

**CHILD CARE SERVICES ON VETERANS HEALTH ADMINISTRATION (VHA)  
PROPERTY**

- 1. REASON FOR ISSUE:** This Veterans Health Administration (VHA) Handbook defines procedures for the establishment and operation of child care centers on VHA property.
- 2. SUMMARY OF MAJOR CHANGES:** This revised VHA Handbook contains procedures for Criminal History Background Checks for employees of child care centers operating on VHA properties involved in the provision of child services to children under the age of 18.
- 3. RELATED DIRECTIVE:** None.
- 4. RESPONSIBLE OFFICE:** VHA's Office of Workforce Management and Consulting (WMC), Office of Child Care (10A2A2-CC) is responsible for the contents of this VHA Handbook. Questions may be referred to 202-461-7279.
- 5. RESCISSION:** VHA Handbook 1025.02, dated March 31, 2010 is rescinded.
- 6. RECERTIFICATION:** The VHA Handbook is scheduled for recertification on or before the last working day of November 2020.

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Under Secretary for Health

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**CONTENTS**

**CHILD CARE SERVICES ON VETERANS HEALTH ADMINISTRATION  
PROPERTY**

1. PURPOSE..... 1

2. BACKGROUND..... 1

3. DEFINITIONS..... 2

4. SCOPE..... 3

5. RESPONSIBILITIES ..... 3

6. CHILD CARE LEASING PROGRAM..... 8

7. CHILD CARE LEASING AUTHORITIES AND OTHER USE OF SPACE..... 10

8. PERMISSIBLE MANAGEMENT MODELS..... 11

9. FUNDING..... 12

10. FUNDRAISING..... 13

11. CHILD CARE STANDARDS ..... 14

12. SECURITY REQUIREMENTS ..... 15

13. REFERENCES:..... 17

APPENDIX A.....A-1

APPENDIX B.....B-1

## CHILD CARE SERVICES ON VETERANS HEALTH ADMINISTRATION (VHA) PROPERTY

### 1. PURPOSE

This Veterans Health Administration (VHA) Handbook defines procedures for the establishment and operations of child care services on VHA property for Department of Veterans Affairs (VA) personnel. It is applicable to all child care centers operating and proposed to operate on VHA property. **AUTHORITY:** 40 U.S.C. 590. **NOTE:** *This Handbook does not apply to child care programs operated through a pilot program authorized by section 205 of Public Law 111-163, Caregivers and Veterans Omnibus Health Services Act of 2010.*

### 2. BACKGROUND

a. While a VA statute specifically authorizes the Secretary of Veterans Affairs to furnish child care through the Veterans Canteen Services (VCS), VA has never provided child care through VCS (see 38 U.S.C. 7809). In July 1991, this authority was re-delegated to the Associate Chief Medical Director for Operations (Re-delegation Memorandum dated July 19, 1991, and signed by the Secretary of Veterans Affairs). The VHA Child Care Program is currently aligned with VHA Central Office, Workforce Management and Consulting (WMC) Office (10A2A2-CC).

b. Legal Authority, in accordance with 40 U.S.C. 590, "Tribble Amendment," and General Services Administration (GSA) regulations at 41 CFR 102-79.25, VA may:

(1) Provide space, equipment, and other services (as defined in paragraph 3.b.) necessary to support the operations of child care facilities on VA property under the following conditions:

(a) The child care provider applies to the allotment officer in the community or district in which child care services are to be provided;

(b) The space is available;

(c) At least 50 percent of the children at the child care facility have one parent or guardian employed by the Federal Government; and

(d) The provider will give priority to Federal employees for available child care services in the space.

(2) Pay accreditation fees, including renewal fees, for the child care facility to be accredited by a nationally recognized early-childhood professional organization.

(3) Pay travel and per diem expenses for representatives of the child care facility to attend the annual National Association for Early Childhood Programs (NAEYC) Child Care Conference.

(4) Enter into a consortium with one or more private entities whereby the private entities assist in defraying costs associated with the salaries and benefits for personnel providing child care services at the facility.

### 3. DEFINITIONS

a. **Enhanced Use Lease.** The enhanced use leasing (EUL) authority allows VA to receive money as consideration, or no consideration at all, in return for granting long-term leases (up to 75 years) of unused and available VA real property. **NOTE:** See 38 U.S.C. 8161 *et. seq.* for additional provisions on the EUL authority.

b. **Enhanced Health Care Resource Sharing Agreement.** The Enhanced Health Care Resource Sharing Authority authorizes contracts or agreements for the mutual use, or exchange of use, of health care resources, including use of space agreements, between VA health care facilities and any health care provider, other entity, or individual. **NOTE:** See 38 U.S.C. 8153 for additional provisions on the enhanced health care resources sharing agreement.

c. **Out lease.** Out lease is the leasing of VA real property to public or private interests outside of VA for up to 3 years. In such cases, VA is the lessor. **NOTE:** See 38 U.S.C. 8122 for additional provisions on the out lease authority. (Reference VA Delegation Memorandum, July 15, 2011, Information Letter (IL) 00CFM-11-01).

d. **Revocable License Agreement.** A revocable license agreement is permission to enter upon and conduct a specific act or series of acts upon the land of the licensor without possession or acquiring any estate. This license may be revoked by the Medical Center Director at any time with or without cause.

e. **Services.** Services are defined by the Tribble Amendment as: lighting, heating, cooling, electricity, office furniture, office machines and equipment, classroom furnishings and equipment, kitchen appliances, playground equipment, telephone service (including installation of lines and equipment and other expenses associated with telephone services), and security systems (including installation and other expenses associated with security systems), including replacement equipment, as needed. Services do not include medical services provided by VA. However, on a humanitarian basis, VA may provide hospital care or medical services in case of emergencies (see 38 U.S.C. 1784). VA must be reimbursed for such emergency care.

f. **Tribble Amendment.** The Tribble Amendment; found at 40 U.S.C. 590, gives Federal agencies the authority to provide space, equipment, and services to support the establishment and operation of child care centers for Federal

families. At least 50 percent of the children enrolled in a child care center must have one parent or guardian who is a Federal employee, and the provider must give priority to Federal employees for available child care services in the space. Remaining available slots in the VA child care center may be opened to the general public.

g. **Vulnerability Assessment.** Vulnerability assessment is an individual building security assessment designed to determine the specific security measures needed to eliminate or reduce threats directly associated with each individual building.

#### 4. SCOPE

The VHA Child Care Program is aligned within the WMC Office of Child Care (10A2A2-CC). The VHA Office of Child Care is responsible for all matters nationwide related to the provisions of child care services for VA employees, including policy guidance, program management, and technical assistance. Any VHA facility interested in establishing child care services on VHA property must contact the WMC Office of Child Care for information, start-up guide, and technical guidance.

a. **Child Care Subsidy Program.** In accordance with section 630 of Public Law (Pub. L) 107-67, VA may pay a percentage of child care costs directly to the provider of choice that is licensed and regulated by the State or local regulating authorities for qualifying employees. **NOTE:** *Information regarding VA's Child Care Subsidy Program may be obtained from VA Central Office Human Resources Management, Child Care Subsidy (05CCSP) Program or by visiting the intranet Web site: <http://vaww.va.gov/OHRM/CCSP/> (this is an internal Web site and is available to VA employees only) or <http://www.va.gov/OHRM/WorklifeBenefits/vachildcare.asp>. To apply for child care subsidy benefits, the online application process is available at: <http://vaww.va.gov/OHRM/ccsp/Application.asp> (this is an internal Web site and is available to VA employees only). Information about the online application process is also available in Human Resources offices at local field facilities.*

b. **Primary Mission.** The primary mission of the VHA Child Care Program is to assist VA employees in meeting their child care needs and to ensure that VA and Federal families receive quality child care services.

#### 5. RESPONSIBILITIES

a. **VHA Office Of Child Care.** The VHA Office of Child Care has oversight responsibilities for all child care programs on VA property nationwide. The VHA Office of Child Care develops minimum standards for child care programs located on VA property based on relevant authorities. The VHA Office of Child Care may also monitor and assess child care facilities to verify conformance with minimum nutritional, health, and safety standards, as well as Federal, State, and local statutory and regulatory requirements. Site visits are conducted for this

purpose. A child care center must have an initial site visit within 1 year of becoming operational. The VHA Child Care Program Manager is responsible for the initial and subsequent child care center site review. The VHA Office of Child Care is the final authority for review and concurrence on all child care out leases, agreements, permits, and licenses granted under the authorities listed in paragraph 6. Consultation services to field facilities establishing and operating child care programs on VA property is also provided by the VHA Office of Child Care. As needed, the VHA Office of Child Care may consult with the Center for Leasing Excellence (10NA2).

b. **VA Central Office Human Resources Management.** The Office of Human Resources Management is responsible for administering the child care subsidy program and providing consultation services regarding the child care subsidy program. The Office of Human Resources Management also maintains and updates the national list of child care centers operating on VA property.

**NOTE:** *The national list of child care centers is available at <http://www.va.gov/OHRM/WorklifeBenefits/vachildcare.asp>.*

c. **Veterans Integrated Service Network Director.** Each VISN Director is responsible for reviewing and approving proposals to establish child care programs within their respective VISN, as appropriate.

d. **Office Of Regional Counsel.** The Office of Regional Counsel is responsible for reviewing and concurring on, prior to execution, all out leases, revocable licenses for less than 5 years, and permits affecting or involving real property in which VA has an interest, or over which VA has control. The Office of Regional Counsel is responsible for providing legal advice on child care issues at local facilities within its jurisdiction.

e. **Office Of Asset Enterprise Management And The Office of Interagency Health Affairs.** The Office of Asset Enterprise Management and the VHA Office of Interagency Health Affairs are responsible for evaluating the potential for child care projects, determining the suitability, and negotiating leases under 38 U.S.C. 8161 et seq. and use of space agreements under 38 U.S.C. 8153, respectively.

f. **VA Medical Facility Director.** The VA Medical Facility Director or designee is responsible for:

(1) Ensuring that child care reflects favorably upon VA, and the VA medical facility.

(2) Establishing and providing oversight of a local child care committee responsible for assessing needs, completing market surveys, and determining the feasibility of various management models for provisions of child care services.

- (a) Selecting a preferred child care management model.
- (b) Designating available space or land.
- (c) Submitting necessary documentation to prepare a lease and other legal or contractual agreements with the child care provider.
- (d) Developing the construction project, out lease proposal, or enhanced use lease proposal, and submitting the project through appropriate offices for review and approval.
- (e) Designating an individual to serve as the management liaison with the child care provider and the VHA Office of Child Care.
- (f) Providing services only as authorized by law (40 U.S.C. 590).
- (g) Ensuring that all State and local child care licensure regulations are met and that proper licensing is obtained.
- (h) Providing information about existing on-site child care services, as well as the VA child care subsidy program when recruiting new employees and during new employee orientation sessions.
- (i) Ensuring that all national and local labor obligations are met.
- (j) Ensuring the medical facility's Office of Information and Technology (OI&T) ensures:
  - (3) All child care providers operating on VHA property are in compliance with all privacy and information security requirements.
  - (4) VHA Office of Child Care is notified when a child care center Director's access is denied due to breaches in information security.
- (a) Notifying VA stakeholders and the VHA Office of Child Care of all anticipated closures of child care centers. Written notice to the VHA Office of Child Care must be submitted at least 90 days prior to closing. The notice must include the date and reason for closure.
- (b) Ensuring Child National Agency Check with Inquiries (CNACI) processing for all employees, contractors, or volunteers that work at child care centers.
- g. **Local Child Care Committee.** A child care committee is a voluntary group comprised of individuals from a local facility with a broad base of representatives from all departments, including union employees. A chairperson for the committee must be designated by the local child care committee or local medical facility management. An active Child Care Committee is an important

first step to assessing and planning for a child care center. The Child Care Committee is responsible for:

- (1) Analyzing facility resources and mission.
- (2) Surveying employees for interest and support of a child care center.
- (3) Conducting a market survey of community child care centers to determine whether or not the market is saturated with child care centers in a geographic location, evaluating information, setting goals, and setting target dates for establishing child care services at medical facilities. **NOTE:** *The Child Care Committee is disbanded when the center is established.*

h. **Child Care Facility Board of Directors.** The child care facilities Board of Directors is a voluntary group usually composed of a variety of individuals from the local facility and community (optional). **NOTE:** *The model with a Board of Directors is optional because some facilities hire a provider directly without a Board of Directors. For those facilities with a Board of Directors but which do not open enrollment to the community, their Board of Directors' membership may not include community representation. Others may not include community representation even when they open enrollment to the community if there are no community individuals interested in serving on the Board of Directors.*

(1) **Functioning Characteristics.** The Board of Directors is responsible for oversight and management of the child care provider. The Board of Directors should:

- (a) Be of a manageable size, between five and eleven members.
- (b) Have broad and diverse representation with expertise in several key areas, such as administration, finance, child development, and fundraising.
- (c) Ensure membership has a vested interest in the operation of the Child Care Center by being able to participate in board decisions such as tuition and fees establishment, receiving and reviewing center reports, concurring in the choice of employees for the center and participate in scheduled meetings.
- (d) While a Board of Directors is not required by all management models, an incorporated board (a non-profit entity) is recommended to ensure and oversee the long-term viability of the center. Specific responsibilities assigned to the Board of Directors depend upon the model selected.

(2) **Board of Director's Insurance.** The Volunteer Protection Act of 1997 (42 U.S.C. 14501-14505) provides certain protections to volunteers, non-profit organizations, and governmental entities in lawsuits based on the activities of volunteers. State laws may provide additional protection from liability relating to volunteers or to any category of volunteers in the performance of services for a non-profit organization or governmental entity. Since the board is not directly



responsible for hiring and firing decisions, the need for board insurance must be evaluated. **NOTE:** *Hiring and firing is the provider's responsibility. The Board of Directors has the responsibility for purchasing general liability insurance or Directors' and Officers' liability insurance, which directly focuses on claims involving management and governance errors. Most boards are named as coinsured parties on the provider's liability insurance policy.*

**(3) Conflict of Interest for Federal Employees.**

(a) Board members who are Federal employees must be mindful of certain criminal conflict of interest laws, which generally prohibit personal and substantial participation in VA matters affecting the interests of entities whom an employee serves as a Director. Further, these laws generally prohibit employees from representing non-Federal persons or entities before any Federal agency or court (see 18 U.S.C. 203, 205, 208, and 216).

(b) However, if not inconsistent with the faithful performance of an employee's duties, an employee may, without compensation act, as an agent or attorney, or otherwise represent any cooperative, voluntary, professional, recreational, or similar organization or group not established or operated for profit, if a majority of the organization's or group's members are current officers or employees of the United States or the District of Columbia, or their spouses or dependent children, unless the representation is in connection with:

(c) Claims against the United States or District of Columbia;

(d) A judicial or administrative proceeding where the organization or group is a party; or

(e) A grant, contract, or other agreement (including a request for a grant, contract or other agreement) providing for the disbursement of Federal funds to the organization or group.

**(4) Board Representation.** A VA employee serving as a member of the child care provider's board may represent the child care provider at VA or another agency provided that a majority of the children cared for by the provider have at least one Federal parent or guardian and the representation is not in connection with a matter described in proceeding subpar. 14c (2)(a)-(c).

(a) Any questions as to whether an employee board member's representation of their respective provider would violate criminal conflict of interest law should be referred to the OGC Ethics Specialty Team, in VA Central Office to the Designated Agency Ethics Official (DAEO) Assistant General Counsel (023), at, OGC023Ethics@va.gov or in the field as follows:

1. ME, NH, VT, MA, RI, CT, NY, NJ, DE, PA, OH, WV, MI, WI –  
[OGCNorthEastEthics@va.gov](mailto:OGCNorthEastEthics@va.gov).

2. VA, NC, SC, GA, FL, MS, AL, LA, southern TX, Puerto Rico-  
[OGCSouthEastEthics@va.gov](mailto:OGCSouthEastEthics@va.gov).

3. DC, MD, IN, KY, TN, AR, MO, IL, IA, MN, ND, SD, NE, KS-  
[OGCMidwestEthics@va.gov](mailto:OGCMidwestEthics@va.gov).

4. TX, OK, NM, AZ, CO, UT, WY, MT, ID, NV, CA, OR, WA, HI, AK, Guam,  
Phillipines- [OGCWestEthics@va.gov](mailto:OGCWestEthics@va.gov).

(b) VA employees may not serve on a child care provider board in their official capacity or during hours of service, as these boards do not constitute a VA activity. VA employees who wish to serve on the board and who, in their VA capacity have responsibilities involving the on-site child care center, need to consult with the DAEO for employees in VA Central Office, or, for field-based employees, the appropriate office of the Ethics Specialty Team as noted above, to safeguard against conflicts of interest. **NOTE:** *VA management liaisons (designated per par. 12(g) with the child care center may, in their official capacity, also liaise with the provider's board to provide VA's views to the provider.*

i. **Parent Advisory Group.** After a child care center is established, an advisory group may be formed comprised entirely of parents of children currently enrolled in child care center. This parent advisory group is responsible for observing the daily activities within the child care center, and making recommendations to the Board of Directors about the operations of the center. This parent advisory group only serves in an information-sharing capacity, and does not define policy or become directly involved in the actual operations of the child care center.

## 6. CHILD CARE LEASING PROGRAM

a. **Compliance.** All child care out lease agreements must be in compliance with VHA leasing policies and VHA Office of Child Care requirements regardless of the type of authority used to establish on-site child care services. All requirements must be delineated in the lease agreement or included in the proposed lease package when submitted to VHA Office of Child Care for review, concurrence, and approval (see Appendix A). Providing evidence of compliance is a prerequisite to obtaining a child care lease agreement.

b. **Additional Lease Compliance Requirements.**

(1) New and lease renewal agreements for Child Care Centers must contain the Child Care National Agency Check with Inquiries (CNACI) language indicating that the CNACI background checks have been conducted, and evidence must be provided to the VAMC Medical Director to ensure background checks are complete for current employees of the Child Care Center. See Appendix B for complete background check procedures and requirements.

(2) A modification for all revocable leases for child care centers shall be executed by the medical facility to include the required CNACI language per VHA Handbook 1025.02.

(3) Within a year prior to the expiration of a current lease agreement or prior to the exercise of an option period, the VAMC Medical Center Director shall notify the VHA Child Care Center Director that the required CNACI language in the VHA Handbook 1025.02 will be incorporated in the agreement.

c. **Requirements Prior to Obtaining a Lease Agreement.** The following child care lease requirements must be met prior to obtaining a lease agreement to operate on VA property:

(1) Obtain a license to operate a child care center. The license must remain current during the terms of the lease agreement. This requirement is waived for centers operating in States that do not issue a State license on Federal property. However, these centers must be in compliance with State licensure regulations.

(2) Maintain a minimum of \$1,000,000 in liability insurance.

(3) Maintain adequate fire insurance to cover the space occupied by the child care center (unless waived by the sponsoring Medical Center Director). A letter signed by the Medical Center Director or designee, certifying that the amount of fire insurance is adequate, is required.

(4) Ensure that criminal history background checks are initially conducted for all employees involved in the provision of child care services to children under the age of 18 in accordance with 42 U.S.C. 13041. Providing evidence that these criminal history background checks have been conducted is a prerequisite for obtaining a lease. As such, all VA lease agreements for child care centers will ensure employment applications use specific language, required by law, asking whether the individual has ever been arrested for or charged with a crime involving a child, and if so requiring a description of the disposition of the arrest or charge. The employment application must state that the application is being signed under penalty of perjury. Any allegation, arrest, or conviction for a sex crime, an offense involving a child victim, or a drug felony may be grounds for denying employment or for dismissal of an employee involved with the provision of child care services to children under the age of 18. If the person has been arrested or convicted of any other crime that bears on an individual's fitness to have responsibility for the safety and well-being of children, this may be considered as well. (See Appendix B for complete criminal background procedures and requirements).

(5) Achieve accreditation by the NAEYC. Centers must have an initial site visit after 1 year of operation and every 3 years thereafter. Site visits are conducted by the VHA Child Care Program Manager. The child care provider must maintain accreditation through the renewal process of the National Association of Early Childhood Programs during the child care provider's tenure

on VA property. Child Care Centers who fail to maintain their certification or allow certification expire must begin the process of re-accreditation thru NAEYC within (6) months of NAEYC certification expiration. This requirement does not apply to child care services established under the Revocable License authority.

Programs established under this authority generally are not full-service child care programs, such as summer camp, or before and after school programs. These intermittent programs are not subject to accreditation, as the accreditation body does not accredit intermittent programs.

(6) Comply with all Federal, State, and local regulations governing the operations of child care centers and the provisions of this Handbook.

(7) Be subject to site visits by the VHA Office of Child Care to ensure conformance with Federal, State, and local regulations. VHA Child Care Centers are subject to periodic site reviews from the National Child Care Program Office. Reviews will be coordinated in advance between the Child Care Center, the hosting VAMC and the NCCP Office. The review cycle will average bi-annually, but may vary at the discretion of the National Child Care Program Manager.

**7. CHILD CARE LEASING AUTHORITIES AND OTHER USE OF SPACE** The following authorities are used to establish child care services on VA property:

a. **Enhanced Health Care Resource Sharing Authority (38 U.S.C. 8153).**

The Enhanced health care resource sharing authority authorizes contracts or agreements for the mutual use, or exchange of use, of health care resources between VA health care facilities, including use of space agreements, and any health care provider, or other entity or individual for up to 5 years. Information regarding the establishment of child care services under this authority must be directed to the VHA Office of Interagency Health Affairs. All proposed sharing agreements for child care programs must be submitted to the VHA Office of Child Care for review and concurrence to ensure all applicable child care requirements are included in the sharing agreement.

b. **Out lease Authority (38 U.S.C. 8122).** Out lease authority is the leasing of VA-owned real property to public or private interests outside of VA for up to 3 years. In such cases, the local facility is the lessor. Proposed out lease agreements for new or existing child care programs must be submitted to the Office of Child Care at least 60 calendar days prior to the operation of a new center or the expiration of an existing out lease agreement. All proposed out lease agreements for child care programs must be submitted to the VHA Office of Child Care for review and concurrence to ensure all applicable child care requirements are included in the out lease agreement. (Reference VA Delegation Memorandum, July 15, 2011, Information Letter (IL) 00CFM-11-01).

c. **Revocable License Agreement.** A revocable license agreement is permission to enter upon and conduct a specific act or series of acts upon the land of the licensor without possession or acquiring any estate. A revocable license agreement legalizes an act, which in the absence of the license would

constitute a trespass. A license is personal and non-assignable (unless by agreement) and is revocable at any time. A revocable license is not recommended for a full service child care program. It is utilized only for intermittent programs, such as summer camp programs. All proposed revocable license agreements must be submitted to the VHA Office of Child Care for review and concurrence to ensure all applicable child care requirements are included in the revocable license agreement.

## 8. PERMISSIBLE MANAGEMENT MODELS

a. **Public-Private Ventures.** In this case, under the provision of the enhanced use leasing authority of 38 U.S.C. 8161 et seq., VA may lease its land or space, over a long-term, to a child care provider who will provide child care services to VA employees. These joint ventures are individually developed and are unique to each geographic location. VA may also enter into a consortium with other agencies to provide child care services to VA employees. All EULs must be conducted in accordance with the established procedures for such leases.

b. **VA Lease with Public or Non-Profit Provider.** In this case, VA leases existing renovated space to a non-profit provider for the operations of a child care program. VA may provide space, equipment, and other services (as defined in paragraph 3.b.) necessary to support the operations of child care facilities on VA property. (Reference Title 40 U.S.C. 590) (Reference Title 38 U.S.C. 8122).

(1) The non-profit provider is responsible for all aspects of operation of the child care center and furnishes all operational supplies.

(2) An annual lease fee may be required of the provider and the fee may be a nominal amount of \$1 per year provided that at least 50 percent of enrollees are dependents of Federal employees, or VA may lease the space without monetary consideration, so long as the provider agrees to maintain, protect, or restore the property. **NOTE:** *This fee only applies to leases executed under authority provided by 38 U.S.C. 8122.*

(3) VA may provide grounds and building maintenance and sanitation services in VA space regardless of the percentage of enrollees who are dependents of Federal employees.

c. **VA Lease with Public or For-Profit Provider.** In this case, VA leases existing renovated space to a public or for-profit provider for the operation of a child care program. VA may provide space, equipment, and other services (as defined in paragraph 3.b.) necessary to support the operations of child care facilities on VA property.

(1) The public or for-profit provider is responsible for all aspects of operation of the center and furnishes all operational supplies.

(2) Rent, up to the market value of the space leased, may be required of the provider, or VA may lease the space without monetary consideration, so long as the provider agrees to maintain, protect, or restore the property.

(3) VA may provide grounds and building maintenance and sanitation services in VA-owned space regardless of the percentage of enrollees who are dependents of Federal employees.

d. **VA Lease with Non-Profit Child Care Board of Directors.** In this case, VA leases existing renovated space to a non-profit child care Board of Directors for the operation of a child care program. VA may provide space, equipment, playground area, playground equipment, furnishings, utilities, telephone services, security, grounds and building maintenance, and sanitation services.

(1) The Board of Directors may directly operate or contract with a non-profit or for-profit provider.

(2) An annual fee may be required of the Board of Directors or a child care provider up to the market value of the space leased, or VA may reduce the fee to a nominal amount provided that at least 50 percent of the enrollees are children of Federal employees and the lease is to a public or non-profit organization.

(3) Pursuant to the Competition in Contracting Act (CICA), which is codified at 41 U.S.C. 3301-3312, leases must be procured through the competitive procedures set forth in the Federal Acquisition Regulation (FAR)/General Services Acquisition Regulations (GSAR), unless a justification for Other Than Full and Open Competition is prepared and approved in accordance with FAR Subpart 6.3 and VA Acquisition Regulation (VAAR) section 806.302.

(4) VA may provide grounds and building maintenance and sanitation services in VA space regardless of the percentage of enrollees who are dependents of Federal employees.

## 9. FUNDING

a. **Acquisition or Construction of Facilities.** Authority granted by 38 U.S.C. 8103(a) provides that the Secretary of Veterans Affairs may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, any facility (including the site of such facility) that the Secretary considers necessary for use as a medical facility. Title 38 U.S.C. Section 8101(3) defines a "medical facility" as any facility or part thereof which is, or will be, under the jurisdiction of the Secretary of Veterans Affairs for the provision of health care services (including hospital, nursing home, or domiciliary care or medical services) including any necessary building and auxiliary structure, garage, parking facility, mechanical equipment, trackage facilities leading thereto, abutting sidewalks, accommodations for attending personnel, and recreation facilities associated therewith.

(1) The provision of child care services enhances recruitment and retention of health care personnel and thereby furthers VA's health care mission. Therefore, child care centers established for the benefit of employees at a VA medical facility, as defined above, would be considered a medical facility for the purposes of 38 U.S.C. 8101(3) and 8103(a). Consequently, the Secretary of Veterans Affairs may construct, purchase, alter, or lease structures under 38 U.S.C. 8103(a) in order to establish child care services at medical facilities.

(2) Construction projects for child care facilities on VA property must be funded as follows:

(a) From the medical care appropriations capital account, at the discretion of the medical facility Director, if the minor improvement project cost is under \$500,000.

(b) From the minor construction account, if the minor improvement project cost is between \$500,000 and \$10,000,000.

(c) From the major construction account, if the project cost is over \$10,000,000.

b. **Excess Federal Property Program.** VA facilities are authorized and encouraged to screen available unused personal property for possible reassignment to child care centers operating at local medical facilities (see 41 CFR 102-36.45(e)(1)).

c. **Local Medical Facility Funding.** If the child care center is located at a local VA medical facility, funds for children's furnishings may be drawn from the medical care appropriations capital account.

d. **Tribble Amendment.** Authority granted by the Tribble Amendment significantly reduces operating costs. (40 U.S.C. 590) If at least 50 percent of the enrollees at the child care center are dependents of Federal employees and if priority is given to Federal employees for available child care services, the Tribble Amendment authorizes:

(1) Space to be used by child care providers without charge for rent or services.

(2) VA to provide space, equipment, and other services (as defined in paragraph 3.b.) necessary to support the operations of child care facilities.

## 10. FUNDRAISING

a. **Combined Federal Campaign.** While regulations governing use of Federal space generally prohibit fundraising except for Combined Federal Campaign (CFC), there is an exception for "solicitations conducted by organizations composed of civilian employees or members of the uniformed services among their own members for organizational support or for the benefit

of welfare funds for their members,” (see 5 CFR 950.102(d) specifically, and 38 CFR 1.218(a)(8) generally). The Office of Personnel Management (OPM), which has primary responsibility for the CFC, has determined that “child care centers located at Federal installations fall within this exception and, therefore, special solicitations may be conducted under the policies and procedures approved by the head of the department or the agency that sponsors the child care center.” See Office of Personnel Management Memorandum for Directors of Personnel, “Special Solicitation for Child Care Centers Located at Federal Installations,” October 29, 1999.

(1) OPM informally advised that they interpret “location of Federal installations” to include those child care centers located nearby that serve as Federal facilities. Therefore, employees could raise funds in the workplace for a child care center serving their VA medical facility. All fundraising activities are subject to the approval of the medical facility Director.

(2) OPM requires that child care fundraising not take place during CFC.

b. **Other Potential Sources.** Employee Associations and local bargaining units can be instrumental in planning and conducting fundraising activities.

c. **Provider-Sponsored Fundraising.** Child care centers have the authority to conduct fundraising activities within the confines of the space that is designated in the lease agreement. However, it is possible for the parties to agree in the contract between the Board of Directors and the provider that fundraising is not to be conducted within the child care center’s space. OPM’s guidance on this issue is not meant to limit the opportunities for child care centers to seek support from non-Federal sources, from Federal employees outside the workplace, or to limit the opportunity for a Federal employee in a private capacity to support the centers. See OPM Memorandum, October 29, 1999. ***NOTE: If a child care center wishes to hold a fundraiser in a Federal building within the confines of the space that is designated in the lease agreement, the sponsor must have a tax-exempt designation from the Internal Revenue Service or have applied for non-profit status.***

d. **Recycling Program.** Pub. L. 107-67, 607, authorizes all Federal agencies to use the proceeds from the sale of recycled materials to support “employee programs.” Designating funds to a Board of Directors’ tuition assistance program is an authorized use of these funds. The Board of Directors may contact the sponsoring agency regarding the possibility of receiving recycling funds.

## 11. CHILD CARE STANDARDS

VA must not allow a child care center to operate in its space unless the center meets the following standards:

a. NAEYC Accreditation Criteria;



- b. General Services Administration (GSA) Standards, GSA Child Care Center Design Guide;
- c. Consumer Product Safety Commission (CPSC) Guidelines and Standards for Playgrounds and Safety Requirements;
- d. American with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101-12213; and
- e. State licensing standards and any local licensing standards.

## 12. SECURITY REQUIREMENTS

a. **Information Security Requirement.** VA must not allow a child care center to operate in a VA space, unless all employees of the center who must have access to VA information or information systems meet the privacy and information security requirements in 38 U.S.C. 5723(f), which include requirements to:

- (1) Complete the VA security and privacy awareness training initially and annually, after.
- (2) Sign and acknowledge the VA National Rules of Behavior on an annual basis.
- (3) Read and maintain copies of VA Directive and Handbook 6500, Information Security Program; VA Directive 6502, VA Enterprise Privacy Program; VA Handbook 6500.6, Contract Security; and other applicable information security policies of VA or the facility, to include the requirements for a Personal Identity Verification (PIV) card in accordance with VA Directive 0735, Homeland Security Presidential Directive-12 Program.
- (4) Notify OI&T when employment of a child care center employee is terminated. The child care center Director must also be aware of the process required to terminate access when discontinuing employment with the child care center.

b. **Liability Requirements.** VA must not allow a child care center to operate in a VA space unless the center meets the following liability requirements:

- (1) Ensure initial criminal history background checks are conducted for all its employees, contractors and volunteers. (See Appendix B for complete criminal background procedures and requirements).
- (2) Maintain a minimum of \$1,000,000 in liability insurance.
- (3) Maintain fire insurance in an amount that is adequate to cover the space occupied by the center (unless waived by the sponsoring agency director). The Medical Center Director or designee must certify in writing that the amount of fire insurance coverage is adequate to cover the VA space occupied by the child

care center. **NOTE:** *This requirement applies notwithstanding that the real property in question is insured by or on behalf of the U.S. government.*

c. **Physical Security Requirements.** VA must not allow a child care center to operate in a VA space unless the center meets the following physical security requirements:

(1) Prior to opening, vulnerability assessments of child care centers must be conducted by local police departments to determine the physical security of the facility. Vulnerability assessments must be repeated if the child care center relocates to new buildings or undergo major renovations of the existing buildings.

(2) Local VA Police Service is responsible for conducting vulnerability assessments of the entire medical facility or campus, and physical security surveys of the child care centers operating at the medical facility. Based on the above reports, local VA Police Service is responsible for determining the appropriate physical security requirements necessary to protect the child care center. All security measures implemented must ensure entrances to the child care center are monitored in such a way that prohibits unauthorized persons from entering the VA medical facility and having access to the child care center or other areas where there are children. Appropriate security measures include but are not limited to surveillance cameras at all entry doors.

(3) Physical design and use of the medical facility must permit visual monitoring of the care being provided to the children. Visual monitoring windows or half-doors are required.

(4) Child care centers are required to have a workable, effective procedure that records the arrival and departure times of enrolled children.

(5) Playgrounds must be enclosed by fences. Fencing must be at least 7 feet high for new construction or replacement fencing. Existing playground fencing must be at least 6 feet high. The only kind of chain link that may be used is a dark vinyl-coated chain link. Exposed galvanized wire, which has a highly institutional appearance, is not appropriate. The fence must have no sharp exposed connections that are accessible to children. The gates must be equipped with self-closing and self-latching mechanisms. The latch or securing device must be high enough, or of such type, that small children cannot open it. **NOTE:** *Reference American Society for Testing and Materials (ASTM) fence standards (F2049-00).*

(6) Child care centers are required to develop, implement, and evaluate emergency preparedness procedures that include a Continuity of Operations Plan (COOP) that address both on-site and off-site procedures. The child care center must be included in the local VA sponsoring facility's emergency call list. All emergency preparedness planning must be coordinated with the local VA sponsoring medical facility to ensure compatibility of plans and procedures.

(7) Child care centers are required to develop and implement a Code Adam policy in compliance with 42 U.S.C. 5792a, Title 3, Subtitle D, the Code Adam Act of 2003.

(8) Child care centers are required to comply with the VA physical security requirements as described in VA Handbook 6500, Information Security Program, and Appendix B, Physical Security Requirements and options, of VA Handbook 0730/4, Security and Law Enforcement.

### 13. REFERENCES

- a. 40 U.S.C. 590.
- b. 38 U.S.C. 5721-5728.
- c. 38 U.S.C. 7809.
- d. 38 U.S.C. 8122.
- e. 38 U.S.C. 8153.
- f. 38 U.S.C. 8103.
- g. 18 U.S.C. 203, 205, 208, 216.
- h. 42 U.S.C. 13041.
- i. 42 U.S.C.12101-12213.
- j. 41 U.S.C.3301-3312.
- k. 5 CFR Part 2635.705.
- l. 5 CFR Part 950.102.
- m. 41 CFR Part 102-36.
- n. Pub.L. 107-67 630.
- o. Pub.L. 105-19.
- p. Pub.L. 103-329 608.
- q. Pub.L. 101-647, Section 231.
- r. Pub.L. 102-190, Section 1094.
- s. VA Directive 0710, Personnel Suitability and Security Program.
- t. VA Handbook 0730/4, Appendix B, Security and Law Enforcement.

- u. VA Directive and Handbook 6500, Information Security Program.
- v. VA Directive 6502, VA Enterprise Privacy Program.
- w. VA Handbook 6500.6, Contract Security.
- x. OPM Letter, Special Solicitations for Child Care Centers Located at Federal Installations, dated Oct. 29, 1999.
- y. Presidential Memorandum, Steps to Improve Federally Sponsored Child Care, dated March 10, 1998. <http://www.gpo.gov/fdsys/pkg/PPP-1998-book1/pdf/PPP-1998-book1-doc-pg347.pdf>. **NOTE:** *This linked document is outside of VA control and may or may not be conformant with Section 508 of the Americans with Disabilities Act.*
- z. VHA Office of Child Care Evaluation Checklist: [http://vaww.va.gov/wmc/10A2A2-FBO/Child\\_Care\\_Docs.asp](http://vaww.va.gov/wmc/10A2A2-FBO/Child_Care_Docs.asp). **NOTE:** *This is an internal VA Web site that is not available to the public.*
- aa. NAEYC Accreditation Criteria: National Association for Early Childhood Programs: <http://www.naeyc.org/>
- bb. GSA Child Care Center Design Guide: <http://www.gsa.gov/graphics/pbs/designguidesmall.pdf>. **NOTE:** *This linked document is outside of VA control and may or may not be conformant with Section 508 of the Americans with Disabilities Act.*
- cc. Consumer Product Safety Commission Guidelines: <http://www.cpsc.gov/PageFiles/122149/325.pdf>. **NOTE:** *This linked document is outside of VA control and may or may not be conformant with Section 508 of the Americans with Disabilities Act.*
- dd. Federal Investigations Notice Letter 97-05, dated August 19, 1997. <http://www.opm.gov/investigations/background-investigations/federal-investigations-notices/1997/fin97-05/>. **NOTE:** *This linked document is outside of VA control and may or may not be conformant with Section 508 of the Americans with Disabilities Act.*

**INSTRUCTIONS FOR OUT LEASE OF DEPARTMENT OF VETERANS AFFAIRS  
(VA) SPACE OR LAND TO CHILD CARE PROVIDER**

**(NEW OR RENEWAL OUT LEASES)**

1. **Request for Approval.** Request for approval of lease under Title 38 United States Code (U.S.C.) 8122(a) (1).

a. **New Leases.** All leases for new child care centers must be approved prior to the centers' operating date by the VHA Child Care Program Manager. Request for lease approval must be submitted at least 90 calendar days prior to the centers' opening date.

b. **Renewal Leases.** Submit the following information at least 90 calendar days prior to the expiration of the current out lease.

c. **Submission.** Submit the proposed out lease agreement with supporting documentation to:

VA Central Office  
Workforce Management and Consulting Office (10A2A1B-CC)  
810 Vermont Avenue, NW  
Washington, DC 20420

d. **Inclusion.** The required supporting documentation includes:

(1) A copy of the Public Notice of Intent to Lease that was published in the local newspaper.

(2) A copy of the proposed lessee's license to operate a child care center issued by the appropriate State regulatory agency.

(3) A copy of the proposed lessee's "charter" or Internal Revenue Service Form 990 providing proof of profit or non-profit status.

(4) Evidence of the proposed lessee's liability and fire insurance coverage in amounts necessary to protect the government from any and all claims, including, but not limited to third-party property damage and bodily injury claims arising out of the use of the property by the lessee. The following insurance is mandatory and must be kept current:

(a) Liability insurance in the amount of \$1,000,000.00.

(b) Fire insurance to cover damages to rented premises in an amount determined by conducting an appraisal of the rented premises. The medical facility Director or designee must certify that the amount of fire insurance purchased by the child care provider is adequate to cover the space occupied by the child care center.

(5) Automobile liability (if appropriate), workers compensation and employee liability, as well as health insurance coverage should be in accordance with State and local licensing laws and regulations.

(6) The VA medical facility's recommendation of the term of the lease (not to exceed 3 years), the amount of the rental consideration (whether monetary or in the form of restoration or maintenance of the leased property), and any other special terms and conditions to be incorporated in the lease.

(7) An inspection report by the local safety fire protection engineer that the space meets or will meet code requirements for intended use.

(8) Location of space (i.e., building number and floor).

(9) Evidence of review and approval by Office of Regional Counsel.

2. **Background Checks.** VA requires all child care providers to ensure criminal history background checks are conducted for all its employees, contractors and volunteers working in the facility and/or working directly with the children as a condition of the lease. Providing evidence that these criminal history background checks have been conducted is a prerequisite for obtaining a lease and the renewal of a lease. All out leases must have provisions requiring the provider ensure that the background checks have been done. (See Appendix B for complete criminal background procedures and requirements).

3. **Accreditation.** VA requires all child care centers operating on its property to be accredited by the NAEYC program and to maintain accreditation through the renewal process of the NAEYC programs during operations. A provision requiring accreditation must be incorporated in the lease agreement.

4. **Provision for a New Lease.** Child care centers are eligible for accreditation when they have completed 1 full year of operation. The accreditation process must begin 1 year after operation and achieve accreditation within 1 year of beginning the accreditation process.

5. **Provision for a Renewal Lease for Centers Already Accredited.** The child care provider must maintain accreditation through the renewal process of the NAEYC. A provision stating that the provider must maintain accreditation through the renewal process of the NAEYC must be incorporated in the out lease agreement. VA requires a statement of the provider's intent in renewing their lease.

6. **Provision for Closing Centers.** The President of the Board of Directors or child care provider is responsible for notifying the VA Medical Center Director, and the VHA Office of Child Care of any anticipated closures of child care centers. Written notice to the VHA Office of Child Care must be submitted at least 60 days prior to closing. The notice must include the date and reason for the closure. A

provision stating the Board of Directors or Child Care Provider must submit written notice as indicated above that must be incorporated in the out lease agreement.

7. **Process.** Upon receipt of the preceding information, the Child Care Program Manager will review all lease required documentation. If the lease package meets all requirements, the lease documentation will be approved for signature.

8. **Responsible WMC Entity.** The Office of Child Care is responsible for maintaining a copy of the lease agreement and responsible to ensure all applicable actions such as background checks and subsequent related actions mentioned in Paragraph 1.d. (1)-(8) are current or complete.

**CRIMINAL HISTORY BACKGROUND CHECK PROCEDURES****1. Background.**

a. All child care centers operating under a lease agreement on the Department of Veterans Affairs (VA) property are required to comply with Federal background investigations and State criminal history repository checks to ensure the safety and security of children, VA staff, Veterans, volunteers and visitors to the VA facilities.

b. Federal statutes require criminal history background checks on all individuals involved with providing child care services to children under the age of 18. Specifically, 42 U.S.C. 13041 defines procedures applicable for hiring child care facility personnel. In addition, these statutes require a review of personnel and security records to include a Federal Bureau of Investigation (FBI) fingerprint check and State Criminal History Repositories (SCHR) checks of current and former residences listed on employment applications. Federal Investigations Notice Letter 97-05, dated August 19, 1997, describes the investigative product line, exclusively intended for child care provider positions. The Child Care National Agency Check with Written Inquiries (CNACI) was designed by a consortium of Federal agencies that offer child care services.

c. In response to these specific requirements, the Office of Personnel Management (OPM) created the Federal background investigation product specifically to support Child Care Provider Investigations.

(1) The scope of the CNACI includes the basic National Agency Check with Written Inquiries (NACI) and State Criminal History Repository (SCHR) checks for all States of residence.

(2) The CNACI meets the requirement as indicated in 42 U.S.C. 13041 as determined by the Office of Personnel Management.

(3) OPM assesses VA and other Federal Government Agencies a standard fee for the CNACI, a processing fee for each SCHR search conducted, and the additional user fee charged by each State, if any.

d. 42 U.S.C. 13041 states that any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be grounds for denying employment or for dismissal of any employee at a child care center. The law allows agencies to suspend an employee from having any contact with children while on the job in the case of an offense when the charge has not been disposed of as listed above. Conviction of a crime other than a sex crime may be considered if it bears on an individual's fitness to have responsibility for the safety and well-being of children at VA child care centers.



e. Employment applications used by the child care center provider that operates or maintains child care services at a VA medical facility, must have specific language related to crimes involving a child. The employment applications for individuals who are seeking work shall contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and if so, requiring a description of the disposition of the arrest or charge. The application shall state that it is being signed under penalty of perjury, with the applicable Federal punishments for perjury stated on the application. Applications must also state the requirement for employees to report all arrests, post-employment, for charges not involving children.

f. The child care center may hire staff provisionally prior to the completion of a background check. However, the provisional employee may never be alone with children under her or his care and must at all times be physically supervised by an employee of the child care center who has successfully completed a CNACI investigation when in the presence of children.

g. All employment or volunteer positions are strictly contingent upon favorable adjudicative determination of their background investigation to meet suitability requirements for employment and to be in compliance with 42 U.S.C. 13041. Individuals must be advised that disqualifying derogatory information will result in refusal of employment. Applicants have a right to obtain a copy of the criminal history report and to challenge the accuracy and completeness of any information contained in the report.

h. Any current child care center employees, contractors, and volunteers located at VA medical facilities will be initiated for the CNACI level investigation, which includes SCHR, and every 5 years throughout the duration of their employment or lease, whichever terminates first. If a State requires background checks on an annual basis, child care providers will be responsible for initiating and paying for these checks during the interim.

## **2. New Employees, Contractors and Volunteers.**

a. Newly-hired employees, contractors and volunteers must undergo a criminal history background check at the CNACI level.

b. Background investigations will be coordinated through the servicing human resources office with the assistance of the child care center Director to the Security and Investigation Center (SIC).

## **3. Current Employees, Contractors and Volunteers.**

a. Current employees will have 14 days to complete the investigative requirements of initiating the CNACI. All persons employed or volunteering at a child care center at a VA medical facility must receive a favorable adjudicative

determination from a CNACI to meet suitability requirements for employment and to be in compliance with 42 U.S.C. 13041.

b. If derogatory information is reported regarding an employee, contractor, or volunteer, the individual will be given the opportunity to request a copy of the criminal history report and challenge the accuracy and completeness of the information before formal personnel action is taken.

c. Employees must be advised that disqualifying derogatory information will result in refusal of employment. Employees, contractors, and volunteers determined to be unsuitable to provide child care services will be removed from employment and escorted off VA medical facilities and barred from working with children at any other VA child care center.

#### 4. **Security Investigations Center Process.**

a. For current child care center employees, the Director must provide a list of all current child care center employees. This listing must include the employee's full name, social security number, date of birth, place of birth, and a resume for the employee. The resume is needed to validate the places of residence and to coordinate the investigative requirements, which may vary from State to State. The Child Care Center Director will keep accurate records of all staff and will update the designated staff member of the SIC when changes occur.

b. Once the listing is complete, the medical facility Director will submit the listing with a request for a background investigation through the VA SIC Contractor Request Portal by contacting SIC at (501) 257-4461 or 4490. SIC will review the listing and initiate the CNACI on each of the staff members of the Center.

c. The Child Care Center Director will ensure all staff have their fingerprints taken at the VA medical facility and sign the appropriate release forms indicating they are aware of the CNACI requirement.

d. The SIC will initiate each child care center staff member into the Electronic Questionnaire for Investigations Processing (e-QIP). The staff members will complete the required investigative information and comply with all requirements incorporated in the background investigation within 5 business days of notice.

e. Upon completion of the CNACI, an SIC staff member will communicate with the Child Care Center Director the results of the investigation. If derogatory information is contained within the background investigation, the staff member will be given an opportunity to challenge the accuracy and completeness of any information contained in the report.

f. CNACI fees will be paid by the local VA medical facility.

g. Adjudicative determination is made by SIC, including the certificate of investigation into OPM and VA databases.

h. There is a 5-year periodic reinvestigation requirement.

i. CNACI requirements must be met prior to issuance of a VA issued Personal Identity Verification (PIV) card.