



February 11, 2022

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

Re: **Opposition to Senate Bill 2567 – Expanding Wheelchair Warranty Protections**

Dear Senators Cronin and Fattman,

Thank you for offering to meet with our three organizations on February 15. In advance of that we wanted to formally communicate our strong opposition to Senate Bill 2567, an act expanding Wheelchair Warranty Protections. This bill has been referred to the Senate Ways & Means Committee and, as further explained below, should not be allowed to move forward.

As background, the Home Medical Equipment & Services Association of New England (HOMES www.homesne.org), the National Coalition for Assistive and Rehab Technology (NCART www.ncart.us), and the American Association for Homecare (AAHomecare www.aahomecare.org) represent manufacturers and providers of Home Medical Equipment (HME) and Complex Rehabilitative Technology (CRT) products, including manual and power wheelchairs. We provide education and advocacy to establish appropriate coverage and funding policies to ensure people with disabilities have adequate access to important medical equipment, such as manual and power wheelchairs, and the related supporting services.

Our wheelchair manufacturer members are recognized industry leaders who have decades of experience in the development of the products designed to address important medical and functional needs of individuals with disabilities. Our provider members collectively operate over 1,000 accredited Medicare/Medicaid locations across the country, including 54 locations serving the people of Massachusetts. These companies supply specialized products and critical supporting services to hundreds of thousands of children and adults in their local communities.

We appreciate your attention to improvements needed in the critical area of wheelchair repairs. While this bill is not the answer, we believe the focus should be on changes to problematic insurance plan policies and processes that will address the barriers that exist for people with disabilities.

We respectfully request that the State Legislature confer with all stakeholders on these areas to ensure that the bill provides genuine solutions instead of creating additional confusion, complications, and risks for wheelchair users and others.

Issues with Senate Bill 2567

We look forward to reviewing our concerns regarding Senate Bill 2567 when we meet with you on February 15. To help facilitate those discussions we are providing the following summary:

- 1.) Wheelchair manufacturers and providers have not been included in any discussions regarding the development of this bill. In a matter as significant as this, it is critical that there be inclusion of all stakeholders. The omission of wheelchair manufacturers and providers has resulted in legislative language that is impractical and will create confusion and negative consequences.
- 2.) The legislative language indicates a lack of understanding of the process of how wheelchair repairs are requested, provided, billed, and paid for. In addition, there is a misunderstanding regarding the distinct roles, responsibilities, and abilities of manufacturers versus providers (dealers). It is important to understand the distinction between manufacturers and providers. It is our understanding that the legislation requires manufacturers to make free repairs for the first two years after a person receives a wheelchair. Manufacturers do not have the network of resources in place to bear the responsibility of repairing wheelchairs; they employ a minimum number of technicians to provide customer service by telephone or travel to train their dealers. The wheelchair provider (dealer) is the organization that has the trained technicians to provide wheelchair fitting, support, and repair to wheelchair users.
- 3.) The legislative language is problematic in multiple other areas including:
 - a.) A warranty typically relates to a manufacturing defect, but the legislation defines it differently. The legislation connects all the listed repair rights to any condition or defect that substantially impairs the use, value, or safety of a wheelchair, and excludes only conditions which result from abuse, neglect, or unforeseeable misuse by consumer modification.
 - b.) Warranties do not cover normal wear and tear items (tires, batteries, brake pads, motor brushes, etc.). The definition of repair rights in the legislation includes any normal wear and tear. Warranty/defect is conflated with condition/repair.
 - c.) The definition of “nonconformity” is concerning. Many times, manufacturers may provide repair parts to their customers “under warranty” without verification, whether it is due to a manufacturer defect and not the result of “abuse” or “neglect”. If the bill were implemented, manufacturers would be forced to more closely evaluate for “nonconformity” and much closer scrutiny would likely result in certain items no longer being provided as warranty replacements (i.e., controllers/joysticks). This would create increased costs for both wheelchair users and insurance plans.
 - d.) CRT manual and power wheelchairs are highly individualized/customized to the person and are not easily replaceable on a loaner basis. These individual configurations are person-specific and designed to address the medical and functional needs of the person, which include breathing, digestion, skin pressure relief, and positioning.
 - e.) Providing a replacement wheelchair within four business days of notice is nearly impossible. CRT wheelchairs are made to order and can have very complex custom-molded seating systems.
 - f.) The legislation places a manufacturer in the position of deciding whether or not conditions result from abuse, neglect, or unforeseeable misuse, when a manufacturer is not the healthcare provider with access to the wheelchair user’s medical team.
 - g.) “Collateral costs” as defined in other statutes such as the Massachusetts Customized Wheelchair Lemon Law are similar to direct damages. The definition in the legislation is more in line with consequential damages which creates serious concerns. Direct damages refer to the lost benefit of the sale, while consequential damages refer to causation beyond the scope of a sale. This definition basically recategorizes certain consequential damages as direct damages, again, which is problematic and causes unnecessary confusion.

- h.) The legislation ignores the interaction with insurance plans (Medicare, Medicaid, commercial insurers) that pay for the wheelchair through their funding process. How will a refund be handled if a wheelchair is returned? The legislation requires a refund of the full purchase price to the consumer by the manufacturer, not to the insurance plan.
- 4.) The legislation does not address the fundamental barriers related to timely access to repair services for wheelchairs users. There are serious challenges for users of wheelchairs in accessing timely repairs and services. Unfortunately, the legislation does not offer the needed solutions for those users. Many of these current challenges stem from the unreasonable prior approval requirements, excessive documentation requirements, and insufficient payment rates of federal, state, and commercial insurance plans that are estimated to fund 90% of wheelchair repairs.

We appreciate the opportunity to share our deep concerns with Senate Bill 2567 and the need to not allow this legislation to move forward. As stated above, while this bill is not the answer, we would like to work with you to understand and resolve the existing barriers for wheelchair repairs for people with disabilities.

Thank you for your consideration of the above summary of issues. We look forward to discussing these and other items in more detail when we meet as a group on February 15.

Regards,



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