

Serious Illness Processing Guidelines

Published 1 April 2015

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Introduction

This guidance note is for KiwiSaver providers and trustees of KiwiSaver schemes. It explains the industry standard approach for withdrawals in cases of serious illness from KiwiSaver schemes. It also provides views on the suggested timeframes in which applications should be processed and provides guidance on the appropriate tone that should be adopted when communicating to members.

What is serious illness?

Serious illness, as defined by the KiwiSaver Act, means an injury, illness, or disability –

- (a) that results in the member being totally and permanently unable to engage in work for which he or she is suited by reason of experience, education, or training, or any combination of those things; or
- (b) that poses a serious and imminent risk of death.

Due to the fact that KiwiSaver is a long-term retirement savings regime, and that a member can withdraw their entire KiwiSaver account balance in circumstances of serious illness, there is a high threshold test to meet before the trustee of a KiwiSaver scheme can agree to a withdrawal on this basis.

Medical practitioners have been advised that when they are assessing a patient and completing a medical certificate for a member applying for a serious illness withdrawal, "a serious and imminent risk of death" means a serious risk of death (due to the relevant injury, illness or disability) within the next 12 months.

There is a fine balance between ensuring that the correct supporting information for the application is provided and that the member meets the strict criteria, and ensuring that the provider can maintain an appropriate relationship with the members who are its customers.

Nature of communication

A serious illness withdrawal will be made at a time when a member (or his or her representative, in some cases of total morbidity or other lack of capacity) has a great deal on his or her mind and at a time of high stress. It is therefore important that all involved treat each aspect of the application with appropriate sensitivity and urgency.

It is important that when communicating with the member, their current health situation is borne in mind.

You should avoid requesting 'business as usual' tasks to be completed that may be difficult for a member suffering from serious illness to comply with in a timely manner. Only essential information should be requested and the process should be made as easy as possible for genuine applications, while recognising the need to uphold the integrity of the KiwiSaver regime by not approving applications that do not meet the criteria.

It is expected that KiwiSaver providers and trustees will consider any alternatives for compliance when it could be difficult for the member to comply the primary withdrawal option.

How much can a member withdraw?

An accepted serious illness withdrawal application entitles the member to a withdrawal up to an amount equal to their member accumulation. As defined by the KiwiSaver Act, a member's accumulation means the net value of the total of:

- (a) the member's contributions (which would include any amount transferred from a UK pension scheme, if the KiwiSaver scheme has QROPS status)
- (b) any amounts transferred from an Australian complying superannuation scheme and contributed to the member's KiwiSaver account
- (c) any vested employer contributions
- (d) the government's contributions (the 'kick-start' contribution, member tax credits and any fee subsidy contributions).

The statutory definition may be simply stated as the entirety of the member's KiwiSaver account, made up of each item listed in paragraph 11.

Although the trustee has the discretion to provide an amount up to the value of a member's KiwiSaver account, in most cases the entire value of the member's KiwiSaver account will be withdrawn.

Closure of the member's KiwiSaver account

The KiwiSaver Act provides that once a member's KiwiSaver account balance reaches zero, the KiwiSaver provider has the ability to terminate the member's KiwiSaver membership.

If this provision is invoked, that should be communicated to members who successfully make a full withdrawal of their KiwiSaver account balance on the grounds of serious illness.

KiwiSaver providers should be upfront about this fact and provide members with the option to keep their KiwiSaver membership if they wish (although most will likely want the account to be closed). Members may choose to keep some of their account balance in the KiwiSaver scheme to retain their KiwiSaver membership.

Members with UK pension transfer money in KiwiSaver

Care must be taken whenever a member has transferred an amount from a UK pension scheme into his or her current (or any prior) KiwiSaver scheme. If the member has been UK resident at any time during either:

- the year of the withdrawal; or
- any of the five preceding UK tax years;

then he or she may have to pay UK tax on the amount of money transferred from a UK pension scheme if they withdraw it for serious illness purposes.

This is because although the UK has an 'ill-health' definition that will allow some serious illness withdrawals to be made UK tax-free, the definitions are not the same. Further consideration will therefore be essential if the member is within the five year period.

KiwiSaver scheme providers should be proactive in discussing with those members who have previously transferred amounts from UK pension schemes the risk of incurring a UK tax liability when making a serious illness withdrawal. A key reason is that it is not possible for such members to 'leave behind' the UK pension transfer portions of their KiwiSaver balances when making a serious illness withdrawal - the UK legislation deems any withdrawal to include *in the first instance* an amount transferred from a UK pension scheme.

Timeframes for processing withdrawal applications

Given the circumstances in which a serious illness withdrawal application is being made, the application should be processed as quickly as possible.

To ensure a consistent customer experience across providers, and so that being with one provider does not offer a timing advantage over being with another provider, all serious illness withdrawal requests should be considered and processed within a maximum 6 working days (4 working days for provider and 2 working days for the trustees) after the date that the provider obtains all the required information and passes it to the trustee of the scheme.

Many providers and trustees have adopted a process whereby the provider forms a view and makes a recommendation to the trustee as to the application when the provider passes on all the information. This can help to speed up the process as the provider has had more close contact with the member making the application than the trustee.

Ensuring that trustees maintain a tight turnaround time, while ensuring the integrity of the process, is important for the reputation of KiwiSaver and members' faith in the system.

The application form

An industry standard application form has been prepared that incorporates the required information that must be provided for an application for serious illness to be processed. A copy of this application form is attached in **Schedule 1**. Below we provide useful information on what must be covered off in the application form.

Identification

Proof of identity and address should only be required where a member has not previously provided it. Where identification is required, a certified copy of one (or more than one) of the approved forms of identify and/or residential address should be provided.

This process should be made as easy as possible for the member, while still ensuring that the provider complies with its requirements under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

Privacy

The industry standard application form includes a privacy waiver that permits the sharing of information between the medical practitioner(s) involved in the application and the provider and/or the trustee of the KiwiSaver scheme.

The information that is permitted to be shared between the member's medical practitioner and their KiwiSaver provider is limited to information that is necessary to the assessment of the presence of a serious illness. The privacy waiver does not extend outside of that and members should understand the limits on that provision.

For example, information that relates to a member's previous health conditions or information that relates to a spouse and/or child of the member should not be shared under this provision.

This provision has been included to allow prompt processing of applications. It is important that all members understand the benefits of agreeing to this provision and that it is limited in its reach.

Statutory declaration

Because a serious illness withdrawal, if accepted, will likely include member tax credits, a statutory declaration is required under the current KiwiSaver legislation.

If the member is unable to complete the statutory declaration themselves, and the member has granted a valid power of attorney and the attorney can provide a copy of a certificate of non-revocation of the power of attorney, the member's power of attorney may sign the statutory declaration on behalf of the member.

When processing any application for serious illness withdrawals you must ensure that the statutory declaration has been completed. This includes ensuring that the statutory declaration has been witnessed before a person eligible under the Oaths and Declarations Act 1957. The template application form (see **Schedule 1**) provides a list of the most common persons who qualify to witness a statutory declaration.

In addition, to accept the application form it must be provided as an original and not sent electronically (because of the statutory declaration component). Because the statutory declaration is a prescribed form and not covered by the Electronic Transactions Act 2002, the application cannot be processed or accepted if it is provided as an electronic copy of the original.

If time is really of the essence and the member is unable to easily find a person who qualifies to witness a statutory declaration, then the provider might suggest that the member make an application to withdraw all of his or her KiwiSaver account balance excluding the member tax credits. If the member agrees to this, under the application process no statutory declaration is required and the application can be sent to the provider electronically.

In due course, after withdrawing the majority of the account, if the member desires, he or she could follow up the serious illness application with another application for withdrawal of the member tax credits (accompanied by the correctly completed and witnessed statutory declaration). In such a case, if the time lapse between the two applications is not too long, the provider should not require another medical certificate or identification, but should instead rely on such documents provided as part of the first application.

Declined applications

If an application is declined, the Manager on behalf of the Trustee should sensitively communicate this to the applicant (in the manner determined by its own communications protocols) giving high level reasons why the claim has been declined. Additionally, the member

should be informed of what further options are available to them, such as any other potential grounds for early withdrawal of funds.

Members should also be reminded of the fact that they can complain to the Trustee's disputes resolution scheme provider. This will be important (and the member should be given that DRS provider's contact details) whenever for example there is any unresolved difference of opinion between the Trustee/Manager and the member as to whether the withdrawal sought should have been permitted, or the member is unhappy with any aspect of the procedure followed by the Trustee or the Manager.

Schedule 1

Medical Practitioners' Guide

Medical Certificates for KiwiSaver Serious Illness Withdrawal Applications

About this Guide

*This guide will assist you with completing a medical certificate for a KiwiSaver member applying for a Serious Illness withdrawal (referred to as a **member** in this guide).*

Please read this guide carefully and refer to it when completing the medical certificate.

Who Can Apply?

A member who meets at least one of the following two criteria (as provided by the KiwiSaver Act 2006) can apply.

The member is:

- **totally and permanently** unable to engage in work for which they are suited by reason of experience, education, training or any combination of those things (referred to as **Total Permanent Disability** in this guide); **or**
- facing a **serious and imminent risk of death** (within the next 12 months and referred to as **Terminal Illness** in this guide).

You can read about the requirements online at **www.legislation.govt.nz** (clause 12 of Schedule 1 of the KiwiSaver Act).

What Information to Provide?

As the medical practitioner you must be registered with the Medical Council of New Zealand and:

- 1) provide:
 - your full name,
 - address of medical practice,
 - medical registration number, and
 - your full contact details;
- 2) confirm that the member applying for this withdrawal is your patient and provide their:
 - full name,
 - residential address, and
 - date of birth;
- 3) confirm that a full medical examination was carried out;
- 4) confirm that the member's circumstances meet the criteria for a Total Permanent Disability or Terminal Illness withdrawal (and specify which of these applies); and
- 5) provide a description of the Total Permanent Disability or Terminal Illness.

The Process

This is an overview of how the process works.

Stage One Complete the assessment

First, you must complete the medical examination of the member who is applying for the withdrawal and ensure they meet the KiwiSaver Act criteria (described under "Who can apply?"). This will help you:

- decide whether or not the member is eligible; **and**
- complete the medical certificate if the member is eligible.

For example, if the member is applying under the Total Permanent Disability criteria you must be able confirm that the member's circumstances mean that the member permanently will be unable to engage in work to which he or she is suited, or the withdrawal application will be declined.

Stage Two Complete the medical certificate

You complete and sign the medical certificate. Please refer to "What Information to provide?" to ensure you provide complete information. If the information is incomplete the withdrawal application may be returned to the KiwiSaver provider or the member for further information.

Stage Three Provide the medical certificate to the KiwiSaver provider or member

When the medical certificate is complete, send this direct to the KiwiSaver provider processing the application (provided member consent has been in the withdrawal application and otherwise provide it to the member).

You may wish to provide additional supporting documents, such as medical records or test results.

Schedule 2

KiwiSaver Serious Illness Withdrawal

Application Form Content

Explanation for Applicants

Send this original completed for, together with any attachments, to: []

KiwiSaver is a long-term retirement savings initiative. Because it is specifically designed to help you to save for your retirement, there are only very limited circumstances in which you can withdraw funds prior to your qualifying date (the date when you qualify for NZ Super – currently age 65 – or the date, if later, when you complete 5 years' KiwiSaver membership).

One of these circumstances is **Serious Illness**.

Serious Illness, as defined by the KiwiSaver Act, means an injury, illness or disability—

- (a) that results in the member being totally and permanently unable to engage in work for which he or she is suited by reason of experience, education, or training, or any combination of those things; or
- (b) that poses a serious and imminent risk of death.

If you are suffering serious illness, you can apply to withdraw all or part of your total KiwiSaver balance including the \$1000 kick-start and the amount of the Government's Member Tax Credit contributions.

Your application will be processed as soon as is practically possible.

If you have any questions when completing this form, please call []

A. Checklist

Make sure you send us everything listed below, as we can't consider your withdrawal application without the following:-

- Your completed application;
- Your original statutory declaration signed by you, and taken by a person authorised to take statutory declarations (see section X of this form);
- Your doctor's declaration signed by your doctor (see section X of this form).

B. Your Information

1) Name

First Name(s) *(Please give any preferred or taken name)*
Surname *(Please also give any previous names and reason for change)*
Mr, Mrs, Miss, Ms, Other - *(Please specify)* -
Country of birth
Date of birth

2) Home address

Apartment number *(if applicable)*

Street number
Street name
Suburb or RD
Town or City
Postcode
Postal Address if different

3) Contact details

Home phone number
Mobile phone number
Work phone number
Email address
Best time for us to contact you?

4) Identification

Your IRD number
Your customer (or investor) number

If you believe you have already given us proof of your identity, continue to the next section. We'll be in touch if we need additional identification information.

C. Withdrawal details

How much money do you need?

Requested amount:-

- \$_____; or
 all available funds less any fees, expenses and tax

We can only pay your withdrawal to you, we can't pay third parties.

If my application is approved, please pay my withdrawal into my New Zealand bank account detailed below:-

Bank account details: Bank, Branch, Account number, Suffix
Name of bank account holder

D. Your agreement

- I understand that if I withdraw my full balance, my KiwiSaver account will be closed and I will no longer be a member of KiwiSaver.
- I understand that I am not entitled to any Government annual contributions for any period that my principal place of residence was not New Zealand, and any Government annual contributions claimed on my behalf during such period will be deducted from my withdrawal amount and returned to the Commissioner of Inland Revenue
- I understand my KiwiSaver provider and/or the Trustee may speak with the Registered Medical Practitioner providing the declaration (on page X) if required to gain clarity of my condition. I consent to that Registered Medical Professional providing this information for that purpose.

E. Doctor's Declaration of Serious Illness

See 'Schedule 1' of these Guidelines

F. Member Declaration

I (full name of the person making the declaration)
of (address)
and (occupation)

do solemnly and sincerely declare that:

- During my KiwiSaver membership, there were no periods when my principal place of residence was not New Zealand;
- During my KiwiSaver membership, there were periods when my principal place of residence was not New Zealand. Specify below, to the best of your knowledge, the periods during your KiwiSaver membership when your principal place of residence was New Zealand

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Signature of the person making the declaration

Applicant's signature

Declared at _____ this _____ day of _____ 20XX

Before me: (signature, name, occupation and address of the)

- a. New Zealand Lawyer; or
- b. Justice of the Peace; or
- c. Notary Public; or
- d. Registrar or Deputy Registrar of the Supreme Court, High Court, District Court; or Court of Appeal

In front of whom the declaration is made

Full name

Address

Occupation

Signature

G. Doctor's Certification as to Serious Illness (your doctor will need to complete this section)

Patient's details

First name(s)

Surname

Address

Postcode

Doctor details

Full name

Address

Contact numbers (daytime phone number; mobile number; email address)

Certification

- I am a registered medical practitioner with the Medical Council of New Zealand;
- The above-named is a patient of mine and I have recently given him / her a full medical examination;
- In my opinion (***tick option(s) that apply***):
 - the above-named member has an injury, illness or disability that results in him or her being totally and permanently unable to engage in work for which he or she is suited by reason of experience, education or training (or any combination of those things); or
 - the above-named member has an injury, illness or disability that poses a serious and imminent risk of death.
 - the above-named member does not have an injury, illness or disability that satisfies either of the above tests.

I form this opinion based on (give a brief description of the patient's condition):-

Signed and stamped by the Doctor

Dated

END