By Senator Forman

32-1257-00

A bill to be entitled

An act relating to medical equipment; amending s. 400.295, F.S.; defining the terms "collateral costs," "nonconformity," and "warranty rights period"; creating s. 400.936, F.S.; providing for warranties and equipment repairs; providing for notice of consumer's rights; amending s. 427.802, F.S.; redefining the terms "assistive technology devices" and "assistive technology device dealer"; amending s. 427.803, F.S.; revising the duties of assistive technology device dealers and manufacturers; amending s. 427.8041, F.S.; eliminating a fee; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 400.925, Florida Statutes, is amended to read:

400.925 Definitions.--As used in this part, the term:

(1) "Accrediting organizations" means the Joint Commission on Accreditation of Healthcare Organizations or other national accreditation agencies whose standards for accreditation are comparable to those required by this part for licensure.

(2) "Affiliated person" means any person who directly or indirectly manages, controls, or oversees the operation of a corporation or other business entity that is a licensee, regardless of whether such person is a partner, shareholder, owner, officer, director, agent, or employee of the entity.

(3) "Agency" means the Agency for Health Care Administration.

(4) "Applicant" means an individual applicant in the case of a sole proprietorship, or any officer, director, agent, managing employee, general manager, or affiliated person, or any partner or shareholder having an ownership interest equal to 5 percent or greater in the corporation, partnership, or other business entity.

(5) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative home medical equipment device.

(6)~~(5)~~ "Consumer" or "patient" means any person who uses home medical equipment in his or her place of residence.

(7)~~(6)~~ "Department" means the Department of Children and Family Services.

(8)~~(7)~~ "General manager" means the individual who has the general administrative charge of the premises of a licensed home medical equipment provider.

(9)~~(8)~~ "Home medical equipment" includes any product as defined by the Federal Drug Administration's Drugs, Devices and Cosmetics Act, any products reimbursed under the Medicare Part B Durable Medical Equipment benefits, or any products reimbursed under the Florida Medicaid durable medical equipment program. Home medical equipment includes, but is not limited to, oxygen and related respiratory equipment. Home medical equipment includes customized wheelchairs and related seating and positioning, but does not include prosthetics or orthotics or any splints, braces, or aids custom fabricated by a licensed health care practitioner.

(10)~~(9)~~ "Home medical equipment provider" means any person or entity that sells or rents or offers to sell or rent to or for a consumer:

(a) Any home medical equipment and services; or

(b) Home medical equipment that requires any home medical equipment services.

(11)~~(10)~~ "Home medical equipment provider personnel" means persons who are employed by or under contract with a home medical equipment provider.

(12)~~(11)~~ "Home medical equipment services" means equipment management and consumer instruction, including selection, delivery, setup, and maintenance of equipment, and other related services for the use of home medical equipment in the consumer's regular or temporary place of residence.

(13)~~(12)~~ "Licensee" means the person or entity to whom a license to operate as a home medical equipment provider is issued by the agency.

(14)~~(13)~~ "Moratorium" means a mandated temporary cessation or suspension of the sale, rental, or offering of equipment after the imposition of the moratorium. Services related to equipment sold or rented prior to the moratorium must be continued without interruption, unless deemed otherwise by the agency.

(15) "Nonconformity" means a condition or defect of a home medical equipment device which substantially impairs the use, value, or safety of the device and which is covered by an express warranty applicable to the home medical equipment device, but does not include a condition or defect that is the result of abuse, neglect, or unauthorized modification or alteration of the home medical equipment device by a consumer.

(16)~~(14)~~ "Person" means any individual, firm, partnership, corporation, or association.

(17)~~(15)~~ "Premises" means those buildings and equipment which are located at the address of the licensed home medical equipment provider for the provision of home medical equipment services, which are in such reasonable proximity as to appear to the public to be a single provider location, and which comply with zoning ordinances.

(18)~~(16)~~ "Residence" means the consumer's home or place of residence, which may include nursing homes, assisted living facilities, transitional living facilities, adult family-care homes, or other congregate residential facilities.

(19) "Warranty rights period" means the period ending 1 year after first delivery of the home medical equipment device to the consumer or the manufacturer's express written warranty, whichever is longer.

Section 2. Section 400.936, Florida Statutes, is created to read:

400.936 Warranties; repairs; consumer's rights.--

(1) A manufacturer that sells new equipment to a consumer, either directly or through a home medical equipment provider, shall furnish the consumer with an express warranty for the equipment. The duration of the express warranty must be for at least 1 year after first delivery of the equipment to the consumer unless the manufacturer's warranty is longer. In the absence of an express warranty from the manufacturer, the manufacturer is considered to have expressly warranted to the consumer of home medical equipment that, for a period of 1 year after the date of first delivery to the consumer, the equipment will be free from any condition or defect that substantially impairs the value of the equipment to the

consumer. This paragraph does not apply to nonequipment items that are disposable or consumable supplies.

(2) If any home medical equipment does not conform to the warranty and the consumer first reports the problem to the manufacturer during the warranty rights period, the manufacturer shall make repairs necessary to conform the equipment to the warranty, irrespective of whether the repairs are made after the expiration of the warranty rights period. The repairs will be at no cost to the consumer if reported to the provider or manufacturer during the warranty rights period. This subsection may not be construed to grant an extension of the warranty rights period or to expand the time within which a consumer must file a complaint under this part.

(3) If any new home medical equipment does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer or the provider and makes the equipment available for repair within 1 year after first delivery or return of the equipment to the consumer, the nonconformity must be repaired at no charge to the consumer.

(4) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer, at the direction of the consumer, must do one of the following:

(a) Accept return of the equipment and replace the equipment with comparable new equipment and refund any collateral costs.

(b) Accept return of the equipment and refund to the consumer and to any holder of a perfected security interest in the consumer's equipment, as the interest may appear, the full purchase price plus any finance charge amount paid by the consumer at the point of sale, and collateral costs.

(5) To receive comparable home medical equipment or a refund due under paragraph (4)(a), a consumer must offer to transfer possession of the equipment having the nonconformity to the manufacturer. No later than 30 days after the offer, the manufacturer shall provide the consumer with the comparable equipment or refund. When the manufacturer provides the comparable equipment or refund, the consumer shall return the equipment having the nonconformity to the manufacturer, along with any endorsements necessary to transfer real possession to the manufacturer.

(6) To receive a refund due under paragraph (4)(b), a consumer must offer to return the equipment having the nonconformity to its manufacturer. No later than 30 days after the offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return to the manufacturer the equipment having the nonconformity.

(7)(a) A home medical equipment provider shall furnish to consumers, at the time of acquisition or lease, a written statement prepared by the agency that explains the consumer's rights under this part. The statement shall include the consumer toll-free number for the agency, 888-419-3456. Consumers should contact the provider with complaints regarding any equipment and services and any equipment warranty issues. If the provider and consumer are unable to resolve the complaint issues together, the consumer should contact the agency's toll-free number to report the complaint. The consumer's signed acknowledgement of receipt of materials required under this part constitutes prima facie evidence of compliance by the provider and manufacturer. The

acknowledgement must be a part of the consumer's record for 5 years.

(b) A provider or manufacturer shall provide to the consumer, each time the consumer's home medical equipment is returned after being examined or repaired under the warranty, a legible statement of any diagnosis, a description of all work performed, and a list of any parts replaced or repaired.

Section 3. Subsections (1) and (4) of section 427.802, Florida Statutes, are amended to read:

427.802 Definitions.--As used in this part:

(1) "Assistive technology devices" means computer or electrical devices that enable persons with disabilities to provide voice input or receive voice output ~~manual wheelchairs, motorized wheelchairs, motorized scooters, voice-synthesized computer modules~~, optical scanners, ~~talking software, braille printers,~~environmental control devices for use by a person with quadriplegia, motor devices that enable persons with disabilities to enter, operate, and exit a vehicle, and ~~vehicle adaptive transportation aids,~~devices that enable persons with severe speech disabilities to in effect speak~~, personal transfer systems, and specialty beds, including a demonstrator, that a consumer purchases or accepts transfer of in this state for use by a person with a disability~~.

(4) "Assistive technology device dealer" means a business entity that is ~~primarily~~ engaged in the selling or leasing of assistive technology devices. ~~As used in this subsection, the term "primarily" means no less than 30 percent of the business entity's gross sales in the previous fiscal year.~~

Section 4. Section 427.803, Florida Statutes, is amended to read:

427.803 Duty of ~~manufacturer and~~ an assistive technology device dealer and a manufacturer to conform an assistive technology device to the warranty.--

(1) A manufacturer who sells a new assistive technology device to a consumer, either directly or through an assistive technology device dealer, shall furnish the consumer with an express warranty for the assistive technology device. The duration of the express warranty must be at least 1 year after first delivery of the assistive technology device to the consumer. In the absence of an express warranty from the manufacturer, the manufacturer is considered to have expressly warranted to the consumer of an assistive technology device that, for a period of 1 year after the date of first delivery to the consumer, the assistive technology device will be free from any condition or defect that substantially impairs the value of the assistive technology device to the consumer.

(2) If an assistive technology device does not conform to the warranty and the consumer first reports the problem to the assistive technology device dealer ~~manufacturer~~ during the Assistive Technology Device Warranty Act rights period, the manufacturer shall make such repairs as are necessary to conform the device to the warranty, irrespective of whether such repairs are made after the expiration of the Assistive Technology Device Warranty Act rights period. Such repairs shall be at no cost to the consumer if reported to the ~~manufacturer or~~ assistive technology device dealer or manufacturer during the Assistive Technology Device Warranty Act rights period. Nothing in this subsection shall be construed to grant an extension of the Assistive Technology

Device Warranty Act rights period or to expand the time within which a consumer must file a complaint under this chapter.

(3) Each ~~manufacturer or~~ assistive technology device dealer or manufacturer shall provide to its consumers conspicuous notice of the address and phone number for its zone, district, or regional office for this state in the written warranty or owner's manual. Within 10 days after the department's written request, an assistive technology dealer or a manufacturer shall forward to the department a copy of the owner's manual and any written warranty for each make and model of assistive technology device that it sells in this state.

(4) ~~The manufacturer shall provide to the assistive technology device dealer and,~~At the time of acquisition, the assistive technology device dealer shall provide to the consumer a written statement that explains the consumer's rights under this chapter. The written statement shall be prepared by the department and shall contain a toll-free number for the department that the consumer can contact to obtain information regarding the consumer's rights and obligations under this chapter or to commence arbitration. The consumer's signed acknowledgment of receipt of materials required under this subsection shall constitute prima facie evidence of compliance by the ~~manufacturer and~~ assistive technology device dealer and manufacturer. The form of the acknowledgments shall be approved by the department, and the assistive technology device dealer shall maintain the consumer's signed acknowledgment for 3 years.

(5) ~~A manufacturer or~~ An assistive technology device dealer or manufacturer shall provide to the consumer, each time the consumer's assistive technology device is returned

after being examined or repaired under the warranty, a fully itemized, legible statement of any diagnosis made and all work performed on the assistive technology device, including, but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition and~~,~~ parts involved ~~and labor~~, the date on which the assistive technology device was submitted for examination or repair, and the date when the repair or examination was completed.

Section 5. Subsection (16) of section 427.8041, Florida Statutes, is amended to read:

427.8041 Assistive technology device dealers registration; application; exemption; penalties; adoption of fees and fines; purchase fees.--

(16) ~~A $2 fee shall be collected by the assistive technology device dealer or assistive technology device lessor from the consumer at the consummation of the sale or lease of an assistive technology device. Such fees must be remitted monthly to the Department of Revenue.~~All fees, less the cost of administration, must be transferred monthly to the Department of Agriculture and Consumer Services for deposit into the General Inspection Trust Fund to carry out the provisions of this section. The Department of Agriculture and Consumer Services may use an amount it determines necessary to purchase expert consultation services to assist in carrying out the provisions of this act.

Section 6. This act shall take effect upon becoming a law.

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SENATE SUMMARY

Provides warranty and repair rights for consumers of home medical equipment and assistive technology devices.