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Fraudulent Medicare claims for circumcision must be addressed

Key takeaways

- Medicare rebates in Australia are limited to circumcisions of the penis that are ‘clinically relevant’ under the law.
- Most circumcisions performed are not clinically relevant, making associated Medicare claims incorrect/fraudulent. Australian taxpayers are losing millions every year on unnecessary, harmful and unlawful circumcisions of non-consenting children.
- There should be an audit to determine the extent of wrongly claimed benefits intended for clinically relevant circumcisions of the penis. Training is needed for health practitioners so they understand the Medicare rules and their liability, and the law must be enforced to prevent Medicare fraud.

History of Medicare rebates for circumcision

In 1985, the then federal Minister for Health removed the rebate for newborn circumcision from the Medicare Benefits Schedule (MBS). This was in response to the 1983 recommendations of the Australian National Health and Medical Research Council, which found ritual circumcision to be both unnecessary and hazardous.¹ However, the Medicare rebate was quickly reinstated following lobbying by religious groups, even though nothing prevented religious people from continuing to circumcise at their own instead of the taxpayer’s expense.

No medical support for unnecessary circumcision

No professional body of medical doctors anywhere in the world recommends routine infant circumcision. The Royal Australasian College of Physicians (RACP) said in a 2022 position statement it “believes that the frequency of diseases modifiable by circumcision, the level of protection offered by circumcision and the complication rates of circumcision do not warrant routine infant circumcision in Australia or Aotearoa New Zealand.”² Unfortunately, the RACP statement also says male circumcision is legal in Australia,³ when in fact it exists in a legal grey area in which health practitioners have significant exposure to civil and criminal liability.

Health practitioners are breaking the law

An MBS Review Taskforce was established in 2018. As part of the review, the Urology Clinical Committee published recommendations that said the MBS should continue to include circumcisions of the penis conducted for religious and cultural reasons.⁴ In May 2019, the Paediatric Surgery Advisory Group affirmed the above recommendation.⁵ This recommendation

has no medical or legal basis. It is self-evident that circumcisions performed for social, cultural, or religious reasons are not clinically relevant and do not qualify for Medicare rebates intended only for clinically relevant procedures.⁶

Medicare claims for non-clinically relevant circumcisions are a breach of the *Health Insurance Act 1973* (Cth) and an offence under the *Criminal Code 1995* (Cth).

Section 10(1) of the *Health Insurance Act 1973* (Cth) provides that Medicare benefits are payable for 'professional services', which are defined as 'clinically relevant' services if they are generally accepted in the medical profession as *necessary* for the appropriate treatment of the patient.⁷ The RACP and the Urological Society of Australia and New Zealand do not recognise routine infant or cosmetic circumcision as necessary or appropriate to treat any condition.

By virtue of their medical training, qualified medical practitioners must know that amputating healthy foreskin tissue is medically unnecessary and therefore not clinically relevant. And yet most circumcisions in Australia are performed in private clinics on children too young to consent for purely social, cultural or religious reasons, and Medicare claims are made for these cosmetic, medically unnecessary circumcisions despite them not being clinically relevant. This is dishonest and constitutes fraud against the Commonwealth, the maximum penalty for which is 10 years' imprisonment.⁸

All this is to say nothing of the civil and criminal liability to which health practitioners expose themselves for performing medically unnecessary circumcisions that clearly breach medical ethics, violate human rights, and cause physical and mental harms.⁹

Enforce the law

In the 2018 financial year, \$2,600,000 worth of Medicare rebates were claimed for circumcision procedures.¹⁰ With continuing costs, many tens of millions of taxpayer dollars have been unlawfully distributed over the last few decades. Australian taxpayers should not foot the bill for medically unnecessary circumcisions. An audit is needed to determine the extent and cost of unlawful claims.

Existing Medicare rebates for circumcision do not need to be removed, as was attempted in 1985, but rather only applied to 'clinically relevant' circumcisions as intended and in accordance with the law and Medicare requirements.

References

- 1 National Health and Medical Research Council, 95th Session, Adelaide (June 1983), p 130.
- 2 Royal Australasian College of Physicians, 'Circumcision of infant males' (December 2023) <https://www.racp.edu.au/docs/default-source/advocacy-library/racp-circumcision-of-infant-males-position-statement.pdf?sfvrsn=92edd11a_4> 3
- 3 Ibid 12
- 4 Medicare Benefits Review Schedule Taskforce, 'Final report on the review of urology MBS items' (2018) <<https://www.health.gov.au/sites/default/files/documents/2021/05/taskforce-final-report-urology-clinical-committee-final-report-on-the-review-of-urology-mbs-items.pdf>> 65
- 5 Medicare Benefits Review Taskforce, 'Report from the Paediatric Surgery Advisory Group (May 2019)' <[https://www1.health.gov.au/internet/main/publishing.nsf/Content/mbs-review-2019-taskforce-reports-cp/\\$file/Final-Report-Paediatrics-August-2019.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/mbs-review-2019-taskforce-reports-cp/$file/Final-Report-Paediatrics-August-2019.pdf)> 16, 19
- 6 Health Insurance Act 1973 (Cth); Circumcision on the MBS—Factsheet 9 October 2020 <[http://www.mbsonline.gov.au/internet/mbsonline/publishing.nsf/Content/1C7B3AED38006462CA2585E80009D95C/\\$File/Factsheet-Circumcision.pdf](http://www.mbsonline.gov.au/internet/mbsonline/publishing.nsf/Content/1C7B3AED38006462CA2585E80009D95C/$File/Factsheet-Circumcision.pdf)>
- 7 Health Insurance Act 1973 (Cth), s 3.
- 8 Criminal Code 1995 (Cth), Division 135.
- 9 For example: James L Snyder, 'Chapter 8 Complications of Circumcision: A Urologist's Perspective' in G.C. Denniston et al. (eds) *Genital Autonomy*, (Springer Science 2010); John T Lackey, et al, 'Urethral fistula following circumcision', (1968) 206(10) *Journal of the American Medical Association* 2318; Jonathan Meddings and Travis Wisdom, 'Genital Autonomy' (February 2017) *The Rationalist Society of Australia* <https://www.academia.edu/32477639/RSA_White_Paper_Genital_Autonomy>; Lee E Ponsky et al, 'Penile adhesions after neonatal circumcision', (2000) 164(2) *The Journal of Urology* 495–496; Meena Kalyanaraman et al, 'Urosepsis and postrenal acute renal failure in a neonate following circumcision with a Plastibell device', (2015) 58(4) *Korean Journal of Pediatrics* 154–157; Robert Van Howe, 'Incidence of meatal stenosis following neonatal circumcision in a primary care setting', (2006) 45(1) *Clinical Pediatrics* 49–54; Serkan Yildirim, Tayfun Aköz and Mithat Akan, 'A rare complication of circumcision: concealed penis,' (2000) 106(7) *Plastic and Reconstructive Surgery* 1662–1663; Samuel Ramos and Gregory J Boyle, 2000. 'Ritual and medical circumcision among Filipino boys: evidence of post-traumatic stress disorder', (2000) *Humanities & Social Science Papers* Paper 114; Warren Snodgrass, 'Extensive skin bridging with glans epithelium replacement by penile shaft skin following newborn circumcision' (2006) 2(6) *Journal of Pediatric Urology* 555–558.
- 10 Op cit 5, 16.