



## DEPARTMENT OF COMMERCE & INSURANCE

P.O. Box 690, Jefferson City, Mo. 65102-0690

### INSURANCE BULLETIN 22-01

#### Termination and Placement of Insurance Coverages

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*The following Bulletin is issued by the Missouri Department of Commerce and Insurance (“Department”) to inform and educate the reader on the specified issue. It does not have the force and effect of law, is not an evaluation of any specific facts or circumstances, and is not binding on the Department. See section 374.015, RSMo.*

**To:** All insurers writing insurance coverages in the State of Missouri

**From:** Chlora Lindley-Myers, Director

**Re:** Termination and Placement of Insurance Coverages

This Bulletin is issued to provide information regarding the practice of replacing insurance coverage terminated by one carrier (“terminating carrier”) with insurance coverage provided by a different carrier (“new carrier”). There appears to be uncertainty in the marketplace regarding the consumer consent required to be obtained by the new carrier to issue and bind coverage after coverage is discontinued by the terminating carrier. Specifically, the question has arisen whether a new carrier may collect data from the terminating carrier or its producers, without an application from the consumer, and simply issue new policies or new certificates of coverage to those consumers whose policies or certificates are being non-renewed by the terminating carrier. This bulletin only applies where an offer of coverage to consumers is made by a new carrier who is unaffiliated with the terminating carrier.

A contract of insurance, like other contracts, requires a meeting of the minds of the parties to the contract. *See Byrne v. Prudential Ins. Co. of America*, 88 S.W.2d 344 (Mo. 1935); *Helmkamp v. American Family Mutual Insurance Company*, 407 S.W.2d 559 (MO. App. S.D. 1966). 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 new carrier to bind coverage or issue a policy or certificate to a consumer. A policy or certificate issued to a consumer without application or affirmative consent is not a valid contract.

The provisions of Section 375.936.6 RSMo regarding misrepresentations of insurance policies are implicated where an insurer or producer enrolls a consumer in insurance coverage or issues an insurance policy or certificate without the affirmative consent of the consumer. In addition, 15 CSR 60-8.060 prohibits of the use of negative option plans. The use of an opt-out or negative option methodology is not sufficient to show affirmative consent, nor is the payment of premium, in and of itself, sufficient to show affirmative consent. Affirmative consent, in this instance, means an affirmative statement, either verbally or in writing, that indicates acceptance of the offer of coverage.

Any questions or comments regarding this Bulletin should be directed to Teresa Kroll at [marketconduct@insurance.mo.gov](mailto:marketconduct@insurance.mo.gov)

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