

10-3-1116. Remedies for unreasonable delay or denial of benefits - required contract provision - frivolous actions - severability.

(1) A first-party claimant as defined in section [10-3-1115](#) whose claim for payment of benefits has been unreasonably delayed or denied may bring an action in a district court to recover reasonable attorney fees and court costs and two times the covered benefit.

(2) An insurance policy, insurance contract, or plan that is issued in this state that offers health or disability benefits shall not contain a provision purporting to reserve discretion to the insurer, plan administrator, or claim administrator to interpret the terms of the policy, contract, or plan or to determine eligibility for benefits.

(3) An insurance policy, insurance contract, or plan that is issued in this state shall provide that a person who claims health, life, or disability benefits, whose claim has been denied in whole or in part, and who has exhausted his or her administrative remedies shall be entitled to have his or her claim reviewed de novo in any court with jurisdiction and to a trial by jury.

(4) The action authorized in this section is in addition to, and does not limit or affect, other actions available by statute or common law, now or in the future. Damages awarded pursuant to this section shall not be recoverable in any other action or claim.

(5) If the court finds that an action brought pursuant to this section was frivolous as provided in article [17](#) of title [13](#), C.R.S., the court shall award costs and attorney fees to the defendant in the action.

(6) If any provision of this section or its application to any person or circumstance is held illegal, invalid, or unenforceable, no other provisions or applications of this section shall be affected that can be given effect without the illegal, invalid, or unenforceable provision or application, and to this end the provisions of this section are severable.

(7) The general assembly declares that this section is a law regulating insurance.

Source: L. 2008: Entire section added, p. 2173, § 5, effective August 5.

ANNOTATION

This section is not expressly preempted by the federal Employee Retirement Income Security Act of 1974 (ERISA). *McClenahan v. Metro. Life Ins. Co.*, 621 F. Supp. 2d 1135 (D. Colo. 2009).

Application of this section to the dispute, however, would constitute an improper retrospective application of the statute. The statute became effective after all of the events relevant to the case had occurred, including the filing of the lawsuit. *McClenahan v. Metro. Life Ins. Co.*, 621 F. Supp. 2d 1135 (D. Colo. 2009).
