



Australian Government

Department of Health

MINISTERIAL GUIDELINES FOR THE CHILD DENTAL BENEFITS SCHEDULE: EXTENUATING CIRCUMSTANCES FOR INFORMED FINANCIAL CONSENT

Issued by the Minister for Health

Dental Benefits Act 2008

Dental Benefits Rules 2013

Rule 15 (6) and Rule 15 (7)

These Ministerial Guidelines set out the extenuating circumstances in which dental providers will be exempt from complying with certain conditions outlined in the informed financial consent requirements of Rule 15 of the Dental Benefits Rules 2013.

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Ministerial Guidelines for the Child Dental Benefits Schedule: Extenuating Circumstances for Informed Financial Consent

Purpose

These Ministerial Guidelines specify the extenuating circumstances determined by the Minister for Health in accordance with Rules 15 (6) and (7) of the Dental Benefits Rules 2013 (the Rules).

These Guidelines are intended to add flexibility to the compliance requirements for dental practitioners providing services under the Child Dental Benefits Schedule (CDBS). The Guidelines define situations where CDBS benefits may still be payable where a dental provider has not met the requirements of the Rules due to circumstances beyond their control.

These Guidelines apply to all service items listed in the Schedule of Services in the Rules and are the source for determining whether extenuating circumstances apply to cases where a dental provider has failed to record medical and informed financial consent to treatment when required, as prescribed under the Rules.

Introduction

The *Dental Benefits Act 2008* (the DB Act) and its subordinate Rules establish the CDBS – a program aimed at providing access to dental services for children. Under the CDBS, children aged 2-17 years in families receiving Family Tax Benefit Part A (and certain other government payments) will have access of up to \$1,000 in dental benefits, capped over two calendar years, for basic prevention and treatment services.

It is important that the CDBS facilitates open communication between dental providers and patients and their families about the costs of services.

Ensuring that patients and their families are informed of proposed CDBS treatment, costs and payment procedures gives them the opportunity to plan for any out-of-pocket costs they may be charged.

The program's informed financial consent requirements aim to facilitate discussion of proposed treatment and costs and ensure patients are fully informed before progressing with a course of care.

If a dental provider fails to satisfy the informed financial consent requirements, then the services provided cannot be deemed 'eligible CDBS services' and the dental provider will be

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required to pay back to the Australian Government all amounts of assigned benefits paid for non-compliant services.

However, where there are circumstances outside the control of the dental provider that prevent compliance with the requirements, it is in the best interest of the patient and the dental provider that benefits are paid for CDBS services.

The Guidelines will exempt cases of non-compliance with Rule 15 where the dental provider has obtained consent but, due to certain circumstances generally outside of their control, the dental provider has failed to record this consent in writing.

An exception to obtaining informed financial consent prior to treatment can only occur in cases where a patient is not known to be a CDBS patient on the day of treatment (see Extenuating Circumstance **(2)** below).

Rule 15 does not provide legal authority for providers to breach any other legal requirements or guidelines on consent to treatment.

Informed Financial Consent

Informed Financial Consent Requirements

The informed financial consent requirements are outlined in Rule 15 of the Rules.

If dental providers wish to participate in the CDBS, it is a requirement of the program that they obtain consent to medical treatment and costs before progressing with any treatment.

Dental providers must also document this consent in writing on an appropriate patient consent form. To do this, the provider needs to obtain a signature from the patient or patient's guardian (that is, a person with authority to consent on the patient's behalf) on the patient consent form, which affirms that treatment and costs were discussed and agreed prior to treatment.

Billing Arrangements

The dental provider may choose to set their own fees, which may exceed the benefits listed in Schedule 1 of the Rules. In these circumstances, patients and their families will incur out-of-pocket costs and be required to personally meet the additional costs incurred above the benefit amount for each service item.

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Alternatively, dental providers may choose to bulk bill CDBS patients. Bulk billing is where the patient assigns the available benefit for the service to the dental provider and the dental provider accepts the benefit payable for each service in Schedule 1 of the Rules as full payment. As the dental provider accepts the available benefit as full payment, a co-payment cannot be charged to the patient.

In order to bulk bill CDBS services, an agreement must be made between the dental provider and patient (or patient's guardian) for benefits to be assigned to the dental provider in accordance with s12 of the DB Act.

Requirements for Documenting Consent

Dental providers must use the Non-Bulk Billing Patient Consent Form to document cases where they choose to set their own fees above the schedule benefit. In such cases, the dental provider must ensure patients and their families are made aware of the likely out-of-pocket costs they will be charged for CDBS services on the day. The Non-Bulk Billing Patient Consent Form must be executed on each day of service provision under the program.

When dental providers choose to bulk bill CDBS services they must ensure a Bulk Billed Patient Consent Form is executed on the first day of service in a calendar year. For each day of service provision thereafter, the dental provider must advise the patient or the patient's guardian of the likely treatment and bulk billing arrangements before commencing treatment.

However, consent does not have to be recorded on a Bulk Billed Patient Consent Form at subsequent appointments because the patient consent form from the first visit will apply for the entire calendar year as long as the patient is bulk billed.

Extenuating Circumstances

Rule 15 (6) of the Rules provides an exemption for dental providers who have obtained medical and informed financial consent to treatment but failed to properly record this consent in writing if an 'extenuating circumstance' applies in respect of CDBS services.

Rule 15 (7) provides for the extenuating circumstances to be determined in writing by the Minister for Health.

Extenuating Circumstances

In accordance with subrule 15 (7), the Minister for Health determines the following circumstances as extenuating circumstances for the purposes of the informed financial consent Rule.

(1) Emergency services provided outside of normal practice

This extenuating circumstance applies to cases where a dental provider renders emergency CDBS services outside their normal practice routine (that is, outside the dentist's normal operating hours and/or in a different location), and as a result the dental provider does not execute the appropriate patient consent form on the same day as service provision.

For example, this would cover a case where emergency treatment is provided after hours, where the late hour of service led to the relevant consent form not being signed on the same day as the service. This extenuating circumstance would also apply to cases where a dental provider has been called to provide emergency CDBS services at a location that is not their usual practice where the dental provider does not have access to resources to execute a patient consent form on the day of service.

(2) Failure of patients to disclose their intention to use CDBS benefits to the provider or practice on the day of service

This extenuating circumstance applies to CDBS service provision where the patient or patient's guardian fails to disclose to the provider at the time of service that they intend to claim their CDBS entitlements.

In these situations, the patient is still eligible to claim benefits (provided an appropriate invoice with CDBS item numbers is made available), but they will not have signed the patient consent form on the day of treatment.

This would include circumstances where the patient receives services on one day, and only on a later day is the dental provider advised that the patient seeks to claim CDBS benefits for the services provided previously.

This extenuating circumstance would also include those cases where a family may not find out their child is eligible for the CDBS until later in the calendar year and after the date of service (such as when they begin to receive their Family Tax Benefit Part-A entitlement later in the calendar year or choose to claim the entitlement as a lump sum).

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(3) *Refusal to sign*

This extenuating circumstance covers cases where a patient or the patient's guardian consents to treatment and costs before receiving services, but for reasons outside the dental provider's control, refuses to sign the patient consent form before the end of the visit.

For example, the patient or patient guardian may consent verbally at the beginning of a visit, but at the end of the visit may be unhappy with the services provided, or reconsider the financial implications once payment is required, and refuse to sign the appropriate patient consent form.

(4) *Administrative error*

To avoid administrative errors, it is important that practices have appropriate procedures in place to ensure that staff involved in treating CDBS patients and processing CDBS paperwork know how to meet their obligations. For example, when a CDBS patient arrives at a clinic, a receptionist may ask them about their eligibility and intention to claim CDBS entitlements and then communicate this to relevant staff so that the proper informed financial consent can be obtained and recorded.

However, there may be circumstances beyond the practice's normal operations that are exceptional – for example, where a practice's IT system was inoperative or where there has been a genuine administrative oversight (such as new staff being untrained in the CDBS's requirements in the first few days of work). For an administrative error to satisfy the extenuating circumstance, the provider must be able to:

- prove that the administrative error that occurred was outside the practice's ordinary business processes and procedures;
- produce evidence that reasonable steps were taken to rectify the problem and to prevent it happening again; and
- show that their response and corrective action was conducted within a reasonable period from the date of error.

(5) *Incapacity/death of patient before signing*

This extenuating circumstance applies to cases where the services and costs have been agreed to, but due to incapacity or death the patient or patient's guardian is unable to sign the patient consent form when required.

(6) *Person executing the patient consent form does not have authority to sign*

This extenuating circumstance applies when, unbeknown to the dental provider, a person not authorised or legally able to consent to the child's treatment or treatment costs signs the patient consent form.

For example, this may arise where there are shared informal care arrangements for children or unclear shared-care arrangements. In order for this extenuating circumstance to apply, the dental provider must be found to have acted in good faith and complied with their requirements for obtaining and recording consent.

Recording Extenuating Circumstances

Dental providers must be able to provide sufficient evidence of an extenuating circumstance to the Department of Human Services (DHS) if they wish to claim that one or more of the above circumstances applies to a case of not meeting the requirements to document informed financial consent. If DHS cannot determine whether an extenuating circumstance applies, then the services are 'ineligible services' under the Rules and providers will be required to pay back benefits paid for the non-compliant services.

Dental providers must create and retain appropriate records to substantiate that an extenuating circumstance existed for the provision of CDBS services. These records must be kept on file for a period of four years.

For each extenuating circumstance, the dental provider must record the following details on their patient file:

- a) the date of service.
- b) the date at which the dental provider realised that the patient consent form had not been signed and/or had not recorded the consent to treatment and costs.
- c) the reasons why a patient consent form was not executed;
 - in the extenuating circumstance of emergency services being provided outside the normal practice, the dental provider must also document the reasons underlying the 'emergency' treatment – i.e. details on why the required treatment was classed as 'emergency' and was different from the normal practice.
 - in extenuating circumstances where the patient fails to disclose their intention to claim CDBS benefits, the dental provider must also record the reasons underlying the non-disclosure. For example, reasons may include whether the patient had previously declined to use CDBS benefits or chose to pay their bill by a different method.

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- d) a record that consent to treatment and treatment costs was obtained before commencing treatment.
- e) the steps taken to rectify the non-compliance issue for the particular circumstance and, in the exceptional circumstances of administrative errors, steps taken to avoid the non-compliance issue arising in the future (for example, this would include recording the date and details of IT or operational services changes or staff training undertaken to remedy administrative errors).

Additional Reporting Requirements for Extenuating Circumstance (2) - 'Failure of patients to disclose their intention to use CDBS benefits to the dental provider or practice on the day of service'

For extenuating circumstance **(2)**, the dental provider would need to issue to the patient an invoice with CDBS item numbers and particulars in order for the patient to claim CDBS benefits for previously rendered services.

The dental provider will also need to keep a record of both invoices.

The dental provider should also advise the patient that they are not entitled to claim both CDBS and PHI benefits for the same service item under the Rules.

Additional Reporting Requirements for Extenuating Circumstance (6) - 'Person executing the patient consent form does not have authority to sign'

With regard to extenuating circumstance **(6)**, it may be that the dental provider only becomes aware after audit activities are under way that the person who signed the patient consent form did not have authority to execute the form.

In these circumstances, the dental provider will have informed the patient of the costs and treatment and recorded this consent through a patient consent form. The dental provider does not need to execute a new patient consent form for these past services.

If, however, the dental provider is aware of the incorrect signature of a previous form and renders services to the patient again in the future, they must take reasonable steps to ensure that the signature obtained on a new patient consent form is from a person who has authority to execute the form. These steps must be noted in the patient file as part of documenting the extenuating circumstance.

Assessment of Extenuating Circumstances

The Department of Health is responsible for the policy and legislation for the CDBS.

The Department of Human Services (DHS) is responsible for the program's administration. As part of the program's administration, DHS manages the program's compliance framework and auditing processes, which include investigating non-compliance with legislation and making determinations on whether extenuating circumstances apply to cases of non-compliance.

In making these determinations, DHS is required to follow these Guidelines and assess each potential extenuating circumstance on a case by case basis. DHS considers the full range of evidence of each case to determine whether the case falls within one of the extenuating circumstances above and whether the dental provider has properly recorded the details of the case in their patient files.

To assist DHS in this role, it is in the dental provider's best interest to take reasonable steps to rectify any problems that may arise with their informed financial consent paperwork and administrative record keeping as soon as possible after becoming aware of any compliance issues.

Process of Review

As the CDBS continues to operate and the audit processes commence, these Guidelines will be reviewed. Any need for refinement of the Guidelines will be assessed in light of the program's evaluation framework.

With specific reference to the exceptional circumstance of administrative errors, this is only meant to cover situations that might occur as practices adapt to providing services under the new program. It will be reviewed in the first twelve months of the program and is expected to be discontinued once CDBS administrative procedures have become embedded in practices.

Dental providers must ensure they are familiar with the extenuating circumstances and recording requirements, including later iterations of these Guidelines, and must always act to promote compliance with the informed financial consent requirements of the CDBS. These Ministerial Guidelines and further iterations thereof will be published and be made available on the [Department of Health's website, www.health.gov.au/dental](http://www.health.gov.au/dental).