

## UM/UIM Coverage: Headaches and Opportunities


In 1927, Massachusetts enacted the first law requiring drivers to purchase auto liability insurance. Subsequently, 47 states and Washington, D.C. have enacted compulsory auto insurance coverage laws. Today, more than 20 states require drivers to maintain Underinsured or Uninsured Motorist coverage.

These laws create both business opportunities and headaches for agents as they face significant exposures for not understanding how these laws apply in the limit selection and waiver process for UM/UIM coverage.

Uninsured motorist (UM) coverage generally covers an insured as defined by the policy for medical expenses and pain and suffering resulting from injuries or death, and property damage resulting from accidents with at-fault drivers without liability coverage. Underinsured motorist (UIM) coverage pays such costs when the other driver's insurance is insufficient to cover these expenses. Many states have statutory minimum requirements as to the coverage UM and UIM must provide, so look to your state(s) requirements and be familiar with the applicable language of each carrier's policy you sell.

Although many UM/UIM benefits are duplicated by policyholders' health plans or other insurance coverages that provide for property damage and medical expenses, UM/UIM is likely the only source to compensate victims for pain and suffering. In truly catastrophic cases, juries may award several million dollars for these non-economic damages. Needless to say, victims and their families who are unable to collect such damages because they lacked sufficient UM/UIM coverage can make very sympathetic witnesses. The evidence against the agent is typically that the higher available UM/UIM coverage would have cost relatively little extra compared to overall auto premiums, and if presented with the opportunity to purchase such coverage along with a proper explanation, the customer would have certainly purchased it. Of course, jurors who determine whether a catastrophic accident victim's insurance agent negligently failed to offer higher UM/UIM limits in addition to an umbrella policy that provided UM/UIM benefits (most do not) do so with the benefit of 20/20 hindsight of knowing that the accident happens. Needless to say, the best way to avoid being a defendant is to make sure that you thoroughly explain the need for UM/UIM coverage, give the client every opportunity to purchase the highest available limits, including umbrella coverage and, most importantly, document both the offer (limits, benefits and incremental premiums) and, if rejected, the client's decision to decline against your advice.

The importance of documenting a client's decision not to purchase more than the minimum limits for UM/UIM coverage cannot be overstated. If a client purchases the minimum UM/UIM limits and is then catastrophically injured in a car accident caused by a drunk driver with no insurance, he or his family is very likely to sue the agent. Absent effective documentation, the evidence will be a swearing match between the agent's testimony that the higher limits were offered and rejected for cost considerations, and the severely injured client's testimony that if the agent had only explained the importance of this coverage and offered the higher limits, he certainly would have paid the small additional premium to purchase it. Those cases are far more difficult to defend than those where the agent's file contains a letter confirming the client's decision not to take the agent's recommendation to purchase additional UM/UIM coverage.

Insurance agents' most effective tools for avoiding E&O claims related to UM/UIM coverage are training agency staff members on these issues and then establishing and implementing practical procedures to identify and handle the explanation and offer of UM/UIM coverages and limits, documenting clients' rejection of higher limits and handling waiver paperwork properly. Clients who heed your advice will be better protected against a catastrophic loss at the hands of an uninsured or underinsured driver—and if a client elects not to carry such protections, you will be in a better position to defend your professional reputation with a well-documented file. 

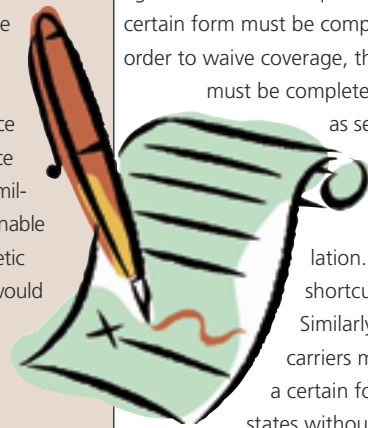
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## UM/UIM Waivers

In many states, UM/UIM coverage is mandatory and cannot be waived. In other states, clients can simply decide to go without UM/UIM coverage.

However, there are states that allow motorists to decline to purchase UM/UIM coverage only after having signed a valid waiver of such coverage. When a state requires that a certain form must be completed in order to waive coverage, the form must be completed exactly

as set forth by the statute or regulation. No shortcuts will do. Similarly, some carriers may require a certain form in states without a mandated form, and those carriers' forms should be used exactly as set forth as well. An agent's failure to effectuate a proper waiver by using the wrong form, getting the wrong signature, getting the signature after policy delivery or otherwise not doing everything with precision, may create a UM/UIM coverage obligation for a carrier where the client intended to decline the coverage. Often, the carrier will then assert an E&O claim against the agent, alleging that the agent's negligent failure to get an effective waiver was the sole cause of the carrier's UM/UIM obligation. Such cases are difficult to defend. Agents and their employees who assist clients in completing coverage waivers must understand every requirement for completing those waivers correctly.



—C.I.