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S T A T E O F R H O D E I S L A N D

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2025

A N A C T

RELATING TO COMMERCIAL LAW -- GENERAL REGULATORY PROVISIONS -- RIGHT TO CONSUMER ACCESS TO POWERED WHEELCHAIR REPAIRS

Introduced By: Representatives Diaz, Kislak, Bennett, Edwards, Giraldo, Shallcross Smith, Ajello, and Fogarty
Date Introduced: January 10, 2025

Referred To: House Corporations

It is enacted by the General Assembly as follows:

SECTION 1. Title 6 of the General Laws entitled "COMMERCIAL LAW — GENERAL REGULATORY PROVISIONS" is hereby amended by adding thereto the following chapter:

CHAPTER 61

RIGHT TO CONSUMER ACCESS TO POWERED WHEELCHAIR REPAIRS

6-61-1. Definitions.

For purposes of this chapter, unless the context otherwise requires:

(1) “Authorized repair supplier” means an individual or business who is unaffiliated with an original equipment manufacturer and who has an arrangement with the original equipment manufacturer, for a definite or indefinite period, under which the original equipment manufacturer grants to the individual or business a license to use a trade name, service mark, or other proprietary identifier for the purposes of offering the services of inspection, diagnosis, maintenance, or repair of powered wheelchairs under the name of the original equipment manufacturer, or other arrangement with the original equipment manufacturer to offer those services on behalf of the original equipment manufacturer. An original equipment manufacturer who offers the services of inspection, diagnosis, maintenance, or repair of its own powered wheelchairs, and who does not have an arrangement with an unaffiliated individual or business, shall be considered an authorized repair supplier with respect to that equipment.

(2) “Commissioner” means the health insurance commissioner.

(3) “Complex manual wheelchair” means manually driven complex wheelchair that can accommodate rehabilitative accessories and features.

(4) “Complex power wheelchair” means a power-driven complex wheelchair, as defined by the Center for Medicare and Medicaid Services (“CMS”) that is classified as a Group 2 power wheelchair with power options that can accommodate rehabilitative features to include, but not limited to, tilt in space; or a Group 3, Group 4 or Group 5 power wheelchair.

(5) “Complex rehabilitation technology (CRT)” or “complex wheelchair” means items that are individually configured for individuals to meet their specific and unique medical, physical, and functional needs and capacities for basic activities of daily living and instrumental activities of daily living identified as medically necessary, and shall include options and accessories related to any of such items. Current healthcare common procedure coding system (“HCPCS”) shall fall under the definition of complex rehabilitation technology, and any amendments to HCPCS subsequently added or created by the federal government shall be included within the definition of complex rehabilitation technology and shall be added to the covered HCPC list.

(6) “Complex rehabilitation wheelchair manufacturer” or “manufacturer” means a person or company that designs, develops, tests, and produces finished systems or components of those systems and sells all products or components to:

(i) Authorized providers for distribution; or

(ii) To other manufacturers for the production of more complex wheelchair systems. Manufacturers are also responsible for maintaining compliance with relevant production regulations and standards and reporting as designated by federal and state authorities.

(7) “Consumer” means a member of a health carrier who uses a complex rehab technology with which the CRT supplier has a contractual relationship.

(8) “Consumer-owned backup complex power wheelchair” means a retired power wheelchair, that can be safely used by the consumer when a manual backup or suitable loaner wheelchair cannot be supplied to meet the consumer’s medical needs.

(9) “Covered person” means a policyholder, subscriber, or other person participating in a policy, contract, or plan that provides for third-party payment or prepayment of health or medical expenses.

(10) “Defect” means an abnormality that impairs the quality, function, or utility of a wheelchair from its intended design and purpose.

(11) "Department" means the department of business regulation established pursuant to the provisions of chapter 14 of title 42.

(12) “Embedded software” means any programmable instructions provided on firmware

delivered with an electronic component of equipment, or with a part for that equipment, for purposes of equipment operation, including all relevant patches and fixes made by the manufacturer of the equipment or part for these purposes.

(13) "Evaluation/diagnostic time" means time and labor during which a qualified technician troubleshoots and diagnoses any wheelchair adjustments or repair needs.

(14) "Executive office" means the executive office of health and human services, the agency designated by state law and the Medicaid state plan as the Medicaid single state agency.

(15) "Fair and reasonable terms and costs," with respect to obtaining manufacturer documentation, parts, embedded software, firmware, or tools from a manufacturer to provide services, means terms that are equivalent to the most favorable terms that the manufacturer offers to an authorized repair supplier and costs to the buyer that are no greater than the manufacturer's suggested retail price:

(i) For documentation, including any relevant updates, "fair and reasonable terms and costs" also means at no charge, except that, when the documentation is requested in physical printed form, a charge may be included for the reasonable actual costs of preparing and sending the copy;

(ii) For software tools, "fair and reasonable terms and costs" also means all of the following:

(A) Provided at no charge and without requiring authorization or Internet access;

(B) Without imposing impediments to access or use, in the course of effecting the diagnosis, maintenance, or repair and without impairing the efficient and cost-effective performance of the diagnosis, maintenance, or repair;

(C) Enables full functionality;

(iii) If an original equipment manufacturer does not utilize an authorized repair supplier, "fair and reasonable terms and costs" means an equitable price charged to the buyer in consideration of the actual cost to the original equipment manufacturer to prepare and distribute the part, tool, service access method, or documentation, exclusive of any research and development costs incurred.

(16) "Firmware" means a software program or set of instructions programmed on equipment, or on a part for that equipment, to allow the equipment or part to communicate within itself or with other computer hardware.

(17) "Health care professional" means an individual who is licensed, registered, or certified under federal or state law or regulation to provide health care services.

(18) "Health plan" or "payer" means an entity subject to the insurance laws of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide health

insurance coverage including, but not limited to, an insurance company, a health maintenance organization and a nonprofit hospital and medical service corporation.

(19) "Independent repair provider" means an individual or business, other than the manufacturer, that is engaged in the services of inspection, diagnosis, maintenance, or repair of equipment for the purposes of returning it to the safety and performance specifications established by the manufacturer and to meet its original intended use.

(20) "Inoperable" means when a wheelchair becomes unusable due to a mechanical or electronic breakdown or failure.

(21) "Loaner" means a properly working wheelchair that performs the essential functions of the original wheelchair and that is provided to the consumer on a temporary basis while the consumer's wheelchair is being repaired/replaced. A "loaner" wheelchair is further defined to be in good working order, does not create any threat to the consumer's health or safety, and need not be new or identical to or have the same functional capabilities as those of the original wheelchair.

(22) "Manufacturer documentation" means any manual, diagram, reporting output, service code description, schematic, or other guidance or information used in effecting the services of inspection, diagnosis, maintenance, or repair of powered wheelchairs.

(23) "Medical documentation" means any chart notes, letters of medical necessity, prescriptions, or other clinical documentation demonstrating the initial or continued medical necessity of qualifying complex rehabilitation technology.

(24) "Non-conformity" means a condition or defect that significantly impairs the use, value, function or safety of an assistive device or any of its components, but does not include a condition or defect of the device that is the result of:

(i) Abuse, misuse or neglect by a consumer;

(ii) Modifications or alterations not authorized by the manufacturer;

(iii) Normal wear;

(iv) Normal use which may be resolved through a fitting adjustment, routine maintenance, preventative maintenance or proper care; or

(v) A consumer's failure to follow any manufacturer's written service and maintenance guidelines furnished to the customer at the time of purchase.

(25) "Prior authorization" means any requirement held by the payer that the covered person or the qualified complex rehabilitation technology supplier obtain written or verbal approval from the payer [or other insurer] before completing needed services or providing equipment to a covered person.

(26) "Qualified complex rehabilitation technology professional" means an individual who

is certified as an assistive technology professional (ATP) by a professional organization providing certification of assistive technology professions.

(27) "Qualified complex rehabilitation technology supplier" or "supplier" means a company or entity that meets all of the following criteria:

(i) Is accredited by a recognized accrediting organization as a supplier of complex rehabilitation technology;

(ii) Is an employer of at least one qualified complex rehabilitation technology professional to analyze the needs and capacities of the complex needs consumer in consultation with qualified health care professionals, to participate in the selection of appropriate complex rehabilitation technology for those needs and capacities of the complex needs consumer, and to provide training in the proper use of the complex rehabilitation technology;

(iii) Requires a qualified complex rehabilitation technology professional to be physically present for the evaluation and determination of appropriate complex rehabilitation technology for a complex needs consumer;

(iv) Has the capability to provide service and repair by trained technicians for all complex rehabilitation technology it sells; and

(v) Provides written information at the time of delivery of the complex rehabilitation technology to the complex needs consumer stating how the complex needs consumer may receive service and repair for the complex rehabilitation technology.

(28) "Recipient" means a person receiving benefits under the state Medicaid program, including a person whose Medicaid eligibility is being redetermined.

(29) "Third party payer" means an entity other than the consumer of healthcare supplier, that reimburses and manages health care expenses, such as insurance companies and government payers.

(30) "Tools" means any software program, hardware, or other apparatus used in inspection, diagnosis, maintenance, or repair of powered wheelchairs, including software or other mechanisms that provision, program, or pair a new part, calibrate functionality, or perform any other function required to bring the product back to fully functional condition.

(31) "Trade secret" shall have the same meaning as set forth in § 6-41-1.

(32) "Trip/travel allowance" means compensation for travel to the recipient's home or location for the purpose of facilitating a repair to a complex wheelchair.

(33) "Warranty" means a guarantee made by a manufacturer regarding the integrity or condition of the product and the terms and conditions under which repairs, refunds, or exchanges shall be made if the product does not function as originally described or intended within a specified

period.

6-61-2. No prior authorization for repair of complex wheelchairs.

(a) A health plan's coverage and payment of complex wheelchair repairs shall not require:

(1) A qualified complex rehabilitation technology supplier to obtain any form of prior authorization; or

(2) Any medical documentation to complete repairs for consumer-owned complex rehabilitation technology.

(b) The complex rehabilitation technology supplier shall maintain documentation of any repairs and/or maintenance completed for consumer-owned complex wheelchairs. Such documentation shall not be subject to general audits.

6-61-3. Requirement for suppliers to service what they sell.

A supplier who sells complex power or complex manual wheelchairs shall meet the criteria of a "qualified complex rehabilitation technology supplier", as defined in § 6-61-1 and for complex wheelchairs that a supplier has sold, the supplier is required to offer service and repairs during the wheelchair's useful life expectancy, unless:

(1) The consumer has moved outside of the original supplier's service area;

(2) The damage that requires repair is the result of consumer abuse or misuse of the equipment that restricts coverage by the client's health plan, and the client refuses to pay for the repairs; or

(3) The consumer or their representative poses a potential threat to the health and safety of the supplier or is otherwise abusive.

6-61-4. Consumer access to parts -- Self repairs.

(a) For the purpose of providing services for power wheelchair equipment, an original equipment manufacturer shall, with fair and reasonable terms and costs, make available, as defined in § 6-61-1, to an independent repair supplier or consumer of the manufacturer's equipment, manufacturer 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.

(b) With respect to power wheelchair equipment that contains an electronic security lock or other security-related function, an original power wheelchair equipment manufacturer shall, with fair and reasonable terms and costs, make available to independent repair suppliers and owners any manufacturer 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

suppliers and consumers through appropriate secure release systems.

(c) For powered wheelchairs, consumers can self-repair or have repairs performed by an independent repair supplier. This section shall not apply to any part(s) requiring programmability, calibration, or clinical involvement to ensure appropriate consumer seating and positioning. Items included in this section for powered wheelchairs shall include:

(1) Batteries;

(2) Battery chargers;

(3) Nonprogrammable joysticks;

(4) Joystick housings or brackets;

(5) Wheel assembly;

(6) Non-positioning accessories;

(7) Anti-tip devices;

(8) Armrests, excluding positioning components, designed for adjustment by a therapist or assistive technology professional;

(9) Caster spheres;

(10) Cosmetic shrouding; and

(11) Nonpowered leg lowers.

(d) This chapter does not require an original power wheelchair equipment manufacturer to divulge a trade secret, except as necessary to provide documentation, parts, tools, service access methods, and training courses and materials on fair and reasonable terms. An original equipment manufacturer may redact documentation to remove trade secrets from the documentation before providing access to the documentation if the usability of the redacted documentation for the purpose of providing services is not diminished. An original equipment 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 the information is a trade secret and the usability of the part, embedded software, firmware, or tool for the purpose of providing services is not diminished.

(e) An original power wheelchair manufacturer which fails to produce a replacement part because the part is out of stock and the manufacturer is unable to obtain the part, shall not be subject to the penalties as provided in chapter 13.1 of title 6 if the original equipment manufacturer does the following:

(1) Informs the consumer or independent repair provider that the part is out of stock, and, consequently, the manufacturer is unable to obtain the part; and

(2) Makes the part available to the consumer or independent repair provider within five (5) business days of when the part becomes available.

(f) An original equipment manufacturer is not liable for faulty or otherwise improper repairs provided by independent repair suppliers or owners, including faulty or otherwise improper repairs that cause any of the following:

(1) Damage to a powered wheelchair that occurs during the repairs;

(2) Any indirect, incidental, or consequential damages; or

(3) An inability to use, or a reduced functionality of, a powered wheelchair resulting from faulty or otherwise improper repair.

6-61-5. Rules and regulations.

The department of business regulation may promulgate rules and regulations to implement and enforce the provisions of §§ 6-61-2, 6-61-3 and 6-61-2.

6-61-6. Application and scope.

(a) This chapter applies to the following classes of third-party payment supplier contracts, policies, or plans delivered, issued for delivery, continued, or renewed in this state on or after January 1, 2026:

(1) Individual or group accident and sickness insurance providing coverage, pursuant to chapter 18 of title 27, on an expense incurred basis; and

(2) An individual or group hospital, chapter 19 of title 27 or medical service contract issued pursuant to chapter 20 of title 27; and

(3) An individual or group health maintenance organization contract regulated under chapter 41 of title 27; and

(4) A plan established for public employees pursuant to chapter 12 of title 36; and

(5) The medical assistance program under chapter 8 of title 40 including all managed care organizations acting pursuant to a contract with the executive office of health and human services to administer the medical assistance program.

(b) The commissioner may promulgate rules and regulations to implement and enforce the provisions of this section.

SECTION 2. This act shall take effect upon passage.

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EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

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RELATING TO COMMERCIAL LAW -- GENERAL REGULATORY PROVISIONS -- RIGHT TO CONSUMER ACCESS TO POWERED WHEELCHAIR REPAIRS

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This act would provide that original power wheelchair equipment manufacturers would be required to provide to independent service providers repair information and tools to maintain and repair original power wheelchair equipment.

This act would take effect upon passage.

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LC000432/SUB A
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