

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

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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:

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

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

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

11 SECTION 2. Chapter 93 of the General Laws is hereby amended by striking out section
12 107, as appearing in the 2022 Official Edition, and inserting in place thereof the following
13 section:-

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

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

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

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

35 “Defective”, having a condition of nonconformity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

294 SECTION 8. Section 25 of chapter 176O of the General Laws, as appearing in the 2022
295 Official Edition, is hereby amended by inserting after the word “services”, in line 49, the
296 following words:- ; provided, however, that a health plan shall not require a prior authorization
297 for any repair of a complex rehabilitation technology wheelchair estimated to cost less than
298 \$1,000.

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