

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Dental Benefits Act 2008

Dental Benefits Amendment Rules (No. 1) 2019

Authority

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.

Subsection 66(1A) of the Act provides for the Minister Health to delegate the power to make Dental Benefits Rules under s 60(1).

Purpose

The *Dental Benefits Amendment Rules (No.1) 2019* (the Amendment Rules) amend the *Dental Benefits Rules 2014* (the Rules) to extend the date to which a dental service provided by a State or internal Territory is eligible for dental benefits to 31 December 2022 under the Child Dental Benefits Schedule (CDBS). The CDBS provides benefits for basic dental services for eligible children aged 2-17 years. Effectively, the Amendment Rules will allow patients to continue to access treatment provided by public sector dentists under the CDBS until 31 December 2022.

The Amendment Rules also include a consequential amendment to update a reference to the now repealed *Health Insurance Regulations 1975* to the *Health Insurance Regulations 2018*, which commenced on 1 October 2018.

These Rules commence the day after the instrument is registered.

Consultation

Consultation prior to making the Amendment Rules was not necessary as the changes do not substantially alter existing arrangements.

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

DETAILS OF THE *DENTAL BENEFITS AMENDMENT RULES (NO.1) 2019*

1. Name

Section 1 provides that the name of the instrument is the *Dental Benefits Amendment Rules (No.1)2019*.

2 Commencement

Section 2 provides that the instrument commences on the day after registration.

3 Authority

Section 3 provides that the Amendment Rules are made under subsection 60(1) of the *Dental Benefits Act 2008*.

4 Schedules

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Item 1 amends the definition of ‘provider number’ in rule 4 of the Rules to replace a reference to ‘*Health Insurance Regulations 1975*’ with ‘*Health Insurance Regulations 2018*’.

Item 2 repeals Schedule 2 of the Rules and substitutes 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 to 31 December 2022.

Statement of Compatibility with Human Rights

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

Dental Benefits Amendment Rules (No.1) 2019

The *Dental Benefits Amendment Rules (No.1) 2019* are 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* (the Rules) 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 Rules (No.1) 2019* (the Amendment Rules) amend the Rules to:

- make a consequential amendment to update a reference to the now repealed *Health Insurance Regulations 1975* to the *Health Insurance Regulations 2018*; and
- extend the date to which a dental service provided by State or Territory is eligible for dental benefits to 31 December 2022.

Effectively, the Amendment Rules will allow patients to continue to access treatment provided by public sector dentists under the CDBS until 31 December 2022.

Human rights implications

The Amendment Rules engage 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 extension to the date of eligibility of State and Territory dental services for dental benefits maintains the right to health and social security as it maintains access to benefits for patients who access CDBS services through the public sector.

The consequential amendment has no human rights implications.

Conclusion

The *Dental Benefits Amendment Rules (No.1) 2019* maintain the rights to health and social security and are therefore compatible with Australia’s human rights obligations.

ALISON MOREHEAD
First Assistant Secretary
Health Systems Policy and Primary Care Group
Department of Health