

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES**

**SIXTH AMENDMENT TO 11 NYCRR 60-2
(INSURANCE REGULATION No. 35-D)**

SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS INSURANCE

I, Maria T. Vullo, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, and Sections 301, 307, 308 and 3420 of the Insurance Law, do hereby promulgate the following Sixth Amendment to Part 60-2 of Title 11 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (Insurance Regulation No. 35-D), to take effect on August 1, 2017, to read as follows:

(MATTER UNDERSCORED IS NEW; MATTER IN BRACKETS IS DELETED)

Subpart 60-2 is amended to read as follows:

Section 60-2.0 Preamble

(a) This Subpart implements Insurance Law section 3420(f)(2)[of the Insurance Law], which requires motor vehicle liability insurers to provide, at the option of the insured, supplementary uninsured/underinsured motorists (SUM) insurance coverage to all policyholders in New York State.

(b) [In satisfying this statutory requirement, insurers have issued a number of variations of SUM endorsements. These variations provide different methods of claim settlement and arbitration, create confusion in the process and, as a result, diminish the utility of SUM coverage.

(c) The purpose of this] This Subpart [is to interpret] interprets Insurance Law sections 3420(f)(2) and (f)(5), of the Insurance Law, in light of ensuing *judicial* rulings and experience, by establishing] and establishes a standard form for SUM coverage, in order to eliminate ambiguity, minimize confusion and maximize its utility.

[(d)](c) The prescribed standard form for SUM coverage [is] shall be exempt from compliance with Insurance Law section 3102(c)(1)(D) pursuant to Insurance Law section 3102(c)(2)(F)(ii) [of the Insurance Law].

Section 60-2.1 Basics of SUM coverage

(a) [A policyholder should consider purchasing] SUM provides additional insurance coverage [in order to protect against the possibility] for bodily injury, including death resulting therefrom, sustained by an insured, as a result of an accident involving a negligent owner or operator of another motor vehicle [whose owner or operator was negligent and] who:

(1) may have no insurance whatsoever; or

(2) even if insured, is only insured for third-party bodily injury coverage at relatively low liability limits, in comparison to the policyholder's own liability limits for bodily injury sustained by third-parties.

(b) [By purchasing] An insurer shall not offer SUM coverage[, which cannot be purchased] in an amount exceeding the [amount of] third-party liability coverage limits purchased[, by the policyholder [and any]. The policy shall provide coverage for any insured under the policy [can] for:

(1) [be protected for] bodily injury to [themselves] such person, up to the limit of the SUM coverage purchased; and

(2) receive from the policyholder's own insurer payment for bodily injury sustained due to the negligence of the other motor vehicle's owner or operator.

(c) The maximum amount payable under the SUM coverage shall be the policy's SUM limit reduced and thus offset by any motor vehicle bodily injury liability insurance policy or bond payments received from, or on behalf of, any negligent party involved in the accident.

(d) The rate and premium for SUM coverage shall, in accordance with Insurance Law article 23[of the Insurance Law], take into appropriate account the offsetting characteristic of SUM coverage stated in subdivision (c) of this section.

(e) (1) An insurer shall offer:

(i) SUM limits, in a motor vehicle liability insurance policy with split limits, up to \$250,000 per person per accident and, subject to such limit for one person, \$500,000 per accident; or

(ii) a SUM limit, in a motor vehicle liability insurance policy with a combined single limit, up to \$500,000 per accident.

(2) An insurer is not required to offer SUM limits in the motor vehicle liability insurance policy in the amounts specified in [subparagraphs (1)(i) and (ii)] paragraph (1) of this subdivision, if, in lieu thereof:

(i) the insurer offers motor vehicle liability limits in amounts:

(a) greater than \$100,000 because of bodily injury to or death of one person in any one accident, and, subject to such limit for one person, \$300,000 because of bodily injury to or death of two or more persons in any one accident; or

(b) greater than a combined single limit of \$300,000 because of bodily injury to or death of one or more persons in any one accident; and

(ii) the insurer offers, in the motor vehicle liability policy:

(a) SUM coverage with split limits of \$100,000 per person per accident and, subject to such limit for one person, \$300,000 per accident; or

(b) SUM coverage with a combined single limit of \$300,000 per accident; and

(iii) the insurer also makes available a personal umbrella liability policy with limits up to at least \$500,000, and the insurer provides SUM coverage in the umbrella policy so that the total SUM coverage in the motor vehicle liability insurance policy and the personal umbrella liability policy shall be up to at least \$500,000.

(3) An insurer may offer SUM limits that exceed the amounts specified in paragraph (1) or (2) of this subdivision.

(4) Nothing in this section shall be construed to require an insurer to offer any particular minimum or maximum amount of third-party bodily injury liability limits.

(5) Notwithstanding any other provision of this subdivision, an insurer shall not provide [in a policy] SUM limits in an amount that exceeds the third-party bodily injury liability limits offered by the insurer and purchased by the policyholder [in that policy].

Section 60-2.2 Notice about SUM coverage

(a) Every insurer writing [automobile] motor vehicle liability insurance that satisfies the requirements of article 6 or 8 of the Vehicle and Traffic Law shall, with all new [policies issued to become effective on and after March 9, 1998 and all] and renewal policies [renewed to become effective on and after March 9, 1998], provide a written notice in concise language that shall include:

(1) a statement that SUM coverage is available, including the SUM limits being offered for purchase;

(2) the provisions set forth in section 60-2.1(a), (b) and (c) of this Subpart and an explanation of the difference between uninsured motorists (UM) coverage and [supplementary uninsured/underinsured motorists] SUM coverage; and

(3) the examples about SUM coverage set forth in subdivision (b) of this section.

(b) The following examples, [(using [the] per person limits)] unless otherwise noted, illustrate the proper application of SUM coverage:

(1) Example One:

Insured's Bodily Injury Damages	\$300,000
Insured's Liability Limit	\$500,000
Insured's SUM Limit	\$250,000
Other Motor Vehicle Liability Limit	\$25,000

Result: In this example, the insured has purchased the maximum amount of SUM coverage that must be offered by the insurer, provided that the insured has purchased bodily injury liability limits of at least \$250,000. Insured recovers \$25,000 from the

negligent owner or operator of the other motor vehicle, and \$225,000 (\$250,000 minus \$25,000) under the SUM coverage, for a total recovery of \$250,000.

[However, in] In the event that the negligent owner or operator of the other motor vehicle had no liability insurance at all, the insured would collect \$250,000 in SUM coverage from the insured's own insurer. [But] However, if the owner or operator of the other motor vehicle was not negligent, then the insured would receive no SUM payments.

(2) Example Two:

Insured's Bodily Injury Damages	\$100,000
Insured's Liability Limit	\$25,000
Insured's SUM Limit	\$25,000
Other Motor Vehicle Liability Limit	\$25,000

Result: Insured recovers \$25,000 from the negligent [other motor vehicle] owner or operator of the other motor vehicle. [But the] The insured receives nothing under the SUM coverage, which equals the mandatory [uninsured motorists] UM coverage, since the liability limits on the other owner or operator's motor vehicle [did not have less] were not lower than the liability insurance [than] limits on the insured's motor vehicle. If the insured's liability and SUM limits were both \$50,000, then the insured would collect another \$25,000 in SUM coverage from the insured's own insurer.

(3) Example Three

Insured's Bodily Injury Damages	\$60,000
Insured's Liability Limit	\$100,000
Insured's SUM Limit	\$100,000
Other Motor Vehicle Liability Limit	\$50,000

Result: Insured recovers \$50,000 from the [other] negligent owner or operator of the other motor vehicle [owner or operator] and \$10,000 under the SUM coverage, which is the difference between the amount of the insured's SUM coverage and the liability coverage available from the other motor vehicle owner or operator, limited by the amount of the insured's bodily injury damages.

(4) Example Four:

Insured's Bodily Injury Damages	\$150,000
Insured's Liability Limit	\$100,000
Insured's SUM Limit	\$100,000
Other Motor Vehicle Liability Limit	\$25,000

Result: [Suppose] If the insured and the owner or operator of the other motor vehicle [owner or operator] were each 50 percent at fault for the accident, then the insured's total recovery would be \$75,000, in light of comparative negligence of the parties involved

in the accident. The insured would recover \$25,000 from the negligent owner or operator of the other [negligent] motor vehicle [owner or operator] and \$50,000 under the SUM coverage.

On the other hand, if the owner or operator of the other motor vehicle [owner or operator] was totally at fault for the accident, then the insured would recover \$25,000 from the negligent [motor vehicle] owner or operator and would then receive \$75,000 in SUM coverage from the insured's own insurer. Had the insured purchased liability and SUM limits of \$150,000 or more, the SUM recovery would then be \$125,000.

(5) Example Five:

<u>Insured's Bodily Injury Damages</u>	<u>\$25,000</u>
<u>Passenger's Bodily Injury Damages</u>	<u>\$25,000</u>
<u>Another Passenger's Damages that resulted in death</u>	<u>\$50,000</u>
<u>Insured's Combined Single Liability (CSL) Limit</u>	<u>\$75,000</u>
<u>Insured's CSL SUM Limit</u>	<u>\$75,000</u>
<u>Other Motor Vehicle Liability Limit</u>	<u>Uninsured (i.e. no coverage)</u>

Result: Since the other motor vehicle was uninsured, the full \$75,000 CSL SUM limit is available for all insured persons from this accident under the policy. However, since the accident involves insured persons who were both injured and killed, the mandatory UM limits of \$25,000 per person and \$50,000 per accident for injured persons and \$50,000 per person and \$100,000 per accident for persons killed in the accident are available. Therefore, the insured and first passenger each recover \$25,000 and the second passenger's estate recovers the full \$50,000 under the SUM coverage.

If the insured's CSL and CSL SUM limit were each \$300,000 and the insured's damages amounted to \$200,000, then all insured persons would be covered under the SUM coverage as the total damages (\$200,000 + \$25,000 + \$50,000 = \$275,000) are less than the \$300,000 CSL SUM limit.

Section 60-2.3 Requirements for SUM endorsements

(a) The declarations page of every new or renewal motor vehicle liability insurance policy issued, if SUM coverage is purchased by the policyholder, shall state:

(1) the SUM limits, instead of the amount of mandatory [uninsured motorists] UM coverage; and

(2) the maximum amount payable under SUM coverage shall be the policy's SUM limits reduced and thus offset by motor vehicle bodily injury liability insurance policy or bond payments received from, or on behalf of, any negligent party involved in the accident, as specified in the SUM endorsement.

(b) If SUM coverage is provided under a personal umbrella liability policy:

(1) the limits shall be excess of the SUM coverage provided in the underlying motor vehicle liability policy;

(2) the coverage shall be consistent with all applicable requirements of the SUM endorsement prescribed in this section; and

(3) the declarations page shall state the SUM limits.

(c) Every SUM endorsement issued shall be the [Supplementary Uninsured/Underinsured Motorists Endorsement] SUM endorsement as prescribed by subdivision (f) of this section.

(d) The prescribed SUM endorsement:

(1) [includes] shall include the mandatory [uninsured motorists (UM)] UM coverage required by section 3420(f)(1) of the Insurance Law;

(2) [applies] shall apply to accidents in and out of New York State, subject to the territorial limits stated in the SUM endorsement; and

(3) has been determined by the superintendent, as required by Insurance Law section 3425(d)(3)[of the Insurance Law], to contain at least substantially equivalent value in the aggregate of benefits as those contained in previously approved SUM endorsements.

(e) If the policyholder does not purchase SUM coverage, then the insurer shall issue, instead of the SUM endorsement prescribed by subdivision (f) of this section, the mandatory [uninsured motorists] UM endorsement as prescribed by the Motor Vehicle Accident Indemnification Corporation (MVAIC) and approved by the superintendent.

(f) Prescribed SUM endorsement:

SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS ENDORSEMENT--NEW YORK

We, the company, agree with you, as the named insured, in return for payment of the premium for this coverage, to provide Supplementary Uninsured/Underinsured Motorists (SUM) coverage, subject to the following terms and conditions:

INSURING AGREEMENTS

I. Definitions:

For purposes of this SUM endorsement, the following terms have the following meanings.

(a) Insured. The unqualified term “insured” means:

(1) you, as the named insured and, while residents of the same household, your spouse and the relatives of either you or your spouse;

(2) any person while acting in the scope of that person's duties for you, except with respect to the use and operation by such person of a motor vehicle not covered under this policy, where such person is: ¹

(i) your employee and you are a fire department;

(ii) your member and you are a fire company, as defined in General Municipal Law section 100;

(iii) your employee and you are an ambulance service, as defined in Public Health Law section 3001; or

(iv) your member and you are a voluntary ambulance service, as defined in Public Health Law section 3001;

(3) any other person while occupying:

(i) a motor vehicle insured for SUM under this policy; or

(ii) any other motor vehicle while being operated by you or your spouse; and

(4) any person, with respect to damages such person is entitled to recover, because of bodily injury to which this coverage applies sustained by an insured under paragraph (1), (2) or (3) above.

(b) Bodily Injury. The term "bodily injury" means bodily harm, including sickness, disease or death resulting therefrom.

(c) Uninsured Motor Vehicle. The term "uninsured motor vehicle" means a motor vehicle that, through its ownership, maintenance or use, results in bodily injury to an insured, and for which:

(1) no bodily injury liability insurance policy or bond applies to such motor vehicle (including a vehicle that was stolen, operated without the owner's permission[,], or unregistered) at the time of the accident[:]
or

(2) [neither] the owner [nor driver can] and operator cannot be identified (including a hit-and-run motor vehicle), and which causes bodily injury to an insured by physical contact with the insured or with a motor vehicle occupied by the insured at the time of the accident, provided that:

(i) the insured or someone on the insured's behalf [shall have]:

(a) reported the accident within 24 hours or as soon as reasonably possible to a police, peace or judicial officer or to the Commissioner of Motor Vehicles; and

(b) [shall have] filed with the Company a statement under oath that the insured or the insured's legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and

¹ Language in paragraph (2) of the definition of insured may be deleted for covered policies as defined in Insurance Law Section 3425(a)(1)[of the New York Insurance Law].

(ii) at the request of the Company, the insured or the insured's legal representative makes available for inspection the [automobile] motor vehicle the insured was occupying at the time of the accident; or

(3) there is a bodily injury liability insurance coverage or bond applicable to such motor vehicle at the time of the accident, but;

(i) the amount of such insurance coverage or bond is less than the third-party bodily injury liability limit of this policy; or

(ii) the amount of such insurance coverage or bond has been reduced, by payments to other persons injured in the accident, to an amount less than the third-party bodily injury liability limit of this policy; or

(iii) the insurer writing such insurance coverage or bond denies coverage[,] or such insurer is or becomes insolvent.

The term "uninsured motor vehicle" [does] shall not include a motor vehicle that is:

(1) insured under the liability coverage of this policy; or

(2) owned by you, [as] the named insured, or your spouse residing in your household; or

(3) self-insured within the meaning of the financial responsibility law of the State in which the motor vehicle is registered, or any similar state or Federal law, to the extent that the required amount of such coverage is equal to, or greater than, the third-party bodily injury liability limits of this policy; or

(4) owned by the United States of America, Canada, a state, a political subdivision of any such government[,] or an agency of any of the foregoing; or

(5) a land motor vehicle or trailer, while located for use as a residence or premises and not as a motor vehicle[,] or while operated on rails or crawler-treads; or

(6) a farm type vehicle or equipment designed for use principally off public roads, except while actually upon public roads.

(d) Occupying. The term "occupying" means in, upon, entering into[,] or exiting from a motor vehicle.

(e) State. The term "state" [includes the District of Columbia,] means a state, territory or possession of the United States,[and] the District of Columbia or a province of Canada.

II. Damages for Bodily Injury Caused by Uninsured Motor Vehicles:

We will pay all sums that the insured or the insured's legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, caused by an accident arising out of such uninsured motor vehicle's ownership,

maintenance or use, subject to the Exclusions, Conditions, Limits and other provisions [of] set forth in this SUM endorsement.

III. SUM Coverage Period and Territory:

This SUM coverage applies only to accidents that occur:

1. during the policy period shown in the Declarations; and
2. in the United States, its territories or possessions, or Canada.

EXCLUSIONS

This SUM coverage does not apply to:

1. [to] bodily injury to an insured, including care or loss of services recoverable by an insured, if such insured, such insured's legal representatives[,] or any person entitled to payment under this coverage, without our written consent, settles any lawsuit against any person or organization that may be legally liable for such injury, care or loss of services, [but] however this provision shall be subject to Condition [10.] 9;

2. [to] bodily injury to an insured incurred while occupying a motor vehicle owned by that insured, if such motor vehicle is not insured for SUM coverage by the policy under which a claim is made[,] or is not a newly acquired or replacement motor vehicle covered under the terms of this policy[.]; or

3. [for] non-economic loss[,] resulting from bodily injury to an insured [and] arising from an accident in New York State, unless the insured has sustained serious injury as defined in Section 5102(d) of the New York Insurance Law.

CONDITIONS

1. Policy Provisions: None of the Insuring Agreements, Exclusions or Conditions of the policy shall apply to this SUM coverage except: "Duties After an Accident or Loss"[;], "Fraud"[;] and "Termination",² if applicable.²

2. Notice and Proof of Claim: As soon as practicable, the insured or other person making a claim shall give us written notice of claim under this SUM coverage.

(i) As soon as practicable after our written request, the insured or other person making claim shall give us written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment[,] and other details we need to determine the SUM amount payable.

(ii) The insured and every other person making claim hereunder shall, as may reasonably be required, submit to examinations under oath by any person we name and subscribe the same. Proof of claim shall be made upon forms we furnish unless we fail to furnish such forms within 15 calendar days after receiving notice of claim.

² Appropriate terms may be substituted to conform with terms used in the policy.

3. Medical Reports: The insured shall submit to physical examinations by physicians we select when and as often as we may reasonably require. The insured, or in the event of the insured's incapacity, [such] the insured's legal representative (or in the event of [such] the insured's death, the insured's legal representative or the person or persons entitled to sue therefore), shall upon each request from us authorize us to obtain copies of relevant medical reports and [copies of relevant] records.

4. Notice of Legal Action: If the insured or [such] the insured's legal representative brings any lawsuit against any person or organization legally responsible for the use of a motor vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with the lawsuit shall be forwarded immediately to us by the insured or the insured's legal representative.

5. SUM Limits and Maximum Payments:

(a) The SUM limits payable under this [SUM] endorsement shall be determined as follows:

[(a)] (1) if an accident results in bodily injury excluding death to one or more persons, then we will provide the SUM limits stated in the Declarations; or

[(b)] (2) if [the bodily injury] an accident results in the death of one or more persons, then we will provide the greater of [SUM limits of the higher of] the SUM limits stated in the Declarations[,], or \$50,000 for such bodily injury resulting in death sustained by one person as the result of any one accident and, subject to this per person limit, \$100,000 for such bodily injury resulting in death sustained by two or more persons as the result of any one accident[.]; or

(3) if an accident results in both bodily injury to one or more persons and the death of one or more persons, then we will provide the greater of the SUM limits stated in the Declarations or the limits required by the mandatory uninsured motorists (UM) coverage as follows:

- \$25,000 per injured person and, subject to this per person limit,
- \$50,000 to two or more persons injured as the result of any one accident; and
- \$50,000 per person for bodily injury resulting in death and, subject to this per person limit,
- \$100,000 to two or more persons for bodily injury resulting in death as the result of any one accident.

[6. Maximum SUM Payments:]

(b) Regardless of the number of insureds, our maximum payment under this SUM endorsement shall be the difference between:

[(a)] (1) the SUM limits; and

[(b)] (2) the motor vehicle bodily injury liability insurance or bond payments received by the insured or the insured's legal representative, from or on behalf of all persons that may be legally liable for the bodily injury sustained by the insured.

(c) The SUM limit shown on the Declarations is the amount of coverage for all damages due to bodily injury in any one accident.³ (The SUM limit shown on the Declarations for “Each Person” is the amount of coverage for all damages due to bodily injury to one person. The SUM limit shown under “Each Accident” is, subject to the limit for each person, the total amount of coverage for all damages due to bodily injury to two or more persons in the same accident).⁴

[7] 6. Non-Stacking: Regardless of the number of motor vehicles involved, persons covered, claims made, motor vehicles or premiums shown in this policy[,] or premium paid, the limits, whether for [uninsured motorists] UM coverage or [supplementary uninsured/underinsured motorists] SUM coverage, shall never be added together or combined for two or more motor vehicles to determine the extent of insurance coverage available to an insured who was injured in the same accident.

[8] 7. Priority of Coverage: If an insured is entitled to [uninsured motorists] UM coverage or [supplementary uninsured/underinsured motorists] SUM coverage under more than one policy, the maximum amount such insured may recover shall not exceed the highest limit of such coverage for any one motor vehicle under any one policy[,] and the following order of priority shall apply:

(a) a policy covering a motor vehicle occupied by the injured person at the time of the accident;

(b) a policy covering a motor vehicle not involved in the accident under which the injured person is a named insured; and

(c) a policy covering a motor vehicle not involved in the accident under which the injured person is an insured other than a named insured.

Coverage available under a lower priority policy applies only to the extent that it exceeds the coverage of a higher priority policy.

[9] 8. Exhaustion Required: Except as provided in Condition [10] 9, we will pay under this SUM coverage only after the limits of liability have been [used up] exhausted under all motor vehicle bodily injury liability insurance policies or bonds applicable at the time of the accident in regard to any one person who may be legally liable for the bodily injury sustained by the insured.

[10] 9. Release or Advance:

(a) In accidents involving the insured and one or more negligent parties, if such insured settles with any such party for the available limit of the motor vehicle bodily injury liability coverage of such party, a release may be executed with such party after thirty calendar days [actual] from our receipt of your written notice to us, unless within this time period we agree to advance such settlement amounts to the insured in return for the cooperation of the insured in our lawsuit on behalf of the insured.

³ Language in this sentence should be used for SUM endorsements issued with a combined single limit, in which case Condition 5 should speak throughout in terms of a singular limit, rather than plural limits.

⁴ Language in parentheses should be used for SUM endorsements issued with split limits.

(b) We shall have a right to the proceeds of any such lawsuit equal to the amount advanced to the insured and any additional amounts paid under this SUM coverage. Any excess above those amounts shall be paid to the insured.

(c) An insured shall not otherwise settle with any negligent party, without our written consent, such that our rights would be impaired.

[11] 10. Non-Duplication: This SUM coverage shall not duplicate any of the following:

(a) benefits payable under workers' compensation or other similar laws;

(b) non-occupational disability benefits under[article nine of the]New York Workers' Compensation Law article nine or other similar law;

(c) any amounts recovered or recoverable pursuant to[article fifty-one of the] New York Insurance Law article fifty-one or any similar motor vehicle insurance payable without regard to fault;

(d) any valid or collectible motor vehicle medical payments insurance; or

(e) any amounts recovered as bodily injury damages from sources other than motor vehicle bodily injury liability insurance policies or bonds.

[12] 11. Arbitration:

(a) If any insured [making] makes a claim under this SUM coverage and we do not agree that such insured is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, or we do not agree as to the amount of payment that may be owing under this SUM coverage, then, at the option and upon written demand of such insured, the matter or matters upon which such insured and we do not agree shall be settled by arbitration, administered by the [American Arbitration Association] _____ (*insert name of designated organization*), pursuant to procedures [prescribed or] approved by the Superintendent of Financial Services for this purpose.

(b) If[, however,] the maximum amount of SUM coverage provided by this endorsement equals the amount of coverage required to be provided by[section 3420(f)(1) of the] New York Insurance Law section 3420(f)(1) and[Article 6 or 8 of the] New York Vehicle and Traffic Law Article 6 or 8, then such disagreement shall be settled by such arbitration procedures upon written demand of either the insured or us. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, and any such insured and we each agree to be bound by any award made by the arbitrator as to this SUM coverage. For purposes of this Condition, the term "insured" includes any person authorized to act on behalf of the insured.

[13] 12. Subrogation: If we make a payment under this SUM coverage, then we have the right to recover the amount of [this] the payment from any person legally responsible for the bodily injury or loss of the person to whom, or for whose benefit, such payment was made to the extent of the payment. The insured or any person acting on behalf of the insured must do whatever is necessary to transfer this right of recovery to us. Except as permitted by Condition [10] 9, such person shall do nothing to prejudice this right.

[14] 13. Payment of Loss by Company: We shall pay any amount due under this SUM coverage to the insured or, at our option, to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents.

[15] 14. Action Against Company: No lawsuit shall lie against us unless the insured or the insured's legal representative has first fully complied with all the terms of this SUM coverage.

[16] 15. Survivor Rights: If you or your spouse, if a resident of the same household, dies, then this SUM [coverage] endorsement shall cover:

[1] (a) the survivor as named insured;

[2] (b) the decedent's legal representative as named insured, but only while acting within the scope of such representative's duties as such; and

[3] (c) any relative who was an insured at the time of such death.

Section 60-2.4 Arbitration of SUM claims

(a) [All arbitrations] Every arbitration involving SUM coverage under the endorsement prescribed in section 60-2.3 of this Subpart shall be administered by an organization designated by the superintendent and conducted in accordance with procedures established by the [American Arbitration Association (AAA)] designated organization and approved by the superintendent. [All requests] Every request for [AAA] arbitration of SUM disputes shall be filed directly with the [AAA] designated organization.

(b) Qualifications of SUM arbitrators for [a hearing] hearings to be held in New York State.

(1) [Arbitrator screening committee] SUM Arbitrator Screening Committee. The superintendent [shall] will appoint an advisory committee of six members who will review the qualifications of applicants for the position of [supplementary uninsured/underinsured motorists] SUM arbitrator for hearings to be held in [New York] this State and review the performance of the appointed arbitrators. [The screening] This committee shall make recommendations to the superintendent pertaining to the appointment and dismissal of SUM arbitrators. The committee shall consist of one representative of the New York State Bar Association, one representative of the New York State Trial Lawyers Association, two representatives of motor vehicle insurers, a non-voting [AAA] representative of the designated organization and a non-voting representative of the [Department of Financial Services] superintendent. Tie votes shall be [reported] recorded as such to the superintendent.]

(2) A SUM arbitrator shall be an attorney, licensed to practice law in [New York] this State, with at least [10] ten years of experience [which] that the superintendent and SUM Arbitrator Screening Committee [has] have determined qualifies [such] the attorney to review and resolve the issues involved in [supplementary uninsured motorists] SUM disputes. [Documentation of such experience shall be submitted to, and reviewed by, the superintendent prior to the appointment of an arbitrator. Arbitrator Screening Committee.] The SUM Arbitrator Screening Committee, subject to the approval of the superintendent, shall establish any additional qualifications for the position of SUM arbitrator. An applicant for the SUM arbitrator position shall submit documentation of experience along with an application to the superintendent and the SUM Arbitrator Screening

Committee. An arbitrator candidate shall disclose to the superintendent any circumstance that is likely to create an appearance of bias of that might disqualify the person as an arbitrator and the superintendent will determine whether the candidate should be disqualified.

(3) [All]Every SUM arbitrator[s] shall be appointed by, and serve at the pleasure of, the superintendent. [An arbitrator candidate shall disclose to the superintendent any circumstance which is likely to create an appearance of bias or which might disqualify such person as an arbitrator, and the superintendent shall determine whether the candidate should be disqualified. The superintendent shall forward the name of all SUM arbitrators to the AAA, and promptly inform the AAA of all additions to, and deletions from, the panel.] Subsequent to reviewing the recommendations of the SUM Arbitrator Screening Committee, the superintendent will forward the names of all appointed or renewed arbitrators and promptly inform the designated organization of all additions to, or deletions from, the panel.

(4) No person shall, during the period of appointment as an arbitrator, have any practice or professional connection with any firm or insurer involved in any degree with motor vehicle insurance or negligence law.

(5) No person shall, during the period of appointment as an arbitrator, have any practice or professional connection with any firm or insurer involved in any degree with [automobile] motor vehicle insurance or negligence law.[The Arbitrator Screening Committee, subject to the approval of the superintendent, shall establish any additional qualifications for appointment as a SUM arbitrator.]

(c) Arbitrator's compensation. Arbitrators shall contract on an annual basis with the [AAA] designated organization. The rate of compensation shall be determined by the [AAA] designated organization, after consultation with the Arbitrator Screening Committee. Arbitrators shall be independent contractors[,], and shall not be employees of the [AAA] designated organization.

(d) SUM Optional Arbitration Advisory Committee. The insurer members of the No-Fault Optional Arbitration Advisory Committee, constituted pursuant to section 65.17(b)(3)(iv) of this Title, shall constitute an advisory committee that reviews the operations and the actual [costs] cost of administering the [AAA] SUM arbitration forum.

(e) Financing.

(1) The cost of administering the [AAA] SUM arbitration forum shall be paid [annually] quarterly by insurers to the [AAA] designated organization upon receipt of a statement therefrom. This cost shall be distributed among insurers in an equitable manner [approved] as determined by the Superintendent of Financial Services. This distribution shall, to the extent practicable, be a function of the degree to which an insurer is named as a respondent in [AAA] SUM arbitration proceedings.

(2) [Semiannually, commencing July 1, 1993 and continuing every six months thereafter,] On an annual basis, no later than April 30 of each year, the [AAA] designated organization shall prepare:

(i) an estimate of the annual expenses expected to be incurred for the operation and administration of the [AAA] SUM forum [during the subsequent six-month period. The projected cost of the AAA SUM forum shall be assessed on a proportionate basis to those insurers named as respondents on cases

forwarded to the AAA in the preceding calendar year and], including an estimated assessment per closed case, that shall be subject to the approval of the superintendent.

(a) The [AAA] designated organization shall send to each applicable insurer, on a quarterly basis or otherwise pursuant to paragraph four of this subdivision, a bill for the amount due [and any].

(b) Any payment due shall be made to the [AAA] designated organization within 30 days after the billing date.

[3) On an annual basis, as of December 31st of each year, the AAA shall prepare]

(ii) a detailed analysis of the actual [costs] expenses incurred for the operation and administration of the [AAA] SUM forum during the preceding calendar year.

(a) This analysis shall be forwarded to the SUM Optional Arbitration Advisory Committee and the superintendent [on or before April 30th of each year].

(b) The SUM Optional Arbitration Advisory Committee shall notify the [AAA] designated organization and the superintendent whether [they accept] it accepts or [reject] rejects the [AAA's] designated organization's cost analysis in whole or in part.

(c) In the event that the [AAA] designated organization and the SUM Optional Arbitration Advisory Committee cannot resolve any differences that may exist, such differences will be referred to the superintendent for resolution. The superintendent's decision shall be binding on the [AAA] designated organization and insurers.

[(4)] (3) Once the [AAA] designated organization submits a final cost analysis that has either been approved by the SUM Optional Arbitration Advisory Committee or resolved by the superintendent [in the event of a dispute], the [AAA] designated organization shall send to each applicable insurer an accounting of the actual assessment. Any adjustment due to the difference between the estimate of expenses and the actual expenses incurred for the operation and administration of the SUM forum shall be made to the bill for the [subsequent] next quarterly estimated assessment.

(4) The designated organization and the SUM Optional Arbitration Advisory Committee may, by agreement subject to the approval of the superintendent, augment or modify the manner and timing of assessment billings through written guidelines.

(5) The designated organization shall impose an interest charge, at prime rate plus one percent, for all assessment charges that are unpaid for more than 90 days after the billing date. Interest collected will be used to reduce the overall current year SUM forum operating expenses.



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

I, Maria T. Vullo, Superintendent of Financial Services, do hereby certify that the foregoing is the Sixth Amendment to Part 60-2 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 35-D), entitled "Supplementary Uninsured/Underinsured Motorists Insurance", signed by me on July 6, 2017, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, and Sections 301, 307, 308 and 3420 of the Insurance Law, to take effect on August 1, 2017.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on April 26, 2017. No other publication or prior notice is required by statute.

A handwritten signature in blue ink, appearing to read "Maria T. Vullo", written over a horizontal line.

Maria T. Vullo
Superintendent of Financial Services

Date: July 6, 2017