

SB 612-FN - AS INTRODUCED

2026 SESSION

26-2207

05/08

SENATE BILL            **612-FN**

AN ACT                relative to clinical eligibility criteria for nursing facility and home and community based care.

SPONSORS:            Sen. Avard, Dist 12

COMMITTEE:          Health and Human Services

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ANALYSIS

This bill modifies long-term care eligibility by adding mobility to the list of activities of daily living. The bill also requires the department of health and human services to obtain a determination of an applicant's need for long term care from the applicant or participant's primary care physician, physician assistant, or advanced practice registered nurse, and to consider information from other health care providers.

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Explanation:          Matter added to current law appears in **bold italics**.  
Matter removed from current law appears ~~[in brackets and struckthrough.]~~  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty-Six*

AN ACT relative to clinical eligibility criteria for nursing facility and home and community based care.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 Long-Term Care; Eligibility. Amend RSA 151-E:3 to read as follows:

2 151-E:3 Eligibility.

3 I. A person is [~~medicaid~~] **Medicaid** eligible for nursing facility services or Medicaid home  
4 and community-based care waiver services if the person is:

5 (a) Clinically eligible for nursing facility care because the person requires 24-hour care  
6 for one or more of the following purposes:

7 (1) Medical monitoring and nursing care when the skills of a licensed medical  
8 professional are needed to provide safe and effective services;

9 (2) Restorative nursing or rehabilitative care with patient-specific goals;

10 (3) Medication administration by oral, topical, intravenous, intramuscular, or  
11 subcutaneous injection, or intravenous feeding for treatment of recent or unstable conditions  
12 requiring medical or nursing intervention; or

13 (4) Assistance with 2 or more activities of daily living [~~involving~~] **which include**  
14 **but are not limited to** eating, toileting, transferring, **mobility**, bathing, dressing, and continence.  
15 **For purposes of this section "mobility" means the need to be physically steadied, assisted, or**  
16 **guided in ambulation, or unable to propel a wheelchair alone or appropriately and**  
17 **require the assistance of another person;** and

18 (b) Financially eligible as either:

19 (1) Categorically needy, as calculated pursuant to rules adopted by the department  
20 under RSA 541-A; or

21 (2) Medically needy, as calculated pursuant to rules adopted by the department  
22 under RSA 541-A.

23 II. Skilled professional medical personnel employed by or designated to act on behalf of the  
24 department shall determine clinical eligibility in accordance with the criteria in subparagraph I(a).  
25 The clinical eligibility determination shall be based upon an assessment tool, approved by the  
26 department, performed by skilled professional medical personnel employed by the department, or by  
27 an individual with equivalent training designated by the department. The department shall train  
28 all persons performing the assessment to use the assessment tool. For the purposes of this section,  
29 "skilled professional medical personnel" shall have the same meaning as in 42 C.F.R. section  
30 [~~432.50(d)(1)(ii)] **432.2**.~~

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1 II-a. Subject to written approval by the Center for Medicare and Medicaid Services, financial  
2 eligibility rules in paragraph II shall include eligibility if the person's countable income is at or  
3 below the nursing facility special income standard, as defined in 42 C.F.R. 435.236, for the Medicaid  
4 program or the person incurs allowable medical expenses each month, including the anticipated cost  
5 of waiver services, which when deducted from the individual's income would reduce the individual's  
6 income to an amount that is no higher than the nursing facility special income standard. The  
7 department shall submit a request for such approval within 30 days of the effective date of this  
8 paragraph.

9 III. [Repealed.]

10 IV. If the skilled professional medical personnel employed by or designated to act on behalf  
11 of the department are unable to determine that an applicant is eligible following the clinical  
12 assessment tool pursuant to paragraph II, the ~~[skilled professional medical personnel]~~ **department**  
13 shall obtain ***a determination for the need for long-term care from the applicant's primary***  
14 ***care physician, physician assistant, or advanced practice registered nurse. The***  
15 ***department shall request information from and*** give substantial weight to ***other*** clinical  
16 information provided by the applicant's ~~[physician or nurse practitioner, including, but not limited to~~  
17 ~~diagnosis, prognosis, and plan of care recommendations, and consider information from other~~  
18 ~~licensed practitioners, including occupational or physical therapists, if available. All clinical~~  
19 ~~information obtained shall also be used in the preparation of the initial support plan]~~ ***other known***  
20 ***health care providers, including but not limited to specialty care physicians, case***  
21 ***management providers, or occupational or physical therapists, including diagnosis,***  
22 ***prognosis, and plan of care recommendations. All clinical information obtained by the***  
23 ***department shall be reviewed by skilled professional medical personnel employed by or***  
24 ***designated to act on behalf of the department for an eligibility decision.***

25 2 Effective Date. This act shall take effect 60 days after its passage.

**SB 612-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT relative to clinical eligibility criteria for nursing facility and home and community based care.

**FISCAL IMPACT: This bill does not provide funding, nor does it authorize new positions.**

Estimated State Impact				
	FY 2026	FY 2027	FY 2028	FY 2029
<b>Revenue</b>	\$0	\$0	\$0	\$0
<i>Revenue Fund(s)</i>				
<b>Expenditures*</b>	\$0	\$2.5 million+ (half general funds, half federal funds)	\$2.5 million+ (half general funds, half federal funds)	\$2.5 million+ (half general funds, half federal funds)
<i>Funding Source(s)</i>	General Fund, Federal Funds			
<b>Appropriations*</b>	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

\*Expenditure = Cost of bill

\*Appropriation = Authorized funding to cover cost of bill

**METHODOLOGY:**

This bill modifies RSA 151-E:3, relative to long-term care eligibility, by:

- (1) Adding mobility to the list of activities of daily living; and
- (2) Changing how eligibility for long-term care is determined and redetermined by requiring the Department of Health and Human Services to get a determination of an applicant's need for long term care from the applicant or participant's primary care physician or nurse practitioner;

In response to a similar bill from the 2025 session (SB 125), the Department estimated that adding mobility as an activity of daily living would cost \$2.5 million or more per year, which would be paid for with 50 percent federal funds and 50 percent general funds. For the purposes of this fiscal note, the Office of the Legislative Budget Assistant assumes the cost of the current bill will be the same.

With respect to (2), the Department notes that it already seeks medical information from an applicant's primary care provider if they have one. The Department notes that the bill may result in situations in which it is unable to issue a denial of clinical eligibility, either because a primary care provider has failed to respond or because the individual lacks a primary care provider. Failing to issue a denial of clinical eligibility will result in delays to processing

applications, which may result in the Department failing to meet the federal requirement that determinations be made within 45 days of the application. The Department therefore contends that this requirement could potentially put federal financial participation for Medicaid in jeopardy. Since the Department does not otherwise expect this change to cost money to implement, this provision will have no cost as long as there is no federal penalty for failing to meet eligibility determination deadlines.

**AGENCIES CONTACTED:**

Department of Health and Human Services