



Policy Clarification 2022-11-01

Title: Annuity Free Look Period

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Program(s) Impacted: E&D Medical Programs

The purpose of this document is to clarify how the 'free look' period in an annuity contract affects the availability of an annuity otherwise deemed to be an unavailable resource. This information is applied by KDHE Eligibility Policy during the Annuity Clearance process.

Free Look Period

The purchaser of a single premium immediate annuity (SPIA) is given a minimum ten (10) day grace period to cancel the annuity by returning the contract to the annuity company for a full refund. This grace period is known in the insurance industry as the 'free look' period. The 'free look' period begins on the date the actual annuity is delivered to/received by the purchaser.

Note: The free look period for an annuity purchased/sold in Kansas must be at least ten (10) days by statute. However, the period may be greater if indicated on the actual annuity contract. Therefore, the free look period may be more than, but never less than ten (10) days. The free look period may not be waived by the purchaser.

For eligibility purposes, an otherwise unavailable annuity that is considered an exempt resource shall be considered an available resource during the free look period and unavailable thereafter. This is because the funds used to purchase the annuity are refundable (and therefore considered available) until the free look period has expired.

To calculate the free look period, add the number of days indicated on the contract to the verified date the actual annuity contract was received by the purchaser as noted on the Certificate of Delivery. The date that falls on is the last day the funds used to purchase the annuity is considered an available resource. The day after that is the first day the annuity is considered an unavailable resource because the purchaser can no longer return the contract for a full refund. The month that date falls in is the first month the annuity is not counted as a resource.

The following Medical KEESM provision applies:

5200 (3) – *“Resources must be available. Resources are considered available when an applicant/recipient has a legal interest therein and the legal ability to make them available.”*

Certificate of Delivery / Delivery Receipt:

The date the actual annuity contract is received by the purchaser is vitally important to this determination. Verification is required and can be obtained by requesting a copy of the "Certificate of Delivery", also known as a "Delivery Receipt". A Certificate of Delivery is a document which verifies the date the actual annuity contract was delivered to (and received by) the annuity owner.

The Certificate of Delivery must be signed and dated by the owner acknowledging receipt and is required in the annuity clearance process to determine when the free look period begins (and ends) for these types of annuities. Either the annuity agent or issuing company should be able to provide this proof by way of a collateral contact or hard copy verification.

To clarify, the application to purchase the annuity submitted by the purchaser to the annuity company is not the contract. The contract is what is delivered to the purchaser after the application is accepted by the annuity company. For eligibility purposes, as eligibility cannot determine the date of exemption without proof of when the contract was delivered to the purchaser, failure to provide the delivery receipt shall result in the annuity being considered an available asset.

The following examples illustrate:

1. An applicant purchases a \$50,000 Single Premium Immediate Annuity (SPIA) with a ten (10) day free look period. The agency verifies that the applicant received the actual annuity contract on May 17, as verified by receipt of the certificate of delivery. The free look period expires on May 27. The day after is May 28, (the eleventh (11th) day after the date of receipt) and would be the date it is considered an unavailable resource.

The funds used to purchase the annuity are considered an available resource through May 27. Beginning May 28, the annuity (and the funds used to purchase the annuity) is considered an unavailable resource. Because the annuity became unavailable in May, that is the first month the annuity is considered an unavailable resource.

2. An applicant purchases a \$100,000 SPIA with a thirty (30) day free look period. The agency verifies that the applicant received the actual annuity contract on June 19, as verified by receipt of the certificate of delivery. The free look period expires on July 19 (thirty (30) days after the date of receipt). The day after is July 20.

The funds used to purchase the annuity are considered an available resource through July 19. Beginning July 20, the annuity (and the funds used to purchase the annuity) is considered an unavailable resource. Because the annuity became unavailable in July, the annuity is an available resource in June and an unavailable resource beginning in July.

3. An applicant purchases a \$25,000 SPIA with a twenty (20) day free look period. The agency verifies that the applicant received the actual annuity contract on September 10, as verified by receipt of the certificate of delivery. The free look period expires on September 30 (twenty (20) days after the date of receipt). The day after is October 1.

The funds used to purchase the annuity are considered an available resource through

September 30. Beginning October 1, the annuity (and the funds used to purchase the annuity) is considered an unavailable resource. Because the annuity became unavailable in October, the annuity is an available resource in September and an unavailable resource beginning in October.

4. A recipient inherits \$35,000 from a deceased parent and immediately uses the funds to purchase a SPIA in that amount with a ten (10) day free look period. The certificate of delivery verifies that the annuity contract is received by the recipient on August 26. The free look period expires on September 5 (ten (10) days after the date of receipt). The day after is September 6. Receipt of the inheritance and purchase of the SPIA was timely reported to the agency by the recipient on August 21.

The inheritance and annuity are considered an available resource through September 5. Beginning September 6, the annuity (and the funds used to purchase the annuity) is considered an unavailable resource. Due to prospective budgeting, the earliest the agency can make a change on the case is for the month of October. Since the annuity is considered, an unavailable resource beginning in September, the recipient remains resource eligible. The first monthly payment from the annuity was received in September. The ongoing payments will be budgeted on the case beginning in October.

Note: This process applies regardless of when the annuity was purchased or when the first payment has been or will be made. This means that there may be instances where the annuity may be considered an available resource when delivery of the contract has been delayed or disrupted in some manner and the purchaser has already received one or more payments under the contract. Since the purchaser may still exercise his/her rights to cancel under the free look provision, the annuity is considered an available resource until that period expires.

For questions or concerns related to this document, please contact the KDHE Medical Policy Staff at KDHE.MedicaidEligibilityPolicy@ks.gov.

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Questions regarding any KEES issues are directed to the KEES Help Desk at KEES.HelpDesk@ks.gov.