

U.S. Department of Energy

Washington, D.C.

ORDER

DOE 4220.5

12-19-91

SUBJECT: DEPENDENT CARE PROGRAMS FOR THE DEPARTMENT OF ENERGY
MANAGEMENT AND OPERATING CONTRACTORS

1. PURPOSE. To set forth the policy, responsibilities, minimum requirements, and guidelines to be followed by Department of Energy (DOE) management and operating (M&O) contractors when establishing dependent care programs.
2. SCOPE. The provisions of this Order apply to all DOE Elements and to M&O contractors to the extent set forth in a contract, or transmitted by the contracting officer for compliance in accordance with a contract provision or other agreement.
3. REFERENCES.
 - a. Bureau of Labor Statistics, "Reports of Employer Child-Care Practices," of 1-15-88, which reports private and government employer child care benefits and work schedule policies by size of establishment.
 - b. Comptroller General Decision No. B-222989, of 6-9-88, which concluded that section 139 of P.L. 99-190 does not grant a Federal agency independent authority to enter into leases for child care facilities nor use its appropriated funds for such purposes.
 - c. DOE 3220.1, MANAGEMENT OF CONTRACTOR PERSONNEL POLICIES AND PROGRAMS, of 3-4-81, which establishes organizational responsibilities and procedures for the review and approval of costs for compensation and personal services incurred by DOE contractors.
 - d. DOE 3890.1, CONTRACTOR INSURANCE AND OTHER HEALTH BENEFITS PROGRAMS, Chapter II, of 6-7-85, which prescribes policy and procedures for the review and approval of group insurance and other contractor health benefits programs for DOE M&O and other contractors.
 - e. ENVIRONMENTAL ASSESSMENT FOR THE OPERATION OF THE PINELLAS PLANT CHILD DEVELOPMENT CENTER/PARTNERSHIP SCHOOL, issued by the Secretary of Energy, of 6-26-90, in which he states his support for cooperative ventures and his policy that the DOE, "will not locate child care, schools, or other facilities for children at DOE nuclear weapons complex sites."
 - f. Federal Acquisition Regulation (FAR) 17.601 and Department of Energy Acquisition Regulation (DEAR) Subpart 970.000 which define management and operating contract.
 - g. Internal Revenue Code, Section 21, which describes the child care tax credit for expenses for household and dependent care services necessary for gainful employment.

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All Departmental Elements

INITIATED BY:
Office of Procurement, Assistance
and Program Management

- h. Internal Revenue Code, Section 22(e), which defines permanent and total disability.
- i. Internal Revenue Code, Section 129 (26 United States Code (U.S.C.) 129), which regulates employer provided Dependent Care Assistance Programs (DCAP).
- j. Internal Revenue Code, Section 151 (26 USC 151), 1989, which specifies taxpayer entitlement to deductions including allowance of deductions for disabled dependents.
- k. Internal Revenue Code, Section 501(c)(3), "Charitable Organizations," 501(c)(4), "Employee Organizations," and 501(c)(9), "Voluntary Employee Benefit Associations," which define tax exemptions theoretically available to child care facilities.
- l. Public Law 99-190 (Stat 1323) Section 139(a), of 12-19-85, which permits use of space in existing Federal buildings for child care.
- m. Family Support Act of 1988, which clarifies circumstances under which dependent day care tax credits and/or tax-favored treatment may be received and requires employers to provide information to employees sufficient for them to decide whether they would fare better under the day care tax credit or the flexible spending account.
- n. Tax Reform Act of 1986, which limits the exclusion for dependent care assistance to \$5000 per year or \$2500 per year for a married individual filing separately.
- o. Title 40 USC 490b, which authorizes the provision and renovation of available space in existing Federal facilities rent free and the provision of services including lighting, heating, cooling, electricity, office furniture, office machines and equipment, telephone service, and security systems at no charge for dependent day care centers.

4. DEFINITIONS. See Attachment 1.

5. POLICY.

- a. The needs of employees comprising the workforce at DOE government-owned contractor-operated facilities may give rise to the need for dependent care programs to assure the accomplishment of the DOE mission and to support recruitment and retention of highly qualified individuals, reduce absenteeism and increase productivity and job satisfaction and attain statutorily established goals, such as Equal Employment Opportunity (EEO) and Affirmative Action.
- b. It is DOE policy to assure that contractors managing and operating DOE facilities support a single dependent care program or a combination of programs, as appropriate, which best meet the needs of the workforce within the context of priorities agreed upon between the contractor and

the DOE. As certain forms of dependent care are significantly more expensive than others, contractors must consider the cost of providing such a benefit and the number of employees who will benefit, and select the dependent care option/options which are most equitable yet meet identified employee needs and management objectives.

- c. It is DOE policy that workplace child-care centers or other facilities for children shall not be located at DOE nuclear weapons complex sites.

6. RESPONSIBILITIES AND AUTHORITIES.

a. Director, Office of Procurement, Assistance and Program Management (PR-1) shall:

- (1) Develop and maintain policy and issue guidelines for contractor dependent care programs.
- (2) Provide for advance review and assistance as needed in the negotiation of personnel appendices to assure the inclusion of language that provides for both the needs of the workforce as surveyed by the contractor and provisions outlined in this Order.
- (3) Provide guidance to Contracting Officers and assist cognizant DOE officials responsible for overall activities of the contractor concerning DOE policies, requirements, and guidelines for contractor dependent care programs.
- (4) Appraise the effectiveness of the implementation of DOE policy by cognizant Departmental Elements responsible for overall activities of the contractor.
- (5) Develop and maintain contract language to ensure implementation of this Order.

b. Heads of Field Elements.

- (1) Assure that contractors follow the policy and requirements of this Order when considering dependent care programs.
- (2) Negotiate advance understandings on allowable and unallowable costs for contractor dependent care programs.
- (3) Approve reasonable costs of increasing employee benefits as authorized by DOE 3890.1, for those costs associated with contractor dependent care programs and any substantive expansion.
- (4) Appraise performance of contractor dependent care programs, e.g., assess the number of options offered, the extent of integration with existing employee benefit plans and programs, and the extent to which contractor goals and objectives and employee needs are met.

- (5) Coordinate with the Office of Contractor Human Resource Management prior to approval of dependent care programs.

7. REQUIREMENTS.

- a. General. Dependent care benefit programs for contractor-operated facilities shall be designed in such a way as to best meet identified and empirically assessed employee needs and management objectives. They should, when feasible, be designed to take advantage of the local provider market and be integrated with existing employee benefits.
- b. Types of Dependent Care Program Options. Dependent care programs may be provided through several options.
 - (1) Child Care. Program options include, but are not limited to: information and referral services, family day care home support, consortium of employers, cooperative efforts, extended day programs, workplace or near workplace child care centers, employer secured discounts from existing providers, flextime, flexible personnel and leave policies, and sick child care.
 - (2) Eldercare. Program options include, but are not limited to: information and referral services, home care support, employer negotiated discounts/subsidies with/for elder day care centers, consortia, cooperative efforts, flextime, flexible personnel and leave policies, and long-term care insurance.
- c. Implementation Studies. The approval of the DOE is required prior to implementation of any dependent care program at a DOE-owned contractor-operated facility, and the basis for such approval shall be the findings of contractor/consultant conducted studies which address the following:
 - (1) Employee Needs Assessment. At a minimum an assessment must identify and analyze:
 - (a) Employee demographics.
 - (b) Type and operating features of dependent care currently available.
 - (c) Employee attitudes.
 - (d) The connection between dependent care needs and work problems.
 - (e) Special needs.
 - (2) Management Analysis. Required analysis must provide:
 - (a) An assessment of current and projection of future employment markets.

- (b) Economic projections of future staffing requirements.
- (c) An identification of personnel problems which may be diminishing productivity, e.g., tardiness, turnover, and absenteeism.
- (d) A determination of acceptable levels of turnover, tardiness, absenteeism, etc.
- (e) An analysis of possible acceptable dependent care options and desired level of contractor involvement, i.e., low involvement would be information and referral services and very high involvement would be a workplace day care center.
- (f) An analysis of the implementation of dependent care programs by other employers in the contractor's competitive labor markets.

(3) Market Analyses. Required market analyses:

- (a) Identify and evaluate whether dependent care facilities exist and are available in the area to adequately meet employees' needs as identified in the employee needs assessment.
- (b) Identify the costs, i.e., tuitions/fees, charged by the various dependent care providers within the local area. (A regional analysis may be used if sufficient data is not available from the local area.)

(4) Cost/Benefit Analyses. An analysis of costs and benefits for each potential dependent care option is necessary to determine which option best meets management objectives and employee needs, and must include:

- (a) Cost analyses of direct and indirect costs for year one through three and up to five additional years to the extent reasonable estimates can be made.
- (b) Benefits analyses of quantifiable and non-quantifiable (qualitative) benefits.
 - 1 Examples of quantifiable benefits include, but are not limited to: expected productivity gains; projected reductions in turnover, absenteeism, tardiness, and projected ratios of employment offers to employment acceptances.
 - 2 Examples of qualitative benefits include, but are not limited to: improved employee satisfaction and morale, positive community and public relations, and high quality care.

- (5) Occupational and Radiological Health Evaluations. Any proposed workplace dependent care facility shall include an evaluation that ensures the location, design, construction, and management of the proposed workplace dependent care facility is in compliance with DOE, Federal, State and local policies, regulations, and requirements for environment, safety, and health.
- d. Communication of Dependent Care Options. High quality communication to employees about dependent care programs is essential, especially for options which will be financed through the use of flexible spending accounts. DOE contractors must adequately explain orally and in writing to employees on a regular and as needed basis the nature and types of all dependent care programs as well as any tax implications, program limitations, and exclusions.
- e. Liability. Agreements between contractors and dependent care (program) provider organizations must assure that the contractor and the DOE are held harmless from liability.
- (1) Property damage liability and bodily injury liability insurance policies must be retained by dependent care (program) provider organizations in amounts as appropriate for services provided. The M&O contractors must be added as additional insureds on these policies.
- (2) Agreements between M&O contractors and dependent care (program) provider organizations must ensure that the provider organizations operate, maintain, and upgrade any proposed workplace dependent care facility in compliance with Federal, State and local policies, regulations, and requirements for environment, safety, and health.
- f. Capital Costs. All reasonable capital costs for dependent care program options listed in paragraph 7b(1) and (2), above, when approved by the DOE in advance, shall be considered to be allowable if the type of dependent care program has been validated and accepted by the DOE. Capital costs must be budgeted and accounted for in accordance with DOE requirements related to capital projects. If the results of an implementation study indicate that dependent care needs can be adequately addressed through any option or combination of options other than a workplace or near workplace contractor sponsored dependent care facility, any costs associated with the lease or purchase of such a facility will not be reimbursable.
- g. Program Operations Costs. The costs for labor, materials, and supplies expended for the operation of contractor workplace or near workplace dependent care program will not be made allowable under any circumstance. However, options for employees to finance such costs

through contractor employee benefit programs, subject to the requirements of DOE 3890.1, may be available through such possibilities as: flexible spending accounts, Dependent Care Assistance Programs (DCAP), flexible (cafeteria) benefit plans, and voucher systems.

h. Other Costs. The following costs, if associated with development and implementation of dependent care programs, shall be made allowable.

- (1) Costs incurred for implementation studies when the need for such study has been approved by the DOE in advance.
- (2) Reasonable costs for communication of dependent care programs to employees.
- (3) Support costs associated with making available a dependent care facility approved under the criteria set forth in this Order and located on or contiguous to a government-owned DOE facility for the exclusive benefit of DOE and contractor employees. Such costs may include all or a portion of such expense items as utilities and maintenance as well as food services and medical services or supplies which are already being used in support of site operations and are readily available to additionally support dependent care programs. Such use shall be approved by the DOE Contracting Officer in advance.

BY ORDER OF THE SECRETARY OF ENERGY:



JOHN J. NETTLES, JR.
Director of Administration
and Human Resource Management

DEFINITIONS

1. AFTER SCHOOL CARE. Custodial child care provided for age 13 and younger children immediately following regular school hours.
2. CHILD CARE. Custodial and/or developmental care provided for children up to age 13 which permits their single parent/legal guardian or parents/legal guardians to be employed outside of the home. Includes care provided by baby-sitters, organized child care facilities and family day care homes.
3. COOPERATIVE EFFORTS. Projects and initiatives undertaken by the contractor in cooperation with qualified community professional organizations, government sponsored organizations and joint undertaking by government and community and contractor organizations to foster an increase in the number and quality and/or expand the capabilities of community resources to serve child care/eldercare needs of employees.
4. CONSORTIUM. An arrangement in which a group of employers work together to develop and support a child care center or other dependent care program to serve their employees. Applicable where multiple contractors exist on one site or in connection with community employers.
5. DEPENDENT CARE. Child care, eldercare, and custodial services provided employees' other family members who are legally dependent due to a mental/physical handicapping condition so that employees can go to work. The Internal Revenue Code section 129 definition of dependent applies and includes parents, grandparents and other relatives who regularly spend at least 8 hours each day in the employee's household.
6. DEPENDENT CARE ASSISTANCE PROGRAM (DCAP). Employer provided dependent care assistance regulated by IRC 129. DCAPs may use salary reduction, employer subsidy or a combination of salary reduction and employer subsidy. To provide a preferred tax status employee dependent care benefit, DCAPs must comply with the standards prescribed by the Tax Reform Act of 1986. Nondiscrimination tests apply.
7. DISCOUNT OPTIONS. Employer arrangements with local day care/ eldercare providers for a reduction in the tuition/fee normally charged for each dependent participating in the care arrangement. (The most common discount is 10%.) This form of assistance allows a program to expand and contract with the changing demand of working parent employees.
8. ELDERCARE. Care provided for a parent and/or relative age 65 or older who cannot care for themselves due to a disability problem or serious illness.
9. ELDERCARE CENTERS. Organized custodial care facilities which meet minimum licensing standards in states where required and which provide a range of social and health care support services for a fee during the day for elderly individuals.

10. EMPLOYER SUBSIDIES. Any form of regular financial assistance including reimbursement of employees' dependent care expenses, voucher systems, employer arrangements for discounts or free care, as part of the employee benefits package.
11. EXTENDED DAY PROGRAMS. Organized child care programs which wraparound the normal public school day, i.e., start before school starts and after school ends to extend the hours for which school age children are cared for during the hours and days their parents are at work.
12. FAMILY DAY CARE HOMES. Offer licensed care for up to six children in a home by an individual. Neither DOE nor contractors would assume liability for services so provided.
13. FLEXIBLE LEAVE POLICIES. Includes personal leave to care for short term dependent care needs, extension of maternity or paternity leave or parental leave. Other leave categories such as vacation or sick leave are excluded unless they are flexibly administered.
14. FLEXIBLE PERSONNEL POLICIES. Include such temporary arrangements as part-time work, telecommuting and work at home which may be appropriate options for short-term dependent care problem resolution. Job sharing is also a flexible personnel policy. The need for implementation of any of the temporary arrangements under such policies should be determined on a case by case basis.
15. FLEXIBLE SPENDING ACCOUNT (FSA). A tax favored reimbursement account which permits employees to fund certain qualified benefits on a before-tax basis. Employees may elect to take a salary reduction which is credited to each individual employee's account. Benefits are paid from this account when the employee properly files for reimbursement. FSAs are regulated by IRC 125 which defines and describes qualified benefits and nondiscrimination rules.
16. FLEXTIME. A variable work schedule program in which employees may vary the times their workdays begin and end.
17. INFORMATION AND REFERRAL SERVICES. Services provided by the employer that can range from a simple list of local child care/ eldercare providers to the maintenance of an information system containing such items as availability of space, type of care, etc., that allows the employer to direct employees to the most suitable care providers. However, neither the contractor nor DOE would assume liability for any services/providers selected as a result of any information and referral services so provided. This service does not include informal arrangements such as employee bulletin boards where providers can post notices.

18. JOB SHARING. A flexible personnel policy which includes a formal arrangement whereby work of a single full-time position is performed by more than one employee with prorated salary and benefits.
19. LONG TERM CARE (LTC) INSURANCE. A formal insurance option for the provision of nursing home, home health care and/or some custodial care coverage for employees and their dependents.
20. NEAR WORKPLACE CHILD CARE CENTERS. An organized facility which provides high quality care to meet the custodial and developmental needs of infants and young children (generally up to age 5), and located not more than 3 miles from the worksite with consideration given to the security demands and requirements of the worksite.
21. OPERATION COSTS. Expenses incurred for the operation of a worksite or near worksite dependent care center. There are two types of Operation Costs: program operation costs and facility operation costs.
 - a. Program Operation Costs include expenses for labor (dependent care providers), program instructional/developmental materials and program supplies, such as toys, fingerpaints, paper, modeling clay, administrative forms, and permission slips.
 - b. Facility Operation Costs include expenses for utilities, maintenance, food service, and medical services or supplies already in use on the site and readily available.
22. PARENTAL/FAMILY LEAVE POLICY. A formal contractor human resource management policy which permits employees to take unpaid leaves of absence for a reasonable length of time with guarantee of job reinstatement and continuation of benefits for purposes related to the birth, adoption, or serious illness of a dependent child or relative. In some States parental leave is legally mandated.
23. PART-TIME WORK. A type of flexible personnel policy/system which allows a full-time employee on a temporary basis to voluntarily work fewer hours with reduced pay and benefits.
24. SICK CHILD CARE. Specialized temporary care provided for sick children. Such programs may include care by qualified individual child care providers, the use of services of local hospitals with special sick child care programs or options which operate more like insurance programs, i.e., covering a portion of either in-home or outside care services or a portion of working parents' lost wages.
25. TELECOMMUTE. An arrangement permitted by flexible personnel policies that allows employees to work at home with compensation on a temporary or short-term basis through the use of computer terminals which are linked to contractors' computer networks.

26. VOUCHER SYSTEMS. A system which provides an employer financed (fixed cost) subsidy applied to any form of licensed or registered child care/eldercare or some specified form of licensed or registered dependent care. The dollar amount may be a flat amount or percentage of fixed costs up to a maximum.
27. WORK AT HOME. A type of flexible personnel policy which permits arrangements that allow employees to work at home, with compensation on a temporary or short term basis. Includes telecommuting or picking up assignments at the contractor's facility and doing them at home.
28. WORKPLACE CHILD CARE CENTERS. An organized facility which provides high quality care to meet the custodial and developmental needs of infants and young children (generally up to age 5), and which is located at the contractor worksite/physical plant.