



## FORT SILL LEGAL ASSISTANCE

### *FAMILY CARE PLAN*



#### **Soldiers who are required to have a Family Care Plan:**

Commanders will require a Family Care Plan when any of the following apply—

(1) A pregnant Soldier who—

(a) Has no spouse; is divorced, widowed, or separated; or is residing without her spouse.

(b) Is married to another service member of an AA or RC of any service (Army, Air Force, Navy, Marines, or Coast Guard).

(2) A Soldier who has no spouse; is divorced, widowed, or separated, or is residing apart from his or her spouse; who has joint or full legal and physical custody of one or more Family members under the age of 19; or who has adult Family members incapable of self-care regardless of age.

(3) A Soldier who is divorced and not remarried, and who 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 so as to require 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 regardless of age.

#### **The Family Care Plan and Deployments:**

A Soldier is considered non-deployable until a Family Care Plan is validated and approved. Prior to deployment a Soldier should consider the following measures:

(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.

(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.

### **The Family Care Plan and the Exceptional Family Member Program:**

Soldiers will not receive special consideration in duty assignments or duty stations based on their responsibilities for Family members unless enrolled in the Exceptional Family Member Program (EFMP) (see AR 608–75 for more information).

### **The Family Care Plan and Child Custody:**

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 his/her children. Deploying Soldiers should take steps to get the courts to establish physical custody in their absence.

### **The Family Care Plan and your Last Will and Testament.**

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

### **Deficient Family Care Plans and Opportunity to Correct Deficiencies.**

If a Family Care Plan is found to be deficient, you will receive a "reasonable period" of time to rework the Plan. Ordinarily this will be at least 30 days and it can be extended up to 60 days for active duty Soldiers.

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

The parent of any minor children normally has a superior right to the custody of the minor children. If the Soldier designates an individual other than a parent for guardianship in the Family Care Plan, the Soldier must obtain consent from the other parent to such designation using the DA Form 7666. While such consent is not binding upon a court of law, it demonstrates the other parent is aware of the custodial arrangements set forth in the Family Care Plan and agrees with those arrangements.

Should a Soldier designate a person contrary to the provisions of an existing family law legal document (such as a divorce decree, court order, or marital separation agreement) the Soldier must seek legal assistance to modify the legal document.

Guardians should be persons to whom the Soldier would have no reservations entrusting the total welfare of his/her child or other Family member. Guardians should

be persons who are able to exercise that responsibility over extended periods of time, if necessary.

Soldiers have the responsibility to thoroughly brief guardians on arrangements made by the Soldier, location of all pertinent documents, and procedures for accessing military and civilian facilities, services, entitlements, and benefits on behalf of the dependent Family members.

If the guardian is located in an overseas area other than where the Soldier is stationed, the Family member's attendance at Department of Defense Dependent Schools (DODDS) and other schools may require an exception to policy because of the lack of command sponsorship. The Soldier and/or guardian must request the exception; it is not automatic.

Updated April 2010

If you have questions concerning the information in this fact sheet, please call the Legal Assistance Office (580) 442-5058 or (580) 442-5059. Our hours of operation are Monday, Tuesday, Wednesday and Friday, 0800 – 1600, and Thursdays 1200-1600. The Fort Sill Legal Assistance Office is located on the 4<sup>th</sup> floor of Building 4700, Hartell Hall on Mow-Way Road.