



February 23, 2022
 (via electronic mail)

The Honorable John Cronin
 The Honorable Ryan Fattman
 State House
 Boston MA 02133

Re: Response to letter of NCART related to Senate Bill 2567, Expanding
 Wheelchair Protections

Dear Senators Cronin and Fattman:

We are writing to respond to the February 11, 2022 letter from NCART, HOMES and AAHomecare, three trade groups with reservations concerning S. 2567, *An Act Wheelchair Warranty Protections for Consumers with Disabilities* and to urge you to support this important legislation.

This letter is written on behalf of the Disability Law Center, Disability Policy Consortium, Boston Center for Independent Living, Center for Living and Working, Northeast Independent Living Program, Ad Lib Center for Independent Living, Cape Organization for Rights of the Disabled, Disability Resource Center, Southeast Center for Independent Living, Independence Associates, Metrowest Center for Independent Living, Stavros Center for Independent Living, Health Care for All, Easterseals Massachusetts and Greater Boston Legal Services.

Our organizations regularly work with people who struggle to obtain wheelchair repairs in a timely and reasonable fashion, often while isolated at home for extended periods of time. Together our constituents, members and/or staff testified before the Joint Committee on Consumer Protection and Professional Licensure to urge the legislature to act on behalf of people who use wheelchairs. We would encourage you to listen closely to the testimony of the wheelchair consumers who testified at the committee hearing, and the other disability justice advocates who spoke in support of this important legislation. The committee hearing may be accessed at <https://fb.watch/702k6idhZ4/>.¹

Unfortunately, those presented at the hearing are only a small representative sample of the stories of wheelchair users in the Commonwealth, people whom we know or represent, who are left stranded in their home for days or weeks, and sometimes months at a time, unable get to work, school, medical appointments, the grocery store or other places in the community, because of broken wheelchairs awaiting repairs. In addition to the complaints we receive regularly from stranded clients, constituents and members, and their families, this serious problem has also been highlighted by the media² and legal commentators.³ It is also an issue which has severe implications for the health of wheelchair users who may be

¹ The discussion of this bill starts around the 2 hour, 17 minute mark, with testimony by the Disability Policy Consortium, Boston Center for Independent Living and the Massachusetts Developmental Disabilities Council, a state agency. Then starting at around the 2 hour, 29 minute mark, the testimony of many wheelchair users begins, telling their personal stories about trying to secure repairs to their wheelchairs, often when they are stranded at home for weeks or months at a time. At the 3 hour, 31 minute mark, testimony of the Disability Law Center begins, followed by testimony by other wheelchair users (including a young woman who moved from the Commonwealth because of poor wheelchair service) and questions by members of the Committee. The hearing ends at about the 4 hour and 1 minute mark.

² See e.g., <https://www.wcvb.com/article/woburn-massachusetts-man-with-cerebral-palsy-has-been-waiting-9-weeks-to-get-his-wheelchair-fixed/36283445#> (April 29, 2021) (Story of Woburn man with cerebral palsy, stranded with a heavy broken motorized wheelchair being pushed by his 77 year old mother for nine (9) weeks, with the problem apparently only resolved after WCVB 5 TV contacted the provider.)

³ “Consumers with disabilities are a growing segment of the general population who are often adversely affected by defective or malfunctioning products. Many such consumers are sold assistive technology devices that fail to meet appropriate performance standards or fail to operate as promised by the manufacturer or dealer. Moreover, purchasers of assistive technological devices often have limited choices for vendors as suppliers and thus have limited bargaining power when purchasing such devices.” *Consumer Warranty Law*, 6th Edition, Section 16.1, National Consumer Law Center (2021).

subject to pressure ulcers, blood clots, pneumonia, loss of physical function and depression from being confined in bed for prolonged periods.⁴

In Appendix “A” to this letter, we have provided a summary of S. 2657, including the ways in which it would strengthen our existing wheelchair warranty/lemon law, and the many jurisdictions which already offer better protection for their wheelchair consumers. In Appendix “B” we outlined proposed amendments offered by the Office of Attorney General Maura Healey, suggestions with which we concur.

We will address the issues NCART’s letter in the order in which they appear there:

- **Warranty Repairs Versus Public Funding and Insurance Coverage.** At the beginning and ending of their letter, NCART asks wheelchair users and advocates to focus instead on the policies of public payors and private insurers, who often have excessive paperwork as part of their “prior approval” process. They made a similar request on the February 15, 2022 call. These are not mutually exclusive issues. Most of our organizations regularly advocate on these and other related issues, including policies of MassHealth and/or Medicare.⁵ We welcome all opportunities to collaborate with trade associations on those efforts. However, this is a very different problem from warranty repairs.

⁴ See e.g., literature published by Lynn Worobey, Ph.D. a professor and researcher in the Department of Physical Medicine and Rehabilitation at human engineering research laboratories at the University of Pittsburgh, including *Wheelchair Breakdowns Are Associated with Pain, Pressure Injuries, Rehospitalization, and Self-Perceived Health in Full-Time Wheelchair Users With Spinal Cord Injury*. Hogaboom NS, Worobey LA, Houlihan BV, Heinemann AW, Boninger ML., *Arch Phys Med Rehabil*. 2018 Oct; 99(10):1949-1956. According to a 2016 study by Worobey, in just a six month period, 64% of wheelchair users reported needing at least one repair during that period, of which 28% reported having at least one of these “adverse consequences” happen to them during that period, 18% reported getting stranded due to their wheelchair malfunctioning during that period, and 7% reported not being able to have their wheelchair repaired at all. Worobey, Lynn et al., *Type and Frequency of Reported Wheelchair Repairs and Related Adverse Consequences Among People With Spinal Cord Injury* at 1755, *Archives of Physical Medicine & Rehabilitation*, American Congress of Rehabilitation Medicine (2016).

⁵ We regularly work with consumers with prior approval issues related to assistive technology. Many of us also engage in policy related advocacy on this subject and the requirements of public payors and/or insurance coverage. For example, DPC and BCIL are active members of a MassHealth working group (which includes one provider, National Seating & Mobility) looking at ways to use temporary ARPA funding to fund mobile response units of trained community-based workers to assist with simple repairs, e.g., to tires and batteries. Using only volunteer filmmakers and a small grant from the Christopher and Dana Reeve Foundation, DLC also created *Wheels of Justice*, a documentary film highlighting the struggles of person with a spinal cord injury who sought a standing wheelchair, and his difficulty navigating through the MassHealth prior approval process.

S. 2567 addresses **repairs during the warranty period** for individuals with inoperable wheelchairs, immobile and stranded at home for weeks, or sometimes months at a time. When this occurs for no reason attributable to the wrongful acts of the consumer, the manufacturer and dealer should stand behind their product. The solution is not to shift this burden on the taxpayer (e.g. MassHealth or Medicare) or private medical insurance.

We agree that **after the warranty period**, the costs are usually covered by public payors (for MassHealth or Medicare) or private health insurers. In some situations, those entities may ask for “prior approval” or ask for unnecessary documentation that may further delay repairs. That is a different problem, which goes to a different part of the ownership cycle of a wheelchair. As noted on this February 15th telephone call, fixing this also involves altering or regulating the procedures used in MassHealth and Medicare, as well as national medical insurance companies, and insurers only doing business in Massachusetts.⁶ Indeed, much of this problem is beyond the ability of the Massachusetts legislature to fix. For example, a Massachusetts MassHealth recipient who is dually eligible for Medicare and not enrolled in One Care may need a prescription for a wheelchair repair that is not covered by a warranty. Veterans and their families insured by the Veterans Administration will also be subject to verification requirements beyond the reach of state law, as to those repairs that are not covered under a warranty.

To understand that these are separate and distinct problems, one need only look at the policies of the public payors (e.g., MassHealth and Medicare) and private insurers that initially pay for wheelchair repairs. Repairs that are covered under warranty are not paid for by these entities. For example, the Medicaid regulations provide as follows:

(1) MassHealth pays for repairs to medically necessary mobility systems, including back-up systems, when either the member's primary or back-up systems are customized, adapted, or modified to the extent that no rental equipment would be comparable, **and the repair is not covered under the warranty** (see [130 CMR 409.413\(D\)](#)).

130 CMR sec. 409.420(D)(1) (emphasis supplied).

(E) Provider Responsibility. The DME provider who submits a claim to the MassHealth agency for repair of Durable Medical Equipment is responsible for

(4) ***taking advantage of all manufacturer warranties;***

⁶ These issues were discussed at length with providers, manufacturers, public and private payors, and wheelchair consumers at DLC’s wheelchair repair conference, “*Mobility Matters: Understanding the Wheelchair Repair Process*” described below.

(5) *complying with the requirements of the Wheelchair Lemon Law* ([M.G.L. c. 93, § 107](#)) and any other applicable provisions of federal and state laws pertaining to the service provided;

130 CMR 409.420(E) (emphasis supplied).

The same holds true for Medicare. See Medicare Benefit Policy Manual, Section 40.4, *Items Covered Under Warranty* and Section 110.2, *Repairs, Maintenance, Replacement and Delivery*.⁷ Our understanding is that similar rules are also imposed by private health insurers.

In sum, repairs under warranty are, by definition, repairs that are not subject to prior approval and prescription processes described by NCART in their recent letter and phone call. These are two distinct, non-intersecting problems.

Finally, in our view, if the prior approval process causes inefficiency and delay -- and we agree that it often does⁸ -- then this only strengthens the argument for looking at the scope of Massachusetts warranty laws. ***Repairs completed under warranty do not require, and cannot result in, payment by a public payor or an insurer.*** The warranty period under the existing wheelchair lemon law (one year) is far too short, and places Massachusetts wheelchair consumers in a weaker position compared to consumers in other states. State law in Connecticut and Rhode Island requires a two-year warranty. This short warranty period currently has two negative consequences. First, public payors and private insurers must cover the costs of substandard wheelchair parts which fail or wear out quickly without cause. Second, when those parts are defective, consumers must endure a repair process which is prolonged unnecessarily by the additional requirements of public payors and private insurers to which NCART objects.

- **Involvement of Manufacturers and Providers in Discussions About Our Concerns.** Each of our organizations works with, represents and/or is comprised of consumers who use wheelchairs. Both we and our members, clients and constituents have been advocating on these issues since our groups were founded. As a result of Medicare competitive bidding and other factors, there has been a radical consolidation within the industry. There is now almost a “duopoly” of two national dealer/providers who service MassHealth customers in the Commonwealth. Moreover, practically speaking, that provider may be selected by the rehabilitation facility and not the consumer. This means

⁷ Available <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c16.pdf>

⁸ There are also other aspects to this problem. For example, sometimes employees of provider/dealers impose paperwork requirements which do not actually exist in the individual consumer’s case, either because employees are mistaken, insufficiently trained, or using overly rigid and uniform practices to complete their job tasks.

the free market is working inefficiently, there is little consumer bargaining power and, consequently and increasingly, very poor customer service.⁹

NCART states that manufacturers and providers have not been involved in discussions over writing the bill. However, Massachusetts wheelchair consumers and their advocates have discussed these issues for many years with providers and manufacturers, to no avail. Over time, these problems become only more acute as the industry has become consolidated. Many of these conversations have taken place in the context of advocacy on behalf of individual wheelchair consumers whose wheelchairs have been broken and who have been faced with prolonged waiting periods for repairs.

By late 2016, the problem had become so bad that DLC decided to sponsor our own one-day conference on wheelchair repair, titled *“Mobility Matters: Understanding the Wheelchair Repair Process”* and invite Massachusetts stakeholders to engage in creative problem solving. This included representatives from manufacturers and dealers, as well as public and private payors, and wheelchair consumers and their advocates, as well as other interested persons. DLC brought in the Greater Boston Chapter of the National Spinal Cord Injury Association as a conference co-sponsor, and then planned the conference with other stakeholders. Prior to the conference date, DLC circulated a survey to wheelchair consumers and analyzed the results. The results, as we expected, were disturbing.¹⁰

Wheelchair providers were given their own panel at the conference, and three different provider businesses, who work across multiple states, served as panelists. Two of these were Numotion and National Seating & Mobility, who both presented to you during the February 15, 2022 call. A used equipment provider also presented in a separate conference session. In addition to the provider panels, industry experience was also reflected in other panelists, and of course, conference participants. We also selected a moderator with more than 15 years of experience working for a national DME provider

⁹ In addition to the lack of competition in the marketplace, there are two other causes of low consumer bargaining power. First, as to warranty protection, there is very little effective regulation. Low income consumers lack the resources to enforce the current inadequate warranty provisions or fall outside of their scope. Despite the very high volume of complaints we receive about new or relatively new broken wheelchairs, there have been *no* cases brought to arbitration under the current wheelchair lemon law. The law does not apply when wheelchairs were paid for by MassHealth and Medicare and the existing consumer protections are sorely inadequate. Second, demand for wheelchairs is inherently inelastic. If gas prices increase, many consumers who drive can place downward pressure on prices by taking public transit, sharing rides, walking or biking. Most wheelchair users have no alternative means of mobility.

¹⁰ For example, of the 85 wheelchair users responding to the DLC survey, 36 % said their repairs were not done correctly. 45% reported a delayed response time for the vendor. 40% reported having trouble getting status reports from their vendor.

and a Massachusetts health care provider. The conference had over 130 registered attendees. Our efforts both during and after the conference to develop workable solutions to this persistent problem were unsuccessful.

By the fall of 2020, the problem had only become worse, with a further erosion in the quality of customer service and an increasing number of calls we all have received from wheelchair users stranded at home, immobile and waiting extended periods of time. We became increasingly convinced that not all, but at least a significant portion of this problem was rooted in our weak warranty laws protecting wheelchair consumers. DLC reviewed this statute in relation to laws in other jurisdictions, through a collaboration with the National Consumer Law Center (NCLC) in Boston.¹¹ We learned, as we feared, that the laws in other states offered wheelchair consumers far more protection than that afforded to wheelchair users in the Commonwealth. Several of the organizations signing this letter then drafted proposed legislation to equalize this disparity by incorporating some stronger elements found in other states.

- **Responsibility of Manufacturers Versus Dealers.** NCART contends [NCART letter, page 2, para #2] that it is inappropriate that manufacturers, as opposed to provider/dealers, are held responsible for warranty repairs and reflects a lack of understanding by the bill's proponents. We find this very peculiar in two respects:

First, ***this is the current law in Massachusetts.*** G.L. c. 93 sec. 107. Manufacturers have been covered by the law since the statute was first enacted, 25 years ago. St. 1996, c. 267. To the extent these three trade associations object to this, they are opposing existing law and not this legislation.

Second, ***manufacturers are responsible under any and every wheelchair/assistive technology lemon law in the country.*** In addition to Massachusetts, this includes

¹¹ NCLC attorneys are national subject matter experts, and for example, publish *Consumer Warranty Law*, 6th edition (2021), a detailed treatise on warranty law.

In this letter, we refer to these laws as being lemon laws and/or warranty laws. A lemon law is a consumer protection law requiring the manufacturer and/or dealer to replace or refund a product when it has been made available for repair, usually multiple times, and it has still not been repaired to as to conform to the warranty. Any lack of privity between the manufacturer and the consumer is irrelevant. A warranty law indicates that goods sold must meet a standard of quality and performance, and usually provides for consumer remedies, including repairs, under time limits and circumstances defined in the warranty. Like many other wheelchair lemon/warranty laws, the existing Massachusetts statute provides for both a repair remedy (as a warranty law) and a replacement/ refund remedy (as a lemon law). See, G.L. c. 93 sec 107(C)(1) and 107(C)(2)(b)(i) and (ii).

Some wheelchair warranty/lemon laws also cover a range of assistive technology (AT) devices. Others, such as the existing Massachusetts statute and S. 2567, cover only wheelchairs or similar mobility devices.

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawai'i, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

To the extent that NCART indicates that responsibility should be shared by provider/dealers because they are “the organization that has the trained technicians...”, we agree. S. 2567 provides for shared responsibility of both manufacturers and provider/dealers, as is the case in other jurisdictions.

- **Definition of Manufacturing Defect.** NCART contends [NCART letter, p. 2, para. 3(a)] that the scope of the warranty is inappropriate and unconventional. We disagree, and again are confused by NCART’s argument. NCART objects to the definition of “nonconformity”, i.e., “a condition or defect that substantially impairs the use, value or safety of a customized wheelchair and which is covered by an express warranty applicable to the customized wheelchair or to a component of the customized wheelchair....” [NCART letter, p. 2, para #3(a), (c)]. However, again, this is not language created by S. 2567, but rather *is carried over verbatim* from our 25 year old statute, G.L. c. 93, sec 107. Almost all of the terms defined in the bill are similar to terms defined in the existing Massachusetts state law and/or in wheelchair repair/lemon laws in other jurisdictions.

Under S. 2567, SECTION 2 C(2)(a) and (b), the obligation to replace the wheelchair, or refund its purchase price (subject to adjustment) happens only when there is a “reasonable attempt to repair,” which means that during the warranty period the consumer reports a “nonconformity” or defect (a condition of nonconformity) and has given the manufacturer notice followed by two unsuccessful attempts to repair by the manufacturer or an aggregate period of 21 days during which the wheelchair is out of service because of a warranty nonconformity. See also definitions in SECTION 2(A).

- **Tires, Batteries, Brake Pads and Motor Brushes.** NCART objects to tires and batteries and other items from being covered during the warranty period. Once more, the bill repeats existing language from the Massachusetts General Laws. Both the bill and the existing law address conditions related to nonconformities or defects which affect the use, value or safety of a wheelchair or its components which arise during the warranty period after the manufacturer has been given an opportunity to repair. Both the bill and existing statute provide, appropriately, that conditions which derive from abuse or

neglect by the wheelchair consumer are excluded from the warranty.¹² Tires and brake pads are neither categorically included nor excluded from the warranty, in both the bill and the existing law. They are treated as they were treated before.¹³

- **Loaner Wheelchairs.** NCART notes [NCART letter, p. 2, at 3(d)] that manual and power wheelchairs are highly customizable. [NCART letter, p. 2 #3(d)]. We agree. Some consumers have an older wheelchair which can be used in a pinch. If need be, MassHealth will make repairs to back-up wheelchairs so long as the member is not residing in a nursing home. Other consumers do not have a second wheelchair, and when their only wheelchair breaks, they may become immobile or confined to their living space for weeks, or sometimes months, at a time.

NCART objects that CRT manual and power wheelchairs are “not easily replaceable on a loaner basis.” Currently, Massachusetts MassHealth providers are obligated to attempt to supply MassHealth consumers with a loaner, which is **comparable in most respects**, regardless of the complexity and customization of the wheelchair. 130 CMR sec. 409.420(B) (“The provider must attempt to supply, on a rental basis, properly working substitute equipment that is comparable in most respects to the equipment to be repaired.”)

Similarly, the definition of replacement wheelchair in S. 2567 requires one that is working and comparable, but not identical. NCART also contends that that it is nearly

¹² This portion of the bill differs from the statute in only one minor respect, not raised by NCART. S.2567 provides that consumers who make an adjustment to their own wheelchair will not void their warranty, so long as the alteration is not unreasonable and foreseeable misuse. This slight change in language has not been raised by NCART, so we will not discuss it here. [Please note that there is a typographical error in the S. 2567; the word “foreseeable” appears as “*unforeseeable*.” We would ask that Senate Ways and Means correct this language, for the benefit of manufacturers, before the bill is reported out of committee].

S. 2567 corrects an apparent error in the existing statute which provides in its definition of “nonconformity” that this *includes* a defect resulting from abuse or neglect. We believe the statute should have read that a nonconformity “...*shall not include*...” such conditions.

¹³ As noted above, parts which fail because of “abuse” or “neglect” are excluded from the warranty under both S. 2567 and existing law. At the same time, providers should not be permitted to use substandard parts which wear out from ordinary use during the warranty period.

In our research we only identified three jurisdictions (Indiana, Colorado and Michigan) with wheelchair lemon laws which expressly includes coverage of tires and batteries. We also found only two jurisdictions which may exclude wear and tear in the context of their wheelchair lemon laws, probably because the issue is so fact dependent, as explained above. Indiana’s law, which covers wheelchairs, other assistive technology and hearing aids, excludes “normal wear, including accumulation of ear wax, perspiration, or moisture.” Virginia excludes “normal wear” from their warranty. One other jurisdiction, Florida, excludes conditions or defects generally which derive from “excessive wear”, indicating that ordinary wear is covered by their warranty.

impossible to provide a wheelchair with very complex custom-molding seating systems” within four business days. Again, the loaner wheelchair does not need to be identical. If need be, the Office of the Attorney General could be asked to provide guidance by promulgating regulations, subject to public comment and a public hearing, so that manufacturers could be more certain what type of loaner wheelchair will suffice.

The concept of requiring a manufacturer to give a loaner wheelchair during repairs is not a new or controversial one and is not “nearly impossible” to meet. In fact, it is the law in many other jurisdictions, as to both ordinary and CRT manual and power wheelchairs, including Alabama, California, Colorado, Delaware, Hawai’i, Idaho, Iowa, Maine, North Dakota, Ohio, Oregon, Rhode Island and Vermont.¹⁴

Many of these have response times for providing a loaner which are shorter than, or comparable to S. 2567. See, California (when wheelchair is out of service for 24 hours); Colorado (if out of service for over one day); Oregon (if threat to safety or if out of service for seven days); Rhode Island (same) and Vermont (two business days, unless “extensive custom retrofit” is required, in which case 10 days).

The fact that a wheelchair is “not easily replaceable” only strengthens the need for prompt repairs, otherwise addressed in S. 2567.

- NCART contends, without explanation, that a lack of access to a customer’s health care provider and medical team means they are unable to determine when a wheelchair repair is caused by abuse, neglect, or foreseeable misuse. [NCART letter, p. 2, #3(f)]. We do not understand this allegation.
- NCART objects to the definition of “collateral costs” in S. 2567 arguing that it is too broad. [NCART letter, p. 2. #3g]. The definition of this term in the existing Massachusetts statute already encompasses “expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative wheelchair or other assistive device for mobility.” The language in S. 2567 expands or clarifies this somewhat, to include the consumer’s cost of shipping (as already covered by statutes in Alaska, the District of Columbia, Illinois, Iowa and Ohio). The Massachusetts law also includes medical expenses for a physical injury caused by a

¹⁴ In addition to the states listed above, Indiana, Missouri and Virginia fold a fungible loaner into their standard for reasonable attempts to repair. Also, Kentucky and Minnesota require reimbursement for a substitute wheelchair. Both Illinois and South Carolina provide definitions of loaner chairs but their statutes are unclear as to the scope of any loaner requirement.

nonconformity (as covered in Alaska and the District of Columbia), but does so more narrowly.¹⁵

- NCART argues that the interplay between the refunds of a wheelchair and the interests of public payors and private insurers is unclear. [NCART letter, p. 2, #3h]. Specifically, they would like to ensure that when there is a refund, these funds go to the entity (public payor or private insurer) that advanced these costs.

In our experience under current law, when a refund of a purchase is made by the manufacturer, that refund already goes to the public payor or private insurer to reimburse them for the funds they previously spent. We believe that this is already required under regulations for public payors or under the terms of the insurance plan. The bill also protects the interests of “any holder of any perfected security interest, as their interests may appear. S.2567, SECTION 2, (C)(2)(b)(2) and (C)(2)(c). However, if the Committee believes there is a need for any additional clarifying language, we would certainly not object to including this.

- NCART ‘s letter [p. 3, #4] concludes by returning to its original argument, that the legislature should focus on issues such as unreasonable prior approval and excessive documentation requirements. Our response to this argument is contained in the first bullet point above, beginning on page three of this letter: First, these issues are distinct from warranty protections, and can and should be addressed independently. Second, these issues do not overlap; repairs that are subject to warranty are, by definition, not subject to prior approval and prescription or medical documentation requirements, and vice versa. Third, given the payors involved (Medicare, the Veterans Administration and national insurers), it may be difficult or impossible for the Massachusetts legislature to address the problem now raised by NCART. Finally, by expanding the wheelchair warranty law from one year (as is currently the case) to two years (which is the protection afforded Connecticut and Rhode Island by their state laws), both wheelchair consumers and wheelchair providers will be relieved of the medical and insurance paperwork for those repairs.

¹⁵ Even though this situation would likely be covered by the collateral source rule, S. 2567 provides only for the consumer to be able to claim their *out-of-pocket* medical expenses i.e., after insurance coverage. In the case of a MassHealth consumer, this would likely mean no medical claim whatsoever.

Thank you very much for the opportunity to respond to the NCART letter. We will follow up with your staff to determine if we may assist in answering any additional questions.

Very truly yours,



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Bill Fredericks, Allcare Medical Supply Corp.

APPENDIX “A” – SUMMARY OF H. 2567, *The Warranty Protections for Consumers with Disabilities Act.*

This bill would amend Mass General Law Chapter 93, section 107 (the Customized Wheelchair Lemon Law) to expand warranty protections for wheelchairs users. The Warranty Protections for Consumers with Disabilities Act would protect individuals with disabilities and strengthen our consumer protection laws by:

1. Expands the definition of “consumer” in the Customized Wheelchair Lemon Law to include those with full private/public insurance coverage and no out-of-pocket expenses for wheelchairs (***requires an update to the regulation 201 CMR 19***);
2. Sets the minimum warranty length at two years (like our neighboring states of RI and CT), compared to the current one year, and sets the default warranty period to three years if the manufacturer fails to follow these requirements;
3. Requires manufacturers to publicize notice of these warranty protections to consumers (like AZ, DE, and NY);
4. Expands the scope of the law to include not only customized wheelchairs, but any wheelchair or other aid that enhances the mobility or positioning of an individual with disability (most states have this type of coverage);
5. Expands the definition of “manufacturer” to include dealers with exclusive distribution arrangements with a manufacturer or that are designated by the manufacturer for repairs (like D.C. and VA);
6. Requires manufacturers to maintain inventory for all repair and replacement orders for wheelchairs under warranty pursuant to this law, either personally or through subcontractors (similar to the current MassHealth regulations 130 CMR 409.405 (f) and 130 CMR 409.412);
7. Defines “reasonable attempt to repair” to include either: 1) two repair attempts with continuing nonconformity (like 16 other states); or 2) twenty-one days out of service with continuing nonconformity, instead of the current rule of four unsuccessful attempts or 30 days out of service);¹⁶

¹⁶ Note that the current Massachusetts automobile lemon law provides for relief after three or more attempts or 15 more days out of service. G.L.c. 90 sec 7N ½. It is difficult to understand why a higher burden is placed upon wheelchair consumers given the at least comparable complexity of components in automobiles and the

8. Ensures that for the repair of nonconforming wheelchairs, the manufacturer shall provide for the consumer either: (a) a replacement wheelchair; or (b) reimbursement for the cost incurred by the consumer for renting a replacement wheelchair (16 states have some obligation on manufacturers to provide temporary replacement equipment or reimbursement of rental equipment during repairs);
9. Provides that when a wheelchair is both defective and inoperable, requiring the manufacturer or an authorized wheelchair dealer to assess the wheelchair within three (3) business days following notice and, if necessary, provide a replacement wheelchair within four (4) business days for the expected duration of repairs provided under the warranty;
10. Expands the “collateral costs” covered for consumers with defective wheelchairs to include shipping costs, transportation costs, out-of-pocket medical expenses (like D.C. and AK), as well as lost wages;
11. Changes the exception for “nonconformity” from “unauthorized modification or alteration” to unreasonable and foreseeable misuse by modification or alteration, providing a reasonable right to repair;
12. Authorizes the Attorney General to bring action under our consumer protection statute [c. 93A] to enforce this law and allows consumers to bring private causes of action under the consumer protection statute, (as is already the case in HI, KS, MD, OH and VT) and makes violations of the law per se “unfair or deceptive acts” (as is the case in MD and KS).
13. Requires the Office of Consumer Affairs and Business Regulation to report to the House and Senate Clerks and the Joint Committee on Children, Families, and Persons with Disabilities not later than January 1 of each year on the operational status of the wheelchair alternate arbitration mechanism; and
14. Requires the Secretary of the Executive Office of Consumer Affairs and Business Regulation to promulgate regulations as necessary pursuant to this act’s amendments of Chapter 93, section 107 within ninety days of this bill’s passage.

dependence of wheelchair consumers on their wheelchairs, in order to leave their homes and go to work, school or elsewhere in the community. See n. 6 above.

APPENDIX “B” - SUGGESTED AMENDMENTS TO H. 2567 OFFERED BY THE OFFICE OF THE ATTORNEY GENERAL MAURA HEALEY

We have received the following suggestions for revisions to H. 2567, with which the proponents listed above concur:

--Add the following definition in SECTION 2 of the bill:

“Inoperable”, unable to function or to function safely.

--In SECTION 2, paragraph (B)(2) (immediately preceding the notice language in capital letters) strike “...an understand...” and substitute “...may access...”

--The AGO also agrees with our request to correct a typographical error by substituting “foreseeable” for “unforeseeable” in the definitions in SECTION 2 of the bill.