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NEW JERSEY ADMINISTRATIVE CODE  
TITLE 13  
LAW AND PUBLIC SAFETY  
CHAPTER 45A  
SUBCHAPTER 26E  
WHEELCHAIR LEMON LAW

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## SUBCHAPTER 26E. MOTORIZED WHEELCHAIR DISPUTE RESOLUTION

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### 13:45A-26E.1 PURPOSE AND SCOPE

- a) The purpose of this subchapter is to implement the Motorized Wheelchair Lemon Law, P.L. 1995, c.233, by establishing a motorized wheelchair dispute resolution system within the Division of Consumer Affairs in conjunction with the Office of Administrative Law. The subchapter also sets forth the method for computing the refund, and details the reporting requirements and procedure for publication of compliance records of manufacturers of motorized wheelchairs.
- b) This subchapter applies to:
- 1) Manufacturers of motorized wheelchairs sold or leased in the State of New Jersey;
  - 2) All purchasers, lessees and consumers as defined in N.J.S.A. 56:12-75(l) of motorized wheelchairs sold or leased in the State of New Jersey; and
  - 3) Motorized wheelchair dealers servicing motorized wheelchairs.

### 13:45A-26E.2 DEFINITIONS

As used in this subchapter, the following words shall have the following meanings:

“Days” means calendar days.

“Director” means the Director of the Division of Consumer Affairs.

“Dispute Resolution System” means a procedure established by the Division of Consumer Affairs and the Office of Administrative Law for the resolution of disputes regarding motorized wheelchair nonconformity(s) through summary administrative hearings.

“Manufacturer” means a person who manufactures or assembles motorized wheelchairs and agents of that person, including an importer, a distributor, factory branch, distributor branch and any warrantors of the manufacturer’s motorized wheelchairs, but does not include a motorized wheelchair dealer.

“Motorized wheelchair” means any motor-driven wheelchair, including a demonstrator and all accompanying power accessories utilized to operate the wheelchair, which a consumer purchases or accepts transfer of in this State for the purpose of increasing independent mobility, in the activities of daily living of an individual who has limited or no ambulation abilities, and includes motorized power scooters designed primarily for indoor use and retrofit power units designed to motorize power wheelchairs.

“Motorized wheelchair dealer” or “dealer” means a person who is in the business of selling motorized wheelchairs in New Jersey.

“Motorized wheelchair lessor” or “lessor” means a person who leases or rents a motorized wheelchair to a consumer, or who holds the lessor’s rights, under a written lease or written rental agreement.

“Nonconformity” means a condition or defect that substantially impairs the use, value or safety of a motorized wheelchair, and which is covered by an express warranty applicable to the motorized wheelchair or to a component of the motorized wheelchair. A nonconformity does not include a condition or defect which results from abuse, neglect or unauthorized modification or alteration of the motorized wheelchair by a consumer.

“OAL” means Office of Administrative Law.

“Reasonable attempt to repair” means, within the term of an express warranty applicable to a new motorized wheelchair, or within one year after first delivery of the motorized wheelchair to a consumer, whichever is sooner, that:

1. A nonconformity within the warranty has been subject to repair by the manufacturer, lessor or any of the manufacturer’s authorized dealers at least three times and the nonconformity continues; or
2. The motorized wheelchair is out of service for an aggregate of at least 20 days because of a nonconformity, after having been returned to the manufacturer, motorized wheelchair lessor or any of the manufacturer’s authorized dealers for repair.

“Wheelchair Lemon Law” means P.L. 1995, c.233 (N.J.S.A. 56:12-74 et seq.), an Act providing certain protections to consumers who purchase, lease or rent motorized wheelchairs.

**13:45A-26E.3 MANUFACTURER WARRANTY**

- a) At the time of purchase, lease or rental of a new motorized wheelchair in the State of New Jersey, the manufacturer, either directly or through an authorized dealer or lessor, shall furnish the consumer with an express warranty for the motorized wheelchair. The duration of the express warranty shall be not less than one year after first delivery of the motorized wheelchair to the consumer.
  
- b) In the absence of an express warranty from the manufacturer, the manufacturer shall be deemed to have expressly warranted to the consumer of a motorized wheelchair that, for a period of one year from the date of first delivery to the consumer, the motorized wheelchair will be free from any condition or defect which substantially impairs the use, value or safety of the wheelchair to the consumer.

**13:45A-26E.4 WHEELCHAIR LEMON LAW UNIT**

- a) There is established within the Division of Consumer Affairs a section which will process Wheelchair Lemon Law matters, to be known as the Wheelchair Lemon Law Unit (WLLU).
  
- b) The Wheelchair Lemon Law Unit shall, upon request, provide consumers with a brochure setting forth:
  - 1) Information regarding a consumer's rights and remedies under the relevant law; and
  - 2) The procedure to be followed in order to participate in the various dispute resolution systems.
  
- c) All correspondence to the Division of Consumer Affairs regarding Wheelchair Lemon Law matters shall be directed to the attention of the Wheelchair Lemon Law Unit, as follows:

Division of Consumer Affairs  
Wheelchair Lemon Law Unit  
Post Office Box 45026, 124 Halsey Street  
Newark, New Jersey 07101

**13:45A-26E.5 REPAIR OF NONCONFORMITY**

- a) When a consumer believes that a new motorized wheelchair does not conform to an applicable express warranty, the consumer shall:

- 1) Notify the manufacturer, motorized wheelchair lessor or any of the manufacturer's authorized motorized wheelchair dealers of the nonconformity by mail, each time a nonconformity occurs; and
  - 2) Make the motorized wheelchair available for repair before one year after first delivery of the motorized wheelchair to the consumer.
- b) If, within the terms of an express warranty applicable to a new motorized wheelchair, or within one year after first delivery of the motorized wheelchair to a consumer, whichever is earlier, substantially the same nonconformity has been subject to repair three or more times by the manufacturer, lessor or any of the manufacturer's authorized dealers and the nonconformity continues to exist, or the motorized wheelchair has been out of service by reason of repair for one or more nonconformities for an aggregate total of 20 or more days since the original delivery of the motorized wheelchair, and a nonconformity continues to exist, and the manufacturer refuses to replace or refund the price of the motorized wheelchair after one of the above conditions occurs, then the consumer shall be considered; as having met the criteria necessary to pursue a Wheelchair Lemon Law claim and may then:
- 1) Refer the matter to the manufacturer for resolution through the manufacturer's dispute resolution settlement procedure;
  - 2) Refer the matter to the WLLU for dispute resolution; or
  - 3) File an action in the Superior Court of New Jersey. Any party to an action asserting a claim, counterclaim or defense based upon violations of the Wheelchair Lemon Law shall mail a copy of the initial or response pleading containing the claim, counterclaim or defense to the Attorney General within 10 days after filing the pleading with the court.

### **13:45A-26E.6 ELIGIBILITY**

- a) To be eligible for the Dispute Resolution System, a consumer shall provide the following items to the WLLU:
- 1) A completed Application for Dispute Resolution which can be obtained from the WLLU; and
  - 2) Photocopies of the consumer's written notification(s) of the nonconformities to the manufacturer sent prior to the expiration of the manufacturer's warranty.

- b) If application forms are not available, a consumer may file a written request for dispute resolution which shall be accepted by the WLLU if that written request contains all information, items and statements listed in N.J.A.C. 13:45A-26E.7.

### **13:45A-26E.7 APPLICATION**

- a) Application for Dispute Resolution shall require submission of the following:
- 1) The name, address and telephone number of the consumer as well as the lienholder, if any;
  - 2) The date of the original delivery of the motorized wheelchair to the consumer;
  - 3) A written account of the events resulting in the dispute including description(s) of the claimed nonconformity(ies) and a chronology of the repair attempts;
  - 4) Photocopies of the statements of repair given to the consumer by the manufacturer through its dealer, each time a motorized wheelchair is returned from being examined or repaired; and
  - 5) Photocopies of the agreement of sale or lease, the receipt for payment of any options or other modifications arranged, installed or made by the manufacturer or its dealer within 30 days after the date of original delivery, receipts for any other charges or fees including, but not limited to:
    - i) Sales tax;
    - ii) Finance charges;
    - iii) Rental of a motorized wheelchair equivalent to the consumer's motorized wheelchair for the period when the consumer's motorized wheelchair was out of service due to a nonconformity;
    - iv) Prescription for the wheelchair from a licensed medical professional if the consumer purchased or leased the wheelchair by prescription;
    - v) Documents from third-party payors; and
    - vi) Any other documents related to the dispute.



- b) The application must contain a statement as to the following:
- 1) That the consumer believes that the motorized wheelchair's use, market value or safety is substantially impaired by the nonconformity(ies) complained of;
  - 2) That the nonconformity(ies) complained of is (are) not the result of abuse, neglect or unauthorized modifications of the motorized wheelchair by anyone other than the manufacturer or its dealer;
  - 3) That within the term of protection the manufacturer, its agent or authorized dealer failed in at least three attempts to correct the same substantial defect, or the motorized wheelchair was out of service by reason of repair for at least an aggregate of 20 days;
  - 4) That within the term of protection:
    - i) The consumer gave the manufacturer or its dealer at least three attempts to repair substantially the same nonconformity and the nonconformity continues to exist; or
    - ii) The motorized wheelchair was out of service by reason of repair for one or more nonconformities for an aggregate total of 20 or more days since the original delivery of the motorized wheelchair, and the nonconformity(ies) continues to exist; and
  - 5) Whether the consumer wishes to appear at the hearing in person or instead will allow a decision to be rendered by the OAL on the papers submitted by both parties. This option will be available only in the event the manufacturer does not object to a proceeding on the papers in its response pursuant to N.J.A.C. 13:45A-26E.10(f).

### **13:45A-26E.8 FILING FEE**

- a) A consumer whose application for dispute resolution is accepted by the Division shall pay a filing fee of \$50.00 by certified check or money order payable to the "New Jersey Division of Consumer Affairs." The filing fee shall be non-refundable.
- b) The filing fee shall be requested by the WLLU when it has determined that the consumer's application is complete, that it complies with this subchapter and the Wheelchair Lemon Law and that it is eligible for the WLLU's Dispute Resolution System.

**13:45A-26E.9 PROCESSING OF APPLICATIONS**

- a) Submitted applications shall be reviewed by the WLLU for completeness and compliance with the Wheelchair Lemon Law and this subchapter.
  - 1) Incomplete applications shall be returned to the consumer for completion.
  - 2) Applications not in compliance with this subchapter and the Wheelchair Lemon Law shall be rejected and the WLLU shall notify the consumer of the reason for the rejection. However, no judgment shall be made by the WLLU as to whether the claimed defect is substantiated by the evidence or whether the defect substantially impairs the use, market value or safety of a motorized wheelchair.
- b) Upon receipt of the filing fee of \$50.00, the application shall be date-stamped to indicate its acceptance for dispute resolution.

**13:45A-26E.10 NOTIFICATION AND SCHEDULING OF HEARINGS**

- a) Each manufacturer of motorized wheelchairs sold or leased in New Jersey shall forward to the Division of Consumer Affairs, Wheelchair Lemon Law Unit, the name, address, telephone and telefax number of the person designated by the manufacturer to receive notices under this dispute resolution process. It shall be the duty of the manufacturer to update this information, as necessary.
- b) On the day that an application is accepted for resolution, the WLLU shall send a notice by hand delivery or certified mail, return receipt requested to the consumer and the manufacturer's designee. This notice shall indicate that the consumer's request for resolution has been accepted and shall provide general information about the resolution process.
- c) The WLLU shall immediately thereafter refer an accepted application for dispute resolution to the OAL and arrange a hearing date acceptable to all parties. The dispute resolution shall be conducted as a contested case by the OAL in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and Special Rules, N.J.A.C. 1:13 A.
- d) The date of the hearing shall be no later than 20 days from the date of the notice of acceptance unless a later date is agreed to by the consumer.
- e) Notice of the date, time, and location of the hearing shall be mailed by the OAL to both parties.

- f) A copy of the application materials shall be sent by the WLLU simultaneously with the notice of acceptance of the application, to the manufacturer or the manufacturer's designee. Within 10 days of receiving the transmittal sheet from the Office of Administrative Law indicating the judge assigned to the case, the manufacturer shall mail by certified mail, return receipt requested, to the consumer and to the Clerk of the Office of Administrative Law at the address stated on the transmittal sheet, a response to each of the statements set forth in the consumer application. The response shall also state whether the manufacturer objects to a proceeding on the papers if requested by the consumer.
- g) Applications by the consumer or the manufacturer with consent of the consumer for adjournments or rescheduling of the hearing shall be made in accordance with N.J.A.C. 1:1-9.6.

### **13:45A-26E.11 COMPUTATION OF REFUND**

- a) The refund claimed by a consumer pursuant to section 4 of the Wheelchair Lemon Law, whether through the Division of Consumer Affairs motorized wheelchair dispute resolution system or a manufacturer's informal dispute resolution process, shall include:
- 1) The total purchase price of the wheelchair including finance charges, sales tax or, in the case of a lease, the total sum of lease payments made, including any down payment,
  - 2) The cost of any necessary modifications arranged, installed or made by the manufacturer or its dealer within one year after the original date of delivery,
  - 3) Other charges or fees, including, but not limited to, actual expenses incurred by the consumer for the rental of a motorized wheelchair equivalent to the consumer's motorized wheelchair for the period during which the consumer's motorized wheelchair was out of service due to a nonconformity.
- b) From the total sum of items in (a) above, a deduction shall be made, representing an allowance for use. This deduction shall be calculated as follows: the full purchase price of the motorized wheelchair shall be multiplied by a fraction, the denominator of which is 1,825 and the numerator of which is equal to the number of days that the wheelchair was used before the consumer first reported the problem to the dealer or the manufacturer.

### **13:45A-26E.12 FINAL DECISION**

- a) The Director shall review the OAL proposed decision submitted by the administrative law judge who conducts the administrative hearing and shall adopt, reject, or modify the decision no later than 15 days after receipt.

- b) At the conclusion of the 15-day review period, the Director shall give notification of the rejected, modified or adopted decision to both parties, the lien-holder, if any, and the OAL. The notification to the manufacturer and consumer shall be by hand delivery or certified mail, return receipt requested. Within 45 days of receipt of the final decision, any party may file an appeal in the Appellate Division of the Superior Court.
- c) The manufacturer shall advise the Director as to its compliance with the final decision or its intent to appeal the final decision no later than 10 days following the date stated for completion of all awarded remedies.
- d) If the manufacturer unreasonably fails to comply with the decision within the specified time period, the manufacturer shall be liable for penalties in the amount of \$5,000 for each day the manufacturer unreasonably fails to comply, commencing on the day after the specified date for completion of all awarded remedies.

### **13:45A-26E.13 APPEALS**

- a) A manufacturer or a consumer may appeal a final decision to the Appellate Division of the Superior Court by filing a notice of appeal with the court as well as the Director no later than 45 days after the date of the final decision as defined in N.J.A.C. 45A-26E.12(b).
- b) An appeal by a manufacturer shall not be heard unless the notice of appeal is accompanied by a bond which shall be:
  - 1) For a principal sum equal to the money award made by the administrative law judge, plus \$2,500 for anticipated attorney's fees and other costs;
  - 2) Which sum shall be secured by cash or its equivalent; and
  - 3) Payable to the consumer.

### **13:45A-26E.14 MANUFACTURER'S INFORMAL DISPUTE RESOLUTION SYSTEM**

- a) The WLLU shall compile a roster of American and foreign manufacturers of motorized wheelchairs sold or leased in New Jersey.
- b) Manufacturers who establish or participate in an in-house customer assistance mechanism, private arbitration, private buy-back program, or any other type of dispute resolution system shall:

- 1) Advise the WLLU of the existence of its procedure mentioned in (b) above; and
- 2) Send the WLLU an outline of the steps that a consumer must take in order to participate in the manufacturer's informal dispute resolution procedure and shall include all necessary addresses and phone numbers.

**13:45A-26E.15 INDEX OF DISPUTES**

- a) The Division of Consumer Affairs shall maintain an index of motorized wheelchair disputes by make and model and shall compile and maintain statistics indicating the record of manufacturer compliance with any settlement procedure decisions.
- b) The index and statistical record of compliance shall be made available to the public upon written request.