

National Assembly for Wales
Bill Summary

The Safe Nurse Staffing Levels (Wales) Bill

February 2015

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The Safe Nurse Staffing Levels (Wales) Bill

Introduction

The [Safe Nurse Staffing Levels \(Wales\) Bill](#) is an Assembly Member Bill. It was introduced on 1 December 2014 by Kirsty Williams AM following her success in a legislative ballot in December 2013. The Member undertook two [consultations](#) in respect of her proposals during 2014, the latter being a consultation on a Draft Bill.

Kirsty Williams AM made an oral statement in Plenary on 3 December 2014 (further details below).

The scrutiny of the Safe Nurse Staffing Levels (Wales) Bill is remitted to the Health and Social Care Committee. On 18 November 2014 the Business Committee agreed the deadline for the Stage 1 Committee to report as 10 April 2015 and the deadline for the completion of Stage 2 Committee proceedings as 5 June 2015.

The Health and Social Care Committee has held a [consultation](#) on the general principles of the Bill, which closed on 22 January 2015. The Committee is considering the Bill at Stage 1 and began taking evidence on 15 January 2015.

Overview of the Bill

The Bill 'seeks to ensure that nurse staffing levels within the Welsh NHS are sufficient to provide safe, effective and quality nursing care to patients at all times'.

The Explanatory Memorandum (EM) sets out that, in summary, the Bill:

- places a duty on health service bodies in Wales to have regard to the importance of ensuring an appropriate level of nurse staffing wherever NHS nursing care is provided;
- places a duty on health service bodies to 'take all reasonable steps' to maintain staffing ratios, initially in adult inpatient wards in acute hospitals, for:
 - minimum nurse / patient ratios; and
 - minimum nurse / healthcare support workers ratios.

[There is provision for this duty to be extended to other healthcare settings at a future date. Further detail is provided below];

- requires the Welsh Government to develop guidance setting out the methods/process by which the NHS organisations will be expected to determine nurse staffing levels that are locally appropriate and at all times safe. The guidance will apply initially to adult acute wards and will set out the minimum staffing ratios and staff skills mix for these settings;
- seeks to ensure that, when determining nurse staffing levels, certain roles (ward sisters for example) are regarded as supernumerary, and factors such as staff training and development needs and planned/unplanned leave are properly taken into account;
- places a duty on health service bodies in Wales to monitor their compliance with the safe nurse staffing requirements and to take action where failings occur;
- seeks to provide a statutory basis for patients and staff to challenge poor levels of nurse staffing.

1. Background

1.1. *Legislative competence*

The Explanatory Memorandum states (in paragraph 7) that the subject of the Bill falls within the list of subjects in Part 1 of Schedule 7 of the *Government of Wales Act 2008* and is therefore within the competence of the Assembly. Paragraph 9 of Schedule 7 includes:

9. Health and health services

[...] Prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder [...] Provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities. Clinical governance and standards of health care. Organisation and funding of the health service.

The Explanatory Memorandum also states that the regulation of health professionals is listed as an exception under paragraph 9, but that none of the provisions in the Safe Nurse Staffing Levels (Wales) Bill falls within that (or any other exception).

1.2. *Current arrangements for determining nurse staffing levels*

The EM sets out that in April 2012, the Chief Nursing Officer issued guidance to Local Health Boards in Wales, the All Wales Nursing Staffing Principles. This set out the following core principles:

- numbers of patients per registered nurse should not exceed 7 by day;
- a night time ratio of 1 nurse to 11 patients;
- the skill mix of registered nurse to healthcare support worker in acute areas should generally be 60/40;
- nursing establishments on acute wards should not normally fall below 1.1 whole time equivalent per bed, including a headroom of 26.9% to allow for staff leave and training;
- professional judgement will be used throughout the planning process;
- the ward sister/charge nurse should not be included in the numbers when calculating patients per registered nurse;
- ward activity and demand will be considered when establishing staffing levels as well as the number of beds, environment and ward lay-out;
- for specialist areas and wards with tertiary services, professional standards, guidelines and national frameworks should be used to determine nurse staffing levels.

The EM notes that this guidance is **not subject to statutory requirement**. It also sets out information in a table on page 11 of the Explanatory Memorandum, which provides data on the extent to which Local Health Boards were meeting the principles set out in this guidance during May and June 2013, following a Freedom of Information request.

1.3. The Bill's purpose and intended effect

Section 1 of the Bill stated purpose is 'to ensure that nurses are deployed in sufficient numbers' to:

- enable the provision of safe nursing care to patients at all times;
- improve working conditions for nursing and other staff; and
- strengthen accountability for the safety, quality and efficacy of workforce planning and management.

In her [oral statement](#) to introduce the Bill, Kirsty Williams AM said:

The purpose of this Bill is to ensure that nurse staffing levels within the Welsh NHS are sufficient to provide safe, effective and quality nursing care to all patients, at all times. It is about providing nurses with the time to provide compassionate care. This Bill is about transforming the quality of care provided within the Welsh NHS, with the ambition of putting it among world leaders in this field.

She went on to say:

The premise of this Bill is simple: nurses with fewer patients to care for can spend more time with each patient, and, as a result, they can provide better care. They have more opportunity to identify and address potential problems with a patient's care, and can play a preventative, rather than simply a reactive, role.

2. The Safe Nurse Staffing Levels (Wales) Bill: Summary of provisions

The Bill contains only five sections and no Schedules; it is therefore not divided into Parts. The significant provisions of the Bill are contained in section 2 of the Bill, which would insert a new section 10A into the *National Health Service (Wales) Act 2006* as follows:

(1) Each health service body in Wales must in exercising its functions—

(a) have regard to the importance of ensuring that registered nurses are deployed in sufficient numbers to enable the provision of safe nursing care, allowing time to care for patients sensitively, efficiently and effectively; and

(b) take all reasonable steps to maintain minimum registered nurse: patient ratios and minimum registered nurse: healthcare support workers ratios in adult inpatient wards in acute hospitals (in accordance with guidance under this section).

The first of these duties (deploying a sufficient numbers of nurses to provide safe care), in section 10A(1)(a) (inserted into the *NHS (Wales) Act 2006* by section 2 of the Bill), applies to all NHS health service bodies in Wales.

The second duty (to maintain minimum staffing levels), in section 10A(1)(b) (inserted into the *NHS (Wales) Act 2006* by section 2 of the Bill), will be limited to adult inpatient wards in acute hospitals in the first instance. This duty can be extended to other settings by regulations, as is further explained below.

The other sections relate to the purpose of the Bill (section 1), a duty on the Welsh Government to review its operation and effectiveness (section 3), commencement (section 4) and the short title (section 5).

The Explanatory Notes, at pages 75-76 of the Explanatory Memorandum, provide an explanation of the provisions of the Bill.

Power to make regulations

The Bill contains a single power to make regulations. This is the power to make regulations which permit the Welsh Ministers to extend the duty to take all reasonable steps to meet minimum staffing ratios (contained in section 10A(1)(b), inserted into the *NHS (Wales) Act 2006* by section 2 of the Bill) ‘to additional settings’, other than adult inpatient wards in acute hospitals.

The EM states:

168. [...] This provision is included in order that the duty to take all reasonable steps to meet recommended minimum ratios can be extended to settings, other than adult inpatient wards in acute hospitals, should there be sufficient evidence that such an extension is necessary. Any regulations made by the Welsh Ministers will be by way (of) affirmative procedure. This is considered appropriate as the power extends the settings to which the new duty may apply.

Guidance

The Bill contains extensive duties in section 10A(4) (inserted into the *NHS (Wales) Act 2006* by section 2 of the Bill) for the Welsh Ministers to issue guidance to health service bodies about their compliance with the duty to ‘take all reasonable steps’ to maintain minimum staffing ratios under new section 10A(1)(b). The matters to be dealt with are set out in detail in subsections (5) and (6) of section 10A:

“(5) The guidance—

(a) must specify methods by which health service bodies may comply with the duty (including methods of the kinds described in subsection (6)), to the extent that the Welsh Ministers consider it practicable;

(b) must specify recommended minimum registered nurse: patient ratios (which individual health service bodies may adjust so as to increase the minimum numbers of nurses for their hospitals);

(c) must specify recommended minimum registered nurse: healthcare support worker ratios (which individual health service bodies may adjust so as to increase the minimum numbers of registered nurses for their hospitals);

(d) must define, or include provision to be used in defining, the terms used in subsection (1)(b);

(e) must include provision for ensuring that the recommended minimum ratios are not applied as an upper limit in practice;

(f) must be designed to ensure that the requirements of the duty are met on a shift-by-shift basis;

(g) must include provision about the publication to patients, to the extent that Welsh Ministers consider it appropriate, of the numbers, roles and responsibilities of nursing staff on duty; and

(h) must include provision which in the opinion of the Welsh Ministers provides the protections mentioned in subsection (7).

(6) The methods mentioned in subsection (5)(a) are methods that in the opinion of the Welsh Ministers—

(a) involve the use of evidence-based and validated workforce planning tools, which are capable of being applied to calculations by reference to individual nursing shifts;

- (b) allow for the exercise of professional judgement within the planning process;
- (c) make provision for the required nursing skill-mix needed to reflect patient care needs and local circumstances; and
- (d) reflect or apply standards, guidelines and national frameworks produced or adopted by professional nursing organisations.”

3. Regulatory Impact Assessment

3.1. Financial implications of the Bill

Costs and benefits associated with the Bill

A Regulatory Impact Assessment (RIA) is set out on pages 40-75 of the EM. The RIA considers the options available in respect of the main provisions of the Bill and analyses how far these would meet the stated policy objectives.

It outlines an analysis of the associated risks, costs and benefits of each of the following options:

- **Option 1:** Do nothing – maintain working towards current Chief Nursing Officer guidelines and acuity tool implementation;
- **Option 2: Preferred option** - Introduce Bill to ensure nurse staffing levels within the Welsh NHS are sufficient to provide safe, effective and quality nursing care to patients at all times.

The RIA states that the total **additional costs** of the preferred option are approximately £133,000 over the five year period after the Bill becomes law. Of these, the £45,300 annual reporting costs would fall to NHS Wales' bodies, with the remaining £87,500 falling to the Welsh Government. These additional costs are summarised in table 1 below.

The benefits of the Bill are not quantified, as is the case with most Bills. However, the RIA does outline some of the potential benefits of the Bill, for example lower bank and agency staff costs and reduced litigation costs for poor care based on data from Wales. Additionally, a number of other potential benefits are also identified based on work undertaken relating to England by the National Institute for Health and Care Excellence (NICE).

Table 1: Total and additional costs of legislation for five years after introduction

Costs	Year 1	Year 2	Year 3	Year 4	Year 5	Total
One-off costs						
Guidance	40,000					40,000
Communication	5,000					5,000
Reviewing legislation	5,000					5,000
Ongoing Costs						
Staffing, including continuous professional development	275,000,000	275,000,000	275,000,000	275,000,000	275,000,000	1,375,000,000
Reviewing legislation	12,500	0	12,500	0	12,500	37,500
Annual Reporting	9,058	9,058	9,058	9,058	9,058	45,290
Total costs of Bill	275,071,558	275,009,058	275,021,558	275,009,058	275,021,558	1,375,132,790
Total additional costs of Bill	71,558	9,058	21,558	9,058	21,558	132,790

Source: National Assembly for Wales, [Explanatory Memorandum – Safe Nurse Staffing Levels \(Wales\) Bill](#)

Difficulty of costing the Bill due to nursing ratios not being included

When the Bill was introduced in Plenary, Kirsty Williams AM stated that due to the nursing ratios not being on the face of the Bill, it is difficult to develop robust costings. This is because any additional costings would depend on the content of the statutory guidance that would be produced by the Welsh Government if the Bill were to be successful in its passage through the Assembly and become law.

Cost neutrality of additional nursing staff proposed in the Bill

The RIA states that staffing costs across adult acute wards would remain the same as before, at around £275 million per year based on 'rough' calculations made using information provided by the Royal College of Nursing.

Pages 41 to 43 of the RIA show that there are additional costs that some LHBs will need to incur to meet the All Wales Nurse Staffing Principles. The RIA states that these costs would be incurred by LHBs anyway, as they are looking to meet these standards by 2016-17, and so they are not costs directly associated with the Bill. However, Betsi Cadwaladr and Hywel Dda University Health Boards have both expressed concern about the 'potentially huge' financial implications of the Bill when responding to the second consultation held by Kirsty Williams prior to the introduction of the Bill.

3.2. *Children's Rights Impact Assessment*

A Children's Rights Impact Assessment is set out on pages 68-74 of the EM. The RIA considers the options available in respect of the main provisions of the Bill and analyses how far these would meet Kirsty Williams AM's policy objectives.

It outlines the associated risks, costs and benefits of each of the following options:

- **Option 1:** Do nothing – maintain working towards current Chief Nursing Officer guidelines and acuity tool implementation;
- **Option 2: Preferred option** - Introduce Bill to ensure nurse staffing levels within the Welsh NHS are sufficient to provide safe, effective and quality nursing care to patients at all times.

4. Response to the Bill

Plenary statement on the Safe Nurse Staffing Levels (Wales) Bill, 3 December 2014

Following Kirsty Williams AM's [oral statement](#) in Plenary on 3 December 2014 after the Bill's introduction, the Minister for Health and Social Care, opposition party spokespeople and other AMs raised a number of issues which they highlighted as being relevant to the forthcoming scrutiny of the Bill.

The Minister's view

In the [debate](#) to seek the Assembly's agreement to the introduction of the Bill on 5 March 2014 the Minister for Health and Social Services Mark Drakeford AM expressed doubt that the legislative route was the best way of achieving the stated aims. Following the introduction of the Bill, the Minister said in Plenary that the Welsh Government shared the objective of the Bill and did not oppose the idea of it being introduced. Other points raised by the Minister include:

- Whether the legislation delivers on its set objectives, and whether it does so in ways that are 'notably superior to other ways of achieving the same ends';
- How the proposals seek to avoid unintended consequences;
- How the proposals align with the 'ambition' for an integrated approach to health and social care;
- That some parts of the workforce oppose the introduction of the legislation [notably the Chartered Society of Physiotherapy];
- The importance of maintaining a focus on patient outcomes (rather than inputs and outputs);
- Whether all the factors relating to safe nursing set out on the face of the Bill are proven indicators, for example readmission rates.

Issues raised by party spokespeople

These included:

- The financial implications of the Bill, in particular the potential wider health economic impact of minimum nurse staffing ratios [Darren Millar AM];
- That some of the duties relate to adult in-patient wards rather than all in-patient wards [Darren Millar AM];
- Why the reporting requirements are set out at two-yearly intervals [Darren Millar AM];
- How the Bill and any guidance emerging from it would ensure 'swift flexibility' to allow wards and health boards to ensure that rotas could vary sufficiently to respond to patient needs on those wards [Elin Jones AM];

- Why staffing levels for nurses working in the community were not initially included [Elin Jones AM];
- The cost of implementing guidance arising from this Bill [Elin Jones AM].