



March 23, 2021

Representative Dylan Roberts
Chair, House Committee on Business Affairs and Labor
Colorado General Assembly
200 E Colfax, Room 307
Denver, CO 80203
Submitted electronically to dylan.roberts.house@state.co.us

Re: Opposition to passage of House Bill HB21-1199, the “Consumer Digital Repair Bill of Rights Act”.

Dear Chair Roberts and Committee Members,

The following comments are submitted on behalf of the National Coalition for Assistive and Rehab Technology (NCART) in opposition of House Bill HB21-1199, the “Consumer Digital Repair Bill of Rights Act”. To summarize, we respectfully oppose passage of this bill based on serious concerns with the negative impacts and risks that would result for: (a) people with disabilities in Colorado who depend on complex rehabilitative power wheelchairs and (b) the manufacturers of these specialized products.

NCART

NCART is a nonprofit national association of manufacturers and providers of Complex Rehabilitative Technology (CRT) products. We provide education and advocacy to establish appropriate coverage and funding policies to ensure people with significant disabilities such as ALS, spinal cord injury, cerebral palsy, multiple sclerosis, muscular dystrophy, and traumatic brain injury have adequate access to the specialized CRT equipment and related supporting services they require.

CRT products are a specialized subset of products classified within the Durable Medical Equipment (DME) category. These items include medically necessary and individually configured manual and power wheelchairs, seating and positioning systems, and other adaptive equipment such as bathing equipment, standing devices, and gait trainers.

Our CRT power wheelchair manufacturer members are recognized industry leaders who have decades of experience in the development of these CRT products designed to address important medical and functional needs of individuals with disabilities. Our provider members operate over 780 accredited Medicare/Medicaid locations across the country, collectively supplying specialized products and critical supporting services to hundreds of thousands of children and adults in their local communities.

Concerns and Opposition

We respectfully submit the following concerns and opposition regarding the “Consumer Digital Repair Bill of Rights Act”:

1.) National concerns about precedents of “Right-to-Repair” legislation and impact on consumers.

“Right-to-repair” legislation mandates that original equipment manufacturers (OEMs) treat any independent repair provider or individual owner much the same way as the OEM’s authorized network providers – but without any contractual protections, requirements, or restrictions. In doing so, the bill places consumers and their data at risk, undermines the business of companies that are part of OEM-authorized networks, and stifles innovation by putting hard-earned intellectual property in the hands of hundreds, if not thousands, of new entities. It also raises significant questions regarding protecting warranty coverage for consumers and legal recourse for negligent repairs. Finally, but of extreme importance, manufacturers of medical devices have responsibility to report certain information that could be identified by and gathered by a trained technician. Manufacturers do not have the capacity to oversee a large group of independent repair providers to which they are not otherwise contracted.

The legislation also fails to account for the wide range of repair and refurbishment options currently available to consumers from both OEM-authorized and independent repair sources. More than 20 state legislatures have already reviewed similar legislation. No bill has passed, however, as states have come to the determination that legislating repair rules for manufacturers created more issues for consumers than answers.

2.) HB21-1199 does not address the fundamental barriers that compromise timely access to repair services for users of CRT power wheelchairs; General Assembly attention and action should be redirected.

There are real challenges for users of CRT power wheelchairs being able to access timely repairs and services, but unfortunately this bill does not provide the needed solutions. It must be recognized that many of these challenges and barriers stem from poor policies and payment rates of federal, state, and commercial insurance plans that are estimated to fund 90% of these types of services.

The problems contributing to access issues include inadequate labor-hour payment rates, lack of reimbursement for total actual hours worked, lack of payment for “travel time”, inadequate reimbursement amounts for the parts supplied, unrealistic prior approval requirements, and excessive documentation requirements.

The fact that the time and costs of “travel” is not reimbursed is significant. Any repair service involves at least one, if not two, roundtrips to the consumer’s location and funding policies do not allow for reimbursement for this part of providing repairs. Another negative factor is that for most insurers, repair parts are reimbursed based on a set fee schedule amount which in some situations is below the cost the supplier pays for the part.

The reality is that the business dynamics of providing repairs and services for CRT power wheelchairs make it extremely difficult for CRT providers and manufacturers. The business must have fully trained technicians with electronics expertise, maintain an adequate parts inventory, be able obtain and submit the required approval and funding documentation, and be able to

respond in a timely manner to a variety of situations and large geographic areas. These operating costs and investments are significant and must be absorbed in an environment of inadequate coverage and payment.

This legislation will not provide resolutions to the true barriers to timely access. However, the legislative interest and attention is sincerely appreciated and should be redirected to focus on needed actions in the policy and regulatory area.

- 3.) HB21-1199 does not recognize the policy requirements of federal, state, and commercial insurance plans that consumers must meet in order that the cost of their CRT power wheelchairs repairs be covered and puts them at risk for losing any opportunity for reimbursement.

Federal, state, and commercial insurance plans typically only pay for services that are provided by their enrolled suppliers based upon claims submitted with the appropriate documentation including, if applicable, the required prior approval. Should consumers obtain repairs from an independent repair center who is not enrolled with a particular insurance plan they risk losing any opportunity to be reimbursed for the cost of the repair.

- 4.) HB21-1199 would create additional risks for people with disabilities who rely on CRT power wheelchairs and the manufacturers who produce them.

Manufacturers offer authorized repair networks to provide consumers with assurance that their products are serviced by properly trained and vetted repair professionals who have the necessary skills to safely and reliably repair electronic products.

Most consumer technology products are comprised of complex electronics which require specialized training and sophisticated test instruments to repair safely. Some types of repairs can be extremely detailed, complicated, and dangerous to anyone without proper training.

Manufacturers want to ensure that their products are serviced by professionals who understand the intricacies of their products and have spent time procuring the knowledge necessary to safely repair them and return them to consumers without compromising those standards or undermining the safety and security of their products. Authorized repair networks not only include training requirements but also but also have the technical skills and test instruments to verify that repair parts meet all necessary performance and safety specifications. Consumers can be protected by warranties or other means of recourse. The legislation provides no such protections for consumers, repair shops, or manufacturers.

When an electronic device requires repair or service, consumers have a variety of professional repair options, including using an OEM's authorized repair network, which often include local repair service providers as well as mail-in and even in-house repair options for some categories of products. Consumers may also choose to use one of many independent repair providers; although they do so without the quality assurance provided by using a manufacturer's authorized network provider. The point is that the free-market economy provides a wide range of consumer choice for repair with varying levels of quality, price, and convenience without

mandates imposed by the state.

Manufacturers' authorized networks of repair facilities guarantee that repairs meet OEM performance and safety standards. If an OEM's brand and warranty are to stand behind repair work and assume product liability, it is only reasonable that the repair facility demonstrates competency and reliability. Without the training and other quality assurance requirements of authorized service providers, manufacturers would not be able to stand behind their work, warranties, technical support, ongoing training, and business support.

5.) HB21-1199 would compromise existing federal oversight of medical devices.

Medical technology servicing and repair by original equipment manufacturers is highly regulated by the FDA and servicing of these devices is sensitive as it relates to patient safety and device system security. Medical technology manufacturers maintain their own devices or provide repair information to authorized third-party servicers they contract with for device servicing. Medical technology companies are generally supportive of voluntary contractual agreements with third party servicers and repair entities, provided they can enforce rigorous quality standards and meet their own reporting obligations with the FDA.

Third-party servicing entities, not under contract with device manufacturers, are not subject to these same provisions. Further, under the provisions of this bill, an unknown repair or servicing entity could complete an "invisible repair" that is totally unknown to the medical technology company or to the FDA, making reporting and tracking with respect to the quality of third-party work impossible. Guaranteeing the safety of a patient or the integrity of the cybersecurity infrastructure of a hospital, or the health care system generally, would become equally impossible under this proposal.

Thank you for considering our comments and opposition and not pursuing passage of HB21-1199 based on serious concerns with the negative impacts and risks that would result for: (a) people with disabilities in Colorado who depend on complex rehabilitative power wheelchairs and (b) the manufacturers of these specialized products.

Additional Information

NCART has a sincere desire to collaborate with the General Assembly and others in the state to produce the best support systems and outcomes for Colorado residents with disabilities who depend on CRT power wheelchairs. We are happy to provide additional information and engagement via telephone or virtually.

Sincerely,



Donald E. Clayback

Executive Director

716-839-9728

dclayback@ncart.us | www.ncart.us

CC:

Rep. Brianna Titone: brianna.titone.house@state.co.us

House Committee on Business Affairs and Labor-

Rep. Tom Sullivan: tom.sullivan.house@state.co.us

Rep. Judy Amabile: judy.amabile.house@state.co.us

Rep. Shannon Bird: shannon.bird.house@state.co.us

Rep. Terri Carver: terri.carver.house@state.co.us

Rep. Monica Duran: monica.duran.house@state.co.us

Rep. Mike Lynch: mike.lynch.house@state.co.us

Rep. Kyle Mullica: kyle.mullica.house@state.co.us

Rep. Patrick Neville: patrick.neville.house@state.co.us

Rep. Naquetta Ricks: naquetta.ricks.house@state.co.us

Rep. Shane Sandridge: shane.sandridge.house@state.co.us

Rep. Marc Snyder: marc.snyder.house@state.co.us

Rep. Kevin Van Winkle: kevin.vanwinkle.house@state.co.us