

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Dental Benefits Act 2008

Dental Benefits Amendment Rule 2017 (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* (the Principal Rules) provides 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 2017 (No.2)* (the Amendment Rule) amends the Principal Rules to include reduced restrictions on certain diagnostic and preventive dental items, modifies particular item descriptors and benefits, replaces a restorative item with two new items, and introduces two new prosthodontic items. The amendments reflect recent changes to the *Australian Schedule of Dental Services and Glossary* and feedback from patients to improve the efficiency of the program for both eligible patients and dental providers.

The Rule commences on 1 January 2018.

Consultation

The changes were supported by the Department of Health's clinical consultants. The Australian Dental Association provided feedback on the proposed changes and that feedback was incorporated where appropriate.

The Department of Human Services, who administer the payment of benefits under the CDBS, were also consulted on the amendments.

The Office of Best Practice Regulation advised that a Regulatory Impact Statement is not required as the Rule is likely to have no more than a minor regulatory impact on business, community organisations or individuals.

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

DETAILS OF THE *DENTAL BENEFITS AMENDMENT RULE 2017 (NO. 2)*

Part 1 – Preliminary

1. Name of Rule

Rule 1 provides for the Rule be referred to as the *Dental Benefits Amendment Rule 2017 (No. 2)*.

2 Commencement

Rule 2 provides for the Rule to commence on 1 January 2018.

3 Authority

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

4 Schedules

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 – Amendments

Item 1

Rule 17 of the Principal Rules restricts how frequently a listed item can be administered to an eligible dental patient within a specified period. Item 1 remakes Rule 17 to limit the preventive items 88111, 88114 and 88121 to be provided to a particular eligible dental patient once every five months instead of once every six months, but no more than twice in a calendar year. The change will better facilitate families to seek biannual preventive checks during school holidays.

Item 2

Rule 18 of the Principal Rules restricts how frequently a listed item can be administered to an eligible dental patient by a particular eligible dental provider. Item 2 remakes Rule 18 to allow a periodic oral examination (item 88012) to be provided to a particular eligible dental patient once every five months instead of once every six months but no more than twice in one calendar year. The change will better facilitate families to seek biannual check-ups during school holidays.

Item 3

Paragraph 19(b) of the Principal Rules specifies the time period between the provision of a comprehensive oral examination (item 88011) and a periodic examination (item 88012) to an eligible dental patient by a particular eligible dental provider. Item 3 amends Paragraph 19(b) to reduce the period between examinations from six months to five months to better enable families to seek examinations during school holidays.

Item 4

Item 4 adds new Rule 24A into the Principal Rules, placing restrictions on the provision of denture bases. Paragraphs 24A(a) and 24A(b) restricts permanent dentures from being provided within six months of provisional dentures. Paragraphs 24A(c) and 24A(d) limit the new provisional dentures to one upper and one lower denture per patient.

Item 5

Rule 25 of the Principal Rules limits the quantity and type of prosthodontic services that can be provided. Item 5 extends Rule 25 to enable retainers (item 88731), teeth (item 88733) and immediate tooth replacement (item 88736) to be fitted onto new provisional denture items (88723 and 88724).

Item 6

Item 6 amends paragraph 25(d) of the Principal Rules to enable appropriate restrictions on item 88741 (adjustment of a denture) to apply to new provisional denture items (88723 and 88724) as well as the existing permanent denture items (88721 and 88722).

Item 7

Item 7 adds new Rule 27A into the Principal Rules, which provides restrictions for the provision of new preformed metallic crown items 88586 and 88587.

Item 8

Item 8 amends the dental item for removing plaque (item 88111) in Schedule 1 of the Principal Rules to include the cleaning of implants as well as teeth.

Item 9

Item 9 removes the dental item for preformed metallic crowns (item 88576) from Schedule 1 of the Principal Rules. Two new items for preformed metallic crowns (88586 and 88587) have been added (see item 10) to replace item 88576.

Item 10

Item 10 adds two new restorative dental items into Schedule 1 of the Principal Rules, providing for preformed metallic crowns. The new items for preformed metallic crowns (88586 and 88587) replace item 88576 (see item 9).

Items 11 and 13

Items 11 and 13 amend the descriptors for items 88721 and 88722 in Schedule 1 of the Principal Rules to reference the rules that apply restrictions to these items.

Item 12 and 14

Items 12 and 14 amends Schedule 1 of the Principal Rules to increase the benefits payable for a partial maxillary and a partial mandibular denture base (88721 and 88722 respectively) to better reflect the clinical and laboratory costs involved.

Item 15

Item 15 adds new prosthodontic items (88723 and 88724) into Schedule 1 of the Principal Rules, providing for provisional dentures to eligible dental patients.

Item 16

Item 16 amends Schedule 1 of the Principal Rules to reduce the benefit payable for fixing teeth onto a denture (item 88733) to reflect the increased benefits payable for a denture base.

Statement of Compatibility with Human Rights

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

Dental Benefits Amendment Rule 2017 (No. 2)

This Legislative Instrument 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 *Dental Benefits Amendment Rule 2017 (No. 2)* (the Rule) amends the *Dental Benefits Rules 2014* to make minor changes to the restrictions of some diagnostic and preventive items; replace one restorative item with two new equivalent items; introduce two new prosthodontic items; and modify some item descriptions and benefits. All changes are supported by clinical advice.

Changes to diagnostic and preventive services reduce the time period from when a service can be provided again to a patient. The amendments reduce the time period from six months to five months, enabling families to seek their twice yearly preventive checks more easily during school holidays.

The Rule also repeals the item for a metallic crown and replaces the item with two new metallic crown items. The item for a metallic crown with tooth preparation provides the equivalent service as the item removed. The second item enables treatment where a metallic crown is required but with minimal tooth preparation.

The introduction of provisional dentures allows patients to receive temporary dentures while their oral condition recovers from trauma. Permanent dentures may be provided to patients following the improvement of the patient's oral health condition.

The Rule makes some adjustments to the benefits payable for existing denture items: the benefit for a denture base has been increased and the benefit for adding a tooth to a denture has been reduced to better reflect clinical and laboratory costs.

The Rule also makes a number of other minor amendments to existing item descriptors, restrictions and benefits.

The Rule commences on 1 January 2018.

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 reduced restrictions for preventive and diagnostic services enhance a patient’s right to health by enabling them to more readily receive those services when they are needed.

The amendments to metallic crown items maintains the right to health as the new items provide the same health benefit to the patient as the item being removed. By having more specific items with different levels of benefits payable, patients are able to receive more appropriate treatment and maximise their benefit entitlement (which is capped at \$1,000 over two calendar years), which advances the right to social security.

The new provisional denture items advance the right to health by supporting appropriate clinical treatment for patient’s requiring dentures.

While the benefit for fixing teeth onto a denture has been reduced, the benefit for the denture bases has increased. Consequently, the overall benefit payable for denture services is generally higher and thus maintains the right to social security.

Remaining amendments to service limitations have been made to support the introduction of the new items. These amendments support the rights to health and social security by ensuring appropriate clinical use of the new items while providing necessary protections for a patient’s benefit entitlement.

Conclusion

The *Dental Benefits Amendment Rule 2017 (No. 2)* protects and advances the rights to health and social security and is therefore compatible with Australia’s human rights obligations.

The Hon Greg Hunt MP Minister for Health