

Senate Health and Human Services Committee

Sophie Walsh 271-3469

SB 125-FN, relative to clinical eligibility criteria for nursing facility and home and community based care.

Hearing Date: February 12, 2025

Time Opened: 10:01 a.m.

Time Closed: 11:13 a.m.

Members of the Committee Present: Senators Rochefort, Avard, Birdsell, Prentiss and Long

Members of the Committee Absent: None

Bill Analysis: This bill updates clinical eligibility criteria for nursing facility and home and community based care; adds mobility to the activities of daily living; corrects the federal reference for the definition of “skilled professional medical personnel”; requires information from the applicant’s primary care physician be considered; clarifies the medical eligibility determination is the responsibility of “skilled professional medical personnel”; and gives the department staff authority to obtain medical information for the eligibility decision making process.

Sponsors:
Sen. Avard

Who supports the bill: Carolyn A. Virtue (Granite Case Management), Kerry Pfrimmer, Gloria St. Martin, Gregory Stuart, Karry Smardon, Candace Bouchard, Heidi Kroll (Life Coping), Rosalie Yarnall, Emma Yarnall, Janine McGarvey, and Alyssa Hayes.

Who opposes the bill: Henry Lipman and Melissa Hardy (DHHS).

Who is neutral on the bill: Cheryl Steinberg (NH Legal Assistance).

Summary of testimony presented:

Senator Kevin Avard, Senate District 12

- Senator Avard explained that this bill updates the clinical eligibility criteria for nursing facilities and home & community-based care.
- It adds mobility to the activities of daily living (ADLs).

- It corrects the federal references for the definition of 'skilled professional medical personnel' and requires information from the applicant's primary care physician be considered.
- It clarifies the medical eligibility determination and the responsibility of skilled medical professionals.
- It also gives medical staff the authority to obtain medical information to use in the decision-making process for eligibility.

Carolyn A. Virtue, Granite Case Management

- Ms. Virtue distributed binders to the committee containing information and highlighted the key points.
- The first page of the binder contains the Centers for Medicare & Medicaid Services (CMS) definition for ADLs, which include bathing, showering, dressing, and getting in and out of bed.
- It also states that if the person has difficulty performing an activity by themselves and without special equipment because of health problems, the person is deemed to have a limitation.
- Under current practice, Medical Eligibility Assessment (MEA) judgements do not include the use of equipment.
- Senator Rochefort asked if Ms. Virtue could give the Committee a background on what program this is and what eligibility for it means.
- Ms. Virtue replied that they are talking about the Choices for Independence (CFI) Program.
- The binder includes a copy of an actual MEA report for an individual who lived alone.
- Ms. Virtue emphasized the difference between the findings, which deemed the patient independent, and the nurse's notes that clearly stated the patient needs assistance.
- She highlighted two more MEA reports that include the same disparity between findings and nurse's notes.
- Granite Case Management appealed the assessment decision for one of these patients, and that individual was not eligible for care during the appeal process because the appeal was filed 3 days late.
- As a result, that individual had no care for several months until the appeal decision came back in their favor.
- According to the CMS definition, a person is not independent if they need to use equipment to complete ADLs.
- These are the kinds of issues that this legislation is seeking to address.
- This bill changes the reference for 'skilled medical personnel' from the reference for training to the reference for definition.

- Ms. Virtue is asking for this change because the Department of Health and Human Services (DHHS) refuses to identify the individuals making these decisions by name and licensure.
- She emphasized that the patient should know the name and the licensure category of the people making these decisions.
- Ms. Virtue noted that at least one or more times during the past year the people making these assessment decisions would not have met the level of 'skilled professional medical personnel'.
- She stated that there is supposed to be parity between nursing facility assessments and their counterparts residing in the community.
- Ms. Virtue emphasized that there is real harm coming to people and this issue needs to be addressed.
- Upon meeting with the Department last spring, they were hopeful this would be fixed, but it has not been.
- Senator Rochefort asked if his understanding is correct that in the cases of denials, prior to being denied, the assessment would have to go before the patient's primary care physician for agreement on the denial.
- Ms. Virtue replied that he is correct, only in cases where there is a negative outcome from the MEA. She noted that nurses are not further involved in the process after completing the MEA. Decisions are made with no face-to-face interactions and case managers are not contacted for information.
- Senator Rochefort asked if a nurse or physician within the Department is making the decision.
- Ms. Virtue stated that she does not know, as she cannot get an answer. This is why she is seeking to make this change. Federal guidance clearly states that it should be a medical practitioner.

Cheryl Steinberg, New Hampshire Legal Assistance

- Ms. Steinberg stated that New Hampshire Legal Assistance (NHLA) is in support of what this bill is trying to accomplish.
- It rectifies problems with the clinical eligibility redetermination process.
- NHLA has experienced a large increase in referrals from people who have been on the Choices for Independence Program for years and suddenly have been found by the Department to no longer be eligible.
- With a few exceptions, most of these people have conditions that are not going to improve.
- She believes that MEAs are not being completed properly.
- Ms. Steinberg explained that the nurses completing the MEA have State contracts with the company Acentra. They are completing these assessments and coming back with results that do not make sense.
- She believes the form itself is flawed and not being scored properly.

- Ms. Steinberg noted that the form asks patients what they have been able to do in the past week. However, under clinical eligibility rules someone would have to need assistance within the last month. Thus, the form should be asking for a month and not a week.
- NHLA has heard from case managers that oftentimes providers say they never received medical record requests from the Department. She noted that in some instances these records are never sent, and patients are thus assessed with no medical records to support the decision.
- Ms. Steinberg stated that how the Department is making these decisions once they receive information is not transparent.
- NHLA has had at least 25 termination cases, 20 of which were reversed without a hearing. The remaining are pending. She noted that they are only receiving referrals from two case management agencies.
- Ms. Steinberg noted that some tweaks to the language will be needed. They have an upcoming meeting with the Department.
- Senator Avard asked if people are slipping through the cracks and not receiving services during the appeals process while they suffer.
- Ms. Steinberg noted that as long as an appeal is made within 30 days, services continue. However, there are many people who do not appeal on time and lose their services.
- Senator Avard asked how one may know that there is an appeals process available.
- Ms. Steinberg explained that it is included in the notice of denial, but many people do not understand the notices and find them to be confusing. They have been working on this with the Department as well.
- Senator Avard noted that an individual could have early-onset Dementia and not even know they can appeal.
- Ms. Steinberg agreed and said that is another problem. Case managers are supposed to receive copies of the termination notice, but to her knowledge they do not.
- Senator Rochefort asked if Ms. Steinberg could make a direct correlation between the increase in problems and Acentra taking over this process.
- Ms. Steinberg said she could not make that correlation, but explained that Acentra bought out Kepro and has been contracting with the State for a while.
- Senator Rochefort stated that he is assuming this contract is approved by the Governor and Executive Council, and Ms. Steinberg confirmed.

Henry Lipman and Melissa Hardy, Department of Health and Human Services

- Mr. Lipman stated that the Department opposes the bill as written, but believes they can work with the stakeholders to make the process better for people who need services.
- They solicit information, and if they do not have all the information, they can go out and seek it from various sources.
- They have a contractor on their team, which also includes two registered nurses.
- In 2024, 108 cases out of 3,600 went to the appeals unit.
- The Department has processes for trying to keep people eligible. Mr. Lipman noted that we probably do more than any other state.
- The bottom line is they need to find a way to make the process work, so they can get a more complete record of information.
- More than 70% of cases are reopened when more information is received and the record is completed.
- They do not necessarily agree with all the interpretations that were stated and would like to come back with policy choices to make it work better for everyone. The Department is committed to try and make it better.
- They have made positive changes already in open access to their system for the case managers who have authorization.
- Senator Rochefort commented that what they are hearing is that people who have been disabled for decades are not getting reapproved. He continued that Committee members work for the people and if the Department can't come up with a solution, they will make one. He strongly encouraged them to work with stakeholders to come up with something.
- Mr. Lipman responded that they recognize that and want to work with the Committee to make improvements.
- Senator Avard asked where their biggest issues with the bill are.
- Ms. Hardy replied that the definition of mobility is one issue. They agree that they can come up with a better definition and how it is weighed in the score to determine eligibility.
- Senator Avard asked if she agrees walking should be included in that definition with the word mobility.
- Ms. Hardy said she thinks that could be part of the conversation. She noted that there are operational pieces that need to be figured out.
- Senator Avard asked how the Department feels about the primary care physician piece. He emphasized that he hates to see people fall through the cracks and suffer.
- Ms. Hardy responded that she thinks what's proposed here is that if the Department decides someone is not eligible, a physician would have to agree with the determination. She thinks there are unintended consequences with that language. Some people don't see their doctor regularly. She thinks before

- they jump to the physician needing to be involved, they need to improve their process in getting the information needed to make a determination.
- Mr. Lipman commented that the problem they have with it is that ultimately the State must make the decision.
 - Senator Avard emphasized the issues surrounding unsupported people with early-onset Dementia that have no one to advocate for them besides a public guardian and how they are impacted by this. He asked how this is remedied.
 - Ms. Hardy said this is why they value their case management entities. They're assigned to individuals, and part of that is to ensure they get the services they need under CFI.
 - The Department has made improvements in conjunction with case management agencies to get information to them when an individual has an upcoming MEA or closure. This helps the patient through the process and through appeal if necessary.
 - Senator Avard commented that the case managers brought this forward and are saying there is a problem. He said he is tired of hearing that the Department is working on it while people are falling through the cracks. He asked if there is a timeline for when this will be fixed.
 - Mr. Lipman responded that it is his goal to bring a solution forward within the legislative timeline. He said he shares Senator Avard's frustrations and emphasized that the Department has done a lot to protect people. The solution will involve a stronger role for the case managers providing information and putting it into the process. At the end of the day, there are some cases of patients who are alone, and they have to make special efforts in those situations.
 - Senator Rochefort asked who is making these decisions.
 - Ms. Hardy explained that Acentra nurses complete the MEA and provide data to the Department. If there is a concern about someone not meeting medical eligibility, the Bureau of Adult and Aging Services reviews the MEA. The Bureau has 3 staff members, 2 of which are RNs and 1 is a skilled medical professional according to the CMS definition. If two agree that an individual is not eligible, it goes to a supervisor for review.
 - Senator Rochefort asked if that supervisor is a nurse.
 - Ms. Hardy replied that the supervisor isn't a nurse, but one of the two people prior to the supervisor is an RN.
 - Senator Rochefort asked if the supervisor fits the definition of the skilled medical professional, and Ms. Hardy confirmed.
 - Senator Rochefort noted that because Acentra is playing a role in this, if they provide the Department with bad data or an incomplete picture, that handicaps

the Department's skilled personnel in making their determination. He noted looping in Acentra could be helpful.

- Ms. Hardy stated that the Department meets weekly with Acentra and their leadership on any questionable or incomplete cases.
- Senator Rochefort asked if Acentra is collecting a flat fee for service, or if they are incentivized in any way.
- Ms. Hardy replied that they are collecting a monthly rate. She added that they also do preadmission screening for nursing facilities.
- Senator Birdsell asked if the Department reviews overturned cases with Acentra.
- Ms. Hardy stated they do. Out of the number of appeals that have gone into their administrative appeals unit, one has been upheld as not meeting their standard. In the interim, during the appeal process they get additional medical information that allows them to keep services going.
- Senator Birdsell asked if the additional information goes to Acentra.
- Ms. Hardy said it goes directly to the Department.
- Senator Prentiss asked if there is a quality control provision or performance improvement component within their contract with Acentra and how that would be executed.
- Ms. Hardy confirmed there is a provision and said she will provide that information to the Committee.
- Senator Avard asked if Acentra communicates with the case managers, as 130 cases have been overturned.
- Ms. Hardy believes they communicate about the scheduling of the MEA. She also thinks case managers can see certain information in the system.

Rosalie Yarnall

- Ms. Yarnall stated that she has seen a lot of people fall through the cracks.
- Many patients in the CFI program also must qualify financially. To do so, their income level must be very low. Thus, they do not have the ability to replace services once they are removed.
- She noted that if a patient loses their medical eligibility, any emergency device they may utilize could be turned off automatically.
- Patients who are low income also rely heavily on nutrition programs and meal deliveries. These are also automatically turned off when someone falls through the cracks.
- Many of Ms. Yarnall's clients rely heavily on their services because they have no family or support.
- Senator Avard asked if she has been in contact with Acentra, or if Acentra has reached out to CFI caseworkers if an individual is eligible.

- Ms. Yarnall replied that they don't speak of eligibility because they're independent assessors. If everything is going according to plan, then they are given knowledge of a date for the MEA assessment, and if they choose to, they can attend the MEA. She added that they can't tell the assessors what to put in the MEA; they ask the questions and they can cite their case notes.
- Senator Avard asked if she has ever had recommendations looked at and ignored.
- Ms. Yarnall replied that she had been present for an MEA where the assessor cited that the person was not requiring assistance with an ADL even though she said the person relies heavily on their phone alarm to administer their medications and check their blood sugar levels. She has often seen contradictory information on the MEA and it is a big concern.

Janine McGarvey

- Ms. McGarvey has been a nurse for 23 years, with most of that time being in home care.
- She believes that defining skilled professionals is extremely important.
- In her experience in home care, it takes weeks to train nurses on performing assessments and caring for clients in the home.
- For somebody to be independent, they need to be able to do all of the daily living tasks without human assistance.
- Clients thrive in their homes and they deserve to be helped so they can stay there safely.
- Just because someone can complete an ADL, does not mean they are doing so safely.
- Ms. McGarvey explained that Acentra assessments are all interviews. Clients will say they can do all sorts of things, but the reality is that they cannot do them properly.
- She was present for her mother's MEA in 2022. It was 15 minutes total and if she had not been there, her mom would not have been given the services she needs.

Kerry Pfrimmer, Granite Case Management

- Mr. Pfrimmer stated that the case management agencies meet monthly with the Department.
- They are here today because they are not getting a resolution. They want accountability in the system.
- Case Managers are on the front line, and they see what is going on. They don't want to see people fall through the cracks.
- Mr. Pfrimmer emphasized that this bill is not personal or finger pointing; it is to improve the process and make it better for everyone.

- He explained that someone in the appeals bucket is at the end of the pipeline with no services, no fast remedy, and is waiting to be heard.
- Mr. Pfrimmer explained that their agency sees over 25% of their cases being bridged. Recent updates in the database system are auto-triggering this. This means there are people on a short list slated to have services close within the next 30 days.
- There are probably around 1,000 participants at risk in their home environment across all agencies.
- It is often reported that less than 15 minutes are spent on assessments. To him, it seems like it would be difficult to give an assessment in 15 minutes or less to an individual you've never seen in person before.