

**CYFARFOD BWRDD PRIFYSGOL IECHYD  
UNIVERSITY HEALTH BOARD MEETING**

<b>DYDDIAD Y CYFARFOD: DATE OF MEETING:</b>	24 November 2022
<b>TEITL YR ADRODDIAD: TITLE OF REPORT:</b>	Funded Nursing Care: Methodology to apply for 2022/23
<b>CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR:</b>	Jill Paterson, Director of Primary, Community and Long-term Care
<b>SWYDDOG ADRODD: REPORTING OFFICER:</b>	Vicki Broad, Head of NHS Long-term Care

**Pwrpas yr Adroddiad (dewiswch fel yn addas)**

**Purpose of the Report (select as appropriate)**

Ar Gyfer Penderfyniad/For Decision

**ADRODDIAD SCAA**

**SBAR REPORT**

Sefyllfa / Situation

This report:

- Provides the Board with a summary of the position regarding Funded Nursing Care (FNC);
- Provides the Board with the recommended option for setting the FNC rate for 2022/23
- Seeks formal Board approval for the methodology to be used to set the FNC rate for 2022/23

Cefndir / Background

Funded Nursing Care (FNC) is the term used to describe the NHS funding of Registered Nurse (RN) time in care homes for those residents assessed as requiring nursing supervision and input into their care.

The rate is set annually by Health Boards (HBs) working together to ensure a consistent rate is applied across Wales. The rate is calculated using the Inflationary Uplift Mechanism (IUM) which is made up of two components – (i) an identified amount of RN time and (ii) continence products. The RN component is calculated using Agenda for Change Band 5 and is uplifted annually in line with the NHS Pay Award. The continence component is uplifted annually in line with the Consumer Price Index (CPI).

A Supreme Court Judgment in 2017 determined the services provided by the RN that should be reflected in the FNC rate and the IUM used by HBs to set the rate annually complies with that Judgment. In its Judgment the Supreme Court also found that a proportion of the RN time was used undertaking roles and tasks that were incidental<sup>1</sup> and should therefore be funded by either the local authority<sup>2</sup> or the self-funder.

The extant Welsh Government policy guidance was issued in 2004, so is now some 18 years old. It does not reflect the current national legislative and policy landscape. WG has committed to undertaking a review of the FNC Policy Guidance but, as yet, there has been no commitment to a timescale for this. Instead, in the short term WG intend to issue an

Interim Policy Statement. This is currently being drafted by WG. Early drafts indicate it is likely to confirm the current position is that determined by the Supreme Court but this is not yet confirmed.

1 The Supreme Court Judgment viewed the tasks undertaken by the RN as a matter of convenience rather than needing to be undertaken as a nursing task/skill should not be included as a charge to the NHS. This amounted to 0.385 hours per nursing resident per week and this amount is the responsibility of either the self-funder or the LA, as appropriate.

2 WG provided local authorities with recurring funding via the Revenue Support Grant to meet the costs of the 0.385 hour of RN time that comprise the LA component of the rate

## Asesiad / Assessment

### **Setting the FNC rate**

Since 2014 HBs have used the Inflationary Uplift Mechanism (IUM) to set the FNC rate. This is made up of two components:

- The 'labour' component – i.e. time spent by the care home RN in providing direct and indirect care and supervision. This is funded at the mid-point of Band 5 on the Agenda for Change pay scale;
- The continence supplies component. This is uplifted annually in line with the Consumer Price Index (CPI).

HBs initially approved the IUM to apply for a period of five years and then review. The five year period ended with the 2018/19 calculation. HBs then approved an extension to the IUM for a further two years, to cover 2019/20 and 2020/21, the intention being that this would allow for WG to issue revised FNC Policy Guidance which would include a policy expectation regarding what services should be included within the rate. The COVID-19 pandemic led to a suspension of many planned policy developments, leading to the current WG plan to issue an Interim Policy Statement as a short-term measure during 2022.

The two year extension approved by HB Boards ended in March 2022. **Health Boards need therefore to formally consider whether to continue with the IUM as an appropriate option or to implement an alternative mechanism. This option has been considered by: HB professional and finance leads; HB accountable executive Directors; and most recently by HB Chief Executives. The recommendation is that the IUM be further extended to commence with the current 2022/23 year and for further years until a revised WG Policy indicates it to be inappropriate.**

Should the anticipated WG Policy Guidance review not be forthcoming for any reason it is proposed the IUM be reviewed again after three years to ensure it remains an appropriate mechanism. This would mean that in the absence of a policy update the IUM would be reviewed before the end of 2024/25.

The benefits of retaining the IUM are:

- It is a well-established and tested mechanism which was not challenged during the 2017 legal proceedings;
- It provides a mechanism that allows for the rapid calculation of the FNC rate once the annual announcement of the NHS Pay Award is made.
- It complies with the Supreme Court Judgment.

Care home Providers continue to experience significant financial pressures and view the current FNC rate as insufficient to meet the full costs of delivering nursing care within a care home. WG has indicated that updated FNC Policy Guidance would consider all perspectives and views.

Extending the IUM for 2022/23 and beyond requires formal consideration and approval by each HB. This paper is being considered by the Board as the appropriate decision making and governance process.

The 2021/22 FNC rate was £191.80. Based on the 2022/23 NHS Pay Award the in-year FNC rate has been calculated as £201.74. This is made up of the components set out in the table below. Previous years have been included to reflect the uplifts over time. The £201.74 includes the component that the local authorities are responsible for. Excluding this **the total FNC rate for NHS Wales for 2022/23 is £193.88.**

Financial Year	RN component	Contingence component	HB component of FNC rate	Social care related to FNC and so funded by LA (0.385 hours)	Total FNC weekly rate (9.24 hours plus contingence component)
2014/15	£150.62	£11.00	£161.62	£6.55	£168.17
2015/16	£150.98	£11.00	£161.98	£6.56	£168.54
2016/17	£152.48	£11.00	£163.48	£6.63	£170.11
2017/18	£153.99	£11.29	£165.28	£6.70	£171.98
2018/19	£156.30	£11.57	£167.87	£6.80	£174.67
2019/20	£161.15	£11.82	£172.96	£7.01	£179.97
2020/21	£167.11	£12.02	£179.13	£7.27	£186.40
2021/22	£172.12	£12.20	£184.32	£7.48	£191.80
2022/23	£180.73	£13.15	£193.88	£7.86	£201.74

The position regarding FNC in England differs to that in Wales. In England the rate is set and announced annually by the Department for Health and Social Care and relates purely to the RN time; contingence products are provided via NHS procurement routes in addition to the FNC rate. In May 2022 the DHSC announced an 11.5% uplift to the FNC rate, backdated to also cover 2021/22. Whilst the two rates are not directly comparable as they reflect different funding components this has led to a divergence in rates.

## Argymhelliad / Recommendation

The Board is asked to:

- **Note** the update provided in this paper.
- **Note** and **support** the recommendation of HB Chief Executives<sup>3</sup> that the IUM be extended to 2022/23, and beyond, thus providing the opportunity to respond to requirements in future financial years in a timely manner using a tried and tested methodology. This would allow time for WG to formulate revised FNC Policy Guidance that may impact on the way the FNC rate is calculated in future; a review of the mechanism to set the rate that complies with any future policy requirement would then be necessary.
- **Note** and **support** the proposal that, should the anticipated updated policy guidance not be forthcoming, the IUM will be reviewed after three years to ensure it remains an appropriate mechanism to set the FNC rate.
- **Approve** the recommended uplift to the HB component of the weekly FNC rate to £193.88, backdated to 1 April 2022<sup>4</sup>

3 Based on a recommendation by HB professional and finance leads and each HB's lead executive director.

4 Using the IUM means the FNC rate can only be calculated when the NHS Pay Award is announced. There is therefore an inevitable delay to calculating and issuing the rate whilst the pay announcement is awaited. In light of this and other COVID-19 related pressures being experienced by the care home sector, WG asked HBs earlier to 2022 to consider applying an interim uplift with an in year adjustment once the pay award was announced. Some HBs actioned this, for those that did an in year adjustment will be necessary.

<b>Amcanion: (rhaid cwblhau)</b>	
<b>Objectives: (must be completed)</b>	
Cyfeirnod Cofrestr Risg Datix a Sgôr Cyfredol: Datix Risk Register Reference and Score:	N/A
Safon(au) Gofal ac Iechyd: Health and Care Standard(s):	Governance, Leadership and Accountability 7. Staff and Resources
Amcanion Strategol y BIP: UHB Strategic Objectives:	3. Striving to deliver and develop excellent services 4. The best health and wellbeing for our individuals, families and communities 5. Safe sustainable, accessible and kind care 6. Sustainable use of resources
Amcanion Cynllunio Planning Objectives	Not Applicable
Amcanion Llesiant BIP: UHB Well-being Objectives: <a href="#">Hyperlink to HDdUHB Well-being Objectives Annual Report 2018-2019</a>	8. Transform our communities through collaboration with people, communities and partners

<b>Gwybodaeth Ychwanegol: Further Information:</b>	
Ar sail tystiolaeth: Evidence Base:	Supreme Court legal proceedings (2015-2017) regarding s49 of the Health and Social Care Act.  NHS Funded Nursing Care (FNC) Policy  Continuing NHS Healthcare: The National Framework for Implementation in Wales
Rhestr Termiau: Glossary of Terms:	Funded Nursing Care (FNC) refers to the NHS funding of Registered Nursing (RN) care within care homes, where the need for nursing input has been assessed as necessary. It is a statutory requirement set out in s49 of the Health and Social Care Act and the FNC rate covers both the costs of the services provided by the RN along with funding for continence products that may be necessary.  The <u>Inflationary Uplift Mechanism</u> (IUM) is made up of two components: <ul style="list-style-type: none"> <li>• The 'labour' component – i.e. time spent by the care home RN in providing direct and indirect care and supervision. This is funded at the mid-point of Band 5 on the Agenda for Change pay scale;</li> <li>• The continence supplies component. This is uplifted annually in line with the CPI.</li> </ul>
Partïon / Pwyllgorau â ymgynhorwyd ymlaen llaw y Cyfarfod Bwrdd Iechyd Prifysgol: Parties / Committees consulted prior to University Health Board:	All Wales Long-Term Care Leads HDUHB Executive Team National Commissioning Board Local Authority Lead Directors Care Providers (via Care Forum Wales)

<b>Effaith: (rhaid cwblhau) Impact: (must be completed)</b>	
<b>Ariannol / Gwerth am Arian: Financial / Service:</b>	A decision not to retain a robust mechanism on which to base inflationary uplifts could be challenged by Providers as to how costs are assessed appropriately
<b>Ansawdd / Gofal Claf: Quality / Patient Care:</b>	No impact identified
<b>Gweithlu: Workforce:</b>	A decision not to retain a robust Mechanism for the consideration of inflation in 2021/22 could result in challenge from Care Providers (industries); based on previous legal challenge (2014) regarding FNC rates.
<b>Risg: Risk:</b>	Risk of legal challenge
<b>Cyfreithiol: Legal:</b>	A decision not to retain an appropriate mechanism for the consideration of inflation in 2022/23 could result in legal challenge from Care Providers and / or Local Authority Partners. This is due to there being no contemporary policy guidance available (including the judgement of the 5/7 Page 6 of 7 Supreme Court) to guide Health Boards in setting FNC rates via alternate methods.

<b>Enw Da:</b> <b>Reputational:</b>	A decision not to retain an appropriate mechanism for the consideration of inflationary cost pressures in 2022/23 could result in political pressure / reputational damage, given current pressure experienced by care homes in ensuring business continuity for the remainder of the COVID-19 pandemic.
<b>Gyfrinachedd:</b> <b>Privacy:</b>	No impact identified.
<b>Cydraddoldeb:</b> <b>Equality:</b>	No impact identified.