BIOLOGICS, BIOSIMILARS AND YOUR BENEFITS - BENEFITS CANADA
LEGAL PERSPECTIVE

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BIOLOGICS, BIOSIMILARS AND YOUR BENEFITS
LEGAL CONSIDERATIONS

- RISK ENVIRONMENT
- CLAIMS LIMITATIONS & RISK
- LEGAL RISK TRANSFER/ FUNDING
Patient advocacy is on the rise
Private interests are engaged
Psychological/ cost barriers are dropping

Expect more challenges!
LITIGATION
NEW CAUSES OF ACTION

DISPUTE: LIABILITY FOR A DEPENDANT SPOUSE RARE DISEASE CLAIM

PLAINTIFF: ASO DRUG PLAN SPONSOR (Plan B)

DEFENDANT: INSURER (Plan A)

CAUSE OF ACTION: EQUITABLE CONTRIBUTION (I.E. UNJUST ENRICHMENT)

ANOTHER PLAN/ INSURER MAY SUE YOU
HUMAN RIGHTS COMPLAINTS
RISING CHALLENGES

**DISPUTE:** NS HUMAN RIGHTS COMPLAINT

**DEFENDANT:** TRUSTEED PLAN (WITH DRUG APPEALS PROCESS)

**JUDGEMENT:** COVERAGE OF MEDICAL MARIJUANA (OVERTURNED ON APPEAL)

YOU NEED NOT COVER “THE SUN, THE MOON AND THE STARS”… BUT RISKS REMAIN
KEY PLAN LIMITATIONS

• Managed Drug Formulary
• Special Authorization Criteria/ Step Therapy
• Plan Reimbursement Limits:
  – Plan Maximums
  – Deemed Interchangeability/
    Lowest Cost Alternate

LEGAL RISK

• Affected claimants
• Impacts on access
• Employment contract/ terms
• Collective Bargaining Agreement

• Member communications/
  plan documentation
• Plan funding
CLAIM DECLINE CHALLENGES
CONTRACT LAW PRINCIPLES

CONTRA-PROFERENTEM:
Ambiguity is resolved against the drafter

ASO PLAN SPONSOR = DRAFTER
CLAIM DECLINE CHALLENGES
TRUST LAW PRINCIPLES

FIDUCIARY LIABILITY:
Highest Standard at Law

ASO PLAN SPONSOR:
LIMITS ON DELEGATION
TO THE CLAIMS PAYER
CLAIM DECLINE CHALLENGES
CONTRACT MODERNIZATION PRIORITIES

SPECIFIC AREAS OF CONCERN
• Drug Formulary
• Special Authorization
• Lowest Cost Alternate
• Claims Appeals/ Exceptions

MEMBER COMMUNICATIONS:
Mitigating Legal & Reputational Risk
OVERSIGHT/ RISK
UNDERWRITING ARRANGEMENTS: LEGAL RISK

Insured
100% Insurer Risk

NON REFUND ACCOUNTING

REFUND ACCOUNTING

Self-Insured
100% Plan Sponsor Risk

ADMINISTRATIVE SERVICES ONLY

NEW LEGAL RISK TRANSFER OPTIONS
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Q&A