

# State of Wisconsin



2013 Senate Bill 581

Date of enactment: April 16, 2014  
Date of publication\*: April 17, 2014

## 2013 WISCONSIN ACT 278

AN ACT *to amend* 13.92 (4) (c), 13.92 (4) (d), 13.92 (4) (e), 13.92 (4) (f), 35.93 (2) (b) 4., 35.93 (2) (c) 1., 35.93 (3), 35.93 (3) (e) (intro.), 35.93 (3) (e) 1., 227.01 (13) (intro.), 227.11 (2) (intro.) and 227.27 (2); and *to create* 13.92 (4) (bm) and 227.265 of the statutes; **relating to:** rule-making procedures and modifying and creating administrative rules related to long-term care insurance.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 13.92 (4) (bm) of the statutes is created to read:

13.92 (4) (bm) If 2 or more rules filed under s. 227.20 or modified under s. 227.265 affect the same unit of the Wisconsin administrative code without taking cognizance of the effect thereon of the other rules and if the legislative reference bureau finds that there is no mutual inconsistency in the changes made by each such rule, the legislative reference bureau shall incorporate the changes made by each rule into the text of the unit and document the incorporation in a note to the unit. For each such incorporation, the legislative reference bureau shall include in a correction bill a provision formally validating the incorporation. Section 227.27 (2) is not affected by printing decisions made by the legislative reference bureau under this paragraph.

**SECTION 2.** 13.92 (4) (c) of the statutes is amended to read:

13.92 (4) (c) The legislative reference bureau may insert in the Wisconsin administrative code a note explaining any change made under par. (b) or (bm).

**SECTION 3.** 13.92 (4) (d) of the statutes is amended to read:

13.92 (4) (d) Sections 227.114, 227.116, 227.135, and 227.14 to 227.24 do not apply to any change made by the legislative reference bureau under par. (b) or (bm).

**SECTION 4.** 13.92 (4) (e) of the statutes is amended to read:

13.92 (4) (e) The legislative reference bureau shall prepare and keep on file a record of each change made under par. (b) or (bm).

**SECTION 5.** 13.92 (4) (f) of the statutes is amended to read:

13.92 (4) (f) The legislative reference bureau shall notify the agency involved of each change made under par. (b) or (bm).

**SECTION 6.** 35.93 (2) (b) 4. of the statutes, as affected by [2013 Wisconsin Act 20](#), is amended to read:

35.93 (2) (b) 4. Copies of all rules filed with the legislative reference bureau under s. 227.20 (1) or modified under s. 227.265 since the compilation of the preceding register, including emergency rules filed under s. 227.24 (3).

**SECTION 7.** 35.93 (2) (c) 1. of the statutes, as affected by [2013 Wisconsin Act 20](#), is amended to read:

35.93 (2) (c) 1. Each chapter of the Wisconsin administrative code that has been affected by rules filed with legislative reference bureau under s. 227.20 (1) or modified under s. 227.265, in accordance with sub. (3) (e) 1.

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

**SECTION 8.** 35.93 (3) of the statutes is amended to read:

35.93 (3) The legislative reference bureau shall compile and deliver to the department for printing copy for a register which shall contain all the rules filed under s. 227.20 or modified under s. 227.265 since the compilation of rules for the preceding issue of the register was made and those executive orders which are to be in effect for more than 90 days or an informative summary thereof. The complete register shall be compiled and published before the first day of each month and a notice section of the register shall be compiled and published before the 15th day of each month. Each issue of the register shall contain a title page with the name “Wisconsin administrative register”, the number and date of the register, and a table of contents. Each page of the register shall also contain the date and number of the register of which it is a part in addition to the other necessary code titles and page numbers. The legislative reference bureau may include in the register such instructions or information as in the bureau’s judgment will help the user to correctly make insertions and deletions in the code and to keep the code current.

**SECTION 9.** 35.93 (3) (e) (intro.) of the statutes, as affected by [2013 Wisconsin Act 20](#), is amended to read:

35.93 (3) (e) (intro.) The legislative reference bureau shall incorporate into the appropriate chapters of the Wisconsin administrative code each permanent rule filed with the legislative reference bureau under s. 227.20 (1) or modified under s. 227.265 and, for each chapter of the administrative code affected by a rule, do all of the following:

**SECTION 10.** 35.93 (3) (e) 1. of the statutes, as affected by [2013 Wisconsin Act 20](#), is amended to read:

35.93 (3) (e) 1. Publish the chapter in the appropriate end-of-month register in accordance with the filing deadline for publication established in the rules procedures manual published under s. 227.15 (7) ~~or~~, in an end-of-month register agreed to by the submitting agency and the legislative reference bureau, or, in the case of a rule modified under s. 227.265, in the end-of-month register for the month in which the bill modifying the rule is enacted.

**SECTION 11.** 227.01 (13) (intro.) of the statutes is amended to read:

227.01 (13) (intro.) “Rule” means a regulation, standard, statement of policy, or general order of general application which has the effect of law and which is issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency. “Rule” includes a modification of a rule under s. 227.265. “Rule” does not include, and s. 227.10 does not apply to, any action or inaction of an agency, whether it would otherwise meet the definition under this subsection, which:

**SECTION 12.** 227.11 (2) (intro.) of the statutes is amended to read:

227.11 (2) (intro.) Rule-making authority is expressly conferred on an agency as follows:

**SECTION 13.** 227.265 of the statutes is created to read:

**227.265 Repeal or modification of rules.** If a bill to repeal or modify a rule is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply. Instead, the legislative reference bureau shall publish the repeal or modification in the Wisconsin administrative code and register as required under s. 35.93, and the repeal or modification shall take effect as provided in s. 227.22.

**SECTION 14.** 227.27 (2) of the statutes is amended to read:

227.27 (2) The code shall be prima facie evidence in all courts and proceedings as provided by s. 889.01, but this does not preclude reference to or, in case of a discrepancy, control over a rule filed with the legislative reference bureau ~~or the secretary of state~~ under s. 227.20 or modified under s. 227.265, and the certified copy of a rule shall also and in the same degree be prima facie evidence in all courts and proceedings.

**SECTION 15.** Ins 3.46 (13) (a) (intro.) and 2. of the administrative code are consolidated, renumbered Ins 3.46 (13) (a) and amended to read:

Ins 3.46 (13) (a) An insurer may provide compensation to an intermediary ~~or other representative~~, and an intermediary ~~or representative~~ may accept compensation for the sale of a long-term care policy or certificate only if: ~~2. The~~ the compensation provided in the 2nd year or period and subsequent years is the same ~~as provided in the 2nd year or period~~ and is provided for at least 5 renewal years.

**SECTION 16.** Ins 3.46 (13) (a) 1. of the administrative code is repealed.

**SECTION 17.** Ins 3.46 (13) (b) of the administrative code is amended to read:

Ins 3.46 (13) (b) ~~No~~ Except as provided in par. (c), ~~no~~ person may provide compensation to an intermediary, ~~representative or producer~~, and no intermediary, ~~representative or producer~~ may accept compensation, relating to the replacement of a long-term care policy or certificate which is greater than the renewal compensation provided by the replacing insurer for the replacing policy or certificate. Long-term care policies this paragraph ~~applies and par. (c) apply~~ apply and par. (c) apply to include, but are not limited to, long-term care policies, nursing home policies and home health care policies issued prior to June 1, 1991.

**SECTION 18.** Ins 3.46 (13) (c) of the administrative code is created to read:

Ins 3.46 (13) (c) A person may provide to an intermediary, and an intermediary may accept, compensation relating to the replacement of a long-term care policy or certificate; which compensation is no greater than the first-year compensation provided by the replacing insurer for the replacing policy or certificate if, in addi-

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tion to requirements contained in sub. (14), all of the following criteria are satisfied:

- 1. The replacing insurer has established reasonable standards for which first-year compensation is appropriate for the replacement.
- 2. The standards referenced in subd. 1. include all of the following standards:
  - a. The replacing policy is suitable for the applicant.
  - b. The replacing policy materially improves the position of the applicant, including, but not limited to, the coverage, price, premium stability, or financial strength ratings of the insurer.
  - c. The intermediary has done an assessment of the replacement transaction justifying the replacement according to the insurer’s replacement standards and this

subd. 2. c. and submits that assessment to the insurer as part of the application for replacement.

- d. The insurer evaluates each replacement and affirmatively approves or denies the replacement’s qualification for first-year compensation of the replacing policy.
- e. The standards and methodology are subject to review by the office of the commissioner of insurance.
- 3. The replacing insurer has established an auditable methodology for evaluating replacements that qualify for first-year compensation.

**SECTION 19. Effective dates.** This act takes effect on the day after publication, except as follows:

- (1) The treatment of section 35.93 (2) (b) 4. and (c) 1. and (3) (e) (intro.) and 1. of the statutes takes effect on January 1, 2015.

