

## EHS Procedure for FMLA Second Opinion Request

### .1 BACKGROUND

#### .110 General Information

The Family and Medical Leave Act (FMLA) was signed into law on February 5, 1993. The effective date of the Act for non-represented employees is August 5, 1993, and February 5, 1994 for employees covered under a collective bargaining agreement.

Employees may request FMLA leave to care for the employee's seriously-ill spouse, son, daughter, or due to the employee's own serious health condition that makes the employee unable to do the duties of his or her position. (See Attendance and Leave Manual Policy Bulletin No. 94-01 for general information on the kinds of circumstances under which FMLA leave must be granted, determining eligibility and the procedures to be followed when such leave is requested.) Where an employee requests FMLA leave to care for a seriously-ill family member or because of the employee's own serious health condition, employers may require such request to be supported by a medical certification issued by the health care provider of the employee or the employee's ill family member. (See Medical Certification Form, Attachment B, Policy Bulletin No. 94-01.)

If an employee submits an incomplete medical certification, agencies must so advise the employee and provide him or her with a reasonable opportunity to provide the missing information. If the employee submits a complete certification signed by a health care provider, an agency may NOT request additional information from the health care provider. If an agency has a valid reason to doubt the validity of a medical certification, they may request the Employee Health Service (EHS) to render a second medical opinion. In the case of a request to care for a seriously-ill family member, EHS, based on its review of the medical certification submitted, will provide an opinion as to whether the family member has a "serious health condition" and whether the employee is "needed to care for" the family member, as those are defined under the FMLA.

In the case of a request for leave due to the employee's own serious health condition, EHS may schedule a medical examination if necessary to determine if the employee has a "serious health condition" which prevents him or her from performing the essential duties of his or her position.

.112            Location - Medical examinations are conducted at the EHS Medical Examination Center and at the Office of EHS consulting physicians located at Amityville, Binghamton, Buffalo, Elmira, New York City, Plattsburgh, Poughkeepsie, Rochester, Stony Brook, Syracuse, Utica, Watertown and White Plains.

.4            PROCEDURES

.411            FMLA requests will be processed under "Agency Referral Examinations" procedures. See SPMM Section 2620 (A) and Attendance and Leave Manual Policy Bulletin No. 94-01.

- A.            In addition to the required information listed in Item 2620 (A), the request must include Form WH-380, Medical Certification Form or its equivalent.
- B.            This information will allow EHS to render an opinion as to whether the employee's request for leave qualifies under the FMLA. EHS will notify the employee and the employing agency of their opinion. The employing agency makes the administrative decision to approve or disapprove the employee's FMLA leave request.
- C.            If the opinion of EHS and the employee's health care provider differ, the employee may request that the employer obtain certification from a third health care provider at the agency's expense. EHS will provide the agency with a list of physicians who are available to render third opinions. The third opinion provider must be agreed to by both the employee and the employing agency.
- D.            The decision of the third opinion provider is binding on both parties.