


CR 2022/100 - Child Dental Benefits Schedule - payments assigned to representative public dentists

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Status: **legally binding**

Class Ruling

Child Dental Benefits Schedule – payments assigned to representative public dentists

📌 Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Table of Contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	5
Ruling	6
Scheme	9
Appendix – Explanation	30

What this Ruling is about

1. This Ruling sets out the tax treatment of payments assigned to a representative public dentist (RPD) under the Child Dental Benefits Schedule (CDBS).
2. Details of this scheme are set out in paragraphs 9 to 29 of this Ruling.
3. All legislative references in this Ruling are to the *Dental Benefits Act 2008* (DBA), unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you are an RPD who is a ‘dental provider’ within the meaning of the DBA and the *Dental Benefits Rules 2014* (DBR) who:
 - has been allocated a public Medicare Provider Number by the Chief Executive Medicare, and
 - is assigned dental benefits by patients under the CDBS.

When this Ruling applies

5. This Ruling applies from 1 July 2022.

Status: **legally binding**

Ruling

Assessability of assigned dental benefits by patients to a representative public dentist under the Child Dental Benefits Schedule

6. The dental benefit assigned by a patient to a RPD under the CDBS is income according to ordinary concepts and is assessable income of the RPD under section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997).
7. The amount included in assessable income excludes any goods and services tax (GST) component, as per section 17-5 of the ITAA 1997.

Deductibility of amounts paid by the Chief Executive Medicare to the state, territory or health service

8. The amount paid by the Chief Executive Medicare to a state, territory or health service bank account in respect of the bulk-billed dental benefit assigned to a RPD is an allowable deduction to the RPD under section 8-1 of the ITAA 1997.

Scheme

9. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.
10. The Minister for Health and Aged Care may, by legislative instrument, make Dental Benefits Rules in order to carry out or give effect to the DBA (section 60).
11. The DBR establishes the operational framework and service items for the CDBS.
12. Services Australia is responsible for administering the payment of dental benefits and the compliance management framework for CDBS.
13. On 1 July 2022, the DBR were amended to, among other things, broaden the definition of 'dental provider'. The amendments allow for dental hygienists, dental therapists and oral health therapists to become dental providers in addition to registered dentists.
14. Under the CDBS:
- A dental benefit is payable if dental expenses are incurred in respect of an eligible dental service rendered to an eligible dental patient (section 9).
 - The amount of the dental benefit payable is the amount specified in, or determined in accordance with, the DBR (section 9).
 - If a dental benefit is payable, it is payable by the Chief Executive Medicare to the person who incurs the dental expenses in respect of the dental service. Dental benefits will be payable to dental providers in circumstances where the dental patient has assigned his or her right to the benefit to the dental provider in accordance with section 12 (sections 11 and 13).
 - A claim for a dental benefit must be lodged with the Chief Executive Medicare (section 15).

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- The Chief Executive Medicare is to notify eligible patients in relation to a dental service to persons who are eligible to receive dental benefits (section 27).
- A person is eligible to receive dental benefits if the person
 - is an eligible person as defined in section 4
 - is aged under 18 years on 1 January in the calendar year (section 23), and
 - satisfies the means test outlined in section 24 and rule 9 of the DBR.
- The Minister may make Dental Benefit Rules which may provide for a Dental Benefits Schedule (section 61).

15. The dental services must be rendered by or on behalf of a dental provider (section 4, meaning of ‘dental service’). The following classes of persons are dental providers in relation to dental services under the DBA (section 6, and rule 6 of the DBR), provided they have been issued with a Medicare Provider Number by the Chief Executive Medicare:

- dental hygienists
- dental therapists
- oral health therapists, and
- registered dentists.

16. Section 7 sets out that a dental service is taken to be rendered on behalf of a dental provider if:

- the dental service is rendered by another person included in a class of persons specified in the DBR, and
- the other person provides the dental service, in accordance with accepted dental practice, under the supervision of the dental provider.

17. The following classes of person can render a dental service on behalf of a dental provider who is a registered dentist (rule 7 of the DBR):

- where the registered dentist is not a public sector dental provider
 - dental hygienists
 - dental therapists
 - dental prosthetists, and
 - oral health therapists
- where the registered dentist is a public sector dental provider
 - another public sector dental provider.

18. A ‘public sector dental provider’ means (as stated in rule 4 of the DBR):

- (a) a dental provider employed by, contracted to, or providing dental services under an arrangement with:
 - (i) the Commonwealth; or
 - (ii) a State; or
 - (iii) an internal Territory; or

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- (iv) a local governing body; or
 - (v) an authority established by a law of the Commonwealth, a law of a State or a law of an internal Territory; or
- (b) a dental provider on whose behalf another dental provider provides dental services under an arrangement with a body mentioned in subparagraph (a) (i), (ii), (iii), (iv) or (v).
19. One or more public sector dental providers in each state or territory are nominated as RPDs for the provision of dental services under the CDBS.
20. The Chief Executive Medicare issues each RPD with a separate Medicare Provider Number for each practice location for the provision of public dental services. This Medicare Provider Number is separate from any Medicare Provider Number they may have for the delivery of private dental services.
21. Dental providers for the purposes of the DBA must be registered with Medicare Australia and have a Medicare Provider Number issued for the provision of public dental services to be eligible to provide services listed in Schedule 1 of the DBR.
22. The Medicare Provider Number links the benefits claims to an individual practitioner but also identifies the dental provider as being an RPD via use of a public sector speciality code, and a 'public sector dental provider' within the meaning of the DBR.
23. Dental services provided by or under an arrangement with a state or territory are eligible for dental benefits only if:
- the dental service is listed in Schedule 1 of the DBR (section 4, meaning of 'dental service', 'item', and 'Dental Benefits Schedule')
 - the state or territory in which the service is provided is listed in column 1 of Schedule 2 of the DBR (rule 8A of the DBR), and
 - the service was provided on or before the date in column 2 of Schedule 2 of the DBR in respect of that state or territory (rule 8A of the DBR).
24. Schedule 2 of the DBR lists the date after which each state or territory government may no longer access benefits, and access to benefits in that state will be limited to private providers only. The Minister has the ability to make exceptions allowing certain access for public providers even if the date in Schedule 2 has been passed (rule 8A of the DBR).
25. Dental benefits payable for an eligible person under the DBR are limited to the cap provided in Schedule 3 of the DBR over a relevant 2-calendar year period. The cap for 2022–23 is \$1,026. This amount will continue to apply into the future unless a new amount is provided for. Once the cap amount is reached, no additional benefits can be paid for services provided in the relevant 2-calendar year period (rule 14 of the DBR).

Bulk-billing arrangements

26. By convention, all dental services provided under the DBA by public sector dentists are bulk billed. In accordance with the operation of the DBA and DBR, and the administrative arrangements between the Department of Health and Aged Care, Services Australia and state and territory departments, this bulk billing arrangement works as follows:
- The dental services are provided to the eligible dental patient. The eligible dental patient and the RPD by whom, or on whose behalf, the dental service is rendered enter into an agreement, under which the patient assigns their right to the payment of the dental benefit to the RPD and the RPD accepts

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the assignment in full payment of the dental expenses incurred by the patient. This agreement is made in accordance with the approved Services Australia form, which is effected through the Services Australia approved manual or electronic assignment process.

- The approved manual form by which the assignment is effected may be the form DB4-DB, in which the patient signs the statement 'I assign my right to benefit to the Dental Provider who has rendered the service(s)', with the name and separate Medicare Provider Number of the RPD on the form under the words 'Name and provider number of Dental Provider who rendered the above services'. Alternatively, the approved form by which the assignment is effected may be the form DB2-DB, in which the patient signs the statement 'I assign my right to benefits to the dental provider who has rendered the service(s)', with the name of the RPD on the form under the words 'Dental provider who rendered the above service(s)' and the separate Medicare Provider Number under the words 'Provider number'. The assignment of benefit may also be effected through a form which substantially complies with DB4-DB and DB2-DB when the patient wishes to assign their benefits through the Medicare Online claiming process.
- The approved manual form (or one that substantially complies with the approved form) by which benefits are claimed is lodged with Services Australia form DB1N-DB (together with one or more DB4-DB or DB2-DB assignment forms, or a form which substantially complies with the approved assignment forms), including the statement signed by the RPD that 'the professional services specified on the attached assignment forms or claims transmission summary sheet were provided by me or on my behalf'.
- The approved electronic form by which the assignment is effected is where patients agree to assign their benefits to the provider through an EFTPOS terminal keypad through the Medicare Easyclaim system.

27. It is an implied or express term of the contract between the RPD and the relevant state, territory or health service that all the claimed assigned dental benefits will be paid to the relevant state, territory or health service into a separately identifiable bank account.

28. Through the Medicare Provider Number, the dental benefits are paid to the relevant state, territory or health service. The RPD does not receive any of the dental benefits payable for the dental services.

29. Dental providers must keep clinical records, where relevant, for a period of 4 years (rule 16 of the DBR).

Commissioner of Taxation

9 November 2022

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Appendix – Explanation

❶ *This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Table of Contents	Paragraph
Assessability of assigned dental benefits by patients to a representative public dentist under the Child Dental Benefits Schedule	30
<i>The GST component</i>	41
Deductibility of amounts paid by the Chief Executive Medicare to the state, territory or health service	42

Assessability of assigned dental benefits by patients to a representative public dentist under the Child Dental Benefits Schedule

30. Section 6-5 of the ITAA 1997 provides that an amount is assessable income if it is income according to ordinary concepts (ordinary income).

31. The DBA restricts the class of persons who may be assigned dental benefits to dental providers who are registered with Medicare Australia (that is, an RPD). The dental services can be provided by the dental provider, or in the case of a dental provider who is a registered dentist, the dental services can be rendered on their behalf.

32. A dental service is rendered on behalf of a registered dentist if the dental service is performed by another person included in a class of specified person in the DBR and that person provides the dental service in accordance with accepted dental practice, under the supervision of the dental provider. If the registered dentist is not a 'public sector dental provider', the dental services can be rendered on their behalf by a dental hygienist, dental therapist, dental prosthetist or an oral health therapist. If the registered dentist is a public sector dental provider, the dental service can be rendered on their behalf by another public sector dental provider.

33. A dental service will be provided to a patient, either by the RPD, or (in accordance with accepted dental practice) under the supervision of the RPD. In return for the provision of that dental service, the patient agrees to assign to the RPD the dental benefits.

34. That assignment takes place pursuant to a statutory framework, by means of an approved form (DB4-DB or DB2-DB), whereby the patient assigns the dental benefits to the RPD who provided the dental services. The dental benefits are claimed by means of an approved form (DB1N-DB).

35. The RPD does not receive the money because, pursuant to an agreement between the RPD and the relevant state, territory or health service, the claimed assigned dental benefits are paid into a separately identifiable bank account held by the relevant state, territory or health service which contracts the RPD.

36. The RPD derives the claimed assigned dental benefits as income according to ordinary concepts.

37. The state, territory or health service is not a party to the agreement the RPD has with the patient, under which the provision of dental services gives rise to the assignment of the dental benefits. The statutory assignment framework is such that dental benefits can only be assigned to the person (dental provider) who provided or supervised the provision

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of the dental services. A reward for the performance of personal services in the form of the assigned benefits is income according to ordinary concepts. The fact of non-receipt does not alter this conclusion.

38. In Case *T44 86 ATC 366*, fees derived by a medical practitioner were paid directly to the hospital where the practitioner performed his medical services, with the hospital receiving the fees in the capacity as his agent. Under the terms of an agreement with the medical practitioner, the hospital deducted an amount from these fees and paid the balance of the fees to a trust fund. The practitioner could in turn be paid a grant by the trust based on a percentage of his salary. As stated by Mr Roach, the question at issue was:

... whether moneys generated by an account of a taxpayer rendered by, and paid to, his agent and applied in accordance with an agreement between the taxpayer and his agent constitutes assessable income of the taxpayer in the year in which payment is made by the debtor. In my view it does.

39. In Case *T44 86 ATC 366*, the assessable income of the medical practitioner was held to include the whole of the fee, notwithstanding the fee was paid directly to the hospital and the practitioner ultimately received only part of this fee.

40. Therefore, although the dental benefit assigned by the patient to the RPD under the CDBS is paid to the relevant state, territory or health service, it remains assessable income of the RPD under section 6-5 of the ITAA 1997.

The GST component

41. The amount included in assessable income under section 6-5 of the ITAA 1997 excludes any GST component. Section 17-5 of the ITAA 1997 ensures that an amount is treated as not being assessable income (or exempt income) to the extent that it consists of an amount relating to:

- GST payable on a taxable supply
- an increasing adjustment in the GST that relates to a supply, or
- an increasing adjustment that relates to an acquisition and arises in circumstances that give rise to a recoupment that is included in assessable income.

Deductibility of amounts paid by the Chief Executive Medicare to the state, territory or health service

42. Section 8-1 of the ITAA 1997 provides that you can deduct from your assessable income any loss or outgoing to the extent that it is incurred in gaining or producing assessable income and is not:

- capital, private or domestic in nature
- incurred in gaining or producing exempt income, or
- prevented from being deductible by another provision in the ITAA 1997.

43. It is a term of the contract between the dental provider and the state, territory or health service that all the claimed assigned dental benefits are paid by the Chief Executive Medicare directly to the bank account of the state, territory or health service. That same contract is the framework pursuant to which the dental provider provides dental services and is remunerated.

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44. In *Service v Commissioner of Taxation* [2000] FCA 188, the taxpayer was allowed a deduction for fees obtained from acting as director of other companies and as a member of various governmental bodies which he paid over to his employer company under his employment agreement. The Full Federal Court held that the directors' fees paid to the company were outgoings incurred by the taxpayer in gaining or producing his assessable income from the employer.

45. Under the contract between the dental provider and the state, territory or health service, all of the claimed assigned dental benefits are paid by the Chief Executive Medicare directly to the state, territory or health service. Performing dental services under the contract gives rise to assessable income to the RPD and the payment by the Chief Executive Medicare of the claimed assigned dental benefits to the relevant state, territory or health service is incurred in gaining or producing the RPD's assessable income.

46. The payment of the claimed assigned dental benefits by the Chief Executive Medicare to the relevant state, territory or health service is therefore an allowable deduction to the RPD pursuant to Section 8-1 of the ITAA 1997.

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References

Legislative references:

- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- DBA 2008 4
- DBA 2008 6
- DBA 2008 7
- DBA 2008 9
- DBA 2008 11
- DBA 2008 13
- DBA 2008 15
- DBA 2008 23
- DBA 2008 24
- DBA 2008 27
- DBA 2008 60
- DBA 2008 61
- DBR 2014 4
- DBR 2014 6
- DBR 2014 7
- DBR 2014 8A

- DBR 2014 9
- DBR 2014 14
- DBR 2014 16
- DBR 2014 Sch 1
- DBR 2014 Sch 2
- DBR 2014 Sch 3

Cases relied on:

- *Case T44 86 ATC 366*
- *Service v Commissioner of Taxation*
[2000] FCA 188; 97 FCR 265; 2000 ATC 4176; 171 ALR 248; 44 ATR 71

Other references:

Medicare approved forms:

- DB1N-DB
- DB2-DB
- DB4-DB

ATO references

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