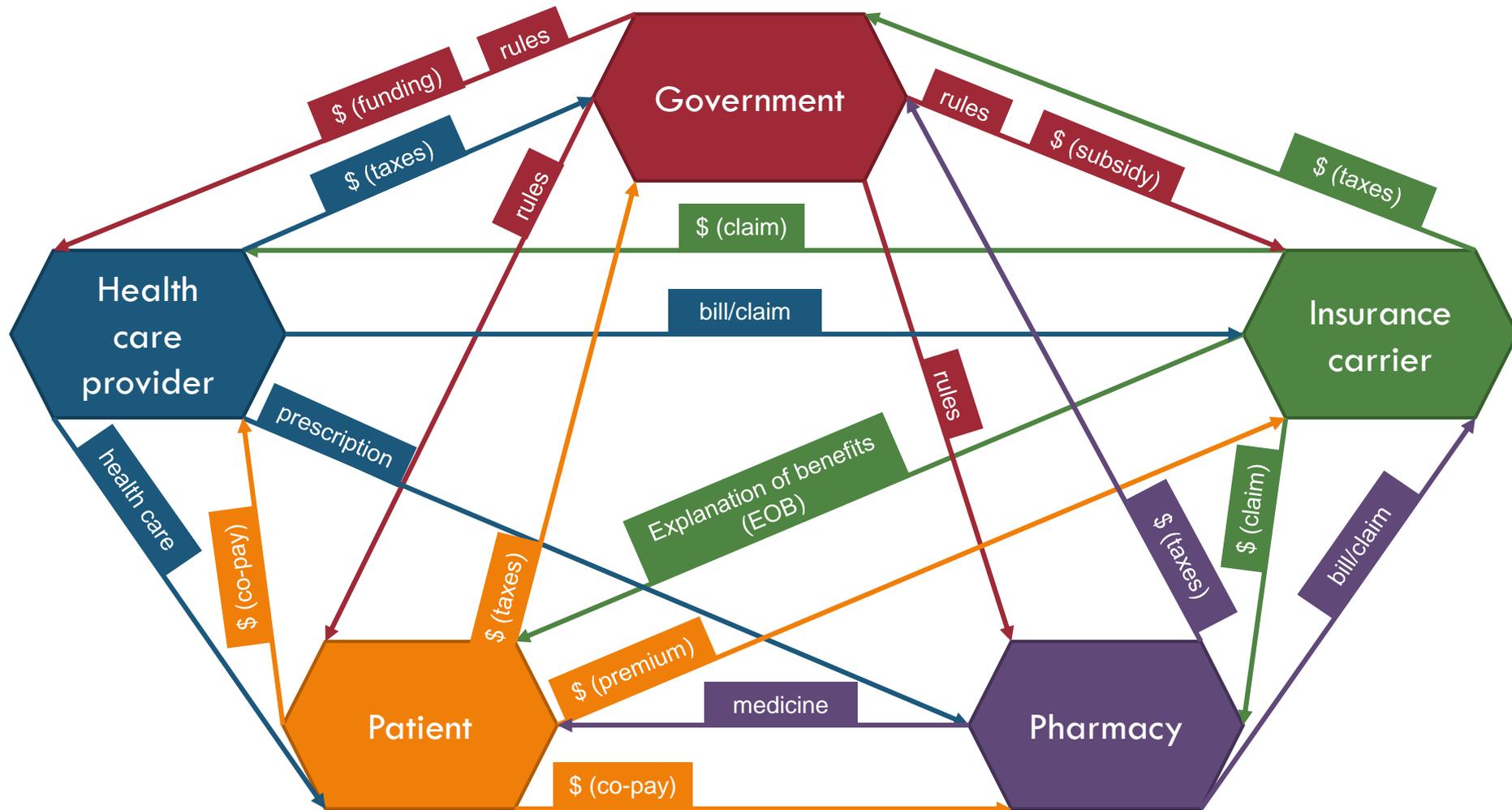
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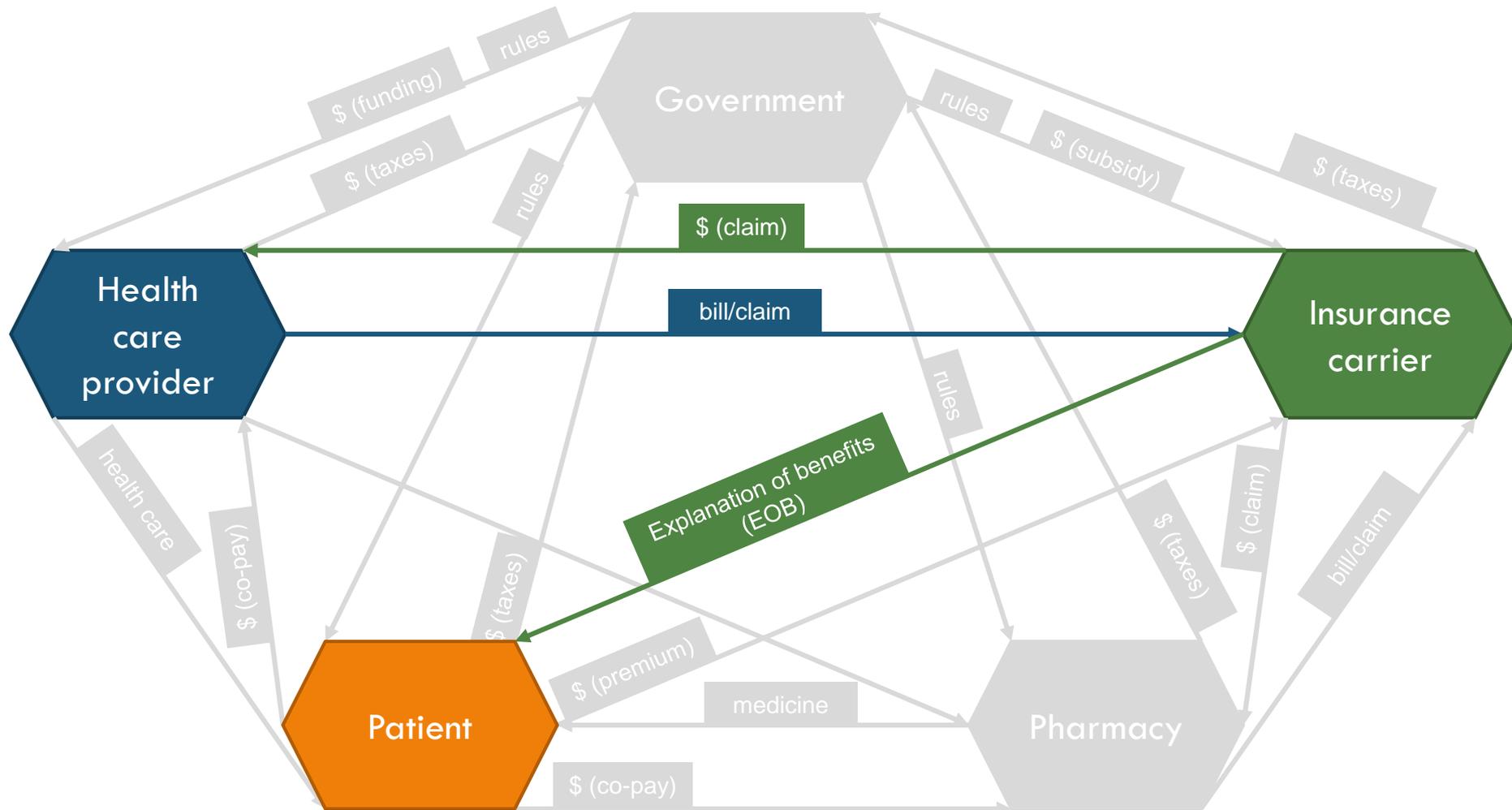
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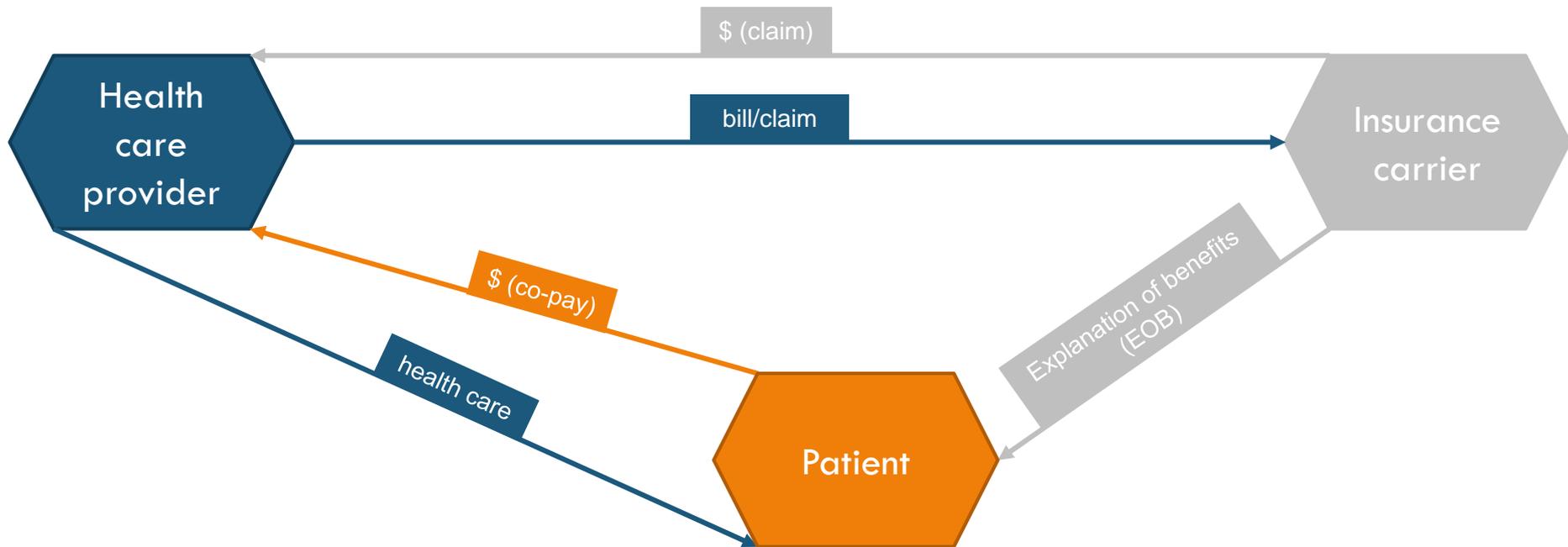
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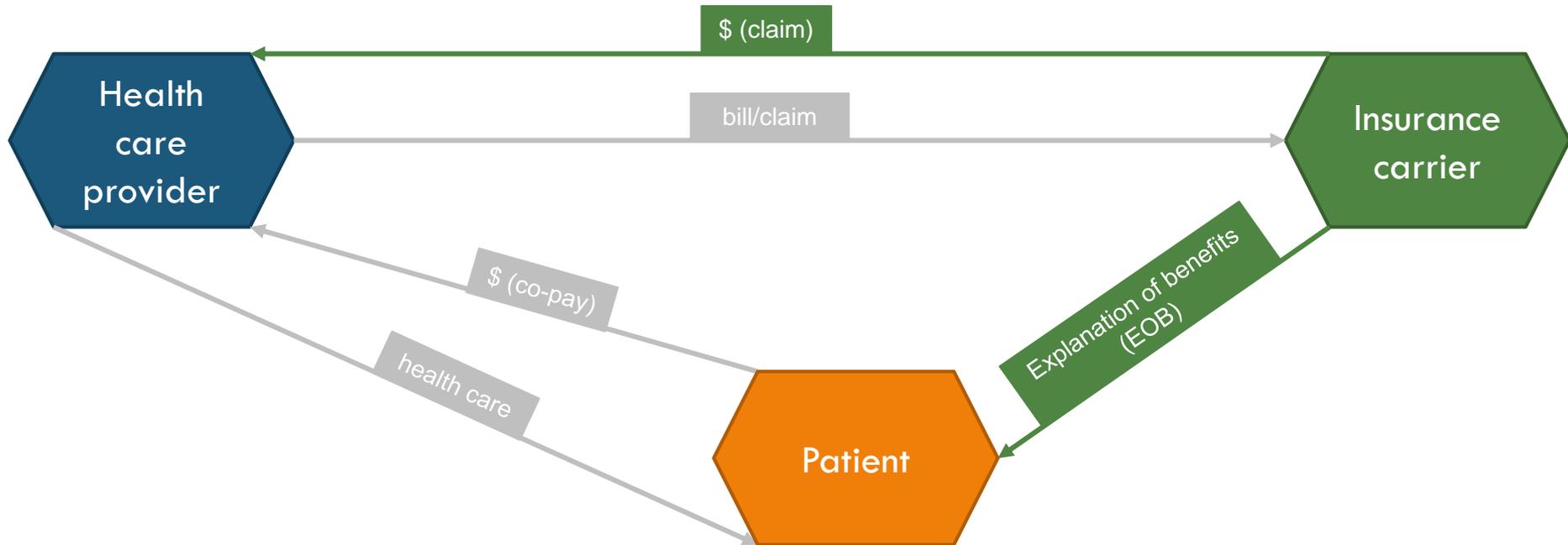


The Patient-Provider-Payer relationship



- Each time you have a doctor visit, the doctor's office sends a bill to the insurance company. The bill includes a **diagnosis code** and a **procedure code** for everything that happened – throat swab, blood test, check-up.

The Patient-Provider-Payer relationship



- The insurance carrier (or plan administrator) then checks the bill to make sure the diagnosis codes and procedure codes line up correctly. If everything looks good, the doctor gets a check and you get an Explanation of Benefits (EOB) detailing the costs and how much you owe after the insurance pays its part.

Down the Insurance Rabbit Hole

- Example:
 - ▣ Diagnosis: broken leg
 - ▣ procedure code: bone-setting
 - ▣ Computer says: Ok!
 - ▣ Result: send payment to doctor and EOB showing **allowed amount**

- Example
 - ▣ Diagnosis: broken leg
 - ▣ Procedure code: removal of lung
 - ▣ Computer says: no way!
 - ▣ Result: no payment and send EOB explaining why **claim denied**

With trans exclusions...

- Even if a plan has no exclusions for transition-related care, you may still receive a claim denial
 - ▣ Why? No one told the computer.
- Example:
 - ▣ Diagnosis code: 302.85 (Gender identity disorder)
 - ▣ Procedure: mastectomy
 - ▣ Computer says: no way!
 - ▣ Result: claim denial

So how do you get your care covered?

- Coming up next...

Where and when is trans care covered by health insurance?

Private Company Insurance

Federal Employee Health Plans

Public Insurance (Medicaid, Medicare, VA)

Implementation Concerns

- Important to clarify which treatments are being covered. While we've seen progress in some places, many treatments continue to be categorically denied to treat GD.
 - ▣ Breast reconstructive surgery (aka breast augmentation for transgender women)
 - ▣ FFS
 - ▣ Hair removal
- Lack of available providers
- Cultural competency

Private Insurance

Insurance Division Bulletins

Affordable Care Act (Section 1557)

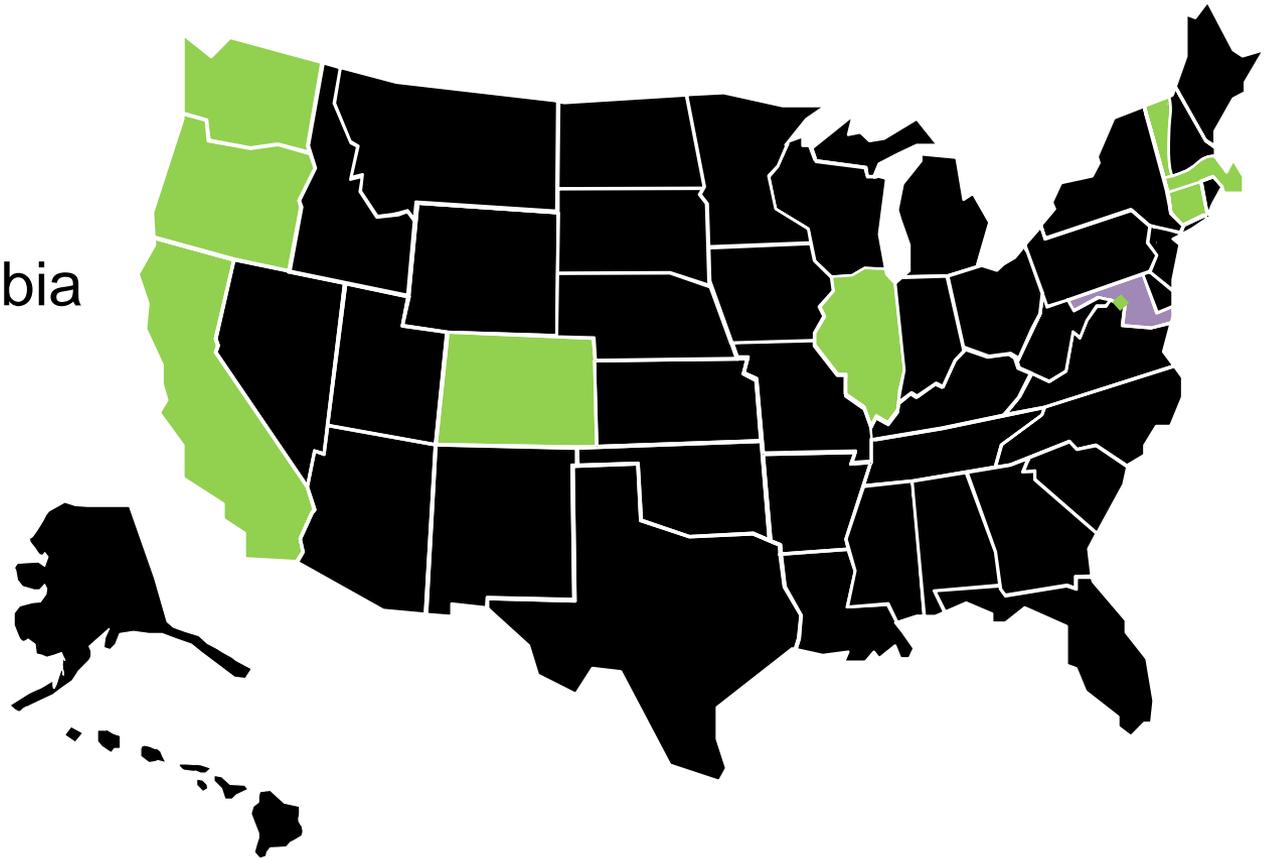
Self-Insured Plans

Insurance Division Bulletins

- Insurance guidance to insurers about the application of state law.
- States have gender identity non-discrimination provisions, especially public accommodations laws.
- Applies to fully managed plans (not self-insured plans).

States with bulletins banning blanket exclusions

- California
- Colorado
- Connecticut
- District of Columbia
- Illinois
- Maryland*
- Massachusetts
- Oregon
- Vermont
- Washington



California's Bulletin

- *The Department directs health plans to ensure that individuals are not denied access to medically necessary care because of the individual's gender, gender identity or gender expression.*
- <http://transgenderlawcenter.org/wp-content/uploads/2013/04/DMHC-Director-Letter-re-Gender-NonDiscrimination-Requirements.pdf>

Oregon's Bulletin

- *A health insurer may not deny or limit coverage or deny a claim for a procedure provided for GD if the same procedure is allowed in the treatment of another non-GID related condition.*
- <http://www.oregon.gov/DCBS/insurance/legal/bulletins/Documents/bulletin2012-01.pdf>

Colorado's Bulletin

- *A carrier may not: deny, exclude, or otherwise limit coverage for medically necessary services, as determined by an individual's medical provider, if the item or service would be provided to another individual without regard to their sexual orientation (transgender status).*
- <http://www.one-colorado.org/wp-content/uploads/2013/03/B-4.49.pdf>

Affordable Care Act (highlights)

- Insurance carriers can't refuse to insure any person because of any **pre-existing condition**
- Requires most plans to include 10 “essential health benefits”, including preventative care
- Creates state health exchanges
 - ▣ usually managed by the state insurance division
- Medicaid expansion

ACA, Section 1557

- 1557 prohibits discrimination based on gender identity or expression in any healthcare setting that receives funding from HHS in any form.
 - ▣ Enforcement mechanisms pending (regulations)
- Section 1557 is the first federal civil rights law to prohibit sex discrimination in health care
- If you have been discriminated against based on gender identity, you may file a complaint.

Companies Offering

- More and more companies are opting for inclusive coverage.
 - ▣ 22% of Fortune 100 companies now cover some transition related health care
 - ▣ HRC's Corporate Equality Index- Perfect score
- How to Negotiate for health care coverage:
 - ▣ Medical necessity & cost/utilization rates
 - ▣ <http://transgenderlawcenter.org/issues/health/healthinsurance>



Federal Employee Health Benefits

- Providers given the option whether to include in 2015 (Northern CA already offers)
- Removed exclusions:
 - Aetna nationwide
 - Kaiser Permanente of the Mid-Atlantic states
 - Foreign Service Benefit Plan
- Kept exclusions:
 - Blue Cross

Public Insurance

Medicaid

Medicare

Veterans Administration

Medicaid

- Medicaid: State level governmental health care program jointly funded by federal & state money generally to people who are low income.
 - States whose Medicaid programs cover some transition-related care:
 - California
 - Connecticut
 - District of Columbia
 - Maryland
 - Massachusetts
 - Minnesota
 - Oregon
 - Vermont
 - Washington

Medicare

- Medicare: National health insurance program for people 65 and older and people with disabilities
 - May 2014: overturned 30-year-old National Coverage Determination that banned coverage for sex reassignment surgeries
 - Requests supposed to be reviewed case-by-case for medical necessity
 - Implementation in pieces
 - Policy guidelines (“local coverage determinations”) issued from Medicare contractors region by region

Veterans Administration

- *It is VHA policy that medically necessary care is provided to enrolled or otherwise eligible transgender Veterans, including hormonal therapy, mental health care, preoperative evaluation, and medically necessary post-operative and long-term care following sexual reassignment surgery.*
- http://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=2863

Appealing Insurance Denials

Private and public insurance

General Best Practices

- Determine what kind of plan you have (will determine where you appeal)
- Figure out the appeals process outlined in your plan. Look for deadlines
- Obtain individualized letters from your health care provider and primary care physician
 - General statements about medical necessity are helpful, but critical to have something specifically relating to your individual health care needs

Internal Appeal

- Documents to consider submitting
 - Letter from your mental health care therapist stating diagnosis and medical necessity of the treatment
 - Letter of support from your primary care provider
 - WPATH standards of care
 - Professional organization statements on medical necessity.
 - <http://www.lambdalegal.org/publications/trans-insurance>

State Insurance Divisions

1. Internal an internal appeal with your insurance carrier
2. File a complaint with the Insurance Division
 - Examples:
 - California:
http://www.dmhc.ca.gov/FileaComplaint/IndependentMedicalReviewComplaintForm.aspx#.VH_ljdLF-So
 - Oregon:
<http://www.oregon.gov/DCBS/insurance/gethelp/Pages/fileacomplaint.aspx>

Private plans: Self funded

- Plans not managed by state level insurance regulation (state bulletins don't apply).
- Negotiate for transition related care
- Internal appeals process
- ERISA
 - Department of Labor
 - To file a complaint:
 - <https://www.askebsa.dol.gov/WebIntake/Home.aspx>

HHS Office of Civil Rights

Complaints

- If your insurance carrier receives federal funding
 - E.g., Medicaid or Medicare, or a state exchange plan (receives federal subsidies), others
- File in writing or email
- Name the health care provider and describe why you believe they have violated the law.
- Must be filed within 180 days of when you knew the action occurred.
- <http://www.hhs.gov/ocr/civilrights/complaints/index.html>

Federal Employer Health Benefits

- Internal appeals process
- Consider filing an Equal Employment Opportunity (EEO) complaint with the Office of Personnel Management (OPM).
- Contact us for information on how to file.

Medicaid Appeals

- Appealing a Medicaid denial
 - Notice of State Agency Action required
 - Right to a State Agency Hearing
 - Must request within 90 days of date of notice.
 - State might require an evidentiary hearing and if adverse, can request a state hearing
 - State hearing
 - Offer testimony
 - Each side has an opportunity to ask questions

Medicare Appeals

- Ask your doctor or health care provider for information that may help your case
- See your plan materials or contact your plan for your appeal rights.
- 5 Levels
 1. Reconsideration from your plan
 2. Review by an Independent Review Entity
 3. Review by an Administrative Law Judge
 4. Review by the Medicare Appeals Council
 5. Judicial review by a federal district court
- <http://www.medicare.gov/claims-and-appeals/file-an-appeal/medicare-health-plan/medicare-health-plan-appeals.html>

Veterans Health Administration

- File a Notice of Disagreement at a regional office.
 - <http://www.benefits.va.gov/benefits/offices.asp>
(list of regional field offices)

- For a booklet on the VHA appeals process:
 - <http://www.bva.va.gov/docs/Pamphlets/010202A.pdf>

Cooperating attorneys



- Contact Transgender Law Center for a list of trans competent cooperating attorneys in your area.

Questions?

Thank you!

www.transgenderlawcenter.org/help



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