

Funded Nursing Care

Update for Care Forum Wales – 20 March 2019

This has been a long-running saga with amounts paid across being challenged for 2014/15, 2015/16, 2016/17 and 2017/18. I know it has become quite difficult for providers to follow where we are. I have therefore tried to set out the full situation and payments owed below.

We have now agreed with the Health Boards the full amounts that should have been paid for 2014/15, 2015/16, 2016/17 and 2017/18.

	HB component of FNC rate (8.855 hours plus continence)	Social care related to FNC and so funded by LA (0.385 hours)	Total FNC weekly rate (9.24 hours plus continence component)
2014/15	£161.62	£6.55	£168.17
2015/16	£161.97	£6.56	£168.53
2016/17	£163.48	£6.63	£170.11
2017/18	£165.28	£6.70	£171.98

The amounts paid before the Supreme Court judgment in August 2017 were:

2014/15	£146.32
2015/16	£146.65
2016/17	£148.01
2017/18	£149.67

With part of these amounts having being paid in arrears in 2016 following an acceptance during the court care of part of the providers' argument.

Then in March 2018 the Health Boards took a decision that the rate for 2017/18 should have been the amounts below before it was pointed out by CFW that there was a further error in the calculations and they accepted the amounts should have been as listed above.

2017/18	£162.75	£6.59	£169.34
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Some Health Boards have since March made this payment with BCUHB also paying the LA element on behalf of the local authorities.

Therefore the amounts still owing to providers are:

	HB component of FNC rate	Social care related to FNC and so funded by LA	Total amount owing
2014/15	£15.30	£6.55	£21.85
2015/16	£15.32	£6.56	£21.88
2016/17	£15.47	£6.63	£22.10
2017/18	£2.53 - £15.61	£0.11-6.70	£2.53 - £22.31

With the amount relating to 2017/18 dependent on whether you have already received part of the back payment this year.

The Health Boards are holding back a small amount to represent the amount allocated to paid breaks in the original calculations of FNC, however the remainder is being paid now. The full local authority amount can also now be paid. These payments have now started to be made. Please see the end of the briefing for updates by Health Board area. The additional amounts agreed to be paid:

	Health Board amount owing	Amount to be withheld as above	Health Board amount to be paid	Local Authority amount to be paid
2014/15	£15.30	£2.21	£13.09	£6.55
2015/16	£15.32	£2.22	£13.10	£6.56
2016/17	£15.47	£2.24	£13.23	£6.63
2017/18	£2.53 - £15.61	£2.26	£0.27-13.35	£0.11-6.70

The Health Board FNC amount for **2018/19** is £167.87 and the local authority element is expected to be £6.80 giving a final total of £174.67, although we are still awaiting final confirmation on the LA amount. We are expecting both Health Board and local authority arrears to be paid on this by the end of April 2019 at the latest.

Paid Breaks and Self Funders

Health Boards have now started to circulate nationally agreed statements on paid breaks and self funders for care homes to return. In order to receive payment, you will need to complete two legally binding declarations.

CFW Offers the following comments, which arise out of our discussions with the Health Boards as they were drawing up these declarations. However, you will need to make your own decisions as to which option(s) best describe your situation. CFW cannot advise on individual cases. If you are unsure, you may want to take your own legal advice and / or discuss your situation direct with the Health Board.

With regard to paid breaks the most straightforward situation is If you make payments to nurses regarding breaks and this can be easily evidenced in which case tick box one.

When considering whether to tick box two it is worth realising the original Laing & Buisson report on FNC in 2013 said that around 15% of the calculation of any other time spent by a nurse was accounted for by paid breaks. This equates to 7.65 minutes per resident per week and the amounts withheld by the Health Boards for this are £2.21-£2.26 per year. The average hourly rate allowed for a nurse was calculated at £13.29 in 2013 not including on costs and this was inflated to £13.90 in 2018/19. If your salary package demonstrably includes enough more than this rate to demonstrate that you are including paid breaks you may feel it is appropriate to tick box two.

If either one or two is the case but you do not have the evidence to hand tick box three.

Please remember that the Health Boards may ask for evidence and may be able to reclaim payments made in reliance on your declaration if what you say proves to be untrue e.g. if they ask for evidence.

With regard to self funders, whether or not the backpay is legally due to the care home or the self funder is likely to depend on the nature of your contract and whether the FNC is set out separately from the remainder of the costs. You are advised to read pages 78-81 of the Competition and Markets Authority advice on this https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759257/Care_homes_full_guidance_for_providers.pdf and in particular paragraph 4.67 . Since contracts are likely to vary from provider to provider you may wish to then take your own legal advice on this matter.

As mentioned above, you could also discuss your situation with the Health Board if you are uncertain which option applies.

Linked CHC payments and FNC going forward

We are still seeking to resolve these matters.

Health Board and local authority back payment processes – please let me know if you have any updates on this

Abertawe Bro Morgannwg

LHB & LA element for 2017/18 paid (as per March figures above) by Bridgend & Swansea LA but not NPT. However Swansea have indicated that they will be reclaiming the HB element and the HB will then pay this. In terms of the remaining amounts the Health Board plans to issue plan is to issue statements to the Care Homes in early January 2019 and will then reimburse upon receipt of a matching invoice. Bridgend have also paid LA element for 2018/19 – not sure if this is at correct amount?

Aneurin Bevan

The Health Board has paid its element for 2017/18 (as per March figures above) and has asked providers to invoice them for the remaining amounts and they advise that all invoices they have received from Providers will be paid before Christmas. No information as yet from local authorities.

Betsi Cadwaladr

The Health Board has paid both the Health Board and the local authority elements for 2017/18 as per March figures above) and is intending to pay the remaining elements on 21 December. There is no requirement to invoice.

2017/18 adjustment to go out by end of January.

Cardiff & Vale

The Health Board will make its payments in January – at least one provider has received but not all. No information as yet from local authorities.

Cwm Taf

Response awaited from both Health Boards and local authorities.

Hywel Dda

The Health Board will make its payments in January. Not clear yet if this will also include local authorities.

Powys

Response awaited from both Health Board and local authority.