COSLA’s Response to the Health and Sport Committee’s Call for Views on the Health and Care (Staffing) (Scotland) Bill

Introduction
1. COSLA welcomes this opportunity to respond to the Health and Sport Committee’s Call for Views on the Health and Care (Staffing) (Scotland) Bill (the Bill).

2. COSLA is the voice of local government in Scotland. We provide political leadership and representation on national issues, and work on behalf of councils to strengthen local democracy and improve local services.

3. COSLA’s members identified, as a priority, the need to support local government and Integration Authorities:
   - to address demographic and financial challenges;
   - to enable communities to live healthy, independent lives; and
   - to promote an outcomes and prevention culture.

4. COSLA’s members have a significant interest in both national and legislative proposals concerning workforce planning and ‘safe staffing’ tools. The Scottish Government and local government have a whole system responsibility for the sustainability of the health and social care workforce. Change in one part of the workforce impacts on other parts of the workforce. We need to focus on staffing models that are fit for the future.

5. Workforce planning should promote and support reforms that improve public services. COSLA recognises the link between effective workforce planning and the delivery of high quality care. It is important to have the right number of staff in place with the right skills. COSLA is concerned about the Bill’s top-down approach which places duties on NHS Boards, councils and providers without due regard to resources, or the impact on social care providers to be flexible, innovative or use tech-based solutions to deliver high quality care.

6. To inform COSLA’s position, COSLA liaised with its 32 member councils and with a number of partners, including CCPS, Scottish Care, Integration Authority Chief Officers, SPDS, SOLAR, Integration Authority Chief Finance Officers, SOLACE and Directors of Finance. Through these discussions COSLA found a common thread, that neither COSLA nor its partners can see where the Bill adds value to the social care workforce, as safe and high-quality services are already assured through existing legislation, the inspection regime, current policy and the Health and Social Care Standards.

COSLA’s Position on the Health and Care (Staffing) (Scotland) Bill
7. COSLA does not support a statutory requirement being applied nationally for workload and workforce planning methodologies and tools to the diverse and changing social care sector. Throughout the process of developing the Bill COSLA officers have been engaging with the Bill team to seek policy assurances. However, we continue to have very serious concerns about the impact of the legislation.

8. COSLA does not support the Bill including the social care workforce on the following grounds:
There are already existing regulations to ensure safe staffing levels in the highly-diverse social care sector, that are well-understood and backed up by an effective inspection regime, and further enhanced by the National Health and Social Care Standards.

Legislation will most likely create a rigid compliance framework and undermine the new integrated environment of health and social care.

Legislation will undermine the purpose of the joint Scottish Government/COSLA National Workforce Plan for Health and Social Care, the purpose of which is to strengthen national and local workforce planning.

The social care workforce is already experiencing challenges in terms of recruitment and retention. There are concerns that the legislation is neither time nor cost effective and will add further processes and pressures to the system.

9. COSLA members through correspondence and dialogue with the Cabinet Secretary, during the consultation process and the development of the Bill, set out the above position. COSLA members mandated its officer to oppose the Bill.

Opportunities for National and Local Workforce Planning

10. Our collective aim, in the health and social care sector, should be to make a long-term difference to people’s lives by focusing on impact, outcomes and by preventing problems before they arise. Not on inputs, such as having a set number/levels of particular staff groups/professions on shift at any one time.

11. Legislation is not the appropriate mechanism to support local and national workforce planning. The Bill does not appear to have taken proper consideration of the current developments in workforce planning policy. COSLA is concerned that the Bill may delay work that has already been identified through engagement across the social care sector. The opportunities to progress national and local workforce planning lie in the following areas:

- National Health and Social Care Workforce Plan
- Existing Legislation and Standards
- Dependency Tool

National Health and Social Care Workforce Plan

12. In 2017, COSLA and the Scottish Government co-produced the National Health and Social Care Workforce Plan Part 2 (Part 2). The purpose of the Part 2 is to strengthen the social care sector’s national and local approach to workload and workforce planning methodologies. COSLA welcomed Part 2’s commitment to progressing and co-producing social care and multi-disciplinary workforce planning tools. Recommendation 4 in Part 2 proposes the development of workforce planning tools:

To progress and co-produce social care and multi-disciplinary workforce planning tools that support the delivery of high quality care that reflects the new health and social care standards and enable service redesign and new models of care.

13. Workforce planning tools should only be developed where the sector has identified a need to do so. Any development of tools and methodology must be sector-led, and the legislation and policy memorandum are unhelpfully vague by saying ‘if’, ‘when’ and ‘where’ there is a requirement for tools to be determined at a future date. Final political agreement on the use of the tools should rest with both COSLA and the Scottish Government.
Existing Legislation and Standards

14. COSLA is unconvinced that the Bill provides any additionality over and above existing social care legislation and standards. COSLA believes the burden of proof is on the Cabinet Secretary to demonstrate the benefits the Bill will bring to social care staff and service users. There is already a legislative framework (Regulation 15 of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011) concerning staffing levels in social care services, and an existing scrutiny framework to ensure it is being applied effectively. Regulation 15 already provides for the appropriate staffing in social care services, enabling safe and high-quality care and improved outcomes for service users. It is the Bill’s intention to maintain and replace the existing requirement (Regulation 15) placed on care service providers and ‘level up’ nursing legislation. In 2017, the SSSC and the Care Inspectorate in their consultation responses stated that this legislative replacement was unnecessary.\(^1\)

15. The existing legislation is further enhanced by the new National Health and Social Care Standards, particularly Standard 3 – “I have confidence in the people who support and care for me”. The Care Inspectorate have developed a new approach to scrutiny methodology, which started in care homes in July 2018. This will be based on how good outcomes are for people with a key question focusing on how good the staff team is in a care home and a number of quality indicators that sit within this. COSLA believes that this new approach to scrutiny will ensure that safe and high-quality care is provided with improved outcomes for residents.

16. There is already a statutory requirement, articulated in Integration Schemes, that Integration Authorities should produce a workforce plan which is developed in line with local need and local requirements. There is a concern that additional legislation requiring the use of specific tools set at a national level runs the risk of removing the scope for plans to be tailored locally.

Dependency Tool

17. National Care Home Contract Reform has been scoping the development of a tool that can measure an individual’s level of need or acuity within the care home sector. This is a collaboration between several key stakeholders including Scottish Care and the Care Inspectorate and has received support from Royal College of Nurses and the Chief Nursing Officer. Initial scoping has concentrated on the level of capability or dependency of an individual, not on staffing levels and numbers due to the complexity of the care home landscape. COSLA believes the development of the dependency tool will help deliver the shared ambitions behind the Bill, by taking account of the particular needs, abilities, characteristics and circumstances of the individual. Whilst not a workforce planning tool in itself (this tool is not intended to give staff numbers or ratios) it will assist by providing robust evidence to ensure high quality and safe care. Being able to assess an individual’s capability is fundamental to staffing requirements.

18. We welcome the confirmation that the Bill’s tools will not give staffing ratio, as ratios do not adequately measure safe and high-quality services and can be restrictive, stifling innovation and creativity.

Concerns about the Health and Care (Staffing) (Scotland) Bill

19. COSLA has the following concerns regarding the content and implications of the Bill:

- Intended Consequences – impediment to innovation, service redesign, localism, integration, flexibility and an unjustified bureaucratic burden
- Extension of the Bill to Care Homes
- Duty on Commissioners
- Resources/Finances

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Unintended Consequences

20. The Bill does not support health and social care integration and our vision for adult social care. Legislating for the use of specific tools and methodologies focuses on process rather than the quality of care – inputs rather than outcomes, which is in contradiction to current understanding of how to improve care. There is the potential for the Bill to obstruct innovative service design in an integrated health and care system.

21. At a local level, the focus should be on working together and joining up public services to get better results and greater efficiency. Local solutions should drive personalisation and workforce planning should be tailored to local systems. Integrated Joint Boards and councils need to reflect local circumstances by maximising their flexibility and autonomy over decisions and resources.

22. Legislation could limit opportunities for the delivery of responsive person-centred services or the development of new models of care. There is a need to avoid tools that are unlikely to be flexible enough to meet the planning needs of all - from the smallest single service provider to large, commercial multi-site providers. It is difficult to see how standardised workforce planning tools can be applied consistently to such a diverse workforce. The consultation states that around 80% of service providers have under 50 staff. The benefits of workforce planning tools are fewer for small care homes that may be unable to realise the benefits of a larger home or hospital and be an unjustified bureaucratic burden.

23. At a time when commissioners and providers are looking to deliver innovative models of care for the 21st century which are tailored to changing demographic, different client needs, current financial challenges and to emerging technology, our concern is that legislation would be prescriptive and stifle innovation. Conversely, if the legislation has no impact on models of care then, as above, it is not clear what added value this Bill will have.

Extension of the Bill to Care Homes

24. COSLA is concerned that the introduction of the Bill to care homes could jeopardise the national arrangement and destabilise the care home sector. The reform of the National Care Home Contract has been focused on ensuring that the contract remains fit for purpose for the future requirements of the care home sector. A key component of this is the development of an indicative cost model or cost of care calculator, to ensure an evidence based and transparent approach to agreeing the national rate and ensuring sustainability in the sector.

25. At a time when the care home market is experiencing workforce pressures due to the shortage of qualified staff, we want to encourage innovative service design and have flexibility within the system to allow for this. The issues of recruitment and retention within the social care workforce is well publicised, and whilst it is not the Bill’s intention to resolve these issues, it is difficult to see how the Bill’s aspirations can be realised while these supply issues exist. The current high vacancy rates of nursing staff have resulted in some care homes becoming reliant on agency nurses. Whilst agency nurses provide a valuable resource, long term reliance on this service can have serious financial implications. The Bill recognises that supplementary staff may be required to maintain safe staffing levels. However, the Bill’s Financial Memorandum does not anticipate any significant increase in staffing levels. COSLA is concerned that while there are supply issues in the workforce, the Bill could increase the reliance on agency nurses with serious implications to the sustainability of the sector.

26. Innovative approaches are required to ensure we have the appropriate staff to provide high quality care. The Care Inspectorate has been working with care homes that have sought to change their staffing and skill mix, for example by upskilling senior carers in care homes to ensure stable yet flexible staff teams. Legislating for the use of a tool to provide staffing levels that is regulated by the Care Inspectorate could impede the progress completed to date.
Throughout our dialogue and consultation with the social care sector there is not an appetite from commissioners, providers or staff for the Bill to be extended to care homes.

**Duty on Commissioners**

The right funding must be in place to ensure Integration Authorities, Councils and providers can discharge their responsibilities under the Bill, otherwise there is risk to future service delivery.

The Bill contains a duty on commissioners to have regard to the guiding principles set out in the Bill, and the duties relating to staffing imposed on the persons providing the service. This duty is unnecessary due to existing legislation and the current regulatory framework which ensures appropriate staffing levels are considered. In a system that is already under pressure, COSLA is concerned that this duty may unintentionally damage relationships between commissioners and service providers.

If this proposed duty is placed on commissioners, then the Scottish Government must provide adequate funding to match any additional cost burdens resulting from the implementation of the legislation.

**Resources/Finances**

COSLA did not have the opportunity to take part in the development of the Bill’s Financial Memorandum (FM) and had no input into the costings included in the FM. The FM lacks detail. The only estimated cost set out in the FM, for the social care tool, is limited to the development of the tool. The FM does not anticipate any significant increase in staffing levels. The FM states that the tools may be used annually in the social care sector due to lower turnover. If this is case, this once again raises the question of the Bill’s additonality.

The proposed tools and methodologies will have resource implications as workforce planning is not cost neutral. The use of tools is an intensive process and additional management and administration costs have not been accounted for, nor have any costs in relation to staffing numbers. In a system that is already under pressure, the tools will impact on local budgets and could distort the allocation of resources diverting them from frontline services.

All new policies should be fully funded and COSLA is concerned that the FM contains no firm commitment to fund any additional pressures as a result of the use of the tools. To ensure the NHS, Councils, Integration Authorities and providers are not set up to fail, there needs to be a clear commitment from Scottish Government to fully fund development and implementation costs. COSLA would encourage the Committee to seek further evidence from the Scottish Government on the likely implementation and ongoing development costs.

**COSLA**

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