



GIG
CYMRU
NHS
WALES

Bwrdd Iechyd Prifysgol
Abertawe Bro Morgannwg
University Health Board



Meeting Date	31st of January 2019	Agenda Item	4.3
Report Title	Funded Nursing Care Update		
Report Author	Diane Fletcher Interim Head of Long Term Care, Gaynor Williams National Director : Complex Care		
Report Sponsor	Gareth Howells, Director of Nursing & Patient Experience		
Presented by	Gareth Howells, Director of Nursing & Patient Experience		
Freedom of Information	Open		
Purpose of the Report	<p>The purpose of this paper is to:</p> <ul style="list-style-type: none"> • Provide the Board with an update on Funded Nursing Care (FNC) since the last update in March 2018; • Advise the Board of the ongoing work since the Supreme Court Judgment to ensure compliance; • Seek Board approval for an uplift to the 2018/19 FNC rate in line with the previously approved Inflationary Uplift Mechanism. 		
Key Issues	Update relating to ongoing work since the Supreme Court Judgment. To note the recommendations		
Specific Action Required <i>(please ✓ one only)</i>	Information	Discussion	Assurance
			Approval ✓
Recommendations	<p>Members are asked to:</p> <ul style="list-style-type: none"> • NOTE the identification of a calculation error by Laing & Buisson that has led to a need to revise the 2017/18 FNC rate as approved by the Board in March 2018; • NOTE that confirmation of the NHS pay award has meant the 2018/19 FNC rate has now been calculated and approve the NHS component of the 18/19 rate as £167.87, with a further additional component payable by LAs; • NOTE the Inflationary Uplift Mechanism was agreed for a five-year period and this ends with the 2018/19 uplift. Health Board teams will consider options for 2019/20 onwards; • NOTE the work undertaken with provider 		

	<p>representatives to resolve the evidence of paid breaks matter and that this should be resolved to the satisfaction of all parties shortly;</p> <ul style="list-style-type: none"> • NOTE the requirement to issue reimbursement resources in year and the processes in place to manage the three cohorts that require reimbursement; • NOTE that Care Forum Wales has indicated their wish to consider other matters, including CHC rates, now that FNC matters are reaching resolution.
--	---

FUNDED NURSING CARE UPDATE

1. INTRODUCTION

The purpose of this paper is to:

- Provide the Board with an update on Funded Nursing Care (FNC) since the last update in March 2018;
- Advise the Board of the ongoing work since the Supreme Court Judgment to ensure compliance;
- Seek Board approval for an uplift to the 2018/19 FNC rate in line with the previously approved Inflationary Uplift Mechanism.

2. BACKGROUND

FNC refers to the NHS funding of Registered Nursing (RN) care within care homes, where this has been assessed as necessary. Board members will recall from previous papers, most recently in March 2018, the background to this and the work commissioned by Health Boards (HBs) from Laing & Buisson that was used as the basis for uplifting the FNC rate. Following this, legal challenges culminated in 2017 with a Supreme Court hearing.

The Supreme Court found that, in addition to the services already funded, HBs should fund additional services provided by the RN. These are:

- Time spent by the RN in receiving registrant supervision;
- Paid breaks;
- A proportion of the personal care delivered by the RN where that was necessary in order to assess and put an appropriate plan of care in place, with the remainder of the personal care delivered by the RN to be funded by the Local Authority (or the individual in the case of self-funders).

Including these additional services ensures that the FNC rate will reflect all of the RN time identified by Laing & Buisson in their Report in 2013. The payments need to be backdated to 1 April 2014, the date of the first decision challenged by the care homes in the legal proceedings.

The March 2018 Board Paper:

- set out these issues in detail;
- updated Boards on work post Judgment, facilitated by Welsh Government, that concluded that the costs of the personal care delivered by the RN be funded on a 50:50 basis between the appropriate HB and Local Authority;
- set out the calculation of the 2017/18 FNC rate and sought approval for this to be issued;
- advised on the work underway to manage the reimbursement process for 2014/15; 2015/16; 2016/17 and the three strands of reimbursement – to providers; to self-funders; to the estate of deceased self-funders;

- advised of the need to seek evidence that paid breaks have been funded before this component could be reimbursed.

3. GOVERNANCE and RISK

Developments since previous Board Paper

Following on from the March HB Board meetings Care Forum Wales (CFW), initially via self-contact and subsequently via further legal correspondence, raised additional queries with HBs regarding the FNC rate. These queries were found to be due to a calculation error by Laing & Buisson in the Report provided to HBs in 2013 and related to the financial cost attached to the standby time rate. Following identification of this error by Laing & Buisson HBs accepted the need to correct the rate and revise the calculations used to reach the amended FNC rates from 2014 onwards.

Further work has also been undertaken to determine an appropriate evidence requirement that paid breaks have been funded and so can be reimbursed. Wales Audit Office (WAO) has confirmed it would expect some form of proportionate evidence requirement be put in place by HBs and further discussions with WAO, CFW and other provider representatives have helped to progress this requirement.

The current position regarding the key issues is:

- The 17/18 uplift as approved by Boards in March 2018 has been issued. Depending on the point in the process HBs were at, this will either be the agreed March rate with the adjustments to reflect the revised rate made later this year alongside the 18/19 uplift or via a combined uplift.
- Reimbursement to Providers for 2014/15; 2015/16; and 2016/17 has now commenced, with the paid breaks component withheld whilst the evidence matter is resolved. It is anticipated that resolution will be possible shortly. In addition HBs need to reimburse those self-funded nursing residents who are currently in care homes and also put a process in place to address reimbursement relating to deceased self-funders. Funding for the reimbursement has been provided by WG, with a clear expectation that the funds will be issued in year. In order to ensure compliance HBs have been working to ensure they have robust data on those in receipt of FNC since 2014. The actual reimbursement sums will be made to three groups:
 - a) To providers for those individuals whose residential care was funded by LAs in care homes;
 - b) To self-funders currently in nursing placements in care homes as they will, by definition, have paid for some elements of care that the Court has determined should be funded by the NHS;
 - c) To the estate of deceased self-funders – as above these individuals will have paid for some services that the Court has decided the NHS should have funded. A specific process will need to be put in place to seek out claimants, using the model in place for retrospective CHC claims – a

newspaper notice will be inserted inviting those who may be eligible to contact the relevant HB.

- HBs need to consider and agree an appropriate form of evidence in order to reimburse providers for paid breaks. Following further dialogue with provider representatives and the WAO it is anticipated this can be resolved with agreement from all parties quite quickly. A verbal update will be provided on any developments since this paper was drafted.
- The labour component of the FNC rate is uplifted based upon previously approved Inflationary Uplift Mechanism that is linked to the NHS Pay Award, with the continence component uplifted on an inflation basis (CPI). Now the Pay Award has been confirmed the 2018/19 NHS component of the FNC rate has been calculated by HB finance leads at £167.87. This excludes the LA component which will be funded by the appropriate LA.

4. FINANCIAL IMPLICATIONS

- The Inflationary Uplift Mechanism was approved by HB Boards to operate for a period of five years, with 2018/19 being the final year. HBs will need to consider whether to continue with the IUM or adopt an alternative process and HB representatives will work on an all Wales basis to consider this further and develop options.
- Care Forum Wales has indicated that, once FNC matters are resolved, they will wish to open dialogue on other matters including Continuing NHS Healthcare.

5. SUMMARY

Health Boards continue to work on an all Wales basis to comply with the requirements of the Supreme Court Judgment. The 17/18 uplift is being issued, with the 18/19 uplift now calculated so that the uplift can also be issued once approved by Boards.

Reimbursement to providers for 2014/15; 2015/16 and 2016/17 is underway, with the paid breaks component withheld whilst the evidence matter is concluded. Reimbursement to self-funders currently in care homes will also take place shortly, with specific work to be progressed relating to deceased self-funders. This is likely to be the most challenging cohort to reimburse and HBs are seeking WG support to accrue resources into early 19/20 should that be necessary.

6. RECOMMENDATIONS

Members are asked to:

- **NOTE** the identification of a calculation error by Laing & Buisson that has led to a need to revise the 2017/18 FNC rate as approved by the Board in March 2018;

- **NOTE** that confirmation of the NHS pay award has meant the 2018/19 FNC rate has now been calculated and **APPROVE** the NHS component of the 18/19 rate as **£167.87**, with a further additional component payable by LAs;
- **NOTE** the Inflationary Uplift Mechanism was agreed for a five-year period and this ends with the 2018/19 uplift. Health Board teams will consider options for 2019/20 onwards;
- **NOTE** the work undertaken with provider representatives to resolve the evidence of paid breaks matter and that this should be resolved to the satisfaction of all parties shortly;
- **NOTE** the requirement to issue reimbursement resources in year and the processes in place to manage the three cohorts that require reimbursement;
NOTE that Care Forum Wales has indicated their wish to consider other matters, including CHC rates, now that FNC matters are reaching resolution.

Governance and Assurance							
Link to corporate objectives (please ✓)	Promoting and enabling healthier communities		Delivering excellent patient outcomes, experience and access		Demonstrating value and sustainability		Securing a fully engaged skilled workforce
			✓		✓		✓
Link to Health and Care Standards (please ✓)	Staying Healthy	Safe Care	Effective Care	Dignified Care	Timely Care	Individual Care	Staff and Resources
	✓	✓	✓	✓	✓	✓	✓
Quality, Safety and Patient Experience							
Supports the continued delivery of continuing health care							
Financial Implications							
The <u>Inflationary Uplift Mechanism</u> was approved by HB Boards to operate for a period of five years, with 2018/19 being the final year. HBs will need to consider whether to continue with the IUM or adopt an alternative process and HB representatives will work on an all Wales basis to consider this further and develop options.							
Legal Implications (including equality and diversity assessment)							
Failure to support the actions taken by the Health Board could result in further legal challenge as set out in this report.							
Staffing Implications							
There is limited impact on staffing.							
Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)							
Limited impact							
Report History	Presented at PCS Formal Board						
Appendices	none						