SENATE . . . . . No. 2541

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

SENATE, January 2, 2024.

The committee on Senate Ways and Means to whom was referred the Senate Bill expanding wheelchair warranty protections for consumers with disabilities (Senate, No. 152), - reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2541).

For the committee,
Michael J. Rodrigues

FILED ON: 1/2/2024

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In the One Hundred and Ninety-Third General Court
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An Act expanding wheelchair warranty protections for consumers with disabilities.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 32A of the General Laws is hereby amended by inserting after section 17S the following section:-

Section 17T. For purposes of this section, "complex rehabilitation technology wheelchair" shall mean an individually-configured manual or motorized wheeled device that requires evaluation, configuration, fitting, adjustment or programming that is medically necessary to enhance the mobility or positioning of an individual with a disability.

Any coverage offered by the commission to an active or retired employee of the commonwealth insured under the commission shall not require a member to obtain a preauthorization for any repair of a complex rehabilitation technology wheelchair estimated to cost less than $1,000.

SECTION 2. Chapter 93 of the General Laws is hereby amended by striking out section 107, as appearing in the 2022 Official Edition, and inserting in place thereof the following section:-

Section 107. (a) As used in this section, the following words shall have the following meanings unless the context clearly indicates otherwise:

"Authorized wheelchair dealer", any seller of a wheelchair that: (i) has an exclusive distribution arrangement within a specified geographic area with any person or entity that manufacturers or assembles the type of wheelchair at issue; or (ii) is designated by the person or entity that manufactures or assembles the type of wheelchair at issue to repair or accept for repair such type of wheelchair.

"Collateral costs", expenses incurred by a consumer in connection with the repair of a nonconformity, including, but not limited to: (i) the cost to rent a wheelchair or other assistive device for mobility during the time repairs are attempted and until the receipt of a replacement wheelchair; (ii) the cost of shipping a wheelchair that has a nonconformity to a manufacturer, lessor or authorized wheelchair dealer for repair or replacement; and (iii) out-of-pocket medical expenses for the treatment of any physical injury caused by the nonconformity in the wheelchair.

"Consumer", (i) the purchaser of a wheelchair, including purchases covered by private or public insurance, if the wheelchair was purchased from a wheelchair dealer or manufacturer for purposes other than resale; (ii) a person to whom the wheelchair is transferred for purposes other than resale; provided, however, that such transfer shall occur before the expiration of an express warranty applicable to the wheelchair; (iii) a person who may enforce the express warranty applicable to the wheelchair; or (iv) a person who leases a wheelchair from a wheelchair lessor under a written lease; provided, however, that "consumer" shall include those who have not paid all or some out of pocket costs for the purchase or lease of a wheelchair.

"Defective", having a condition of nonconformity.

"Early termination cost", an expense or obligation incurred by a wheelchair lessor as a result of both the termination of a written lease before the termination date set forth in such lease and the return of a wheelchair to a manufacturer pursuant to paragraph (3) of subsection (c); provided, however, that "early termination cost" shall include a penalty for prepayment under a finance arrangement.

"Early termination savings", an expense or obligation avoided by a wheelchair lessor as a result of both the termination of a written lease before the termination date set forth in such lease and the return of a wheelchair to a manufacturer pursuant to paragraph (3) of subsection (c); provided, however, that "early termination savings" shall include interest charges that a wheelchair lessor would have paid to finance the wheelchair or, if the wheelchair was not financed, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of such amount at the date of the early termination.

"Express warranty", a warranty that guarantees that the wheelchair shall be free from any condition or defect that substantially impairs the use, value or safety of the wheelchair.

"Manufacturer", a person or entity that manufactures or assembles wheelchairs and agents of that person or entity, including an authorized wheelchair dealer, an importer, a distributor, factory branch, distributor branch and any warrantors of the manufacturer's wheelchair; provided, however, that "manufacturer" shall not include a professional who fabricates, without charge, a device for use in the course of medical treatment.

"Nonconformity", a condition or defect that substantially impairs the use, value or safety of a wheelchair and that is covered by an express warranty applicable to the wheelchair or to a

component of the wheelchair; provided, however, that “nonconformity” shall not include a condition or defect which results from abuse, neglect or the unreasonable and foreseeable misuse of the wheelchair by consumer modification or alteration.

“Original wheelchair”, the nonconforming wheelchair to be repaired.

“Reasonable attempt to repair”, : (i) not less than 2 attempts to repair a nonconformity by the manufacturer, wheelchair lessor or any of the manufacturer's authorized wheelchair dealers which failed to repair the nonconformity after the consumer reported the nonconformity and made the wheelchair available to the manufacturer for repair within the applicable warranty period; or (ii) the wheelchair is out of service for an aggregate of not less than 21 days because of a warranty nonconformity after the consumer reported the nonconformity and made the wheelchair available to the manufacturer for repair within the applicable warranty period.

“Replacement wheelchair”, a properly working wheelchair that is identical to the nonconforming wheelchair or that is comparable in all functional capabilities to the original wheelchair provided by the manufacturer, wheelchair lessor or manufacturer’s authorized wheelchair dealer to the consumer in place of the nonconforming wheelchair.

“Standard wheelchair”, a manual or power wheelchair that has minimal adjustability and customization.

“Temporary loaner wheelchair”, a wheelchair provided to the consumer that: (i) is free of charge; (ii) is in good working order; (iii) is able to perform the most essential functions of the original wheelchair, considering the disabilities of the user; and (iv) does not have any differences from the original wheelchair that create a threat to health or safety; provided,

however, that a “temporary loaner wheelchair” need not be new or identical to or have functional capabilities equal to or greater than those of the original wheelchair.

“Wheelchair”, a manual or motorized wheeled device that enhances the mobility or positioning of an individual with a disability.

“Wheelchair dealer”, an individual or entity that is in the business of selling wheelchairs, including, but not limited to, an authorized wheelchair dealer and a manufacturer who sells wheelchairs directly to consumers.

“Wheelchair lessor”, an individual or entity that leases a wheelchair to a consumer, or who holds the lessor’s rights, under a written lease.

(b)(1) A manufacturer who sells or leases a wheelchair to a consumer, either directly or through a wheelchair dealer or wheelchair lessor, shall furnish the consumer with an express warranty for the wheelchair; provided, however, that the duration of the express warranty shall be not less than 2 years after first delivery of the wheelchair to the consumer.

(2) At the time of purchase or lease of a wheelchair, the manufacturer shall provide directly to the consumer a statement, written in not less than 14-point all capital boldfaced type on a separate piece of paper, or in such other form as the consumer may access, which shall include the applicable warranty period of not less than 2 years from the date of first delivery, in substantially the following form:

“IMPORTANT: IF THIS WHEELCHAIR IS DEFECTIVE WITHIN THE PERIOD OF YOUR WARRANTY, [INSERT WARRANTY PERIOD, NOT LESS THAN 2 YEARS FROM THE DATE OF FIRST DELIVERY], YOU MAY BE ENTITLED UNDER STATE LAW TO

REPLACEMENT OF THE WHEELCHAIR OR A REFUND OF ITS PURCHASE PRICE. TO BE ENTITLED TO A REFUND OR REPLACEMENT, YOU MUST FIRST NOTIFY THE MANUFACTURER, THE WHEELCHAIR LESSOR OR THE WHEELCHAIR DEALER OF THE NON-CONFORMITY AND GIVE THE MANUFACTURER OR AUTHORIZED WHEELCHAIR DEALER AN OPPORTUNITY TO REPAIR THE WHEELCHAIR IN ACCORDANCE WITH SECTION 107 OF CHAPTER 93 OF THE MASSACHUSETTS GENERAL LAWS.

IF THIS WHEELCHAIR IS DEFECTIVE WITHIN THE PERIOD OF YOUR WARRANTY, THE MANUFACTURER OR AUTHORIZED WHEELCHAIR DEALER MUST PERFORM A REMOTE ASSESSMENT OF THE WHEELCHAIR NOT LESS THAN 3 BUSINESS DAYS FOLLOWING NOTICE AND, IF NECESSARY, PERFORM AN IN-PERSON ASSESSMENT NOT LESS THAN 4 BUSINESS DAYS FOLLOWING THE REMOTE ASSESSMENT.

IF NECESSARY, THE MANUFACTURER OR AUTHORIZED WHEELCHAIR DEALER SHALL PROVIDE A TEMPORARY LOANER WHEELCHAIR FOR THE DURATION OF REPAIRS PROVIDED FOR UNDER THE WARRANTY AS SOON AS POSSIBLE, BUT NOT MORE THAN 4 BUSINESS DAYS FOLLOWING NOTICE FOR STANDARD WHEELCHAIRS AND 8 BUSINESS DAYS FOLLOWING NOTICE FOR CUSTOMIZED, ADAPTED OR MODIFIED WHEELCHAIRS.”.

(3) If the manufacturer, lessor or wheelchair dealer fail to provide the statement of warranty as required pursuant to this subsection, the manufacturer shall be in violation of this subsection and the minimum express warranty period shall be extended to 3 years.

(c)(1) If a new wheelchair is defective and the consumer reports such nonconformity to the manufacturer, a wheelchair lessor or a wheelchair dealer and such consumer makes the wheelchair available for repair prior to the expiration of the applicable warranty period from the date of first delivery, the nonconformity shall be repaired at no charge to the consumer. It shall be presumed that the consumer has made the wheelchair available to the manufacturer or authorized wheelchair dealer for repair if such consumer allows the manufacturer or dealer to take it from the consumer's home or other location where the user customarily uses the wheelchair.

(2) If a wheelchair covered by a manufacturer's warranty has a nonconformity to which the warranty is applicable and is made available by the consumer to the manufacturer or authorized wheelchair dealer for the repair of the nonconformity, the manufacturer shall:

(i) perform, or coordinate with an authorized wheelchair dealer to perform, a remote assessment of the original wheelchair not less than 3 business days following notice from the consumer and, if it is determined that a remote assessment is not sufficient to diagnose the nonconformity, an in-person assessment not less than 4 business days following the remote assessment; provided, however, that if a consumer cancels the initial remote assessment and the manufacturer or authorized wheelchair dealer makes reasonable efforts to reschedule the assessment as soon as feasible, the manufacturer or authorized wheelchair dealer shall not be in violation of this clause; provided, however, that the manufacturer or authorized dealer shall provide the consumer with an estimated timeframe for assessment and, following assessment, an estimated timeframe for any repairs;

(ii) provide, or coordinate with an authorized wheelchair dealer to provide, for the duration of the repair period, directly and at no cost to the consumer, as selected by the consumer and as soon as reasonably possible: (A) a temporary loaner wheelchair not more than 4 business days following notice from the consumer if the original wheelchair is a standard wheelchair and not more than 8 business days following notice by the consumer if the original wheelchair has been customized, adapted or modified to the extent that a standard wheelchair is not a suitable temporary loaner wheelchair; or (B) reimbursement for the cost incurred by the consumer for renting a wheelchair while the original wheelchair is assessed and repaired; and

(iii) cover all of the consumer’s collateral costs.

(3) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall:

(i) at the direction of a consumer other than one who leases a wheelchair: (A) accept return of the original wheelchair, issue a replacement wheelchair and refund any collateral costs; or (B) accept return of the wheelchair and refund to the consumer and to any holder of a perfected security interest, as their interest may appear, the full purchase price and any finance charge amount paid by the consumer at the point of sale and any collateral costs, less a reasonable allowance for use; provided, however, that a reasonable allowance for use shall not exceed the amount obtained by multiplying the full purchase price of the wheelchair by a fraction, the denominator of which shall be 1,825 and the numerator of which shall be the number of days that the wheelchair was in the consumer's possession before the consumer first reported the nonconformity to the wheelchair dealer; or

(ii) at the direction of a consumer who leases a wheelchair, accept return of the original wheelchair, refund to the wheelchair lessor and to any holder of a perfected security interest, as their interest may appear, the current value of the written lease and refund to the consumer the amount such consumer paid under the written lease and any collateral costs, less a reasonable allowance for use; provided, however, that a reasonable allowance for use shall not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which shall be 1,825, or the number of days of the lease, whichever number is greater, and the numerator of which shall be half of the number of days that the consumer possessed the wheelchair before first reporting the nonconformity to the manufacturer, wheelchair lessor or wheelchair dealer; and provided further, that

the current value of the written lease shall be the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the wheelchair dealer's early termination costs and the value of the original wheelchair at the lease expiration date if the lease sets forth that value, less the wheelchair lessor's early termination savings.

To receive a replacement wheelchair or a refund due under paragraph (3) of this subsection, a consumer described thereunder shall offer to transfer possession of the wheelchair having the nonconformity to its manufacturer. Not later than 30 days after such offer, the manufacturer shall provide the consumer with the replacement wheelchair or refund. When the manufacturer provides the replacement wheelchair or refund, the consumer shall make the wheelchair having the nonconformity available for return to the manufacturer, along with any endorsements necessary to transfer legal possession to the manufacturer.

(4)(i) To receive a refund due under clause (i) of paragraph (3) of subsection (C), a consumer described thereunder shall offer to return the original wheelchair to its manufacturer. Not later than 30 days after such offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall make the original wheelchair available for return to the manufacturer.

(ii) To receive a refund due under paragraph (3) of subsection (C), a wheelchair lessor shall offer to transfer possession of the original wheelchair to its manufacturer. No later than 30 days after such offer, the manufacturer shall provide the refund to the wheelchair lessor. When the manufacturer provides the refund, the wheelchair lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

A lease against a consumer shall not be enforced after such consumer exercises rights pursuant to clause (ii) of paragraph (3).

A wheelchair returned by a consumer or wheelchair lessor in the commonwealth, or by a consumer or wheelchair lessor in another state under a similar law of that state, shall not be resold or leased in the commonwealth unless the reasons for such return have been fully disclosed to a prospective buyer or lessee.

(5) Manufacturers shall fill all repair and replacement orders for wheelchairs under warranty pursuant to this section from their own inventory or have a written subcontract for the purchase of items necessary to fill repair and replacement orders; provided, however, that the subcontract shall be in writing and contain, at a minimum: (i) names, addresses, phone numbers and contact information for both entities; (ii) the contract term start and end dates; (iii) a description of the wheelchairs covered under the subcontract and the cost of each item; (iv)

signatures of both parties, including signature dates and position titles; (v) an established credit limit that is reasonable, based on the value of the products and services to be provided by the contractor; and (vi) a provision requiring shipping of parts, whenever feasible, by overnight mail.

(6) The manufacturer shall keep written record of all repair attempts made, including, but not limited to: (i) the date a repair was requested; (ii) the type of repair requested; (iii) the date the repair attempt began; (iv) the length of the repair attempt; (v) collateral costs covered; (vi) the results of the repair attempt; and (vii) the total number of repair attempts made.

(d) Each consumer shall have the option of submitting any dispute arising under this section, upon the payment of a prescribed filing fee, to an alternate arbitration mechanism established pursuant to regulations promulgated under this section by the undersecretary of consumer affairs and business regulation. Upon application of the consumer and payment of the appropriate filing fee by the consumer, a manufacturer shall submit to alternative arbitration. The alternate arbitration shall be conducted by a professional arbitrator or arbitration firm appointed by and pursuant to the regulations promulgated by the office of consumer affairs and business regulation pursuant to this section. The alternate arbitration mechanism shall ensure the personal objectivity of its arbitrators and the right of each party to present its case, be in attendance during any presentation made by the other party and rebut or refute such presentation.

(e) The attorney general may bring an action under section 4 of chapter 93A to enforce this section and to obtain restitution, civil penalties, injunctive relief and any other relief awarded pursuant to said chapter 93A. Nothing contained in this section shall limit any rights or remedies available to a consumer under any other law. Any waiver by a consumer of rights under this section shall be void.

(f) In addition to any other remedy at law, a consumer may bring an action to recover for damages caused by a violation of this section. The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and any equitable relief that the court deems is appropriate.

(g) Annually, not later than January 1, the office of consumer affairs and business regulation shall report to the joint committee on children, families and persons with disabilities and the joint committee on consumer protection and professional licensure on the operational status of the wheelchair alternate arbitration mechanism, including, but not limited to, data regarding the number of complaints filed through the alternate arbitration mechanism and the aggregate results of such arbitration procedures.

(h) The undersecretary of consumer affairs and business regulation shall promulgate regulations to implement this section, which shall include, but not be limited to, information on the components and functions necessary for a temporary loaner wheelchair to be in compliance with this section.

SECTION 3. Chapter 118E of the General Laws is hereby amended by inserting after section 10Q the following section:-

Section 10R. For purposes of this section, “complex rehabilitation technology wheelchair” shall mean an individually-configured manual or motorized wheeled device that requires evaluation, configuration, fitting, adjustment or programming that is medically necessary to enhance the mobility or positioning of an individual with a disability.

The division and its contracted health insurers, health plans, health maintenance organizations, behavioral health management firms and third-party administrators under contract

to a Medicaid managed care organization or primary care clinician plan shall not require a preauthorization for any repair of a complex rehabilitation technology wheelchair estimated to cost less than $1,000.

SECTION 4. Chapter 175 of the General Laws is hereby amended by inserting after section 47UU the following section:-

Section 47VV. For purposes of this section, “complex rehabilitation technology wheelchair” shall mean an individually-configured manual or motorized wheeled device that requires evaluation, configuration, fitting, adjustment or programming that is medically necessary to enhance the mobility or positioning of an individual with a disability.

Any policy, contract, agreement, plan or certificate of insurance issued, delivered or renewed within the commonwealth, which is considered creditable coverage under section 1 of chapter 111M, shall not require a member to obtain a preauthorization for any repair of a complex rehabilitation technology wheelchair estimated to cost less than $1,000.

SECTION 5. Chapter 176A of the General Laws is hereby amended by inserting after section 8VV the following section:-

Section 8WW. For purposes of this section, “complex rehabilitation technology wheelchair” shall mean an individually-configured manual or motorized wheeled device that requires evaluation, configuration, fitting, adjustment or programming that is medically necessary to enhance the mobility or positioning of an individual with a disability.

Any contract between a subscriber and the corporation under an individual or group hospital service plan that is delivered, issued or renewed within the commonwealth shall not

require a member to obtain a preauthorization for any repair of a complex rehabilitation technology wheelchair estimated to cost less than $1,000.

SECTION 6. Chapter 176B of the General Laws is hereby amended by inserting after section 4VV the following section:-

Section 4WW. For purposes of this section, “complex rehabilitation technology wheelchair” shall mean an individually-configured manual or motorized wheeled device that requires evaluation, configuration, fitting, adjustment or programming that is medically necessary to enhance the mobility or positioning of an individual with a disability.

Any subscription certificate under an individual or group medical service agreement delivered, issued or renewed within the commonwealth shall not require a member to obtain a preauthorization for any repair of a complex rehabilitation technology wheelchair estimated to cost less than $1,000.

SECTION 7. Chapter 176G of the General Laws is hereby amended by inserting after section 4NN the following section:-

Section 4OO. For purposes of this section, “complex rehabilitation technology wheelchair” shall mean an individually-configured manual or motorized wheeled device that requires evaluation, configuration, fitting, adjustment or programming that is medically necessary to enhance the mobility or positioning of an individual with a disability.

Any individual or group health maintenance contract that is issued or renewed shall not require a member to obtain a preauthorization for any repair of a complex rehabilitation technology wheelchair estimated to cost less than $1,000.

SECTION 8. Section 25 of chapter 176O of the General Laws, as appearing in the 2022 Official Edition, is hereby amended by inserting after the word “services”, in line 49, the following words:- ; provided, however, that a health plan shall not require a prior authorization for any repair of a complex rehabilitation technology wheelchair estimated to cost less than $1,000.

SECTION 9. The undersecretary of consumer affairs and business regulation regulations shall promulgate the regulations required under subsection (h) of section 107 of chapter 93 of the General Laws not later than 90 days after the effective date of this act.