

# **Serious Illness**

## **Processing Guidelines**

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## Introduction

This guidance note is for KiwiSaver managers (in the case of a restricted KiwiSaver scheme) or supervisors (in the case of any other KiwiSaver scheme). It explains the industry standard approach for withdrawals in cases of serious illness from KiwiSaver schemes. It also provides views on the suggested timeframes within 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 manager/supervisor of a KiwiSaver scheme can agree to a withdrawal on this basis.

**Important note:** These *Serious Illness Processing Guidelines* are continually under review. Future updates may add guidelines on how to assess the inability to engage in work of the kind described.

## Considerations for assessing serious or imminent risk of death

A patient must be assessed by an appropriately qualified health practitioner operating within their scope of practice. This would typically be a Medical Practitioner (i.e. a doctor) or a Nurse Practitioner (nurse practitioners have advanced education, clinical training and the demonstrated competence and legal authority to practice beyond the level of a registered nurse).

Health practitioners should be advised when they are assessing a patient and completing a medical certificate for a member applying for a serious illness withdrawal that “a serious and imminent risk of death” should be understood to mean:

- a grave or critical risk of death due to injury, illness or disability
- that death is impending or expected to occur within the next 12 months.

The *Health Practitioner’s Guide* attached as **Schedule 1** provides some guidance.

Withdrawals for medical treatment (non-palliative) are generally best considered under the significant financial hardship withdrawal grounds, where a lower threshold of likelihood of significant financial hardship may be applied.

## Supporting documentation

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 sought 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 managers and supervisors will consider any alternatives for compliance when it could be difficult for the member to comply with 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's accumulation. As defined by the KiwiSaver Act, a member's accumulation means (in practical terms) the entirety of the net balance in the member's KiwiSaver account.

Although the manager or supervisor 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

UK pension transfers into KiwiSaver were permitted prior to April 2015. All KiwiSaver schemes were deregistered for UK pension transfer purposes in 2015 following changes prohibiting withdrawals before age 55 unless for serious illness. The rules below relate to transfers made prior to this occurring. Please note different rules apply from 9 March 2017.

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, being 4 working days for the manager (or the administration manager in the case of a restricted scheme) and 2 working days for the supervisor (or the manager, for a restricted scheme) after the date that the manager/administration manager obtains all the required information and passes it to the supervisor/manager of the scheme.

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

Ensuring that managers and supervisors 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 as **Schedule 2**. 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 health practitioner(s) involved in the application and the manager/supervisor of the KiwiSaver scheme.

The information that is permitted to be shared between the member's health practitioner and their KiwiSaver provider is limited to information that is necessary for 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 government contributions, a statutory declaration is required under the current KiwiSaver legislation.

If the member is unable to complete the statutory declaration themselves, but 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 holder of 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 2**) provides a list of the most common persons who qualify to witness a statutory declaration.

In addition, to be acceptable the application form 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 easily to 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 government contributions. 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 government contributions (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 the documents provided as part of the first application.

### **Declined applications**

If an application is declined, the manager on behalf of the supervisor 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 manager's or supervisor's disputes resolution scheme (DRS) 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 manager/supervisor 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 manager/supervisor.

## **Schedule 1**

### **Health 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](http://www.legislation.govt.nz) (clause 12 of Schedule 1 of the KiwiSaver Act).

##### **What information to provide?**

As the health practitioner you must be registered with the Medical or Nursing Council of New Zealand and:

- 1) provide:
  - your full name,
  - address of practice
  - registration number, and
  - 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 health 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 given 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.

#### **Stage Four Decision making**

The KiwiSaver provider manages the process and the manager/supervisor makes the decision whether to approve or decline the Serious Illness withdrawal application (as required by the KiwiSaver Act).

The manager/supervisor will assess the withdrawal application in terms of the relevant KiwiSaver Act provisions and in particular whether the member's circumstances, as confirmed by you, meet the Total Permanent Disability or Terminal Illness criteria.

The manager/supervisor may require additional information from you if it considers the information supplied is insufficient to enable it to make a decision. In this case the manager/supervisor will contact you directly and will notify the member.

Please allow time for the receipt, checking and assessing of the medical certificate.

**If you have questions about the process please contact the KiwiSaver provider (details can be found on the withdrawal application form).**



## **Schedule 2**

### **KiwiSaver Serious Illness Withdrawal**

#### **Application Form Content**

##### **Explanation for Applicants**

**Send this original completed form, 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 (usually age 65).

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 any \$1000 kick-start and the amount of the government's 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 health practitioner's declaration signed by your health practitioner (see section X of this form).
- Any additional supporting documents, such as medical records or test results.

***Please note: in some circumstances relating to injury, illness or disability we may require further information to assess your ability to engage in work to which you are suited. We will contact you if required.***

#### **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

**5) Proof of identity**

*[Information based on the provider's Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and own compliance procedures.]*

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 contributions for any period that my principal place of residence was not New Zealand, and any government contributions claimed on my behalf for such a period will be deducted from my withdrawal amount and returned to the Commissioner of Inland Revenue.
- I understand my KiwiSaver provider and/or its supervisor may speak with the Registered Health Practitioner providing the declaration (on page X) if required to gain clarity of my condition. I consent to that Registered Health Practitioner providing this information for that purpose.

**E. Member Declaration**

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

do solemnly and sincerely declare that:

- Where my application relates to an injury, illness, or disability: this has resulted in me being totally and permanently unable to engage in work for which I am suited by reason of experience, education, or training, or any combination of those things;
- 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, and I understand I did not qualify for government contributions during each such period. Specify below, to the best of your knowledge, the periods during your KiwiSaver membership when your principal place of residence was New Zealand

Please note that if you were working overseas as an employee of the New Zealand Government or as a volunteer for certain charitable organisations, you were eligible during that period for government contributions. If this applies please provide evidence with your application, such as a letter on your employer's letterhead confirming the period you were employed.

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

**F. Health Practitioner's Certification as to Serious Illness (your health practitioner will need to complete this section)**

**Patient's details**

First name(s)

Surname

Address Postcode

**Health Practitioner's details**

I, Full name

Of Address

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

Certify that

- I am a health practitioner registered with either the Medical or the Nursing Council of New Zealand and the assessment covered by this certification is within my scope of practice;
  - The above-named is a patient of mine and I have recently given him/her a full medical examination;
  - In my opinion the above-named member has an injury, illness or disability that (**tick one option**):
    - 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
    - poses a serious and imminent risk of death.
- OR
- In my opinion 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):-

*Guidance on completion can be found in the Workplace Savings New Zealand KiwiSaver Serious Illness Process Guidelines at <http://www.workplacesavings.org.nz/assets/Uploads/WSNZ-Serious-Illness-Processing-Guidelines-Updated-November-2018.pdf>*

Signed and stamped by the Health Practitioner

Dated

Registered health practitioner/ practice stamp

Medical or Nursing Council Registration number:

**END**