



FROM COUNSEL

A Preventive Law Service of the Fort Riley Legal Assistance Office
Keeping You Informed On Personal Legal Affairs

Family Care Plans & Guardianships

Persons who need assistance, legal advice, or notary services concerning the preparation of a family care plan may walk-in to the Legal Assistance Office in Building 216, Clausen Hall (main post).



Scan here for more information

Q: What is A Family Care Plan?

A. It is the means by which a Soldier plans in advance for the care of his family members when the Soldier is deployed, TDY, or otherwise not available because of military duty.

Q: Who is required to have a Family Care Plan?

A. Generally, all Soldiers who have dependents and are either single or part of a dual-military couple must have a Family Care Plan. The requirement for a Family Care Plan applies to both Active and Reserve Component Soldiers, regardless of grade. AR 600-20, paragraph 5-3, lists the specific categories of Soldiers for whom a Family Care Plan is mandatory. A Family Care Plan also can benefit other Soldiers, however. Although not required to do so, all married Soldiers who have family members as well as Emergency-Essential DA Civilians are encouraged to prepare a Family Care Plan.

Q: Why is a Family Care Plan Important?

A. A Family Care Plan is an essential part of military readiness. Soldiers must be available for duty when and where the needs of the Army dictate – without interference of family responsibilities. Deployments frequently are sudden, leaving a Soldier little time to make on-the-spot arrangements for family member care. A Family Care Plan prepares the Soldier and the family in advance for the Soldier's deployment and reassures a deployed Soldier that everything is taken care of at home, minimizing family-related stress and enabling the Soldier to concentrate more fully on his mission.

Q: What Must be Included in a Family Care Plan?

DA Form 5305-R, *Family Care Plan*, is the form on which the Soldier explains and documents the specific measures he has taken to ensure that his family is cared for during his absence. This form is not a legal document that can alter a court-mandated custodial arrangement. It cannot interfere with a natural parent's right to custody of his or her child.

The Family Care Plan requires proof the guardian or escort were thoroughly briefed with regards to duties and responsibilities while acting as said guardian or escort. At a minimum, proof will consist of the following attachments to 5305:

- DA Form 5841-R, *Power of Attorney*, is the legal means by which the Soldier gives another person the legal authorization to care for the Soldier's dependent children and to make important decisions regarding the children on behalf of the absent Soldier-parent. The Soldier may use a Special POA for Child Custody prepared by the OSJA in lieu of DA Form 5841-R.

Soldiers must use the utmost care and consideration in designating Guardians for family members. Guardians must be persons to whom the Soldier can entrust the welfare of his children or other family members. Guardians should be persons who will be immediately available in the event of an emergency and will be able to exercise their responsibilities for extended periods of time, if necessary. THE GUARDIAN CHOSEN SHOULD NOT BE ANOTHER SOLDIER WHO MAY BE DEPLOYED OR MOBILIZED.

- DA Form 5840-R, *Certificate of Acceptance as Guardian or Escort*, must be completed and signed by Guardian in the presence of a notary. The Guardian then returns the form to the Soldier. The form proves that the Guardian has agreed to accept the responsibility of caring for the family members of a Soldier and has been provided all necessary legal authority and means to do so. The form also serves as verification that the Guardian has been thoroughly briefed by the Soldier on all of the responsibilities he will assume, the locations of pertinent documents and the procedures for accessing military and civilian facilities and services on behalf of the Soldier's family members.

- DD Form 1172, *Application for Uniformed Services Identification Card DEERS Enrollment*. The Family Care Plan must contain one ID Card application, signed by the Soldier, for each family member. Ensuring that each family member can obtain an ID Card guarantees their uninterrupted access to military benefits and privileges while the Soldier is absent. [AR 600-8-14](#) requires ID Cards to be issued for children under age 10 who live with a single parent (that is divorced) or dual-military couple.

- DD Form 2558, *Authorization to start, stop, or change allotment, for Active Duty or Retired Personnel*, is prepared in advance, but not executed by the Soldier until deployment. The form initiates an allotment from the Soldier's military pay to provide for the care and support of his dependents in his absence -- usually the easiest and most secure way of ensuring that money is available to meet the family members' needs. The Soldier also should consider establishing a bank account, to which the named Guardian has access, for payment of the allotment. Consult with officials at your bank to determine the best way to establish such an account. The Soldier may provide other proof of financial support arrangements for the care of dependent family members in lieu of DD Form 2558.

- Letters of Instruction, executed by the Soldier, which contain additional personal information for the Guardian. Information commonly provided in Letters of Instruction includes forms authorizing the Guardian to obtain access to the military installation and to basic military services such as the Commissary and PX on behalf of the Soldier's family members (necessary application forms may be obtained at all Commissary/AAFES offices) and information relating to family member medical needs, such as the names and addresses of physicians, dentists and other health care professionals; locations of current medical, dental and immunization records; and prescriptions for medications required to treat a family member's allergies or other conditions. The Letters of Instruction also should include forms and papers pertaining to the deployed Soldier's legal affairs, such as a list of Social Security Numbers for all family members; information as to the locations of insurance policies, wills,

bank accounts, safety deposit boxes and other important papers; instructions for driver's license and automobile registrations that may expire while the Soldier is away; and arrangements for any taxes that may come due while the Soldier is away. A Power of Attorney authorizing the Guardian or some other responsible person to sign, execute and file income tax returns on behalf of the Soldier and an authorization allowing a responsible individual to obtain a copy of the Soldier's W-2 also should be included.

· DA Form 5304-R, *Family Care Plan Counseling Checklist*, documents that the Soldier has been counseled by his Commander and is aware of the requirement for a Family Care Plan and the documents it must contain.

Q: Can I Use a Special Power of Attorney Instead of the DA Form 5841-R?

A. Yes. In fact, we recommend that you use a special power of attorney instead of DA Form 5841-R. A guardianship special power of attorney may be prepared on a walk-in basis at the Legal Assistance Office, in Building 216, Clausen Hall. Soldiers may also receive a power of attorney during a unit SRP.

Q: Can my Guardian Register My Child for School?

A. Maybe. The answer depends on the particular state. In some states (including Virginia and North Carolina) a non-parent cannot enroll a child in school without a court-ordered guardianship, which terminates the parents' rights to custody and allows the guardian to collect child support for the child. You should have your guardian inquire with the local school system or seek legal assistance to answer this important question.

Q: How Long is the Special Power of Attorney Valid?

A. A special power of attorney executed by our office is valid for up to 3 years. Soldiers should also make guardianship nominations in their will to provide for the care of their children should they die.

Q: How Often Must I Renew My Family Care Plan?

A. Your Family Care Plan must be revalidated by your Commander ANNUALLY, or after any change in your personal circumstances that require a change to the Plan, or whenever a Soldier is MOBILIZED, DEPLOYED, or PROCESSED FOR PRE-DEPLOYMENT.

Q: What About Dual-Military Couples?

A. The same Family Care Plan should be submitted by both members of a dual-military couple. Neither servicemember should be identified in the Plan as the temporary or long-term Guardian of the couple's family members.

Dual military is defined as a Service member married to another Service member regardless of the Service (Army, Air Force, Navy, Marines or Coast Guard) who has legal custody of one or more Family members under nineteen (19) years of age or an adult Family member incapable of self-care.

Q: What About Pregnant Soldiers?

-A unit Commander must conduct Family Care Plan counseling with a pregnant Soldier if:

- 1) The pregnant Soldier has no spouse; is divorced, widowed, or separated from their spouse; or
- 2) The pregnant Soldier is married to another Service member on AA, or RC of any Service.

-When a Commander conducts Family Care Plan counseling with a pregnant Soldier he or she is required to discuss costs of maternity, care obtained from civilian sources and the limitations concerning maternity care in military medical treatment facilities.

-A Commander should counsel a pregnant Soldier (Pregnancy Counseling) as soon as the pregnancy is identified but not later than ninety (90) days prior to the expected date of the birth of the child. The Commander should take that opportunity to conduct Family Care Plan counseling to ensure the Soldier is aware of her responsibilities if she chooses to remain on Active Duty.

-A pregnant Soldiers must complete and obtain command approval of a Family Care Plan not later than sixty (60) days before the expected date of the child's birth.

-The additional proof documentation to complete the Family Care Plan should be completed no later than forty-five (45) days following the date of the birth of the child.

Q: Who Approves My Family Care Plan?

A. Your unit commander is the sole approving authority for your Family Care Plan. Before granting his approval, the unit commander will evaluate your Plan and must be satisfied that it meets all of the requirements of AR 600-20 and appears to be workable. The commander may test the validity of your Family Care Plan, to include contacting the designated Guardian prior to approving your Plan. If your Family Care Plan is disapproved, you will be given 30 days to submit a new, more acceptable Plan for the commander's review and approval.

Q: Who Keeps the Family Care Plan?

The unit maintains the original Family Care Plan in a Soldier's local file. The Soldier, his family, and the designated Guardian all should have complete copies of the Plan, however.

Q: Whose Responsibility is it to Carry Out a Family Care Plan?

A. It is the Soldier's primary responsibility to implement the Family Care Plan!

Q: I am Divorced and Have Physical Custody of My Child. If I Give Someone Guardianship Over my Child Will This Affect My Rights?

A: Possibly. A power of attorney or guardianship application could affect a custodial parent's right to custody, due to a change of circumstances, and a non-custodial parent desiring custody could then move to change any court orders to obtain custody.

The parent of any minor child normally has a superior right to the custody of the minor child despite who is designated as the guardian under the Family Care Plan, unless their parental rights have been terminated or full legal custody has been transferred to the Soldier,

custodial parent. To make a designation of guardian as someone other than the non-custodial parent, the Soldier must obtain consent from the parent using a DA Form 7666. Consent is not binding but does show that non-custodial parent is aware and accepts the custodial arrangement(s) set forth in the Family Care Plan.

Q: What If I am Required to File a Plan, But Decide Not To?

A. Unless a Soldier's family member is enrolled in the Exceptional Family Member Program (See AR 608-75), the Soldier will generally not receive preferential treatment in duty assignments or stationing because of responsibilities for the care of family members. A Soldier who fails to develop a proper Family Care Plan is non-deployable and ineligible for overseas assignment. Depending on the circumstances, a Soldier may be administratively disciplined, barred from reenlistment, or involuntarily separated from the Army for failing to prepare and maintain a workable Family Care Plan. See AR 635-200, para. 5-8. Current command policy mandates separation of Soldiers who fail to establish a required Family Care Plan.³

Q: Where can I get a copy of the forms required to create my family care plan?

A. Forms are available online at <https://armypubs.army.mil/>.

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FROM COUNSEL is distributed by the Fort Riley Office of the Staff Judge Advocate, Legal Assistance Office, located in Building 216. **Consult an attorney for specific legal advice for your particular situation.** Our office hours are: 0800 – 1600 MON-THUR, 0800-1500 FRI. Call 239-3117 for an appointment. See also <https://home.army.mil/riley/about/dir-staff/OSJA/legal-assistance> or <http://www.iaqnet.army.mil/legal>.