6. AUTOMOBILE INSURANCE POLICY - REGULATIONS [Details]

Cross Reference Note:

For abuse of property insurance, see §18-13-119.5.

§ 10-4-601. Definitions

As used in this part 6, unless the context otherwise requires:

(1) Repealed.

(2) "Complying policy" means a policy of insurance that provides the coverages and is subject to the terms and conditions required by this part 6, and is certified by the insurer and the insurer has filed a certification with the commissioner that such policy, contract, or endorsement conforms to Colorado law and any rules promulgated by the commissioner.

(3) "Converter" means a person other than a named insured or resident relative who operates or uses a motor vehicle in a manner that a reasonable person would determine was unauthorized or beyond the scope of permission given by a named insured or resident relative. In determining whether a person is a converter, the following factors should be considered:

(a) The duration of the person's control over the motor vehicle;

(b) The circumstances surrounding the conduct of the person operating or using the motor vehicle; and

(c) The person's good faith.

(4) "Described motor vehicle" means the motor vehicle described in the complying policy.

(5) "Insured" means the named insured, relatives of the named insured who reside in the same household as the named insured, and any person using the described motor vehicle with the permission of the named insured.

(5.5) "Licensed health-care provider" means a person, corporation, facility, or institution licensed or certified by this state to provide health care or professional services as a hospital, health-care facility, or dispensary or to practice and practicing medicine, osteopathy, chiropractic, nursing, physical therapy, podiatry, dentistry, pharmacy, acupuncture, or optometry in this state, or an officer, employee, or agent of the person, corporation, facility, or institution working under the supervision of the person, corporation, facility, or institution in providing health-care services.

(6) "Motor vehicle" means a "motor vehicle" and a "low-power scooter", as both terms are defined in section 42-1-102, C.R.S.; except that "motor vehicle" does not include a toy vehicle, snowmobile, off-highway vehicle, or vehicle designed primarily for use on rails.

(7) "Nonpayment of premium" means failure of the named insured to discharge when due any obligations in connection with the payment of premiums on the policy, or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

(8) "Owner" means a person who holds the legal title to a vehicle; except that, if the vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of the vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this part 6.

(9) "Person" means every natural person, firm, partnership, association, or corporation.

(10) "Policy" means an automobile insurance policy providing coverage for all or any of the following coverages: Collision, comprehensive, bodily injury liability, property damage liability, medical payments, and uninsured motorist coverage, or a combination automobile policy providing bodily injury liability, property damage liability, medical payments, uninsured motorist, and physical damage coverage, delivered or issued for delivery in this state, insuring a single individual, or husband and wife, or family members residing in the same household, as named insured, and under which the insured vehicles therein designated are of the following types only:

(a) A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers nor rented to others pursuant to the terms of a motor vehicle rental agreement; or

(b) Any other four-wheel motor vehicle with a load capacity of fifteen hundred pounds or less that is not used in the occupation, profession, or business of the insured.

(11) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer or by an admitted company within the same insurance group, or the issuance and delivery of a certificate or notice extending the term of the policy beyond its policy period or term; but any policy with a policy period or term of less than six months shall, for the purpose of this part 6, be considered as if written for a policy period or term of six months; and any policy written for a term longer than one year, or any policy with no fixed expiration date, shall, for the purpose of this part 6, be

considered as if written for successive policy periods or terms of one year, and such policy may be terminated at the expiration of any annual period upon giving twenty days' notice of cancellation prior to such anniversary date, and such cancellation shall not be subject to any other provisions of this part 6.

(12) Repealed.

(13) "Resident relative" means a person who, at the time of the accident, is related by blood, marriage, or adoption to the named insured or resident spouse and who resides in the named insured's household, even if temporarily living elsewhere, and any ward or foster child who usually resides with the named insured, even if temporarily living elsewhere.

(14) "Stacking" has the same meaning set forth in section 10-4-402 (3.5).

History:

Amended by 2016 Ch. 16, §1, eff. 8/10/2016. L. 69: p. 549, § 1. C.R.S. 1963: § 72-30-1. L. 92: (4) added, p. 1759, § 3, effective June 5. L. 95: (2)(a) amended, p. 142, § 2, effective April 7. L. 2003: Entire section amended, p. 1558, § 1, effective July 1; (1) amended and (1.5) and (3.5) added, p. 2554, § 1, effective July 1. L. 2004: (6) amended, p. 11, § 2, effective February 20. L. 2007: (1) and (12) repealed, p. 974, § 3, effective May 18. L. 2009: (6) amended, (HB 09-1026), ch. 281, p. 1253, §1, effective July 1, 2010. L. 2010: (5.5) added, (HB 10-1220), ch. 197, p. 855, §18, effective July 1. L. 2016: (11) amended, (HB 16-1025), ch. 16, p. 36, § 1, effective August 10.

Editor's Note:

Amendments to this section by House Bill 03-1253 and House Bill 03-1188 were harmonized, resulting in the renumbering of provisions of this section.

Case Note:

ANNOTATION

Annotator's note. Since this section is similar to former § 10-4-601 as it existed prior to its 2003 amendment and to § 10-4-703 as it existed prior to the 2003 repeal of part 7 of article 4 of this title, relevant cases construing those provisions have been included in the annotations to this section.

The phrase "unless the context otherwise requires" does not suggest that the definitions contained in this section apply to all uninsured motorist coverage provisions. If such were the case, the language limiting the definitions to "this part 7" would always be overridden

by the exception. State Farm Mut. Auto. Ins. Co. v. Stein, 924 P.2d 1154 (Colo. App. 1996), aff'd, 940 P.2d 384 (Colo. 1997).

Policy provision cannot limit scope of insureds to whom compulsory coverage must be provided. Truck Ins. Exch. v. Home Ins. Co., 841 P.2d 354 (Colo. App. 1992).

The definition of "insured" under subsection (5) specifically allows liability coverage to be predicated upon using a motor vehicle described in the policy. The third category of "insureds" is, by definition, vehicle-dependent. Farmers Ins. Exch. v. Anderson, 260 P.3d 68 (Colo. App. 2010).

The plain import of subsection (6) is that an insurer is not required to extend coverage to any person who uses the vehicle without the permission of the named insured. The permissive use exclusion in insured's insurance policy is not in violation of the Colorado Auto Accident Reparations Act because it does not limit the compulsory classification of insureds to whom the insurer is obligated to provide coverage. The provision constitutes a valid exclusion by which a non-permissive user of a vehicle is exempt from coverage as an insured pursuant to the statute. Winscom v. Garza, 843 P.2d 126 (Colo. App. 1992); McConnell v. St. Paul Fire and Marine Ins. Co., 906 P.2d 109 (Colo. 1995).

Once a named insured grants initial permission to use the insured vehicle, the named insured impliedly consents to use of the vehicle by subsequent permittees unless their "permission" to use the vehicle emanates from a converter. Raitz v. State Farm Mut. Auto. Ins. Co., 960 P.2d 1179 (Colo. 1998).

If the definition of "permissive user" in the insurance policies is more restrictive than the language of the Colorado Auto Accident Reparations Act, the policies must be interpreted in accord with the act, as clauses in an insurance contract which attempt to dilute, condition, or limit statutorily mandated coverage are invalid or void. Wiglesworth v. Farmers Ins. Exch., 917 P.2d 288 (Colo. 1996).

Exclusion of state, federal, police, and fire vehicles permissible exercise of police power. Bushnell v. Sapp, 194 Colo. 273, 571 P.2d 1100 (1977).

Definition of "motor vehicle" does not include snowmobiles. Uninsured motorist statute does not require coverage for accidents involving snowmobiles used off public roads. Keely v. Allstate Ins. Co., 835 P.2d 584 (Colo. App. 1992).

Definition of "motor vehicle" applies to any vehicle with the physical characteristics that require registration and licensing, regardless of whether the vehicle is actually registered and licensed in Colorado. Thus, the act may extend to vehicles registered and licensed in another state. Ranger v. Fortune Ins. Co., 881 P.2d 394 (Colo. App. 1994).

Subsection (8) makes it clear that a title holder is not divested of the duty to insure a vehicle merely by conditional sale or by actual use by the vendee following a conditional sale. It is only after entering into a conditional sale agreement that vests the right of immediate possession in the vendee. Whether the right of immediate possession vests in a conditional vendee ultimately depends upon the agreement of the parties. Sachtjen v. Am. Family Mut. Ins. Co., 49 P.3d 1146 (Colo. 2002).

Policy clause that excludes from liability coverage a certain category of permissive users because some other form of coverage exists under a separate policy is inconsistent with the requirements of the Colorado Auto Accident Reparations Act and contrary to public policy; thus, it is unenforceable. Finizio v. Am. Hardware Mut. Ins., 967 P.2d 188 (Colo. App. 1998).

However, insurance policy's "excess clause", which made coverage secondary to other collectible insurance, was not void as an erosion of the statutory mandate of §10-4-619 that vehicle owners carry minimum liability insurance. Court contrasted excess clause, which limited coverage to the extent that other coverage existed, with "escape clause", whereby an insurer provides no coverage if other insurance applied. Shelter Mut. Ins. Co. v. Mid-Century Ins. Co., 214 P.3d 489 (Colo. App. 2008), aff'd, 246 P.3d 651 (Colo. 2011) (disagreeing with Finizio v. Am. Hardward Mut. Ins. annotated above).

A certificate of title is prima facie evidence that a person is the "owner" of a vehicle; however, it does not represent conclusive proof of ownership. Martinez v. Allstate Ins. Co., 961 P.2d 531 (Colo. App. 1997).

Pursuant to definition of "policy", a snowmobile was not intended to be one of the "only" types of vehicles designated as an insured vehicle subject to the statutory "policy" provisions. Keely v. Allstate Ins. Co., 835 P.2d 584 (Colo. App. 1992).

The definition of "policy" in subsection (2) does not apply to limit the provisions of §10-4-609. Based on the legislative intent that all purchasers of automobile liability insurance policies must have the opportunity to purchase uninsured motorist coverage, under §10-4-609 a car rental agreement may qualify as a "policy" and the car rental company is

required to offer the lessee uninsured motorist coverage. Passamano v. Travelers Indem. Co., 882 P.2d 1312 (Colo. 1994).

Definition of "motor vehicle" in subsection (2) makes it apparent that the general assembly did not intend for a motorcycle to be type of vehicle designated as an insured vehicle subject to statutory policy provisions. Allstate Indem. Co. v. Gonzales, 902 P.2d 953 (Colo. App. 1995).

The definition of "resident relative" may not be restricted to a single, "primary" residence. State law contemplates that a person can "reside" in more than one place, so long as all relevant circumstances reveal some intended presence in the insured's home. Thus, an insurance policy that required a relative to reside "primarily" with the first person shown as the named insured impermissibly limited statutorily mandated coverage. Grippin v. State Farm Mut. Auto. Ins. Co., 2016 COA 127, 409 P.3d 529.

The definition of "resident relative" does not apply to a separated husband who moved out of the family home with no intent of moving back into the home. GEICO Cas. Co. v. Collins, 2016 COA 30M, 371 P.3d 729.

§ 10-4-601.5. Administrative authority

The commissioner shall administer and enforce the provisions of this part 6, may make rules necessary for the administration of this part 6 in accordance with article 4 of title 24, and may enforce the provisions of part 12 of article 1 of title 6 that apply to an insurer or a policy.

History:

Amended by 2019 Ch. 391, §2, eff. 1/1/2020. L. 2003: Entire section added, p. 1560, § 3, effective July 1.

Case Note:

ANNOTATION

Annotator's note. Since this section is similar to § 10-4-704 as it existed prior to the 2003 repeal of part 7 of article 4 of this title, a relevant case construing that provision has been included in the annotations to this section.

Authority to issue proper regulations. The commissioner of insurance and the director of revenue have the authority, individually or jointly, to issue proper regulations to enforce relevant statutes. Travelers Indem. Co. v. Barnes, 191 Colo. 278, 552 P.2d 300 (1976).

Deference given to construction of statute by administrative official. Construction of a statute by administrative official charged with its enforcement shall be given great deference by the courts. Travelers Indem. Co. v. Barnes, 191 Colo. 278, 552 P.2d 300 (1976).

However, administrative regulations are not absolute rules. Travelers Indem. Co. v. Barnes, 191 Colo. 278, 552 P.2d 300 (1976).

Action by administrative official in excess of authority. When an administrative official misconstrues a statute and issues a regulation beyond the scope of a statute, it is in excess of administrative authority granted, and the regulation is invalid. Travelers Indem. Co. v. Barnes, 191 Colo. 278, 552 P.2d 300 (1976).

§ 10-4-602. Basis for cancellation

(1) A notice of cancellation of a policy shall be valid only if it is based on one or more of the following reasons:

(a) Nonpayment of premium; or

(b) The driver's license or motor vehicle registration of either the named insured or any operator either residing in the insured's household or who customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty days immediately preceding its effective date; or

(c) An applicant knowingly made a false statement on the application for insurance; or

(d) An insured knowingly and willfully made a false material statement on a claim submitted under the policy.

(2) This section shall not apply to any policy or coverage which has been in effect less than sixty days at the time notice of cancellation is mailed or delivered by the insurer, unless it is a renewal policy.

(3) This section shall not apply to nonrenewal of a policy.

History:

L. 69: p. 550, § 2. C.R.S. 1963: § 72-30-2. L. 94: (1)(c) amended and (1)(d) added, p. 328, § 1, effective July 1.

Case Note:

ANNOTATION

When an insurer provides the reason for cancellation of an automobile policy, the reason given for the cancellation must be accurate in order for the cancellation to be effective. Brown v. Am. Standard Ins. Co. of WI, 2019 COA 11, 436 P.3d 597.

Applied in Wright v. Newman, 598 F. Supp. 1178 (D. Colo. 1984), aff'd, 767 F.2d 460 (10th Cir. 1985).

§ 10-4-603. Notice

(1) No notice of cancellation of a policy to which section 10-4-602 applies shall be valid unless mailed or delivered by the insurer to the named insured at least thirty days prior to the effective date of cancellation; but, where cancellation is for nonpayment of premium, at least ten days' notice of cancellation accompanied by the reason therefor shall be given or, alternatively, a notice advising that the policy will be canceled if timely payment of premium is not made may be given at least ten days but not more than thirty days prior to the premium due date. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that, upon written request of the named insured, mailed or delivered to the insurer not less than fifteen days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation. As used in this section, "premium due date" means the date that a premium that has been previously paid is fully earned.

(2) Where the reason for cancellation does not accompany or is not included in the notice of cancellation, the insurer shall, upon written request of the named insured, mailed or delivered to the insurer not less than fifteen days prior to the effective date of cancellation, specify in writing the reason for such cancellation. Such reason shall be mailed or delivered to the named insured within five days after receipt of such request.

(3) This section shall not apply to nonrenewal of a policy.

History:

L. 69: p. 550, § 3. C.R.S. 1963: § 72-30-3. L. 96: (1) amended, p. 363, § 1, effective April 17.

Case Note:

ANNOTATION

Section applicable to cancellation not expiration of policy. The notice provisions set out in this section apply to unilateral cancellation by the insurer and do not apply to policy expiration. Shelly v. Strait, 634 P.2d 1017 (Colo. App. 1981).

Cancellation for nonpayment of premium can occur only if payment is overdue so that notice one month prior to the due date of a premium payment does not meet requirements of this section. Rotenberg v. Am. Standard Ins. Co., 865 P.2d 905 (Colo. App. 1993).

§ 10-4-604. Nonrenewal

(1) No insurer shall refuse to renew a policy unless such insurer or its agent mails or delivers to the named insured, at the address shown in the policy, at least thirty days' advance notice of its intention not to renew. This section shall not apply:

(a) If the insurer has manifested its willingness to renew;

(b) In case of nonpayment of premium;

(c) If the insured fails to pay any advance premium required by the insurer for renewal.

(2) Notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.

(3) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(4) In the event an insurer refuses to renew, the insured may, by written request, demand a written notification of the reason for nonrenewal. Such notification shall be given the insured within twenty days after receipt of such request.

History:

L. 69: p. 550, § 4. C.R.S. 1963: § 72-30-4. L. 96: (1) amended, p. 363, § 2, effective April 17.

Case Note:

ANNOTATION

Applied in Thomason v. Schnorr, 41 Colo. App. 546, 587 P.2d 1205 (1978).

§ 10-4-604.5. Issuance or renewal of insurance policies - proof of insurance provided by certificate, card, or other media

(1) In addition to any other requirement, if an insurer issues or renews a policy of insurance, the insurer shall provide the insured a proof of insurance certificate or insurance identification card to accompany the insured's registration application or renewal card or provide proof of insurance in such other media as is authorized by the department under section 42-3-105(1)(d), C.R.S. The insurance identification card may be provided in either paper or electronic format. Acceptable electronic formats include display of electronic images on a cellular phone or any other type of portable electronic device.

(2) (Deleted by amendment, L. 2003, p. 1560, § 2, effective July 1, 2003.)

History:

Amended by 2013 Ch. 101, §2, eff. 8/7/2013. L. 98: Entire section added, p. 787, § 6, effective July 1, 1999. L. 2000: (1) amended, p. 511, § 3, effective May 12. L. 2001: (2) amended, p. 524, § 9, effective May 22. L. 2003: Entire section amended, p. 1560, § 2, effective July 1. L. 2006: (1) amended, p. 1491, § 13, effective June 1. L. 2013: (1) amended, (HB 13-1159), ch. 101, p. 322, § 2, effective August 7.

§ 10-4-605. Proof of notice

Proof of mailing notice of cancellation, or of intention not to renew or of reasons for cancellation, to the named insured at the address shown in the policy shall be sufficient proof of notice.

History:

L. 69: p. 551, § 5. C.R.S. 1963: § 72-30-5.

§ 10-4-606. Further notice

When automobile bodily injury and property damage liability coverage is canceled, other than for nonpayment of premium, or in the event of failure to renew automobile bodily injury and property damage liability coverage to which section 10-4-604 applies, the insurer shall notify the named insured of his possible eligibility for automobile liability insurance through an assigned risk plan established pursuant to section 10-4-412 and shall notify the insured as to where he may obtain information concerning such plan. Such notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew.

History:

L. 69: p. 551, § 6. C.R.S. 1963: § 72-30-6. L. 79: Entire section amended, p. 376, § 9, effective July 1.

§ 10-4-607. Immunity

There shall be no liability on the part of, and no cause of action of any nature shall arise against, the commissioner or against any insurer, its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal, or for any statement made by any of them in any written notice of cancellation or notification of reason for nonrenewal, or in any other communication, oral or written, specifying the reasons for cancellation or nonrenewal, or the providing of information with respect thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.

History:

L. 69: p. 551, § 7. C.R.S. 1963: § 72-30-7.

§ 10-4-608. Exemptions

(1) This part 6 does not apply to any policy:

(a) Issued under an assigned risk plan established under section 10-4-412;

(b) Repealed.

(c) Except as authorized by section 10-4-624, arising out of a motor vehicle rental agreement or any self-insurance thereof;

(d) Covering a garage, automobile sales agency, repair shop, service station, or public parking place operation hazard; or

(e) Issued principally to cover personal or premises liability of an insured even though such insurance may also provide some incidental coverage for liability arising out of the ownership, maintenance, or use of a motor vehicle on the premises of such insured, or on the ways immediately adjoining such premises.

History:

Amended by 2017 Ch. 283, §16, eff. 6/1/2017. L. 69: p. 551, § 8. C.R.S. 1963: § 72-30-8. L. 79: Entire section amended, p. 376, § 10, effective July 1. L. 95: Entire section amended, p. 143, § 3, effective April 7. L. 2003: (1)(c) amended, p. 2433, § 1, effective June 5. L. 2017: IP(1) amended and (1)(b) repealed, (SB 17-249), ch. 283, p. 1548, § 16, effective June 1.

§ 10-4-609. Insurance protection against uninsured motorists - applicability

(1)

(a) No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle licensed for highway use in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in section 42-7-103(2), C.R.S., under provisions approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom; except that the named insured may reject such coverage in writing.

(b) This subsection (1) shall not apply to motor vehicle rental agreements or motor vehicle rental companies.

(c) The coverage described in paragraph (a) of this subsection (1) shall be in addition to any legal liability coverage and shall cover the difference, if any, between the amount of the limits of any legal liability coverage and the amount of the damages sustained, excluding exemplary damages, up to the maximum amount of the coverage obtained pursuant to this section. A single policy or endorsement for uninsured or underinsured motor vehicle coverage issued for a single premium covering multiple vehicles may be limited to applying once per accident. The amount of the coverage available pursuant to this section shall not be reduced by a setoff from any other coverage, including, but not limited to, legal liability insurance, medical payments coverage, health insurance, or other uninsured or underinsured motor vehicle insurance.

(2) Before the policy is issued or renewed, the insurer shall offer the named insured the right to obtain uninsured motorist coverage in an amount equal to the insured's bodily injury liability limits, but in no event shall the insurer be required to offer limits higher than the insured's bodily injury liability limits.

(3) Notwithstanding the provisions of subsection (2) of this section, after selection of limits by the insured or the exercise of the option not to purchase the coverages described in this section, no insurer nor any affiliated insurer shall be required to notify any policyholder in any renewal or replacement policy, as to the availability of such coverage or optional

limits. However, the insured may, subject to the limitations expressed in this section, make a written request for additional coverage or coverage more extensive than that provided on a prior policy.

(4) Uninsured motorist coverage shall include coverage for damage for bodily injury or death that an insured is legally entitled to collect from the owner or driver of an underinsured motor vehicle. An underinsured motor vehicle is a land motor vehicle, the ownership, maintenance, or use of which is insured or bonded for bodily injury or death at the time of the accident.

(5) (Deleted by amendment, L. 2007, p. 1921, § 2, effective January 1, 2008.)

(6) An alleged tortfeasor shall be deemed to be uninsured solely for the purpose of allowing the insured party to receive payment under uninsured motorist coverage, regardless of whether the alleged tortfeasor was actually insured, if:

(a) The alleged tortfeasor cannot be located for service of process after a reasonable attempt to serve the alleged tortfeasor; and

(b)

(I) Service of process on the insurance carrier as authorized by section 42-7-414(3), C.R.S., is determined by a court to be insufficient or ineffective after reasonable effort has failed; or

(II)

(A) The report of a law enforcement agency investigating the motor vehicle accident fails to disclose the insurance company covering the alleged tortfeasor's motor vehicle; and

(B) The alleged tortfeasor's insurance coverage when the incident occurred is not actually known by the person attempting to serve process.

(7) Nothing in subsection (6) of this section voids the alleged tortfeasor's policy if the alleged tortfeasor was actually insured.

History:

L. 79: Entire section added, p. 377, § 11, effective July 1. L. 83: Entire section R&RE, p. 454, § 1, effective November 5. L. 92: (2) amended, p. 1759, § 4, effective June 5. L. 95: (1) amended, p. 143, § 4, effective April 7. L. 2007: (1)(c) added and (2), (4), and (5) amended, p. 1921, §§ 1, 2, effective January 1, 2008. L. 2010: (6) and (7) added, (HB 10-1164), ch. 196, p. 845, §1, effective January 1, 2011.

Case Note:

ANNOTATION

Law reviews. For article "'Underinsurance' Coverage in Automobile Accidents", see 15 Colo. Law. 417 (1986). For article, "The 'Catch 22' of Underinsured Motorist Settlements", see 17 Colo. Law. 49 (1988). For article, "Recent Developments in the Law of Underinsured Motorist Coverage", see 22 Colo. Law. 2273 (1993). For article, "When an Automobile Policy Coverage Exclusion or Limitation is Valid", see 25 Colo. Law. 103 (Aug. 1996). For article, "Bringing the Uninsured and Underinsured Motorist Case", see 26 Colo. Law. 111 (Nov. 1997). For article, "New Uninsured Motorist Legislation Changes the Rules", see 37 Colo. Law. 67 (Sept. 2008).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Trial court is proper forum to resolve claim for uninsured motorist benefits and to resolve independent claim of any workers' compensation claim. Failure of plaintiff to exhaust administrative remedies regarding workers' compensation is not relevant to the issue of uninsured motorist coverage. Benson v. Colo. Comp. Ins. Auth., 870 P.2d 624 (Colo. App. 1994).

Protection from loss caused by uninsured motorists is authorized. Nationwide Mut. Ins. Co. v. Hillyer, 32 Colo. App. 163, 509 P.2d 810 (1973).

Section compels companies to extend uninsured motorist coverage. This section compels insurance companies writing motor vehicle liability policies to extend uninsured motorist coverage unless the insured shall reject such coverage. Morgan v. Farmers Ins. Exch., 182 Colo. 201, 511 P.2d 902 (1973); Nationwide Mut. Fire Ins. Co. v. Newton, 40 Colo. App. 425, 579 P.2d 1178 (1978), rev'd on other grounds, 197 Colo. 462, 594 P.2d 1042 (1979).

This section requires that insurance companies issuing policies on motor vehicles registered or principally garaged in this state offer uninsured motorist coverage. Alliance Mut. Cas. Co. v. Duerson, 184 Colo. 117, 518 P.2d 1177 (1974).

However, this section does not mandate that a driver carry uninsured motorist coverage. Individual insureds are free to decline such coverage. Cruz v. Farmers Ins. Exch., 12 P.3d 307 (Colo. App. 2000).

Insurance policy exclusion of resident relatives who own a vehicle from uninsured/underinsured motorist (UM/UIM) coverage violates Colorado public policy. Pacheco v. Shelter Mut. Ins. Co., 583 F.3d 735 (10th Cir. 2009) (decided under law in effect in 2000).

Where former § 10-4-703(6) defined "insured" to include "relatives of the named insured who reside in the same household as the named insured", a policy that attempted to exclude from UM/UIM coverage vehicle-owning relatives meeting that definition is void and unenforceable. Pacheco v. Shelter Mut. Ins. Co., 583 F.3d 735 (10th Cir. 2009) (decided under law in effect in 2000).

The legislature, by enacting this section, did not abrogate the common law agency principles of implied actual authority and apparent authority, and thus they remain in effect in the context of UM/UIM coverage rejections. State Farm Mut. Auto. Ins. Co. v. Johnson, 2017 CO 68, 396 P.3d 651.

An agent has apparent authority to affect a principal's relations with a third party when the third party reasonably believes, based on the principal's manifestations, that the agent has authority to act on behalf of the principal. Apparent authority thus flows only from the acts and conduct of the principal. State Farm Mut. Auto. Ins. Co. v. Johnson, 2017 CO 68, 396 P.3d 651.

In comparison, an agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act. Actual authority thus incorporates concepts of both express and implied authority. State Farm Mut. Auto. Ins. Co. v. Johnson, 2017 CO 68, 396 P.3d 651.

Express authority exists when the principal directly states that the agent may perform a particular act on the principal's behalf. State Farm Mut. Auto. Ins. Co. v. Johnson, 2017 CO 68, 396 P.3d 651.

Implied authority embraces the authority to perform acts that are incidental to or are necessary, usual, and proper to accomplish or perform the main authority expressly delegated to the agent. State Farm Mut. Auto. Ins. Co. v. Johnson, 2017 CO 68, 396 P.3d 651.

Nothing precludes an agent from exercising either apparent or implied authority to reject UM/UIM coverage on behalf of a principal. State Farm Mut. Auto. Ins. Co. v. Johnson, 2017 CO 68, 396 P.3d 651.

The UM/UIM statute does not require each named insured to reject such coverage. One named insured's rejection is binding on all. State Farm Mut. Auto. Ins. Co. v. Johnson, 2017 CO 68, 396 P.3d 651.

Automobile insurance policy cannot narrow the class of individuals who were required to be covered under the former no fault act. If a person seeking coverage was one for whom coverage was required by statute, an insurer cannot limit its statutory obligation by a contractual provision contrary to the requirements of the no fault act. Pacheco v. Shelter Mut. Ins. Co., 583 F.3d 735 (10th Cir. 2009) (decided under law in effect in 2000).

Because UM/UIM coverage must be offered to a class coextensive with the class covered under the policy's liability provision, the exclusion of resident relatives owning vehicles is also void and unenforceable for purposes of UM/UIM coverage. The appropriate remedy is to consider the offending provision void and provide coverage to the limits of the policy. Pacheco v. Shelter Mut. Ins. Co., 583 F.3d 735 (10th Cir. 2009) (decided under law in effect in 2000).

This section incorporates the minimum limits for bodily injury or death as set forth in the financial responsibility act. Nationwide Mut. Ins. Co. v. Hillyer, 32 Colo. App. 163, 509 P.2d 810 (1973).

If uninsured motorist coverage is not rejected by the insured, the minimum amount of coverage required is as provided in the motor vehicle financial responsibility law. Alliance Mut. Cas. Co. v. Duerson, 184 Colo. 117, 518 P.2d 1177 (1974).

Limitation on recovery allowable. As long as a policy assures payment of the statutory minimum, a limitation on recovery is not repugnant to the motor vehicle financial responsibility law. Arguello v. State Farm Mut. Auto. Ins. Co., 42 Colo. App. 372, 599 P.2d 266 (1979).

Coverage satisfying legislative intent. The legislative intent is satisfied by coverage which assures that one injured by an uninsured motorist will be compensated at least to the same extent as one injured by a motorist who is insured in compliance with the motor vehicle financial responsibility law. Alliance Mut. Cas. Co. v. Duerson, 184 Colo. 117, 518 P.2d 1177 (1974).

Section does not apply to umbrella policies. An umbrella liability insurance policy that includes excess liability coverage for the ownership or operation of motor vehicles is not an "automobile liability or motor vehicle liability policy" under the plain language of the section; therefore, insurer is not subject to the requirement to offer UM/UIM coverage as part of an

umbrella policy. Apodaca v. Allstate Ins. Co., 232 P.3d 253 (Colo. App. 2009), aff'd, 255 P.3d 1099 (Colo. 2011).

There is a clear statutory basis for the use of a per occurrence limit on liability when two or more persons are injured. Subsection (2) sets both per person and per accident limits for the amount of uninsured motorist coverage an insurer is required to offer an insured. Application of per occurrence limit coupled with an anti-stacking provision is not inconsistent with the purpose of Colorado's underinsured motorist statute -- to place the insured in the same position as if the underinsured had liability limits in an amount equal to an insured's coverage. Shean v. Farmers Ins. Exch., 934 P.2d 835 (Colo. App. 1996).

Attorney fees and expenses are not recoverable pursuant to this section. Thurman v. State Farm Mut. Auto. Ins. Co., 942 P.2d 1327 (Colo. App. 1997); Loar v. State Farm Mut. Auto. Ins. Co., 143 P.3d 1083 (Colo. App. 2006).

An insurance policy provision violates this section only if it directly limits the benefits to which the insured is entitled. Terranova v. State Farm Mut. Auto. Ins. Co., 800 P.2d 58 (Colo. 1990); Peterman v. State Farm Mut. Auto. Ins. Co., 948 P.2d 63 (Colo. App. 1997), rev'd on other grounds, 961 P.2d 487 (Colo. 1998).

And the mere act of specifying a procedure for determining the insured's right to recover UM benefits from the insurer does not directly limit such benefits, at least so long as the procedure specified is not unduly burdensome. Peterman v. State Farm Mut. Auto. Ins. Co., 948 P.2d 63 (Colo. App. 1997), rev'd on other grounds, 961 P.2d 487 (Colo. 1998).

The phrase "bodily injury, sickness, or disease" in subsection (1)(a) does not include emotional distress absent a physical manifestation of the injury. Hence, this section does not require an insurer to provide benefits for purely emotional harm. Williams v. State Farm Mut. Auto. Ins. Co., 195 P.3d 1158 (Colo. App. 2008).

Where a motor vehicle is being used in a manner reasonably foreseeable at the time the parties contracted for insurance and the "use" of the vehicle is inextricably linked to a plaintiff's injury, plaintiff is entitled to recover under the policy. State Farm Mut. Auto. Ins. Co. v. Kastner, 77 P.3d 1256 (Colo. 2003).

Limiting underinsured benefits to bodily injuries or deaths sustained by a person insured by the policy is not void as against public policy. Jones v. AIU Ins. Co., 51 P.3d 1044 (Colo. App. 2001).

The key to the application of this section is the inability of the innocent injured party to recover for a loss caused by another's negligence, whether that person is known or unknown. Farmers Ins. Exch. v. McDermott, 34 Colo. App. 305, 527 P.2d 918 (1974).

Section requires coverage for hit-and-run drivers. While the language of this section focuses on the problems of an uninsured motor vehicle, its applicability is not limited to those situations in which the identity of the negligent party is known. Furthermore, the declaration of public policy expresses the general assembly's prime concern as the need to compensate the innocent driver for injuries received at the hands of one from whom damages cannot be recovered. Thus, this section does require coverage for hit-and-run drivers. Farmers Ins. Exch. v. McDermott, 34 Colo. App. 305, 527 P.2d 918 (1974).

Section requires coverage for accidents involving drivers having governmental immunity. The phrase "legally entitled to recover damages", as used in this section, means that the insured must be able to establish that the fault of the uninsured motorist gave rise to damages and the extent of those damages. But where recovery from the driver is precluded solely because of the Colorado Governmental Immunity Act, denial of coverage would contravene legislative intent. Borjas v. State Farm Mut. Auto. Ins. Co., 33 P.3d 1265 (Colo. App. 2001).

Where recovery from the driver is precluded solely because of the Worker's Compensation Act of Colorado, denial of coverage would contravene legislative intent. Am. Family Mut. Ins. v. Ashour, 2017 COA 67, 410 P.3d 753.

A "named insured" under subsection (1)(a) is the person or entity listed as the named insured on the policy or the purchaser of the policy. Maxwell v. James River Ins. Co., 401 F. Supp. 3d 1183 (D. Colo. 2019).

Based on that definition, automobile insurers have no duty to provide notice of the availability of UM/UIM to additional insureds that are covered by the policy. Maxwell v. James River Ins. Co., 401 F. Supp. 3d 1183 (D. Colo. 2019).

Insurance company discharged its duties under subsection (1)(a) by obtaining a written waiver of UM/UIM coverage from the named insured of

the policy. Maxwell v. James River Ins. Co., 401 F. Supp. 3d 1183 (D. Colo. 2019).

Provision requiring physical contact held invalid. Uninsured motorist provision of an insurance policy, insofar as it required a physical contact between the insured vehicle and the "hit-and-run" vehicle, was invalid as an impermissible restriction upon the coverage which is required by this section. The physical contact rule is inconsistent with the public policy of the state. Farmers Ins. Exch. v. McDermott, 34 Colo. App. 305, 527 P.2d 918 (1974).

Gunshot injuries sustained during a traffic altercation were "caused by accident" and, therefore, subject to uninsured motorist coverage. State Farm Mut. Auto. Ins. Co. v. McMillan, 925 P.2d 785 (Colo. 1996).

Phrase "caused by accident" was ambiguous, and must be construed against the drafter of the insurance policy. State Farm Mut. Auto. Ins. Co. v. McMillan, 925 P.2d 785 (Colo. 1996).

"Use of an automobile" held not to include the defendant's action of blocking the path of the plaintiffs' vehicle with his own vehicle, exiting his vehicle, and then assaulting the plaintiffs with a golf club. Roque v. Allstate Ins. Co., 2012 COA 10, 318 P.3d 1.

Passenger who was injured after exiting a vehicle to approach the occupant of another vehicle in a road rage incident was not "using" the vehicle as contemplated by the insurance policy when he was injured. Further, because he had voluntarily left the vehicle for a purpose that was not inherent to transportation and was not avoiding imminent injury, his injuries did not arise out of the use of the vehicle. Boyle v. Bristol W. Ins. Co., 2020 COA 102, 480 P.3d 716.

The insurance commissioner cannot by any of his actions vary the requirements of this section or change the public policy of this state determined by the general assembly as specified in former § 10-4-320. Nationwide Mut. Ins. Co. v. Hillyer, 32 Colo. App. 163, 509 P.2d 810 (1973).

Provision in insurance policy that allows the insurer to set off benefits received from workmen's compensation is, in effect, the reduction of uninsured motorist coverage in contravention of the established minimums, and this result is contrary to public policy. Nationwide Mut. Ins. Co. v. Hillyer, 32 Colo. App. 163, 509 P.2d 810 (1973).

An employee injured during the course of employment cannot claim benefits under his or her employer's UM/UIM policy in addition to workers' compensation. Markel Ins. Co. v. Hollandsworth, 400 F. Supp. 3d 1155 (D. Colo. 2019).

Double recovery is not contemplated by the uninsured motorist statute. Alliance Mut. Cas. Co. v. Duerson, 184 Colo. 117, 518 P.2d 1177 (1974).

"Other insurance" clause not offensive to public policy. A person purchasing a motor vehicle insurance policy has three options: That of rejecting uninsured motorist coverage; that of purchasing it in a minimum amount; or that of purchasing it in an amount greater than that specified by statute. In view of these options, there is nothing offensive to public policy in an "other insurance" clause which denied recovery of additional sums over and above that provided by the primary insurance carrier. Alliance Mut. Cas. Co. v. Duerson, 184 Colo. 117, 518 P.2d 1177 (1974).

Validity of arbitration clauses. While courts in other jurisdictions have held that insurance policy clauses requiring arbitration of coverage under the uninsured motorist provisions cannot be reconciled with statute requiring protection against uninsured motorists, the Colorado appellate court has declined to adopt this view in light of the discernible policy supporting arbitration in this state. Wales v. State Farm Mut. Auto. Ins. Co., 38 Colo. App. 360, 559 P.2d 255 (1976).

An arbitration clause that compels an insured to arbitrate a claim for UM benefits does not directly limit the insured's right to such benefits and is thus enforceable. Peterman v. State Farm Mut. Auto. Ins. Co., 948 P.2d 63 (Colo. App. 1997), rev'd on other grounds, 961 P.2d 487 (Colo. 1998).

Requirement for enforceability of arbitration clause. C.R.C.P. 109, which requires that the parties execute a written agreement to arbitrate a dispute, that an arbitrator be named, and that the award may be filed as a basis of a judgment, must be satisfied as a requisite to enforceability of an arbitration clause in an insurance policy. Wales v. State Farm Mut. Auto. Ins. Co., 38 Colo. App. 360, 559 P.2d 255 (1976).

Personal injury protection and uninsured motorist coverage compared. Newton v. Nationwide Mut. Fire Ins. Co., 197 Colo. 462, 594 P.2d 1042 (1979).

For decisions under former § 10-4-320 relating to legislative declaration as to uninsured motorist coverage, see Nationwide Mut. Ins. Co. v. Hillyer, 32 Colo. App. 163, 509 P.2d 810 (1973); Alliance Mut. Cas. Co. v.

Duerson, 184 Colo. 117, 518 P.2d 1177 (1974); Farmers Ins. Exch. v. McDermott, 34 Colo. App. 305, 527 P.2d 918 (1974); Granite State Ins. Co. v. Dundas, 34 Colo. App. 382, 528 P.2d 961 (1974); Wales v. State Farm Mut. Auto. Ins. Co., 38 Colo. App. 360, 559 P.2d 255 (1976); Newton v. Nationwide Mut. Fire Ins. Co., 197 Colo. 462, 594 P.2d 1042 (1979).

This section regulates the availability of insurance protection against uninsured motorists and is designed to protect persons from the often devastating consequences of motor vehicle accidents. Kral v. Am. Hardware Mut. Ins. Co., 784 P.2d 759 (Colo. 1989); Thurman v. State Farm Mut. Auto. Ins. Co., 942 P.2d 1327 (Colo. App. 1997); DeHerrera v. Sentry Ins. Co., 992 P.2d 629 (Colo. App. 1999), rev'd on other grounds, 30 P.3d 167 (Colo. 2001).

This section requires insurers to offer their customers the opportunity to protect themselves from loss caused by negligent conduct of drivers who have not obtained insurance to pay for such loss. The coverage enables the insured to gain compensation for loss due to the negligent conduct of non-insured motorists in the same manner as the insured would be compensated for loss due to the negligent conduct of insured motorists. Kral v. Am. Hardware Mut. Ins. Co., 784 P.2d 759 (Colo. 1989); Thurman v. State Farm Mut. Auto. Ins. Co., 942 P.2d 1327 (Colo. App. 1997).

Purpose of section is to provide insurance protection against injuries and damages caused by financially irresponsible uninsured motorists. Shelter Mut. Ins. Co. v. Thompson, 852 P.2d 459 (Colo. 1993) (decided prior to 1992 amendment); Freeman v. State Farm Mut. Auto. Ins. Co., 946 P.2d 584 (Colo. App. 1997).

The purpose of underinsured motorist coverage is to enable an insured to receive coverage to the extent necessary to compensate fully for a loss caused by the conduct of a financially irresponsible driver. Freeman v. State Farm Mut. Auto. Ins. Co., 946 P.2d 584 (Colo. App. 1997).

This section is to assure that a person injured by an uninsured motorist is compensated to the same extent as one injured by a motorist who is insured in compliance with the law. Section 10-4-711 requires coverage only for accidents that occur within the United States, its territories or possessions, Canada, and Puerto Rico. Gonzales v. Allstate Ins. Co., 51 P.3d 1103 (Colo. App. 2002).

This section does not allow a plaintiff to recover benefits in excess of the total amount of damages. Subsection (1)(c) limits UM/UIM benefits to "the difference, if any" between the defendant's policy limits and

the actual damages sustained. Bailey v. State Farm Mut. Auto. Ins. Co., 2018 COA 133, 429 P.3d 109.

Where defendant's insurer sent him a letter agreeing to pay "any compensatory damage award which may be awarded at trial, regardless of amount", the UM/UIM statute was not triggered and plaintiff was not entitled to collect any amount exceeding the $300,000 awarded by the jury and paid by the defendant's insurer. Bailey v. State Farm Mut. Auto. Ins. Co., 2018 COA 133, 429 P.3d 109.

This section contains no provision expressly authorizing insurers to limit their liability for uninsured motorist benefits. Kral v. Am. Hardware Mut. Ins. Co., 784 P.2d 759 (1989).

Liability of insurer for underinsured motorist coverage is not contingent upon insured's full recovery under tortfeasor's policy. State Farm Mut. Auto. Ins. Co. v. Bencomo, 873 P.2d 47 (Colo. App. 1994).

Whether an insurer has made a sufficient offer requires an analysis of whether the notification was commercially reasonable, the limits of the coverage were specified, the insured was intelligibly advised as to the nature of the coverage so as to allow an assessment of the offer, and whether the insured was advised that the optional coverage was available for a modest increase in the premium. Parfrey v. Allstate Ins. Co., 815 P.2d 959 (Colo. App. 1991), aff'd in part and rev'd in part, 830 P.2d 905 (Colo. 1992).

The plain language of subsection (1)(c) renders any "actual exhaustion" requirement in a UIM policy void and unenforceable. An exhaustion clause purports to condition UIM coverage on the insured actually recovering the maximum amount under the other driver's legal liability coverage. Because the exhaustion clause imposes a condition precedent on coverage mandated by the statute, the clause is void and unenforceable. Tubbs v. Farmers Ins. Exch., 2015 COA 70, 353 P.3d 924.

Subsection (1)(c) requires an insurer to cover an insured for damages sustained in excess of the other driver's legal liability limit, in an amount up to the limit of insured's UIM coverage, regardless of how much, if any, the insured actually recovered under the other driver's legal liability coverage. Tubbs v. Farmers Ins. Exch., 2015 COA 70, 353 P.3d 924.

An insurer is liable for prejudgment interest pursuant to §5-12-102 for underinsured motorist coverage from the date of the insurer's wrongful refusal or failure to pay, notwithstanding a policy provision that provided that liability and the amount of damages were to be

determined by agreement of the parties or by arbitration. Bowen v. Farmers Ins. Exch., 929 P.2d 14 (Colo. App. 1996).

Insurer is liable for prejudgment interest in excess of an uninsured motorist policy limit pursuant to §5-12-102 where the interest is a damage item that did not arise out of the accident but arose instead out of the insurer's breach of the insurance contract. Peterman v. State Farm Mut. Auto. Ins. Co., 8 P.3d 549 (Colo. App. 2000).

Insurer is not liable for prejudgment interest in excess of the underinsured motorist policy limits. If the insurer has paid the maximum allowed under the policy, prejudgment interest may not be added. Vaccaro v. Am. Family Ins. Group, 2012 COA 9M, 275 P.3d 750.

The purpose of subsection (2) is to provide the prospective policyholder an opportunity to make an informed decision regarding the appropriate level of uninsured/underinsured motorist (UM/UIM) coverage. Richardson v. Farmers Ins. Exch., 101 P.3d 1138 (Colo. App. 2004).

In furtherance of that purpose, the subsection imposes a duty on the insurance company to offer the prospective policyholder the opportunity to purchase UM/UIM coverage in an amount equal to the policyholder's bodily injury liability limits up to $100,000 per person and $300,000 per accident. DeHerrera v. Sentry Ins. Co., 30 P.3d 167 (Colo. 2001); Richardson v. Farmers Ins. Exch., 101 P.3d 1138 (Colo. App. 2004).

Subsection (2) creates a one-time duty upon an insurer to notify an insured of the nature and purpose of uninsured and underinsured motorist coverage and to give such insured the opportunity to purchase such coverage in accordance with the insurer's rating plan. Allstate Ins. Co. v. Parfrey, 830 P.2d 905 (Colo. 1992).

But the insurer's duty of notification and offer must be performed in such a manner as is reasonably calculated to permit the insured to make an informed choice as to whether to purchase uninsured and underinsured motorist coverage in an amount which exceeds the minimum statutory liability limits. Allstate Ins. Co. v. Parfrey, 830 P.2d 905 (Colo. 1992); Richardson v. Farmers Ins. Exch., 101 P.3d 1138 (Colo. App. 2004).

An insurer's failure to provide a stated premium (or formula for determining the premium) for optional, enhanced UM/UIM coverage does not in and of itself render insurer's offer

insufficient under subsection (2). Airth v. Zurich Am. Ins. Co., 2018 COA 9, __ P.3d __.

Subsection (2) does not make the obligation to inform contingent upon the insured's purchase of bodily injury liability coverage in excess of the statutory minimum. Loar v. State Farm Mut. Auto. Ins. Co., 143 P.3d 1083 (Colo. App. 2006) (decided prior to 2007 amendment).

Absent any special relationship of "entrustment" in which an insurer assumes a greater duty of care for an insured, the insurer has no obligation to offer or recommend UM/UIM coverage in an amount greater than the statutorily set limits. Kaercher v. Sater, 155 P.3d 437 (Colo. App. 2006).

The determination as to whether an insurer adequately performed its duty of notification and offer will be based on a consideration of the totality of the circumstances. Factors to consider include the clarity of the explanation, whether the explanation was oral or written, the specificity of the options explained to the insured, the price of the different levels of coverage, and any other circumstances regarding the adequacy and clarity of the notification and offer. Allstate Ins. Co. v. Parfrey, 830 P.2d 905 (Colo. 1992).

Where the insurer does not comply with the statutory requirement to offer the prospective policyholder the opportunity to purchase UM/UIM coverage in an amount equal to the policy's bodily injury liability limits for a class of insureds coextensive with the class of insureds covered under the liability provisions, a step-down endorsement limiting UM/UIM coverage for permissive users of the covered individual's vehicle is unenforceable. Richardson v. Farmers Ins. Exch., 101 P.3d 1138 (Colo. App. 2004).

Under subsection (2), insureds are not entitled to obtain enhanced UM/UIM coverage without raising their own bodily injury liability limits. Loar v. State Farm Mut. Auto. Ins. Co., 143 P.3d 1083 (Colo. App. 2006) (decided prior to 2007 amendment).

Former § 10-4-712(3)(c)(II)(H) contained an exception to this section's rule that an insurer does not have a duty to offer higher UM/UIM coverage when the insured makes a change to a policy. The exception required the insurer to offer new UM/UIM coverage pursuant to subsection (2) if there is an increase in bodily injury liability limits and the limits of the uninsured motorist coverage would be less than such limits. Pacheco v. Shelter Mut. Ins. Co., 583 F.3d 735 (10th Cir. 2009) (decided under law in effect in 2000).

Former § 10-4-712(3)(c)(II)(H) required insurer to offer higher UM/UIM coverage when insureds increased their bodily injury liability limits, regardless of whether the policy was a new policy, a replacement policy, or a renewal policy. Pacheco v. Shelter Mut. Ins. Co., 583 F.3d 735 (10th Cir. 2009) (decided under law in effect in 2000).

Factors to consider in determining, under a totality of the circumstances approach, whether the insurer satisfied its duty to notify and offer higher UM/UIM coverage include the clarity with which the purpose of UM/UIM coverage was explained to the insured; whether the explanation was made orally or in writing; the specificity of the options made known to the insured; the price at which the different levels of UM/UIM coverage could be purchased; and any other circumstances bearing on the adequacy and clarity of the notification and offer. Pacheco v. Shelter Mut. Ins. Co., 583 F.3d 735 (10th Cir. 2009) (decided under law in effect in 2000).

A written rejection of coverage is required only with respect to the minimum UM/UIM coverage available under subsection (1) and not to the additional UM/UIM coverage available under subsection (2). Airth v. Zurich Am. Ins. Co., 2018 COA 9, __ P.3d __.

"Stacking" provisions harmonized. Subsection (2) allows an insurer to prohibit stacking of UM/UIM limits only as to policies issued to the insured, not as to policies covering the insured but not issued to the insured or a resident relative. Therefore, under subsection (4)(a), the policy limits of two policies could be combined to determine whether the tortfeasor was underinsured. Progressive Spec. Ins. Co. v. Hartford Und. Ins. Co., 148 P.3d 470 (Colo. App. 2006).

Where a policy lawfully excludes liability coverage in a specific circumstance, the insurance company has no obligation to provide UM/UIM coverage for that circumstance, and the exclusion is not void against public policy. Maxwell v. James River Ins. Co., 401 F. Supp. 3d 1183 (D. Colo. 2019).

Exclusion of a vehicle insured under the liability terms of a policy from uninsured motor vehicle coverage does not violate the legislative purposes and the public policy underlying this section. The insured vehicle exclusion prevents the transformation of uninsured coverage into liability coverage when a claim is made for uninsured motorist benefits to compensate injuries that result from the operation of a vehicle insured for liability. Terranova v. State Farm, 800 P.2d 58 (Colo. 1990); Jacox v. Am. Family Mut. Ins. Co., 2012 COA 170, 317 P.3d 1242; Rivera v. Am. Family Ins. Group, 2012 COA 175, 292 P.3d 1181.

Exclusions for coverage based on vehicles being owned by the policyholder but insured by a different automobile insurance policy are void and against the public policy of this section. Jaimes v. State Farm Mut. Auto. Ins. Co., 53 P.3d 743 (Colo. App. 2002).

Owned-but-not-insured exclusion is misleading. In UM/UIM policy, an exclusion for owned-but-not-insured vehicles is void. Therefore, an insurer who includes such an exclusion in its policies fails to satisfy its disclosure obligations. Briggs v. Am. Nat'l Prop. & Cas. Co., 209 P.3d 1181 (Colo. App. 2009).

A clause limiting coverage to incidents corroborated by someone other than the named insured are void against the public policy of this section. This section does not include a corroboration clause or permit a policy to have such a provision. Therefore, the use of such clauses violates the public policy. Mavashev v. Windsor Ins. Co., 72 P.3d 469 (Colo. App. 2003).

Uninsured motorist benefits unavailable to insured when policy definition excludes from uninsured motorist protection an automobile insured under the policy's liability coverage and policy also denies liability coverage under a household exclusion. Allstate v. Feghali, 814 P.2d 863 (Colo. 1991).

Insurance coverage under this section is not based on the number of uninsured or underinsured tortfeasors causing an accident, nor is it significant that one driver was uninsured and the other was underinsured. Farmers Ins. Exch. v. Star, 952 P.2d 809 (Colo. App. 1997); Am. Family Mut. Ins. Co. v. Murakami, 169 P.3d 192 (Colo. App. 2007).

Holders of certificates of self-insurance are not required by subsection (1) to carry uninsured motorist coverage. White by Scott v. Reg'l Transp. Dist., 735 P.2d 218 (Colo. App. 1987).

A car rental agreement constitutes an insurance policy for purposes of this section, where the rental company offers to sell the lessee various types of insurance coverage for specified prices. The lessee is the named insured and the rental company is required to provide the lessee the option of purchasing uninsured motorist coverage. Passamano v. Travelers Indem. Co., 882 P.2d 1312 (Colo. 1994).

The fact that the car rental company is self-insuring is not controlling. The car rental company still constitutes an insurer and must offer the lessee, as the named insured, the option of rejecting uninsured

motorist protection. Passamano v. Travelers Indem. Co., 882 P.2d 1312 (Colo. 1994).

The definition of "policy" in §10-4-601(2) does not apply to this section. Application of the definition to this section would conflict with the legislative intent that all purchasers of automobile liability insurance policies must be afforded the opportunity to purchase uninsured motorist coverage. Passamano v. Travelers Indem. Co., 882 P.2d 1312 (Colo. 1994).

Subrogation and release-trust agreements allowed. With regard to an award under uninsured motorist coverage, an insurer can be subrogated to the rights which the insured has against those persons responsible for his injuries. Likewise, a trust release agreement entered into between the insured and the insurer is not void as against public policy. Granite State Ins. Co. v. Dundas, 34 Colo. App. 382, 528 P.2d 961 (1974); Kral v. Am. Hardware Mut. Ins. Co., 754 P.2d 411 (Colo. App. 1987), rev'd on other grounds, 784 P.2d 759 (Colo. 1989).

Subsection (1) of this section and §42-7-103(2), when read together, clearly establish the intent of the general assembly to provide a mechanism by means of which an insured might purchase insurance coverage for protection against loss caused by the conduct of a negligent and financially irresponsible motorist. This legislative intent is further reflected in subsections (4) and (5) of this section which provisions were added to the uninsured motorist coverage statute in 1983. Kral v. Am. Hardware Mut. Ins. Co., 784 P.2d 759 (Colo. 1989); Briggs v. Am. Family Mut. Ins. Co., 833 P.2d 859 (Colo. App. 1992).

Subsection (4) permits an injured insured to recover for loss caused by an underinsured motorist to the same extent the insured would recover if the underinsured motorist had no insurance. Subsection (5) measures the maximum limits of the insurer's liability by the extent of the insured's loss. When considered together, subsections (1), (4), and (5) of this section and §42-7-103(3) reflect a clear legislative purpose to place an injured party having uninsured motorist coverage in the same position as if the uninsured motorist had been insured. Kral v. Am. Hardware Mut. Ins. Co., 784 P.2d 759 (Colo. 1989); Briggs v. Am. Family Mut. Ins. Co., 833 P.2d 859 (Colo. App. 1992).

Subsection (5) allows an insurer to aggregate all amounts received by the insured from all parties liable for his or her injuries, and such a policy would not violate public policy by impermissibly diluting or limiting statutorily mandated coverage. Carlisle v. Farmers Ins. Exch., 946 P.2d 555 (Colo. App. 1997); Am. Family Mut. Ins. Co. v. Murakami, 169 P.3d 192 (Colo. App. 2007).

Primary insurer is first to receive the offset under subsection (5). As between a primary insurer and an excess insurer, the primary insurer faced the greater risk. Had the tortfeasor been uninsured, the primary insurer would have been required to pay the claim up to the full amount of its policy limits before the excess insurer was required to pay anything. Therefore, the primary insurer should be the first to receive the benefit of the offset. Progressive Spec. Ins. Co. v. Hartford Und. Ins. Co., 148 P.3d 470 (Colo. App. 2006).

In the case of two competing insurance policies, the excess clauses, even if tied to a vehicle, do not erode the mandate that insurers provide UIM coverage. Therefore, both policies are valid under state law. Baker v. Allied Prop. & Cas. Ins. Co., 939 F. Supp. 2d 1091 (D. Colo. 2013).

Where there are competing excess clauses, a court must treat the clauses as mutually repugnant and void. Therefore, both insurers are co-primary and must share any losses on a dollar-for-dollar basis until the policy limits of one are exhausted. Baker v. Allied Prop. & Cas. Ins. Co., 939 F. Supp. 2d 1091 (D. Colo. 2013).

The purpose of underinsurance is to place the injured party in the same position as if the underinsured had liability limits in amounts equal to the insured's coverage. This will not necessarily result in the injured being compensated to the full extent of such injured person's injuries. Leetz v. Amica Mut. Ins. Co., 839 P.2d 511 (Colo. App. 1992); Prudential Prop. and Cas. Ins. Co. v. LaRose, 919 P.2d 915 (Colo. App. 1996); McCord v. Affinity Ins. Group, Inc., 13 P.3d 1224 (Colo. App. 2000).

The purpose of the uninsured/underinsured motorist coverage available pursuant to this section is to compensate fully an innocent insured for loss, subject to policy limits, caused by financially irresponsible motorists. Farmers Ins. Exch. v. Walther, 902 P.2d 930 (Colo. App. 1995).

This section does not specify how legal entitlement to uninsured motorist benefits is to be determined in regard to the liability of an insurer. It is the insurance policy that specifies the process for determining whether the insured is "legally entitled" to collect damages so as to bind the insurer. Peterman v. State Farm Mut. Auto. Ins. Co., 948 P.2d 63 (Colo. App. 1997), rev'd on other grounds, 961 P.2d 487 (Colo. 1998).

This section requires insurers to offer uninsured motorist coverage to a class of individuals coextensive with the class covered by the liability provision of the respective policy. Aetna Cas. & Sur. Co. v.

McMichael, 906 P.2d 92 (Colo. 1995); Richardson v. Farmers Ins. Exch., 101 P.3d 1138 (Colo. App. 2004); Farmers Ins. Exch. v. Anderson, 260 P.3d 68 (Colo. App. 2010).

Section does not impose a right to be offered UM/UIM insurance on a per vehicle basis. Neither the statute nor case law interpreting the statute expressly or impliedly requires that insurance be offered for each vehicle owned by the policyholder. Briggs v. Am. Nat'l Prop. & Cas. Co., 209 P.3d 1181 (Colo. App. 2009).

The enforcement of a subrogation clause and release-trust agreement placing the insured in the position of having no greater protection against her loss than if uninsured motorist coverage had not been purchased contravened the strong policy adopted by the general assembly to enable an insured who purchases uninsured motorist protection to receive the benefits of that coverage to the extent necessary for full compensation for loss caused by the negligent conduct of a financially irresponsible motorist. Kral v. Am. Hardware Mut. Ins. Co., 784 P.2d 759 (Colo. 1989).

To the extent any reduction of benefits payable to the insured under the uninsured motorist provision of the contract of insurance because of the terms of the subrogation clause and release-trust agreement would result in the insured's inability to obtain full compensation for the loss she sustained, the agreements would directly violate that legislative policy and would therefore be unenforceable. Kral v. Am. Hardware Mut. Ins. Co., 784 P.2d 759 (Colo. 1989).

The general assembly's decision to allow insureds to decline to purchase uninsured motorist protection does not mean the legislature has exempted subrogation of uninsured motorist benefits from its general policy of requiring full compensation to insureds for loss sustained in automobile accidents. Kral v. Am. Hardware Mut. Ins. Co., 784 P.2d 759 (Colo. 1989).

Arbitration provision in no-fault policy with uninsured motorist coverage requiring each party to pay its own fees and expenses of arbitration held void as against public policy and unenforceable. Garceau v. Iowa Kemper Ins. Co., 859 P.2d 243 (Colo. App. 1993).

Where clause of an uninsured motorist policy permits either party to demand trial on merits after the completion of arbitration if amount awarded exceeds specified amount, clause violates public policy by diluting uninsured motorist coverage and is unenforceable. Huizar v. Allstate Ins. Co., 952 P.2d 342 (Colo. 1998).

"Actual trial" clause in insurance contract violates public policy by diluting uninsured motorist coverage and is unenforceable. State Farm Mut. Auto. Ins. Co. v. Brekke, 105 P.3d 177 (Colo. 2004).

Denial of coverage in cases where the uninsured motorist's liability is determined in a default judgment needlessly requires the insured to re-litigate issues already decided. State Farm Mut. Auto. Ins. Co. v. Brekke, 105 P.3d 177 (Colo. 2004).

The general assembly has established that a person who purchases uninsured motorist coverage and sustains loss caused by the negligent conduct of an uninsured motorist is entitled to the benefits of such coverage to the extent necessary to fully compensate the insured for the loss, subject to the limits of the insurance contract. However, the general assembly did not intend to grant windfall profits to insureds by authorizing them to obtain double recovery for the same loss. To the extent payment of all or part of the authorized uninsured motorist benefit to the insured would, when added to the settlement proceeds she received, result in her receiving sums in excess of her total loss, the insurer should be entitled to enforce the terms of a release-trust agreement. Kral v. Am. Hardware Mut. Ins. Co., 784 P.2d 759 (Colo. 1989).

Allowing an insurance company to reduce the amount to be paid in UM/UIM coverage by the amount of social security disability benefits received by the insured contravenes public policy which allows insureds full recovery within policy limits. Barnett v. Am. Family Mut. Ins. Co., 843 P.2d 1302 (Colo. 1993).

Subsection (1)(c) bars the setoff of medical payments from the amount actually paid pursuant to UM/UIM coverage. Calderon v. Am. Family Mut. Ins. Co., 2016 CO 72, 383 P.3d 676.

"The amount of the [UM/UIM] coverage available pursuant to this section" in subsection (1)(c) refers not to the coverage limit but rather to the amount of UM/UIM coverage available on a particular claim. Calderon v. Am. Family Mut. Ins. Co., 2016 CO 72, 383 P.3d 676.

Workers' compensation benefits may not be offset against UIM coverage under Colorado law. Adamscheck v. Am. Family Mut. Ins. Co., 818 F.3d 576 (10th Cir. 2016).

While insureds should not be deprived of benefits for which they pay premiums, they should not be given a double recovery. Where plaintiff is fully compensated for medical expenses, it is not unlawful for insurer to deduct from UM/UIM benefits the amount of medical payments

insurer paid. Levy v. Am. Family Mut. Ins. Co., 293 P.3d 40 (Colo. App. 2011).

This section has been construed to allow certain offsets of amounts that the insured receives from the tortfeasor's carrier and the uninsured/underinsured motorist benefits the insured receives under a policy other than his or her own when injured by an uninsured motorist, except that insurer may not offset amounts an insured receives under "separate and distinct" insurance or other agreements. Farmers Ins. Exch. v. Walther, 902 P.2d 930 (Colo. App. 1995).

Under this section, an injured person covered by an underinsured motorist policy who settles in good faith with a tortfeasor or liability carrier for less than the tortfeasor's policy limits, and who is eligible for underinsured motorist benefits, is entitled to compensation in an amount not exceeding the difference between the amount paid to the insured by or on behalf of the tortfeasor and the limits of underinsured motorist coverage. State Farm Mut. Auto. Ins. Co. v. Tye, 931 P.2d 540 (Colo. App. 1996) (decided under law in effect prior to the 2007 amendment).

Under this section, as amended in 2007, an insured motorist covered by an underinsured motorist policy is not entitled to coverage for the difference between a settlement amount obtained from the tortfeasor and the limit of the tortfeasor's liability policy coverage. Where the insured motorists, a husband and wife, were injured in a car accident and they settled with the other motorist for less than $100,000, they were not entitled to receive from their insurance company the difference between the settlement amount and the $100,000 limit of the other motorist's liability policy coverage. Jordan v. Safeco Ins. Co. of Am., Inc., 2013 COA 47, 348 P.3d 443.

Phrase "legally liable for the bodily injury" refers only to the tortfeasor who caused such bodily injury or death. Carrier liable for underinsured motorist benefits that sought to offset amount owed to insured with amount insured received as heir to the decedent, who was not the tortfeasor, was not eligible for such offset, as liability for amount insured received as heir to the decedent was not "imposed by law"; rather, liability was imposed pursuant to a contract of insurances between decedent and her carrier that insured against losses resulting from bodily injury or death caused by someone legally liable for such bodily injury or death. McCord v. Affinity Ins. Group, Inc., 13 P.3d 1224 (Colo. App. 2000).

This section does not prohibit an auto policy provision that excludes coverage for personal injury to an insured's relative who

occupied a vehicle owned by the insured but which was not covered by the insured's auto policy. Williams-Diehl v. State Farm, 793 P.2d 587 (Colo. App. 1989).

Nor does this section prohibit an exclusion for a vehicle that is not insured under the policy. An exclusion that does not cover any vehicle that is provided for the insured's use does not violate this section. Cruz v. Farmers Ins. Exch., 12 P.3d 307 (Colo. App. 2000).

There is a private cause of action based on violations of this section. Preventing an insured's right of relief for failure to provide the coverage would circumvent the statutory duty imposed upon insurers to include the coverage in every policy, unless the insured expressly rejects it. Parfrey v. Allstate Ins. Co., 815 P.2d 959 (Colo. App. 1991), aff'd in part and rev'd in part, 830 P.2d 905 (Colo. 1992).

Tort claim against the uninsured motorist is distinct from the contract claim against the insurer. In the former case, where the uninsured motorist's liability is determined by default, the insurer may not insist upon a jury trial. In the latter case, however, the amount of damages payable under the contract is an issue, and the insurer may demand a jury trial. State Farm Mut. Auto. Ins. Co. v. Brekke, 105 P.3d 177 (Colo. 2004).

The term "replacement policy" used in subsection (3) refers to a policy issued to replace a prior policy which has been lost or destroyed or to a new policy which incorporates provisions different from those in a prior policy. Allstate Ins. Co. v. Parfrey, 830 P.2d 905 (Colo. 1992).

Consent to sue clauses are void as against public policy. Briggs v. Am. Family Mut. Ins. Co., 833 P.2d 859 (Colo. App. 1992).

Consent to sue clause in uninsured motorist provisions of an insurance contract was void as against the statutory mandate of this state regarding uninsured motorist coverage. Peterman v. State Farm Mut. Auto. Ins. Co., 961 P.2d 487 (Colo. 1998).

Consent to settle clause does not violate public policy. Such clause, designed to protect the legitimate right of an insurer to pursue its subrogation rights, serves a valid purpose and does not diminish the protection of this statute. Estate of Harry v. Hawkeye-Security Ins. Co., 972 P.2d 279 (Colo. App. 1998).

Possibility of fraud or collusion is not justification for upholding consent to sue clauses and the multiplicity of lawsuits that result therefrom. Insurer can intervene in tort action between the insured and the

uninsured for protection from such multiplicity of suits. Briggs v. Am. Family Mut. Ins. Co., 833 P.2d 859 (Colo. App. 1992).

An insurer will be bound by the resolution of issues in a tort action between the insured and an uninsured motorist as long as the insurer has notice and an opportunity to intervene, even if the insurer fails to seek intervention. Briggs v. Am. Family Mut. Ins. Co., 833 P.2d 859 (Colo. App. 1992).

"Consent to sue" clause in uninsured policy found void as against public policy. Briggs v. Am. Family Mut. Ins. Co., 833 P.2d 859 (Colo. App. 1992).

Anti-stacking provisions contained in underinsured motorist insurance policies do not violate the public policy underlying this section. Shelter Mut. Ins. Co. v. Thompson, 852 P.2d 459 (Colo. 1993).

Anti-stacking provisions contained in insurance policies are valid and the claimant was not entitled to stack the underinsured motorist benefits of his three separate policies. Colo. Farm Bureau Mut. Ins. v. Kehr, 853 P.2d 1155 (Colo. 1993); Farmers Ins. Exch. v. Stever, 854 P.2d 1230 (Colo. 1993).

Anti-stacking provisions do not include exclusionary provisions and "other insurance" provisions in the uninsured/underinsured policy concerning limitations on coverage when other automobile liability or uninsured/underinsured motorist coverage applies. Farmers Ins. Exch. v. Walther, 902 P.2d 930 (Colo. App. 1995).

Anti-stacking provision in subsection (2) does not apply where it was enacted after the policy was issued and after the accident on which the case was based occurred. Farmers Ins. Exch. v. Walther, 902 P.2d 930 (Colo. App. 1995); Sellers v. Allstate Ins. Co., 82 F.3d 350 (10th Cir. 1996).

Because the anti-stacking provisions of seven insurance policies applied only to policies issued by the same company, and the petitioners' motorcycle policy was not issued by the same company as their car policies, the existing record failed to support the district court's order in its entirety. The question of different insurance companies should have been addressed when noticed by the appellate court regardless of the petitioners' failure to raise it in the trial court or on appeal. Roberts v. Am. Family Mut. Ins. Co., 144 P.3d 546 (Colo. 2006).

Adding a new vehicle to a UM/UIM policy does not constitute the issuance of a new policy because a policy applies to the individuals

insured and not the vehicles, therefore statutory amendments that became effective January 1, 2008, and applied only to policies issued or renewed on or after that date were not incorporated into an existing policy by the addition of coverage for a new vehicle. Snell v. Progressive Preferred Ins. Co., 260 P.3d 37 (Colo. App. 2010).

By its terms subsection (2) prohibits stacking a policy issued to a named insured upon another policy issued to the named insured or a resident relative of the named insured. The statute prohibits stacking a policy issued to injured child's mother upon a policy issued to the child or a policy issued to injured child's father upon a policy issued to the child. Because injured child's mother and father are not resident relatives of one another, the statute does not prohibit the stacking of a policy issued to the mother upon a policy issued to the father. Am. Std. Ins. Co. v. Savaiano, 298 F. Supp. 2d 1092 (D. Colo. 2003).

For purposes of uninsured motorist provisions, plaintiff's automobile was uninsured while under control of uninsured thief and therefore the owner who was injured while trying to stop theft of car was entitled to recover damages under uninsured motorist coverage. State Farm Mut. Auto. Ins. Co. v. Nissen, 835 P.2d 537 (Colo. App. 1992), aff'd, 851 P.2d 165 (Colo. 1993).

Policy requirement that plaintiff "occupy" vehicle at time of accident against public policy. Since plaintiff was using vehicle at time of accident even though not occupying it, he is entitled to recover. McMichael v. Aetna Ins. Co., 878 P.2d 61 (Colo. App. 1994).

Restrictions on kind of vehicle also against public policy. This act requires that UM/UIM insurance apply to an insured person when injured by a financially irresponsible motorist. The act places no geographical limits on coverage, nor does it purport to tie protection against uninsured motorists to occupancy in any kind of vehicle. DeHerrera v. Sentry Ins. Co., 30 P.3d 167 (Colo. 2001).

UM/UIM coverage follows the insured, not the vehicle. Wagner v. Travelers Prop. Cas. Co. of Am., 209 P.3d 1119 (Colo. App. 2008); Farmers Ins. Exch. v. Anderson, 260 P.3d 68 (Colo. App. 2010).

While section does not require insurer to advise insured of the implications of court decisions affecting UM/UIM coverage under automobile insurance policies, summary judgment in favor of insurer was not appropriate because there is a genuine question of material fact as to whether a reasonable consumer could believe insurer sold UM/UIM coverage on a vehicle basis rather than a policy basis, thereby requiring the consumer to purchase

UM/UIM coverage on all vehicles in order to protect the named insured and residential family members. Wagner v. Travelers Prop. Cas. Co. of Am., 209 P.3d 1119 (Colo. App. 2008).

Insurer's policy was not misleading because it: (1) Does not list a separate UM/UIM premium for each of plaintiff's insured vehicles; (2) includes a total premium section specifically for UM/UIM insurance that provides coverage for class one insureds and class two insureds; (3) contains a declaration page identified as "Additional Coverage"; and (4) shows a single charge for the entire policy regardless of the number of vehicles covered. Mullen v. Allstate Ins. Co., 232 P.3d 168 (Colo. App. 2009).

Insurer did not fraudulently conceal a material fact from insured that in equity and good conscience should have been disclosed. Insurer is not required to provide information regarding the business practices of other insurance companies, specifically, that per-vehicle coverage was available from other insurance companies, and plaintiff and other insureds received the benefit of UM/UIM coverage under their policy for class two insureds in all vehicles listed on the policy. Mullen v. Allstate Ins. Co., 232 P.3d 168 (Colo. App. 2009).

Insurer did not commit negligent misrepresentation by omission. Insurer was not obligated to provide information about other types of coverage; insurer's policy did not include an owned but not insured exclusion; and insurer's UM/UIM coverage on additional vehicles provided an additional benefit by insuring class two insureds. Mullen v. Allstate Ins. Co., 232 P.3d 168 (Colo. App. 2009).

Insurer did not engage in bad faith where policy informed customers that purchase of UM/UIM coverage provided UM/UIM coverage for all class one and class two insureds in all vehicles. An offer that includes accurate information about additional benefits provided is sufficient, and those benefits do not need to be specifically identified as additional benefits. Mullen v. Allstate Ins. Co., 232 P.3d 168 (Colo. App. 2009).

Insurer's practices comply with Colorado law, and, therefore, its practices were not unreasonable. Mullen v. Allstate Ins. Co., 232 P.3d 168 (Colo. App. 2009).

In determining whether the tortfeasor's vehicle was underinsured, the trial court correctly used the per accident bodily injury liability limit in the tortfeasor's policy for comparison where the plaintiff's insurance policy specified only a single limit. Leetz v. Amica Mut. Ins. Co., 839 P.2d 511 (Colo. App. 1992).

A tortfeasor's motor vehicle is underinsured under subsection (4)(a) whenever the limits of insurance liability on that motor vehicle are less than the sum of the underinsured motorist coverage declared in the injured party's policy and the underinsured motorist coverage declared in all other applicable policies. The word "limits" contained in subsection (4)(a) refers to the full amount of underinsured motorist coverage allowed by the injured party's entire policy, including those terms and conditions that permit the "stacking" of the underinsured portions of a policy issued to the injured party and the underinsured portions of other policies covering the injured party that were not issued to either the injured party or one of his or her resident relatives. Therefore, the initial determination of whether a tortfeasor's motor vehicle is underinsured under subsection (4)(a) is determined by comparing the liability limits of the tortfeasor's vehicle with the sum of the underinsured portions of the injured party's policy and the underinsured portions of any other applicable policies. State Farm Mut. Auto. Ins. Co. v. Progressive Mut. Ins. Co., 148 P.3d 117 (Colo. 2006).

The legislative directive in this section to find coverage for "innocent insureds" should not be construed to provide coverage for non-insureds even when a non-insured person has relied on such coverage. Gen. Ins. Co. of Am. v. Smith, 874 P.2d 412 (Colo. App. 1993).

Public policy not violated for failure to carry uninsured motorist coverage for a particularly excluded driver or his or her innocent passenger. Lopez v. Dairyland Ins. Co., 890 P.2d 192 (Colo. App. 1994).

A policy for UM/UIM coverage, negotiated at specific request of the insured, that is more narrow than general liability coverage does not impermissibly dilute, condition, or limit the coverage that must be offered pursuant to this section. Bernal v. Lumbermens Mut. Cas. Co., 97 P.3d 197 (Colo. App. 2003).

The provisions of this section do not include an express restriction on the policyholder's freedom to modify the scope of UM/UIM coverage. Bernal v. Lumbermens Mut. Cas. Co., 97 P.3d 197 (Colo. App. 2003).

Public policy prohibits restricting UM/UIM coverage according to the type of vehicle. Where an employee operated a company truck within the course and scope of the employee's employment and for which the employer elected UM/UIM coverage for employee's occupying private passenger autos only, the court found restricted UM/UIM coverage an impermissible restriction on coverage. Bernal v. Lumbermens Mut. Cas. Co., 97 P.3d 197 (Colo. App. 2003).

The exclusion of uninsured motorist coverage for the wrongful death of a person who is not insured under the terms of an insurance policy does not violate the public policy underlying uninsured motorist insurance as required by this section. Farmers Ins. Exch. v. Chacon, 939 P.2d 517 (Colo. App. 1997).

Injuries sustained by police officer, who was attacked by dog that leapt from vehicle during stop and arrest of dog's owner who was uninsured, are not covered under officer's uninsured motorist coverage. Transporting of dog, in and of itself, insufficient to support a finding that the injury arose from the use of the automobile. Sanchez v. State Farm Mut. Auto. Ins. Co., 878 P.2d 31 (Colo. App. 1994).

Summary judgment in favor of insured defendant was proper where plaintiff was injured while a passenger in a vehicle driven by a person specifically excluded from insurance coverage under this section, and no obligation to provide uninsured motorist coverage exists. Lopez v. Dairyland Ins. Co., 890 P.2d 192 (Colo. App. 1994).

Summary judgment in favor of insurance company defendant was affirmed where claimant was not a named insured under her parents' policy, her claim for emotional distress was based on a provision that applied only to persons with derivative claims, and she sought damages as a result of her own direct injuries and not those of her mother. Wieprzkowski v. State Farm Mut. Auto. Ins. Co., 976 P.2d 891 (Colo. App. 1999).

An action against an insurance company is barred by res judicata where claimant's initial claim for UIM benefits arising from an accident and the subsequent bad faith breach of contract claim against the company derive from the same "transaction". Salazar v. State Farm Mut. Auto. Ins. Co., 148 P.3d 278 (Colo. App. 2006).

Road repair truck used as barricade between worker and on-coming traffic was in "use" for purposes of recovery under underinsured motorist provisions of employer-truck owner's motor vehicle insurance policy. Liability coverage was extended to anyone using the insured vehicle with the permission of the named insured and since plaintiff had permission to use the vehicle, he was entitled to UIM coverage to the extent that his injuries arose out of the "use" of the truck. McMichael v. Aetna Ins. Co., 878 P.2d 61 (Colo. App. 1994).

Death not causally related to use of uninsured motor vehicle, therefore, uninsured motorist benefits not available under insurance policy. State Farm Mut. Auto. Ins. Co. v. Fisher, 618 F.3d 1103 (10th Cir. 2010).

"[U]se" does not include a sexual assault inside a motor vehicle. Using the interior of a motor vehicle for sexual assault is not a reasonably foreseeable use of a motor vehicle; therefore, it does not have a sufficient causal nexus to injuries caused by such act. State Farm Mut. Auto. Ins. Co. v. Kastner, 77 P.3d 1256 (Colo. 2003).

Insurer is entitled to aggregate damages from multiple insureds under this section in calculating amount owed under a per-accident policy. Union Ins. Co. v. Houtz, 883 P.2d 1057 (Colo. 1994).

Insurer's method of aggregating damages under the per-accident policy is not contrary to public policy. Union Ins. Co. v. Houtz, 883 P.2d 1057 (Colo. 1994).

Insurance policy coverage is not rendered illusory simply by crediting an insurer with payments it has made, even if payments might reduce available UM/UIM coverage. Levy v. Am. Family Mut. Ins. Co., 293 P.3d 40 (Colo. App. 2011).

Insurance policy exclusion for motorcycles does not violate public policy. Allstate Indem. Co. v. Gonzales, 902 P.2d 953 (Colo. App. 1995); DeHerrera v. Sentry Ins. Co., 992 P.2d 629 (Colo. App. 1999), rev'd on other grounds, 30 P.3d 167 (Colo. 2001).

Insured entitled to collect uninsured motorist benefits need not be person who suffered bodily injury or death. Where plaintiff sought to collect uninsured motorist benefits as an heir to the decedent under a wrongful death claim arising from a death caused by an underinsured motorist, plaintiff was an "insured" for the purposes of subsection (4). McCord v. Affinity Ins. Group, Inc., 13 P.3d 1224 (Colo. App. 2000).

Where divorced parents' son was killed in an automobile accident, and each parent had a separate policy applicable to the accident that provided up to $100,000 for damages arising from an accident involving an underinsured motor vehicle, and the driver's policy had a liability limit of $100,000, the driver was obligated to pay $50,000 to each parent. As a result, for purposes of each parent's policy, $50,000 was paid to a person "other than an insured injured person in the accident", namely, the other parent. Hence, the driver's vehicle was underinsured under the terms of each policy. Under the wrongful death statute, each parent could recover up to $75,000 in uninsured motorist (UIM) benefits, and insurer was potentially liable under each parent's UIM policy for such amount. Kline v. Am. States Ins. Co., 924 P.2d 1150 (Colo. App. 1996).

An insurer may require judgment or settlement from the underinsured driver as a precondition to a claim for UIM benefits without diluting, conditioning, or unduly limiting statutorily mandated UIM coverage. Freeman v. State Farm Mut. Auto. Ins. Co., 946 P.2d 584 (Colo. App. 1997).

It is not bad faith for an insurer to not pay underinsured motorist coverage while related action is pending. The insurer's reliance on the plain meaning of the section and case law indicating that the amount of underinsured motorist coverage is unknown until recovery is made from the at-fault party was reasonable. Pham v. State Farm Mut. Auto. Ins. Co., 70 P.3d 567 (Colo. App. 2003).

Nothing in this section suggests the general assembly considered loss of consortium to be a separate bodily injury that must be insured against in all insurance policies. Thus an insurer need not offer either liability or uninsured motorist insurance which separately covers a loss of consortium claim to be in compliance with this section. Spaur v. Allstate Ins. Co., 942 P.2d 1261 (Colo. App. 1996).

Loss of consortium is not a "sickness" of the noninjured spouse any more than it is a "bodily injury", it is merely an element of consequential damages arising out of the bodily injury to the spouse injured in the accident. Spaur v. Allstate Ins. Co., 942 P.2d 1261 (Colo. App. 1996).

This section does not require full indemnification of losses suffered at the hands of the uninsured motorists under all circumstances without regard to policy limits. Spaur v. Allstate Ins. Co., 942 P.2d 1261 (Colo. App. 1996).

Independent contractor who elects not to obtain a policy of workers' compensation insurance covering himself is precluded from recovering more than the $15,000 statutory limit in damages from a UM/UIM insurer of the employer of a tortfeasor who is in the same employ as the independent contractor. Cont'l Divide Ins. Co. v. Dickinson, 179 P.3d 202 (Colo. App. 2007).

Applied in O'Sullivan v. Geico Cas. Co., 232 F. Supp. 3d 1170 (D. Colo. 2017).

§ 10-4-610. Property damage protection against uninsured motorists

(1) Every policy providing insurance for bodily injury caused by uninsured motorists that is delivered or issued for delivery in this state, which policy does not also provide insurance for collision damage, shall provide, at the request of the insured, coverage for the protection of persons insured thereunder who are legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of property damage to the motor vehicle described in the policy arising out of the operation, maintenance, or use of the uninsured motor vehicle. The coverage provided under this section shall cover the actual cash value of the vehicle or the cost of repair or replacement, whichever is less. Any coverage offered pursuant to this section on a vehicle may be subject to a deductible, at the option of the insurer, as with other property damage coverage. The coverage provided under this section shall not provide protection for:

(a) Damage if there is not actual physical contact between the covered motor vehicle and another motor vehicle;

(b) Damages which are paid or payable under any other property insurance;

(c) Loss of use of a motor vehicle.

(2) Repealed.

History:

L. 88: Entire section added, p. 409, § 1, effective January 1, 1989. L. 89: IP(1) and (1)(a) amended and (1)(c) and (2) added, p. 456, § 1, effective July 1. L. 2006: (2) repealed, p. 37, § 2, effective January 1, 2007.

§ 10-4-611. Elimination of discounts - damage by uninsured motorist

No rating discounts applied to any policy of motor vehicle insurance issued in this state shall be reduced or eliminated as the result of a collision with an uninsured motor vehicle where the operator of the insured motor vehicle is not at fault.

History:

L. 88: Entire section added, p. 409, § 1, effective January 1, 1989.

§ 10-4-612. Study concerning implementation of proof of insurance. (Repealed)

History:

L. 92: Entire section added, p. 1502, § 1, effective June 3. L. 96: Entire section repealed, p. 1229, § 50, effective August 7.

§ 10-4-613. Glass repair and replacement

(1) No insurance company, domestic or foreign, or any agent or employee of such a company, shall require or permit that automobile glass repair or replacement work must be performed by a particular facility, individual, or business establishment as a condition of payment of a claim. However, an insurance company may provide that payments for such work shall be limited to a fair competitive price. No insurance company that issues, delivers, or renews such a policy shall fail to pay for the repair or replacement of automobile glass by an insured's chosen vendor, nor shall any such insurance company engage in any act or practice of intimidation, coercion, or threat for or against any insured person or entity to use a particular vendor or location for such glass repair or replacement work. No insurance company shall agree to refund or rebate any applicable deductible or portion thereof as an incentive or inducement to any insured to use a particular vendor or location for glass repair or replacement work. The provisions of this section shall apply to all policies of insurance delivered, issued for delivery, or renewed in this state that cover motor vehicles.

(2) Notwithstanding the provisions of subsection (1) of this section, an insurance company may agree to pay the full cost of glass repair, notwithstanding any applicable deductible.

History:

L. 92: Entire section added, p. 1791, § 1, effective April 16.

Editor's Note:

This section was originally numbered as §10-4-612 in House Bill 92-1275 but was renumbered on revision for ease of location.

§ 10-4-614. Inflatable restraint systems - replacement - verification of claims - definition

(1) If an insured receives payment for a policy claim for an inflatable restraint system that has inflated and deployed or been stolen, the insured shall replace such inflatable restraint system in the motor vehicle. Upon receiving such a policy claim, the insurer is authorized to inspect the vehicle for which the claim is being filed to verify that the inflatable restraint system did inflate and deploy or was stolen.

(2) For the purposes of this section, "inflatable restraint system" has the same meaning as is set forth in 49 CFR 571.208 S4.1.5.1 (b).

History:

Amended by 2020 Ch. 216, §12, eff. 6/30/2020. L. 97: Entire section added, p. 796, § 1, effective August 6.

§ 10-4-615. Motorist insurance identification database program - reporting required - fine

(1)

(a) Each insurer that issues a policy pursuant to this part 6 shall provide to the department of revenue a record of each policy issued during the immediately preceding period. Such record shall comply with the requirements of subsections (2) and (3) of this section. This subsection (1) shall not be construed to prohibit more frequent reporting. Such policy information shall be provided to the department as follows:

(I) and (II) (Deleted by amendment, L. 2006, p. 1014, § 10, effective July 1, 2006.)

(III) Each insurer with any policies in place for the preceding six months shall provide such policy information every week for the immediately preceding week. Such information shall be reported no later than seven working days after the last date of the week reported on.

(b) Each insurer shall provide policy information on all existing policies issued by such insurer to the department at least every six months. The department and the working group created in section 42-7-604(4)(b), C.R.S., shall determine if any new means of transmittal of such information may be utilized. Each insurer shall provide information regarding changes to existing policies to the department at the time of receipt of such information.

(2) The record described in subsection (1) of this section shall include:

(a) The name, date of birth, driver's license number, and address of each named insured owner or operator;

(b) The make, year, and vehicle identification number of each insured motor vehicle; and

(c) The policy number, effective date, and expiration date of each policy.

(3) Each insurer shall provide the required information in a form or manner acceptable to the designated agent.

(4)

(a) The division of insurance shall assess a fine of not more than two hundred fifty dollars against an insurer for each day such insurer fails to report timely and accurate information in accordance with this section or

with rules promulgated pursuant to section 42-7-604(8), C.R.S. Any administrative costs incurred by the division of insurance shall be paid from the fines assessed pursuant to this paragraph (a).

(b) The commissioner shall excuse the fine if an insurer provides proof that its failure to comply was inadvertent, accidental, or the result of excusable neglect.

(5) (Deleted by amendment, L. 2006, p. 1014, § 10, effective July 1, 2006.)

(6) Repealed.

History:

L. 97: Entire section added, p. 1444, § 1, effective July 1. L. 2000: (4)(a) amended, p. 1635, § 8, effective June 1. L. 2001: (4)(a) and (6) amended, p. 522, § 3, effective May 22. L. 2003: (1), (4)(a), and (6) amended, p. 2645, § 1, effective July 1. L. 2004: IP(1)(a) and (1)(a)(III) amended, p. 796, § 8, effective May 21. L. 2006: (1) and (5) amended and (6) repealed, pp. 1014, 1010, §§ 10, 2, effective July 1.

§ 10-4-616. Disclosure of credit reports

(1)

(a) Insurers using new or updated credit information in insurance underwriting or rating shall notify applicants or policyholders that their credit information will be used for underwriting or rating.

(b) When an insurer uses a producer for such disclosure, the insurer shall provide the producer with the form of such notice and use a reasonable means to verify that such notice is given. The disclosure notice form shall be developed by the insurer.

(c) Upon request by an applicant or policyholder, an insurer or producer shall provide an explanation of the significant characteristics of the credit information that impact the policyholder's insurance score. This information may be included in the disclosure notice form.

(2) If the use of credit information results in an adverse action to a consumer, the insurer shall comply with the notice requirements of the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681 et seq. Such notice shall include, but is not limited to:

(a) The identity, telephone number, and address of any consumer reporting agency from whom a credit report was obtained;

(b) Notice of the consumer's right to receive a free credit report from the consumer reporting agency for a period of sixty days if such report resulted in an adverse action; and

(c) Notice of the consumer's right to lodge a dispute with the consumer reporting agency and have any erroneous information corrected in accordance with the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681 et seq.

(3) For the purposes of this section, "adverse action" means a denial, cancellation, or nonrenewal of, an increase in any charge for, a placement into a higher tier, or a reduction or unfavorable change in the terms of coverage or amount of insurance in connection with underwriting of existing insurance or an application for insurance.

History:

L. 2003: Entire section added, p. 839, § 1, effective July 1, 2004.

§ 10-4-617. Insurers - biannual fee - auto theft prevention authority

(1) Each insurer that issues a policy pursuant to this part 6 shall biannually pay a fee to the automobile theft prevention board, created pursuant to section 42-5-112, C.R.S., for the support of the automobile theft prevention authority. Upon receiving payment, the board shall transfer the amount received to the state treasurer for deposit in the Colorado auto theft prevention cash fund created in section 42-5-112(4), C.R.S. The amount of the fee shall be equal to one dollar multiplied by the number of motor vehicles insured by the insurer as of July 1 of each year, divided by two. The insurer shall report the number of insured motor vehicles and pay the assessed biannual fee as follows:

(a) On or before August 15, 2008, and on or before August 15 each year thereafter, the insurer shall notify the automobile theft prevention board of the number of motor vehicles insured by that insurer as of July 1 of that year; and

(b) On or before January 1, 2009, and July 1, 2009, and on or before January 1 and July 1 each year thereafter, the insurer shall pay to the automobile theft prevention board the assessed biannual fee in the amount specified in this subsection (1).

(2) On or before February 1, 2009, and on or before February 1 each year thereafter, the automobile theft prevention board shall compare the list of insurers who paid the biannual fee with the list compiled by the division of insurance of all insurance companies licensed to insure motor vehicles in the state and shall notify the commissioner of the division of insurance of any insurer's failure to pay the fee prescribed in subsection (1) of this section. Upon receiving notice of an insurer's failure to pay the fee, the commissioner shall notify the insurer of the fee requirement. If the insurer fails to pay the fee to the automobile theft prevention board within fifteen days after receiving the notice, the commissioner may suspend the insurer's certificate of authority or impose a civil penalty of not more than one hundred twenty percent of the amount due, or both. The insurer shall pay the civil penalty to the commissioner. The commissioner shall transfer the amount received to the state treasurer who shall credit the amount to the Colorado auto theft prevention cash fund, created in section 42-5-112(4), C.R.S.

(3) For the purposes of this section, "insurer" shall have the same meaning as provided in section 10-1-102(13) that covers the operation of a motor vehicle.

(4)

(a) Each insurer subject to the provisions of this section is hereby authorized to recoup the fee required in subsection (1) of this section from its policyholders.

(b) Each insurer subject to the provisions of this section shall not raise its premiums based on the fee in this section.

(5) As used in this section, "motor vehicle" does not include vehicles or vehicle combinations with a declared gross weight of more than twenty-six thousand pounds.

History:

L. 2003: Entire section added, p. 1330, § 2, effective April 22. L. 2008: Entire section amended, p. 2098, § 4, effective July 1. L. 2009: IP(1) and (2) amended, (SB 09-292), ch. 369, p. 1943, §13, effective August 5.

Editor's Note:

This section was originally numbered as §10-4-616 in House Bill 03-1251 but has been renumbered on revision for ease of location.

Cross Reference Note:

For the legislative declaration contained in the 2008 act amending this section, see section 1 of chapter 415, Session Laws of Colorado 2008.

§ 10-4-618. Unfair or discriminatory trade practices - legislative declaration. (Repealed)

History:

L. 2003: Entire section added, p. 2554, § 2, effective July 1. L. 2007: Entire section repealed, p. 974, § 2, effective May 18.

§ 10-4-619. Coverage compulsory

(1) Every owner of a motor vehicle who operates the motor vehicle on the public highways of this state or who knowingly permits the operation of the motor vehicle on the public highways of this state shall have in full force and effect a complying policy under the terms of this part 6 covering the said motor vehicle, and any owner who fails to do so shall be subject to the sanctions provided under sections 42-4-1409 and 42-7-301, C.R.S., of the "Motor Vehicle Financial Responsibility Act". This section shall not apply to persons who hold a current and valid certificate of self-insurance pursuant to section 10-4-624.

(2) An insurer shall not refuse to provide benefits to an insured on the basis that the insured is a volunteer for a fire department and is injured in a motor vehicle while responding to an emergency.

History:

L. 2003: Entire section amended, p. 2433, § 2, effective June 5; entire section added, p. 1560, § 3, effective July 1. L. 2004: Entire section amended, p. 895, § 3, effective May 21.

Editor's Note:

This section was originally numbered as §10-4-616 in House Bill 03-1188 but has been renumbered on revision for ease of location.

Case Note:

ANNOTATION

Annotator's note. Since this section is similar to § 10-4-705 as it existed prior to the 2003 repeal of part 7 of article 4 of this title, relevant cases construing that provision have been included in the annotations to this section.

Act generally covers claims arising from automobile accidents between private person and public entity. Reg'l Transp. Dist. v. Voss, 890 P.2d 663 (Colo. 1995).

Vehicles operating out of the normal traffic flow on highways, roads, or other places, are exempt, as are their owners, from the compulsion of the statute. Smith v. Simpson, 648 P.2d 677 (Colo. App. 1982), overruled on other grounds in Trinity Universal Ins. Co. v. Hall, 690 P.2d 227 (1984).

Coverage is compulsory even though the owner does not have knowledge of or give permission to each individual who drives the car. Bukulmez v. Hertz Corp., 710 P.2d 1117 (Colo. App. 1985); aff'd in part and rev'd in part on other grounds sub nom. in Blue Cross of W. New York v. Bukulmez, 736 P.2d 834 (Colo. 1987).

The provisions of this section and § 10-4-706 do not mandate a minimum coverage for every policy. Rather, the purpose of these statutes is to impose upon motor vehicle owners a mandated level of insurance coverage for their vehicles. Since the insurer limited its total liability under all three identical vehicle insurance policies to the requisite statutory minimum and since each policy therefore complied with the insured's statutory obligation, there was no conflict with this section and §10-4-107. Am. Standard Ins. Co. v. Ekeroth, 791 P.2d 1220 (Colo. App. 1990), cert. denied, 797 P.2d 1299 (Colo. 1990).

In-state insurers are not excluded from having to provide the minimum coverages required of out-of-state insurers. Ortiz v. Hawkeye-Security Ins. Co., 971 P.2d 233 (Colo. App. 1998).

Court declined to read in a primacy requirement to the compulsory coverage mandated by this section. Neither case law nor current statutory law requires compulsory coverage under this section to be treated as primary. To the contrary, §10-4-623 states that an owner's compulsory coverage "may be subject to conditions and exclusions that are not inconsistent with the requirements" of the relevant statutes. Further, former § 10-4-707(4) shows that the general assembly knows how to identify primary coverage. Hence, the omission of such a provision in this section cannot be dismissed as inadvertent. Shelter Mut. Ins. Co. v. Mid-Century Ins. Co., 214 P.3d 489 (Colo. App. 2008), aff'd, 246 P.3d 651 (Colo. 2011).

Nor is there any compelling public policy basis for reading a primary-insurer requirement into the statutory scheme. The public policy behind Colorado's mandatory-insurance laws only requires that the public benefit from insurance coverage, not that any insurer be primary. Shelter Mut. Ins. Co. v. Mid-Century Ins. Co., 246 P.3d 651 (Colo. 2011).

Nor does industry custom compel the vehicle owner's insurer be primary. Shelter Mut. Ins. Co. v. Mid-Century Ins. Co., 246 P.3d 651 (Colo. 2011).

Insureds and insurers are not prohibited from determining by contract what coverages are primary and what coverages are excess as to compulsory coverage. Accident victims are equally protected by compulsory coverage that is primary or multiple coverages that

are co-primary. Thus, there is no need to abrogate the freedom of contract between insureds and insurers regarding primacy of coverages. Shelter Mut. Ins. Co. v. Mid-Century Ins. Co., 214 P.3d 489 (Colo. App. 2008), aff'd, 246 P.3d 651 (Colo. 2011).

Insurance policy's "excess clause", which made coverage secondary to other collectible insurance, was not void as an erosion of the statutory mandate that vehicle owners carry minimum liability insurance. Court contrasted excess clause, which limited coverage to the extent that other coverage existed, with "escape clause", whereby an insurer provides no coverage if other insurance applied. Shelter Mut. Ins. Co. v. Mid-Century Ins. Co., 214 P.3d 489 (Colo. App. 2008), aff'd, 246 P.3d 651 (Colo. 2011).

Exclusion in insurance policy for bodily injury or property damage caused intentionally by or at the direction of an insured does not violate the mandatory liability insurance statute or the state's public policy. Gov't Employees Ins. Co. v. Brown, 739 F. Supp. 2d 1317 (D. Colo. 2010).

Where insureds gave the keys to their truck to the driver and informed him that he could drive the truck to work without asking for further permission, the driver had the initial permission of the insureds necessary to trigger the insurance protection required by the Colorado Auto Accident Reparations Act. Wiglesworth v. Farmers Ins. Exch., 917 P.2d 288 (Colo. 1996).

Initial permission from the primary insured to use the vehicle is all that is required to confer coverage under the Colorado Auto Accident Reparations Act. Wiglesworth v. Farmers Ins. Exch., 917 P.2d 288 (Colo. 1996).

Applied in Ohio Cas. Ins. Co. v. Guaranty Nat'l Ins. Co., 197 Colo. 264, 592 P.2d 397 (1979); In re United States Court of Appeals v. Criterion Ins. Co., 198 Colo. 132, 596 P.2d 1203 (1979); Golting v. Hartford Accident & Indem. Co., 43 Colo. App. 337, 603 P.2d 972 (1979).

§ 10-4-620. Required coverage

Subject to the limitations and exclusions authorized by this part 6, the basic coverage required for compliance with this part 6 is legal liability coverage for bodily injury or death arising out of the use of the motor vehicle to a limit, exclusive of interest and costs, of twenty-five thousand dollars to any one person in any one accident and fifty thousand dollars to all persons in any one accident and for property damage arising out of the use of the motor vehicle to a limit, exclusive of interest and costs, of fifteen thousand dollars in any one accident.

History:

L. 2003: Entire section added, p. 1561, § 3, effective July 1.

Editor's Note:

This section was originally numbered as §10-4-617 in House Bill 03-1188 but has been renumbered on revision for ease of location.

Case Note:

ANNOTATION

Law reviews. For article, "The Enterprise Liability Theory of Torts", see 47 U. Colo. L. Rev. 153 (1976). For article, "The Responsibility of the Insuror Once a Driver is Given Initial Permission", see 15 Colo. Law 1041 (1986). For article, "Über Problems: Ride-Sharing Exclusions in Personal Automobile Insurance Policies", see 47 Colo. Law. 46 (Aug.-Sept. 2018).

Annotator's note. Since this section is similar to § 10-4-706(1)(a) as it existed prior to the 2003 repeal of part 7 of article 4 of this title, relevant cases construing that provision have been included in the annotations to this section.

Nothing in this section suggests the general assembly considered loss of consortium to be a separate bodily injury that must be insured against in all insurance policies. Thus an insurer need not offer either liability or uninsured motorist insurance which separately covers a loss of consortium claim to be in compliance with this section. Spaur v. Allstate Ins. Co., 942 P.2d 1261 (Colo. App. 1996).

An insurance policy is a contract that should be interpreted consistently with principles of contract law. A reviewing court should give the words of an insurance policy their plain and ordinary meaning unless the intent of the parties, as expressed in the policy, indicates a

contrary intent. However, when the provisions are ambiguous, they are construed against the drafting party. Farmers Ins. Exch. v. Wiglesworth, 903 P.2d 659 (Colo. App. 1994), rev'd on other grounds, 917 P.2d 288 (Colo. 1996).

"Household exclusion" clause against public policy. A household exclusion clause, excluding coverage of family members residing in the same household, is void as against public policy. Meyer v. State Farm Mut. Auto. Ins. Co., 689 P.2d 585 (Colo. 1984) (decided prior to 1986 enactment of §10-4-418(2)(b)) .

Physical damage waiver contained in automobile rental agreement was so significantly restricted it was unconscionable, and lessor could not enforce a limitation on such waiver which excluded damages caused when driver was under influence of drugs or intoxicants when it brought action against lessee to recover for total destruction of automobile which occurred while lessee was intoxicated. Davis v. M.L.G. Corp., 712 P.2d 985 (Colo. 1986).

Automobile lessor impermissibly attempted to limit the statutory requirements of subsection (1) which requires automobile liability coverage by conditioning its compulsory liability coverage for property damage on compliance with its lease's provisions. Davis v. M.L.G. Corp., 712 P.2d 985 (Colo. 1986).

Common-law obligations by contract may be altered by parties to bailment or lease of an automobile, provided such contract does not contravene public policy or violate a statute. Davis v. M.L.G. Corp., 712 P.2d 985 (Colo. 1986).

Initial permission from the primary insured to use the vehicle is all that is required to confer coverage. Wiglesworth v. Farmers Ins. Exch., 917 P.2d 288 (Colo. 1996).

The clause "exclusive of interest and costs" must be given meaning and therefore the minimum legal liability coverage mandated by this section means $25,000 of benefits plus any interests and costs attendant thereto. Bjorkman by Bjorkman v. Steenrod, 762 P.2d 706 (Colo. App. 1988), overruled in Allstate Ins. Co. v. Allen, 797 P.2d 46 (Colo. 1990).

Prejudgment interest is subject to the policy limits. Prejudgment interest is an element of damages included within the damages coverages of an insurance policy and subject to the policy limit for such coverage. Allstate Ins. Co. v. Allen, 797 P.2d 46 (Colo. 1990), overruling Bjorkman by Bjorkman v. Steelrod, 762 P.2d 706 (Colo. App. 1988).

Mandatory coverage of $25,000 exclusive of interest and costs establishes minimum applicable to initial amount of damages suffered and not exclusion from liability. Garceau v. Iowa Kemper Ins. Co., 859 P.2d 243 (Colo. App. 1993).

Where each of three identical vehicle insurance policies contained language limiting the insurer's liability to the maximum amount recoverable under any one policy, such provisions prohibited the "stacking" of liability coverage under the three policies. The fact that separate premiums were paid on each policy is not dispositive and does not alter the plain wording of the policies. Am. Standard Ins. Co. v. Ekeroth, 791 P.2d 1220 (Colo. App. 1990).

The provisions of this section and § 10-4-705 do not mandate a minimum coverage for every policy. Rather, the purpose of these statutes is to impose upon motor vehicle owners a mandated level of insurance coverage for their vehicles. Since the insurer limited its total liability under all three identical vehicle insurance policies to the requisite statutory minimum and since each policy therefore complied with the insured's statutory obligation, there was no conflict with this section and §10-4-107. Am. Standard Ins. Co. v. Ekeroth, 791 P.2d 1220 (Colo. App. 1990), cert. denied, 797 P.2d 1299 (Colo. 1990).

This section and §10-4-623(1) deal with mandated minimum liability coverages and have no application to the crime exclusion in the insurance policy because the exclusion applies to supplemental coverage that is in addition to, and separate from, the mandatory coverage. Lincoln Gen. Ins. Co. v. Bailey, 224 P.3d 336 (Colo. App. 2009), aff'd, 255 P.3d 1039 (Colo. 2011).

Any construction of the policy's exclusion, if inconsistent with the Act, renders the exclusion void. Great Plains Ins. Co., Inc. v. Angerman, 833 P.2d 810 (Colo. App. 1991).

Exclusion in insurance policy for bodily injury or property damage caused intentionally by or at the direction of an insured does not violate the mandatory liability insurance statute or the state's public policy. Gov't Employees Ins. Co. v. Brown, 739 F. Supp. 2d 1317 (D. Colo. 2010).

§ 10-4-621. Required coverages are minimum

(1) Nothing in this part 6 shall be construed to prohibit the issuance of policies providing coverages more extensive than the minimum coverage required by section 10-4-620, nor to require the segregation of such minimum coverage from other coverages in the same policy. However, loss statistics as to bodily injury liability and property damage liability shall be kept separately for rating purposes, and such statistics shall be filed with the commissioner each year.

(2) On and after January 1, 2005, all insurers shall offer collision coverage for damage to insured motor vehicles subject to deductibles of one hundred dollars and two hundred fifty dollars. Insurers may offer such other reasonable deductibles as they deem appropriate. Collision coverage shall provide insurance without regard to fault against accidental property damage to the insured motor vehicle with another motor vehicle or motor vehicle caused by physical contact of the insured with another object or by upset of the insured motor vehicle, if the accident occurs within the United States or its territories or possessions.

(3) No insurer may surcharge, refuse to write, cancel, or nonrenew a complying policy of automobile insurance based solely on the method of compliance or level of coverage chosen, as long as the requirements are met under section 42-3-105(1)(d)(I) or (1)(f), C.R.S.

History:

L. 2003: Entire section added, p. 1561, § 3, effective July 1. L. 2004: (2) amended, p. 173, § 1, effective January 1, 2005. L. 2006: (3) amended, p. 1491, § 14, effective June 1.

Editor's Note:

This section was originally numbered as §10-4-618 in House Bill 03-1188 but has been renumbered on revision for ease of location.

§ 10-4-622. Required provision for intrastate and interstate operation

(1) Notwithstanding any of its terms and conditions, every complying policy shall afford coverage at least as extensive as the minimum coverage required by section 10-4-620.

(2) Nothing in this section shall be construed to require that a complying policy provide coverage while the insured motor vehicle is operated in other jurisdictions by reason of any program, statute, law, or administrative rule in effect in such other jurisdiction by which coverage is afforded in such other jurisdiction through a government agency or publicly financed auto accident reparations plan such as, by way of illustration and not limitation, plans presently in effect in the province of Saskatchewan, Canada, and the commonwealth of Puerto Rico, U.S.A.

(3) On and after January 1, 2005, notwithstanding any of its other terms and conditions, every complying policy shall afford coverage at least as extensive as the minimum coverage required by operation of section 10-4-620, during such periods of time as the insured motor vehicle is operated in other jurisdictions of the United States or its territories or possessions, as the statutes, laws, or administrative rules of such other jurisdictions require with respect to liability or financial responsibility and direct benefit or first-party coverages for operators, occupants, and persons involved in accidents arising out of use or operation of motor vehicles within such other jurisdictions.

(4)

(a) Notwithstanding any of its other terms and conditions, every contract of liability insurance for injury, wherever issued, covering ownership, maintenance, or use of a motor vehicle, shall provide coverage at least as extensive as the minimum coverages required by operation of section 10-4-620, and qualifies as security covering the vehicle while it is in this state.

(b) An insurer authorized to transact or transacting business in this state may not exclude the minimum coverage required by operation of section 10-4-620 in any contract of liability insurance for injury, wherever issued, covering ownership, maintenance, or use of a motor vehicle while it is in this state.

History:

L. 2003: Entire section added, p. 1561, § 3, effective July 1. L. 2004: (2) amended, p. 902, § 22, effective May 21; (3) amended, p. 173, § 2, effective January 1, 2005.

Editor's Note:

This section was originally numbered as §10-4-619 in House Bill 03-1188 but has been renumbered on revision for ease of location.

§ 10-4-623. Conditions and exclusions

(1) The coverage described in section 10-4-620 may be subject to conditions and exclusions that are not inconsistent with the requirements of this part 6.

(2) The coverage described in section 10-4-620 may also be subject to exclusions where the injured person:

(a) Sustains injury caused by his or her own intentional act; or

(b) Is operating a motor vehicle as a converter without a good faith belief that he or she is legally entitled to operate or use such vehicle.

(3)

(a) The coverage described in section 10-4-620 is conditioned upon the insurer offering coverages pursuant to section 10-4-609(1).

(b) The insurer shall be deemed to have complied with the requirements of section 10-4-609(1) and the exclusion of the insured from uninsured motorist coverage shall be deemed valid if the named insured has rejected the uninsured motorist coverage in writing. Such exclusion shall be continuing until such time as the insured requests that the insurer provide uninsured motorist coverage. The insurer shall not have a duty to offer uninsured motorist coverage after receiving the insured's written request for exclusion even though:

(I) The vehicles insured under the policy have changed; or

(II) The policy is reinstated, transferred, substituted, amended, altered, modified, replaced, or renewed.

(c) The insurer shall be deemed to have complied with section 10-4-609(1) and the insured's uninsured motorist coverage shall be deemed valid if the insurer has offered coverage at available levels and the insured has selected coverage of a certain value. The insurer shall not have a duty to offer changes in uninsured motorist coverage to the insured even though:

(I) The vehicles covered under the policy have changed; or

(II) The policy is reinstated, transferred, substituted, amended, altered, modified, replaced, or renewed; except that, if there is an increase in bodily injury liability limits and the limits of the uninsured motorist coverage would be less than such limits, the insurer shall offer new uninsured motorist coverage to the insured pursuant to section 10-4-609(2).

History:

L. 2003: Entire section added, p. 1562, § 3, effective July 1.

Editor's Note:

This section was originally numbered as §10-4-620 in House Bill 03-1188 but has been renumbered on revision for ease of location.

Case Note:

ANNOTATION

Law reviews. For article, "The Responsibility of the Insurer Once a Driver is Given Initial Permission", see 15 Colo. Law. 1041 (1986). For article, "Über Problems: Ride-Sharing Exclusions in Personal Automobile Insurance Policies", see 47 Colo. Law. 46 (Aug.-Sept. 2018).

Annotator's note. Since this section is similar to § 10-4-712 as it existed prior to the 2003 repeal of part 7 of article 4 of this title, relevant cases construing that provision have been included in the annotations to this section.

"Household exclusion" clause invalid because it is neither authorized by statute nor in harmony with the legislative purpose of this act. Meyer v. State Farm Mut. Auto. Ins. Co., 689 P.2d 585 (Colo. 1984) (decided prior to 1986 amendment).

Household exclusion clauses in automobile insurance policies issued after effective date of §10-4-418 are valid, and the provision in that section stating that exclusion clauses are compatible with state public policy applies prospectively. Coffman v. State Farm Mut. Auto Ins. Co., 884 P.2d 275 (Colo. 1994).

Exclusion for bodily injury to employees that was intended to avoid duplication of benefits available under the Workers' Compensation Act is enforceable even when the employer failed to obtain workers' compensation insurance because coverages required under § 10-4-706 can be excluded under subsection (1) of this section so long as the exclusion is not contrary to the public policy expressed in § 10-4-702 to avoid inadequate compensation, and injured employee had a remedy under §8-43-408 of the Workers' Compensation Act. Canal Ins. Co. v. Nix, 7 P.3d 1038 (Colo. App. 1999).

Subsection (1) of this section and §10-4-620 deal with mandated minimum liability coverages and have no application to the crime

exclusion in the insurance policy because the exclusion applies to supplemental coverage that is in addition to, and separate from, the mandatory coverage. Lincoln Gen. Ins. Co. v. Bailey, 224 P.3d 336 (Colo. App. 2009), aff'd, 255 P.3d 1039 (Colo. 2011).

Exclusion in insurance policy for bodily injury or property damage caused intentionally by or at the direction of an insured does not violate the mandatory liability insurance statute or the state's public policy. Gov't Employees Ins. Co. v. Brown, 739 F. Supp. 2d 1317 (D. Colo. 2010).

Factual determination made during workers' compensation hearing does not bar a determination of claimant's entitlement to PIP benefits under doctrine of collateral estoppel. Determination that claimant was driving employer's vehicle outside scope of employment not determinative of whether she was acting as converter of the vehicle and therefore might not be entitled to PIP benefits. Maryland Cas. Co. v. Messina, 874 P.2d 1058 (Colo. 1994).

The business use delivery exclusion is invalid and unenforceable under the no-fault act because it is not authorized by statute or in harmony with the legislative purpose of mandating liability coverage to avoid inadequate compensation. St. Paul Fire and Marine Ins. Co. v. Mid-Century Ins. Co., 18 P.3d 854 (Colo. App. 2001).

§ 10-4-624. Self-insurers

(1) Any person in whose name more than twenty-five motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the commissioner.

(2) The commissioner may, in his or her discretion, upon the application of such person, issue a certificate of self-insurance when the commissioner is satisfied that such person is able and will continue to be able to pay benefits as required under section 10-4-620 and to pay any and all judgments that may be obtained against such person. Upon not less than five days' notice and a hearing pursuant to such notice, the commissioner may, upon reasonable grounds, cancel a certificate of self-insurance. Failure to pay any benefits under section 10-4-620 or failure to pay any judgment within thirty days after such judgment has become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

(3) For purposes of subsection (2) of this section, the commissioner shall accept, as proof that a motor carrier as defined in article 10.1 of title 40, C.R.S., is able and will continue to be able to pay all judgments that might be obtained against the carrier, a surety bond in a form acceptable to the commissioner in an amount determined by the commissioner sufficient to ensure that the carrier has the ability to pay all judgments that may be obtained against any such carrier.

History:

L. 2003: (2) amended, p. 2433, § 3, effective June 5; entire section added, p. 1563, § 3, effective July 1. L. 2011: (3) amended, (HB 11-1198), ch. 127, p. 417, §6, effective August 10.

Editor's Note:

This section was originally numbered as §10-4-621 in House Bill 03-1188 but has been renumbered on revision for ease of location.

Case Note:

ANNOTATION

Annotator's note. Since this section is similar to § 10-4-716 as it existed prior to the 2003 repeal of part 7 of article 4 of this title, a relevant case construing that provision has been included in the annotations to this section.

Provisions of act with regard to self-insurers do not limit obligation that every owner of a motor vehicle provide liability coverage for bodily injury arising from the vehicle's permissive use. Barnes v. Whitt, 852 P.2d 1322 (Colo. App. 1993).

§ 10-4-625. Premium payments

The commissioner shall issue rules establishing monthly, quarterly, semiannual, and annual premium payments for persons who are required to purchase insurance under this part 6. An insurer providing a plan for payments on a basis that is more frequent than quarterly need not also provide a quarterly payment plan. An insurer's plan for payments may provide for payment of an advance deposit premium.

History:

L. 2003: Entire section added, p. 1563, § 3, effective July 1. L. 2008: Entire section amended, p. 386, § 1, effective August 5.

Editor's Note:

This section was originally numbered as §10-4-622 in House Bill 03-1188 but has been renumbered on revision for ease of location.

Case Note:

ANNOTATION

Annotator's note. Since this section is similar to § 10-4-718 as it existed prior to the 2003 repeal of part 7 of article 4 of this title, a relevant case construing that provision has been included in the annotations to this section.

This section constitutes declaration of policy that insurance payments can be paid in quarterly installments. Golting v. Hartford Accident & Indem. Co., 43 Colo. App. 337, 603 P.2d 972 (1979).

§ 10-4-626. Prohibited reasons for nonrenewal or refusal to write policy of automobile insurance applicable to this part 6

(1) An insurer authorized to transact or transacting business in this state shall not refuse to write or refuse to renew a policy of insurance affording the coverage required by section 10-4-620 solely because of the age, race, creed, color, religion, sex, sexual orientation, gender identity, gender expression, national origin, ancestry, residence, marital status, or lawful occupation, including the military service, of anyone who is or seeks to become insured or solely because another insurer has canceled a policy or refused to write or renew such policy. The commissioner shall administer and enforce this subsection (1).

(2) Nothing in this section shall be construed to prohibit an insurance company authorized to transact or transacting business in this state from issuing policies of insurance affording the coverage required by operation of section 10-4-620 solely to a specialty market authorized by the commissioner.

History:

Amended by 2021 Ch. 156, §15, eff. 9/7/2021. L. 2003: Entire section added, p. 1563, § 3, effective July 1. L. 2008: (1) amended, p. 1599, § 13, effective May 29. L. 2021: (1) amended, (HB 21-1108), ch. 890, p. 890, § 15, effective September 7.

Editor's Note:

This section was originally numbered as §10-4-623 in House Bill 03-1188 but has been renumbered on revision for ease of location.

Note:

2021 Ch. 156, was passed without a safety clause. See Colo. Const. art. V, § 1(3).

Case Note:

ANNOTATION

Annotator's note. Since this section is similar to § 10-4-719 as it existed prior to the 2003 repeal of part 7 of article 4 of this title, a relevant case construing that provision has been included in the annotations to this section.

Insurers failure to notify insureds clearly and unequivocally of its cancellation of coverage constituted a course of conduct which led insureds, as ordinary laypersons, reasonably to believe that by properly endorsing and returning their premium payment their personal injury coverage would remain in effect or be reinstated. Leland v. Travelers Indem. Co. of Illinois, 712 P.2d 1060 (Colo. App. 1985).

Cross Reference Note:

For the legislative declaration contained in the 2008 act amending subsection (1), see section 1 of chapter 341, Session Laws of Colorado 2008. For the legislative declaration in HB 21-1108, see section 1 of chapter 156, Session Laws of Colorado 2021.

§ 10-4-627. Discriminatory standards - premiums - surcharges - proof of financial responsibility requirements

(1) An insurer shall not:

(a) Cancel or nonrenew, or increase the premium of, a policy of insurance on a motor vehicle used by any resident of the household of the named insured solely because of convictions for traffic violations that resulted in less than seven points being assessed under the point system schedule set forth in section 42-2-127(5), C.R.S., resulting from violations while in the course of employment while the insured is driving a motor vehicle used primarily as a public or livery conveyance or licensed as a commercial vehicle; or

(b) Add a surcharge to the policy premium of an insured or a family member of an insured or other person living in the same household as an insured in a manner that results in an excessive or unfairly discriminatory premium pursuant to section 10-4-403.

(2) This section shall not be construed to limit or in any manner restrict an insurer from canceling or refusing to issue or renew a policy of insurance or from increasing the premium of an insured on a motor vehicle used by him or her for commercial purposes or from reclassifying an insured for traffic violations received by the insured while using a motor vehicle for commercial purposes.

History:

L. 2003: Entire section added, p. 1564, § 3, effective July 1.

Editor's Note:

This section was originally numbered as §10-4-624 in House Bill 03-1188 but has been renumbered on revision for ease of location.

§ 10-4-628. Refusal to write - changes in - cancellation - nonrenewal of policies prohibited

(1) No insurer shall cancel; fail to renew; refuse to write; reclassify an insured under; reduce coverage under, unless the reduction is part of a general reduction in coverage filed with the commissioner; or increase the premium for, unless the increase is part of a general increase in premiums filed with the commissioner, any complying policy because the applicant, insured, permissive user, or any resident of the household of the applicant or insured has:

(a) Had an accident or accidents that are not the fault of such named applicant, insured, household member, or permissive user;

(b) Had a license suspended pursuant to section 42-2-127.5, C.R.S., or been denied a license pursuant to section 42-2-104(3)(f), C.R.S.

(2)

(a)

(I) No insurer shall cancel; fail to renew; reclassify an insured under; reduce coverage under, unless the reduction is part of a general reduction in coverage filed with the commissioner; or increase the premium for, unless the increase is part of a general increase in premiums filed with the commissioner, any complying policy solely because the insured person has been convicted of an offense related to the failure to have in effect compulsory motor vehicle insurance or because such person has been denied issuance of a motor vehicle registration for failure to have such insurance.

(II) Unless actuarial justification in support of the insurer's action that has been filed with the commissioner demonstrates that there is an increase in risk, no insurer shall refuse to write a policy for a new applicant, surcharge the premium of a new applicant, or place a new applicant in a higher-priced program or plan based solely upon:

(A) The fact that the applicant had no prior insurance;

(B) The identity of the applicant's prior insurer; or

(C) The applicant's prior type of coverage, including assigned risk or residual market coverage or any plan other than a preferred plan.

(III) An insurer may use industry-wide data in its actuarial justification under subparagraph (II) of this paragraph (a).

(IV) An insurer shall not refuse to write a policy for a new applicant, surcharge the premium of a new applicant, or place a new applicant in a higher-priced program or plan solely because the applicant had no prior insurance if the applicant was not required to have insurance under section 10-4-620 or under a similar law in another state.

(V) An insurer shall not reduce or cancel insurance coverage except for nonpayment, refuse to issue or renew a policy, or surcharge a newly issued or renewed policy due to a covered person's failure to maintain coverage during a period in which the covered person was deployed by or called to active duty in the United States military if the person was not required to maintain insurance under section 10-4-619 or under a similar law of another state.

(b)

(I) An insurer shall not refuse to write a complying policy solely because of the claim or driving record of one or more but fewer than all of the persons residing in the household of the named insured.

(II) An insurer shall offer to exclude any person in a household by name pursuant to section 10-4-630 if such person's driving record and claim experience would justify the refusal by such insurer to write a policy for such person if such person were applying in such person's own name and not as part of a household.

(III) An insurer renewing a policy pursuant to subparagraph (II) of this paragraph (b) shall include, as part of such renewal, a written notice naming the party specifically excluded from coverage.

(3) An insured who believes subsection (1) or (2) of this section have been violated has the right to file a complaint with the division of insurance pursuant to section 10-4-629.

(4) The commissioner shall promulgate rules to implement this section.

History:

L. 2003: Entire section added, p. 1564, § 3, effective July 1. L. 2004: (2)(b)(II) and (3) amended, p. 1189, § 13, effective August 4. L. 2005: (2)(a)(V) added, p. 220, § 1, effective April 14. L. 2009: (1)(b) amended, (HB 09-1266), ch. 347, p. 1816, §7, effective August 5. L. 2012: (3) amended, (HB 12-1289), ch. 95, p. 313, § 2, effective August 8.

Editor's Note:

This section was originally numbered as §10-4-625 in House Bill 03-1188 but has been renumbered on revision for ease of location.

§ 10-4-629. Cancellation - renewal - reclassification

(1) Except in accordance with the provisions of this part 6, an insurer shall not cancel or fail to renew a policy of insurance that complies with this part 6, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 6.

(2) An insurer intending to take an action subject to this section shall, on or before the thirtieth day before the effective date of the intended action, send written notice by United States mail of its intended action to the insured at the insured's last-known address. The insurer may include the notice of the intended action in the renewal documents, nonrenewal, or cancellation notice provided to the policyholder, as applicable. The notice must state in clear and specific terms, on a form for which the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:

(a) The proposed action to be taken, including, if the action is an increase in premium or reduction in coverage, the amount of increase and the type of coverage to which it is applicable or the type of coverage reduced and the extent of the reduction;

(b) The proposed effective date of the action;

(c) The insurer's actual reasons for proposing to take such action. The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without making further inquiry. Generalized terms such as "personal habits", "living conditions", "poor morale", or "violation or accident record" shall not suffice to meet the requirements of this subsection (2).

(d) If there is coupled with the notice an offer to continue or renew the policy in accordance with this section, the name of the person or persons to be excluded from coverage and what the premium would be if the policy is continued or renewed with such person or persons excluded from coverage;

(e) The right of the insured to replace the insurance through an assigned risk plan;

(f) The right of the insured to file a complaint with the division of insurance regarding the action that is the subject of the notice.

(g) and (h) Repealed.

(3) Any statement of reasons contained in the notice given pursuant to paragraph (c) of subsection (2) of this section shall be privileged and shall not constitute grounds for any action against the insurer or its representatives or any person who in good faith furnished to the insurer the information upon which the statement is based.

(4) to (8) Repealed.

(9) This section does not apply to an insurance policy or coverage that has been in effect less than sixty days at the time the insurer mails or delivers the notice of cancellation, nonrenewal, or reclassification, unless it is a renewal policy.

History:

L. 2003: Entire section added, p. 1566, § 3, effective July 1. L. 2004: (6) amended, p. 178, § 1, effective July 1; (2)(d) amended, p. 1190, § 14, effective August 4. L. 2010: (6) amended, (HB 10-1220), ch. 197, p. 853, §14, effective July 1. L. 2012: IP(2), (2)(f), and (9) amended and (2)(g), (2)(h), and (4) to (8) repealed, (HB 12-1289), ch. 95, p. 311, § 1, effective August 8.

Editor's Note:

This section was originally numbered as §10-4-626 in House Bill 03-1188 but has been renumbered on revision for ease of location.

Case Note:

ANNOTATION

Annotator's note. Since this section is similar to § 10-4-720 as it existed prior to the 2003 repeal of part 7 of article 4 of this title, relevant cases construing that provision have been included in the annotations to this section.

Endorsement was not a decrease in coverage requiring approval by the Commissioner since the household exclusion was not void and since the statute containing the legislative declaration on the household exclusion was enacted at the time the policy was in effect. Coffman v. Coffman, 865 P.2d 856 (Colo. App. 1993).

The statute is not clear and unambiguous with respect to whether an insurer, when providing the required notice to an insured, must refer to the rule, policy, or guidelines on which it bases its decision. Requiring such a reference is a reasonable interpretation that is not arbitrary, capricious, or inconsistent with statute, and the commissioner's disallowance of a proposed increase of premium charged to an insured was upheld accordingly. Colo. Div. of Ins. v. Midwest Mut. Ins. Co., 961 P.2d 1158 (Colo. App. 1998).

Notice requirements of this section do not apply to binders because binders are not "insurance policies". Unigard Sec. Ins. v. Mission Ins. Co., 12 P.3d 296 (Colo. App. 2000).

§ 10-4-630. Exclusion of named driver

(1) In any case where an insurer is authorized under this part 6 to cancel or refuse to renew or increase the premiums on an automobile liability insurance policy under which more than one person is insured because of the claim experience or driving record of one or more but less than all of the persons insured under the policy, the insurer shall in lieu of cancellation, nonrenewal, or premium increase offer to continue or renew the insurance but to exclude from coverage, by name, the person whose claim experience or driving record would have justified the cancellation or nonrenewal. The premiums charged on any such policy excluding a named driver shall not reflect the claims, experience, or driving record of the excluded named driver.

(2) With respect to any person excluded from coverage under this section, the policy may provide that the insurer shall not be liable for damages, losses, or claims arising out of this operation or use of the insured motor vehicle, whether or not such operation or use was with the express or implied permission of a person insured under the policy.

History:

L. 2003: Entire section added, p. 1568, § 3, effective July 1.

Editor's Note:

This section was originally numbered as §10-4-627 in House Bill 03-1188 but has been renumbered on revision for ease of location.

Case Note:

ANNOTATION

Annotator's note. Since this section is similar to § 10-4-721 as it existed prior to the 2003 repeal of part 7 of article 4 of this title, relevant cases construing that provision have been included in the annotations to this section.

This section unambiguously authorizes an automobile insurer to exclude from coverage all liability arising from use of an automobile by a specifically named driver. Sersion v. Dairyland Ins. Co., 757 P.2d 1169 (Colo. App. 1988); Principal Mut. Life Ins. Co. v. Progressive Mtn. Ins. Co., 1 P.3d 250 (Colo. App. 1999), aff'd, 27 P.3d 343 (Colo. 2001).

Trial court properly granted summary judgment in favor of the defendants as insured's son was not an insured driver of the automobile. Sersion v. Dairyland Ins. Co., 757 P.2d 1169 (Colo. App. 1988).

An insurer may exclude a named driver from all coverage, including UM/UIM coverage, while the excluded driver is operating the vehicle. The exclusion of the named driver extends to preclude recovery by a resident relative passenger of the named driver. Massingill v. State Farm Mut. Auto. Ins., 176 P.3d 816 (Colo. App. 2007); Auto-Owners Ins. Co. v. Csaszar, 893 F.3d 729 (10th Cir. 2018).

Public policy not violated for failure to carry uninsured motorist coverage for a particularly excluded driver or his or her innocent passenger. Lopez v. Dairyland Ins. Co., 890 P.2d 192 (Colo. App. 1994).

Exclusion of a claim for negligent entrustment from an automobile policy is authorized under this section. State Farm Mut. Auto. Ins. Co. v. Graham, 860 P.2d 566 (Colo. App. 1993).

Exclusion endorsement which provided that insurer would not be liable for damages, losses, or claims arising out of the operation or use of the insured motor vehicle by the named excluded person, which tracked the language of this section, was not ambiguous and therefore enforceable. State Farm Mut. Auto. Ins. Co. v. Graham, 860 P.2d 566 (Colo. App. 1993).

Summary judgment in favor of insured defendant was proper where plaintiff was injured while a passenger in a vehicle driven by a person specifically excluded from insurance coverage under this section, and no obligation to provide uninsured motorist coverage exists. Lopez v. Dairyland Ins. Co., 890 P.2d 192 (Colo. App. 1994).

§ 10-4-631. Insurers to file rate schedule. (Repealed)

History:

Repealed by 2017 Ch. 283, §17, eff. 6/1/2017. L. 2003: Entire section added, p. 1568, § 3, effective July 1. L. 2017: Entire section repealed, (SB 17-249), ch. 283, p. 1548, § 17, effective June 1.

§ 10-4-632. Reduction in rates for drivers aged fifty-five years or older who complete driver's education course - legislative declaration

(1)

(a)

(I) The general assembly finds and determines that motor vehicle accidents cause a substantial economic impact in lost wages, medical bills, legal fees, rehabilitation costs, and higher insurance rates.

(II) The general assembly also finds that the motor vehicle accident rate creates an additional societal burden in the form of taxes for medicaid, for the medically indigent, and for other hospital-related costs.

(III) The general assembly further finds that the number of such accidents and injuries is positively affected when drivers fifty-five years of age or older take driver's education courses.

(b) Therefore, the general assembly declares that it is appropriate and beneficial to all the people of Colorado that drivers fifty-five years of age or older with recent training and good driving records pay experience-based insurance premiums.

(c) A financial incentive in the form of lower premiums will prompt drivers fifty-five years of age or older to take driver's education courses and will further the goal of the general assembly to reduce accident-related injuries and fatalities in Colorado.

(2) All rates, rating schedules, and rating manuals for liability and collision coverages of a motor vehicle insurance policy submitted to or filed with the commissioner under this part 6 shall provide for an appropriate reduction in premium charges based on justifiable data when the vehicle is a covered vehicle and when the principal operator is fifty-five years of age or older and has successfully completed a driver's education course taught by a driving school regulated pursuant to part 6 of article 2 of title 42 or by a nonprofit corporation subject to articles 121 to 137 of title 7, if such course has been preapproved by the department of revenue. Any discount used by an insurer shall be presumed appropriate unless credible data demonstrates otherwise. Insurers shall provide the commissioner with data reflecting the claims experience of drivers who have received reductions in premium charges compared with the claims experience of drivers who have not received such reductions.

(3) Each person who successfully completes a driver's education course taught by a commercial driving school regulated pursuant to part 6 of article 2 of title 42 shall be issued a certificate by the commercial driving school offering the course, which certificate shall be evidence of qualification for the premium discount required by this section.

(4) Each person who successfully completes a driver's education course taught by a nonprofit corporation subject to articles 121 to 137 of title 7, C.R.S., if such course has been preapproved by the department of revenue, shall be issued a certificate by the nonprofit corporation offering the course, which certificate shall be evidence of qualification for the premium discount required by this section.

(5) The premium reduction required by this section shall be effective for an insured for a three-year period after successful completion of the approved course. However, the insurer may require, as a condition of providing and maintaining such discount, that the insured, during the three-year period after course completion, not be involved in an accident for which the insured is held at fault.

(6) An insured may renew qualification for the discount provided by this section by:

(a)

(I) Retaking a driver's education course taught by a commercial driving school regulated pursuant to part 6 of article 2 of title 42; or

(II) Retaking a driver's education course taught by a nonprofit corporation subject to articles 121 to 137 of title 7, C.R.S., if such course has been preapproved by the department of revenue; and

(b) Not being involved in an accident for which the insured is held at fault.

(7) This section shall not apply where an insured driver is taking a driver's education course as a result of an order of a court or other governmental entity resulting from a moving traffic violation.

History:

Amended by 2017 Ch. 179, §2, eff. 8/9/2017. L. 2003: Entire section added, p. 1568, § 3, effective July 1. L. 2017: (2), (3), and (6)(a)(I) amended, (SB 17-224), ch. 179, p. 659, § 2, effective August 9.

Editor's Note:

This section was originally numbered as §10-4-629 in House Bill 03-1188 but has been renumbered on revision for ease of location.

§ 10-4-633. Certification of policy and notice forms

(1) All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall submit an annual report to the commissioner listing any policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner issued or delivered to any policyholder in Colorado. Such listing shall be submitted no later than July 1 of each year and shall contain a certification by an officer of the organization that to the best of the officer's knowledge each policy form, endorsement, or notice form in use complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

(2) All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall also submit to the commissioner a list of any new policy form, endorsement, cancellation notice, renewal notice, disclosure form, notice of proposed premium increase, notice of proposed reductions in coverage, and any other form as may be requested by the commissioner at least thirty-one days before using such policy form, endorsement, cancellation notice, renewal notice, disclosure form, notice of proposed premium increase, notice of proposed reductions in coverage, and any other form as may be requested by the commissioner. Such listing shall also contain a certification by an officer of the organization that to the best of the officer's knowledge each new policy form, endorsement, or notice form proposed to be used complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

(3) The commissioner shall have the power to examine and investigate insurers authorized to conduct business in Colorado to determine whether automobile policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner comply with the certification of the organization and statutory mandates.

History:

L. 2003: Entire section added, p. 1570, § 3, effective July 1.

Editor's Note:

This section was originally numbered as §10-4-630 in House Bill 03-1188 but has been renumbered on revision for ease of location.

§ 10-4-633.5. Automobile insurance policies - plain language required - rules

(1)

(a) An insurer issuing or renewing automobile insurance policies subject to this part 6 shall not issue or renew a policy unless the text of the policy form does not exceed the tenth-grade level, as measured by the Flesch-Kincaid grade level formula, or does not score less than fifty as measured by the Flesch reading ease formula.

(b) In conjunction with the report submitted to the commissioner pursuant to section 10-4-633, the insurer shall report the readability scores prior to the issuance or renewal of a policy or the use of the policy form.

(2) The policy form shall contain an index or table of contents if the policy is more than three pages in length or if the text of the policy exceeds three thousand words. The index, table of contents, and text of the policy form shall be printed in not less than ten-point type.

(3) For purposes of subsections (1) and (2) of this section, the following shall apply:

(a)

(I) A contraction, hyphenated word, or numbers and letters, when separated by spaces, shall count as one word;

(II) A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, shall be counted as a sentence; and

(III) A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. If the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciations containing fewer syllables may be used.

(b) "Text" includes all printed matter except the following:

(I) The name and address of the insurer; the name, number, or title of the policy; the table of contents or index; captions and subcaptions; and specification pages, schedules, or tables; and

(II) Any policy language that is drafted to conform to the requirements of any federal law or regulation; any policy language required by any collectively bargained agreement; any medical terminology; any words that are defined in the policy; and any policy language required by law or

regulation if the insurer identifies the language or terminology excepted and certifies in writing that the language or terminology is entitled to be excepted.

(4) The commissioner shall promulgate rules regarding the electronic dissemination of newly issued or renewed policy forms or endorsements.

(5)

(a) The requirements of this section shall not apply to commercial automobile insurance coverage.

(b) For the purpose of this subsection (5), "commercial automobile insurance coverage" means any insurance coverage provided to an insured, regardless of the number of vehicles or entities covered, under a commercial automobile, garage, motor carrier, or truckers coverage policy form and rated using either a commercial manual or rating rule.

History:

Amended by 2013 Ch. 316, §13, eff. 8/7/2013. L. 2010: Entire section added, (HB 10-1166), ch. 143, p. 486, §1, effective January 1, 2012. L. 2013: IP(3) amended, (HB 13-1300), ch. 316, p. 1664, § 13, effective August 7.

§ 10-4-634. Assignment of payment for covered benefits

(1) A policy of motor vehicle insurance coverage pursuant to this part 6 shall allow, but not require, an insured under the policy to assign, in writing, payments due under medical payments coverage of the policy to a licensed hospital or other licensed health care provider; an occupational therapist, as defined in section 12-270-104(9); an occupational therapy assistant, as defined in section 12-270-104(11); or a massage therapist, as defined in section 12-235-104(5), for services provided to the insured that are covered under the policy.

(2) When a licensed hospital or other licensed health-care provider, occupational therapist, or massage therapist receives an assignment from an insured, it is the responsibility of the provider to bill the insurer and notify the insurer that the licensed health-care provider holds an assignment on file. The insurer shall honor this assignment the same as if a copy of the assignment had been received by the insurer. Only upon request of the insurer shall the health-care provider be required to provide a copy of the assignment. The provider shall also provide a copy of such bill to the insured, stating on such copy that it is for informational purposes only and that the insurer has been billed for covered benefits. The provider shall also furnish to the insurer a current taxpayer identification number as part of the initial bill and each subsequent billing. Subsequent billings to an insurer need not include a copy of the assignment unless required by the insurer so long as it is clearly noted on each such subsequent billing that the benefits have been assigned. The insurer shall honor such assignment and make payment of covered benefits directly to such licensed hospital or other licensed health-care provider, occupational therapist, or massage therapist. If the insurer fails to honor such assignment but instead makes payment to the insured, and if the insured fails to timely pay an amount equivalent to such payment to the licensed hospital or other licensed health-care provider, then the insurer shall be liable for such payment directly to the licensed hospital or other licensed health-care provider, occupational therapist, or massage therapist. It shall be the responsibility of the licensed hospital or other licensed health-care provider, occupational therapist, or massage therapist to notify the insurer if timely payment has not been received.

History:

Amended by 2021 Ch. 4, §2, eff. 1/21/2021. Amended by 2019 Ch. 136, §34, eff. 10/1/2019. L. 2004: Entire section added, p. 250, § 1, effective April 5. L. 2008: (1) amended, p. 830, § 5, effective July 1. L. 2009: (1) amended, (SB 09-292), ch. 1943, p. 1943, § 14, effective August 5. L. 2010: (1) amended, (HB 10-1220), ch. 855, p. 855, § 19, effective July 1. L. 2019: (1) amended,

(HB 19-1172), ch. 136, p. 1651, § 34, effective October 1. L. 2021: (1) amended, (SB 21-003), ch. 28, p. 28, §2, effective January 21.

§ 10-4-635. Medical payments coverage - definitions

(1)

(a) Except as otherwise provided in this subsection (1), no automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state unless coverage is provided in the policy or in a supplemental policy for medical payments with benefits of five thousand dollars for bodily injury, sickness, or disease resulting from the ownership, maintenance, or use of the motor vehicle.

(b) A policy may be issued without medical payments coverage only if the named insured rejects medical payments coverage in writing or in the same medium in which the application for the policy was taken. The insurer shall maintain proof that a named insured rejected medical payments coverage for at least three years after the date of the rejection, and such proof of rejection shall be presumed valid for all insureds under the policy, including resident relatives of the named insured and permissive users of the motor vehicle. An agent or insurer that obtains a rejection of medical payments coverage from the named insured or applicant pursuant to this section shall not be liable to the insured or any other person seeking benefits under the named insured's policy for claims arising out of or relating to the rejection of medical payments coverage.

(c) If the insurer fails to offer medical payments coverage or fails to maintain or provide proof that the named insured rejected medical payments coverage in the manner required by this section, the insured's policy shall be presumed to include medical payments coverage with benefits of five thousand dollars.

(d) If an insured selects limits for medical payments coverage or exercises the option not to purchase the coverages described in this section, an insurer or affiliated insurer shall not be required to notify any policyholder in any renewal or replacement policy of the availability of medical payments coverage. However, the insured may make a request for additional coverage or coverage more extensive than that provided on a prior policy.

(e) Nothing in this section shall be construed to limit any other coverage amounts being made available by an insurer.

(2)

(a) If a policy contains medical payments coverage, medical payments benefits shall be paid to persons providing medically necessary and accident-related trauma care or medical care. Except as provided in paragraphs (b), (c), and (d) of this subsection (2), payments of claims for medical payments coverage shall be made in accordance with section 10-4-642.

(b) Upon receiving notice, either from a provider or the insured, of an accident for which the medical payments coverage specified in this section or medical payments coverage in a greater amount may apply, the insurer shall reserve five thousand dollars of the medical payments coverage for the payment of trauma care provided by a licensed air ambulance, licensed ambulance, trauma physician, or trauma center in the following priority, as applicable:

(I) Benefits shall be paid first to licensed ambulances or air ambulances that provide trauma care at the scene of or immediately after the motor vehicle accident, including transport to or from a trauma center.

(II) After payments to providers described in subparagraph (I) of this paragraph (b), benefits shall be paid next to trauma physicians that provide trauma care to stabilize or provide the first episode of care to the injured person.

(III) After payments to providers described in subparagraphs (I) and (II) of this paragraph (b), benefits shall be paid next to trauma centers designated as level IV or V pursuant to section 25-3.5-703(4), C.R.S., that provide trauma care to stabilize or provide the first episode of care to the injured person.

(IV) After payments to providers described in subparagraphs (I), (II), and (III) of this paragraph (b), benefits shall be paid next to trauma centers designated as level I, II, or III or as a regional pediatric trauma center pursuant to section 25-3.5-703(4), C.R.S., that provide trauma care to stabilize or provide the first episode of care to the injured person.

(c) The reserve shall be held and used to pay claims of trauma care providers described in this subsection (2) for no more than thirty days after receipt of the accident notice. After the thirty-day period, any amount of the reserve for which the insurer has not received a claim for reimbursement from a trauma care provider described in this subsection (2) may be used to pay any other claims for reimbursement submitted by other providers.

(d) The periods specified in section 10-4-642 for the prompt payment of medical payments coverage benefits shall be tolled for the period that an

insurer is required under this subsection (2) to hold payment of a claim from a provider that did not provide trauma care, but only to the extent the medical payments coverage benefits not held in reserve are insufficient to pay the claim.

(3)

(a) An insurer providing benefits under medical payments coverage in the amount specified in this section or in a greater amount than the amount specified in this section shall not have a right to recover against an owner, user, or operator of a motor vehicle, or against any person or organization legally responsible for the acts or omissions of such person, in any action for damages for benefits paid under such medical payments coverage. An insurer shall not have a direct cause of action against an alleged tortfeasor for benefits paid under medical payments coverage.

(b) Nothing in this subsection (3) shall be construed to:

(I) Modify the requirements of section 13-21-111.6, C.R.S., or any requirements under the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S.;

(II) Prevent a person to whom benefits are paid under medical payments coverage from obtaining recovery of benefits available under uninsured motorist coverage pursuant to section 10-4-609; or

(III) Afford an insurer a cause of action against a person to whom or for whom the medical payments coverage benefits specified in this section were paid except in a case where the benefits were paid by reason of fraud.

(4) This section shall not apply to:

(a) A person obtaining an automobile liability or motor vehicle policy insuring against loss resulting from the ownership, maintenance, or use of a motorcycle, low-power scooter, or toy vehicle, as defined in section 42-1-102, C.R.S., a snowmobile, as defined in section 33-14-101, C.R.S., or any vehicle designed primarily for use off the road or on rails;

(b) A person that has obtained a certificate of self-insurance from the commissioner pursuant to section 10-4-624.

(5) As used in this section:

(a) "Injured person" means the insured, or a passenger who is authorized by the insured to occupy the insured's motor vehicle, who sustains bodily injury arising out of the use of the insured's motor vehicle.

(b) "Licensed air ambulance" means an air ambulance, as defined in section 25-3.5-103(1), C.R.S., that is licensed by the department of public health and environment pursuant to section 25-3.5-307, C.R.S.

(c) "Licensed ambulance" means an ambulance, as defined in section 25-3.5-103 (1.5), C.R.S., that is licensed pursuant to section 25-3.5-301, C.R.S.

(d) "Licensed health-care provider" has the same meaning as set forth in section 10-4-601, and also includes an occupational therapist, as defined in section 12-270-104(9), and an occupational therapy assistant, as defined in section 12-270-104(11).

(e) "Medical care" means all medically necessary and accident-related health- care and rehabilitation services provided by a licensed health-care provider to a person injured in an automobile accident for which benefits under the terms of the medical payments coverage in the policy are payable.

(f) "Provider" means a licensed health-care provider, licensed air ambulance, licensed ambulance, trauma physician, or trauma center.

(g) "Stabilize" means, with respect to a medical condition resulting from a trauma, to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result or occur during the transfer of the individual to or from a trauma center.

(h) "Trauma" means an injury or wound to a living person caused by the application of an external physical force. Trauma includes any event that threatens life, limb, or the well-being of an individual in such a manner that a prudent lay person would believe that immediate medical care is needed.

(i) "Trauma care" means care provided by a licensed ambulance or air ambulance, trauma physician, or trauma center to a person injured in a motor vehicle accident from the time the administration of care begins to the time the patient is fully stabilized or through the first episode of care, not to exceed seventy-two hours after the administration of care begins. The term includes a trauma care system, trauma transport protocols, and triage, as defined in section 25-3.5-703, C.R.S.

(j) "Trauma center" means the emergency department in a licensed or certified hospital or a health-care facility that is designated by the department of public health and environment as a level I, II, III, IV, or V facility or as a regional pediatric trauma center.

(k) "Trauma physician" means a trauma surgeon, orthopedic surgeon, neurosurgeon, intensive care unit physician, anesthesiologist, or physician

who provides care in a trauma center to a trauma patient injured in a motor vehicle accident.

History:

Amended by 2021 Ch. 4, §3, eff. 1/21/2021. Amended by 2019 Ch. 136, §35, eff. 10/1/2019. L. 2004: Entire section added, p. 415, § 1, effective July 1. L. 2005: Entire section amended, p. 467, § 1, effective January 1, 2006. L. 2006: (2) repealed, p. 38, § 3, effective January 1, 2007. L. 2008: Entire section amended, p. 2261, § 1, effective January 1, 2009. L. 2009: (5)(d) amended, (SB 09-292), ch. 1943, p. 1943, § 15, effective August 5; (4)(a) amended, (HB 09-1026), ch. 1253, p. 1253, § 2, effective October 1. L. 2010: (5)(d) amended, (HB 10-1220), ch. 855, p. 855, § 20, effective July 1. L. 2019: (5)(d) amended, (HB 19-1172), ch. 1652, p. 1652, § 35, effective October 1. L. 2021: (5)(d) amended, (SB 21-003), ch. 28, p. 28, §3, effective January 1.

Case Note:

ANNOTATION

This section is silent as to whether an insurer may include a time limit on medical-payments coverage in an insurance agreement. Under Colorado law, a court is not at liberty to supply the missing statutory language that a party believes should have been included in a statute, but must respect the legislature's choice of language. Allen v. United Servs. Auto Ass'n, 907 F.3d 1230 (10th Cir. 2018).

Automobile insurance policy's two-year limitation on the submission of medical payment claims does not offend the intent of the statute or the public policy impelling it. Countryman v. Farmers Ins. Exch., 865 F. Supp. 2d 1108 (D. Colo. 2012).

Three-year time limit on medical payment benefits is not inconsistent with this section and does not contravene public policy. Baker v. Allied Prop. & Cas. Ins. Co., 939 F. Supp. 2d 1091 (D. Colo. 2013).

One-year limit on medical-payments coverage is not prohibited by this section. Nothing in the plain text of this section prohibits insurance companies from including a time limit on medical-payments coverage. Allen v. United Servs. Auto Ass'n, 907 F.3d 1230 (10th Cir. 2018).

§ 10-4-636. Disclosure requirements for automobile insurance products offered - rules

(1)

(a) An insurer or producer issuing automobile insurance policies shall, as a condition of doing business in this state, have on file for public inspection at the division a summary disclosure form that contains an explanation of the major coverages and exclusions of such policies of insurance together with a recitation of general factors considered in cancellation, nonrenewal, and increase-in-premium situations. Each summary disclosure form shall provide notice in bold-faced letters that the policyholder should read the policy for complete details, and such disclosure form shall not be construed to replace any provision of the policy itself.

(b) Every insurer and producer shall update disclosure forms periodically to reflect changes in major coverages and exclusions of such policies of insurance and changes in factors considered in cancellation, nonrenewal, and increase-in-premium situations.

(c) Every insurer and producer or his or her designated agent shall furnish the required disclosure form to applicants for insurance coverage at the time of the initial insurance purchase and thereafter on any renewal when there are changes in major coverages and exclusions or changes in factors considered in cancellation, nonrenewal, and increase-in-premium situations.

(d) An insurer or producer who violates this section shall be deemed to have engaged in unfair or deceptive acts or practices prohibited by section 10-3-1104(1)(a)(I) and shall be subject to the penalties provided in sections 10-3-1108 and 10-3-1109.

(2) In addition to the disclosure required by subsection (1) of this section, any insurer or producer offering motor vehicle coverage pursuant to this part 6 shall provide a clear explanation to the insured regarding the products purchased, the amount of coverage purchased, and the applicability of the coverage depending on the determination of fault of the insured in an automobile accident.

(3)

(a) An insurer or producer offering motor vehicle coverage pursuant to this part 6 shall not automatically add optional or enhanced coverages that will result in an increased premium to an insured's policy without the express consent of the insured. Such consent may be in the same medium in which

the policy is offered. The insurer or producer, for three years, shall maintain adequate evidence of the insured's consent, and such evidence shall be subject to review by the commissioner. The insurer or producer shall record:

(I) Whether optional or enhanced coverage added for an increased premium to an insured's policy was requested by the insured or was recommended by the insurer or producer and consented to by the insured; and

(II) To the extent practicable, an explanation of why such coverage was changed.

(b) For the purposes of this section, "adequate evidence" means:

(I) Written notes or other memorializations of any oral or written communication with the insured kept within the normal course of business; or

(II) A declaration page indicating which coverages are not mandatory after payment of the premium is made unless the insured disputes such coverage within a reasonable time.

(c) This section shall not apply to changes in coverages mandated by law or to amended policy forms that are changed at renewal.

(4) The disclosure form required by subsection (1) of this section shall include a disclosure specifying that:

(a) Medical payments coverage pays for reasonable health-care expenses incurred for bodily injury caused by an automobile accident, regardless of fault, up to the policy limits chosen by the insured;

(b) Medical payments coverage is primary to any health insurance coverage available to an insured when injured in an automobile accident;

(c) Medical payments coverage applies to any coinsurance or deductible amount required to be paid by the person's health coverage plan, as defined in section 10-16-102(34); and

(d) An insured who is injured in an automobile accident will not receive benefits from medical payments coverage for any medical expenses incurred as a result of an accident that is the fault of the insured unless medical payments coverage is purchased.

(5) The disclosure required by subsection (1) of this section shall include a disclosure of any coverages delivered or issued pursuant to section 10-4-610.

(6)

(a) The commissioner may promulgate rules to address the suitability of coverages for insureds, including, but not limited to, administrative remedies against an insurer or producer for automatically adding optional or enhanced coverages that increase the insured's premium without the insured's consent, which additions may include, but are not limited to, remedies for violations of section 10-3-1104(1)(j).

(b) The commissioner shall promulgate by rule a uniform disclosure form that reflects the requirements of this section. Such uniform disclosure form shall be used by insurers and producers in this state in order to comply with this section.

(7) Nothing in this section shall be construed to create a private right of action for damages by an insured.

(8) The disclosures required by this section shall not apply to commercial automobile insurance policies, as defined by the commissioner in rules adopted pursuant to section 10-4-641(1).

History:

Amended by 2013 Ch. 217, §43, eff. 5/13/2013. L. 2004: Entire section added, p. 455, § 1, effective July 1. L. 2006: Entire section amended, p. 38, § 4, effective January 1, 2007. L. 2013: (4)(c) amended, (HB 13-1266), ch. 217, p. 986, § 43, effective May 13.

§ 10-4-637. No discrimination by profession

Reimbursement for lawfully performed health care services covered by a policy providing medical payments coverage under a motor vehicle policy issued pursuant to this part 6 shall not be denied when such services are a covered benefit and rendered within the scope of practice for a licensed health-care provider; a massage therapist, as defined in section 12-235-104(5); an occupational therapist, as defined in section 12-270-104(9); or an occupational therapy assistant, as defined in section 12-270-104(11), performing the services.

History:

Amended by 2021 Ch. 4, §4, eff. 1/21/2021. Amended by 2019 Ch. 136, §36, eff. 10/1/2019. L. 2004: Entire section added, p. 530, § 1, effective January 1, 2005. L. 2007: Entire section amended, p. 2019, § 9, effective June 1. L. 2008: Entire section amended, p. 830, § 6, effective July 1; entire section amended, p. 1994, § 4, effective July 1. L. 2010: Entire section amended, (HB 10-1220), ch. 855, p. 855, § 21, effective July 1. L. 2019: Entire section amended, (HB 19-1172), ch. 1652, p. 1652, § 36, effective October 1. L. 2021: Entire section amended, (SB 21-003), ch. 28, p. 28, §4, effective January 21.

Editor's Note:

Amendments to this section by Senate Bill 08-152 and Senate Bill 08-219 were harmonized.

§ 10-4-638. Retroactive adjustment of health-care service claims

(1) Twelve months or more after the date a claim is paid for health-care services performed pursuant to this part 6, an insurer may not retroactively adjust the payment of the claim.

(2) Adjustments to claims made pursuant to a policy providing for medical payments coverage in cases where a carrier has reported fraud or abuse, pursuant to section 10-1-128(5)(a)(IV), committed by the provider shall not be subject to the requirements of subsection (1) of this section.

History:

L. 2004: Entire section added, p. 530, § 1, effective January 1, 2005.

§ 10-4-639. Claims practices for property damage

(1) An insurer shall pay title fees, sales tax, and any other transfer or registration fee associated with the total loss of a motor vehicle.

(2) An insurer shall clearly disclose to an insured or inform a third-party claimant what benefits are provided related to towing and storage of a motor vehicle that sustains property damage and shall specifically advise an insured or third-party claimant concerning excess charges that may be incurred related to towing and storage of a motor vehicle for which the insured or third-party claimant may be responsible.

(3) An insurer shall establish a fair and consistent method for determining total loss of a motor vehicle. Such method shall include consideration of unique characteristics of the motor vehicle and a credible source of valuation. An insurer shall maintain a record of its methodology for determining total loss evaluation and provide such methodology to the commissioner upon request. The commissioner may promulgate rules for the administration and enforcement of this subsection (3). An insurer may not use different credible sources of valuation only to determine the lowest amount payable for the total loss of the motor vehicle.

(4) The commissioner shall promulgate rules concerning when payments for any applicable replacement motor vehicle shall be made by an insurer and collision waivers for third-party claimant coverage.

History:

L. 2004: Entire section added, p. 895, § 4, effective May 21.

Case Note:

ANNOTATION

The use of the word "shall" in subsection (1) requires an insurer to reimburse the insured for the registration fee associated with the total loss of a vehicle. Trudgian v. LM Gen. Ins. Co., 2020 COA 147, __ P.3d __.

§ 10-4-640. Operator's policy of insurance

(1) Except as otherwise provided in subsection (8) of this section, any natural person may satisfy the requirements of section 10-4-619 by obtaining, in lieu of an owner's policy of insurance, an operator's policy of liability insurance that meets the requirements of this section and of this part 6.

(2) An operator's policy of liability insurance shall provide coverage and shall state in a conspicuous type face and font on the face of the policy, that:

(a) The insurer is only liable under the policy for liability or damages incurred by the insured while the named insured is the operator of a motor vehicle or while a motor vehicle owned by the insured is not being operated by any other person;

(b) The policy does not provide coverage for any vicarious liability imposed on the owner of the motor vehicle as a result of the operation by another person of a motor vehicle owned by the insured;

(c) The coverage provided by the policy may not meet the requirements of the mandatory motor vehicle insurance or financial responsibility laws of another state.

(3) No operator's policy of liability insurance issued pursuant to this section may be delivered or issued for delivery in this state unless the insured has signed a statement, in the same medium as the application was taken, that appears on the contract and states that the insured has read and understood the policy and its limitations.

(4) An owner of a motor vehicle that is registered or required to be registered in this state and who holds an operator's policy of liability insurance shall not permit another person to operate such motor vehicle if the owner knows or should have known that the person does not have insurance to cover such other person's operation of such motor vehicle. If a motor vehicle insured under an operator's policy of liability insurance is driven by a person who does not have in effect a complying policy as required by section 10-4-619 and such person is involved in an accident, the owner of such motor vehicle and such driver shall be liable for any liability or damages arising out of such person's use of the motor vehicle.

(5) An operator's policy of liability insurance shall not provide coverage for damages incurred while a person other than the named insured is operating a motor vehicle.

(6) An operator's policy of liability insurance may provide coverage that applies in other jurisdictions if the coverage available pursuant to this section does not meet the mandatory motor vehicle insurance or financial responsibility requirements of other jurisdictions.

(7) An operator's policy of liability insurance shall provide coverage for liability incurred by the insured while a motor vehicle owned by the insured is not being operated by any other person.

(8) This section shall not apply to a lessor, dealer, manufacturer, rebuilder, or distributor of a motor vehicle; an owner of a fleet; a common, contract, or private motor carrier; or any other individual who owns a motor vehicle for use in the individual's business.

(9) If an insurer writing policies of insurance pursuant to this part 6 offers an operator's policy of insurance, such policy shall meet the requirements of this section.

History:

L. 2004: Entire section added, p. 895, § 4, effective May 21.

§ 10-4-641. Rules - medical payments coverage

(1) The commissioner shall promulgate any necessary rules for the administration of medical payments coverage and coordination of benefits and the implementation of section 10-4-636(4) concerning disclosures required to be made regarding medical payments coverage and the definition of commercial automobile insurance policies for purposes of the exception allowed in section 10-4-636(8). Medical payments coverage shall be primary to any health insurance benefit of a person injured in a motor vehicle accident, and medical payments coverage shall apply to any coinsurance or deductible amount required by the injured person's health coverage plan, as defined in section 10-16-102(34).

(2) Repealed.

History:

L. 2004: Entire section added, p. 1340, § 1, effective May 28. L. 2005: (2) repealed, p. 468, § 3, effective July 1; (1) amended, p. 468, § 2, effective January 1, 2006. L. 2006: (1) amended, p. 40, § 5, effective January 1, 2007. L. 2013: (1) amended, (HB 13-1266), ch. 217, p. 986, § 44, effective May 13.

§ 10-4-642. Prompt payment of direct benefits - legislative declaration - definitions

(1) The general assembly finds, determines, and declares that patients and health- care providers are entitled to receive reimbursements from auto insurance entities in a timely manner. Therefore, it is in the interest of the citizens of Colorado that reasonable standards be imposed for the timely payment of claims.

(2) As used in this section, unless the context otherwise requires:

(a) "Claim" means a claim for payment of medical payments coverage benefits in accordance with the insurer's policy.

(b) "Claimant" means a policyholder, insured, or injured person entitled to medical payments benefits as a result of a motor vehicle accident or a provider with the proper assignment of benefits.

(c) "Clean claim" means:

(I) A claim where there is no additional information needed by the insurer to accept or deny the claim. A claim requiring additional information shall not be considered a clean claim and shall be paid, denied, or settled as set forth in paragraph (b) of subsection (6) of this section.

(II) A claim form that is submitted with, or after submission of, a properly executed application form for benefits currently used by the insurer by the policyholder, insured, or injured person entitled to benefits.

(3) The commissioner may, in consultation with interested parties, including health-care providers, adopt a uniform application form for medical payments benefits or a uniform claim form or both a uniform application and uniform claim form. For a uniform claim form or a uniform application form having elements provided by a health-care provider, the commissioner shall consider the uniform claim forms and elements adopted for health insurance pursuant to section 10-16-106.3. If the commissioner determines that new elements are required to establish that an injury or benefit requested is the result of a motor vehicle accident, the new elements may be listed in a separate uniform application form.

(4)

(a) A claimant may submit a claim:

(I) By United States mail, first class, or by overnight delivery service;

(II) Electronically, if the insurer accepts claims electronically, to the location designated by the insurer;

(III) By facsimile to the location designated by the insurer; or

(IV) By hand delivery to the location designated by the insurer.

(b)

(I) The provider may contact the insurer for the purpose of resubmission of a claim. The insurer shall have a separate facsimile process to receive resubmitted paper claims. A resubmitted claim shall be deemed received on the date of the facsimile transmission acknowledgment.

(II) If a claim is submitted electronically, it is presumed to have been received by the insurer or the insurer's clearinghouse, if applicable, on the date of the electronic verification of receipt. If a claim is submitted by facsimile, it is presumed to have been received by the insurer or the insurer's clearinghouse, if applicable, on the date of the facsimile transmission acknowledgment. If a claim is submitted by mail, it is presumed to have been received by the insurer or the insurer's clearinghouse, if applicable, three business days after the date of mailing. If a claim is submitted by overnight delivery service or by hand delivery, it is presumed to have been received on the date of delivery.

(c) The presumptions in paragraph (b) of this subsection (4) may be rebutted by:

(I) A date stamp on a claim showing the date of receipt. Such date shall be presumed the date of receipt.

(II) The fact that the insurer's records maintained in the ordinary course of business do not evidence receipt of a claim. In such case, the claim shall be deemed not to have been received by the insurer.

(d) An insurer shall maintain claim data that is accessible and retrievable for examination by the commissioner for the current year and for the two immediately preceding years. For each claim, an insurer shall provide a claim number, date of loss, date of auto accident, date of receipt of an application for benefits, date of receipt of a claim, date of payment of a claim, and date of denial or date the claim is closed without payment. An insurer shall detail all material activities relative to a claim. A claim file shall have all material documentation relative to a claim. Each material document within a claim file shall be noted as to date received, date processed, or date sent. Detailed documentation shall be contained in each claim file to permit reconstruction of the insurer's activities relative to each claim.

(5)

(a) Every insurer shall provide a copy of its claim filing requirements to every insured or provider upon request within fifteen calendar days after the request is received by the insurer.

(b) Every insurer shall, within fifteen calendar days after receipt of a notification of loss, an application for benefits, or a claim, provide the necessary application or claim forms and instructions so that the claimant can comply with the policy conditions.

(6)

(a) Clean claims shall be paid, denied, or settled within thirty calendar days after receipt by the insurer if submitted electronically and within forty-five calendar days after receipt by the insurer if submitted by any other means.

(b) If the resolution of a claim requires additional information, the insurer shall, within thirty calendar days after receipt of the claim, give to the claimant a full explanation in writing of what additional information is needed to resolve the claim, including any additional medical or other information related to the claim. The person receiving a request for such additional information shall submit all additional information requested by the insurer within thirty calendar days after receipt of such request. The insurer may deny a claim if a provider receives a request for additional information and fails to timely submit additional information requested under this paragraph (b), subject to the resubmittal of the claim or terms of the policy. If such person has provided all such additional information necessary to resolve the claim, the claim shall be paid, denied, or settled by the insurer within thirty days after receipt of additional information or after the applicable time period set forth in paragraph (c) of this subsection (6).

(c) Absent fraud, all claims other than clean claims shall be paid, denied, or settled within ninety calendar days after receipt by the insurer; except that the commissioner may adopt rules for the purpose of exempting an insurer from the requirement that the insurer pay, deny, or settle a claim within ninety calendar days in circumstances where the investigation of a claim by the insurer is incomplete or otherwise needs to be continued and for extraordinary or unusual claims with extenuating circumstances as determined by the commissioner. The rules shall require the insurer, within thirty days after the receipt of a claim and every thirty days thereafter, to send to the claimant or the claimant's representative, and to the health-care provider if applicable, a letter setting forth the reasons why additional time is needed. The insurer that is exempt from the ninety-day time period due to circumstances where an investigation is incomplete or otherwise needs to be

continued shall pay, deny, or settle the claim within one hundred eighty days after receipt of the claim. An insurer that is exempt from the ninety-day time period shall not be exempt from payment of the interest due pursuant to subsection (7) of this section.

(d) No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such provision, condition, or exclusion is included in the denial. The denial shall be in writing and given to the claimant, and the claim file shall contain documentation of the basis for the denial. The commissioner may adopt a rule regarding the time period for delivery of the denial to the claimant, which shall be the same or shorter time period than the period in which the claim was delivered.

(7) An insurer that fails to pay, deny, or settle a clean claim in accordance with paragraph (a) of subsection (6) of this section or fails to take other required action within the time periods set forth in paragraph (b) of subsection (6) of this section shall be liable for the covered benefit and, in addition, shall pay to the claimant interest at the rate of ten percent per annum for the first one hundred eighty days and at the rate of fifteen percent per annum thereafter, on the total amount ultimately allowed on the claim, accruing from the date payment was due pursuant to subsection (6) of this section. Except for shorter time periods for clean claims, all interest begins to accrue ninety calendar days after receipt of the claim by the insurer.

(8) If an insurer delegates its claims processing functions to a third party, the delegation agreement shall provide that the claims processing entity shall comply with the requirements of this section. Any delegation by the insurer shall not be construed to limit the insurer's responsibility to comply with this section or any other applicable provision of this article.

(9) This section shall not apply to claims filed pursuant to the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S.

(10) The commissioner may investigate claims against an insurer that is authorized to conduct business in this state when such claims are filed by a provider related to the improper handling or denial of benefits pursuant to this section.

(11) The commissioner may impose, after proper notice and hearing, any other penalties set forth in this title against an insurer who has a pattern and practice of violations of this section.

(12) When an insured entitled to benefits under medical payments coverage is injured or believes that he or she has been injured in an accident and is examined or treated by a health-care provider, such health-care provider shall notify the insurer within thirty calendar days after the insured's initial visit. This subsection (12) shall not apply to a hospital or other health facility or entity licensed or certified pursuant to section 25-1.5-103(1), C.R.S.

History:

L. 2004: Entire section added, p. 1098, § 1, effective July 1.

Editor's Note:

This section was originally numbered as §10-4-634 in Senate Bill 04-125, but has been renumbered on revision for ease of location.

Case Note:

ANNOTATION

Admission of attorney litigation conduct as evidence in bad faith insurance claim. There are substantial concerns about the relevancy, probative value, and prejudicial impact of evidence of attorney litigation conduct when presented as evidence of a bad faith claim. Such evidence may be admissible in some circumstances. The appropriate test must recognize the importance of those concerns in evaluating whether evidence of attorney litigation conduct is admissible as part of a bad faith claim. Parsons v. Allstate Ins. Co., 165 P.3d 809 (Colo. App. 2006).

Test to determine admissibility of attorney litigation conduct. Evidence of attorney litigation conduct is admissible as part of a bad faith insurance claim if the risks of unfair prejudice, confusion of the issues, or misleading the jury, and considerations of undue delay, waste of time, or presentation of unnecessary cumulative evidence are substantially outweighed by the probative value of the evidence. Parsons v. Allstate Ins. Co., 165 P.3d 809 (Colo. App. 2006).

§ 10-4-643. Electronic claim forms - rules

The commissioner may promulgate rules, consistent with section 10-4-642, for an insurer to accept claim forms for medical payments coverage benefits from health-care providers in electronic form. An insurer shall not prohibit the submission of a medical payments coverage benefit claim in hard-copy form, nor shall an insurer be prohibited from requiring that a claim be submitted in hard-copy form. An insurer shall not require submission of a medical payments coverage benefit claim form other than those set forth in section 10-4-642.

History:

L. 2004: Entire section added, p. 1098, § 1, effective July 1.

Editor's Note:

This section was originally numbered as §10-4-635 in Senate Bill 04-125, but has been renumbered on revision for ease of location.