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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:

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

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

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

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

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

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

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

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

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

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

(d) "Equipment" means a wheelchair.

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

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

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

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

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

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

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

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

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

(2) engaged in offering or providing services.

(ii) "Independent repair provider" means:

(1) an authorized repair provider if such authorized repair provider is offering or providing services for a manufacturer other than a manufacturer with which such authorized repair provider has an arrangement described in paragraph (a) of this subdivision; or

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

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

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

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

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

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

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

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

(o) "Certified assistive technology professional" means an individual who demonstrates competence in complex rehabilitation technology through nationally recognized certification, relevant licensure, or a combination of education, training, and documented experience in the evaluation, configuration, or repair of complex rehabilitation technology.

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

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

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

(1) batteries;

(2) battery chargers;

(3) nonprogrammable joysticks;

(4) joystick housings or brackets;

(5) wheel assembly parts, including but not limited to, tires and rims;
(6) anti-tip devices;
(7) armrests;
(8) caster assembly, including but not limited to, caster wheels, forks, and bearings;
(9) cosmetic shrouding;
(10) floor mats;
(11) foot plates;
(12) nonpowered leg rests;
(13) swing away foot rests;
(14) nonpowered foot rests; and
(15) non-positioning parts and accessories.
(b) (i) Paragraph (a) of this subdivision shall not apply to:
(1) a part that is no longer available to the original equipment manufacturer, provided that this clause shall not apply to any part for a wheelchair within five years after first delivery of such wheelchair to the original owner; or
(2) conduct that would require the manufacturer to divulge a trade secret; except that a manufacturer shall not refuse to make available to an independent repair provider or owner any documentation, part, embedded software, firmware, or tool necessary to provide services on grounds that such documentation, part, embedded software, firmware, or tool itself is a trade secret.
(ii) (1) A manufacturer may redact documentation to remove trade secrets from such documentation before providing access to such documentation if the usability of such redacted documentation for the purpose of providing services is not diminished.
(2) A manufacturer may withhold information regarding a component of, design of, functionality of, or process of developing a part, embedded software, firmware, or a tool if such information is a trade secret and the usability of such part, embedded software, firmware, or tool for the purpose of providing services is not diminished.
(c) An original equipment manufacturer shall not be liable for faulty or otherwise improper repairs provided by independent repair providers or owners, including faulty or otherwise improper repairs that cause:
(i) damage to wheelchairs that occur during such repairs;
(ii) any indirect, incidental, special, or consequential damages;
(iii) an inability to use, or a reduced functionality of, a wheelchair resulting from the faulty or otherwise improper repair; or
(iv) personal injury.
3. (a) Except as provided under paragraph (b) of this subdivision, nothing in this section shall:
(i) alter the terms of any contract or other arrangement in force on the effective date of this section between an original equipment manufacturer and an authorized repair provider, including the performance or provision of warranty or recall repair work and any exclusivity or noncompete clause in a contract;
(ii) require a manufacturer to provide an independent repair provider or owner access to information, other than documentation, that such manufacturer provides to an authorized repair provider pursuant to a contract or other arrangement with such authorized repair provider except as necessary to comply with paragraph (a) of subdivision two of this section; or
(iii) exempt a manufacturer from a products liability claim that is otherwise authorized under law.

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

4. Nothing in this section shall be construed to require a manufacturer to make available documentation, parts, tools, or software necessary for repairs or modifications that:

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

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

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

(i) a licensed physical therapist;

(ii) a licensed occupational therapist; or

(iii) a certified assistive technology professional.

5. If a manufacturer declines to provide access to a requested part, tool, software, or documentation pursuant to this section, such manufacturer shall, upon the request of the owner and within ten business days, provide to the owner or independent repair provider a written explanation identifying the specific basis for such denial, including any applicable exemptions pursuant to this article and a description of how such requested part, tool, software, or documentation falls within such exemption.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 367-j. Reimbursement and billing procedures for wheelchairs. 1. The commissioner shall maintain specific reimbursement and billing procedures under this title for the evaluation, diagnosis and repair of wheelchairs, to ensure that Medicaid payments for such service permit adequate access to such products and services for complex needs of patients and take into account the significant resources, infrastructure, and staff needed to make such evaluation, diagnosis and repair of wheelchairs.

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

3. Where reimbursement rates are determined by a managed care organization, such rates shall be determined consistent with this subdivision. The commissioner may establish minimum benchmark reimbursement rates to be paid by managed care organizations under this subdivision.

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

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

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

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

2. The commissioner of health shall seek any federal approval necessary, including amending the Medicaid state plan or applying for a Medicaid waiver, to implement the provisions of this section.

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

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