

HEALTH WEALTH CAREER

BIOLOGICS, BIOSIMILARS AND YOUR BENEFITS - BENEFITS CANADA

LEGAL PERSPECTIVE

NOVEMBER 21 , 2018

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MAKE TOMORROW, TODAY



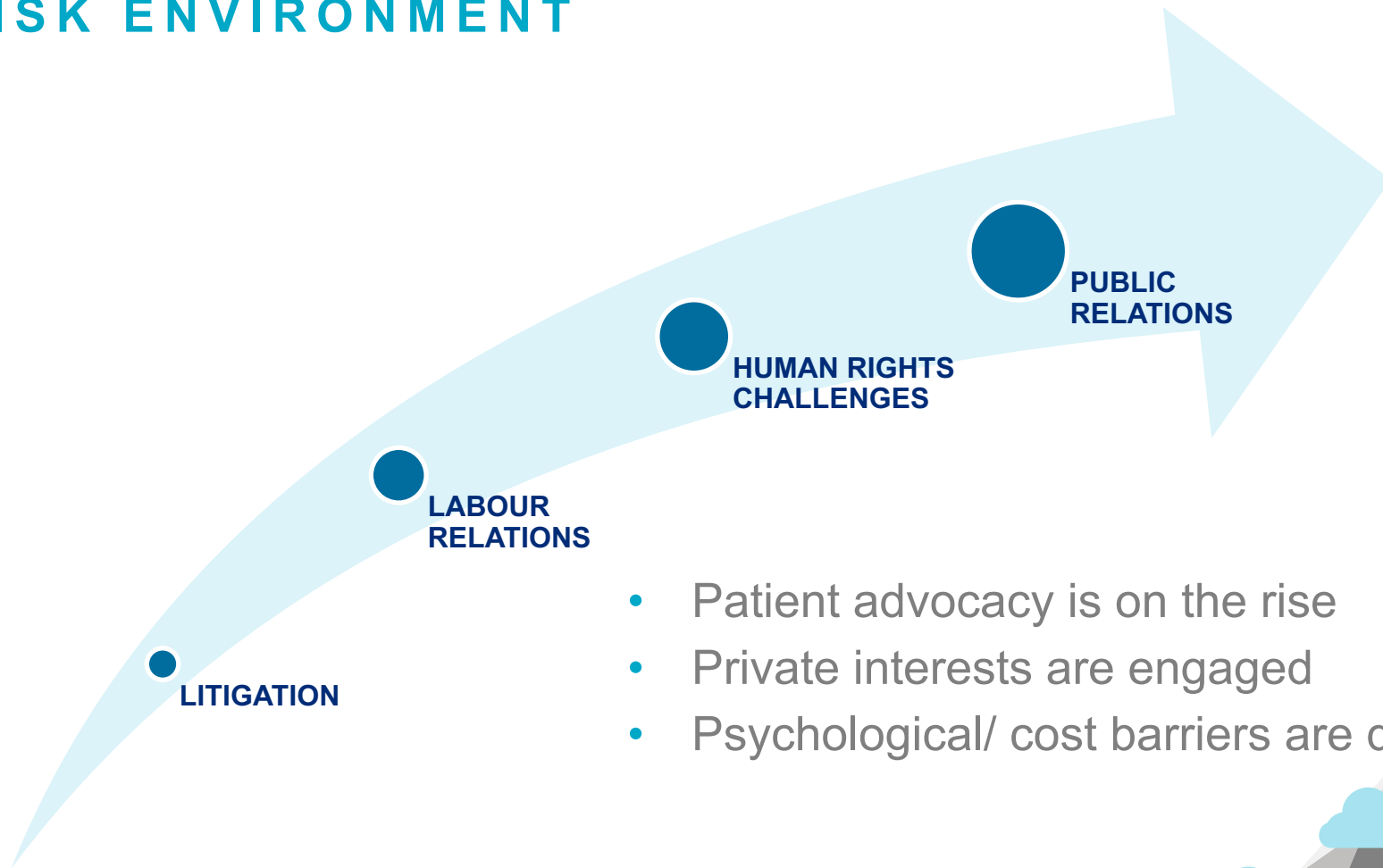
BIOLOGICS, BIOSIMILARS AND YOUR BENEFITS

LEGAL CONSIDERATIONS

- RISK ENVIRONMENT
- CLAIMS LIMITATIONS & RISK
- LEGAL RISK TRANSFER/ FUNDING

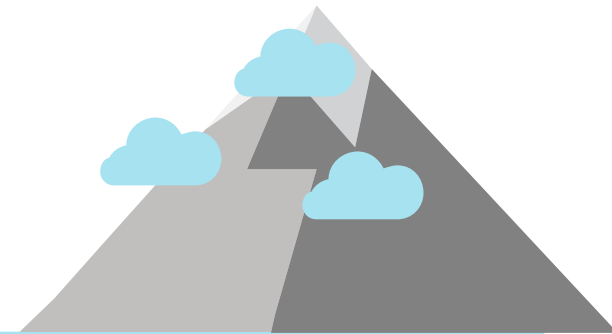


RISK ENVIRONMENT

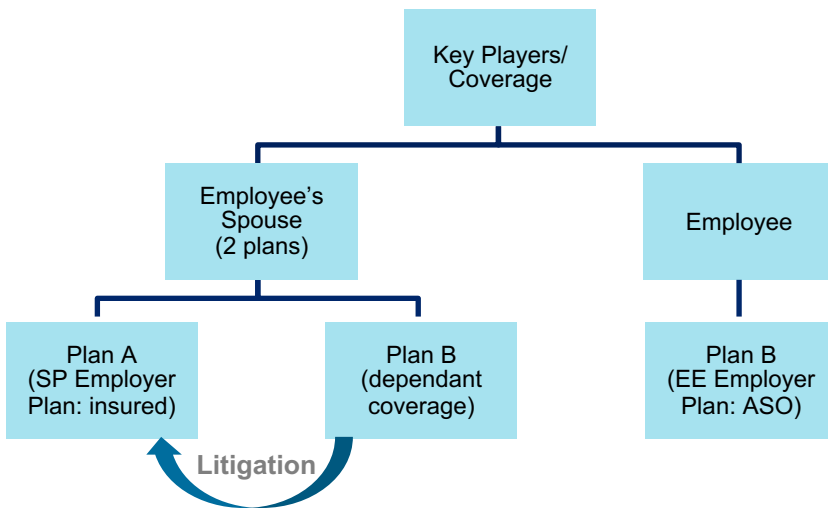


- Patient advocacy is on the rise
- Private interests are engaged
- Psychological/ cost barriers are dropping

**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**

BIOLOGIC & BIOSIMILAR CLAIMS LIMITATIONS RISK EXPOSURE

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



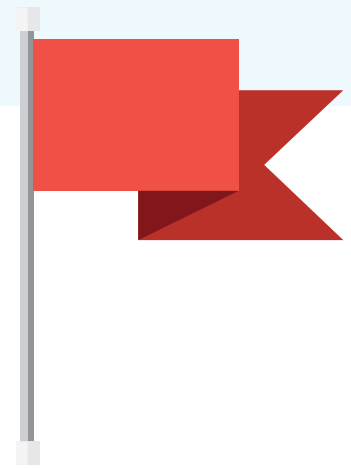
**MEMBER
COMMUNICATIONS:**

Mitigating Legal &
Reputational Risk

OVERSIGHT/ RISK UNDERWRITING ARRANGEMENTS: LEGAL RISK



NEW LEGAL RISK TRANSFER OPTIONS



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Q&A

