

1 **UNINSURED AND UNDERINSURED MOTORIST COVERAGE**

2 **AMENDMENTS**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lyle W. Hillyard**

6 House Sponsor: Jack R. Draxler

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Insurance Code by amending provisions relating to uninsured and
11 underinsured motorist coverage.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends the acknowledgment form requirements for a named insured to sign to
15 reject the statutory minimum of uninsured or underinsured motorist coverage or
16 purchase coverage in a lesser amount;
- 17 ▶ makes the acknowledgment form requirement retroactive for any claim arising on or
18 after January 1, 2001, for which, as of May 14, 2013, an insured has not made a
19 written demand for arbitration or filed a complaint in a court of competent
20 jurisdiction;
- 21 ▶ provides that any selection or rejection of uninsured or underinsured motorist
22 coverage continues for that issuer of the liability coverage until the insured requests,
23 in writing, a change of uninsured or underinsured motorist coverage from that
24 liability insurer;
- 25 ▶ amends the Rules of Civil Procedure that an arbitration shall comply with when
26 arbitrating a claim that is brought by a named insured or a covered person and is
27 asserted against the covered person's uninsured or underinsured motorist carrier;
- 28 ▶ requires a covered person to disclose all material information, other than rebuttal
29 evidence, within 30 days after a covered person elects to submit a claim for

30 uninsured or underinsured motorist coverage benefits to binding arbitration or files litigation;
31 and
32 ▶ makes technical corrections.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **31A-22-305**, as last amended by Laws of Utah 2012, Chapter 283

40 **31A-22-305.3**, as last amended by Laws of Utah 2012, Chapter 283

41

42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section **31A-22-305** is amended to read:

44 **31A-22-305. Uninsured motorist coverage.**

45 (1) As used in this section, "covered persons" includes:

46 (a) the named insured;

47 (b) persons related to the named insured by blood, marriage, adoption, or guardianship,

48 who are residents of the named insured's household, including those who usually make their

49 home in the same household but temporarily live elsewhere;

50 (c) any person occupying or using a motor vehicle:

51 (i) referred to in the policy; or

52 (ii) owned by a self-insured; and

53 (d) any person who is entitled to recover damages against the owner or operator of the

54 uninsured or underinsured motor vehicle because of bodily injury to or death of persons under

55 Subsection (1)(a), (b), or (c).

56 (2) As used in this section, "uninsured motor vehicle" includes:

57 (a) (i) a motor vehicle, the operation, maintenance, or use of which is not covered

58 under a liability policy at the time of an injury-causing occurrence; or

59 (ii) (A) a motor vehicle covered with lower liability limits than required by Section
60 31A-22-304; and

61 (B) the motor vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of
62 the deficiency;

63 (b) an unidentified motor vehicle that left the scene of an accident proximately caused
64 by the motor vehicle operator;

65 (c) a motor vehicle covered by a liability policy, but coverage for an accident is
66 disputed by the liability insurer for more than 60 days or continues to be disputed for more than
67 60 days; or

68 (d) (i) an insured motor vehicle if, before or after the accident, the liability insurer of
69 the motor vehicle is declared insolvent by a court of competent jurisdiction; and

70 (ii) the motor vehicle described in Subsection (2)(d)(i) is uninsured only to the extent
71 that the claim against the insolvent insurer is not paid by a guaranty association or fund.

72 (3) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides
73 coverage for covered persons who are legally entitled to recover damages from owners or
74 operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death.

75 (4) (a) For new policies written on or after January 1, 2001, the limits of uninsured
76 motorist coverage shall be equal to the lesser of the limits of the named insured's motor vehicle
77 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
78 under the named insured's motor vehicle policy, unless a named insured rejects or purchases
79 coverage in a lesser amount by signing an acknowledgment form that:

80 (i) is filed with the department;

81 (ii) is provided by the insurer;

82 (iii) waives the higher coverage;

83 (iv) ~~reasonably explains the purpose of]~~ need only state in this or similar language that
84 uninsured motorist coverage provides benefits or protection to you and other covered persons
85 for bodily injury resulting from an accident caused by the fault of another party where the other

86 party has no liability insurance; and

87 (v) discloses the additional premiums required to purchase uninsured motorist
88 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
89 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
90 under the named insured's motor vehicle policy.

91 (b) Any selection or rejection under this Subsection (4) continues for that issuer of the
92 liability coverage until the insured requests, in writing, a change of uninsured motorist
93 coverage from that liability insurer.

94 (c) (i) Subsections (4)(a) and (b) apply retroactively to any claim arising on or after
95 January 1, 2001, for which, as of May 14, 2013, an insured has not made a written demand for
96 arbitration or filed a complaint in a court of competent jurisdiction.

97 (ii) The Legislature finds that the retroactive application of Subsections (4)(a) and (b)
98 clarifies legislative intent and does not enlarge, eliminate, or destroy vested rights.

99 ~~(b)~~ (d) For purposes of this Subsection (4), "new policy" means:

100 (i) any policy that is issued which does not include a renewal or reinstatement of an
101 existing policy; or

102 (ii) a change to an existing policy that results in:

103 (A) a named insured being added to or deleted from the policy; or

104 (B) a change in the limits of the named insured's motor vehicle liability coverage.

105 ~~(c)~~ (e) (i) As used in this Subsection (4)~~(c)~~(e), "additional motor vehicle" means a
106 change that increases the total number of vehicles insured by the policy, and does not include
107 replacement, substitute, or temporary vehicles.

108 (ii) The adding of an additional motor vehicle to an existing personal lines or
109 commercial lines policy does not constitute a new policy for purposes of Subsection
110 ~~(4)(b)~~(d).

111 (iii) If an additional motor vehicle is added to a personal lines policy where uninsured
112 motorist coverage has been rejected, or where uninsured motorist limits are lower than the
113 named insured's motor vehicle liability limits, the insurer shall provide a notice to a named

114 insured within 30 days that:

115 (A) ~~[reasonably]~~ in the same manner as described in Subsection (4)(a)(iv), explains the
116 purpose of uninsured motorist coverage; and

117 (B) encourages the named insured to contact the insurance company or insurance
118 producer for quotes as to the additional premiums required to purchase uninsured motorist
119 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
120 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
121 under the named insured's motor vehicle policy.

122 ~~[(f)]~~ (f) A change in policy number resulting from any policy change not identified
123 under Subsection (4)~~[(b)]~~(d)(ii) does not constitute a new policy.

124 ~~[(e)]~~ (g) (i) Subsection (4)~~[(b)]~~(d) applies retroactively to any claim arising on or after
125 January 1, 2001, for which, as of May 1, 2012, an insured has not made a written demand for
126 arbitration or filed a complaint in a court of competent jurisdiction.

127 (ii) The Legislature finds that the retroactive application of Subsection (4):

128 (A) does not enlarge, eliminate, or destroy vested rights; and

129 (B) clarifies legislative intent.

130 ~~[(f)]~~ (h) A self-insured, including a governmental entity, may elect to provide
131 uninsured motorist coverage in an amount that is less than its maximum self-insured retention
132 under Subsections (4)(a) and (5)(a) by issuing a declaratory memorandum or policy statement
133 from the chief financial officer or chief risk officer that declares the:

134 (i) self-insured entity's coverage level; and

135 (ii) process for filing an uninsured motorist claim.

136 ~~[(g)]~~ (i) Uninsured motorist coverage may not be sold with limits that are less than the
137 minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304.

138 ~~[(h)]~~ (j) The acknowledgment under Subsection (4)(a) continues for that issuer of the
139 uninsured motorist coverage until the named insured requests, in writing, different uninsured
140 motorist coverage from the insurer.

141 ~~[(i)]~~ (k) (i) In conjunction with the first two renewal notices sent after January 1, 2001,

142 for policies existing on that date, the insurer shall disclose in the same medium as the premium
143 renewal notice, an explanation of:

144 (A) the purpose of uninsured motorist coverage in the same manner as described in
145 Subsection (4)(a)(iv); and

146 (B) a disclosure of the additional premiums required to purchase uninsured motorist
147 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
148 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
149 under the named insured's motor vehicle policy.

150 (ii) The disclosure required under Subsection (4)~~(j)~~(k)(i) shall be sent to all named
151 insureds that carry uninsured motorist coverage limits in an amount less than the named
152 insured's motor vehicle liability policy limits or the maximum uninsured motorist coverage
153 limits available by the insurer under the named insured's motor vehicle policy.

154 ~~(j)~~ (l) For purposes of this Subsection (4), a notice or disclosure sent to a named
155 insured in a household constitutes notice or disclosure to all insureds within the household.

156 (5) (a) (i) Except as provided in Subsection (5)(b), the named insured may reject
157 uninsured motorist coverage by an express writing to the insurer that provides liability
158 coverage under Subsection 31A-22-302(1)(a).

159 (ii) This rejection shall be on a form provided by the insurer that includes a reasonable
160 explanation of the purpose of uninsured motorist coverage.

161 (iii) This rejection continues for that issuer of the liability coverage until the insured in
162 writing requests uninsured motorist coverage from that liability insurer.

163 (b) (i) All persons, including governmental entities, that are engaged in the business of,
164 or that accept payment for, transporting natural persons by motor vehicle, and all school
165 districts that provide transportation services for their students, shall provide coverage for all
166 motor vehicles used for that purpose, by purchase of a policy of insurance or by self-insurance,
167 uninsured motorist coverage of at least \$25,000 per person and \$500,000 per accident.

168 (ii) This coverage is secondary to any other insurance covering an injured covered
169 person.

- 170 (c) Uninsured motorist coverage:
- 171 (i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers'
- 172 Compensation Act;
- 173 (ii) may not be subrogated by the workers' compensation insurance carrier;
- 174 (iii) may not be reduced by any benefits provided by workers' compensation insurance;
- 175 (iv) may be reduced by health insurance subrogation only after the covered person has
- 176 been made whole;
- 177 (v) may not be collected for bodily injury or death sustained by a person:
- 178 (A) while committing a violation of Section 41-1a-1314;
- 179 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated
- 180 in violation of Section 41-1a-1314; or
- 181 (C) while committing a felony; and
- 182 (vi) notwithstanding Subsection (5)(c)(v), may be recovered:
- 183 (A) for a person under 18 years of age who is injured within the scope of Subsection
- 184 (5)(c)(v) but limited to medical and funeral expenses; or
- 185 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured
- 186 within the course and scope of the law enforcement officer's duties.
- 187 (d) As used in this Subsection (5), "motor vehicle" has the same meaning as under
- 188 Section 41-1a-102.
- 189 (6) When a covered person alleges that an uninsured motor vehicle under Subsection
- 190 (2)(b) proximately caused an accident without touching the covered person or the motor
- 191 vehicle occupied by the covered person, the covered person shall show the existence of the
- 192 uninsured motor vehicle by clear and convincing evidence consisting of more than the covered
- 193 person's testimony.
- 194 (7) (a) The limit of liability for uninsured motorist coverage for two or more motor
- 195 vehicles may not be added together, combined, or stacked to determine the limit of insurance
- 196 coverage available to an injured person for any one accident.
- 197 (b) (i) Subsection (7)(a) applies to all persons except a covered person as defined under

198 Subsection (8)(b)(ii).

199 (ii) A covered person as defined under Subsection (8)(b)(ii) is entitled to the highest
200 limits of uninsured motorist coverage afforded for any one motor vehicle that the covered
201 person is the named insured or an insured family member.

202 (iii) This coverage shall be in addition to the coverage on the motor vehicle the covered
203 person is occupying.

204 (iv) Neither the primary nor the secondary coverage may be set off against the other.

205 (c) Coverage on a motor vehicle occupied at the time of an accident shall be primary
206 coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall
207 be secondary coverage.

208 (8) (a) Uninsured motorist coverage under this section applies to bodily injury,
209 sickness, disease, or death of covered persons while occupying or using a motor vehicle only if
210 the motor vehicle is described in the policy under which a claim is made, or if the motor
211 vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy.
212 Except as provided in Subsection (7) or this Subsection (8), a covered person injured in a
213 motor vehicle described in a policy that includes uninsured motorist benefits may not elect to
214 collect uninsured motorist coverage benefits from any other motor vehicle insurance policy
215 under which the person is a covered person.

216 (b) Each of the following persons may also recover uninsured motorist benefits under
217 any one other policy in which they are described as a "covered person" as defined in Subsection
218 (1):

219 (i) a covered person injured as a pedestrian by an uninsured motor vehicle; and

220 (ii) except as provided in Subsection (8)(c), a covered person injured while occupying
221 or using a motor vehicle that is not owned, leased, or furnished:

222 (A) to the covered person;

223 (B) to the covered person's spouse; or

224 (C) to the covered person's resident parent or resident sibling.

225 (c) (i) A covered person may recover benefits from no more than two additional

226 policies, one additional policy from each parent's household if the covered person is:
227 (A) a dependent minor of parents who reside in separate households; and
228 (B) injured while occupying or using a motor vehicle that is not owned, leased, or
229 furnished:
230 (I) to the covered person;
231 (II) to the covered person's resident parent; or
232 (III) to the covered person's resident sibling.
233 (ii) Each parent's policy under this Subsection (8)(c) is liable only for the percentage of
234 the damages that the limit of liability of each parent's policy of uninsured motorist coverage
235 bears to the total of both parents' uninsured coverage applicable to the accident.
236 (d) A covered person's recovery under any available policies may not exceed the full
237 amount of damages.
238 (e) A covered person in Subsection (8)(b) is not barred against making subsequent
239 elections if recovery is unavailable under previous elections.
240 (f) (i) As used in this section, "interpolicy stacking" means recovering benefits for a
241 single incident of loss under more than one insurance policy.
242 (ii) Except to the extent permitted by Subsection (7) and this Subsection (8),
243 interpolicy stacking is prohibited for uninsured motorist coverage.
244 (9) (a) When a claim is brought by a named insured or a person described in
245 Subsection (1) and is asserted against the covered person's uninsured motorist carrier, the
246 claimant may elect to resolve the claim:
247 (i) by submitting the claim to binding arbitration; or
248 (ii) through litigation.
249 (b) Unless otherwise provided in the policy under which uninsured benefits are
250 claimed, the election provided in Subsection (9)(a) is available to the claimant only.
251 (c) Once the claimant has elected to commence litigation under Subsection (9)(a)(ii),
252 the claimant may not elect to resolve the claim through binding arbitration under this section
253 without the written consent of the uninsured motorist carrier.

254 (d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to
255 binding arbitration under Subsection (9)(a)(i) shall be resolved by a single arbitrator.

256 (ii) All parties shall agree on the single arbitrator selected under Subsection (9)(d)(i).

257 (iii) If the parties are unable to agree on a single arbitrator as required under Subsection
258 (9)(d)(ii), the parties shall select a panel of three arbitrators.

259 (e) If the parties select a panel of three arbitrators under Subsection (9)(d)(iii):

260 (i) each side shall select one arbitrator; and

261 (ii) the arbitrators appointed under Subsection (9)(e)(i) shall select one additional
262 arbitrator to be included in the panel.

263 (f) Unless otherwise agreed to in writing:

264 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected
265 under Subsection (9)(d)(i); or

266 (ii) if an arbitration panel is selected under Subsection (9)(d)(iii):

267 (A) each party shall pay the fees and costs of the arbitrator selected by that party; and

268 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected
269 under Subsection (9)(e)(ii).

270 (g) Except as otherwise provided in this section or unless otherwise agreed to in
271 writing by the parties, an arbitration proceeding conducted under this section shall be governed
272 by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

273 (h) (i) The arbitration shall be conducted in accordance with Rules 26(a)(4) through (f),
274 27 through 37, 54, and 68 of the Utah Rules of Civil Procedure, once the requirements of
275 Subsections (10)(a) through (c) are satisfied.

276 (ii) The specified tier as defined by Rule 26(c)(3) of the Utah Rules of Civil Procedure
277 shall be determined based on the claimant's specific monetary amount in the written demand
278 for payment of uninsured motorist coverage benefits as required in Subsection (10)(a)(i)(A).

279 (iii) Rules 26.1 and 26.2 of the Utah Rules of Civil Procedure do not apply to
280 arbitration claims under this part.

281 (i) All issues of discovery shall be resolved by the arbitrator or the arbitration panel.

282 (j) A written decision by a single arbitrator or by a majority of the arbitration panel
283 shall constitute a final decision.

284 (k) (i) Except as provided in Subsection (10), the amount of an arbitration award may
285 not exceed the uninsured motorist policy limits of all applicable uninsured motorist policies,
286 including applicable uninsured motorist umbrella policies.

287 (ii) If the initial arbitration award exceeds the uninsured motorist policy limits of all
288 applicable uninsured motorist policies, the arbitration award shall be reduced to an amount
289 equal to the combined uninsured motorist policy limits of all applicable uninsured motorist
290 policies.

291 (l) The arbitrator or arbitration panel may not decide the issues of coverage or
292 extra-contractual damages, including:

- 293 (i) whether the claimant is a covered person;
- 294 (ii) whether the policy extends coverage to the loss; or
- 295 (iii) any allegations or claims asserting consequential damages or bad faith liability.

296 (m) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or
297 class-representative basis.

298 (n) If the arbitrator or arbitration panel finds that the action was not brought, pursued,
299 or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney fees
300 and costs against the party that failed to bring, pursue, or defend the claim in good faith.

301 (o) An arbitration award issued under this section shall be the final resolution of all
302 claims not excluded by Subsection (9)(l) between the parties unless:

- 303 (i) the award was procured by corruption, fraud, or other undue means;
- 304 (ii) either party, within 20 days after service of the arbitration award:
 - 305 (A) files a complaint requesting a trial de novo in the district court; and
 - 306 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo
307 under Subsection (9)(o)(ii)(A).

308 (p) (i) Upon filing a complaint for a trial de novo under Subsection (9)(o), the claim
309 shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules

310 of Evidence in the district court.

311 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may
312 request a jury trial with a complaint requesting a trial de novo under Subsection (9)(o)(ii)(A).

313 (q) (i) If the claimant, as the moving party in a trial de novo requested under
314 Subsection (9)(o), does not obtain a verdict that is at least \$5,000 and is at least 20% greater
315 than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.

316 (ii) If the uninsured motorist carrier, as the moving party in a trial de novo requested
317 under Subsection (9)(o), does not obtain a verdict that is at least 20% less than the arbitration
318 award, the uninsured motorist carrier is responsible for all of the nonmoving party's costs.

319 (iii) Except as provided in Subsection (9)(q)(iv), the costs under this Subsection (9)(q)
320 shall include:

321 (A) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

322 (B) the costs of expert witnesses and depositions.

323 (iv) An award of costs under this Subsection (9)(q) may not exceed \$2,500 unless
324 Subsection (10)(h)(iii) applies.

325 (r) For purposes of determining whether a party's verdict is greater or less than the
326 arbitration award under Subsection (9)(q), a court may not consider any recovery or other relief
327 granted on a claim for damages if the claim for damages:

328 (i) was not fully disclosed in writing prior to the arbitration proceeding; or

329 (ii) was not disclosed in response to discovery contrary to the Utah Rules of Civil
330 Procedure.

331 (s) If a district court determines, upon a motion of the nonmoving party, that the
332 moving party's use of the trial de novo process was filed in bad faith in accordance with
333 Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving
334 party.

335 (t) Nothing in this section is intended to limit any claim under any other portion of an
336 applicable insurance policy.

337 (u) If there are multiple uninsured motorist policies, as set forth in Subsection (8), the

338 claimant may elect to arbitrate in one hearing the claims against all the uninsured motorist
339 carriers.

340 (10) (a) Within 30 days after a covered person elects to submit a claim for uninsured
341 motorist benefits to binding arbitration or files litigation, the covered person shall provide to
342 the uninsured motorist carrier:

343 (i) a written demand for payment of uninsured motorist coverage benefits, setting forth:

344 (A) the specific monetary amount of the demand; and

345 (B) the factual and legal basis and any supporting documentation for the demand;

346 (ii) a written statement under oath disclosing:

347 (A) (I) the names and last known addresses of all health care providers who have
348 rendered health care services to the covered person that are material to the claims for which
349 uninsured motorist benefits are sought for a period of five years preceding the date of the event
350 giving rise to the claim for uninsured motorist benefits up to the time the election for
351 arbitration or litigation has been exercised; and

352 (II) whether the covered person has seen other health care providers who have rendered
353 health care services to the covered person, which the covered person claims are immaterial to
354 the claims for which uninsured motorist benefits are sought, for a period of five years
355 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the
356 time the election for arbitration or litigation has been exercised that have not been disclosed
357 under Subsection (10)(a)(ii)(A)(I);

358 (B) (I) the names and last known addresses of all health insurers or other entities to
359 whom the covered person has submitted claims for health care services or benefits material to
360 the claims for which uninsured motorist benefits are sought, for a period of five years
361 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the
362 time the election for arbitration or litigation has been exercised; and

363 (II) whether the identity of any health insurers or other entities to whom the covered
364 person has submitted claims for health care services or benefits, which the covered person
365 claims are immaterial to the claims for which uninsured motorist benefits are sought, for a

366 period of five years preceding the date of the event giving rise to the claim for uninsured
367 motorist benefits up to the time the election for arbitration or litigation have not been disclosed;

368 (C) if lost wages, diminished earning capacity, or similar damages are claimed, all
369 employers of the covered person for a period of five years preceding the date of the event
370 giving rise to the claim for uninsured motorist benefits up to the time the election for
371 arbitration or litigation has been exercised;

372 (D) other documents to reasonably support the claims being asserted; and

373 (E) all state and federal statutory lienholders including a statement as to whether the
374 covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health
375 Insurance Program benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act,
376 or if the claim is subject to any other state or federal statutory liens; and

377 (iii) signed authorizations to allow the uninsured motorist carrier to only obtain records
378 and billings from the individuals or entities disclosed.

379 (b) (i) If the uninsured motorist carrier determines that the disclosure of undisclosed
380 health care providers or health care insurers under Subsection (10)(a)(ii) is reasonably
381 necessary, the uninsured motorist carrier may:

382 (A) make a request for the disclosure of the identity of the health care providers or
383 health care insurers; and

384 (B) make a request for authorizations to allow the uninsured motorist carrier to only
385 obtain records and billings from the individuals or entities not disclosed.

386 (ii) If the covered person does not provide the requested information within 10 days:

387 (A) the covered person shall disclose, in writing, the legal or factual basis for the
388 failure to disclose the health care providers or health care insurers; and

389 (B) either the covered person or the uninsured motorist carrier may request the
390 arbitrator or arbitration panel to resolve the issue of whether the identities or records are to be
391 provided if the covered person has elected arbitration.

392 (iii) The time periods imposed by Subsection (10)(c)(i) are tolled pending resolution of
393 the dispute concerning the disclosure and production of records of the health care providers or

394 health care insurers.

395 (c) (i) An uninsured motorist carrier that receives an election for arbitration or a notice
396 of filing litigation and the demand for payment of uninsured motorist benefits under Subsection
397 (10)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the demand and
398 receipt of the items specified in Subsections (10)(a)(i) through (iii), to:

399 (A) provide a written response to the written demand for payment provided for in
400 Subsection (10)(a)(i);

401 (B) except as provided in Subsection (10)(c)(i)(C), tender the amount, if any, of the
402 uninsured motorist carrier's determination of the amount owed to the covered person; and

403 (C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah
404 Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's
405 Health Insurance Act, or if the claim is subject to any other state or federal statutory liens,
406 tender the amount, if any, of the uninsured motorist carrier's determination of the amount owed
407 to the covered person less:

408 (I) if the amount of the state or federal statutory lien is established, the amount of the
409 lien; or

410 (II) if the amount of the state or federal statutory lien is not established, two times the
411 amount of the medical expenses subject to the state or federal statutory lien until such time as
412 the amount of the state or federal statutory lien is established.

413 (ii) If the amount tendered by the uninsured motorist carrier under Subsection (10)(c)(i)
414 is the total amount of the uninsured motorist policy limits, the tendered amount shall be
415 accepted by the covered person.

416 (d) A covered person who receives a written response from an uninsured motorist
417 carrier as provided for in Subsection (10)(c)(i), may:

418 (i) elect to accept the amount tendered in Subsection (10)(c)(i) as payment in full of all
419 uninsured motorist claims; or

420 (ii) elect to:

421 (A) accept the amount tendered in Subsection (10)(c)(i) as partial payment of all

422 uninsured motorist claims; and

423 (B) litigate or arbitrate the remaining claim.

424 (e) If a covered person elects to accept the amount tendered under Subsection (10)(c)(i)
425 as partial payment of all uninsured motorist claims, the final award obtained through
426 arbitration, litigation, or later settlement shall be reduced by any payment made by the
427 uninsured motorist carrier under Subsection (10)(c)(i).

428 (f) In an arbitration proceeding on the remaining uninsured claims:

429 (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid
430 under Subsection (10)(c)(i) until after the arbitration award has been rendered; and

431 (ii) the parties may not disclose the amount of the limits of uninsured motorist benefits
432 provided by the policy.

433 (g) If the final award obtained through arbitration or litigation is greater than the
434 average of the covered person's initial written demand for payment provided for in Subsection
435 (10)(a)(i) and the uninsured motorist carrier's initial written response provided for in
436 Subsection (10)(c)(i), the uninsured motorist carrier shall pay:

437 (i) the final award obtained through arbitration or litigation, except that if the award
438 exceeds the policy limits of the subject uninsured motorist policy by more than \$15,000, the
439 amount shall be reduced to an amount equal to the policy limits plus \$15,000; and

440 (ii) any of the following applicable costs:

441 (A) any costs as set forth in Rule 54(d), Utah Rules of Civil Procedure;

442 (B) the arbitrator or arbitration panel's fee; and

443 (C) the reasonable costs of expert witnesses and depositions used in the presentation of
444 evidence during arbitration or litigation.

445 (h) (i) The covered person shall provide an affidavit of costs within five days of an
446 arbitration award.

447 (ii) (A) Objection to the affidavit of costs shall specify with particularity the costs to
448 which the uninsured motorist carrier objects.

449 (B) The objection shall be resolved by the arbitrator or arbitration panel.

450 (iii) The award of costs by the arbitrator or arbitration panel under Subsection
451 (10)(g)(ii) may not exceed \$5,000.

452 (i) (i) A covered person shall disclose all material information, other than rebuttal
453 evidence, within 30 days after a covered person elects to submit a claim for uninsured motorist
454 coverage benefits to binding arbitration or files litigation as specified in Subsection (10)(a).

455 (ii) If the information under Subsection (10)(i)(i) is not disclosed, the covered person
456 may not recover costs or any amounts in excess of the policy under Subsection (10)(g).

457 (j) This Subsection (10) does not limit any other cause of action that arose or may arise
458 against the uninsured motorist carrier from the same dispute.

459 (k) The provisions of this Subsection (10) only apply to motor vehicle accidents that
460 occur on or after March 30, 2010.

461 Section 2. Section **31A-22-305.3** is amended to read:

462 **31A-22-305.3. Underinsured motorist coverage.**

463 (1) As used in this section:

464 (a) "Covered person" has the same meaning as defined in Section 31A-22-305.

465 (b) (i) "Underinsured motor vehicle" includes a motor vehicle, the operation,
466 maintenance, or use of which is covered under a liability policy at the time of an injury-causing
467 occurrence, but which has insufficient liability coverage to compensate fully the injured party
468 for all special and general damages.

469 (ii) The term "underinsured motor vehicle" does not include:

470 (A) a motor vehicle that is covered under the liability coverage of the same policy that
471 also contains the underinsured motorist coverage;

472 (B) an uninsured motor vehicle as defined in Subsection 31A-22-305(2); or

473 (C) a motor vehicle owned or leased by:

474 (I) a named insured;

475 (II) a named insured's spouse; or

476 (III) a dependent of a named insured.

477 (2) (a) Underinsured motorist coverage under Subsection 31A-22-302(1)(c) provides

478 coverage for a covered person who is legally entitled to recover damages from an owner or
479 operator of an underinsured motor vehicle because of bodily injury, sickness, disease, or death.

480 (b) A covered person occupying or using a motor vehicle owned, leased, or furnished
481 to the covered person, the covered person's spouse, or covered person's resident relative may
482 recover underinsured benefits only if the motor vehicle is:

483 (i) described in the policy under which a claim is made; or

484 (ii) a newly acquired or replacement motor vehicle covered under the terms of the
485 policy.

486 (3) (a) For new policies written on or after January 1, 2001, the limits of underinsured
487 motorist coverage shall be equal to the lesser of the limits of the named insured's motor vehicle
488 liability coverage or the maximum underinsured motorist coverage limits available by the
489 insurer under the named insured's motor vehicle policy, unless a named insured rejects or
490 purchases coverage in a lesser amount by signing an acknowledgment form that:

491 (i) is filed with the department;

492 (ii) is provided by the insurer;

493 (iii) waives the higher coverage;

494 (iv) ~~reasonably explains the purpose of~~ need only state in this or similar language that
495 underinsured motorist coverage provides benefits or protection to you and other covered
496 persons for bodily injury resulting from an accident caused by the fault of another party where
497 the other party has insufficient liability insurance; and

498 (v) discloses the additional premiums required to purchase underinsured motorist
499 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
500 liability coverage or the maximum underinsured motorist coverage limits available by the
501 insurer under the named insured's motor vehicle policy.

502 (b) Any selection or rejection under Subsection (3)(a) continues for that issuer of the
503 liability coverage until the insured requests, in writing, a change of underinsured motorist
504 coverage from that liability insurer.

505 (c) (i) Subsections (3)(a) and (b) apply retroactively to any claim arising on or after

506 January 1, 2001, for which, as of May 14, 2013, an insured has not made a written demand for
507 arbitration or filed a complaint in a court of competent jurisdiction.

508 (ii) The Legislature finds that the retroactive application of Subsections (3)(a) and (b)
509 clarifies legislative intent and does not enlarge, eliminate, or destroy vested rights.

510 ~~(b)~~ (d) For purposes of this Subsection (3), "new policy" means:

511 (i) any policy that is issued which does not include a renewal or reinstatement of an
512 existing policy; or

513 (ii) a change to an existing policy that results in:

514 (A) a named insured being added to or deleted from the policy; or

515 (B) a change in the limits of the named insured's motor vehicle liability coverage.

516 ~~(c)~~ (e) (i) As used in this Subsection (3)~~(c)~~(e), "additional motor vehicle" means a
517 change that increases the total number of vehicles insured by the policy, and does not include
518 replacement, substitute, or temporary vehicles.

519 (ii) The adding of an additional motor vehicle to an existing personal lines or
520 commercial lines policy does not constitute a new policy for purposes of Subsection
521 (3)~~(b)~~(d).

522 (iii) If an additional motor vehicle is added to a personal lines policy where
523 underinsured motorist coverage has been rejected, or where underinsured motorist limits are
524 lower than the named insured's motor vehicle liability limits, the insurer shall provide a notice
525 to a named insured within 30 days that:

526 (A) ~~reasonably~~ in the same manner described in Subsection (3)(a)(iv), explains the
527 purpose of underinsured motorist coverage; and

528 (B) encourages the named insured to contact the insurance company or insurance
529 producer for quotes as to the additional premiums required to purchase underinsured motorist
530 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
531 liability coverage or the maximum underinsured motorist coverage limits available by the
532 insurer under the named insured's motor vehicle policy.

533 ~~(d)~~ (f) A change in policy number resulting from any policy change not identified

534 under Subsection (3)~~(b)~~(d)(ii) does not constitute a new policy.

535 ~~(e)~~ (g) (i) Subsection (3)~~(b)~~(d) applies retroactively to any claim arising on or after
536 January 1, 2001 for which, as of May 1, 2012, an insured has not made a written demand for
537 arbitration or filed a complaint in a court of competent jurisdiction.

538 (ii) The Legislature finds that the retroactive application of Subsection (3)(d):

539 (A) does not enlarge, eliminate, or destroy vested rights; and

540 (B) clarifies legislative intent.

541 ~~(f)~~ (h) A self-insured, including a governmental entity, may elect to provide
542 underinsured motorist coverage in an amount that is less than its maximum self-insured
543 retention under Subsections (3)(a) and ~~(3)(j)~~(l) by issuing a declaratory memorandum or
544 policy statement from the chief financial officer or chief risk officer that declares the:

545 (i) self-insured entity's coverage level; and

546 (ii) process for filing an underinsured motorist claim.

547 ~~(g)~~ (i) Underinsured motorist coverage may not be sold with limits that are less than:

548 (i) \$10,000 for one person in any one accident; and

549 (ii) at least \$20,000 for two or more persons in any one accident.

550 ~~(h)~~ (j) An acknowledgment under Subsection (3)(a) continues for that issuer of the
551 underinsured motorist coverage until the named insured, in writing, requests different
552 underinsured motorist coverage from the insurer.

553 ~~(i)~~ (k) (i) The named insured's underinsured motorist coverage, as described in
554 Subsection (2), is secondary to the liability coverage of an owner or operator of an
555 underinsured motor vehicle, as described in Subsection (1).

556 (ii) Underinsured motorist coverage may not be set off against the liability coverage of
557 the owner or operator of an underinsured motor vehicle, but shall be added to, combined with,
558 or stacked upon the liability coverage of the owner or operator of the underinsured motor
559 vehicle to determine the limit of coverage available to the injured person.

560 ~~(j)~~ (l) (i) In conjunction with the first two renewal notices sent after January 1, 2001,
561 for policies existing on that date, the insurer shall disclose in the same medium as the premium

562 renewal notice, an explanation of:

563 (A) the purpose of underinsured motorist coverage in the same manner as described in
564 Subsection (3)(a)(iv); and

565 (B) a disclosure of the additional premiums required to purchase underinsured motorist
566 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
567 liability coverage or the maximum underinsured motorist coverage limits available by the
568 insurer under the named insured's motor vehicle policy.

569 (ii) The disclosure required under this Subsection (3)~~(j)~~(l) shall be sent to all named
570 insureds that carry underinsured motorist coverage limits in an amount less than the named
571 insured's motor vehicle liability policy limits or the maximum underinsured motorist coverage
572 limits available by the insurer under the named insured's motor vehicle policy.

573 ~~(k)~~ (m) For purposes of this Subsection (3), a notice or disclosure sent to a named
574 insured in a household constitutes notice or disclosure to all insureds within the household.

575 (4) (a) (i) Except as provided in this Subsection (4), a covered person injured in a
576 motor vehicle described in a policy that includes underinsured motorist benefits may not elect
577 to collect underinsured motorist coverage benefits from another motor vehicle insurance policy.

578 (ii) The limit of liability for underinsured motorist coverage for two or more motor
579 vehicles may not be added together, combined, or stacked to determine the limit of insurance
580 coverage available to an injured person for any one accident.

581 (iii) Subsection (4)(a)(ii) applies to all persons except a covered person described
582 under Subsections (4)(b)(i) and (ii).

583 (b) (i) Except as provided in Subsection (4)(b)(ii), a covered person injured while
584 occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the
585 covered person, the covered person's spouse, or the covered person's resident parent or resident
586 sibling, may also recover benefits under any one other policy under which the covered person is
587 also a covered person.

588 (ii) (A) A covered person may recover benefits from no more than two additional
589 policies, one additional policy from each parent's household if the covered person is:

590 (I) a dependent minor of parents who reside in separate households; and
591 (II) injured while occupying or using a motor vehicle that is not owned, leased, or
592 furnished to the covered person, the covered person's resident parent, or the covered person's
593 resident sibling.

594 (B) Each parent's policy under this Subsection (4)(b)(ii) is liable only for the
595 percentage of the damages that the limit of liability of each parent's policy of underinsured
596 motorist coverage bears to the total of both parents' underinsured coverage applicable to the
597 accident.

598 (iii) A covered person's recovery under any available policies may not exceed the full
599 amount of damages.

600 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident is
601 primary coverage, and the coverage elected by a person described under Subsections
602 31A-22-305(1)(a) and (b) is secondary coverage.

603 (v) The primary and the secondary coverage may not be set off against the other.

604 (vi) A covered person as described under Subsection (4)(b)(i) is entitled to the highest
605 limits of underinsured motorist coverage under only one additional policy per household
606 applicable to that covered person as a named insured, spouse, or relative.

607 (vii) A covered injured person is not barred against making subsequent elections if
608 recovery is unavailable under previous elections.

609 (viii) (A) As used in this section, "interpolicy stacking" means recovering benefits for a
610 single incident of loss under more than one insurance policy.

611 (B) Except to the extent permitted by this Subsection (4), interpolicy stacking is
612 prohibited for underinsured motorist coverage.

613 (c) Underinsured motorist coverage:

614 (i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers'
615 Compensation Act;

616 (ii) may not be subrogated by a workers' compensation insurance carrier;

617 (iii) may not be reduced by benefits provided by workers' compensation insurance;

618 (iv) may be reduced by health insurance subrogation only after the covered person is
619 made whole;

620 (v) may not be collected for bodily injury or death sustained by a person:

621 (A) while committing a violation of Section 41-1a-1314;

622 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated
623 in violation of Section 41-1a-1314; or

624 (C) while committing a felony; and

625 (vi) notwithstanding Subsection (4)(c)(v), may be recovered:

626 (A) for a person under 18 years of age who is injured within the scope of Subsection
627 (4)(c)(v), but is limited to medical and funeral expenses; or

628 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured
629 within the course and scope of the law enforcement officer's duties.

630 (5) The inception of the loss under Subsection 31A-21-313(1) for underinsured
631 motorist claims occurs upon the date of the last liability policy payment.

632 (6) (a) Within five business days after notification that all liability insurers have
633 tendered their liability policy limits, the underinsured carrier shall either:

634 (i) waive any subrogation claim the underinsured carrier may have against the person
635 liable for the injuries caused in the accident; or

636 (ii) pay the insured an amount equal to the policy limits tendered by the liability carrier.

637 (b) If neither option is exercised under Subsection (6)(a), the subrogation claim is
638 considered to be waived by the underinsured carrier.

639 (7) Except as otherwise provided in this section, a covered person may seek, subject to
640 the terms and conditions of the policy, additional coverage under any policy:

641 (a) that provides coverage for damages resulting from motor vehicle accidents; and

642 (b) that is not required to conform to Section 31A-22-302.

643 (8) (a) When a claim is brought by a named insured or a person described in
644 Subsection 31A-22-305(1) and is asserted against the covered person's underinsured motorist
645 carrier, the claimant may elect to resolve the claim:

646 (i) by submitting the claim to binding arbitration; or

647 (ii) through litigation.

648 (b) Unless otherwise provided in the policy under which underinsured benefits are
649 claimed, the election provided in Subsection (8)(a) is available to the claimant only.

650 (c) Once a claimant elects to commence litigation under Subsection (8)(a)(ii), the
651 claimant may not elect to resolve the claim through binding arbitration under this section
652 without the written consent of the underinsured motorist coverage carrier.

653 (d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to
654 binding arbitration under Subsection (8)(a)(i) shall be resolved by a single arbitrator.

655 (ii) All parties shall agree on the single arbitrator selected under Subsection (8)(d)(i).

656 (iii) If the parties are unable to agree on a single arbitrator as required under Subsection
657 (8)(d)(ii), the parties shall select a panel of three arbitrators.

658 (e) If the parties select a panel of three arbitrators under Subsection (8)(d)(iii):

659 (i) each side shall select one arbitrator; and

660 (ii) the arbitrators appointed under Subsection (8)(e)(i) shall select one additional
661 arbitrator to be included in the panel.

662 (f) Unless otherwise agreed to in writing:

663 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected
664 under Subsection (8)(d)(i); or

665 (ii) if an arbitration panel is selected under Subsection (8)(d)(iii):

666 (A) each party shall pay the fees and costs of the arbitrator selected by that party; and

667 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected
668 under Subsection (8)(e)(ii).

669 (g) Except as otherwise provided in this section or unless otherwise agreed to in
670 writing by the parties, an arbitration proceeding conducted under this section is governed by
671 Title 78B, Chapter 11, Utah Uniform Arbitration Act.

672 (h) (i) ~~Am~~ The arbitration shall be conducted in accordance with Rules 26(a)(4)
673 through (f), 27 through 37, 54, and 68 of the Utah Rules of Civil Procedure, once the

674 requirements of Subsections (9)(a) through (c) are satisfied.

675 (ii) The specified tier as defined by Rule 26(c)(3) of the Utah Rules of Civil Procedure
676 shall be determined based on the claimant's specific monetary amount in the written demand
677 for payment of uninsured motorist coverage benefits as required in Subsection (9)(a)(i)(A).

678 (iii) Rules 26.1 and 26.2 of the Utah Rules of Civil Procedure do not apply to
679 arbitration claims under this part.

680 (i) An issue of discovery shall be resolved by the arbitrator or the arbitration panel.

681 (j) A written decision by a single arbitrator or by a majority of the arbitration panel
682 constitutes a final decision.

683 (k) (i) Except as provided in Subsection (9), the amount of an arbitration award may
684 not exceed the underinsured motorist policy limits of all applicable underinsured motorist
685 policies, including applicable underinsured motorist umbrella policies.

686 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of all
687 applicable underinsured motorist policies, the arbitration award shall be reduced to an amount
688 equal to the combined underinsured motorist policy limits of all applicable underinsured
689 motorist policies.

690 (l) The arbitrator or arbitration panel may not decide an issue of coverage or
691 extra-contractual damages, including:

692 (i) whether the claimant is a covered person;

693 (ii) whether the policy extends coverage to the loss; or

694 (iii) an allegation or claim asserting consequential damages or bad faith liability.

695 (m) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or
696 class-representative basis.

697 (n) If the arbitrator or arbitration panel finds that the arbitration is not brought, pursued,
698 or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney fees
699 and costs against the party that failed to bring, pursue, or defend the arbitration in good faith.

700 (o) An arbitration award issued under this section shall be the final resolution of all
701 claims not excluded by Subsection (8)(l) between the parties unless:

702 (i) the award is procured by corruption, fraud, or other undue means;
703 (ii) either party, within 20 days after service of the arbitration award:
704 (A) files a complaint requesting a trial de novo in the district court; and
705 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo
706 under Subsection (8)(o)(ii)(A).

707 (p) (i) Upon filing a complaint for a trial de novo under Subsection (8)(o), a claim shall
708 proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules of
709 Evidence in the district court.

710 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may
711 request a jury trial with a complaint requesting a trial de novo under Subsection (8)(o)(ii)(A).

712 (q) (i) If the claimant, as the moving party in a trial de novo requested under
713 Subsection (8)(o), does not obtain a verdict that is at least \$5,000 and is at least 20% greater
714 than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.

715 (ii) If the underinsured motorist carrier, as the moving party in a trial de novo requested
716 under Subsection (8)(o), does not obtain a verdict that is at least 20% less than the arbitration
717 award, the underinsured motorist carrier is responsible for all of the nonmoving party's costs.

718 (iii) Except as provided in Subsection (8)(q)(iv), the costs under this Subsection (8)(q)
719 shall include:

720 (A) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

721 (B) the costs of expert witnesses and depositions.

722 (iv) An award of costs under this Subsection (8)(q) may not exceed \$2,500 unless
723 Subsection (9)(h)(iii) applies.

724 (r) For purposes of determining whether a party's verdict is greater or less than the
725 arbitration award under Subsection (8)(q), a court may not consider any recovery or other relief
726 granted on a claim for damages if the claim for damages:

727 (i) was not fully disclosed in writing prior to the arbitration proceeding; or

728 (ii) was not disclosed in response to discovery contrary to the Utah Rules of Civil
729 Procedure.

730 (s) If a district court determines, upon a motion of the nonmoving party, that a moving
731 party's use of the trial de novo process is filed in bad faith in accordance with Section
732 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

733 (t) Nothing in this section is intended to limit a claim under another portion of an
734 applicable insurance policy.

735 (u) If there are multiple underinsured motorist policies, as set forth in Subsection (4),
736 the claimant may elect to arbitrate in one hearing the claims against all the underinsured
737 motorist carriers.

738 (9) (a) Within 30 days after a covered person elects to submit a claim for underinsured
739 motorist benefits to binding arbitration or files litigation, the covered person shall provide to
740 the underinsured motorist carrier:

741 (i) a written demand for payment of underinsured motorist coverage benefits, setting
742 forth:

743 (A) the specific monetary amount of the demand; and

744 (B) the factual and legal basis and any supporting documentation for the demand;

745 (ii) a written statement under oath disclosing:

746 (A) (I) the names and last known addresses of all health care providers who have
747 rendered health care services to the covered person that are material to the claims for which the
748 underinsured motorist benefits are sought for a period of five years preceding the date of the
749 event giving rise to the claim for underinsured motorist benefits up to the time the election for
750 arbitration or litigation has been exercised; and

751 (II) whether the covered person has seen other health care providers who have rendered
752 health care services to the covered person, which the covered person claims are immaterial to
753 the claims for which underinsured motorist benefits are sought, for a period of five years
754 preceding the date of the event giving rise to the claim for underinsured motorist benefits up to
755 the time the election for arbitration or litigation has been exercised that have not been disclosed
756 under Subsection (9)(a)(ii)(A)(I);

757 (B) (I) the names and last known addresses of all health insurers or other entities to

758 whom the covered person has submitted claims for health care services or benefits material to
759 the claims for which underinsured motorist benefits are sought, for a period of five years
760 preceding the date of the event giving rise to the claim for underinsured motorist benefits up to
761 the time the election for arbitration or litigation has been exercised; and

762 (II) whether the identity of any health insurers or other entities to whom the covered
763 person has submitted claims for health care services or benefits, which the covered person
764 claims are immaterial to the claims for which underinsured motorist benefits are sought, for a
765 period of five years preceding the date of the event giving rise to the claim for underinsured
766 motorist benefits up to the time the election for arbitration or litigation have not been disclosed;

767 (C) if lost wages, diminished earning capacity, or similar damages are claimed, all
768 employers of the covered person for a period of five years preceding the date of the event
769 giving rise to the claim for underinsured motorist benefits up to the time the election for
770 arbitration or litigation has been exercised;

771 (D) other documents to reasonably support the claims being asserted; and

772 (E) all state and federal statutory lienholders including a statement as to whether the
773 covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health
774 Insurance Program benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act,
775 or if the claim is subject to any other state or federal statutory liens; and

776 (iii) signed authorizations to allow the underinsured motorist carrier to only obtain
777 records and billings from the individuals or entities disclosed.

778 (b) (i) If the underinsured motorist carrier determines that the disclosure of undisclosed
779 health care providers or health care insurers under Subsection (9)(a)(ii) is reasonably necessary,
780 the underinsured motorist carrier may:

781 (A) make a request for the disclosure of the identity of the health care providers or
782 health care insurers; and

783 (B) make a request for authorizations to allow the underinsured motorist carrier to only
784 obtain records and billings from the individuals or entities not disclosed.

785 (ii) If the covered person does not provide the requested information within 10 days:

786 (A) the covered person shall disclose, in writing, the legal or factual basis for the
787 failure to disclose the health care providers or health care insurers; and

788 (B) either the covered person or the underinsured motorist carrier may request the
789 arbitrator or arbitration panel to resolve the issue of whether the identities or records are to be
790 provided if the covered person has elected arbitration.

791 (iii) The time periods imposed by Subsection (9)(c)(i) are tolled pending resolution of
792 the dispute concerning the disclosure and production of records of the health care providers or
793 health care insurers.

794 (c) (i) An underinsured motorist carrier that receives an election for arbitration or a
795 notice of filing litigation and the demand for payment of underinsured motorist benefits under
796 Subsection (9)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the
797 demand and receipt of the items specified in Subsections (9)(a)(i) through (iii), to:

798 (A) provide a written response to the written demand for payment provided for in
799 Subsection (9)(a)(i);

800 (B) except as provided in Subsection (9)(c)(i)(C), tender the amount, if any, of the
801 underinsured motorist carrier's determination of the amount owed to the covered person; and

802 (C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah
803 Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's
804 Health Insurance Act, or if the claim is subject to any other state or federal statutory liens,
805 tender the amount, if any, of the underinsured motorist carrier's determination of the amount
806 owed to the covered person less:

807 (I) if the amount of the state or federal statutory lien is established, the amount of the
808 lien; or

809 (II) if the amount of the state or federal statutory lien is not established, two times the
810 amount of the medical expenses subject to the state or federal statutory lien until such time as
811 the amount of the state or federal statutory lien is established.

812 (ii) If the amount tendered by the underinsured motorist carrier under Subsection
813 (9)(c)(i) is the total amount of the underinsured motorist policy limits, the tendered amount

814 shall be accepted by the covered person.

815 (d) A covered person who receives a written response from an underinsured motorist
816 carrier as provided for in Subsection (9)(c)(i), may:

817 (i) elect to accept the amount tendered in Subsection (9)(c)(i) as payment in full of all
818 underinsured motorist claims; or

819 (ii) elect to:

820 (A) accept the amount tendered in Subsection (9)(c)(i) as partial payment of all
821 underinsured motorist claims; and

822 (B) litigate or arbitrate the remaining claim.

823 (e) If a covered person elects to accept the amount tendered under Subsection (9)(c)(i)
824 as partial payment of all underinsured motorist claims, the final award obtained through
825 arbitration, litigation, or later settlement shall be reduced by any payment made by the
826 underinsured motorist carrier under Subsection (9)(c)(i).

827 (f) In an arbitration proceeding on the remaining underinsured claims:

828 (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid
829 under Subsection (9)(c)(i) until after the arbitration award has been rendered; and

830 (ii) the parties may not disclose the amount of the limits of underinsured motorist
831 benefits provided by the policy.

832 (g) If the final award obtained through arbitration or litigation is greater than the
833 average of the covered person's initial written demand for payment provided for in Subsection
834 (9)(a)(i) and the underinsured motorist carrier's initial written response provided for in
835 Subsection (9)(c)(i), the underinsured motorist carrier shall pay:

836 (i) the final award obtained through arbitration or litigation, except that if the award
837 exceeds the policy limits of the subject underinsured motorist policy by more than \$15,000, the
838 amount shall be reduced to an amount equal to the policy limits plus \$15,000; and

839 (ii) any of the following applicable costs:

840 (A) any costs as set forth in Rule 54(d), Utah Rules of Civil Procedure;

841 (B) the arbitrator or arbitration panel's fee; and

842 (C) the reasonable costs of expert witnesses and depositions used in the presentation of
843 evidence during arbitration or litigation.

844 (h) (i) The covered person shall provide an affidavit of costs within five days of an
845 arbitration award.

846 (ii) (A) Objection to the affidavit of costs shall specify with particularity the costs to
847 which the underinsured motorist carrier objects.

848 (B) The objection shall be resolved by the arbitrator or arbitration panel.

849 (iii) The award of costs by the arbitrator or arbitration panel under Subsection (9)(g)(ii)
850 may not exceed \$5,000.

851 (i) (i) A covered person shall disclose all material information, other than rebuttal
852 evidence, within 30 days after a covered person elects to submit a claim for underinsured
853 motorist coverage benefits to binding arbitration or files litigation as specified in Subsection
854 (9)(a).

855 (ii) If the information under Subsection (9)(i)(i) is not disclosed, the covered person
856 may not recover costs or any amounts in excess of the policy under Subsection (9)(g).

857 (j) This Subsection (9) does not limit any other cause of action that arose or may arise
858 against the underinsured motorist carrier from the same dispute.

859 (k) The provisions of this Subsection (9) only apply to motor vehicle accidents that
860 occur on or after March 30, 2010.