RCN Scotland briefing:

Stage 1 Assisted Dying for Terminally Ill Adults (Scotland) Bill

Overall position:

- RCN Scotland is committed to supporting our members to provide high-quality end of life care, ensuring a comfortable and dignified death. **We have a neutral position on whether the law on assisted dying should be changed**, which reflects our members' differing views on the issue.

- However, our neutral position does not mean we are silent on the issue. If passed by MSPs, the Bill, we believe, would see registered nurses provide assistance to an individual to end their life in the majority of cases. Section 15 provides that registered nurses can take on the role of authorised health professional and provide an eligible individual with a substance to end their own life. This role for registered nurses in the Scottish Bill is different to the Bill being considered at Westminster which provides that only the coordinating doctor, or another doctor they authorise, may provide assistance.

- Providing someone with assistance to end their life will require time, in order to provide individuals, and their families, with the necessary care, support and respect. We believe that in practice, it is likely that registered nurses will in most cases take on this role. Liam McArthur MSP has acknowledged this point when he highlighted that in Australia, over time, nurses have tended to become increasingly involved in the process instead of doctors.

- **We have a responsibility to ensure the Bill contains the necessary safeguards to protect nurses and nursing practice.** We are working to protect both nurses who may wish to participate in assisting a death under the framework established by the Bill, and those who may not wish to participate.

- As well as protecting our individual members, we are also mindful of the need to ensure that, if the Bill passes, it results in a high-quality service which does not have a negative resourcing impact on existing, and often struggling, nursing services.

- **Notwithstanding our neutral position on whether assisted dying should be legalised, our position is that the Bill, as drafted, does not sufficiently protect registered nurses.** If the Bill passes stage 1, further protections are needed for nurses, both in the legislation itself and in the guidance that would follow.

- **We are also concerned that scrutiny of the Bill has so far overlooked the role of nurses**, instead focusing on the role of medical practitioners. The role for nurses as authorised health professionals means that attention needs to be paid to ensuring appropriate protections and support, which won't necessarily be the same as those required for doctors.

Key issues that need to be addressed in the Bill:

If assisted dying is legalised, there are a number of changes we wish to see to ensure that nurses have a genuine choice about whether, and if so to what extent, they are willing to participate. We also believe that the safeguards protecting nurses, both those who may wish to participate and those who may not, need to be strengthened. If the Bill progresses beyond stage 1, we are calling for the following key issues to be addressed:

1. The Bill should make clear that an opt-in model will be established:

    - **The Bill should make clear that an "opt-in" model of delivery is to be established so that only registered nurses who positively choose to participate, and who have completed mandatory training, will be expected to do so.**

    - We believe that establishing an opt-in model would provide a greater degree of choice and reassure members who do not wish to participate, that they would not be asked to do so.

    - It also has the important advantage of ensuring that nurses who would agree to participate receive the in-depth training necessary and are deemed competent to provide that complex role.

2. A general right to refuse to participate in activities directly related to assisted dying:

    - **Our position is that the conscientious objection clause alone does not offer sufficient protection, and that staff should be able to object to being involved based on conscience or any other reason.**

    - The Bill places the burden of proof of conscientious objection on the individual health professional. We know that some of our members may not want to be involved for reasons other than conscientious objection. For example, when we surveyed our members in December, a number of members commented that they agree with the principle of assisted dying but would not want to participate in the process as they feel it would have a negative impact on their mental health.

    - It's welcome that the Committee believes that consideration should be given to amending the wording of the conscientious objections clause.

    - We are calling for an opt-in provision as a further safeguard. But nurses who do not opt-in to become an authorised health professional may be asked to be directly involved in other ways, for example coordinating services, and there should be a general right to decline to carry out these roles.

3. Authorised health professionals should not provide assistance to die while working alone:

- **A key concern is that the Bill allows a nurse to provide a terminally ill adult with an approved substance to end their life while working alone.** While it states that a nurse may be accompanied by another health professional as they think necessary, it does not require this.

- Our position is that carrying out the final assessments of capacity and lack of coercion, providing the approved substance and remaining with the individual while they self-administer, while working alone, would leave our members open to accusations of coercion or wrongdoing and represents an unacceptable risk. **The Bill must require two registered health professionals to attend together to provide assistance to end life.**

- **Doctors get the security of two practitioners assessing eligibility at the start of the process, nurses need the same protection when it comes to the point of providing the substance.**

- Given current staffing shortages and financial challenges, there is a very real risk that staff attending alone would quickly become the norm rather than the exception.

- Our member survey was clear that the vast majority of respondents would expect at least two health professionals present at the point of the final capacity assessment and the provision of the approved substance. The general sense from the comments is that the level of responsibility and agility required is too great for one health professional to undertake alone.

4. Specialist training must be provided:

- The Bill does not currently mandate training for healthcare professionals involved in assisted dying and the financial memorandum gave no consideration to the cost of training nurses. We believe this is a critical omission that should be addressed in the primary legislation, with specific reference to the needs of registered nurses.

- The Bill should make clear that appropriate, specialist training must be provided to all nurses participating in assisted dying, prior to them being involved in an assisted death. As discussed above, our position is that **the best way to ensure staff are highly trained is for staff to be required to complete training as part of an opt-in model.**

4. Specialist training must be provided: *(cont.)*

- A registered nurse acting as authorised health professional needs to be satisfied that the patient has the capacity to request assistance to end their life, before providing the approved substance. **Registered nurses will be required to make complex assessments around capacity and coercion. These decisions are complex, particularly for younger adults or older people with cognitive impairment, and it is therefore a highly skilled role.**

- Yet during the evidence session with Mr McArthur on 4 February, discussion around carrying out complex capacity assessments focused exclusively on this role being performed by medical practitioners when assessing eligibility for an assisted death. Similarly, the Committee report calls for further reflection on the resource implications for the medical professions of assessing capacity with no consideration of the role that nurses would play in assessing capacity prior to providing an approved substance. This is important because the training needs of nurses carrying out this role will be different to the needs of doctors. It's also important to consider that some time could have passed since the coordinating medical practitioner and independent medical practitioner undertook their assessments and it is possible this may be the first time the registered nurse has met the individual.

- **Specialist capacity and coercion training must be part of the training that registered nurses who opt-in to this service would receive.**

- Our member survey showed that the overwhelming majority (93%) expected to receive specialist training on all aspects of the role of nursing in relation to assisted dying, before participating in activities directly related to assisted dying.

- During the evidence session on 28 January, we were deeply alarmed by the Cabinet Secretary's response to a question about training costs which seemed to suggest that, once the provision of assisted dying had been established, future training could simply form part of the standard registered nurse training programme. This would be completely insufficient and unacceptable.

5. Provision of assisted dying cannot simply be added to existing, stretched teams:

- While the Bill is largely silent on how assisted dying would be delivered if the legislation passes, the accompanying documents suggest that doctors and nurses would take on the roles set out in the Bill as part of their existing employment and that the cost of delivering the assisted dying would be absorbed by existing budgets.

5. Provision of assisted dying cannot simply be added to existing, stretched teams: *(cont.)*

- **If the Bill passes, we do not support an approach where assisted dying would simply be provided by existing teams, for example district nurses.** Providing someone with assistance to end their life will require specialist training and should be provided by individuals who have opted into that role and are able to develop confidence and experience. It also requires time in order to provide individuals, and their families, with the necessary care, support and respect. Expecting existing teams to take on this role, in addition to existing workloads, would not be safe or sustainable.

- Dedicated resources for establishing a workforce that has opted in to provide this service and for training and support would be essential.

6. Protection from discrimination and harassment:

- We would also like to see the Bill amended to provide statutory protection from discrimination for registered nurses so that it is unlawful to discriminate against them based on their decision to either participate or not participate in assisted dying. We welcome the Committee's call for the inclusion of a 'no detriment' clause to be investigated at stage 2.

- Assisted dying is an extremely emotive issues, with strongly held views on either side of the debate, and health care staff should not be concerned about whether their decision to participate, or not participate, will have an impact on their professional or personal life. This provision may provide particular reassurance for staff who work in rural areas or in small communities.

- We also support the BMA's calls for the Bill to include provision for safe access zones that could be established in future, should the need arise, to protect staff and patients from harassment.

7. Other issues:

- We welcome the Committee's recommendation that, if the Bill progresses to stage 2, amendments are needed to ensure suitable legal clarity and protections for medical practitioners around the issue of raising assisted dying with patients . This legal clarity must also extend to the role of nurses.

- It is also welcome that the Committee is calling for amendments to ensure health professionals have access to tailored psychological support.

7. Other issues: *(cont.)*

- We completely agree with the Committee's conclusion that a combination of amendments and detailed guidance on self-administration and the provision of assistance is needed to ensure absolute clarity and appropriate protection for all parties involved. As detailed above, we are opposed to the provisions that could see a registered nurse attend to provide assistance alone.

- We agree that amendments are needed to make clear what the legal position is on institutional objection.

Palliative care:

- We are acutely aware that many members have concerns about the provision of palliative care and agree that there is a real and urgent need to improve access to palliative care across Scotland. In some parts of the country there are insufficient services to support people at the end of their lives and we are clear that, whether or not the Bill passes, there requires to be further investment in palliative and end-of-life care services.

- We welcome the Committee's call for this Bill to be a catalyst for further improvements to be made to palliative care services.