

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE

SUPERINTENDENT OF INSURANCE
Russell Toal



DEPUTY SUPERINTENDENT
Jennifer A. Catechis

BULLETIN 2021-024

November 9, 2021

TO: ALL AUTOMOBILE INSURERS COVERING RISKS LOCATED IN NEW MEXICO

RE: REQUIRED DISCLOSURE AND EXCLUSION RELATED TO UNINSURED MOTORIST/UNDERINSURED MOTORIST (“UM/UIM”) COVERAGE TO TAKE EFFECT IMMEDIATELY

THIS BULLETIN is issued in accordance with *Crutcher v. Liberty Mut. Ins. Co.*, NMSC Docket No. S-1-SC-37478.

The New Mexico Supreme Court recently issued its decision in the above-referenced case, concluding, in relevant part, as follows:

For the foregoing reasons, we conclude that UM/UIM coverage at the minimum level is permitted because the law not only allows, but requires, it to be sold as was done so here. However, such coverage is illusory because it is misleading to the average policyholder. *As such, we will now require every insurer to adequately disclose the limitations of minimum limits UM/UIM policies in the form of an exclusion in its insurance policy.* If the insurer provides adequate disclosure, it may lawfully charge a premium for such coverage. (Emphasis added).

This Bulletin serves as notice that the New Mexico Office of Superintendent of Insurance (OSI) is requiring all automobile insurers covering risks located in New Mexico to adopt, on an immediate basis, a Disclosure and an Exclusion for use in **every** automobile policy, whether such policy is now in existence or is to be issued in the future, as set forth in this Bulletin. Because of the immediacy of the Supreme Court’s requirement, OSI is providing language that insurers may use at their discretion. This language is found in Appendices A and

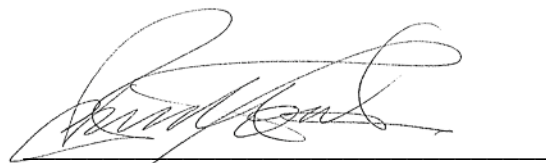
B attached hereto. To facilitate immediate inclusion of the optional OSI language in policy forms, if insurers choose to use that language, insurers may file their forms with the prescribed language on a “use and file” basis through the SERFF system. If using the unaltered OSI language, insurers shall develop and distribute the new Disclosure and Exclusion to existing policyholders as soon as practicable, but not later than thirty (30) days from the date of this Bulletin and shall file the new forms in SERFF within ninety (90) days of the date of this Bulletin. These requirements are in lieu of the requirements established through the OSI form review process as set forth in NMSA 1978, § 59A-18-12 and OSI rules.

Insurers may propose language to be used in addition to the language provided in Appendices A and B, or they may develop their own language without using the OSI language. If an insurer elects to add language or to develop its own language, the insurer shall submit its language for OSI review in accordance with the normal form review process set forth in NMSA 1978, § 59A-18-12 and OSI rules, and the normal sixty (60) day statutory review period shall apply. Whether the insurer adds to the OSI language or develops its own language, the insurer must submit its proposed Disclosure and Exclusion language in its entirety for review. If using their own proposed language, whether in addition to or instead of the OSI language, insurers shall develop and distribute the new Disclosure and Exclusion to existing policyholders as soon as practicable, but not later than thirty (30) days, after OSI approves the language or after the end of the sixty (60) day statutory period, whichever occurs first.

If an insurer has already filed via SERFF its own language to address the court decision but wishes to adopt the OSI language in Appendices A and B, the insurer may withdraw its filing with a note that OSI language will be adopted instead. For specific questions regarding this Bulletin, please contact Melissa Robertson via email to: melissa.robertson@state.nm.us.

ISSUED this 9th day of November, 2021.

SUPERINTENDENT OF INSURANCE



RUSSELL TOAL

APPENDIX A:
Required Disclosure

LIMITATIONS OF UNINSURED MOTORIST/UNDERINSURED MOTORIST
(UM/UIM) COVERAGE

Please be aware of the limitations of your Uninsured Motorist/Underinsured Motorist (UM/UIM) coverage. If you suffer a loss with an Uninsured or Underinsured Motorist, the total payment you receive will be limited to the greater of either your UM/UIM limit or the other party's liability coverage limit, subject to other policy provisions. If you have any questions about your coverage, please contact us at [insert contact info].

APPENDIX B:
Required Exclusion

This Automobile Insurance Policy excludes UIM coverage in the event of a loss from a motor vehicle accident in which the total reimbursement you receive from other parties' insurance policies is equal to or in excess of the UM/UIM coverage provided by this Policy. This exclusion is in accordance with New Mexico law, as set forth in *Crutcher v. Liberty Mut. Ins. Co.*, decided on October 4, 2021.