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Introduced by M. of A. BORES, GALLAGHER, LAVINE, GALLAHAN, STECK, McDONALD, LUPARDO, SANTABARBARA, BURDICK, McDONOUGH, ANGELINO -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the social services law, in relation to enacting the "consumer wheelchair repair bill of rights act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "consumer wheelchair repair bill of rights act".

3 § 2. Article 32 and section 670 of the general business law, as
4 amended by chapter 219 of the laws of 2006, are renumbered article 32-A
5 and section 676 and a new section 677 is added to read as follows:

6 § 677. Right to repair wheelchairs. 1. For the purposes of this
7 section, the following terms shall have the following meanings:

8 (a) (i) "Authorized repair provider" means a person that is unaffil-
9 iated with a manufacturer other than through an arrangement with such
10 manufacturer, whether for a definite or an indefinite period, in which
11 such manufacturer, for the purpose of offering to provide services to an
12 equipment owner regarding the owner's equipment or a part, grants such
13 person:

14 (1) a license to use a trade name, service mark, or other proprietary
15 identifier; or

16 (2) authorization under any other arrangement to act on behalf of such
17 manufacturer.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (ii) "Authorized repair provider" includes, but is not limited to, a
2 manufacturer that offers to provide services to an owner of such
3 manufacturer's equipment regarding such owner's equipment or a part if
4 such manufacturer does not have an arrangement with an unaffiliated
5 person, as described in subparagraph (i) of this subdivision.

6 (b) "Documentation" means a manual; diagram, including a schematic
7 diagram; reporting output; service code description; or similar type of
8 information, whether in an electronic or tangible format, that a
9 manufacturer provides to an authorized repair provider for purposes of
10 assisting such authorized repair provider with services performed on
11 such manufacturer's equipment or a part.

12 (c) "Embedded software" means programmable instructions provided on
13 firmware delivered with an electronic component of equipment or with any
14 part for the purpose of restoring or improving operation of such equip-
15 ment or part; and shall include but not be limited to all relevant
16 patches and fixes that the manufacturer makes to equipment or to any
17 part for the purpose of restoring or improving such equipment or part.

18 (d) "Equipment" means a wheelchair.

19 (e) (i) "Fair and reasonable costs" with respect to obtaining documen-
20 tation, parts, embedded software, firmware, or tools from a manufacturer
21 to provide services, means terms that are equivalent to the most favora-
22 ble terms that such manufacturer offers to an authorized repair provider
23 and costs that are no greater than such manufacturer's suggested retail
24 price. Costs considered under this subparagraph shall be calculated
25 using net costs incurred, accounting for any discounts, rebates, or
26 incentives offered.

27 (ii) With respect to documentation, "fair and reasonable terms and
28 costs" means that the manufacturer provides such documentation, includ-
29 ing any relevant updates to such documentation, at no charge; except
30 that such manufacturer may charge a fee for a printed copy of such
31 documentation if the amount of such fee covers only such manufacturer's
32 actual cost to prepare and send such printed copy of such documentation.

33 (iii) With respect to tools that are software programs, "fair and
34 reasonable terms and costs" means that the manufacturer provides such
35 tools that are software programs:

36 (1) at no charge and without requiring authorization or internet
37 access or otherwise imposing impediments to access or use;

38 (2) in the course of effectuating the diagnosis, maintenance, or
39 repair and enabling the full functionality of the equipment or part; and

40 (3) in a manner that does not impair the efficient and cost-effective
41 performance of the equipment or part.

42 (f) "Firmware" means a software program or set of instructions
43 programmed on equipment or a part to allow such equipment or part to
44 communicate with itself or with other computer hardware.

45 (g) (i) "Independent repair provider", except as otherwise provided in
46 subparagraph (ii) of this paragraph, means a person in the state that
47 is:

48 (1) neither a manufacturer's authorized repair provider nor affiliated
49 with a manufacturer's authorized repair provider; and

50 (2) engaged in offering or providing services.

51 (ii) "Independent repair provider" means:

52 (1) an authorized repair provider if such authorized repair provider
53 is offering or providing services for a manufacturer other than a
54 manufacturer with which such authorized repair provider has an arrange-
55 ment described in paragraph (a) of this subdivision; or

1 (2) a manufacturer with respect to offering or providing services for
2 another manufacturer's equipment or part.

3 (h) "Original equipment manufacturer" or "manufacturer" means a person
4 doing business in the state and engaged in the business of selling,
5 leasing, or otherwise supplying new equipment or parts manufactured by
6 or on behalf of itself to any individual, business, or other entity.

7 (i) "Owner" means a consumer, as defined by section six hundred seven-
8 ty-six of this article.

9 (j) "Part" means a new or used replacement part for equipment that a
10 manufacturer offers for sale or otherwise makes available for the
11 purpose of providing services.

12 (k) "Powered wheelchair" means a motorized wheeled device designed for
13 use by a person with a physical disability.

14 (l) "Services" means diagnostic, maintenance, or repair services
15 performed on equipment or a part.

16 (m) "Tools" means any software program, hardware implement, or other
17 apparatus used for diagnosis, maintenance, or repair of equipment or
18 parts, including software or other mechanism that provides, programs, or
19 pairs a new part; calibrates functionality; or performs any other func-
20 tion required to return such equipment or part to fully functional
21 condition.

22 (n) "Trade secret" means the whole or any portion or phase of any
23 scientific or technical information, design, process, procedure, formu-
24 la, improvement, confidential business or financial information, listing
25 of names, addresses, or telephone numbers, or other information relating
26 to any business or profession which is secret and of value. To be a
27 "trade secret" the owner thereof shall have taken measures to prevent
28 the secret from becoming available to persons other than those selected
29 by the owner to have access thereto for limited purposes.

30 (o) "Certified assistive technology professional" means an individual
31 who demonstrates competence in complex rehabilitation technology through
32 nationally recognized certification, relevant licensure, or a combina-
33 tion of education, training, and documented experience in the evalu-
34 ation, configuration, or repair of complex rehabilitation technology.

35 2. (a) Except as provided under paragraph (b) of this subdivision:

36 (i) For the purpose of providing services for equipment in the state,
37 an original equipment manufacturer shall, with fair and reasonable terms
38 and costs, make available to an independent repair provider or owner of
39 such manufacturer's equipment any documentation, parts, embedded soft-
40 ware, firmware, or tools that are intended for use with the equipment or
41 any part, including updates to documentation, parts, embedded software,
42 firmware, or tools.

43 (ii) With respect to equipment that contains an electronic security
44 lock or other security-related function, a manufacturer shall, with fair
45 and reasonable terms and costs, make available to independent repair
46 providers and owners any documentation, parts, embedded software, firm-
47 ware, or tools needed to reset the lock or function when disabled in the
48 course of providing services. The manufacturer may make the documenta-
49 tion, parts, embedded software, firmware, or tools available to inde-
50 pendent repair providers and owners through appropriate secure release
51 systems. Parts required to be made available under this paragraph shall
52 include, but not be limited to:

53 (1) batteries;

54 (2) battery chargers;

55 (3) nonprogrammable joysticks;

56 (4) joystick housings or brackets;

1 (5) wheel assembly parts, including but not limited to, tires and
2 rims;

3 (6) anti-tip devices;

4 (7) armrests;

5 (8) caster assembly, including but not limited to, caster wheels,
6 forks, and bearings;

7 (9) cosmetic shrouding;

8 (10) floor mats;

9 (11) foot plates;

10 (12) nonpowered leg rests;

11 (13) swing away foot rests;

12 (14) nonpowered foot rests; and

13 (15) non-positioning parts and accessories.

14 (b) (i) Paragraph (a) of this subdivision shall not apply to:

15 (1) a part that is no longer available to the original equipment
16 manufacturer, provided that this clause shall not apply to any part for
17 a wheelchair within five years after first delivery of such wheelchair
18 to the original owner; or

19 (2) conduct that would require the manufacturer to divulge a trade
20 secret; except that a manufacturer shall not refuse to make available to
21 an independent repair provider or owner any documentation, part, embed-
22 ded software, firmware, or tool necessary to provide services on grounds
23 that such documentation, part, embedded software, firmware, or tool
24 itself is a trade secret.

25 (ii) (1) A manufacturer may redact documentation to remove trade
26 secrets from such documentation before providing access to such documen-
27 tation if the usability of such redacted documentation for the purpose
28 of providing services is not diminished.

29 (2) A manufacturer may withhold information regarding a component of,
30 design of, functionality of, or process of developing a part, embedded
31 software, firmware, or a tool if such information is a trade secret and
32 the usability of such part, embedded software, firmware, or tool for the
33 purpose of providing services is not diminished.

34 (c) An original equipment manufacturer shall not be liable for faulty
35 or otherwise improper repairs provided by independent repair providers
36 or owners, including faulty or otherwise improper repairs that cause:

37 (i) damage to wheelchairs that occur during such repairs;

38 (ii) any indirect, incidental, special, or consequential damages;

39 (iii) an inability to use, or a reduced functionality of, a wheelchair
40 resulting from the faulty or otherwise improper repair; or

41 (iv) personal injury.

42 3. (a) Except as provided under paragraph (b) of this subdivision,
43 nothing in this section shall:

44 (i) alter the terms of any contract or other arrangement in force on
45 the effective date of this section between an original equipment
46 manufacturer and an authorized repair provider, including the perform-
47 ance or provision of warranty or recall repair work and any exclusivity
48 or noncompete clause in a contract;

49 (ii) require a manufacturer to provide an independent repair provider
50 or owner access to information, other than documentation, that such
51 manufacturer provides to an authorized repair provider pursuant to a
52 contract or other arrangement with such authorized repair provider
53 except as necessary to comply with paragraph (a) of subdivision two of
54 this section; or

55 (iii) exempt a manufacturer from a products liability claim that is
56 otherwise authorized under law.

1 (b) With respect to a contract or other arrangement, or renewal of a
2 contract or existing arrangement, that an original equipment manufactur-
3 er enters into after the effective date of this section, any contract
4 term, provision, agreement, or language in such contract or arrangement
5 that waives, avoids, restricts, or limits such manufacturer's obli-
6 gations under this section shall be void and unenforceable.

7 4. Nothing in this section shall be construed to require a manufactur-
8 er to make available documentation, parts, tools, or software necessary
9 for repairs or modifications that:

10 (a) involve the calibration of a powered wheelchair's seating systems
11 that directly affect the user's therapeutic or medical seating, or
12 mobility configuration; or

13 (b) alter or bypass manufacturer-established safety parameters
14 designed to prevent tipping, loss of stability, or other hazards,
15 including but not limited to, limits on speed, tilt, recline, or seat
16 elevation while the wheelchair is in motion; or

17 (c) require the professional judgment or services of any of the
18 following when such judgment or service is necessary to ensure safe user
19 seating and positioning:

20 (i) a licensed physical therapist;

21 (ii) a licensed occupational therapist; or

22 (iii) a certified assistive technology professional.

23 5. If a manufacturer declines to provide access to a requested part,
24 tool, software, or documentation pursuant to this section, such manufac-
25 turer shall, upon the request of the owner and within ten business days,
26 provide to the owner or independent repair provider a written explana-
27 tion identifying the specific basis for such denial, including any
28 applicable exemptions pursuant to this article and a description of how
29 such requested part, tool, software, or documentation falls within such
30 exemption.

31 § 3. The general business law is amended by adding a new section 678
32 to read as follows:

33 § 678. Timely repair of wheelchairs. 1. No later than one year after
34 the effective date of this section, and after consultation with the
35 commissioner of health, the secretary of state, through the consumer
36 protection division established pursuant to section ninety-four-a of the
37 executive law, shall establish a "timely repair for wheelchair program"
38 under which manufacturers and wheelchair dealers or wheelchair lessors
39 shall be held accountable for wheelchair repairs requested by owners as
40 provided in this section.

41 2. Notwithstanding any contradictory provision of section six hundred
42 seventy-six of this article, a manufacturer, wheelchair dealer, or
43 wheelchair lessor, as such terms are defined by section six hundred
44 seventy-six of this article, or an authorized repair provider, as such
45 term is defined by section six hundred seventy-seven of this article,
46 shall make best efforts to:

47 (a) acknowledge and respond to a request for wheelchair repair as soon
48 as practicable but no later than one business day after the date such
49 request was made;

50 (b) provide an assessment or schedule an appointment to make any
51 repairs as soon as practicable but no later than seventy-two hours after
52 acknowledging a request;

53 (c) order any necessary parts not currently in inventory as soon as
54 practicable but no later than two business days of completing the
55 assessment; and

1 (d) complete the repair as soon as practicable but no later than five
2 business days after all required parts have been received.

3 3. During the repair process, if any condition or defect renders a
4 wheelchair out of service for a total of thirty days or longer, the
5 owner of such wheelchair shall be entitled to receive a temporary wheel-
6 chair from the manufacturer of such owner's wheelchair for use until
7 such wheelchair owner's wheelchair is repaired and returned.

8 4. A manufacturer, authorized wheelchair dealer or wheelchair lessor
9 shall maintain an electronic mail address and a phone line that is dedi-
10 cated solely to receiving wheelchair repair requests. Such electronic
11 mail address and phone line shall be accessible each day and capable of
12 receiving and recording messages. Wheelchair dealers shall: (a) respond
13 to a request for wheelchair repair no later than one business day after
14 the date such request was made; and (b) order parts necessary for a
15 wheelchair repair no later than three business days after assessing the
16 need for such repair.

17 5. The office of the consumer protection division of the department of
18 state shall maintain a phone number and electronic mail address to be
19 posted conspicuously on its website, to receive and record complaints
20 regarding timely wheelchair repairs. No later than January first, two
21 thousand twenty-seven, and annually thereafter, the department of state
22 shall submit a report to the governor and the legislature regarding any
23 complaints received and recorded pursuant to this subdivision. Such
24 report shall be published on the website of the office of the consumer
25 protection division of the department of state and visible to the gener-
26 al public.

27 6. Any entity that is a consumer, as defined by subparagraph five of
28 paragraph b of subdivision one of section six hundred seventy-six of
29 this article, shall conspicuously post on its website the consumers'
30 rights pursuant to this section and the phone number and electronic mail
31 address created pursuant to subdivision five of this section.

32 7. (a) No later than December thirty-first, two thousand twenty-eight,
33 and annually thereafter, the department of health shall provide a list
34 of all entities subject to the provisions of subdivision two of this
35 section that contracts with the state to sell or lease wheelchairs to
36 Medicaid recipients to the department of state's consumer protection
37 division. Such entities shall submit a report to the office of the
38 consumer protection division of the department of state regarding repair
39 of such wheelchairs. Such report shall include, but not be limited to,
40 minimum, maximum and average times from the date and time of a wheel-
41 chair repair request for such wheelchair dealer to: (i) respond; (ii)
42 conduct a repair assessment (1) in the home or other community location,
43 (2) remotely, or (3) at a repair facility; (iii) request any necessary
44 prior authorization from the department of health and receive a decision
45 from the department of health on such request; (iv) order any wheelchair
46 parts needed; (v) receive delivery of any needed repair parts; and (vi)
47 complete repairs (1) in the home or other community location, (2)
48 remotely, or (3) at a repair facility.

49 (b) The office of the consumer protection division of the department
50 of state shall make the report submitted under paragraph (a) of this
51 subdivision available to the public within sixty days of receiving it.

52 8. The secretary of state, in consultation with the commissioner of
53 health, shall promulgate rules, regulations, reporting requirements, and
54 penalties necessary to establish the timely repair for wheelchair
55 program and implement the provisions of this section.

1 § 4. The social services law is amended by adding a new section 367-j
2 to read as follows:

3 § 367-j. Reimbursement and billing procedures for wheelchairs. 1. The
4 commissioner shall maintain specific reimbursement and billing proce-
5 dures under this title for the evaluation, diagnosis and repair of
6 wheelchairs, to ensure that Medicaid payments for such service permit
7 adequate access to such products and services for complex needs of
8 patients and take into account the significant resources, infrastruc-
9 ture, and staff needed to make such evaluation, diagnosis and repair of
10 wheelchairs.

11 2. The commissioner shall monitor the addition of new billing codes
12 for the evaluation, diagnosis and repair of wheelchairs by the Medicare
13 program and shall expeditiously incorporate such codes under this
14 section.

15 3. Where reimbursement rates are determined by a managed care organ-
16 ization, such rates shall be determined consistent with this subdivi-
17 sion. The commissioner may establish minimum benchmark reimbursement
18 rates to be paid by managed care organizations under this subdivision.

19 § 5. The opening paragraph of subdivision 1 of section 676 of the
20 general business law, as amended by chapter 219 of the laws of 2006 and
21 such section as renumbered by section two of this act, is amended to
22 read as follows:

23 As used in this [~~section~~] article, unless otherwise defined in the
24 applicable section:

25 § 6. The general business law is amended by adding a new section 679
26 to read as follows:

27 § 679. Medically necessary wheelchair repairs. 1. Notwithstanding any
28 other provision of law, any wheelchair repair that is needed within five
29 years of the initial prescription shall be deemed medically necessary
30 and shall not require a new prescription, medical documentation subject
31 to the drug utilization review program, or prior authorization from
32 insurance before proceeding with repair.

33 2. The commissioner of health shall seek any federal approval neces-
34 sary, including amending the Medicaid state plan or applying for a Medi-
35 caid waiver, to implement the provisions of this section.

36 3. The consumer protection division of the department of state and the
37 commissioner of health shall promulgate any rules and/or regulations to
38 implement the provisions of this section.

39 § 7. This act shall take effect on the one hundred eightieth day after
40 it shall have become a law.