

OCI Offers Guidance Bulletin on “Negative Enrollment” Into Policies

On April 19, 2019 the OCI issued an interpretive bulletin addressing the situation where an insurer is exiting the market and an offer of coverage is being made by a new carrier that is unaffiliated with the exiting insurer (not to be confused with coverage offers by affiliates of exiting insurers, which are subject to Section 631.29 of the Wisconsin Statutes). The OCI refers to this as “negative enrollment” and, according to the agency’s bulletin, there is “confusion in the marketplace” regarding consumer consent to bind coverage when the consumer’s existing insurer is exiting the market. The OCI poses the question as follows:

[W]hether 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[?]

Essentially the OCI focuses its analysis on the following scenario: An insurer is exiting the marketplace, with no affiliate in place to renew coverage under Section 631.29, and the consumer has not submitted an application for coverage with the proposed new insurer. One must infer from the scenario that the consumer’s agent has shared information with an unaffiliated insurer in order to quote and place coverage.

Drawing on basic contract principles such as the required “meeting of the minds” to form a contract, as well as the statutory mandate that OCI “maintain freedom of contract” under Section 601.01(7), the OCI concludes:

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.

As you are surely aware, violations of Section 628.34 subject agents to serious penalties. The OCI goes on to offer a specific interpretation of “consent”:

[C]onsent in this instance means an affirmative statement from the consumer, either verbally or in writing, that indicates acceptance of an offer of coverage.

Seems straightforward, right? There’s a wrinkle though—the OCI also says that “payment of the first month’s premium, in and of itself, is not sufficient to show consent for purposes of the insurance regulations.” The takeaway for agents is that placement of coverage with an unaffiliated replacement insurer requires more than billing and payment—some form of verbal or written consent must also be obtained. I encourage you to review the OCI bulletin, which is available at <https://oci.wi.gov/Pages/Regulation/Bulletin20190419.aspx>. The IIAW will keep an eye on developments related to this bulletin.



> **Josh Johanningmeier**
IIAW General Counsel