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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 75

RIN 0790-AI82

Docket ID: DOD-2011-OS-0127

Exceptional Family Member Program (EFMP)

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes the Exceptional Family Member Program (EFMP) and provides guidance, assigns responsibilities, and prescribes procedures for identifying a family member with special needs, and coordinating travel at government expense for family members of active duty Service members who meet the Department of Defense (DoD) criteria for identifying a family member with special needs. This proposed rule also prescribes procedures for processing DoD civilian employees who have family members with special needs for an overseas assignment and providing family support services.

DATES: Comments must be received by [INSERT 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Department of Defense, Office of the Deputy Chief Management Officer,
Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010
Defense Pentagon, Washington, DC 20301-9010.

Instructions: All submissions received must include the agency name and docket number or RIN for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Rebecca Lombardi, 571-372-0862.

SUPPLEMENTARY INFORMATION:

Executive Summary

This proposed rule would implement 10 U.S.C. 1781c, which established the Office of Community Support for Military Families with Special Needs (OSN). Under this proposed rule, the OSN would be housed within the Office of the Under Secretary of Defense for Personnel and Readiness. The purpose of the Office is to enhance and improve Department of Defense support around the world for military families with special needs (whether medical or educational needs) through the development of appropriate policies, enhancement and dissemination of appropriate information throughout the Department of Defense, support for such families in obtaining referrals for services and in obtaining services and oversight of the activities of the military departments in support of families. The OSN would be responsible for developing an EFMP policy that addresses the development and implementation of a community support program across the Services, and expand coordination of assignments for military families with special needs within and outside the United States.

The rule would provide guidance for identifying family members with special needs and requires the Military Services to establish a system to identify, document and consider a military family member's special medical and educational needs when approving travel at government expense. It would also provide guidance for the processing of overseas assignments for DoD civilian employees who have family members with special needs. The rule also would establish a system of monitoring and assigning oversight responsibilities for the EFMP as well as authorizing the development of implementing guidance and forms necessary for the operation of the EFMP.

III. Costs and Benefits

The Department of Defense and the Military Departments, which are responsible for providing services to Military families with special needs, receive their funding from the Operations and Maintenance (O&M) defense-wide budget. The approximate cost for the Exceptional Family Member Program for FY2011 was \$30,509,878.93.

Retrospective Review

This proposed rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, "Improving Regulation and Regulatory Review." DoD's full plan and updates can be accessed at:

<http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036>.

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

Sec. 202, Pub. L. 104-4, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately \$141 million. This proposed rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)

The Department of Defense certifies that this proposed rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 75 does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. These reporting requirements have been approved by the Office of Management and Budget and assigned OMB Control Number 0704-0411, titled Exceptional Family Member Program.

Executive Order 13132, “Federalism”

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule will not have a substantial effect on State and local governments.

System of Record Notices (SORN) and Privacy Impact Assessments (PIA)

The applicable SORN for the Exceptional Family Member program is:

DHA 16 DoD. The system name is the Special Needs Program Management Information System (SNPMIS) Records (available at <http://dpcl.d.defense.gov/Privacy/SORNsIndex/DODwideSORNArticleView/tabid/6797/Article/570679/edha-16-dod.aspx>).

The Privacy Impact Assessment (PIA) for this program is available at <http://health.mil/Reference-Center/Forms/2014/07/29/PIA-Summary-Special-Needs-Program-Management-Information-System-SNPMIS>.

The Special Needs Program Management Information System (SNPMIS) provides access to a comprehensive program of therapy, medical support, and social services for young Department of Defense (DoD) Military Health System (MHS) beneficiaries with special needs. SNPMIS is the Military Health System (MHS) automated information system designed to ensure the DoD meets the unique information requirements associated with implementation of the Individuals with Disabilities Education Act (IDEA). SNPMIS captures records referral, evaluation, eligibility, and service plan data for children with special needs who are eligible for MHS services under IDEA. This system is a distributed data collection application with database servers distributed at various Medical Treatment Facilities (MTFs) located within the

Continental United States (CONUS) and Outside the Continental United States (OCONUS).
SNPMIS is currently used in 45 EDIS clinics at Army, Navy, and Air Force installations worldwide.

List of Subjects in 32 CFR Part 75

Children, Family health, Special needs.

Accordingly 32 CFR Part 75 is proposed to be added to read as follows:

PART 75– EXCEPTIONAL FAMILY MEMBER PROGRAM (EFMP)

Subpart A – General

Sec.

75.1 Purpose.

75.2 Applicability.

75.3 Definitions.

Subpart B – Policy

75.4 Policy.

75.5 Responsibilities.

Subpart C - Procedures

75.6 DoD criteria for identifying family members with special needs.

75.7 Coordinating assignments of active duty Service members who have a family member with special needs.

75.8 Civilian employees on overseas assignment .

75.9 Provision of family support services.

75.10 Office of Community Support for Military Families with Special Needs (OSN).

Authority: 10 U.S.C. 1781c

Subpart A – General

§ 75.1 Purpose.

This part:

(a) Establishes the EFMP and establishes policy, provides guidance, assigns responsibilities and prescribes procedures for:

(1) Identifying a family member with special needs who is eligible for services as defined in this part.

(2) Coordinating travel at government expense for family members of active duty Service members who meet the DoD criteria for special medical or educational needs.

(3) Processing DoD civilian employees who have family members with special needs for an overseas assignment.

(4) Providing family support services to military families with special needs.

(b) Establishes a system of monitoring and assigns oversight responsibilities for the EFMP.

(c) Authorizes the development of implementing guidance and forms necessary for the operation of the EFMP in accordance with this part.

(d) Does not create any rights or remedies in addition to those already otherwise existing in law or regulation, and may not be relied upon by any person, organization, or other entity to allege a denial of such rights or remedies.

§ 75.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field

Activities, and all other organizational entities within the DoD (referred to collectively in this part as the “DoD Components”).

(b) Service members who have family members with special needs as described in this part.

(c) All DoD civilian employees in overseas locations and selectees for overseas positions who have family members with special needs as described in this part.

§ 75.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this part.

Assistive technology device. Any item, piece of equipment, or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities. This term does not include a medical device that is surgically implanted or the replacement of that device.

Assistive technology service. Any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.

CONUS. The 48 contiguous states of the United States, excluding Alaska, Hawaii, and U.S. territories.

Early Intervention Services (EIS). Developmental services for infants and toddlers with disabilities that are provided under the supervision of a Military Department, including evaluation, IFSP development and revision, and service coordination provided at no cost to the child’s parents.

Evaluations. Medical, psychological, and educational assessments required to define a medical or educational condition suspected after a screening procedure.

Family member. A dependent (a spouse and certain children, in accordance with 5 U.S.C. 8901(5) of a Service member) who is eligible to receive a DoD identification card, medical care

in a DoD medical treatment facility, and command sponsorship or DoD-sponsored travel. To the extent authorized by law and in accordance with Service implementing guidance, the term may also include other nondependent family members of a Service member.

For the purposes of §75.8 of this part only, this definition also includes civilian employees on an overseas assignment, or being considered for an overseas assignment, and their dependents who are, or will be, eligible to receive a DoD identification card during that overseas assignment. To the extent authorized by law and in accordance with Service implementing guidance, the term may also include other nondependent family members of a civilian employee on an overseas assignment.

Family member travel. Refers exclusively to permanent change of station actions. Same as a “dependent” as defined by 37 U.S.C. 401.

Family support services. Encompasses the non-clinical case management delivery of information and referral for families with special needs, including the development and maintenance of an individualized SP.

Individualized Education Program (IEP). A written document identifying the special education and related services for a child with a disability.

Individualized Family Service Plan (IFSP). A written document identifying the specially designed services for an infant or toddler with a disability and the family of such infant or toddler.

Medical case management. A collaborative process of assessment, planning, facilitation, and advocacy for options and services to meet an individual’s health needs through communication and available resources to promote quality cost-effective outcomes. See Department of Defense

TRICARE Medical Management Guide, 2009, Version 3 (available at http://www.tricare.mil/tma/ocmo/download/MMG_v3_2009.pdf).

Non-clinical case management. The provision of information and referral to families and individuals that assist them in making informed decisions and navigating resources to improve their quality of life such as medical, educational, social, community, housing, legal, and financial services. This does not involve coordination and follow-up of medical treatments.

Overseas. Defined in 20 U.S.C. 932(3) and (4).

Pinpoint location. A specific geographic location recommended for an active duty Service member's assignment because it has:

- (1) A valid requirement for the active duty Service member's grade and military occupational specialty.
- (2) Availability of required medical services.
- (3) Availability of required educational staff necessary to provide EIS and special education to the active duty Service member's child with special educational needs.

Related services. Transportation and such developmental, corrective, and other supportive services, as required, to assist a child, age 3 through 21 years, inclusive, with a disability to benefit from special education under the child's IEP. The term includes speech-language pathology and audiology, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluative purposes. That term also includes school health services, social work services in schools, and parent counseling and training. The sources for those services are school,

community, and medical treatment facilities.

Related services assigned to the military medical departments overseas. Services provided by Educational and Developmental Intervention Services to Department of Defense Dependent School students, under the development or implementation of an IEP, necessary for the student to benefit from special education. Those services may include medical services for diagnostic or evaluative purpose, social work, community health nursing, dietary, occupational therapy, physical therapy, audiology, ophthalmology, and psychological testing and therapy.

Respite Care Services. The provision of temporary relief to military family members who are responsible for the regular care of dependent family members with special needs.

Responsible military department. The Military Department responsible for providing EIS or related services in the geographic areas assigned under 32 CFR part 57.

Services plan (SP). An individualized plan written in collaboration with the family or the family member with special needs that documents current needs and steps to achieve their desired outcome.

Special education. Specially designed instruction, including physical education, which is provided at no cost to the parent or guardians to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings.

Special needs. Includes special medical and educational needs of family members who meet the DoD criteria as found in §75.6 of this part.

Specialty care. Specialized health care provided by a physician whose training focused primarily in a specific field, such as neurology, cardiology, rheumatology, dermatology, oncology, orthopedics, or ophthalmology and is required for health maintenance.

Subpart B – Policy

§ 75.4 Policy.

It is DoD policy that:

- (a) The EFMP identifies family members with special needs, enrolls sponsors in the program, and participates in the coordination of assignments for active duty Service members in order for the special needs of family members to be considered during the assignment process.
- (b) Active duty Service members whose families include a member with special needs must enroll in the EFMP to ensure their family members' special needs are considered during the assignment coordination.
- (c) The EFMP provides family support services, including non-clinical case management, to military families with special needs regardless of the sponsor's Service affiliation or enrollment status in the EFMP, as described in §75.9 of this part. Family support service to the Reserve Component is dependent upon each Service's eligibility requirements.
- (d) Active duty Service members whose families include a member with special needs may be stabilized in Alaska, Hawaii, or a continental United States (CONUS) assignment location for a minimum of 4 years when:
 - (1) The arrangement is initiated by the Service member.
 - (2) The family member has a documented need for stabilization, as determined by Service-specific guidance.
 - (3) Stabilization does not have an adverse effect on the mission requirements of the Military Department.
 - (4) The career development of the Service member has been considered and is not affected adversely.

(e) The special needs of a civilian family member will not be considered in the selection of a civilian for an overseas position.

§ 75.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness (USD (P&R)):

(1) Provides for an OSN, pursuant to 10 U.S.C. 1781c.

(2) Submits an annual report to Congress pursuant to 10 U.S.C. 1781c on the activities of the OSN, including identification of gaps in services for military families with special needs and actions being taken or planned to address such gaps.

(b) Under the authority, direction, and control of the USD(P&R), the Assistant Secretary of Defense for Manpower and Reserve Affairs (ASD(M&RA)):

(1) Consults with the Secretaries of the Military Departments, as appropriate, to ensure the development, implementation, and monitoring of an effective EFMP across DoD, in accordance with this part.

(2) Resolves disputes among the DoD Components regarding the implementation of procedures in §75.6 through §75.10 of this part.

(3) Requires the Military Services and DoD Education Activity (DoDEA) to notify OSN of additions, deletions, or substitutions to the locations of EIS and special education in overseas military communities.

(4) Convenes a meeting at least once a year to review the implementation of this part.

Representatives from the ASD(M&RA); the Assistant Secretary of Defense for Health Affairs (ASD(HA)); the General Counsel of the Department of Defense; the Secretaries of the Military Departments; must attend. A representative of the Commandant of the Coast Guard shall be invited to attend. Participants will:

- (i) Represent functional areas including: military medical; military and civilian personnel; housing; dependents' education; legal; child and youth services; morale, welfare, and recreation; and community support activities.
- (ii) Review Service and DoDEA reports on family support services, assignment coordination, the pinpoint locations of EIS and special education overseas, and data requirements of this part.
- (c) Under the authority, direction, and control of the USD(P&R), the ASD(HA):
 - (1) Advises the USD(P&R) regarding the availability of specialized medical services to family members with special needs.
 - (2) Collaborates with the OSN on medical issues related to this part.
 - (3) Participates in the development and deployment of a data management system, including appropriate interfaces that support the EFMP mission.
 - (4) Ensures that policies and procedures are in place within the Military Health System (MHS) to safeguard personally identifiable information (PII) and protected health information (PHI) gathered during the medical processes required by this part in accordance with 32 CFR part 310, DoD Instruction 6025.18, "Privacy of Individually Identifiable Health Information in DoD Health Care Programs" (available at <http://www.dtic.mil/whs/directives/corres/pdf/602518p.pdf>) and DoD 8580.02-R, "DoD Health Information Security Regulation" (available at <http://www.dtic.mil/whs/directives/corres/pdf/858002rp.pdf>).
 - (5) Ensures procedures are established to make purchased care providers aware of the mandatory enrollment requirements when a family member of an active duty Service member is identified within the purchased care system with a medical condition that meets the criteria in §75.6.
 - (6) Ensures that there is a medical case management program to support military families with special medical needs following Defense Health Program eligibility guidelines. The case

managers will collaborate with the EFMP non-clinical family support services personnel in assisting the eligible population consistent with 32 CFR part 310, DoD Instruction 6025.18, and DoD 8580.02-R.

(d) Under the authority, direction, and control of the ASD(M&RA), the Director, DoDEA:

(1) Designates and updates as necessary a point of contact in each DoDEA overseas area to review the DD Form 2792-1 (available at

<http://www.dtic.mil/whs/directives/infomgt/forms/forminfo/forminfo2581.html>), “Special Education/Early Intervention Summary,” for all school-aged children (ages 3-21) with disabilities.

(2) Makes recommendations to the Military Services and Defense Agencies on the availability of special education services.

(3) Ensures that policies and procedures are in place to inform families of the requirement to enroll in the EFMP when their child is enrolled in a DoDEA school and is covered by an IEP.

(4) Requests reimbursement from the sending Military Department when there is a failure to coordinate an overseas assignment with DoDEA that results in the assignment of the Service member to an overseas location when one or more of the following conditions are met:

(i) DoDEA personnel are not available to provide special education pursuant to the child’s IEP.

(ii) There is no DoD school, but DoDEA has the responsibility to provide special education pursuant to the child’s IEP.

(iii) The DoDEA incurs expenses (e.g., hiring additional staff) beyond normal operations to provide special education pursuant to the child’s IEP.

(5) Submit an annual memorandum to the ASD(M&RA), reflecting the prior school year's data (e.g., August of one calendar year through June of the following calendar year) not later than October 15, including the number of:

(i) Assignments coordinated by the DoDEA to include locations, travel recommendations and the associated military department.

(ii) Problematic assignments, including the reasons (e.g., the assignment was not coordinated with DoDEA or the information that was supplied was incorrect or incomplete by Military Department or Defense Agencies and location) and the estimated cost to provide the required special services.

(iii) Problematic assignments for which reimbursement was considered.

(e) The Secretaries of the Military Departments:

(1) Establish guidance consistent with this part and ensure leadership oversight at all levels of military command for implementation, monitoring, and evaluation of this part.

(2) Program, budget, and allocate sufficient funds and other resources, including staffing, to meet the policy objectives of this part.

(3) Establish an EFMP within their Department that includes identification and enrollment, assignment coordination, and family support services components; and promote collaboration between the three components.

(4) Ensure that when a family member of an active duty Service member is identified within a military treatment facility with a medical condition that meets the criteria in §75.6, that the Service member is referred to the Service-specific EFMP point of contact. Confirm that the EFMP point of contact will enroll the Service member and follow-up to complete the DD Form 2792, "Family Member Medical Summary."

- (5) Require military treatment facility personnel to be trained on the policies and procedures in this part.
- (6) Participate in the development and deployment of a data management system, including appropriate interfaces that support the EFMP mission.
- (7) Publish the guidelines that define the EFMP on the appropriate Headquarters Service website and ensure that all installation websites link to this official information.
- (8) Ensure the establishment of generic e-mail addresses for installation EFMP family support services personnel as well as the medical offices supporting the EFMP so that Service members and their family members have easy access to support capabilities.
- (9) Establish policies and procedures to safeguard PII and PHI.
- (10) Ensure the establishment of screening and evaluation procedures for the purpose of identifying family members of active duty Service members with special needs. The guidelines should be commensurate with established TRICARE access to care standards, and include those family members whose primary provider is in the TRICARE network.
- (11) Ensure annual education and training to key personnel is conducted on the policies and procedures in this part and on topics appropriate to providing family support services. These topics may include EIS, special education, Medicaid, supplemental security income, and TRICARE benefits, including the extended health care option and any other programs that benefit military families with special needs.
- (12) Require that information on this part be provided to all active duty Service members and their families, regardless of location, and to civilian employees or selectees who have applied for government employment in overseas locations.

(13) Ensure military personnel activities coordinate all assignments with the responsible Military Department or other DoD Component when the sponsor requests accompanied family member travel overseas. Refer to the Joint Travel Regulations “Uniformed Service Members and Civilian Employees” (available at <https://www.defensetravel.dod.mil/Docs/perdiem/JTR.pdf>) for PCS travel and transportation allowances for eligible Service members and family members.

(14) Ensure military personnel activities coordinate all CONUS assignments of Service members enrolled in the EFMP with the responsible Military Department or other DoD Component. Refer to the Joint Travel Regulations for PCS travel and transportation allowances for eligible Service members and family members.

(15) Establish procedures to reimburse DoDEA when there is a failure to coordinate such assignments that result in the conditions described in paragraph (d)(3) of this section.

(16) Require the military personnel activities to coordinate with the appropriate Military Department when considering Service member assignment(s) to an overseas area where the provision of EIS and related services is the responsibility of another Military Department, in accordance with §75.8 of this part.

(17) Require human resources representatives to advise civilian employees or selectees for an overseas position of the availability of services to meet the family member’s special needs in the specific assignment location.

(18) Submit an annual report (not later than January 15) to the ASD(M&RA) identifying:

(i) EFMP enrollment and assignment function:

(A) Total number of Service members enrolled in the EFMP.

(B) Total number of family members enrolled in EFMP.

- (C) Total number of assignments of Service members enrolled in the EFMP that were coordinated in the last year.
- (D) Assignment problems, including early return of family members or reassignment of the Service member resulting from failure to enroll in the EFMP or inaccuracies in the enrollment information.
- (E) Total number of requested stabilizations, those approved and the location.
- (ii) EFMP family support services program, by installation:
 - (A) Type and number of EFMP family support services personnel.
 - (B) Number of families supported through the EFMP, including number of individualized SPs.
 - (C) Identified obstacles to the effective delivery of EFMP family support services, including military and non-military service providers.

Subpart C – Procedures

§ 75.6 DoD criteria for identifying family members with special needs.

- (a) Special Medical Needs. Individuals who meet one or more of the criteria in this section will be identified as a family member with special medical needs:
 - (1) Potentially life-threatening conditions or chronic (duration of 6 months or longer) medical or physical conditions requiring follow-up care from a primary care manager (to include pediatricians) more than once a year or specialty care.
 - (2) Current and chronic (duration of 6 months or longer) mental health condition (such as bipolar, conduct, major affective, or thought or personality disorders); inpatient or intensive (greater than one visit monthly for more than 6 months) outpatient mental health service within the last 5 years; or intensive mental health services required at the present time. This includes medical care from any provider, including a primary care manager.

(3) A diagnosis of asthma or other respiratory-related diagnosis with chronic recurring symptoms that involves one or more of the following:

- (i) Scheduled use of inhaled or oral anti-inflammatory agents or bronchodilators.
- (ii) History of emergency room use or clinic visits for acute asthma exacerbations or other respiratory-related diagnosis within the last year.
- (iii) History of one or more hospitalizations for asthma, or other respiratory-related diagnosis within the past 5 years.

(4) A diagnosis of attention deficit disorder or attention deficit hyperactivity disorder that involves one or more of the following:

- (i) Includes a co-morbid psychological diagnosis.
- (ii) Requires multiple medications, psycho-pharmaceuticals (other than stimulants) or does not respond to normal doses of medication.
- (iii) Requires management and treatment by mental health provider (e.g., psychiatrist, psychologist, or social worker).
- (iv) Requires the involvement of a specialty consultant, other than a primary care manager, more than twice a year on a chronic basis.
- (v) Requires modifications of the educational curriculum or the use of behavioral management staff.

(5) A chronic condition that requires:

- (i) Adaptive equipment (such as an apnea home monitor, home nebulizer, wheelchair, custom-fit splints/braces/orthotics (not over-the-counter), hearing aids, home oxygen therapy, home ventilator, etc.).
- (ii) Assistive technology devices (such as communication devices) or services.

(iii) Environmental or architectural considerations (such as medically required limited numbers of steps, wheelchair accessibility, or housing modifications and air conditioning).

(b) Special Educational Needs. Family members of active duty Service members (regardless of location) and civilian employees appointed to an overseas location eligible for enrollment in a DoDEA school on a space-required basis will be identified as having special educational needs if they have or are found eligible for, either an IFSP or an IEP under 32 CFR part 57.

§ 75.7 Coordinating assignments of active duty Service members who have a family member with special needs

(a) Standards for authorizing overseas travel for family members with special needs of active duty Service members.

(1) Family member travel at government expense overseas may be denied when an active duty Service member has a family member with special medical needs and the services to meet those needs are unavailable in a duty location, as determined by the MHS based on acceptable U.S. healthcare standards. The Military Department will follow the procedures in this part regardless of the sponsor's location when processing a Service member with a family member with special needs.

(2) Active duty Service members may not be denied consideration for an essential (as defined by the military personnel assignment system) duty assignment overseas solely because they have children who are or may be eligible for EIS or special education services in accordance with 32 CFR part 57. They will receive the same consideration for travel at government expense to any duty location as families without such members.

(3) The failure to assign an active duty Service member to a pinpoint location overseas, as defined in §75.3, is never a basis to deny EIS or special education to the active duty Service member's eligible infant, toddler, or child pursuant to 32 CFR part 57.

(4) The responsible Military Department may request reimbursement from the sending Military Department if failure to coordinate an assignment with the responsible Military Department results in one of the following situations:

(i) The assignment of the Service member to an overseas location where responsible Military Department personnel are not available to provide EIS pursuant to the child's IFSP or related services pursuant to the child's IEP.

(ii) The assignment causing the responsible Military Department to incur extraordinary expenses (e.g., hiring additional staffing) to provide EIS pursuant to the child's IFSP or related services pursuant to the IEP.

(5) The receiving Military Department may also require the sending Military Department to provide those services that are pursuant to the child's IFSP or IEP when there is failure to coordinate an assignment.

(b) Military Service Procedures. Each Military Service will establish procedures to:

(1) Identify active duty Service members who have family members with special medical needs through completion of DD Form 2792, and with educational needs through DD Form 2792-1.

The procedures require use of the information when considering family member travel.

(2) Update the status of family member(s) with special needs when conditions occur, change, or no longer exist, and when Service-specific policy requires.

(3) Coordinate the availability of medical and educational services.

(4) Maintain records on the effectiveness of the assignment process involving sponsors who have family members with special needs and on-assignment problems resulting from the inadequacy of the Military Services' procedures or failure to follow their procedures.

(c) Military Personnel Activities. Military personnel activities will coordinate with appropriate sources to verify that required special medical and educational services are available.

(1) Assignments Overseas.

(i) Coordinate with medical activities to verify that required medical services are available, if the member has a dependent eligible for such services, before authorizing family member travel at government expense.

(ii) Coordinate with DoDEA and the medical activity responsible for supporting DoDEA to ensure that assignments are made to locations where EIS or special education services are available. DoDEA will determine whether the needs can be met in any location or whether an established pinpoint location is required.

(iii) Remove active duty Service members who have family members with special medical and educational needs from overseas orders if no suitable overseas assignment location can be found and there is no adverse impact on the military mission or on the active duty Service member's career.

(2) Assignments within the United States and its Territories.

(i) Coordinate and verify the availability of medical services essential to meet the needs of family members with special medical needs.

(ii) Coordinate with the MHS, school districts or EIS providers, EFMP family support services personnel, the school liaison officer and others, as appropriate, to determine the availability of

EIS and special education services essential to meet the family member's special education needs.

(d) Military Medical Activities. Military medical activities will respond to requests from personnel activities to determine the availability of required medical services. Medical treatment facilities will identify or confirm family members who meet the criteria for special needs, as specified in §75.6 of this part, following Service-specific guidance.

(e) Active Duty Service Members.

(1) When the active duty Service member becomes aware that a family member may meet the criteria for special needs, as specified in §75.6 of this part, the active duty Service member must:

(i) Notify the cognizant military medical authority using Service-specific guidance.

(ii) Have the DD Form 2792 completed by the appropriate medical provider.

(iii) Have the DD Form 2792-1 completed by the current EIS provider or current school providing special education to determine whether the family member (birth through 21 years of age, inclusive) is eligible for, or receiving, EIS or special education and related services.

(2) The active duty Service member must provide the cognizant military authority the completed DD Form 2792 and DD Form 2792-1, when appropriate.

(3) The active duty Service member must provide the information required to complete the DD Form 2792 and, when appropriate, the DD Form 2792-1. An active duty Service member who fails or refuses to provide the required information for a family member for whom the Service member is a personal representative for health information in accordance with Public Law 104-191, "Health Insurance Portability and Accountability Act of 1996 (HIPPA)", or who knowingly provides false information about any dependent, may be subject to disciplinary actions for such offense.

(i) Such disciplinary actions would be in accordance with Article 92 (failure to obey a lawful order or regulation or dereliction of duty) or Article 107 (false official statement), in violation of 10 U.S.C. chapter 47 (also known and referred to in this part as “The Uniform Code of Military Justice (UCMJ)”).

(ii) In addition to UCMJ disciplinary action, the active duty Service member may also be subject to administrative sanctions, including denial of command sponsorship.

§ 75.8 Civilian employees on overseas assignment.

(a) Vocabulary. Section 75.3 provides definitions of “family member” that apply only to this section.

(b) Employee rights. (1) The DoD Components must select civilian employees for specific positions based on job requirement and merit factors in accordance with 5 U.S.C. 2302, and 29 U.S.C. 791 through 794d. The selection for an overseas position must not be influenced by the special needs of a civilian employee’s family member(s), or any other prohibited factor.

(2) The civilian employee or selectee will be given comprehensive medical, dental, and educational information about the overseas community where the position is located to help the employee make an informed choice about accepting the position.

(3) Refer to the Joint Travel Regulations (available at <https://www.defensetravel.dod.mil/Docs/perdiem/JTR.pdf>) for PCS travel and transportation allowances for eligible civilian employees and their family members.

(4) Civilian employees or selectees assigned to positions overseas are generally responsible for obtaining medical and dental services and paying for such services, except services provided pursuant to 32 CFR part 57. Their family members may have access to the MHS on a space-available, reimbursable basis only, except for services pursuant to 32 CFR part 57.

(i) The DoDEA and the Military Medical Department responsible for the provision of related services to support DoDEA at the duty station are required to evaluate school-aged children (ages 3 through 21 years, inclusive) eligible for enrollment in a DoDEA school on a space required basis and provide them with the special education and related services stipulated in their IEPs expeditiously and regardless of cost.

(ii) The Military Departments are required to provide infants and toddlers (from birth up to 3 years of age, inclusive) eligible for enrollment in a DoDEA school on a space required basis with the EIS stipulated in the IFSPs expeditiously and regardless of cost.

(c) Processing a Civilian Employee for an Overseas Position. (1) When recruiting for an overseas position, DoD human resources representatives will:

(i) Provide information on the requirements of this part related to civilian employees or applicants for employment, including employee rights provided in §75.8(a) of this part.

(ii) Provide information on the availability of medical and educational services, including a point of contact for the applicant to ask about specific special needs. This information must be contained in any document used for recruitment for overseas positions.

(iii) Include the following statements in recruitment information:

(A) If an employee brings a child to an overseas location and that child is entitled to attend a DoD school on a space-required basis in accordance with DoDEA Regulation 1342.13 (available at http://www.dodea.edu/aboutDoDEA/upload/1342_13.pdf), the DoDEA and the Military Department responsible for providing related services will ensure that the child, if eligible for special education, receives a free appropriate public education, including related services pursuant to 32 CFR part 57.

(B) If an employee brings an infant or toddler (up to 3 years of age) to an overseas location, and that infant or toddler, but for the child's age, is entitled to attend the DoDEA on a space-required basis in accordance with DoDEA Regulation 1342.13, then the Military Department responsible for EIS will provide the infant or toddler with the required EIS in accordance with the eligibility criteria consistent with 32 CFR part 57.

(C) If an employee brings a family member to an overseas location who requires medical or dental care, then the employee will be responsible for obtaining and paying for such care.

Access for civilian employees and their families to military medical and dental treatment facilities is on a space-available and reimbursable basis only.

(2) When the gaining human resources representatives process a civilian for an overseas position where family member travel is authorized at government expense, then they must ask the selectee to determine whether a family member has special needs, using the criteria provided in §75.6 of this part. All selectees must be asked only after they have been notified of their selection in accordance with 29 U.S.C. 791 through 794d, and 29 CFR 1630.14. If the selectee indicates that a family member has special needs:

(i) The DoD civilian human resources representatives may not coerce or pressure the selectee to decline the job offer in light of that information.

(ii) The selectee may voluntarily forward to the civilian human resources representative completed DD Forms 2792 or 2792-1 for each family member with special needs to provide information on the availability of medical and educational services. DD Form 2792-1 must be submitted if the selectee intends to enroll his or her child in a school funded by the DoD or a school in which DoD is responsible for paying the tuition for a space-required family member.

(3) The gaining human resources activity will coordinate with the appropriate military medical and educational personnel on availability of services and inform the selectee in writing of the availability of medical, educational, and early intervention resources and services to allow the civilian employee to make an informed choice whether to accept the position. The notice will include:

(i) Comprehensive medical, dental, and educational information on the overseas community where the position is located.

(ii) A description of the local DoDEA facility and programs, specifying the programs for children with special education needs.

(iii) A description of the local EIS available for infants and toddlers with disabilities.

(iv) A statement indicating that the lack of EIS or special education resources (including related services assigned to the military medical departments) cannot serve as a basis for the denial of family travel at government expense and required services will be provided even if a local program is not currently established in accordance with 32 CFR part 57.

(d) Use of EFMP Family Support Services.

(1) Civilian employees may utilize EFMP family support services on a space available basis.

§ 75.9 Provision of family support services.

(a) EFMP Family Support. EFMP family support services and their personnel:

(1) Provide information and referral to military families with special needs.

(2) Provide assistance, including non-clinical case management to families of active duty Service members (such as the development and maintenance of an individualized SP). The SP will include:

- (i) Identification of the family's current needs, the services they receive, and the support they require.
- (ii) Documentation of the support provided to the family and follow-on contacts, including case notes.
- (3) Refer families who have serious or complicated medical issues to the MHS to request medical case management.
- (4) Conduct ongoing outreach with military units, individuals and their families, other service providers, and military and community organizations to promote an understanding of the EFMP and to encourage families with special needs to seek support services when needed.
- (5) Serve as the point of contact with leadership in identifying and addressing the community support requirements of military families with special needs.
- (6) Collaborate with military, federal, State, and local agencies to share and exchange information in developing a comprehensive program.
- (7) Provide assistance before, during and after relocation, including coordination of services with the gaining installation's EFMP family support services program.
- (8) Educate and provide assistance to Service members and their families about EFMP family support services, the enrollment and assignment coordination process, resources, and other topics as appropriate.
- (b) Respite care. Family support services may include respite care services for family members regardless of the age of the family member

§ 75.10 Office of Community Support for Military Families with Special Needs (OSN).

The OSN:

- (a) Develops and implements policies on the:

- (1) Provision of support for military families with special needs.
 - (2) Identification and documentation of family members' special medical or educational needs.
 - (3) Coordination of military assignments when the Service member has a family member with special needs.
 - (4) Provision of EIS and special education services to eligible DoD family members in accordance with 32 CFR part 57.
- (b) Develops implementing guidance and forms necessary for the operation of the EFMP in accordance with this part.
- (c) Provides oversight for the:
- (1) Implementation of this part.
 - (2) Availability and accessibility of programs provided by the Military Services and federal, State and local non-governmental agencies and identifies any gaps in DoD services available to military family members with special needs.
 - (3) Provision of EIS and special education services to eligible DoD family members in accordance with 32 CFR part 57.
- (d) Collaborates with the Office of the ASD(HA) on medical services regarding family members with special medical needs.
- (e) Develops and implements a web-based data management system to support the EFMP with the Military Departments.

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Aaron Siegel,

Alternate OSD Federal Register Liaison Officer,

Department of Defense.

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