



CYFARFOD BWRDD PRIFYSGOL IECHYD UNIVERSITY HEALTH BOARD MEETING

DYDDIAD Y CYFARFOD: DATE OF MEETING:	30 May 2024
TEITL YR ADRODDIAD: TITLE OF REPORT:	Interim Funded Nursing Care (FNC) Rate 2024/25
CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR:	Jill Paterson, Director of Primary Care, Community and Long Term Care
SWYDDOG ADRODD: REPORTING OFFICER:	Sian Hurley, Head of Healthcare Contracting

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

The purpose of this report is to seek approval for an Interim All Wales 2024/25 Funded Nursing Care (FNC) rate to be paid to Providers, whilst Agenda for Change pay negotiations continue.

Cefndir / Background

Funded Nursing Care (FNC) is the term used to describe the NHS funding of Registered Nursing (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 working together to ensure a consistent rate is applied across Wales. The rate is calculated using the Inflation Uplift Mechanism (IUM) which is made up of two components:

- an identified amount of Registered Nursing (RN) time
- 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) as reported in January of each year.

It is anticipated that arriving at an agreed A4C pay settlement for 2024/25 will be challenging, with staff side organisations indicating they will not participate in the Independent Pay Review Body process. This will inevitably lead to delays in a pay settlement being agreed by Welsh Government (WG).

Health Boards have been encouraged by WG to ensure that Care Providers are not disadvantaged by delays in agreeing fees for the sector.

Asesiad / Assessment

The Inflationary Uplift Mechanism (IUM) is a method of uplifting historic rates to reflect current prices and inflationary pressures within the sector. The mechanism has been used for a number of years and was not challenged at the judicial review in 2016; it is, therefore, recommended that the IUM is retained as the basis for applying inflation to the FNC fee rate.

The mechanism recognises the two components of FNC:

- Funding of Registered Nursing time; this has been calculated as 9.24 hrs of RN time per resident per week
- Funding for incontinence products

The 2024/25 Agenda for Change pay award is still being negotiated, and it is anticipated that there will be significant delays in agreeing a settlement.

At the All Wales Deputy Director of Finance meeting on 19 February 2024, it was agreed that a recommendation be made to Health Boards that the Registered Nursing element is uplifted by 3%, pending finalisation of pay negotiations. The NHS contribution weekly fee rate per FNC resident is recommended to be £213.18.

The table below summarises the proposed new 2024/25 Interim Rate for FNC (per resident per week):

	NHS Component of FNC	Social Care RN Component	Total FNC
2023/24	£ 206.95	£ 8.37	£ 215.32
Uplift	£ 6.23	£ 0.25	£ 6.48
2024/25 interim	£ 213.18	£ 8.62	£ 221.80

Each Health Board will need to individually approve the recommended interim FNC rate via its normal governance processes, reflecting individual organisations' scheme of delegation for approval of FNC fee rates, and communicate the changes to each Local Authority.

The current financial plan for the 2024/25 IMTP has included an Uplift of 5% for an increase in FNC fee rates. The proposed uplift remains within this planning assumption.

The impact of implementing this interim uplift for the Health Board has been assessed as £96K for 2024/25 for the FNC element.

Key Risks

The 2024/25 recommended uplift equates to a 3.01% overall uplift to FNC rate, compared to 7.4% uplift in NHS England. The differential of FNC fee rates between NHS Wales and NHS England is growing, which could result in potential disputes or challenges by Providers or Local Authorities. Older adult Care Homes across the region remain at risk from a financial perspective. Care Home Providers have expressed concerns to commissioners about the current cost of living crisis and the impact that this is having upon their financial sustainability. Care Home fees have significantly increased however over recent years in recognition of the increased costs of food, fuel and inflation. Recruitment and retention of staff is also a key

challenge across the Sector and this has an impact on both domiciliary and residential care. The Sector remains fragile and the sustainability of services is a national concern.

There will be an impact of this proposal upon Continuing Health Care (CHC) fee rates for 2024/25; a separate paper will be provided to set out the proposal for CHC fee rates, once confirmation of the Local Authority Fees has been published.

There is a risk that the final pay settlement may result in a lower uplift than that included in this interim rate. WG has indicated that Health Boards should not seek recovery from providers if an interim rate has been agreed which is higher than a revised calculation following final pay agreements. Welsh Government will allocate funds to Health Boards based on the final pay agreement.

Further information to support the request:

- Appendix 1 – Background to FNC - setting the 2024/25 rate

Argymhelliad / Recommendation

The Board is asked to **APPROVE**:

- An interim FNC rate for NHS contributions of **£213.18 per resident per week** with effect from 1 April 2024, pending finalisation of the National FNC rate for 2024/25.
- That following the settlement of the A4C pay award for 2024/25, the principles of the IUM are applied for a revised Final FNC rate. **IF** the final national FNC rate is greater than the proposed interim rate, the difference between the interim rate and the final rate should be retrospectively applied and backdated to 1 April 2024.

Amcanion: (rhaid cwblhau)

Objectives: (must be completed)

Cyfeirnod Cofrestr Risg Datix a Sgôr Cyfredol: Datix Risk Register Reference and Score:	N/A
Parthau Ansawdd: Domains of Quality Quality and Engagement Act (sharepoint.com)	5. Equitable
Galluogwyr Ansawdd: Enablers of Quality: Quality and Engagement Act (sharepoint.com)	5. Whole systems perspective
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	N/A

Amcanion Llesiant BIP: UHB Well-being Objectives: Hyperlink to HDdUHB Well-being Objectives Annual Report 2021-2022	8. Transform our communities through collaboration with people, communities and partners
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Gwybodaeth Ychwanegol: Further Information:	
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:	Contained within the body of the report
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 HDdUHB Executive Team National Commissioning Board Local Authority Lead Directors Care Providers (via Care Forum Wales) Deputy Directors of Finance (DDOF's)

Effaith: (rhaid cwblhau) Impact: (must be completed)	
Ariannol / Gwerth am Arian: Financial / Service:	A decision not to apply an interim uplift could be challenged by Providers as to how costs are assessed appropriately
Ansawdd / Gofal Claf: Quality / Patient Care:	No impact identified
Gweithlu: Workforce:	A decision not to apply an interim uplift retain a robust Mechanism for the could result in challenge from Care Providers (industries); based on previous legal challenge (2014) regarding FNC rates
Risg: Risk:	Risk of legal challenge
Cyfreithiol: Legal:	A decision not to apply an interim uplift 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.
Enw Da: Reputational:	A decision not to apply an interim uplift 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.
Gyfrinachedd: Privacy:	No impact identified
Cydraddoldeb: Equality:	No impact identified

Funded Nursing Care: Setting the 2024/25 Rate

March 2024

Background

1. Welsh Government policy defines Funded Nursing Care (FNC) as a weekly amount paid by health boards (HBs) to care homes in respect of each resident who has been assessed as requiring nursing care. This includes RN input into developing the plan of care, oversight of the care delivered, and specific interventions that need by their nature to be undertaken by a registrant.
2. The rate is set on an all Wales basis by health boards, working together to ensure a consistent approach across Wales, as was the case when FNC was funded initially by the Welsh Government.
3. In Wales the FNC rate includes funding for an amount of registered nurse time and also for continence products that may be necessary. This is different to England where the FNC rate is purely focused towards the registrant, continence products are provided by NHS England via a direct supply process.
4. For many years the FNC rate has been calculated using the Inflationary Uplift Mechanism (IUM). This reflects the two components of the FNC rate:
 1. Funding for the RN, this is calculated based on the mid-point of Band 5 Agenda for Change and uplifted annually in line with the NHS pay award.
 2. Funding for continence supplies, this is uplifted annually in line with the CPI.

Legal Issues

5. The way HBs set the FNC rate in Wales was challenged legally in 2015/16; specifically care home providers and local authorities were of the view the weekly amount paid did not cover the actual costs of registered nurse input. The legal process culminated in 2016 in the Supreme Court.
6. The Supreme Court concluded:
 - In addition to the services already funded, HBs should include two other factors when determining the FNC rate. These were paid breaks and time spent by the registrant receiving clinical supervision¹.
 - There would be times when the registrant provided some care purely incidentally – ie it did not require the skills of a RN to deliver the care, it was provided purely by the RN as a matter of convenience. The Supreme Court determined this component of care should be funded by the appropriate local authority
 - The Court made no criticism or comment about the Inflationary Uplift Mechanism, it was determined to be an appropriate mechanism to set the rate.

¹ It is of note that neither of these factors are funded for registrants employed within the NHS.

7. Following the Supreme Court Judgment² health boards all took action to include the two additional factors identified by the Court. Welsh Government provided funding to local authorities to support their contribution to the FNC rate. To date, local authorities have used the IUM process to reflect their contribution³.

Policy Position

8. At the time of the legal challenges the extant Welsh Government policy guidance was that issued in 2004, almost 20 years old and not reflective of contemporary policy developments or legislation/case law. WG recognised this but staffing constraints meant that a complete review of the FNC policy guidance was deferred.

9. Several years after the Supreme Court Judgment, in November 2002, WG issued interim policy guidance⁴. This was a brief statement rather than a full policy review, its intention was to reflect the Supreme Court Judgment.

10. The key updates to the 2004 guidance were:

- References to section 49 of the Health and Social Care Act 2001 should be replaced by section 47 of the Social Services and Well-being (Wales) Act 2014
- The scope of the activity of a registered nurse which must be covered by the LHB's FNC payment, is that set out in the 2017 Supreme Court Judgement
- Calculation of the FNC rate
- Requirements and guidance for partnership working and pooled funds under the 2014 Act
- The Regulation and Inspection of Social Care (Wales) Act 2016 amends parts of the Care Standards Act 2000 and sets out the regulatory framework for social care services in Wales.

11. The policy guidance identifies the factors that are covered by the registered nurse as:

- time spent on nursing care, in the sense of care which can only be provided by a registered nurse, including both direct and indirect nursing time
- paid breaks
- time receiving supervision
- stand-by time and
- time spent on providing, planning, supervising or delegating the provision of other types of care which in all the circumstances ought to be provided by a registered nurse because they are ancillary to or closely connected with or part and parcel of the nursing care which the nurse has to provide

² The Judgment can be found at: [R \(on the application of Forge Care Homes Ltd and others\) \(Appellants\) v Cardiff and Vale University Health Board and others \(Respondents\) \(supremecourt.uk\)](#)

³ Following the SC Judgment the amount of RN time allocated weekly to be funded by health boards was 8.655 hours per nursing resident per week and an amount for continence products. The incidental/ancillary care to be funded either by the self funder or by the appropriate local authority was set at 0.385 hours per nursing resident per week. .

⁴ [NHS Funded Nursing Care \(FNC\) Interim Policy Statement: November 2022 \[HTML\] | GOV.WALES](#)

Other relevant factors

Estimated uplift from the start of the financial year

12. The IUM uses the NHS Pay Award as the basis of any annual uplift to the labour component of the FNC rate. As the NHS Pay Award is rarely announced before the start of each financial year the rate has frequently been uplifted later, as soon as the Pay Award was confirmed, with backdating of the uplift to the start of that financial year. Providers identified risks to their business in not receiving the funding at the commencement of the financial year. In response to this the policy guidance requires HBs to:

consider options to ensure clarity for providers, such as an interim rate at the start of the financial year, with re-calculation after the pay award for nurses has been announced. HBs would not be expected to reclaim any payment made on an interim basis which is above that which the pay award determines.

13. This places some risk on health boards of having to estimate the Pay Award uplift each year and make that available as from 1 April each year, but with no way to reclaim payments should the pay award be less than had been estimated.

Unanticipated Impacts

14. The IUM uses the annual NHS Pay Award to set the labour component of the FNC rate. In 2023/24 two additional uplifts were made to the NHS Pay Award which resulted in the need to make further adjustments to the FNC rate. This led to a prolonged period of time before the final 2023/24 FNC rate could be confirmed.

Differences in the FNC Rate in England and Wales

15. There are three issues of relevance here:

(i) The FNC rate in England is for registered nurse time only. Continence products are provided via a direct supply mechanism⁵. It is not possible therefore to directly compare the weekly rate.

(ii) The rate is set in England by the Department for Health and Social Care. The uplift is usually on the basis of commissioned work from consultants⁶ and NHS England is then informed what the rate would be.

(iii) In May 2022 the Department of Health and Social Care announced an uplift of 11.5% in the FNC rate, backdated to also cover 2021/22⁷. This additional funding was provided to reflect the variety of care needs met within care homes and their role in working with the NHS on 'tackling COVID-19 backlogs'.

⁵ Work was undertaken several years ago to explore whether a direct supply of continence products would be more efficient and cost effective. At that time the views of providers were that they did not wish to proceed with this, partly because there would be a limited list of products and they wanted to continue to use products of their choice. Moving to a direct supply process in Wales would also significantly impact on the annual commissioning process.

⁶ Both Mazars and Laing & Buisson have been used in the past

⁷ [Increased funding for nursing in care homes - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/increased-funding-for-nursing-in-care-homes)

16. A direct consequence of the 11.5% uplift in England is the significant ‘gap’ that is now evident between the FNC rates in England and Wales. Funding for the uplift was provided by the Department of Health and Social Care in England. Welsh Government were contacted and informed of the position but have declined to engage on any additional funding discussions.

Sectoral views and expectations

17. Anecdotal evidence from across HBs indicates there are growing tensions regarding the FNC rate, with some providers and some local authority partners expressing the view that the FNC rate is not sufficient to meet the assessed needs of nursing residents. This is despite HBs complying fully with the Supreme Court Judgment and the WG interim policy statement.

18. Early indications are that the likelihood of legal challenges in some areas is immediate and growing. The outcome of any legal challenge to one health board is likely to have implications across Wales.

Engagement

19. The WG interim policy statement states that HBs should engage *effectively with LAs and care providers when announcing and paying a suitable FNC rate each year*. It also recognises that the rate has been set annually on an all-Wales basis by LHBs using an Inflationary Uplift Mechanism (IUM).

20. HBs receive views from providers through a range of local formal and informal mechanisms. The residential component of the rate (paid either by self-funders of the local authority) is subject to engagement and discussions including through the *Lets agree to agree* process. The factors included in the FNC rate have been set by the Supreme Court and restated in the WG interim policy statement and are therefore not subject to amendment or adjustment.

Setting the 2024/25 Rate

21. As with previous years, the NHS Pay Award has yet to be announced; it is unlikely that the announcement would be made in time to be reflected in the FNC rate from April 2024, or as early as possible afterwards. The UK Government only instructed the PRB to prepare their report at the very end of December 2023, and called for the PRB to respond by May.

22. It is necessary therefore to consider an interim uplift, bearing in mind that any over assessment of the uplift would not be subject to reimbursement.

23. A trawl has been undertaken to identify evidence provided to the Pay Review Body (PRB) for the 2024/25 uplift. Whilst NHS Providers, the Royal College of Nursing, the Royal College of Midwives and other trades unions all advocate for significant uplifts that reflect the real term pay degradation over the last decade. Interestingly, NHS Providers advocates focused additional adjustments for Band 5 which, if accepted, would have further financial implications for the FNC rate.

24. Three unions representing nurses have announced that they will not submit evidence to the NHS Pay Review Body (PRB) for the 2024-25 pay round and have instead demanded direct pay negotiations with the government.

25. Unison, GMB and Unite have confirmed that they will boycott the 2024/25 PRB process, amid concerns that it is not fit for purpose.

26. The Department for Health and Social Care submission to the PRB emphasises the need for any uplift to be *affordable*⁸.

Conclusion

27. Health boards are in the invidious position of an expectation to set an uplift to the FNC rate from April 2024 whilst the rate relies upon the NHS Pay Award for 2024/25 which is not expected to be announced for several months.

28. In the meantime, health boards need to set an interim rate that, if retrospectively is found to be excessive, cannot be reclaimed.

29. Reaching agreement on an appropriate uplift will require the input and expertise of both professional and finance colleagues across the health boards in Wales.

30. HB boards have all approved the IUM to apply until review meaning there is no requirement to seek board approval annually. However given the IUM is tied to the NHS Pay Award which is not yet available, it is likely that any interim uplift will need to go through HB boards and/or relevant HB Committees for approval. This may lead to a delay in issuing even an interim uplift.

31. This paper sets out the issues and seeks advice, guidance and a collated view from finance colleagues.

Recommendations

32. That HB professional and finance leads note the already approved⁹ IUM as the ongoing mechanism to set the FNC rate

33. That professional and finance leads give due consideration to the issues set out in this note and consider an appropriate interim uplift to the FNC rate to apply until the 2024/25 NHS Pay Award is confirmed. In doing this it is essential to note that any overassessment of the interim uplift to be applied cannot be reclaimed by HBs.

34. Note that because the interim uplift is an assessment rather than a direct application of the NHS Pay Award uplift there may be a need to seek formal approval for the proposed interim rate by each HB through their Board/relevant Committee.

35. That finance colleagues consider any additional issues of relevance and provide their combined views on an appropriate interim uplift.

⁸ [DHSC's written evidence to the NHS Pay Review Body for the pay round 2024 to 2025 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

⁹ By each HB Board/Board level Committee