



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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DATE: April 19, 2019
TO: All Insurers, Agents, and Interested Parties
FROM: Mark V. Afable, Commissioner of Insurance
SUBJECT: Negative Enrollment of Consumers into Insurance Policies

The Office of the Commissioner of Insurance (OCI) is aware of confusion in the marketplace regarding the consumer consent needed to bind or issue an insurance contract in situations where an insurer is exiting the market. Specifically, the question has arisen as to whether an insurer may collect data from the exiting insurer or its agents without application from the consumer, and simply issue new policies to those consumers whose policies are being non-renewed by the exiting insurer. This bulletin only applies in the situation where an offer of coverage to consumers is made by an insurer who is unaffiliated with the exiting insurer. Renewal offers in an affiliated insurer are governed by Wis. Stat. § 631.39.

Under longstanding Wisconsin law, a “meeting of the minds” is required for a valid insurance contract to exist. See *Milwaukee Metro. Sewerage Dist. v. American International Specialty Lines Ins. Co.*, 598 F.3d 311, 317 (7th Cir. 2010)(citing *John R. Davis Lumber Co. v. Scottish Union & Nat’l Ins. Co.*, 94 Wis. 472, 69 N.W. 156 (1896)). Where the consumer has not submitted an application for coverage, some other affirmative consent is required from the consumer to establish a meeting of the minds, and for the insurer to bind coverage or issue a policy to a consumer. A policy issued to a consumer without application or affirmative consent is not a valid contract under Wisconsin law.

OCI has been charged by the legislature with “maintain[ing] freedom of contract.” Wis. Stat. § 601.01. An insurer or agent that participates in a process whereby a consumer is enrolled in or is issued an insurance policy without their consent or where a consumer is sent a premium bill or invoice for an insurance policy that the consumer did not actively consent to has committed a misrepresentation under Wis.Stat. § 628.34.

For the sake of clarity, consent in this instance means an affirmative statement from the consumer, either verbally or in writing, that indicates acceptance of an offer of coverage. The payment of the first month’s premium, in and of itself, is not sufficient to show consent for purposes of the insurance regulations. Insurers are reminded that non-conformity with Wisconsin law does not relieve them of their obligations under the policy per Wis.Stat. § 631.15.

Consumers who receive notice that the coverage with their insurance carrier will be non-renewed are encouraged to talk to their insurance agent or find replacement coverage soon after receiving notice to avoid a gap in coverage.

Any questions concerning this bulletin should be directed to Rebecca L. Rebholz, Director Bureau of Market Regulation, at (608) 264-8111, or by email at Rebecca.Rebholz@wisconsin.gov.