



## FORT SILL LEGAL ASSISTANCE



### FAMILY CARE PLAN

#### What is a Family Care Plan?

A Family Care Plan is a plan made by the Soldier to ensure their family members are taken care of when the Soldier is unavailable due to military responsibilities. Pursuant to Army Regulation (AR) 600-20 ("Army Command Policy"), the Army requires documentation to prove the person accepting guardianship of family members agrees to the Family Care Plan and is aware of their responsibilities.

The following documents **must** be attached to the Family Care Plan (DA Form 5305):

- (1) DA Form 5841 (Power of Attorney) or equivalent delegation of legal control (unsigned until deployment),
- (2) DA Form 5840 (Certificate of Acceptance as Guardian or Escort),
- (3) DD Form 1172-2 (Application for Identification Card/DEERS Enrollment) for each Family member (*Note*: AR 600-8-14 directs that ID cards will be issued for children under age 10 who reside with a single parent or dual military couple),
- (4) DD Form 2558 (Authorization to Start, Stop, or Change an Allotment) for Active Duty or retired personnel, unsigned until deployment, or other proof of financial support arrangements,
- (5) A letter of instruction to the guardian/escort [see DA Form 5304 (Family Care Plan Counseling Checklist)], **and**
- (6) If appropriate, DA Form 7666 (Parental Consent) as evidence of consent to the Family Care Plan from all parties with a legal interest in the custody of the minor child.

#### Who is required to have a Family Care Plan?

Commanders will require a Family Care Plan if a Soldier falls into one of the following categories:

- (1) A pregnant Soldier who—
  - (a) has no spouse,
  - (b) is divorced, widowed, separated, or is residing without their spouse, **or**
  - (c) is married to another service member of an Active Army (AA) or Reserve Component (RC) of any service (Army, Air Force, Navy, Marines, or Coast Guard).
- (2) A Soldier who—
  - (a) has no spouse,
  - (b) is divorced, widowed, separated, or is residing apart from their spouse,
  - (c) has joint or full legal and physical custody of one or more family members under the age of 19, or
  - (d) has adult family members incapable of self-care regardless of age.
- (3) A Soldier who is divorced and not remarried and has liberal or extended visitation rights by court decree that allows family members to be solely in the Soldier's care in excess of 30 consecutive days.

(4) A Soldier whose spouse is incapable of self-care or is otherwise physically, mentally, or emotionally disabled and requires special care or assistance.

(5) A Soldier categorized as half of a dual-military couple of the AA or RC of any service (Army, Air Force, Navy, Marines, or Coast Guard) who has joint or full legal custody of one or more family members under age 19 or who has adult family members incapable of self-care.

### **How does a Family Care Plan affect deployments? How to avoid issues?**

A Soldier required to have a Family Care Plan is considered **non-deployable** until a Family Care Plan is validated and approved. Therefore, prior to deployment, that Soldier must complete their Family Care Plan.

### **Prior to deployment, what can a Soldier do to plan ahead for physical custody and care of their children?**

Possible options to consider include the following:

(1) Obtain a consent form from the noncustodial parent, which consents to the placement of the child with the Soldier's choice of guardian during the period of the Soldier's absence.

(2) Obtain a court order that permits the child to stay in the physical custody of the individual the Soldier designates under the Family Care Plan. If permitted in the state with jurisdiction, the Soldier might consider a Power of Attorney delegating parental powers to the individual (but such powers are limited).

(3) Include a provision in the couple's Parenting Plan that permits the custodial Soldier-parent to deliver the child to the physical custody of a pre-designated individual who the Soldier names in the Family Care Plan.

### **Does a Family Care Plan affect a custody arrangement?**

The Family Care Plan is not a legal document that can change a court-mandated custodial arrangement, nor can it interfere with a natural parent's right to custody of their children. Deploying Soldiers should pursue the options listed above to petition a court to establish physical custody in their absence.

### **What happens if your Family Care Plan is deficient?**

If a Family Care Plan is found to be deficient, you will receive a "reasonable period of time" to correct the Plan. Ordinarily, this period will be at least 30 days, and can be extended up to 60 days for active-duty Soldiers. Soldiers without proper Family Care Plans after this period are subject to reenlistment and/or involuntary administrative separation in accordance with AR 635-200.

### **Are you required to have a Last Will and Testament for your Family Care Plan?**

The Family Care Plan does not and cannot require a Soldier to have a will. Soldiers are encouraged but not required to have a will that determines responsibility for dependents. Soldiers are also encouraged to ensure that information regarding the location of a Soldier's will is contained in the Family Care Plan.

## **What is the Exceptional Family Member Program?**

The Exceptional Family Member Program (EFMP) allows Soldiers to receive special consideration in duty assignments or duty stations because of their responsibilities for Family members (see AR 608–75 for more information).

## **The Family Care Plan and Guardian of Children:**

To designate anyone other than the child's other parent as a guardian in the Family Care Plan, the child's other parent must sign DA Form 7666 to show consent to the plan. Selecting a new guardian does not change a divorce decree, court order, or marital separation agreement that is already in place. Soldiers will need to seek legal advice to change such documents. It is the Soldier's responsibility to make sure the guardians they select are fully aware of their responsibilities and have all the documentation necessary to take care of the child.

*Updated November 2022*

**This Information Paper provides only basic information and is not intended to serve as a substitute for personal consultation with a Legal Assistance Attorney. To schedule an appointment with a Legal Assistance Attorney, please contact the Legal Assistance Office at (580) 442-5058. The Fort Sill Legal Assistance Office is located on the 4th Floor of Building 4700 (Welcome Center) at 4700 Mow-Way Road, Fort Sill, Oklahoma 73503.**