



Region Legal Service Office Hawaii
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Preventative Law Series

FAMILY CARE PLAN

The Family Care Plan

Every single-parent, married dual military couple, and legal guardian of a dependent adult in the Navy must have a workable Family Care Plan that designates who will be responsible for the family member when servicemember is deployed. The nature of naval service dictates that servicemembers must be ready to deploy throughout the world on short notice and be able to fully execute their military and professional duties. For servicemembers with minor children or dependent adult family members, the ability to meet this requirement is directly related to the degree of prior family care planning. Thorough planning benefits both the Navy and servicemember. Ensuring proper care for the servicemember's minor children and dependent adult family members reduces stress on the servicemember and strengthens a deployable asset for the command. Planning to ensure the adequate and proper care of minor children and dependent adult family members is important for every servicemember.

What is a workable Family Care Plan and how does the servicemember go about getting one?

A *workable* Family Care Plan is a plan that will allow the servicemember with minor children or dependent adult family members to deploy knowing that he has provided for the care and custody of his minor children and adult dependents. The plan outlines the legal, medical, logistical, educational, monetary, and religious arrangements for the care of the servicemember's minor children and/or dependent adults. The plan should include all reasonably foreseeable situations and be sufficiently detailed and systematic to provide a smooth, and, if necessary, rapid transfer of responsibilities to the caregiver in the absence of the servicemember. Our servicemembers transfer and relocate within the United States and to and from other countries. The drafter of the Plan must be aware and wary of the international, federal, and state laws that govern the legality and effectiveness of custody plans made by servicemembers.

The Navy instruction on the Family Care Plan is OPNAVINST 1740.4C. This latest issuance of the Navy's Family Care Plan instruction provides additional guidance and direction on the issues and obstacles the servicemember may encounter in developing a workable Family Care Plan.

Who needs to submit a Family Care Plan?

A servicemember is required to submit formal documentation of a "Family Care Plan" to the Commanding Officer and/or designated representative if he or she falls into one of the following situations:

- The servicemember has primary or shared physical custody of a minor child or children and is not married to the other natural or adoptive parent of the minor child or children.

- The servicemember is married to a servicemember (married dual military couple) where one or both have primary or shared physical custody of a minor child or children. (Note: Dual military couples who are required under OPNAVINST 1740.4C to have a "Family Care Plan" must develop a single "Family Care Plan" which must be signed by both servicemembers.)
- The servicemembers is legally responsible for an adult dependent family member who is incapable of providing for themselves

What is a Family Care Plan?

Family Care Plans are mission planning tools that obligate the servicemember to establish and document plans to care for minor children and adult family members/dependents while the servicemember is absent. To be effective, Family Care Plans must consider and comply with applicable State and Federal laws governing child custody and parental rights. Family Care Plans are subject to court orders addressing child custody or support issues and cannot change, modify, or supersede existing court orders.

Planning is the key to a successful Family Care Plan. While the servicemember is developing the Family Care Plan, he should review any existing court orders or written agreements for custody and visitation. It is important to speak with a legal assistance attorney regarding the impact of removing the children from the home location or leaving the children with someone other than the biological parent. At least six (6) months before deployment or mobilization the servicemember should identify who they can count on to care for their children in an emergency, and who they would want to take over the care of the children should the servicemember deploy, become seriously hurt, ill, or die. The person the servicemember identifies may not, without additional legal documentation, have the legal authority to serve as the care provider or guardian in the event of incapacity or death. The six (6) month window is the minimum time needed to obtain the written agreements or court orders necessary to legally grant authority to someone other than the biological parent to care for the minor child or dependent adult.

The Family Care Plan is not intended to, and does not create a right, entitlement, cause of action, or defense in favor of any individual and does not supersede a preexisting or subsequent separation agreement, court order, child custody order, or divorce decree that addresses child custody and support issues.

To whom is the "Family Care Plan" Submitted?

In accordance with OPNAVINST 1740.4C, the "Family Care Plan" should be submitted to the Command's Family Care Plan coordinator or other Officer designated by the Commanding Officer his or her representative.

What is in the "Family Care Plan" Package?

The typical Navy "Family Care Plan" package should include the following:

- [NAVPERS 1740.6 \(Rev 11/06\)](#) ("Family Care Plan Certificate");
- [NAVPERS 1740.7 \(Rev 11/06\)](#) ("Family Care Plan Arrangements");
- Family Care Plan Checklist;
- Copies of Legal Documents to include court orders, written agreements, powers of attorney, wills and other applicable legal documents;
- Allotment information;
- Financial information;
- Counseling forms; and,
- Other documents that support the Family Care Plan.

In the event of the servicemember's death or incapacity, powers of attorney and the Family Care Plan will only serve to advise family members of the servicemember's intentions. Powers of Attorney are ineffective in addressing custody matters where the principal is deceased or incapacitated. Servicemembers should plan for this contingency in testamentary documents and through other legal action as may be necessary to confirm their expectations and directives regarding custody of their child(ren) in the event of the servicemember's death or incapacity.

Who can be a caregiver for the Family Care Plan?

Servicemembers must take extra precautions if the person named as caregiver in the FCP is not the natural or adoptive parent of the minor child(ren) or a person legally authorized to care for the dependent adult family member. Absent a court order, biological parents share equal custodial rights in a child. Even where there is a court order appointing one parent the primary custodial parent, if that parent is also the servicemember and they deploy, the court order and parental rights are not transferable to a caregiver. The biological parent will have superior rights to custody of minor children and can potentially take the child. If the caregiver does not have the express consent of all parties legally entitled to have physical custody of the children, the non-consenting party may challenge the caregiver's right to have the children. In situations where the caregivers were the biological parents, there have been attempts to obtain custody or modify existing custody orders in the servicemembers absence. To make the Family Care Plan workable the servicemember must obtain the written consent of the biological parent or a court order. In every case, the document should state that the caregiver's duties are temporary and terminate upon the return of the servicemember.

Lastly, the instruction does not prohibit any person who is willing to serve as a caregiver from standing in the servicemembers place for his or her dependents. However, the use of members of the active and reserve component to serve as caregivers is inherently risky. This category of caregiver is subject to the same obligations as the servicemember creating the Family Care Plan. Using a servicemember creates the same situation for single parents that dual married military couples have when they name each other. If the active or reserve component servicemember/caregiver is deployed or mobilized the child(ren) or adult family member/dependent will be left without a caregiver. If the servicemember caregiver is not the natural or adoptive parent of the minor child(ren) or a person legally authorized to care for the adult family member/dependent, they do not and will not have authority to appoint an alternate caregiver. It is strongly recommended that only non servicemembers serve as caregivers.

Who is the Caregiver?

Short-Term Caregiver Theoretically the short-term caregiver must be ready to accept care of the servicemember's children at any time, 24 hours per day, 7 days per week, in the event the servicemember is called to duty or deployed with little or no-notice. The short-term care provider should live in the local area where the servicemember is stationed/located. The short-term care provider must sign the Family Care Plan, indicating that they understand the responsibilities entrusted to them.

Long-Term Caregiver a person, who will agree, in writing, to provide long-term care for the servicemember's children in the event that he or she is deployed for a significant period, selected for an unaccompanied tour, or are assigned to a ship at sea. The long-term care provider does not have to live in the local area, but the Family Care Plan must consider the legal ramifications and impact of relocation on existing custody and visitation agreements and court orders. Additionally, the Family Care Plan must contain provisions to transfer the child(ren) from the short-term care provider to the long-term caregiver (finances, airline tickets, etc.), in the event a no-notice deployment turns into a long-term deployment. Long term caregivers are most likely to run afoul of the interests and wishes of the other biological parent. Extra care and detail must go into this selection and the documentation to support or create the long-term caregivers authority to watch over the children.

What should the servicemember consider when deciding who will be the caregiver to assume temporary custody of his or her children?

- Will the other biological parent agree in writing to the person named?
- Will the servicemember need to modify or obtain a court order to grant the custodian the authority to keep the children.
- Will the children have to relocate?
- Will visitation rights be altered by the relocation?
- Will the visitation schedule have to change to accommodate the relocation?
- Will the children have to transfer to a new school or child care?
- What documents will that new school or child care facility require to enroll the children?
- Does the caregiver have other children at home? Do the children get along with each other?
- Does the caregiver have the strength and the energy to care for the children?
- Does the caregiver have the time to care for the children? Someone who works full time and is frequently away on travel may not be the best choice.
- What arrangements will need to be made to provide financial support for the children's food and other expenses?
- Should child support payments be modified based upon the location or relocation of the children?

Family Care Provision Details

In addition to designating short-term and long-term caregivers, the "Family Care Plan" must include detailed plans for the care and support of the children. Family Care Plans must include provisions for logistical movement of the family or caregiver. Logistical arrangements include, but are not limited to, arrangements to relocate, if necessary, the caregiver or family to a new location, financial, medical educational, and legal support necessary to ensure continuity of care and support of family members during the movement. The servicemember must also give consideration of a non-military escort for the family.

Financial arrangements for the financial well-being of family members covered by the Family Care Plan during short- and long-term separations should be made. Arrangements for financial care include power(s) of attorney, allotments, access to accounts, or other appropriate means to ensure the self-sufficiency and financial security of family members.

Commanding Officer Review

The regulations require that the Commanding Officer or a "designated representative" review each "Family Care Plan" for workability and completeness. The "designated representative" is usually the executive officer or command chief. After the initial review, the plans should be updated by the servicemember and reviewed at least annually.

Reporting Time Periods Requirements

When a military member first becomes a single-parent or military couple with children, he/she must notify his or her commanding officer, supervisor, or the commander's designated representative immediately but no later than 30 days of the occurrence of change in family circumstances or personal status. After the initial report, the servicemember has 60 days (90 days for Guard/Reserve members) to submit a completed "Family Care Plan" (i.e., [NAVPERS 1740.6 \(Rev 11/06\)](#) ["Family Care Plan Certificate"] and [NAVPERS 1740.7 \(Rev 11/06\)](#) ["Family Care Plan Arrangements"]). If mitigating circumstances are involved, the commander or supervisor concerned may grant the member an additional 120 days to submit an acceptable Family Care Plan. Further extensions are not authorized.

The same 60 day rule applies for active duty military members who move from one military base to another. They have 60 days to find a short-term care provider who lives in the local area.

Military mothers of newborns receive a 4-month deferment from duty away from the home station for the period immediately following the birth of a child. This provision allows the new mother time to develop the Family Care Plan and to establish a pattern of child care. Single servicemembers and one member of a married dual military couple who adopt a child also receive a 4-month deferment from the date the child is placed in the home as part of the adoption process. Similarly, Reserve component members receive a 4-month deferment from involuntary recall to active duty.

Penalties

Failure to produce the required Family Care Plan within the time period required can result in involuntary separation from the military by reason of parenthood in accordance with DOD Directive 1332.14 (enlisted) or DOD Directive 1332.30 (officers). Failure to produce the required Family Care Plan in the case of the Reserve member can result in processing for discharge or transfer to an inactive or retired status in accordance with OPNAVINST 1740.4C(7)(d)(6)(c).

Where should the servicemember go for help when developing a workable Family Care Plan?

Servicemembers should seek assistance in developing a workable Family Care Plan from the Fleet Family Support Center(s), Legal Assistance Offices, and other service and civilian organizations that retain lists of certified or licensed childcare providers. FFSCs and the Family Care Plan Coordinators should have information (i.e., brochures, handouts, pre-deployment and parenting classes) that covers Family Care Plan deployment related issues. A servicemember who is not able to establish an adequate Family Care Plan must provide documentation of what attempts were taken toward compliance with the instruction.

Family Care Plan record safeguards.

Family Care Plan documents and files contain private information and should be maintained under the control of the Commanding Officer and/or authorized personnel. When not in use the files should be secured away from the eyes of anyone not authorized to view them. Automated records should be password protected.

Retention and disposal of Family Care Files

"Family Care Plan" records should be maintained by the Commanding Officer or his designated representative for the period the individual is assigned to that organization. Records should be updated annually or when family circumstances or other personal status changes (see above). The Family Care Plan file should follow the servicemember to each new assignment. Upon retirement or separation from military service, the Family Care Plan record should be destroyed.

Developing a Supplement and "Back-Up" Family Care Plan

Notwithstanding the requirements of OPNAVINST 1740.4C, the servicemember should be encouraged to develop a "backup" plan to supplement and fill in the gaps to the "Family Care Plan" which may include the following:

- The names, phone numbers, and schedules of the people who have agreed to care for your children in an emergency. Note which people will care for your children in the short term, and who has agreed to take over for a longer period.

- Your spouse's contact information. Include the name and address of the military unit, commander or commanding officer, first sergeant or command chief, command enlisted advisor, and supervisor's name and telephone number. Include the Key Volunteer, Ombudsman, or Family Readiness Program point of contact and phone number.
- Limited power of attorney for your backup caregiver. This would allow your backup caregiver to authorize emergency medical care for your children. Some hospitals may not perform certain procedures without the consent of the caregiver.
- The names and phone numbers of your children's pediatrician, dentist, schools, child-care providers, and other caregivers in their lives.
- Your children's schedules. This includes the time they leave for school or child-care and when they return home. Also, be sure to list any after-school activities, such as dance lessons or scouts.
- Your children's routines at home. Describe bedtime rituals, homework time, and other important routines at home.
- Your children's likes and dislikes. Name your children's favorite toys and foods, whether they need a nightlight to sleep, and other particulars that would help the caregiver comfort your children.
- Names of medications your children take regularly. Write down where you keep the prescription and include instructions on administering the medication and how to order refills.
- A list of any food or medication allergies your children have.
- Copies of the following or instructions on where to find them:
 - Military ID cards for your children if they are over 10. This will ensure that their temporary caregiver has access to services.
 - Copies of your children's medical and dental plan cards if other than TRICARE.
 - Copies of your spouse's most recent military orders.

For more information, please visit your local Region Legal Service Office.