

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105

REG-2009-00025

March 25, 2011

PROPOSED TEXT OF UNINSURED MOTORIST BODILY INJURY COVERGE ENDORSEMENT¹
CALIFORNIA LOW COST AUTOMOBILE INSURANCE PROGRAM

¹ The proposed changes amend the California Automobile Insurance Low Cost Program Plan of Operations approved by the Commissioner. Deletions appear in ~~strike through~~ and additions appear in underline.

**CALIFORNIA LOW COST AUTOMOBILE UNINSURED MOTORISTS
BODILY INJURY COVERAGE ENDORSEMENT**

This endorsement is part of *your* Policy. Except for the changes this endorsement makes, all other terms of *your* Policy remain the same and apply to this endorsement.

Named Insured(s) _____

Policy Number _____

Effective Date _____

12:01 A.M. Standard Time

SCHEDULE

Limits—Uninsured Motorists Bodily Injury Coverage	Premium
\$ 10,000 Each Person	\$ _____
\$ 20,000 Each Accident	

It is agreed that this Policy is changed as follows:

I. The following definitions are added to Section II. DEFINITIONS:

A. *Uninsured Motor Vehicle* means a land motor vehicle that is

1. not insured or bonded for *bodily injury* liability at the time of the accident; or
2. insured or bonded for *bodily injury* liability at the time of the accident, but the insuring or bonding company
 - a. denies coverage, or
 - b. is or becomes insolvent within one year of the accident; or
 - c. admits coverage conditionally or with reservation, or
3. an *underinsured motor vehicle*; or
4. a hit-and-run land motor vehicle whose owner or driver cannot be identified and that strikes *you*, a *household member*, or the vehicle an insured is *occupying*.

An *uninsured motor vehicle* does not include a land motor vehicle

- a. owned by or *leased to you* except for a vehicle insured for this coverage on a primary basis under this Policy when that vehicle is being operated, or is caused to be operated, without *your* consent in connection with any criminal activity that is documented in a police report and to which *you* are not a party.
- b. owned by or *leased to any household member* except for a vehicle insured for this coverage on a primary basis under this Policy when that vehicle is being operated, or is caused to be operated, without that *household member's* consent in connection with any criminal

activity that is documented in a police report and to which that *household member* is not a party.

- c. furnished or available for the regular use of *you* or any *household member*
- d. owned or operated by a self-insurer under any motor vehicle law, except a self-insurer that is or becomes insolvent;
- e. owned by the United States of America, Canada, a state or political subdivision of any of those governments or an agency of any of the foregoing any government or any of its political subdivisions, units, or agencies;
- f. designed or modified for use mainly off public roads except while on public roads;
- g. while located for use as a residence or premises.

B. *Underinsured Motor Vehicle* means a land motor vehicle that is insured or bonded for *bodily injury* liability at the time of the accident, but the limits of liability are less than the limits of liability of this coverage.

II. The following coverage is added:

UNINSURED MOTORISTS BODILY INJURY COVERAGE

1. This Policy provides Uninsured Motorists Bodily Injury Coverage only if a premium for Uninsured Motorists Bodily Injury Coverage appears on the Schedule or the Policy Declarations.
2. **Who Is An Insured**
The following are insureds:
 - a. *You*
 - b. Any *household members*

- c. Any other person while **occupying your insured auto**, a **replacement auto**, or a **temporary substitute auto**
- d. Any person entitled to recover damages because of **bodily injury** to which this coverage applies sustained by an insured under paragraphs 2. a through 2. c above

However, an insured does not include any person described in 2.a through 2.d above who sustains **bodily injury** while **your insured auto**, a **replacement auto**, or a **temporary substitute auto** is being used as a public or livery conveyance. This does not apply to shared-expense car pools.

3. Coverage

- a. **We** will pay, subject to the limits of liability, compensatory damages that an insured is legally entitled to collect from the owner or operator of an **uninsured motor vehicle** because of **bodily injury** sustained by an insured as a result of an accident.

The **bodily injury** must arise out of the ownership, maintenance, or use of an **uninsured motor vehicle**.

- b. If the **bodily injury** is caused by an **uninsured motor vehicle**, **we** will pay only after the limits of any bonds or policies providing **bodily injury** liability coverage have been exhausted by payment of judgments or settlements.
- c. **We** are not bound by any judgment against any person or organization resulting from any suit brought without **our** written consent.

4. Exclusions—What Is Not Covered

There is no Uninsured Motorists Bodily Injury Coverage for the following:

- a. Any insured while **occupying** any land motor vehicle not insured under this coverage that is owned by or **leased** to that insured
- b. Any insured when struck by any land motor vehicle that is owned by or **leased** to that insured

This exclusion (4. b) does not apply if all of the following conditions are met:

- (1) The land motor vehicle is being operated, or is caused to be operated, by a person without that insured's consent in connection with a criminal activity.

- (2) That insured is not a party to that criminal activity.
- (3) The criminal activity is documented in a police report.

- c. Any **household member** while **occupying** or when struck by any land motor vehicle that is owned by or **leased** to **you** and insured for this coverage on a primary basis under another policy
- d. Any insured if that insured, or the legal representative, settles the **bodily injury** claim without **our** written consent

This exclusion (4. d) does not apply when the settlement is made with the insurer of an **underinsured motor vehicle**.

- e. To the extent it benefits any insurer or self-insurer under any workers' compensation, disability benefits, or similar law
- f. To the extent it benefits any governmental body or agency
- g. Any insured while using a land motor vehicle without reasonable belief that he or she has a right to do so
- h. Punitive or exemplary damages
- i. Any insured while **occupying** a land motor vehicle rented or **leased** by that insured when it is being used as a public or livery conveyance

5. Limits of Liability

- a. The maximum amount of Uninsured Motorists Bodily Injury Coverage is shown on the Schedule or Policy Declarations under Limits—Uninsured Motorists Bodily Injury Coverage, Each Person, Each Accident.

- (1) Each Person—This is the maximum amount of coverage for all damages due to **bodily injury** to one person in any one **auto** accident. This maximum amount includes all injury and damages to others resulting from that **bodily injury** including, but not limited to, damages for care, loss of services, or death.
- (2) Each Accident—This is the maximum amount of coverage, subject to the amount shown for Each Person, for all damages due to **bodily injury** to two or more persons in the same accident.

b. If the damages are caused by an ***underinsured motor vehicle***, the limits of liability ~~and damages~~ will be reduced by the following:

- (1) All amounts paid by or on behalf of the owner or operator of the ***underinsured motor vehicle***
- (2) ~~All amounts paid or payable under this or any other automobile policy for medical payments coverage~~
- (3) All amounts payable under the ***bodily injury*** liability coverage provided by this Policy

c. The limits shown on the Schedule or Policy Declarations for Uninsured Motorists Bodily Injury Coverage may not be added to the limits for similar coverage applying to other vehicles to determine the limit of insurance coverage available. This applies regardless of the number of

- (1) vehicles involved;
- (2) insureds;
- (3) claims made;
- (4) vehicles or premiums shown on the Schedule or the Policy Declarations; or
- (5) premiums paid.

This means that no stacking or aggregation of Uninsured Motorists Bodily Injury Coverage will be allowed by this endorsement.

d. No person will recover duplicate payments from ***us*** for the following:

- (1) The same elements of loss under this Policy
- (2) Any amount paid or payable to or for the benefit of the insured by or for any person or organization who is or may be held legally liable for the ***bodily injury*** to the insured
- (3) Any element of loss for which that person is entitled to receive payment under any workers' compensation law exclusive of non-occupational disability benefits

6. Other Coverage

a. If two or more insurance policies issued by ***us*** to ***you*** apply to the same accident, the total limits of liability under all such policies will not exceed that of the policy with the highest limits of liability.

b. If other similar coverage is available to an insured, the total limits of liability available from all policies provided by all insurers, either on an excess or primary basis, will not exceed the highest limit available for any one vehicle.

c. Subject to 6.b above, any Uninsured Motorists Bodily Injury Coverage applicable under this endorsement will apply on an excess basis if an insured sustains ***bodily injury*** while ***occupying*** a vehicle not owned by or ***leased*** to that insured.

d. Subject to 6.b and 6.c above, if this endorsement and one or more other policies provide coverage

(1) on a primary basis, ***we*** are liable only for ***our*** share. ***Our*** share is that percent of the damages payable on a primary basis that the limits of liability of this endorsement bears to the total of all applicable uninsured motorists bodily injury coverage provided on a primary basis.

(2) on an excess basis, ***we*** are liable only for ***our*** share. ***Our*** share is that percent of the damages payable on an excess basis that the limits of liability of this endorsement bears to the total of all applicable uninsured motorists bodily injury coverage provided on an excess basis.

7. Arbitration

a. If ***we*** and the insured do not agree whether that insured is legally entitled to recover damages or on the amount of damages to which that insured is entitled, the disagreement will be settled by arbitration. Disagreements concerning coverage may not be arbitrated.

b. Either party may make a written demand for arbitration. The arbitration will be conducted by a single impartial arbitrator.

c. Each party will pay any expenses that party incurs. The cost of the arbitrator will be shared equally by both parties.

d. The decision of the arbitrator as to the insured's right to recover damages or the amount of such damages will be binding.

III. Additional Duties under Uninsured Motorists Bodily Injury Coverage

The following duties apply in addition to those set forth in Section IV. Duties After An Accident:

1. An insured seeking coverage must do the following:
 - a. Authorize **us** to obtain medical reports and records.
 - b. Submit to examination by physicians chosen and paid by **us** as often as **we** reasonably may require.
 - c. Submit a proof of loss when required by **us**.
 - d. Send **us** copies of all legal papers if a suit is brought.
 - e. Promptly report a hit-and-run accident to the police.
2. An insured seeking coverage for **bodily injury** involving an **underinsured motor vehicle** must provide us with the following:
 - a. A copy of the complaint, by personal service or certified mail, if that insured brings action against the owner or operator of the **underinsured motor vehicle**
 - b. All pleadings and depositions for copying, or furnish **us** copies of the documents at **our** expense
These documents must be provided to **us** within a reasonable time period.
 - c. Proof that the limits of liability under any bonds or policies have been exhausted by payments of judgments or settlements

IV. Section V. GENERAL PROVISIONS

- A. The **Our Right To Recovery Payments** provision is replaced by the following for Uninsured Motorists Bodily Injury Coverage:
 1. If the damages are caused by an **uninsured motor vehicle**, when **we** make payment to or on behalf of any person, any right of that person to recover from another passes to **us**. Such person must

- a. do whatever is necessary to help **us** exercise those rights;
- b. do nothing after loss to prejudice those rights.

2. If the damages are caused by an **underinsured motor vehicle**, when a person has been paid by **us** under this Policy and also recovers from another source, the amount recovered from the other source must be held by that person in trust for **us** and reimbursed to **us** to the extent of **our** payment.

- B. The **Suit Against Us** provision is replaced by the following for Uninsured Motorists Bodily Injury Coverage:

There is no right of action against **us**

1. until all the terms of this Policy have been met;
2. unless one of the following actions are taken within two years from the date of the accident:
 - a. Suit has been filed in the proper court against the uninsured motorist.
 - b. An agreement as to the amount due under this coverage has been made.
 - c. The insured or his or her legal representative has formally started arbitration proceedings by making a written request, sent to **us** by certified mail, return receipt requested.

If a suit has been filed against the uninsured motorist, written notice of the suit must be given to **us** within a reasonable time after the insured knew or should have known that the motorist was uninsured. This notice will not be required to be given earlier than two years from the date of accident. Failure of the insured or his or her legal representative to provide such notice will not be a basis for a denial of coverage unless such failure prejudices **our** rights.

This provision does not limit a right of action resulting from **bodily injury** caused by an **underinsured motor vehicle**.

Instructions

The provisions of this endorsement must be attached to, incorporated in, or overprinted upon every applicable policy affording Uninsured Motorists Bodily Injury Coverage issued in accordance with the provisions of the California Low Cost Automobile Insurance Program.