National Assembly for Wales / Cynulliad Cenedlaethol Cymru

Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol

Safe Nurse Staffing Levels (Wales) Bill / Bil Lefelau Diogel Staff Nyrsio (Cymru)

Evidence from Kirsty Williams AM - SNSL AI 09 / Tystiolaeth gan Kirsty Williams AC - SNSL AI 09

Kirsty Williams AM

David Rees AM,
Chair, Health and Social Care Committee,
National Assembly for Wales
Pierhead Street
Cardiff
CF99 1NA

National Assembly for Wales
Pierhead Street
Cardiff
CF99 1NA
Email: **kirsty.williams@wales.gov.uk**
Tel: 0300 200 7277
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Dear Chair,

Safe Nurse Staffing Levels (Wales) Bill

Thank you for your correspondence of 22 January, and for the opportunity to present evidence to the Health and Social Care Committee on the Safe Nurse Staffing Levels (Wales) Bill at your meeting of 15 January.

In your correspondence you asked if I could supply the Committee with an outline of which of the safe nursing indicators outlined in section 3(5) of the Bill were derived from the CNO's guidelines, the NICE guidelines and which were included as a result of the responses to your consultations on the Bill. I have set this out in the table below:

Indicator	Source
(a) mortality rates	▪ Wide range of academic research (much of this referred to in the EM) ▪ Consultation responses
(b) readmission rates	▪ Academic research[1] ▪ Consultation responses, including from the National

[1] For example, *RN Staffing Affects Patient Success After Discharge* (Health Services Research journal, April 2011)

	Specialist Advisory Group for Diabetes ▪ NICE safe staffing guideline - Resource impact commentary
(c) hospital-acquired infections	▪ CNO care quality indicators[2] ▪ NICE safe staffing guideline - Resource impact commentary ▪ Consultation responses ▪ Perfectly resourced ward pilot (Aneurin Bevan)
(d) medication administration errors	▪ CNO care quality indicators ▪ NICE safe staffing guideline ▪ Consultation responses
(e) number and severity of falls	▪ CNO care quality indicators ▪ NICE safe staffing guideline
(f) number and severity of hospital-acquired pressure ulcers	▪ CNO care quality indicators ▪ NICE safe staffing guideline ▪ Consultation responses
(g) patient and public satisfaction with services	▪ CNO care quality indicators ▪ NICE safe staffing guideline ▪ Consultation responses ▪ Perfectly resourced ward pilot
(h) nursing overtime and sickness levels	▪ NICE safe staffing guideline ▪ Consultation responses ▪ Perfectly resourced ward pilot
(i) use of temporary (agency and bank) nursing	▪ NICE safe staffing guideline ▪ Consultation responses ▪ Perfectly resourced ward pilot

In your correspondence you also asked why some of the safe nursing indicators contained within the NICE guidelines are not contained in section 3(5) of the Bill.

The NICE indicators that are not included on the face of the Bill are missed breaks and compliance with mandatory training. However, there is nothing to prevent these indicators also being used to measure the impact of the Bill if the Welsh Government considers this appropriate. Indeed, the Bill states that the list of indicators of safe nursing is not exhaustive.

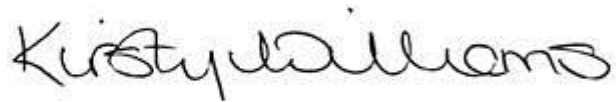
For clarity, the majority of indicators identified by NICE are included in the Bill's list (falls; pressure ulcers; medication administration errors; nursing overtime; use of temporary nursing). The NICE safe nursing indicator 'Adequacy of meeting patients' nursing care needs' relates to patients' experiences of care (NICE suggests this could be measured through patient surveys). The Bill includes patient and public satisfaction with services as an indicator. The NICE guidance also includes as an indicator the planned, required and available nurses for each shift. The provisions of

[2] A number of Care Quality Indicators are set out in the CNO's Adult Acute Nursing Acuity & Dependency Tool Governance Framework (the document identifies these indicators as being linked to nurse staffing issues).

the Safe Nursing Levels (Wales) Bill will necessitate the recording and monitoring of this information.

Finally, you asked if I could provide written responses to the questions listed in Annex A of your correspondence. I have detailed answers to these questions at Annex A of my own correspondence.

Yours sincerely



Kirsty Williams
Assembly Member for Brecon and Radnorshire

Annex A

1. **Can the Bill as drafted realistically deliver on its policy objectives [especially given that the minimum ratios are not specified on the face of the Bill]?**

Yes, it can.

This Bill will provide a statutory basis for the planning and delivery of safe nurse staffing across NHS Wales, including delivery of **minimum ratios and accompanying guidance for adult acute inpatient settings. This legislation would guarantee** results and safeguard patient outcomes, when guidance alone has not succeeded. The Bill would ensure the delivery of safe levels of nursing care, consistently, across all hospitals in Wales.

But this doesn't mean stripping away guidance altogether.

What is required is not a simple set of inflexible hard-letter targets, specified on the face of the Bill. Concerns have been raised about such an approach both within the Assembly, and in response to my own consultations on the Bill.

Rather, what is needed is a statutory set of principles, which underpin and enforce the delivery of guidance (including, but not limited to, minimum ratios). These principles are reflected in two clear duties in new section 10A(1)(a) and (b), each of which will be enforceable in accordance with the principles of administrative law; there is every reason to believe that they will be effective in ensuring that staffing levels are given proper place among the other considerations that are required to influence policy and operations decisions within health service bodies.

I am also conscious that prescribing staffing levels on the face of the Bill could hinder future service development. Setting the ratios (and methods to determine appropriate nurse staffing locally) out in statutory guidance, rather than on the face of the Bill, will ensure that NHS Wales has the flexibility to respond to changes in service provision and delivery of care. Guidance can be more easily kept up to date than legislation, and can be more responsive to relevant developments, such as technological advances. It is also important to note that the ratios and methods, set out in such guidance, will be determined by relevant experts in the field and be evidence-based.

2. **Is it valid to directly apply international evidence on minimum staffing ratios to Wales given the differences in the healthcare systems?**

For clarity: this Bill is based on the known situation in Wales and the UK, and the evidence base that already exists here to support its implementation. This evidence base highlights:

- problems with nurse staffing in acute areas;
- that nursing jobs have been cut to save money; and
- the relationship between nurse levels and patient outcomes.

The evidence base also highlights that work has already been undertaken, in the UK, to develop tools and guidance which will support the implementation of minimum ratios in acute settings, but that the delivery of such guidance is not currently supported by any legislative requirement.

As such, international evidence simply provides additional examples and learning. It demonstrates that ratios have been effectively implemented in some areas of the world already (for example California, Victoria (Australia), Japan), and provides information on the successful implementation and impacts of nurse ratio legislation.

It also demonstrates (via the 2014 major European study published in The Lancet) that the same, fundamental relationship exists between nurse staffing levels and mortality rates, regardless of the differences in health service structures and financing between different countries. It is a staggering statistic that for each extra patient a nurse is responsible for, the likelihood of an inpatient dying within 30 days of admission increases by 7 per cent.

3. **Why has a definition of an 'acute hospital' not been provided on the face of the Bill given the absence of a generally applicable definition?**

Section 2 of the Bill which will insert Section 10A (5) (d) into the National Health Service Wales Act 2006 provides for the guidance which Welsh Ministers must issue to define the terms, or include provision to be used in defining the terms in in new section 10A (1) (b). This will include a definition of 'acute hospital'.

It may also be noted that the term 'acute hospital' is commonly used within the health sector. In drafting legislation I believe it is important to use phrases which resonate with their principal target audience (in this case the healthcare sector). Notably, the CNO and NICE define adult acute wards as being medical and surgical wards that provide overnight care for adult patients in "acute hospitals" (this should be taken to exclude critical care, maternity, and mental health services).

Acute hospitals can also be distinguished from community hospitals, which generally offer rehabilitation following a period of acute care. The ratios will not apply to community hospitals (likewise, the July 2014 NICE guidance does not apply to community hospitals).

Not defining the term 'acute hospital' on the face of the Bill also provides greater flexibility for nuance and future adjustment in the light of experience. The ability to define and change definitions in guidance will provide the Welsh Ministers with the ability to respond quickly and flexibly to changes in service provision and delivery of care within the NHS in Wales.

We could provide a definition of "acute hospital" and preserve flexibility by giving Welsh Ministers a power to amend it by subordinate legislation if the definition becomes outdated: but it seems more sensible simply to leave it to health care bodies to apply the industry term as it is understood from time to time, in accordance with guidance.

4. **Why is the definition of terms in relation to the ratios reserved to guidance and what consideration was given to whether certain key definitions be included on the face of the Bill?**

A number of the terms used in new section 10A (1) (b) already have a definition. For example 'registered' in the context of a nurse already has a definition by virtue of Section 5 and Schedule 1 to the Interpretation Act 1978.

Because the Bill inserts provisions into the National Health Service Wales Act 2006, where appropriate it would also pick up existing definitions within that Act. For instance 'patient' is already defined by section 206.

Other terms such as 'healthcare support worker' and 'acute hospital' will require definition. Consideration was given to including the terms either on the face of the Bill or in regulations but this was not felt appropriate (for the reasons given in my response to question 3 above).

5. **Given the definition of 'health service body' as set out on the face of the Bill includes Welsh Ministers, the Bill as drafted makes it possible for Welsh Ministers to issue guidance to themselves. Is this the intention, and if so, why?**

Under the National Health Service (Wales) Act 2006, the duty to provide nursing services lies with Welsh Ministers. Local Health Boards are directed to exercise functions on their behalf and functions are conferred on NHS Trusts in accordance with their establishment orders. If for any reason there were no Local Health Boards or NHS Trusts, this duty would therefore lie with the Welsh Ministers.

It may also be noted that there are two parts to the new duty in new section 10A (1). The guidance will only apply to the more specific duty in new section 10A (1) (b). There is no reason why Welsh Ministers should not have regard to the more general duty (of 10A(1)(a)) when exercising functions. The Welsh Ministers will only be subject to guidance in the event that they are directly responsible for settings that fall within the definition of an adult acute inpatient ward. In the event that Welsh Ministers became directly responsible for such settings, there is no reason why such settings should not be subject to the guidance as other health service bodies.

It is by no means unusual for a minister or other public authority to be responsible for issuing guidance about the exercise of the authority's own functions. The purpose is to publicise and give legal authority to the principles determining the exercise of those functions.

6. **Why is there is a difference between the duty to maintain safe nurse staffing levels (which states that bodies are required to comply) and the corresponding reporting requirements (which state that bodies must report on how they aimed to comply)?**

The purpose of the reporting requirement is to obtain information in order to further the statutory objective of safe nurse staffing levels.

It is recognised that there may be occasions when it is not possible for health service bodies to comply with the duty.

The legislative intent of the Bill is to introduce the new duties as key and enforceable components of the professional decision-making process, not as hard letter targets.

A reporting requirement under which local health boards show how they have aimed to comply with the duty, will elicit far more useful information (in particular where there has been non-compliance) than a duty which simply requires health service bodies to detail compliance.

7. **Why is the power for Welsh Ministers to issue guidance limited to the duty in respect of minimum ratios and therefore does not apply to the wider duty for health service bodies to have regard to the importance of safe nurse staffing levels in exercising all their functions?**

The essence of the duty as set out in new section 10A(1)(a) is clear and does not require to be supplemented by guidance.

The principle of this Bill is to provide a statutory basis for the delivery of *existing* guidance on nursing in adult acute inpatient settings, and associated minimum ratios.

However, the CNO and NICE are working towards extending tools and guidance to other settings. The next phase of the CNO's work focuses on district nursing and health visiting, and mental health inpatient settings initially. During 2015, NICE intend to publish guidelines for maternity settings, A&E and mental health inpatient settings.

It is expected that the Welsh Government will take account of this work, and as such the Bill includes provision for 10A(1)(b) to extend to other settings and services, once the evidence to support this is developed. This will ensure that any minimum ratios developed will be the most appropriate for those settings.

8. **Is it the intention for health service bodies in Wales to comply with their duties in respect of minimum staffing ratios prior to the Welsh Government issuing the relevant guidance?**

No.

The fact that new section 10A(1)(b) includes an express reference to the statutory guidance shows that the duty is not to apply in the absence of guidance.

I would envisage that the Welsh Government guidance would be issued to coincide with Royal Assent and the Act coming into force. I would anticipate that Welsh Ministers would wish to make appropriate preparations to meet impending new statutory duties, as they commonly do with legislation introduced by the Welsh Government.

Assuming the general principles of this Bill are approved, I would look forward to discussing with the Welsh Government an implementation and pre-commencement timetable.

For clarity, I do not believe the requirement to issue guidance to be an onerous one, given that the Chief Nursing Officer's guidance and workforce planning tools are already in place on a non-statutory basis. Likewise, health service bodies should already be complying with the Chief Nursing Officer's guidance, and therefore this will not be a 'new' requirement for them. Indeed, Local Health Boards have been provided with additional funding to recruit additional nurses to meet the guidance, and they are budgeting in their three year plans accordingly.

9. **Has any assessment of the cost of extending minimum staffing ratios to additional settings been undertaken?**

Any proposals to extend the Bill to other areas of NHS staffing would need to be accompanied by a robust evidence base, with a costed impact assessment and subject to scrutiny by the Assembly. As this robust evidence base is not currently available in Wales, a detailed assessment of the costs of extending safe staffing legislation to cover other settings has not been undertaken at the current time.

Work is currently underway by the Chief Nursing Officer in Wales and NICE in England to develop tools and guidance for additional settings. I would expect that this work will contribute to the evidence base for extending minimum ratios and guidance to other settings.

10. **The Bill provides for ratios to apply to 'adult inpatient wards in acute hospitals'. Is it therefore your intention that they should apply to maternity in-patient wards; mental health in-patient wards within adult acute hospitals; critical care in-patient wards; specialist in-patient wards? If not, why is this not stated on the face of the Bill?**

The CNO and NICE's definition of adult acute settings is that they are medical and surgical wards which provide overnight care for adult patients in acute hospitals, which should be taken to exclude critical care, maternity, and mental health services.
I would anticipate that the statutory guidance required by this Bill would include a definition, to provide clarity.

Critical care, maternity, mental health and other specialist areas are likely to have very different requirements in terms of staffing levels, skill mix and skill sets needed.
The evidence base that would support the implementation of this Bill relates to adult general medical and surgical wards in acute hospitals.

11. Why is legislation needed in Wales given that England and Northern Ireland have achieved lower ratios of nurses to patients than Wales without using legislation?

Whilst figures published by the RCN[3] have shown that Wales has, on average, more patients per nurse than England, Northern Ireland and Scotland, this data was based on employment research undertaken in 2009. Without comparable up to date figures, it's not known whether this picture remains the same.

Also, what these figures do not show, is how much variation there is within each country. In England, for example, the recent work of Francis and Keogh clearly demonstrates that some areas may have significantly poorer nurse staffing levels than others.

This Bill aims to ensure safe, appropriate levels of nurse staffing consistently across all hospitals in Wales.

12. Is there enough nursing staff capacity to deliver what this legislation aims to achieve? If not, how long do you estimate it would take to build that capacity?

By placing safe nurse staffing on a statutory footing, the Bill aims to strengthen accountability for the safety, quality and efficacy of workforce planning and management.

A 2013 report by the International Council of Nurses describes how several countries have been turning to mandated ratios as a strategy to improve working conditions and facilitate the return of nurses to practice:

> "Shortly after the implementation of mandated ratios in Victoria, Australia - five thousand unemployed nurses applied to return to work and fill vacant posts in the health services" (Kingma 2006 p.225). Further, research commissioned by the Australian Nursing Federation (ANF) found that "more than half of Victoria's nurses would resign, retire early or reduce their hours if mandated, minimum nurse:patient ratios were abolished" (ANF 2004 p.1).

Similarly, the ratio legislation in California is considered to have achieved its goals of reducing nurse workloads and improving the recruitment and retention of nurses, as well having a positive impact on quality of care. (Linda Aiken et al 2010).

It has also been argued that a 'shortage' of nurses is not necessarily a shortage of individuals with nursing qualifications: rather, it's a shortage of nurses willing to work in the present conditions. The main causes of nursing shortages have been identified as inadequate workforce planning and allocation mechanisms, resource-constrained undersupply of new staff, poor recruitment, retention and 'return' policies, and ineffective use of available nursing resources through inappropriate skill mix and utilisation, poor incentive structures and inadequate career support.[4] The Bill will help address these issues.

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[3] Royal College of Nursing, *Guidance on safe nurse staffing levels in the UK*, 2010
[4] Buchan, J and Aiken, L, Solving nursing shortages: a common priority, 2008

13. **What assessment has been made of the potential impact of the Bill on healthcare support workers if there are fewer of them needed on adult acute wards as a result of the Bill?**

Healthcare support workers have a vital role in supporting nurses.

Far from intending to reduce the overall number of healthcare support workers, by placing safe nurse staffing on a statutory footing, the Bill aims to strengthen accountability for the safety, quality and efficacy of workforce planning and management (incorporating workforce planning for healthcare support workers).

The Bill promotes the use of acuity tools and professional judgement to determine the required skill mix of nursing staff on wards (above the minimum level). This will ensure that no member of staff is undertaking tasks they are not appropriately qualified to do, and that the most effective use is made of staff resources, in line with the principles of prudent healthcare.

14. **Are you are confident that existing provisions for staff and/or patients to raise concerns are sufficient?**

Yes. The Bill will provide a statutory basis on which staff and patients can challenge poor levels of staffing both within health service bodies and with the Courts by way of judicial review.

I did give consideration to whether specific protection for patients and staff raising concerns should be included within the Bill, and I posed this question in my first consultation. A small number of respondents suggested that the Bill should include a specific protection, but there was a broader view that the correct mechanisms already exist.

As the Committee will be aware, work to strengthen the complaints arrangements is underway following Keith Evans' review of concerns in Welsh NHS last year.

15. **Have you considered that the requirement in the Bill for publication to patients of information on the numbers and roles of nursing staff on duty could also include a requirement to set out information about the existing mechanisms for patients and staff to challenge breaches of the guidance?**

The statutory guidance, required by the Bill, will need to balance patients and carers' need for information with the potential administrative burden of delivering such information.

However, it may be noted that it is already considered best practice to display pictures at ward level depicting the reporting chain (this was recognised early on in the 1000 Lives campaign).

16. **Does the ‘perfectly resourced ward’ pilot provide evidence that introducing safe nurse staffing levels would contribute to significant reductions in bank and agency staff costs, given that bank staff costs reduced considerably across both the pilot and control wards?**

The 2012 ‘perfectly resourced ward’ pilot in Aneurin Bevan showed a reduction in bank and agency staffing costs of over 60%. There was also a slight reduction in the overall costs of running these wards while the pilot was being run. However, I believe the pilot’s key finding was the positive impact on quality and patient safety. Wards were able to develop a seamless patient journey, positive patient experiences were reflected in patient surveys, and fundamentals of care standards were embedded within the wards. Staff satisfaction also increased.

17. **Could you provide further clarification about the intention of the reference to ‘each financial year’ in the commencement provision contained in section 4 of the Bill?**

The reference to ‘each financial year’ is included to make it clear (to health service bodies) that the new duties imposed by the Act will only take effect from the 1st April of the year following Royal Assent having been given. So, if for example, Royal Assent was given on 1 September 2015, the new duties imposed by this Act would only take effect from 1 April 2016. Likewise, if Royal Assent was given on 1 January 2016, the new duties imposed by this Act would take effect from 1 April 2016.

The annual reporting requirements would therefore cover a full financial year, rather than a partial year. The intention behind this provision is to make it easier for health service bodies to use existing structures to produce these reports at the same time as they are producing other reports.

New section 10A (10) would enable a report required by this Bill to be included as part of a wider report.

18. **It does not appear that the duty to maintain minimum ratios can be effective until the relevant Welsh Ministers’ guidance has been issued. Should section 4 of the Bill deal with this?**

Please see my response to question 8.