

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health and Aged Care

Dental Benefits Act 2008

Dental Benefits Amendment Rule 2016 (No. 2)

Subsection 60(1) of the *Dental Benefits Act 2008* (the Act) provides that the Minister may, by legislative instrument, make Dental Benefits Rules providing for matters required or permitted by the Act or necessary or convenient to carry out or give effect to the Act. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The *Dental Benefits Rules 2014* provide for the operational framework and service items for the Child Dental Benefits Schedule (CDBS). The CDBS commenced on 1 January 2014 and provides benefits for basic dental services for eligible children aged 2-17 years.

The *Dental Benefits Amendment Rule 2016 (No. 2)* (the Rule) amends the *Dental Benefits Rules 2014* to implement the government's revised policy for the CDBS which reduces the benefits available for dental services provided to an eligible child, from \$1,000 to \$700, over two calendar years. This reduction in total dental benefits available is being phased in and will apply to two year cap periods commencing in 2017 or later. Children who commenced a two year cap period in 2016 will continue to have access to up to \$1,000 of dental benefits until 31 December 2017, provided the child is eligible for the CDBS in 2017. From 1 January 2018, the \$700 cap on dental benefits available in a two year cap period will apply to all eligible children accessing the CDBS.

The two year cap period commences from the calendar year in which the child first accesses dental services under the CDBS and then for each subsequent two year period during which the child accesses dental services. Cap periods do not overlap, i.e. if a child has a two year cap period for the 2016 and 2017 calendar years, the next two year cap period that could apply to the child is for the 2018 and 2019 calendar years.

The Rule also changes the date on which a dental service provided by a State or internal Territory is eligible for dental benefits to 31 December 2019 to continue to allow patients to access treatment provided by public sector dentists under the CDBS.

The Rule commences on 1 January 2017.

This Rule is a legislative instrument for the purposes of the *Legislation Act 2003*.

Consultation

As the change to the benefits cap from \$1,000 to \$700 is being phased in, it does not materially affect children currently using the CDBS and therefore consultation was not carried out.

Consultation was not necessary in respect of the change in relation to state and territory access to dental benefits as the change is machinery in nature and does not substantially alter existing arrangements.

Authority: Subsection 60(1) of the
Dental Benefits Act 2008

DETAILS OF THE *DENTAL BENEFITS AMENDMENT RULE 2016 (No. 2)***1. Name of Rule**

Rule 1 provides for the Rule to be referred to as the *Dental Benefits Amendment Rule 2016 (No. 2)*.

2. Commencement

Rule 2 provides for the Rule to commence on 1 January 2017.

3. Authority

Rule 3 provides that the *Dental Benefits Act 2008* provides authority to make the Rule.

4. Schedule(s)

Rule 4 provides that each instrument that is specified in a Schedule to the Rule is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Rule has effect according to its terms. Schedule 1 specifies amendments to the *Dental Benefits Rules 2014*.

Schedule 1 – Amendments**Item 1**

Item 1 repeals Schedule 2 of the *Dental Benefits Rules 2014* and replaces it with a new Schedule 2. The new Schedule 2 changes the date to which a dental service provided by State or internal Territory is eligible for dental benefits from 31 December 2016 to 31 December 2019. This will allow patients to continue to access treatment provided by public sector dentists under the Child Dental Benefits Schedule.

Item 2

Item 2 adds new items to the table at Schedule 3 of the *Dental Benefits Rules 2014*. Subrule 14(1) of the *Dental Benefits Rules 2014* provides that the total amount of dental benefit payable in respect of dental services rendered to an eligible dental patient must not exceed the amount (the cap) for the 'relevant 2 year period'. The table in Schedule 3 of the *Dental Benefits Rules 2014* specifies relevant 2 year periods and the applicable cap for those periods.

The cap for each relevant 2 year period was previously \$1,000. The new items added to the table specify that the cap for the relevant 2 year period covering the 2016 and 2017 calendar years is \$1,000 and the cap for the relevant 2 year period covering the 2017 and 2018 calendar years is \$700. By virtue of subrule 14(9) of the *Dental Benefits Rules 2014*, the cap for all subsequent relevant 2 year periods will also be \$700, unless further amendments are made.

Rule 14 of the *Dental Benefits Rules 2014* provide that an eligible dental patient's first relevant 2 year period will be the period made up of the first calendar year after 2014 in which the person receives a dental service and the following calendar year. Once that relevant 2 year period has ended, the next time the eligible dental patient receives another dental service will start the next relevant 2 year that will apply to that patient.

In other words, if an eligible dental patient first receives a dental service in 2016 their relevant 2 year period will cover the 2016 and 2017 calendar years, and their cap will be \$1,000. They will not move to a \$700 cap until 2018-2019. The \$700 cap will only apply to eligible dental patients whose relevant 2 year period commences in 2017 or later.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Dental Benefits Amendment Rule 2016 (No. 2)

The *Dental Benefits Amendment Rule 2016 (No. 2)* (the Rule) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Dental Benefits Rules 2014* provide for the operational framework and service items for the Child Dental Benefits Schedule (CDBS). The CDBS commenced on 1 January 2014 and provides benefits for basic dental services for eligible children aged 2-17 years.

The Rule amends the *Dental Benefit Rules 2014* to:

- provide for a new cap of \$700 on the total amount of dental benefit payable in respect of dental services rendered to an eligible dental patient for the 2017-2018 two year cap period and subsequent two year cap periods; and
- change the date to which a dental service provided by State or Territory is eligible for dental benefits to 31 December 2019.

Human rights implications

The Rule engages the right to health and the right to social security. Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) defines the right to health as “the right to the enjoyment of the highest attainable standard of physical and mental health”. Article 9 of the ICESCR contains the right to social security, including social insurance.

The Rule implements the government’s revised policy for the CDBS which reduces the total dental benefits available for dental services provided to an eligible dental patient, from \$1,000 to \$700, over two calendar years. This reduced cap will apply to eligible children who have a two year cap period commencing with the 2017 calendar year or in later calendar years. Children who commenced a two year cap period in 2016 will continue to have access to up to \$1,000 in dental benefits until 31 December 2017, provided the child is eligible for the CDBS in 2017.

While this policy reduces the benefits available under the CDBS, it is not the only means of financial support for dental services. State and territory governments provide free or low cost dental care to people with pensioner concession cards or health care cards. This provides a safety net for people who have limited means to meet the full cost of dental treatment themselves. Additionally, many states provide dental services to all children, regardless of means.

The objective of the limit on benefits is to balance the need for support for the dental treatment needs of children with maintaining the sustainability of government funding. The provision for a benefit limit of \$700 over two consecutive calendar years is a reasonable and proportionate way to provide sustainable access to an appropriate level of government funding in the context of the broader dental system.

The change to the date of eligibility of State and Territory dental services for dental benefits has a beneficial impact on the rights to health and social security as it maintains access to benefits for patients who access CDBS services through the public sector.

Conclusion

The Rule is compatible with Australia's human rights obligations because it advances the protection of human rights by enabling limited resources to be spent more effectively and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon Sussan Ley MP Minister for Health and Aged Care