

<b>Title: Family and Medical Leave Act (FMLA) Policy</b>	
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<b>Discrete Operating Unit/Facility:</b> Banner Baywood Medical Center Banner Behavioral Health Banner Boswell Medical Center Banner Casa Grande Medical Center Banner Churchill Community Hospital Banner Del E Webb Medical Center Banner Desert Medical Center Banner Estrella Medical Center Banner Fort Collins Medical Center Banner Gateway Medical Center Banner Goldfield Medical Center Banner Heart Hospital Banner Ironwood Medical Center Banner Lassen Medical Center Banner Payson Medical Center Banner Thunderbird Medical Center Banner—University Medical Center Phoenix Banner—University Medical Center South Banner—University Medical Center Tucson Community Hospital East Morgan County Hospital McKee Medical Center North Colorado Medical Center Ogallala Community Hospital Page Hospital Platte County Memorial Hospital Sterling Regional MedCenter Washakie Medical Center	Banner Corporate Banner Health Clinics Banner Imaging Services Banner MD Anderson Cancer Center Banner Health Network Banner Home Care and Hospice Banner Plan Administration Banner Pharmacy Services Banner Surgery Centers Banner Urgent Care Centers Occupational Health/Employee Services Post-Acute Care Services Research Rural Health Clinics University Physicians Health Plans

**I. Purpose/Population:**

- A. **Purpose:** To inform employees of their right to a leave of absence under the Family and Medical Leave Act of 1993, as amended, and to explain the process for obtaining this leave of absence.
- B. **Population:** All Employees.

**II. Definitions:**

The following definitions are in accordance with the Family and Medical Leave Act of 1993 (“FMLA”), as amended, and its implementing regulations, at the time of approval of this policy. If the definitions under the FMLA or its regulations are amended after this policy is approved, the new definitions will apply. If there is any conflict between the definitions set forth below and a definition under the FMLA or its regulations, the FMLA and its regulations shall control.

- A. **Child (Son or Daughter):** A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *In Loco Parentis*, which means “in the place of a Parent.” The Child must be either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability. However, for purposes of Military Caregiver Leave (defined in Section II.I.) or leave based on a Qualifying Exigency (defined in Section II.M.), the Child may be over 18 years of age.
- B. **Contingency Operation:** A military operation that is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations or hostilities against an enemy of the United States or against an opposing force; or is created by definition of law.
- C. **Covered Military Member:** For purposes of FML for a Qualifying Exigency, a Covered Military Member is: (1) a member of the National Guard or Reserves who is called to active duty in support of a Contingency Operation; or (2) is a member of the regular Armed Forces and is deployed to a foreign country.
- D. **Covered Service Member:** For purposes of Military Caregiver Leave, described in Section III.D., a Covered Service Member is a current member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list, for a serious injury or illness.
- E. **Covered Veteran:** For purposes of Military Caregiver Leave, described in Section III.D., a Covered Veteran is a veteran of the Armed Forces (including the National Guard or Reserves) discharged under conditions other than dishonorable at any time during the five year period before the Eligible Employee first takes Military Caregiver Leave to care for the veteran, and who is undergoing medical treatment, recuperation, or therapy for a qualifying serious injury or illness.
- F. **Eligible Employee:** an employee of Banner Health who:
  - 1. Has been employed by Banner Health for at least twelve (12) months; and
  - 2. Worked at least 1,250 hours during the twelve (12) month period immediately preceding the commencement of the leave.
    - a. If an employee would have met the 1,250 hours to qualify but for intervening military service, he or she remains eligible for FML.

Leave that begins before employee is eligible for FML may start out as “non-FML” leave but, if an employee becomes eligible for FML in the midst of such absence, FML begins from that point forward.

1. If a Banner Health employee worked as a temporary employee (“temp”) during the twelve (12) month period prior to the request for FML, the hours worked as a temp count in determining if the employee is an Eligible Employee under the FML.
- G. **Family Medical Leave (FML):** unpaid leave granted in accordance with the Family and Medical Leave Act of 1993, as amended, to Eligible Employees for the reasons set forth in Section III.C.
- H. **Health Care Provider:** means any of the following health care professionals who may provide certification of a Serious Health Condition, including:
1. Doctors of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) in the state;
  2. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the state and performing within the scope of their practice under state law;
  3. Nurse practitioners, nurse-midwives, and clinical social workers authorized to practice under state law and performing within the scope of their practice as defined under state law;
  4. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;
  5. Any Health Care Provider recognized by Banner or Banner’s group health plan’s benefits manager; and,
  6. A Health Care Provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.
- I. **In Loco Parentis:** Person(s) who is responsible for day to day care and financial support of a Child. *In Loco Parentis* includes a person who was responsible for the day to day care and financial support of an employee when the employee was a Child. A biological or legal relationship is not necessary to establish that a person stands *In Loco Parentis*.
- J. **Military Caregiver Leave:** Twenty-six (26) weeks of unpaid leave granted to an Eligible Employee to care for a Spouse, Child, Parent or Next of Kin who is a Covered Service Member or a Covered Veteran with a serious injury or illness, as described in Section III.D. This twenty-six week period is **not** in addition to the 12 week period set forth in Section III.C. below.
- K. **Next of Kin:** For purposes of Military Caregiver Leave described in Section III.D., “Next of Kin” means the Covered Service Member or Covered Veteran’s nearest blood relative.
- L. **Parent :** A biological, adoptive, step or foster Parent, or an individual who stood *In Loco Parentis* to an employee when the employee was a Child. The term “Parent” does not include parents-in-law.

- M. **Period of Incapacity:** A span of time during which an employee is unable to work, attend school or perform other regular daily activities due to a Serious Health Condition, treatment for the Serious Health Condition, or recovery from a Serious Health Condition.
- N. **Qualifying Exigency:** A need that arises when the Eligible Employee's Spouse, Child (regardless of age) or Parent is a Covered Military Member and the need for leave arises for the following reasons:
1. To address issues arising from the fact that the Covered Military Member is notified of an impending call to duty seven (7) or fewer days prior to the start of deployment;
  2. To attend an official ceremony, program or event sponsored by the military or family support or assistance programs, and informational briefings that are related to the Covered Military Member's active duty or call to active duty;
  3. To arrange for alternate childcare, to provide childcare on an urgent, immediate need basis (not a routine, regular, everyday basis), to enroll or transfer a Child into a new day care program or school, or to attend meetings with staff at a school or daycare facility when the need arises because of the Covered Military Member's active duty or call to active duty;
  4. To make or update financial or legal arrangements to address the Covered Military Member's absence while on duty, or to act as the Covered Military Member's representative at a federal, state or local agency in connection with military service benefits;
  5. To attend counseling when the need for which arises out of the Covered Military Member's active duty or call to active duty;
  6. To spend up to five (5) days with a Covered Military Member on short-term, temporary, rest and recuperation leave;
  7. To attend official ceremonies or programs sponsored by the military for a period of ninety (90) days following the termination of the Covered Military Member's active duty status or to address issues that arise from the Covered Military Member's death while on active duty;
  8. To attend to the needs of a Parent of the Covered Military Member, when the Parent is incapable of self-care and the need arises from the Covered Military Member's covered active duty, such as arranging for alternative care for the Parent, providing care to the Parent on a non-routine, urgent, immediate need basis, admitting or transferring the Covered Military Member's Parent to a new care facility, and attending certain meetings with staff at a care facility, such as meetings with hospice or social service providers; or
  9. To address other events which the Eligible Employee and Banner agree qualify as an exigency.
- O. **Serious Health Condition:** means an illness, injury, impairment, or physical or mental condition that involves:
1. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any Period of Incapacity, or any subsequent treatment in connection with such inpatient care; or
  2. Continuing treatment by a Health Care Provider. A Serious Health Condition involving continuing treatment by a Health Care Provider includes any one or more of the following:
    - a. A Period of Incapacity of more than three (3) consecutive calendar days, and any subsequent treatment or Period of Incapacity relating to the same condition, that also involves:
      - i. Treatment two (2) or more times by a Health Care Provider; or

- ii. Treatment by a Health Care Provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the Health Care Provider.

The first visit must occur within seven (7) days of the employee's or family member's illness or injury. Where two visits are involved, the second must occur within 30 days of the employee's initial illness or injury, unless extenuating circumstances exist (such as, for example, where the provider does not have available appointments). Visits to the provider must be in person.

- b. Any Period of Incapacity due to pregnancy, or for prenatal care.
  - c. Any Period of Incapacity or treatment for such incapacity due to a chronic Serious Health Condition. A chronic Serious Health Condition is one which:
    - i. Requires periodic visits for treatment by a Health Care Provider of at least two (2) times per year;
    - ii. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
    - iii. May cause episodic rather than a continuing Period of Incapacity (e.g., asthma, diabetes, epilepsy, etc.).
  - d. A Period of Incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The Eligible Employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a Health Care Provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
  - e. Any period of absence to receive multiple treatments (including any period of recovery from treatment) by a Health Care Provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a Period of Incapacity of more than three (3) consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).
- P. **Spouse:** A husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law in the state in which the marriage occurred. In the case of a marriage entered into outside of any state, the husband or wife is a "Spouse" if the marriage is valid in the place where entered into and could have been entered into in at least one state. This definition includes an individual in a same sex or common law marriage that either: (1) was entered into in a state that recognizes such marriages; or (2) if entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state. Spouse includes such an individual separated from the employee under a legal separation decree, but does not include a divorced Spouse.

### **III. Policy:**

- A. Banner Health Compliance. Banner Health complies with the legal requirements set forth in the Family and Medical Leave Act of 1993, as amended. This policy may be superseded by applicable state or local laws that require more generous leave benefits.
- B. Administration of FML and Military Caregiver Leave. Banner Health has contracted with Cigna to administer FML and Military Caregiver Leave for Banner Health employees. Cigna administers FML and Military Caregiver Leave in accordance with the Family and Medical Leave Act of 1993, as amended, and the terms of this policy.

- C. Family Medical Leave (FML). Banner Health provides Eligible Employees with up to twelve (12) weeks of FML during a rolling twelve (12) month period (described in Section E below) for one or more of the following reasons:
1. Birth of a Child of the Eligible Employee, and to care for the newborn Child;
  2. Placement with the Eligible Employee of a Child for adoption or foster care;
  3. Care for the Eligible Employee's Spouse, Child, or Parent with a Serious Health Condition;
  4. Serious Health Condition that makes the Eligible Employee unable to perform the functions of the Eligible Employee's job, as determined by a Health Care Provider;
  5. For a Qualifying Exigency that arises: (1) when an Eligible Employee's Spouse, Child (regardless of age) or Parent is a member of the National Guard or Reserves and is called to active duty in support of a Contingency Operation; or (2) when an Eligible Employee's Spouse, Child, or Parent is a member of the regular Armed Forces and is deployed to a foreign country.
- D. Military Caregiver Leave. Banner Health provides Eligible Employees with up to twenty-six (26) weeks of leave during a rolling twelve (12) month period to care for the Eligible Employee's Spouse, Child (regardless of age), Parent or Next of Kin who is:
1. A Covered Service Member with a serious illness or injury incurred in the line of duty on active duty; or
  2. A Covered Veteran with a serious injury or illness that was incurred in the line of duty on active duty, or that existed before the veteran's active duty and was aggravated by service in the line of duty on active duty
- E. Intermittent Leave. Intermittent leave or leave on a reduced leave schedule may be taken because of an Eligible Employee's own Serious Health Condition, the Serious Health Condition of the Eligible Employee's Spouse, Child or Parent, and to care for a Covered Service Member or Covered Veteran with a serious illness or injury. Intermittent leave is appropriate only if there is a medical need for leave and the medical need can best be accommodated through an intermittent or reduced leave schedule. If an Eligible Employee needs leave intermittently or on a reduced leave schedule for planned medical treatment then the Eligible Employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly Banner Health's operations.
- F. Measurement of FML period. The twelve (12) or twenty-six (26) weeks that an Eligible Employee is entitled to take for FML (or Military Caregiver Leave) is measured on a rolling twelve (12) month period which begins on the date the employee first takes FML.
- G. Husband and Wife Both Work for Banner. In the event a husband and wife are both Eligible Employees and both work for Banner (or a Banner subsidiary such as Banner Medical Group or Banner Medical Group Colorado), the FML is limited to a combined total of twelve (12) weeks of FML during any twelve (12) month period if the FML is taken for one or more of the following reasons:
1. Birth of the Eligible Employee's Child or to care for the Child after birth;
  2. Adoption or foster care placement of a Child or to care for the Child after placement; and
  3. To care for one of the Eligible Employee's Parents with a Serious Health Condition.

If a husband and wife are both Eligible Employees, they are jointly entitled to a combined total of twenty-six (26) workweeks of leave during a single twelve (12) month period for Military Caregiver Leave.

- H. Group Health Plan Coverage: In the event an Eligible Employee participates in Banner Health's group health plan coverage, Banner Health continues an Eligible Employee's group health plan coverage during FML and Military Caregiver Leave. The Eligible Employee must continue to pay his/her portion of the group health coverage premiums during the FML/Military Caregiver Leave period. Failure to pay the Eligible Employee's portion of the group health coverage may result in the cancellation of group health plan coverage. An Eligible Employee who does not return from FML/Military Caregiver Leave may be responsible to reimburse Banner Health for the premiums it paid on the Eligible Employee's behalf during FML/Military Caregiver Leave.
- I. Return to Same or Equivalent Position. Upon return from FML/Military Caregiver Leave, an Eligible Employee is restored to his or her original job or an equivalent position with equivalent pay, benefits, and other terms and conditions of employment, provided the Eligible Employee is capable of performing the essential functions of the job. In addition, an employee's use of FML/Military Caregiver Leave will not result in the loss of any employment benefit that the employee earned or was entitled to before using FML/Military Caregiver Leave.
- J. Use of PTO or paid sick time During FML. An Eligible Employee must use accrued PTO or accrued state-specific paid sick time concurrently with FML/Military Caregiver Leave, except where prohibited by state law. If an Eligible Employee has exhausted PTO or paid sick time, any remaining FML/Military Caregiver Leave is unpaid unless he or she is eligible for Workers' Compensation or Short Term Disability benefits. During the unpaid portion of FML/Military Caregiver Leave, the Eligible Employee does not accrue PTO or paid sick time. For further information on Short Term Disability benefits, consult MyHR.
- K. Failure to Return from FML. An Eligible Employee's failure to return to work upon the expiration of FML may be grounds for immediate termination under the following circumstances: (a) the Eligible Employee has been cleared to return to work; or (b) the Eligible Employee has not communicated with his/her manager that he/she is unable to return to work, and has not applied for an extension of FML, Short Term Disability or a Medical or Personal Leave of Absence.
- L. Falsifying Documents. Providing false or misleading information or misrepresentations in connection with FML or Military Caregiver Leave may result in denial or termination of the Leave, and subjects the Eligible Employee to corrective action, up to and including termination.

#### **IV. Procedure/Interventions:**

- A. Applying for FML/Military Caregiver Leave
  - 1. Application for FML/Military Caregiver Leave.
    - a. To apply for FML or Military Caregiver Leave, contact Cigna at 888-842-4462.
  - 2. Eligible Employee's Obligation to Provide Notice to Banner Health of Need For FML or Military Caregiver Leave.

- a. When the need for FML/Military Caregiver leave is foreseeable, the Eligible Employee must provide 30 days advance notice to Banner Health. (Contacting Cigna to request FML/Military Caregiver Leave serves as notice to Banner Health.)
  - b. When the need for FML/Military Caregiver Leave is not foreseeable, or the leave must begin in less than 30 days, the Eligible Employee must provide notice to Banner Health as soon as practicable. It should be practicable for the employee to provide notice of the need for leave either the same day or the next business day. (Contacting Cigna to request FML/Military Caregiver Leave will serve as notice to Banner Health.)
  - c. If an employee is going to be out on an intermittent FML absence that is not foreseeable, call Cigna to notify Cigna that he/she is taking intermittent FML within two calendar days of the start of the FML absence, unless unusual circumstances justify the failure to call within two calendar days. In addition to notifying Cigna, the employee must also follow all department call-in processes for reporting an absence.
  - d. Failure to provide the proper and timely notice may result in a delay of the start of FML or a denial of FML. Absences related to the denial of FML may result in corrective action, up to and including termination of employment.
  - e. If FML is sought for a Qualifying Exigency, the Eligible Employee must provide notice as soon as practicable.
3. Certification of Health Care Provider and Certification of Qualifying Exigency.
- a. When an Eligible Employee contacts Cigna and applies for FML, Cigna gives the Eligible Employee a form called *Certification of Health Care Provider*, which must be completed by the Eligible Employee's (or his/her Spouse's, Child's or Parent's) Health Care Provider and returned to Cigna.
  - b. When an Eligible Employee contacts Cigna and applies for Military Caregiver Leave, Cigna gives the Eligible Employee a form called *Certification of Serious Injury or Illness of Covered Service Member*, which must be completed by the Covered Service Member's Health Care Provider and returned to Cigna.
  - c. When an Eligible Employee contacts Cigna and applies for FML based on a Qualifying Exigency, Cigna gives the Eligible Employee a form called *Certification of Qualifying Exigency for Military Family Leave*, which must be completed by the Eligible Employee and returned to Cigna.
  - d. The Eligible Employee must return the *Certification of Health Care Provider*, *Certification of Serious Injury or Illness of Covered Service Member*, or *Certification of Qualifying Exigency for Military Family Leave* to Cigna within 15 calendar days, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. Failure to do so may result in denial of leave under the FMLA. If the employee is absent on an unapproved leave, the time off is not protected under the FMLA and may be considered an occurrence.
  - e. An Eligible Employee on an unapproved leave of absence may be subject to corrective action up to and including termination.
4. Recertification of Serious Health Condition.  
Cigna may request that a Serious Health Condition be recertified.
- a. Cigna requests recertification no more often than once every thirty calendar days and only in connection with an Eligible Employee's absence, except as otherwise provided in this section.
  - b. If the Health Care Provider has stated that the Serious Health Condition lasts longer than thirty days (e.g., 40 days), then Cigna will not request recertification until the expiration of that longer period (e.g., 40 days).

- c. Cigna may request recertification in less than thirty (30) days if: (a) the Eligible Employee requests an extension of leave; (b) circumstances described by the previous certification have changed significantly; or (c) information is received that casts doubt upon the Eligible Employee's stated reason for the absence or the continuing validity of the certification.
- d. Regardless of the duration of the Serious Health Condition stated by the Health Care Provider, Cigna requests recertification at least once every six months in connection with an Eligible Employee's absence, even if the Health Care Provider stated that the Serious Health Condition would last longer than six months.
- e. Recertification forms must be returned to Cigna by the Eligible Employee within 15 calendar days, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. The Eligible Employee is required to notify Cigna of any delay in return of certification forms.

5. Birth or Placement of Child.

- a. When FML is taken because of the birth or placement of a Child, the Eligible Employee must submit acceptable documentation of the birth or placement.
- b. When FML is taken because of the birth or placement of a Child, Leave may be taken non-consecutively. Such Leave must conclude within 12 months beginning on the date of birth or placement. Note: Where state or local law is more expansive, such law will govern.

B. Returning from FML:

- 1. Return to Work; Occupational Health Clearance. If an Eligible Employee has been on FML for more than three (3) days for his/her own Serious Health Condition, the Eligible Employee must visit occupational health to obtain a return to work clearance prior to returning to work. The return to work clearance must certify that the Eligible Employee is able to return to work and any work restrictions that he/she may have.

C. Employee Responsibilities while on FML:

- 1. Extension of FML. An Eligible Employee must contact Cigna to request an extension of FML if one is needed. Cigna will request appropriate certification to support the request for extension.
- 2. Communication with Leader. Eligible Employees must inform their leaders that they have requested FML/Military Caregiver Leave at the time the Eligible Employee contacts Cigna. Eligible Employees are not required to reveal the reason for the FML/Military Caregiver Leave to their leaders. An Eligible Employee who does not report to work, and fails to inform his/her leader that FML/Military Caregiver Leave has been requested, is subject to corrective action, up to and including termination.
- 3. Working And Other Similar Activities While on FML. If an Eligible Employee works or attends school while on FML for his/her own Serious Health Condition, Banner Health/Cigna will seek additional information to determine whether FML is needed.

**V. Procedural Documentation:**

- A. **Certification of Health Care Provider:** The form completed by the Eligible Employee's Health Care Provider which certifies the need for FML based on a Serious Health Condition or a military injury or illness. There are three versions of this form:
  - 1. Certification of Health Care Provider for Employee – to be used when an Eligible Employee requests FML for his/her own Serious Health Condition.
  - 2. Certification of Health Care Provider for Family Member's Serious Health Condition – to be used when an Eligible Employee requests FML for the Serious Health Condition of his/her Spouse, Parent or Child.
  - 3. Certification of Serious Injury or Illness of Covered Service Member – to be used when an Eligible Employee requests Military Caregiver Leave to care for a covered service member with a serious injury or illness.
  
- B. **Certification of Qualifying Exigency for Military Family Leave:** The form completed by an Eligible Employee who requests FML for a Qualifying Exigency.
  
- C. **Forms are available on [MyHR](#) to assure timely updated material is available for employees and administration.**

## **VI. Additional Information:**

- A. N/A

## **VII. References:**

- A. The Family Medical Leave Act of 1993, as amended; 29 Code of Federal Regulations §825.100 *et seq.*

## **VIII. Other Related Policies/Procedures:**

- A. [Corrective Action Policy](#)
- B. [Banner Health Attendance Policy](#)
- C. [Arizona Paid Sick Time Policy](#)
- D. [California Sick Leave Policy](#)

## **IX. Keywords and Keyword Phrases:**

- A. Family Leave
- B. FML
- C. FMLA
- D. Family Military Leave
- E. Military Care Giver Leave
- F. Benefits
- G. Returning to Work
- H. HRPolicies
- I. Attendance Policy
- J. Corrective Action Policy
- K. CIGNA
- L. Medical Leave
- M. Leave of Absence
- N. Pregnancy
- O. Maternity
- P. Adoption

**X. Appendix:**  
A. N/A