

Y PWYLLGOR ANSAWDD, DIOGELWCH A PHROFIAD QUALITY, SAFETY AND EXPERIENCE COMMITTEE

DYDDIAD Y CYFARFOD: DATE OF MEETING:	05 October 2023
TEITL YR ADRODDIAD: TITLE OF REPORT:	The potential impact of Choices Framework actions on compliance with the Nurse Staffing Levels (Wales) Act
CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR:	Mandy Rayani, Director of Nursing, Quality and Patient Experience
SWYDDOG ADRODD: REPORTING OFFICER:	Helen Humphreys, Head of Professional Standards and Nursing Regulation

Pwrpas yr Adroddiad (dewiswch fel yn addas)

Purpose of the Report (select as appropriate)

Er Gwybodaeth/For Information

ADRODDIAD SCAA

SBAR REPORT

Sefyllfa / Situation

As part of the Annual Recovery Plan – Choices Framework discussions, consideration has been given to:

- Ceasing agency nursing in identified areas including adult in patient wards on the acute sites, paediatric inpatient wards, community hospitals, mental health inpatient service and planned care, and
- Capping the fill rate of the establishments and/or rosters.

This paper sets out the implications of these proposed actions on compliance with the Nurse Staffing Levels (Wales) Act 2016 (NSLWA) and refers to Counsel advice (dated 12 September 2023) which was sought to clarify the Board's and the Designated Person's (i.e. Director of Nursing, Quality and Patient Experience) statutory responsibilities under the Act.

Cefndir / Background

The NSLWA has five sections:

- I. Section 25A of the NSLWA relates to the overarching responsibility placed upon each Health Board, requiring Health Boards and Trusts to ensure they have robust workforce plans, recruitment strategies, structures and processes in place to ensure appropriate nurse staffing levels across their organisations. This duty came into effect in April 2017.
- II. Section 25B requires Health Boards/ Trusts to calculate and take reasonable steps to maintain the nurse staffing level in all adult acute medical and surgical wards (and paediatric inpatient wards since October 2021).
- III. Section 25C requires Health Boards/Trusts to use a specific method to calculate the nurse staffing level in all adult acute medical and surgical wards (since April 2018) and paediatric inpatient wards (since October 2021).
- IV. Section 25D of the Act required that Welsh Government devised statutory guidance to support the NSLWA. The initial statutory guidance document was issued in 2017 with a revised document issued in February 2021 to reflect the extension of the

NSLWA to include paediatric in-patient wards. An operational handbook to support NHS Wales organisations in implementing the NSLWA across adult medical and surgical in-patient wards was issued in March 2018 and for paediatric in-patient ward in October 2021.

- V. Section 25E requires Health Boards/Trusts to report their compliance in maintaining the nurse staffing level for all wards to which Section 25B pertains.

Asesiad / Assessment

As previously stated, consideration has been given to:

- Ceasing agency nursing in identified areas including adult in patient wards on the acute sites, paediatric inpatient wards, community hospitals, mental health inpatient service and planned care, and
- Capping the fill rate of the establishments and/or rosters.

An action from the Core Development Group (CDG) /Financial Control Group (FCG) held on the 30 August 2023 was to prepare a plan to reflect the implementation of the above actions. The Designated Person and CDG/FCG asked that legal advice should be sought and be taken into account when preparing the implementation plan.

The Executive Director of Nursing Quality and Patient Experience, as the Designated Person under the Act, sought advice from King's Council on the implications for both the Board and the Designated Person should the proposal to cease the use of agency staff in S25B wards or indeed to remove the use of nurse agency as a specific reasonable step to support meeting their duties set out in the Nurse Staffing Levels (Wales) Act 2016 and the Statutory Guidance (Version 2), be progressed.

The Board has an overarching duty under S25A of the Act to have regard to providing sufficient nurses in all settings (S25A applies to all areas apart from those included under S25B of the Act and includes for example, emergency departments and all front door services, mental health inpatients and community services, district nursing, community hospitals, health visiting). There are no specific statutory duties around calculating or maintaining the nurse staffing levels in S25A areas.

The King's Counsel advice was that the Board would still need to ensure that there were sufficient nurses in those settings.

The Designated Person and/or the Board's duties under Section 25B and C of the Act i.e. to calculate and maintain the nurse staffing levels in those wards where Section 25B and Section 25C of the Act applies (S25B and S25C of the Act applies to adult medical and surgical inpatient wards and paediatric inpatient wards).

S25B of the Act requires the Designated Person to "*calculate and take steps to maintain nurse staffing levels*" and S25C sets out the method of calculating the nurse staffing levels that must be used for those wards where S25B applies.

When calculating the nurse staffing levels the Designated Person has a duty (set out under the professional judgement section of the statutory guidance – paragraph ii) to consider "*the effect on the nurse staffing level of the use of temporary staffing for example consideration of the continuity of care for patients and the range of activities that temporary staff are able to undertake*" to ensure that the nurse staffing levels is appropriate to meet the patients' needs.

When maintaining the nurse staffing levels, LHBs and Trusts are required to "*take all reasonable steps to maintain the nurse staffing level. Maintaining means having the number of*

registered nurses the required establishment and its planned roster require” (paragraph 13 of the statutory guidance). Paragraph 16 states that “the responsibility for decisions relating to the maintenance of the nurse staffing level rests with the LHB (or Trust)”.

One of the reasonable steps at operational level, referenced in the statutory guidance (paragraph 17), is the “*use of temporary staff from a nursing agency appropriate to the skill mix set out in the planned roster*”.

Paragraph 18 of the statutory guidance states that “*when undertaking these steps, LHBs and Trusts should consider and take due regard of the duty placed upon them in section 25A to have sufficient nurses to allow the nurses time to care sensitively for patients wherever nursing services are provided or commissioned*”.

Based upon the advice received from King’s Counsel it has been identified that proceeding with the cessation of agency staff for Section 25B wards would be contrary to the statutory requirements set out in the Act, around both calculating and maintaining the nurse staffing levels.

The essence of the legally privileged advice was discussed and noted by the Core Development Group/Financial Control Group membership on the 13 September 2023. Following the discussion it was agreed that all the savings plans based upon a proposal to reduce fill rates and cease agency utilisation aligned to the Choices Framework plans submitted, would be reviewed and updated.

Argymhelliad / Recommendation

The Quality, Safety and Experience Committee is asked to note the content of this SBAR, and the decision taken to review savings plans following receipt of legal advice as it is considered that this approach will enable the HDUHB to remain compliant with its duties under the Nurse Staffing Levels (Wales) Act 2016.

Amcanion: (rhaid cwblhau)	
Objectives: (must be completed)	
Committee ToR Reference: Cyfeirnod Cylch Gorchwyl y Pwyllgor:	2.2 Provide evidence based and timely advice to the Board to assist it in discharging its functions and meeting its responsibilities with regard to the quality and safety of health care provided and secured by the University Health Board.
Cyfeirnod Cofrestr Risg Datix a Sgôr Cyfredol: Datix Risk Register Reference and Score:	
Parthau Ansawdd: Domains of Quality Quality and Engagement Act (sharepoint.com)	1. Safe 6. Person-Centred 3. Effective
Galluogwyr Ansawdd: Enablers of Quality: Quality and Engagement Act (sharepoint.com)	3. Data to knowledge 4. Learning, improvement and research

Amcanion Strategol y BIP: UHB Strategic Objectives:	5. Safe sustainable, accessible and kind care 4. The best health and wellbeing for our individuals, families and communities
Amcanion Cynllunio Planning Objectives	2c Workforce and OD strategy
Amcanion Llesiant BIP: UHB Well-being Objectives: Hyperlink to HDdUHB Well-being Objectives Annual Report 2021-2022	2. Develop a skilled and flexible workforce to meet the changing needs of the modern NHS 5. Offer a diverse range of employment opportunities which support people to fulfill their potential

Gwybodaeth Ychwanegol: Further Information:	
Ar sail tystiolaeth: Evidence Base:	Nurse Staffing Levels (Wales) Act 2016 and Statutory Guidance (2 nd edition 2021).
Rhestr Termiau: Glossary of Terms:	
Partïon / Pwyllgorau â ymgynhorwyd ymlaen llaw y Pwyllgor Ansawdd, Diogelwch a Phrofiod: Parties / Committees consulted prior to Quality, Safety and Experience Committee:	

Effaith: (rhaid cwblhau) Impact: (must be completed)	
Ariannol / Gwerth am Arian: Financial / Service:	There are financial implications associated with information described in this paper and relate to the costs associated with using agency nurses to maintain the nurse staffing levels.
Ansawdd / Gofal Claf: Quality / Patient Care:	The intention underpinning the Act is to allow the nurses' time to care for patients sensitively which is likely to be compromised if the ability to use agency staff is removed.
Gweithlu: Workforce:	There are workforce implications associated with information described in this paper and relate to using agency nurses to maintain the nurse staffing levels and if the use of agency is removed, the ability of our substantives workforce to be able to deliver the care to our patients which may result in, for example, increased sickness
Risg: Risk:	As stated above, there are financial risks associated with the information described in this paper and relate to the use of agency staff to maintain the nurse staffing levels,

Cyfreithiol: Legal:	Proceeding with the cessation of agency staff for Section 25B wards is contrary to the statutory requirements set out in the Act, around both calculating and maintaining the nurse staffing levels
Enw Da: Reputational:	Proceeding with the cessation of agency staff for Section 25B wards is contrary to the statutory requirements set out in the Act, around both calculating and maintaining the nurse staffing levels. and this could result in reputational damage if carried out.
Gyfrinachedd: Privacy:	Currently no impact in relation to privacy identifiable within this work.
Cydraddoldeb: Equality:	No negative EqIA impacts identified.