



Disability Rights Connecticut
"Connecticut's protection and advocacy system"

**846 Wethersfield Avenue
Hartford, CT 06114**

February 28, 2023

**Re: Testimony of Sheldon Toubman before the Human Services Committee
Regarding HB 6702 (Wheelchair Repairs)**

Good afternoon, Senator Lesser, Representative Gilchrest and other distinguished members of the Human Services Committee:

My name is Sheldon Toubman and I am the Litigation Attorney at Disability Rights CT. We are the Protection and Advocacy System for CT, serving individuals with a full range of physical, behavioral, intellectual and developmental disabilities. I am here to testify in general support of the goals of HB 6702 but to recommend a different approach which advocates believe will more effectively benefit people with mobility disabilities requiring the use of wheelchairs for independence.

First, we greatly appreciate your willingness to raise this bill to address the very serious problems which customized wheelchair users in CT are experiencing in getting their devices repaired in any kind of timely way, whether they are in the warranty period or not. At DRCT, we have received a number of calls from very frustrated consumers who have described a series of delays in trying to get equipment fixed. These delays are severely comprising the independence of individuals who must rely upon wheelchairs for basic mobility, including to get to work or even to move within their own homes. In some cases, defects in their equipment is creating serious dangers to users.

The root cause of the problem seems to be the low level of responsiveness by the two large national wheelchair supply companies which now completely control the market for customized wheelchairs in Connecticut, having bought out the small, local companies which used to provide quality service to wheelchair users. Having represented people with physical disabilities for many years, I remember when the local companies used to provide timely, personalized services to people

who depended on their wheelchairs for basic mobility- the owners knew many of their customers by name. They also stocked commonly needed parts so that their customers would not have to wait for them to be ordered and arrive to have repairs timely completed.

The committee's "right to repair" bill, as well as two others raised by members of the House, have helpfully raised awareness of the severity of the problem. In response, consumers and advocates have been meeting and the coalition working on this has determined that they need a somewhat different approach to the problem: rather than putting the burden on the consumer to repair devices on their own, which is often very difficult for wheelchair users, or to pay out of pocket for such repairs from a third party when the supplier of the equipment is not responsive, they believe the responsibility for such timely repair should be placed on the companies which have supplied these devices in the first place.

The coalition's proposed substitute bill is attached. The basics of the substitute bill which consumers in the coalition would like to see are:

1. The wheelchair supplier must in most cases come out to assess the equipment within 3 business days of a call regarding a need for repair, timely repair it, and, in the case of items under warranty only, provide a loaner wheelchair starting on the 4th business day if repair is not possible by then.
2. What is a "timely" repair should be determined through a broad stakeholder process having half consumers/half professionals to be convened by the Department of Aging and Disability Services and the Department of Consumer Protection no later than October 1, 2023- This is proposed in recognition that this is a complex issue and it would be difficult for the legislature to impose the standard; better to let the parties in interest try to thrash this out (which potentially may include a tiered set of deadlines for what is a timely response, depending on the type of repair, e.g., a tire replacement involving a standard part should be very quick). The stakeholder group would also continue to meet on a quarterly basis for two years after the regulations are promulgated to monitor implementation and attempt to resolve any remaining issues.
3. The Department of ADS should be responsible for promulgating regulations regarding what is "timely" repair by March 1, 2024 based on what the

stakeholder group comes up with but, in the event they cannot reach consensus, ADS should proceed to issue regulations anyway by that date, based on the input from the stakeholder group and the “best interests of consumers.”

4. Both the consumer and the Attorney General should have the right to bring an action in court if a supplier does not comply with the timely repair requirements in the ADS regulations.
5. The delivery of a custom wheelchair should include prominent written notice of the above rights.
6. Suppliers must stock parts or have a contract with another company to provide needed parts (often the source of the delay) overnight, wherever feasible.
7. Suppliers must have a staffed 24 hour call center for receiving calls about urgent wheelchair repair needs, if they are multi-state entities.
8. Prior authorization by insurers, including the Department of Social Services, should be prohibited for wheelchair repairs since the suppliers complain about the burden of going through this administrative process, and there really is not much judgement in whether or not a wheelchair needs to be repaired. (Prior authorization would still be allowed for original acquisition and modifications, and if the supplier specifically requested it for an expensive repair because they were concerned about eventual payment.)

We recognize that some tweaks may be needed to this proposed substitute language and that it is not in proper legislative format. Consumers and advocates are willing and able to help the committee in any way needed to craft legislation which addresses the festering serious problem you have identified in HB 6702.

Thank you for raising this bill and for the opportunity to speak with you about it today.

DRAFT SUBSTITUTE LANGUAGE FOR “RIGHT TO REPAIR” WHEELCHAIR REPAIR BILLS

Definitions Section:

The following words shall have the following meanings unless the context clearly indicates otherwise:-

“Authorized wheelchair dealer”: any seller of a wheelchair

“Complex rehabilitation technology wheelchair” shall mean, a specialized, medically necessary, and individually configured manual or power wheelchair. The provision of this specialized equipment requires evaluation, configuration, fitting, adjustment, and programming along with long-term maintenance and repair services.

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

“Defective”: having a condition of nonconformity.

“Express warranty”: an express warranty under Conn. Gen. Stat. § 42a-2-313 that is applicable to a wheelchair

“Inoperable”: unable to function or function safely.

“Manufacturer”: a person or entity that manufactures or assembles wheelchairs and agents of that person or entity, including an authorized wheelchair dealer, an importer, a distributor, factory branch, distributor branch and any warrantors of the manufacturer's wheelchair; provided, however, that

“manufacturer” shall not include a professional who fabricates, without charge, a device for use in the course of medical treatment.

“Nonconformity”: a condition, malfunction or defect that substantially impairs the use, value or safety of a wheelchair and which is covered by an express warranty applicable to the wheelchair or to a component of the wheelchair; provided, however, that “nonconformity” shall not include a condition or defect which results from abuse, neglect or unauthorized modification or alteration of the wheelchair.

“Original wheelchair”: the nonconforming wheelchair to be repaired, should it have been fully functional.

“Temporary loaner wheelchair”: a wheelchair provided to the consumer that: (i) is free of charge; (ii) is in good working order; (iii) is able to perform the most essential functions of the original device, in light of the disabilities of the user; and (iv) does not have any differences from the original device that create a threat to health or safety; provided, however, that a “temporary loaner wheelchair” need not be new or identical to or have functional capabilities equal to or greater than those of the original wheelchair.

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

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

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

Section Prohibiting Prior Authorization for Wheelchair Repairs

Prior authorization for any necessary repair of a complex rehabilitation technology wheelchair shall not be required by any payor for such a wheelchair originally paid for by the payor, provided, however, that an authorized wheelchair dealer may nevertheless request prior authorization if they are concerned about non-coverage of the repair by the payor and, in that event, the payor shall be required to timely process any request so submitted and provide a written response to both the dealer and the consumer.

Section Requiring Three-Day Turnout to Assess Repairs, and that DADS Produce Regulations with Input from Stakeholder Group Establishing Minimum Turnaround Times for the Repairs

Any authorized wheelchair supplier that provides a complex rehabilitation technology wheelchair to a resident of Connecticut shall be required to come to the home of the consumer within the State of Connecticut within three business days of receiving a call that repair is needed to a complex rehabilitation technology wheelchair to assess the needed repairs and if possible provide any immediate repairs necessary to prevent harm to the consumer, and shall then be required to repair said product in a timely manner, regardless of whether the equipment is still covered under warranty and regardless of whether the payor of the equipment is paying for the repairs, provided that the consumer shall be required to pay for the repairs if there is no such coverage. The three-day assessment requirement will be satisfied if a photograph can be provided by the consumer to the dealer and this is sufficient to fully assess the repair needed within three days. An exception to the three-day assessment requirement shall apply only if (1) the consumer clearly states they can wait more than three days after being informed by the dealer of the right to assessment within that period in all cases, and (2) the consumer consents at the same time to the specific alternative period by which the assessment will be completed as proposed by the dealer. The supplier shall employ sufficient staff to comply with this subsection. Pursuant to this subsection, the Department of Aging and Disability Services shall establish standards for repairing complex rehabilitation technology wheelchairs in a timely manner, and the expected quality of each repair, through regulations promulgated no later than March 1, 2024. Prior to promulgating any standards or regulations pursuant to this subsection, the Department of Aging and Disability Services shall, jointly with the Department of Consumer Protection, engage in a stakeholder process, which process shall include qualified complex rehabilitation technology professionals, authorized wheelchair suppliers, and complex rehabilitation technology wheelchair consumers identified by consumer-led disability advocacy organizations. The membership of the stakeholder group shall be half professionals/industry representatives and half consumers. The first meeting of this group shall be convened no later than October 1, 2023. This stakeholder process will be used to develop the requirements for timeliness and quality of repair, PROVIDED, HOWEVER, that, if the stakeholder group process does not result in a consensus on such requirements, or some of them, the Department of Aging and Disability Services shall nevertheless proceed to issue regulations by March 1, 2024, based on input from the stakeholders and what is in the best interests^{of} consumers. After the regulations are promulgated, the stakeholder group shall continue to be reconvened on a quarterly basis during the fiscal years ending July 1, 2025, and July

1, 2026, by the Department of Aging and Disability Services, to discuss ongoing issues related to wheelchair repairs and attempt to resolve any remaining concerns.

Section re Enforcement of New DADS Regulations related to Timely Repair

The Department of Aging and Disability Services may promulgate regulations providing for the imposition of sanctions on any authorized wheelchair dealer which fails to comply with the statutory duty to assess equipment within three business days or fails to repair equipment within the period for timely repair specified in the Department’s regulations adopted under this section.

The Connecticut Attorney General is hereby authorized to bring an action under the Connecticut Unfair Trade Practices Act to enforce this section and to obtain restitution, civil penalties, injunctive relief and any other relief awarded pursuant to said chapter.

A consumer may bring a private right of action under the Connecticut Unfair Trade Practices Act to enforce this section. A violation of this section shall constitute an unfair or deceptive act under said chapter. In addition to pursuing any other remedy, including relief under said chapter, a consumer may bring an action to recover for damages caused by a violation of this section. The court shall award a consumer who prevails in such an action twice the amount of any monetary loss, together with costs, disbursements and reasonable attorney fees and any equitable relief that the court deems is appropriate. Nothing contained in this section shall limit any rights or remedies available to a consumer under any other law. Any waiver by a consumer of rights under this section shall be void.

Section Regarding Right to Prompt Repair/Loaner and Duty to Provide Notice of Same During Warranty Period

Notwithstanding any contrary provision in Conn. Gen. Stat. § 42-330 et seq, if a wheelchair covered by a manufacturer’s warranty has a nonconformity to which the warranty is applicable and is made available by a consumer to the manufacturer or authorized wheelchair dealer for the repair of the nonconformity, the manufacturer shall cover all collateral costs and shall provide directly to the consumer, for the duration of the repair period and as selected by the consumer: (A) a temporary loaner wheelchair; or (B) reimbursement for the cost incurred by the consumer for renting a wheelchair while the original wheelchair is assessed and repaired. If the original wheelchair within the period of the warranty is both defective and inoperable, the manufacturer or authorized wheelchair dealer must assess the wheelchair

not more than three (3) business days following notice from the consumer that repair is needed to a wheelchair and if possible provide any immediate repairs necessary to prevent harm to the consumer, and shall then, if necessary, provide a temporary loaner wheelchair to the consumer not less than four (4) business days following notice from the consumer of the need for repair for the expected duration of repairs provided under the warranty. The manufacturer or authorized dealer shall provide the consumer with an estimated timeframe for assessment and, following assessment, any repairs.

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

“IMPORTANT: IF THIS WHEELCHAIR IS DEFECTIVE WITHIN THE PERIOD OF YOUR WARRANTY OR WITHIN 2 YEARS FROM THE DATE OF FIRST DELIVERY, WHICHEVER IS LATER, YOU MAY BE ENTITLED UNDER STATE LAW TO REPLACEMENT OF THE WHEELCHAIR OR A REFUND OF ITS PURCHASE PRICE. HOWEVER, TO BE ENTITLED TO A REFUND OR REPLACEMENT, YOU MUST FIRST NOTIFY THE MANUFACTURER, THE WHEELCHAIR LESSOR OR THE WHEELCHAIR DEALER OF THE NON-CONFORMITY AND GIVE THE MANUFACTURER OR AUTHORIZED WHEELCHAIR DEALER AN OPPORTUNITY TO REPAIR THE WHEELCHAIR IN ACCORDANCE WITH CONN. GEN. STAT. § 42-330 ET SEQ. IF THIS WHEELCHAIR IS BOTH DEFECTIVE AND INOPERABLE WITHIN THE PERIOD OF YOUR WARRANTY, THE MANUFACTURER OR AUTHORIZED WHEELCHAIR DEALER MUST ASSESS THE WHEELCHAIR NOT LESS THAN 3 BUSINESS DAYS FOLLOWING NOTICE OF THE NEED FOR REPAIR AND, IF NECESSARY, PROVIDE A TEMPORARY LOANER WHEELCHAIR WITHIN 4 BUSINESS DAYS FOR THE EXPECTED DURATION OF REPAIRS PROVIDED FOR UNDER THE WARRANTY.”

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

Section re Duty to Have Parts Readily Available for Wheelchairs

Authorized wheelchair dealers shall be required to fill all repair and replacement orders for wheelchairs from their own inventory or have a written subcontract for the purchase of items necessary to fill repair

and replacement orders; provided however, that the subcontract shall be in writing and contain, at a minimum: (A) names, addresses, phone numbers and contact information for both entities; (B) the contract term start and end dates; (C) a description of the wheelchairs covered under the subcontract and the cost of each item; (D) signatures of both parties, including signature dates and position titles; (E) an established credit limit that is reasonable, based on the value of the products and services to be provided by the contractor; and (F) a provision requiring shipping of parts, whenever feasible, by overnight delivery.

Section re Duty to Operate 24 Hour Call Center

Any authorized wheelchair dealer operating in Connecticut plus at least one other state shall operate a 24 hour/7 days per week call center for individuals with urgent wheelchair repair needs, and such call center shall be live-staffed at all times.