

Soldier persists in refusing the medical care, the MTF commander refers the matter to the proper Special Court-Martial Convening Authority. Copies of the medical board proceedings are provided. If the Special Court-Martial Convening Authority orders the Soldier to submit to treatment and the Soldier refuses to obey, the commander may take—

- (a) Disciplinary action according to MCM.
- (b) Administrative action to separate the Soldier from service through retirement, discharge, or other legal means.

## **5–5. Family care plans**

a. The DCS, G–1 is responsible for policy on Family care plans as follows:

(1) The Army assists the Soldier in providing for the care of his or her Family members. Mission, readiness, and deployability needs especially as it affects AA, ARNG, and RC single parents, parents with custody pursuant to a court order or separation agreement, and dual military couples with Family members. Plans must be made to ensure Family members are properly and adequately cared for when the Soldier is deployed, on TDY, or otherwise not available due to military requirements. ARNG and RC Soldiers are subject to those policies and regulations, and will implement plans during any period of absence for AT, regularly scheduled unit training assemblies, emergency mobilization and deployment, or other type of AD. Emergency-essential civilians who meet the criteria set forth in paragraph *a*, above, are encouraged to have a Family care plan that follows the guidelines set forth in this regulation.

(2) DA Form 5305 (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 child. Its sole purpose is to document for Army purposes the plan by which Soldiers provide for the care of their Family members when military duties prevent the Soldier from doing so. It will include proof that guardians and escorts have been thoroughly briefed on the responsibilities they will assume for the sponsor/Soldier and the procedures for accessing military and civilian facilities and services on behalf of the Family members of the sponsor/Soldier. It will attest that the guardian and escort agreed to provide care and have been provided all necessary legal authority and means to do so. It will include proof that the Soldier has obtained consent to the planned designation of guardianship from all parties with a legal interest in the custody and care of the minor child, or proof that reasonable efforts have been made to obtain consent to such designation.

(3) As a minimum, proof will consist of the following attachments to DA Form 5305:

- (a) DA Form 5841 (Power of Attorney) or equivalent delegation of legal control (unsigned until deployment).
- (b) DA Form 5840 (Certificate of Acceptance as Guardian or Escort).
- (c) DD Form 1172 (Application for Uniformed Services 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).
- (d) DD Form 2558 (Authorization to Start, Stop, or Change an Allotment) for AD or retired personnel, unsigned until deployment, or other proof of financial support arrangements.
- (e) A letter of instruction to the guardian/escort (see DA Form 5304 (Family Care Plan Counseling Checklist)).
- (f) 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.

(4) Soldiers are responsible for implementing the Family care plan and thus ensuring the care of their Family members. When operational or security considerations prevent the Soldier from implementing the plan, it will be used by appropriate military or civilian authorities to obtain care for such Family members. DA Form 5305 may be executed at any time when conditions warrant and Family care is necessary due to the required military absence of the Soldier. DA Form 5304, DA Form 5305, DA Form 5840, and DA Form 5841 are available on the Army Publishing Directorate (APD) Web site.

b. Commanders of AA and RC Soldiers, regardless of the Soldier's grade, will conduct or arrange for Family care plan counseling and require a Family care plan be completed 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.

- c. Soldiers must arrange for the care of their Family members in order to be—
- (1) Available for duty when and where the needs of the Army dictate.
  - (2) Able to perform assigned military duties without interference of Family responsibilities.
- d. Enlisted Soldiers will be counseled on voluntary and involuntary separation whenever parenthood interferes with military responsibilities (see DA Form 5305) under provision of—
- (1) AR 635–200 for AA Soldiers.
  - (2) AR 135–178 for RC and ARNG Soldiers.
  - (3) AR 135–91 for ARNG Soldiers.
- e. Officers will be counseled on voluntary and involuntary separations whenever parenthood interferes with military responsibilities (see DA Form 5305) under provision of—
- (1) AR 600–8–24 for AA Soldiers and RC and officers serving on AD or on ADT for a period in excess of 90 days.
  - (2) AR 135–175 for ARNG and RC Soldiers, except for officers serving on AD or on ADT for a period in excess of 90 days.
  - (3) NGR 635–101 for ARNG Soldiers.
- f. Pregnant Soldiers (who meet the criteria established in paragraph 5–5b(1)) will be counseled—
- (1) In the AA, according to AR 600–8–24 for officers and AR 635–200 for enlisted Soldiers.
  - (2) In the ARNG and RC, according to AR 135–91.
  - (3) On costs of maternity care obtained from civilian sources and the limitations concerning maternity care in military medical facilities.
  - (4) Using DA Form 5304 as soon as pregnancy is identified but not later than 90 days prior to the expected date of birth of the child. Pregnant Soldiers should receive Family care plan counseling at the time of pregnancy counseling to ensure the Soldier is informed of the responsibilities if she chooses to remain on AD.
  - (5) That they must complete and have an approved DA Form 5305 showing their intentions for Family care not later than 60 days prior to the date of the birth of the child. DA Form 5840 and DA Form 5841 or other guardianship documents, DD Form 1172, and DD Form 2558, will be completed, and DA Form 5305 recertified not later than 45 days following the date of birth of the child.
- g. The unit commander—
- (1) May designate an authorized representative to conduct Family care plan counseling using DA Form 5304 and to initial and sign the counseling form in the commander's behalf. The commander or authorized representative will use DA Form 7667 (Family Care Plan Preliminary Screening) to identify those Soldiers whose Family care plan may be at risk and who should consult with an attorney.
  - (2) Is the sole approving authority for DA Form 5305. This responsibility will not be delegated.
  - (3) May authorize an additional 30 days (60 days total from date of counseling) to all AA Soldiers and 60 days (90 days total from the date of counseling) to all RC Soldiers for completion, including submission and final approval of DA Form 5305 with attendant documents.
  - (4) Must ensure that all required documents are in order, and must be satisfied that the Family care plan meets the requirements and appears to be workable and durable.
  - (5) Should disapprove DA Form 5305 if the required attachments are not present unless extenuating circumstances exist.
  - (6) May consider extenuating circumstances in approving DA Form 5305, but must understand that the Soldier is considered non-deployable until a Family care plan is validated and approved.
  - (7) Must adequately test the validity and durability of the Family care plan, to include contacting the designated guardian(s) prior to final approval or recertification.
  - (8) Will provide the Soldier 30 days from date of the first disapproval to submit additional documentation or evidence to support the Family care plan.
  - (9) Will provide the Soldier a reasonable period of time to attempt to rework a Family care plan found to be deficient at time of mobilization, processing for overseas movement, or deployment. Ordinarily, a Soldier will be afforded at least 30 days to correct deficiencies in a plan unless a shorter period is specified by the unit commander due to the urgency and/or nature of the deployment, or due to the nature of the deficiencies.
  - (10) May authorize leave per AR 600–8–10 for a deployed Soldier to return home when circumstances beyond the Soldier's control preclude the designated guardian from exercising those responsibilities.
  - (11) Should consider initiating a bar to reenlistment against Soldiers who fail to properly manage personal, marital, or Family affairs, or who fail to provide or maintain adequate Family care plans.
  - (12) Should consider initiating involuntary separation proceedings against Soldiers who fail to provide and maintain adequate Family care plans.
  - (13) Should take action to ensure he or she is aware of other situations that may create changes in the status of his or her Soldiers with regard to the Soldier's responsibility to support Family members. These include but are not limited to the following:

- (a) Death or disability of spouse.
- (b) Legal separation when initial agreements have identified the Soldier as custodial parent or guardian of one or more Family members.
- (c) Divorce proceedings awarding joint or full custody of Family members to the Soldier.
- (d) Court decrees awarding visitation rights to the Soldier for more than 30 days.
- (e) Adoption.
- (f) Assumption of foster care responsibilities.
- (g) Guardianship agreement for children or adults incapable of self-care to temporarily or permanently reside with the Soldier.
- (h) Extended periods of absence by the spouse for schooling, hospitalization, employment, and so forth.
- (i) Expiration of current power of attorney, change in guardianship due to PCS, change of temporary care provider, and so forth.

(14) Will review copies of all child custody orders or marital separation agreements currently in effect to ensure the Family care plan is not inconsistent with any such legal documents. If Family care plan is inconsistent with any existing court orders, decrees, or marital separation agreements, the commander will seek advice from the servicing Office of the Staff Judge Advocate and may advise the Soldier to contact a legal assistance attorney or an attorney he or she has retained at no expense to the government.

(15) Will ensure consent has been obtained pursuant to DA Form 7666 under appropriate circumstances, or proof of notice and/or reasonable efforts having been made to obtain consent to the Family care plan from all parties having a legal interest in the custody and care of the minor child. If consent has been denied, the commander will seek advice from the servicing Office of the Staff Judge Advocate office and will advise the Soldier to contact a legal assistance attorney or an attorney he or she has retained at no expense to the government.

*h.* The IRR, Individual Mobilization Augmentee, Standby Reserve, Category I and II retirees, and inactive national guard personnel who meet the criteria outlined in paragraph *b*(1) through (5), above, are required to maintain valid Family care plans to ensure their availability for AD during a mobilization. Therefore—

(1) The CG, AHRC will establish specific procedures for counseling, submission, validation, and recertification of Family care plans for RC personnel and category I/II retirees.

(2) The Director, ARNG will establish specific procedures for the counseling, submission, validation, and recertification of Family care plans for inactive national guard personnel.

*i.* All married Soldiers who have Family members are encouraged to complete and maintain a Family care plan even if not specifically required to do so by this regulation. To do so assists the spouse, commander, rear detachment commander, Family Assistance Center, or next of kin providing care for dependent Family members in the event the spouse is injured, ill, incapacitated, or otherwise unable to provide care for the dependent Family member. Counseling of such is also encouraged

*j.* Soldiers must use the utmost care and consideration in the designation of guardians to care for Family members.

(1) 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 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.

(2) 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.

(3) 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. Guardians should be made aware that such designation does not authorize them access to any of the military facilities, services, entitlement, or benefits for personal use, but only as the agent for the dependent Family members for whom they have been designated guardian. Installation commanders are authorized to issue agents' letters to designated guardians upon request and presentation of proper documentation (such as DA Form 5841, DA Form 5840, children's ID cards, or application for same).

(4) 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 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.

*k.* The following procedures will be used for completing DA Form 5304 and DA Form 5305. For all assignments, CONUS and OCONUS:

(1) The DA Form 5304 will be used for counseling Soldiers who fall into categories outlined in paragraph *b*, above, as soon as possible upon arrival at the unit of assignment, and it will be initialed and signed—

- (a) During unit in-processing, after any event requiring completion of a Family care plan, or at Pre-Deployment processing.
- (b) By pregnant Soldiers not later than 90 days prior to the expected date of birth of the child.
- (c) By single parents, parents exercising custody pursuant to a court order or marital separation agreement, parents residing apart from his or her spouse and dual-military couples with Family members.
- (d) By both members of the dual-military couple and the respective commanders or designated representative. (This assures both unit commanders that Soldiers and their military spouses have made necessary arrangements for the escort, temporary, and primary guardianship responsibilities for Family member. Dual-military couple Soldiers with Family members will be counseled together when practicable.)
- (e) By the unit commander or a designated representative and held in the unit suspense files pending completion of DA Form 5305. (It will be returned to the Soldier when no longer needed for suspense action.)
- (2) The DA Form 5305 will be—
- (a) Completed and approved within 30 days for AA Soldiers and 60 days for ARNG and USAR Soldiers from the date of counseling.
- (b) Signed by both members of a dual-military couple and, if possible, by both commanders. The same plan should be submitted by both members of the dual-military couple, and neither member should be identified in the plan as the temporary or long-term guardian. Once both commanders have approved and signed the plan, the commander whose Soldier is least likely to deploy should retain the original plan and forward a copy of the complete plan to the other commander. If both members are equally likely to deploy, but one is a Soldier and the spouse is a member of another Service, the original plan should be kept on file in the Soldier's unit and a copy forwarded to the spouse's unit. If both are Soldiers and equally likely to deploy, it is inconsequential which commander has the original copy of the plan.
- (c) Recertified at least annually by initialing and dating the DA Form 5305. This must be done during the anniversary of the Soldier's birth month, after any change of circumstance requiring a change in the Family care plan, or whenever the Soldier is mobilized, deployed, or processed for pre-deployment. Commanders should ensure that all information is current and all documents are still up-to-date and legally valid.
- (3) OCONUS assignment and deployment procedures are as follows:
- (a) All Soldiers in categories outlined in paragraph *b*, above, who receive assignment instructions for an OCONUS assignment must be counseled again and must have their DA Form 5305 recertified not later than 30 days before the final out-processing date at the losing installation. If an adequate Family care plan is not submitted within 30 days, the Soldier is not considered deployable, will not depart the command, and the commander will consider initiating involuntary separation proceeding. A copy of the approved DA Form 5305 will be filed in the Soldier's out-processing file. A copy of the DA Form 5305 will be placed in the military personnel records jacket as a transfer document. The losing unit commander will retain a copy for 90 days after the Soldier departs.
- (b) Soldiers must arrange for an escort and transportation for Family members and a guardian in CONUS or United States territory to care for their Family members in the event their Family members are evacuated from OCONUS. If noncombatant evacuation operation procedures are not initiated and Soldiers are alerted for deployment, Soldiers residing in government quarters may request approval for guardians to reside in those quarters in their absence. Noncombatant evacuation operation standing operations should make maximum use of Family care plans to ensure successful operations. Soldiers may also request that they, as a single parent or one member of a dual-military couple, be authorized to personally escort Family members back to CONUS-located guardian. They will be given the opportunity provided time allows and advanced return or early return of Family member paperwork is initiated per local command policies, the Joint Federal Travel Regulation, and Defense Foreign Clearance Guide guidance.
- (c) Soldiers unable to provide the unit commander with the required DA Form 5305 and attendant documents will be ineligible for overseas assignment. They should be considered for processing for separation from military Service. Policies regarding eligibility for overseas assignment are contained in AR 614–30.
- (d) Enlisted Soldiers without adequate Family care plans should be considered for separation processing by their unit commanders under the following regulations:
1. AR 635–200 for AA Soldiers.
  2. AR 135–178 for ARNG and RC Soldiers.
  3. AR 135–91 for ARNG and RC Soldiers.
- (e) Officers without adequate Family care plans should be considered for separation processing by their unit commanders under the following:
1. AR 600–8–24 for AA Soldiers.
  2. AR 135–175 for ARNG and RC Soldiers.
  3. NGR 635–101 for ARNG Soldiers.
- (f) The ARNG and RC Soldiers performing duty on an AD status (AT, ADT, AD for special work, TTAD, AGR, and so forth) OCONUS must re-certify DA Form 5305 with attendant documents before embarkation to show that adequate care for their Family members has been provided for during their absence and in the event that their return to CONUS is delayed. Soldiers unable to provide the required documentation will not deploy to perform AT OCONUS.

*l.* DA Form 5305 with attachments will be filed in the unit files and destroyed 90 days after the Soldier departs on PCS orders. In CONUS and OCONUS if the PCS move is a “same-installation” move and the Soldier can maintain the same Family care plan, the Soldier will be allowed to take the original DA Form 5305 to the gaining unit and need not generate a new DA Form 5305. The gaining commander should certify the existing DA Form 5305 when the Soldier arrives in the new unit.

(1) Provide a copy of the DA Form 5305 to the Soldier, dual-military couple spouse, and dual-military spouse’s commander.

(2) Place a copy of the DA Form 5305 in the military Personnel Records Jacket that accompanies the departing Soldier to the gaining unit.

(3) Ensure that in the event of deployment, the Family care plan files remain with the rear detachment, or if no rear detachment remains, with the Family Assistance Center servicing the departing unit. Army National Guard and RC commanders must ensure Family care plan files are transferred to Joint Forces Headquarters (JFHQ)/RSC/GOCOM before departing home station.

*m.* A copy of DA Form 5305 with copies of DA Form 5840 and DA Form 5841, and/or other appropriate documents will be provided to the Child and Youth Services (CYS) Program if the CYS certified Family Child Care Provider is designated as temporary guardian. AR 608–10, paragraph 2–13a requires that a copy of DA Form 5305 be on file at the military Child Development Center if the Soldier’s Family members are enrolled in the day care or extended care program.

*n.* Commanders must stress the Soldier’s obligation to both the military and to his/her Family members. Moreover, they must ensure Soldiers understand they 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 (see AR 608–75 for more information). They must also ensure that Soldiers are aware that 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. The main evidence that Soldiers have made adequate arrangements for the care of their dependent Family members will be the execution of DA Form 5305 with its attendant documents listed below—

(1) DA Form 5841, special power of attorney or other legal documents designating escort, temporary, and primary guardian(s) (unsigned until the Soldier is deployed).

(2) Notarized DA Form 5840 from person(s) named in power of attorney.

(3) Completed DD Form 1172 for each Family member.

(4) Completed DD Form 2558 (unsigned until deployment) or proof of other adequate financial arrangements for care of Family members.

(5) Letters of instructions containing additional pertinent information for escorts, temporary or long-term guardians (see DA Form 5840).

(6) Completed DA Form 7667.

(7) Copies of any child custody orders or marital separation agreements currently in effect that impact upon the custody of a Soldier’s minor children.

(8) Completed DA Form 7666 under appropriate circumstances, or proof of notice and/or reasonable efforts having been made to obtain consent to the Family care plan from all parties having a legal interest in the custody and care of the minor children.

*o.* Commanders will encourage Soldiers to consult with a legal assistance attorney about having a will prepared. The Family care plan does not require a will, and Soldiers will not be ordered to obtain a will. When a will is prepared, it will not be retained in the unit files. Soldiers will be encouraged but not required to ensure that information regarding the location of a Soldier’s will is contained in the Family care plan.

*p.* The AA commanders will continue to use the Family Care Counseling Report (SIDPERS AAA-338) until such time as the Defense Integrated Military Human Resources System comes on line.

*q.* Maximum feasible testing of the validity and durability of Family care plans will be accomplished (for example, during exercises, alerts, Pre-Deployment processing, mobilization, deployment, AT, and other unit activities) to ensure information in a Soldier’s DA Form 5305 is accurate, current, and executable. Family care plans found to be invalid during the above testing will be revised/recertified within 30 days of the finding. For ARNG and RC Soldiers, it will be revised/recertified within 60 days unless mobilization mission requirements preclude authorizing that amount of time.

## **5–6. Accommodating religious practices**

*a.* The Army places a high value on the rights of its Soldiers to observe tenets of their respective religious faiths. The Army will approve requests for accommodation of religious practices unless accommodation will have an adverse impact on unit readiness, individual readiness, unit cohesion, morale, discipline, safety, and/or health. As used in this regulation, these factors will be referred to individually and collectively as “military necessity” unless otherwise stated. Accommodation of a Soldier’s religious practices must be examined against military necessity and cannot be guaranteed at all times.

*b.* The DCS, G–1 will establish policy on the accommodation of religious practices within the U.S. Army.