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NHS Funded Nursing Care (FNC) Interim Policy Statement: November 2022

Update on legislative changes and court judgements on NHS Funded Nursing Care since 2004.

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Purpose of this document

The current FNC policy is set out in a single WG document [NAFWC 25/2004 and WHC \(2004\) 024](#) and takes the form of guidance to LHBs and local authorities.

The purpose of this interim policy statement is to provide an update on legislative changes and court judgements since 2004. This statement should be viewed in addition to the substantive [2004 FNC Guidance](#) in advance of a longer-term review of FNC policy.

Definitions

NHS Funded Nursing Care (FNC)

As described in the [Continuing NHS Healthcare National Framework \(2021\)](#):

Continuing NHS health care (CHC) is different from 'NHS Funded Nursing Care' (FNC) which is only applicable to individuals requiring nursing care in a care home. The provision of FNC derives from Section 49 of the Health and Social Care Act 2001 (now replaced in relation to Wales, by Section 47(4) and (5) of the Social Services and Well-being (Wales) Act 2014), which excludes nursing care from the services which can be provided by local authorities. The decision on eligibility for FNC should only be taken when it is considered by the Multi-disciplinary Team (MDT) that the person does not fall within the eligibility criteria

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for CHC but does have nursing care needs.

Nursing care

Section 47(10) of the **2014 Act** defines nursing care as a service which involves either the provision of care or the planning, supervision or delegation of the provision of care, but does not include a service which, by its nature and in the circumstances in which it is to be provided, does not need to be provided by a registered nurse.

Care home service

The Regulation & Inspection of Social Care (Wales) Act 2016: Schedule 1 of the Act defines regulated services. It states:

‘A “care home service” is the provision of accommodation, together with nursing or care at a place in Wales, to persons because of their vulnerability or need.’

General background

The decision to apply NHS Funded Nursing Care should only be taken when it is considered that the person does not fall within the **eligibility criteria for CHC** but does have nursing care needs.

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FNC is a weekly amount paid by local health boards (LHBs) to care homes in respect of each resident who has been assessed as requiring nursing care. It comprises two elements: the health board registered nurse's time (calculated as 8.655 hours) and an amount for continence products. In addition, there is a Welsh Government payment administered by LA's/self-funder contribution for social care tasks undertaken by a registered nurse, considered incidental and ancillary, calculated as 0.385 hours per week.

The weekly rate is reviewed every year and all LHBs pay the same. Unlike accommodation and personal care costs, the FNC contribution to the cost of a resident's care package is not means-tested nor is it taxable. The policy intention is to ensure that nobody, regardless of their care setting, should have to pay for the services of a registered nurse to meet their assessed nursing needs.

Those needing nursing care at home receive it free from the community nursing service or GP surgery, while those in hospital have access to nursing care at all times without charge. NHS healthcare is free at the point of need, with exceptions such as dentistry.

The current FNC policy is set out in a single WG document NAFWC 25/2004 and WHC (2004) 024. It takes the form of guidance to LHBs and local authorities.

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Updates

The key updates for the **2004 guidance** set out here are:

- 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.

Section 47 of the 2014 Act

Section 47 of the **Social Services and Well-being (Wales) Act 2014** ("the 2014 Act") prevents a local authority from providing services which the NHS is required to provide under any enactment unless doing so would be incidental or ancillary to services which a local authority is empowered to provide under ss35-45 under that Act. In effect it replicates s49 of the Health and Social Care Act 2001.

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The 2017 Supreme Court Judgement

Following disputes involving local authorities, care providers and LHBs, in 2017, the Supreme Court ([2017] UKSC 56) considered whether everything a registered nurse did in a residential care setting falls within the exclusion under s49 of the 2001 Act (or s47 of the 2014 Act) and should therefore be funded by a LHB.

It decided that, in addition to what LHBs had included in their calculation of the weekly FNC amount at the time, the FNC amount should also include paid breaks and time spent under clinical supervision. However, it also concluded that a small element of the registered nurse's time was spent on incidental/ ancillary care tasks that did not fall within the exclusion of s49 and thus fell to the individual or the local authority to pay for. This element was later costed at 0.385 hours of a nurse's time per week.

Registered nurse input

The registered nurse input is described in the 2017 Supreme Court Judgement, closely following the wording of section 47(10) of the Social Services and Well-being (Wales) Act 2014, in the following terms:

'Services provided by a registered nurse and involving either the provision of care or the planning, supervision or delegation of the provision of care, other than any services which, having regard to their nature and the circumstances in which they are provided, do not need to be provided by a registered nurse'.

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Nursing care by a registered nurse covers:

- 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

Calculation of the FNC rate

LHBs should engage effectively with LAs and care providers when announcing and paying a suitable FNC rate each year, meeting the criteria set out in this document.

In recent years, the rate has been set annually on an all-Wales basis by LHBs using an Inflationary Uplift Mechanism (IUM).

The IUM has two components:

- The Registered Nurse time, uplifted annually in line with the NHS Agenda for Change Pay Scale at midpoint Band 5.
- Funding for continence supplies. This is uplifted annually in line with the Consumer Prices Index (CPI).

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As the NHS Pay Award is not announced in time for the uplift to be provided at the start of the financial year, HBs should 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.

Table of recent agreed FNC rates

Financial year	RN component	Continance component	Total HB component of FNC rate (8.655 hours)	LA component (0.385 hours)	Total weekly FNC rate (9.4 hours plus continance 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

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Financial year	RN component	Continence component	Total HB component of FNC rate (8.655 hours)	LA component (0.385 hours)	Total weekly FNC rate (9.4 hours plus continence component)
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

Partnership working and pooled funds

In the delivery of FNC, LHBs and LAs must take account of Regulations and guidance under Part 9 of the 2014 Act in relation to partnership working and pooled funds, as set out in the Part 9 Guidance.

In particular, the requirements and guidance set out in section 9 of that guidance in relation to care home places for older people and care homes more generally, include care home places with FNC.

Key links

- [2004 FNC Guidance](#)

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- **CHC Framework**
- **The Social Services and Well-being (Wales) Act 2014**
- **Social Services and Well-being (Wales) Act 2014 Codes and guidance: Part 9 Statutory Guidance (Partnership Arrangements)**
- **Supreme Court Judgement - R (on the application of Forge Care Homes Ltd and others) (Appellants) v Cardiff and Vale University Health Board and others (Respondents)**
- **Regulation and Inspection of Social Care (Wales) Act 2016**

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