February 7, 2014 – Introduced by Senator LASEE, cosponsored by Representatives PETERSEN, KAHL, WEININGER, ZEPNICK, DOYLE and YOUNG. Referred to Committee on Insurance and Housing.

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.

Analysis by the Legislative Reference Bureau

Rule-making procedures

Current law sets forth a procedure for the promulgation of administrative rules (rules). Generally, that procedure consists of the following steps:

1. The agency planning to promulgate the rule prepares a statement of the scope of the proposed rule, which the governor and the agency head must approve before any state employee or official may perform any activity in connection with the drafting of the proposed rule.

2. The agency drafts the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, and submits those materials to the Legislative Council Staff for review.

3. Subject to certain exceptions, a public hearing is held on the proposed rule.

4. The final draft of the proposed rule is submitted to the governor for approval.

5. The final draft of the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, are
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submitted to the legislature for review by one standing committee in each house and by the Joint Committee for Review of Administrative Rules.

6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Code (code) and the Wisconsin Administrative Register (register), and, subject to certain exceptions, the rule becomes effective on the first day of the first month beginning after publication.

Under this bill, if a bill that repeals or modifies a rule is enacted, the ordinary rule-making procedures under current law do not apply. Instead, the LRB must publish the repeal or modification, in the code and the register, and the repeal or modification, subject to certain exceptions, takes effect on the first day of the first month beginning after publication.

Compensating intermediaries for sale of long-term care insurance

Under current rules promulgated by the Office of the Commissioner of Insurance, an insurer may provide compensation to an insurance intermediary or other representative, and the intermediary or other representative may accept compensation, for the sale of a long-term care policy or certificate only if 1) the first-year compensation for the sale does not exceed 400 percent of the compensation paid in the second year or period for the sale or for servicing the policy or certificate and 2) the compensation provided in subsequent years is the same as provided in the second year or period and is provided for at least five renewal years. The current rules prohibit any person from providing compensation to an intermediary, representative, or producer, and prohibit any intermediary, representative, or producer from accepting compensation, relating to the replacement of a long-term care policy or certificate for which the compensation is greater than the renewal compensation provided by the replacing insurer for the replacing policy or certificate.

The bill removes from the rules references to other representatives or procedures while retaining references to intermediaries. Under the bill, instead of the current compensation restrictions, an insurer may compensate an intermediary, and an intermediary may accept compensation, for the sale of a long-term care policy or certificate only if the compensation provided in the second year or period and subsequent years is the same and is provided for at least five renewal years. The bill adds an exemption to the prohibition on certain compensation for replacement of a long-term care policy. Under that exemption, 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 for which the compensation is not greater than the first-year compensation provided by the replacing insurer for the replacing policy or certificate, if certain criteria that are created in the bill and certain requirements that are in the current rules are satisfied.

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

1 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 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 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 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 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 addition 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.

(END)