

Text of Executive Order

Exercising State Authority over National Guard & Veteran Medical Treatment to Improve Readiness and Reduce State and Local Budget Impacts

EXECUTIVE DEPARTMENT

I, Mary Fallin, Governor of Oklahoma, pursuant to the authority vested in me under Article II, Subsection 21 of the Oklahoma Constitution as the Commander in Chief of the National Guard and under Title 10 of the United States Code providing command responsibility for health of service members under my command and under state constitutional authority under the police powers over the health of all residents of the state, hereby declare the following:

STATEWIDE CRISIS

1. There is a crisis in readiness of the National Guard forces under my command after eleven years of war, which has left many who have served with residual injuries that degrades the effectiveness of the National Guard's ability to respond to state emergencies and meet federal obligations.
2. There is a crisis in the veteran population and the active duty forces within the state that reflects the same residual injuries that affect the lives, employability, and productivity of the veteran work force.
3. After eleven years of war, the Department of Defense medical establishment and the Veterans Administration's medical establishment have consistently refused to provide known effective treatment for our nation's war veteran population, either acutely in theater or after they return from the theater of operations. Instead, the behavior of these organizations is reminiscent of the denial of the impact of Agent Orange exposure at the end of the Vietnam War.
4. The United States Congress, Military Command, and Veterans Administration leadership have made many attempts to correct the behavior of these agencies, only to be repeatedly thwarted by bureaucratic maneuvering and infighting. There has been a failure of military medicine's primary mission: to keep the forces under their care as fit for duty as possible and conserve the manpower resources at the disposal of military command.
5. This failure to provide effective biological repair treatment for brain insults has placed an inordinate burden on state resources since each of these war casualties costs society an estimated \$60,000 per year in lost tax revenue, lost productivity, safety net and social services costs, incarceration, substance abuse and health expenditures. A large portion of these costs are born by state and local government budgets. Military medicine and the Veterans Administration health teams have also shifted a large portion of this economic burden onto private health insurance carriers, state Medicaid, and especially state and local governments through unreimbursed medical expenses that have their origin in uncompensated war injuries, lost tax revenue and productivity due to untreated injury, higher civilian unemployment, remedial education and vocational education costs, homelessness, increased incarceration and legal expenditures, and burdens on state charity resources.

6. This shift of burden from the Federal Government to the states at the end of World War I led to the creation of the Veterans Bureau, the predecessor to the Veterans Administration. Today's burden shifting is much greater than that after World War I.

Therefore it is declared:

AUTHORITY and RESPONSIBILITY

7. The State of Oklahoma has authority under the Federal Constitution under police powers and the Constitution of the State of Oklahoma, and under Title 10 of the U.S. Code to enforce the Federal government's health care responsibility to war veterans within the State. The State has the authority and the responsibility to deliver medical care and recover its costs for doing so.

Therefore, effective upon signature of this order:

STATEWIDE COORDINATION OF EFFECTIVE TREATMENT FOR TBI OR PTSD

8. All state health resources will begin to coordinate effective biological repair treatment and adjunctive therapies under the direction of the Oklahoma State University Center for Health Sciences Center for Aerospace and Hyperbaric Medicine, under the auspices of the OSUCHS CAHM Principle Investigator.

Payment for Treatment: Veterans and Civilians

- a. In coordination with the Oklahoma State Legislature, the Oklahoma National Guard Relief Program (Oklahoma Statutes, Title 44, Section 237, Subsection 68-2368.14) is designated as a state health account to begin paying for all effective treatments at published Medicare rates for the state of Oklahoma following the rules of HR396, the TBI Treatment Act, 112th Congress for all Active Duty, National Guard, or Veterans in the state who qualify for treatment under the TBI Treatment Act.
 - i. Reimbursement payments from the Federal government for services charged to this account shall be reimbursed to this account.
 1. Amounts over the cost of care will be permitted to accumulate and be utilized in the account to provide treatment expansion.
 2. Funds in the account may be expended for purposes of carrying out this Executive Order as outlined in the E.O.
 - ii. This account shall be a revolving fund and funded with sufficient funds; (\$20 million is sufficient to treat 1,000 veterans and supply seed money to kick-start the revolving fund.) in coordination with the legislature through reprogramming or the regular appropriations process. This will permit:
 1. Rapid deployment of effective treatment, diagnostics and related medical care as called for in protocols that comply with the rules specified in the TBI Treatment Act.
 2. Acquisition of equipment needed by the National Guard and localities to deploy effective treatment under the EO.
 3. Pay for training for physicians and allied health professionals to carry out the medical treatment under this EO.

4. Pay for contract obligations to OSU, OU and IHMF related to carrying out their respective functions in this EO.
- iii. All billing for treatment throughout the state will be coordinated through the OSU Center for Health Sciences, a Tricare and VA eligible provider, and the Primary Investigator for all studies currently authorized by the TBI Treatment Act.
 1. OSUCHS will bill the respective state fund for treatments under the E.O.
 2. The State will bill the Federal Government health care provider or private carrier for treatments that qualify under the TBI Treatment Act.
- b. For non-veteran civilians who qualify under the NBIRR-01 study or its successors, the Trauma Care Assistance Revolving Fund (TCARF), (Recommended Seed Funding of \$10 million, sufficient to treat 500 persons). TCARF is currently authorized to reimburse hospitals and ambulance service for uncompensated trauma care or trauma transportation, and shall be used for civilian reimbursement, under the rules of the TBI Treatment Act.
 - i. Where the individual qualifies for State Medicaid, Workers Compensation, or other public health assistance, the TCARF will be reimbursed accordingly at standard published Facility reimbursement rates for the treatment for each carrier, or the Medicare Reimbursement rate, whichever is higher.
 - ii. Where the individual is covered by private carrier insurance, reimbursement to the fund will be pursued by the State, in accordance with applicable laws or regulations that may need enactment to carry out this provision.
- c. It is recommended that the State Appropriations committees apply 10% of the document projected or realized savings from other state programs into these respective programmatic accounts so that effective treatment can be expanded with the state.

The TBI Treatment Act

- d. The TBI Treatment Act was legislation cosponsored and voted for by me, Governor Mary Fallin when I served in the U.S. House of Representatives. It was introduced by Congressman Chris Cannon of Utah and Congressman Pete Sessions of Texas, and supported in the Senate and brought to the floor twice by Senator Inhofe. The legislation was crafted by Dr. William A. Duncan. It was endorsed by the Congressional Brain Injury Caucus, the American Legion, Veterans of Foreign Wars, Retired Officers Association, and others. It passed the U.S. House of Representatives unanimously three times, once in the 111th Congress and twice in the 112th Congress, only to be blocked by a single senator at the request of DoD and VA medicine.

Metrics, Rapid Analysis, Reporting to Policy Makers and Publication of Results

- e. Oklahoma University:
 - i. Rapid analysis of treatment results and accompanying metrics for each entitlement program potentially impacted by this treatment will be carried out

under a statewide contract with Oklahoma University's Cognitive Science Research Center (OU-CSRC) for neurocognitive test data and Oklahoma University's Health Sciences Center College of Public Health for all other metric statistical analysis (OUHSC CPH), operating as the Oklahoma Evidence-based Practice Center.

- ii. Oklahoma University Health Sciences Center's (OUHSC) affiliated health services will coordinate with OSUCHS to provide medical care, facility space for equipment installation, and professional services under the guidance of OSUCHS as it relates to this E.O. Billing for services will follow the path outlined in this E.O.
- iii. International Hyperbaric Medical Foundation: Coordination of these data results shall be made with the International Hyperbaric Medical Foundation, who has national obligations to rapidly report this data under its obligations to comply with FDA regulations, and report data to the Data Safety Monitoring Board governing the NBIRR-01 study, and who will subsequently publish that data on the Internet.
- iv. Reports of data results and program progress will be provided to the Governor of the State of Oklahoma, all designated State Agencies, and to all legislators, electronically, every sixty days (rounded to the 1st of the month), beginning sixty (60) days following the signing of this Executive Order, and every first day of the subsequent two month time periods. This will permit the State to ensure that the program authorized by this E.O. is on track and delivering results as anticipated.

Controlled Deployment of Effective Treatment

- f. The Executive Order will permit a controlled and continued rapid deployment of the most effective treatment for injured war veterans available to injured war veterans suffering from traumatic brain injury, PTSD or other brain insults; hyperbaric oxygen therapy (HBOT). Initial large-scale deployment of HBOT treatment was initiated by the State House and Senate Veterans Affairs committees, and is being delivered by the Oklahoma State University Center for Health Sciences Center for Aerospace and Hyperbaric Medicine (OSUCHS CAHM) at the large multiplace chamber, owned by the State of Oklahoma, in partnership with the IHMF's national study, NBIRR-01 (NCT01105962 and its successors). Dr. Paul Rock¹, who is the Primary Investigator for this study in the State of Oklahoma, is an Army-trained physician, and serves on the Army's Institutional Review Board reviewing research conducted by the U.S. Army.
 - i. Because of its unique expertise, OSUCHS CAHM will have jurisdiction over all medical treatments under this proposal, with OUHSC participating in the treatment at its locations, and all available public and private hospitals and

¹ Dr. Rock's expertise: Practiced clinical wound care and HBOT for 7 years, but not residency trained or boarded in HBOT. The NBIRR-01 study is the first research in hyperbaric medicine. Dr. Paul Harch, Dr. Van Meter, Dr. Wright and other qualified physicians and personnel will be providing training that is needed for physicians and technicians that will be involved in other areas of the state. Dr. Rock's IRB experience with the Army IRB: He was a full board member of the US Army Medical Research and Materiel Command's Human Subjects Research Review Board (HSRRB) for more than a decade, and is currently an alternate member of the successor board that replaced the HSRRB in 2010. And the HSRRB's responsibility was for the medical research performed in the Army's 7 medical research laboratories, some cooperative DOD medical research activities and as the second level review board for the Congressionally Directed Medical Research Program (CDMRP).

- clinics across the state able to deliver services called for under this study following OSUCHS CAHM's leadership and advice.
- ii. Diagnostics required for purposes of providing pre-post treatment will be conducted by sites approved by OSUCHS as meeting standard criteria for expertise in providing a given diagnostic for purposes of meeting study criteria.
 1. Sites for such diagnostics will be located to reduce travel and inconvenience to those receiving treatment.
 2. It is anticipated that medical treatment itself, such as hyperbaric oxygen therapy, cognitive rehabilitation, or other treatments, since their delivery are of a routine and consistent nature, will be delivered locally, while diagnostics, which are done at specified times between treatment sets, validating whether or not a treatment was effective and thus can be billed and reimbursed under the act, should be as independent from the treating site as practicable. This permits centers with appropriate diagnostic expertise to evaluate study subjects, while permitting the less difficult routine treatment to be delivered by appropriately skilled health care providers.
 3. All diagnostics will be paid for from the respective funds designated, and payment will be at the standard rate of the provider, or the published Medicare rate for such diagnostic, whichever is higher.
 - iii. The State's Rural Medicine and Telemedicine assets will be utilized to assist all locations within the state to have access to treatment and appropriate medical supervision and expertise on individual cases.
 - iv. These results will be quickly published by the IHMF's Data Safety Monitoring Board so that projected results can be matched with actual results, and impacts on homelessness; job placement and performance and social safety net; incarceration metrics and substance-abuse prevention; and program metrics can be tracked against known national and state normative data.
9. The International Hyperbaric Medical Foundation has been a valuable partner and has unique and valuable expertise that will assist the State of Oklahoma in deploying this and other treatments that will improve health outcomes in the State of Oklahoma, as well as creating short- and long-term reductions in entitlement and safety net programs through reduced demand for services.
- a. The National Brain Injury Rescue & Rehabilitation Project (NBIRR) is NOT designed to prove HBOT works. It is, in fact, designed to provide a platform for the rational validation and deployment of effective treatments to maximize patient recovery from brain insults from all sources. This **primary** objective is fulfilled through a series of IRB-approved studies, like NBIRR-01, that permit a validation of entire protocols that cross-coordinate across medical disciplines, and permit those disciplines to have the validation tools needed to perfect protocols that not only work but are cost effective. It puts physicians back in charge of patient care and outcomes and appropriately rewards them for success.
 - b. The IHMF also has other studies, such as the Hyperbaric Amputation Prevention Initiative and the Hospital Outcomes & Profit System (HOPS) studies, designed to validate care pathways to maximize patient recovery and minimize health care costs. As these international studies come on line, OSUCHS has jurisdiction under this E.O. to similarly begin to coordinate their implementation across the state.

- c. The IHMF contract with OSUCHS will apply to all payments under this E.O. permitting the IHMF to fulfill its obligations under the contract.

Education and Training of Medical and Professional Personnel

- 10. Education and training of medical personnel in order to deploy NBIRR-01 will be the primary responsibility of OSUCHS CAHM. This E.O. permits expenses for education and training to be billed to the respective accounts designated in this E.O.
 - a. Physician Continuing Medical Education: Continuing Medical Education for health care providers across the state that have prescription authority over a given medical treatment paid under this E.O. will be coordinated by OSUCHS, and provided at state-owned facilities whenever possible.
 - i. For this training, accredited medical school faculty shall be used, especially faculty having expertise in hyperbaric medicine or affiliated with Hyperbaric Medicine Fellowships and with expertise in treatment of neurological injuries or PTSD. The IHMF has this training as part of its primary mission charter and coordination with them is encouraged as part of this effort.
 - ii. One-Net should be used to broadcast this education and grand rounds education to as many sites as practicable across the State so that personnel who need this education and training can receive it. CME costs will be billed by OSUCHS to the respective state funds as a scholarship and paid off by the respective recipient of the CMEs through medical supervision or other medical care for these patients.
 - iii. Recordings of training or grand rounds lectures with CME credit status shall be made available through OSUCHS web servers in accordance with standard practices.
 - b. Both OSUCHS and OUHSC will begin incorporating training for their respective medical and Allied Health professional students in medical practices for these populations.
 - c. Allied Health Professional, Health Care Provider and Technician Training
 - i. One immediate shortage to be quickly addressed under this E.O is training for technicians needed to safely operate hyperbaric medical facilities. Persons with EMT-1 or better training are needed as technicians. Immediate steps will be taken to make available trainers within Oklahoma with appropriate qualifications to provide this training, for all EMTs and other Allied Health Professionals interested in this career path.
 - ii. Scholarships for tuition costs are authorized by this E.O., from the designated funds, to be repaid by fulfillment of internship hours necessary to become nationally certified as “Certified Hyperbaric Technicians” or “Baromedical Nurses.” Such funds shall be reimbursed to the state funds from the labor costs associated with each paid treatment under this E.O., at nationally recognized rates, by the OSUCHS billing program.
 - iii. All state sponsored and private training programs for Allied Health Professionals are encouraged to incorporate hyperbaric medicine into their respective curricula.
 - d. Priority for scholarships under this E.O. shall be given to trained military medical personnel who are unemployed. They shall also have priority in receiving treatment, if injured, as designated in the section entitled, “Targeted Populations under this E.O.”

11. In order to meet the State's Emergency presented by the presence of tens of thousands of National Guard and other injured veterans in the State of Oklahoma, it is necessary to create the ability to rapidly and rationally deploy treatment. Market rates shall apply to this deployment. The goal is to rescue as many at-risk and injured veterans as possible in order to restore wholeness to their lives and improve productivity, opportunity, and community.
 - a. Therefore, for activities carrying out this E.O., compliance with provisions of the Oklahoma Central Purchasing Act shall not be required of OSUCHS, OUHSC, OU-Norman or the IHMF. However, each of these organizations shall observe internal purchasing procedures approved by the Purchasing Director of the Department of Central Services and keep records of acquisitions which shall be subject to audit by the Department of Central Services.
 - b. Compliance with provisions of the Public Competitive Bidding Act of 1974, the Public Building Construction and Planning Act, and Consulting Services through the Construction and Properties Division of the Department of Central Services shall not be required of the OSUCHS, OUHSC, OU-Norman or the IHMF. However, the OSUCHS, OUHSC, OU-Norman or the IHMF shall observe internal procurement and bidding procedures and keep records of contracts and acquisitions which shall be subject to audit by the Department of Central Services.
 - c. Compliance with provisions of the Oklahoma Surplus Property Act shall not be required of the OSUCHS, OUHSC, OU-Norman or the IHMF; however, OSUCHS, OUHSC, OU-Norman or the IHMF shall observe internal property disposition procedures and keep records of property dispositions which shall be subject to audit by the Department of Central Services.
 - d. OSUCHS, OUHSC, OU-Norman or the IHMF shall be exempted from the requirements of the Office of State Finance to file the annual budget work program, budget request, information systems plan and telecommunications plan. However, IHMF shall continue to file an annual audited financial statement in accordance with governmental accounting standards.
 - e. OSUCHS, OUHSC, OU-Norman or the IHMF shall be further exempted from conversion to CORE Phase II requirements of the Office of State Finance.
 - f. OSUCHS, OUHSC, OU-Norman or the IHMF shall continue to be accountable to provide a report annually to the President Pro Tempore of the Senate, Speaker of the House of Representatives and Governor describing the methods and innovations utilized in its research and treatment deployment processes and the improved services and the savings that have accrued as a result of these exceptions.
12. Due to the emergency nature of the deployment of hyperbaric treatment facilities to all areas of the state, and the permanent and temporary need for in-theater and local equipment, for a period of two years both the Oklahoma National Guard shall also be exempt from procurement provisions as specified in paragraph 11, subsections "a" through "f."
13. Wherever existing hyperbaric equipment currently resides within the state, either at hospitals or free-standing centers, it will be utilized to the extent of its unused scheduling capacity for regularly scheduled patients. Payments will be made at the Medicare facility rate and physician supervision shall be provided by the local facility with the part B payment paid directly to the supervising physician, or OSUCHS Telemedicine department if local physician supervision is unavailable, less the OSUCHS and IHMF administrative fees.
14. Whenever such equipment is not available within a one-half to one-hour drive to an identified population, or when the equipment available is insufficient for the need, either Oklahoma State University Center for Health Sciences Aerospace and Hyperbaric Medicine Center or

the Oklahoma National Guard, or private parties, are permitted to pay for and bring in equipment to meet the state's urgent need for treatment in a given geographical area.

- a. All provisions of the NBIRR-01 Institutional Review Board Study and OSUCHS CAHM guidance shall be followed.
 - i. It is anticipated that after the initial funding to the revolving fund, federal payments will be sufficient to permit the OSUCHS CAHM to access the Oklahoma National Guard Relief Program account to pay for these purchases or leases under the paragraph 10 expedited procurement rules.
 - ii. A portion of each paid treatment, at a standard market per treatment rate, will be designated from each payment to reimburse the Oklahoma National Guard Relief Program or the Trauma Care Assistance Revolving Fund (TCARF), for equipment purchases or facility installation. (For HBOT that is traditionally \$50 from each treatment.)
 1. It is permissible, after the equipment and facility installation is paid for, to leave the equipment under control of local health care providers who want the equipment that has been paid for, so that public health in Oklahoma is further improved by increased access to hyperbaric oxygen therapy, diagnostics, or other durable equipment for all medical conditions where this equipment would improve patient outcomes.
 - iii. Where medical equipment, such as hyperbaric oxygen chambers, can be manufactured locally within the state, to the maximum extent possible, pressure vessels, control panels, compressors or other medical devices, shall be manufactured within the state when national resources are inadequate to meet demand, and in accordance with all FDA, PVHO or other regulations.

Authority to Activate National Guard Members for Treatment or Training

15. All National Guard commanders are authorized, as outlined in HR396, to activate any service member in need of treatment because of pre-deployment assignment or any member who has returned from theater and is in need of medical treatment, when such activation is necessary for a member to receive medical treatment under this Executive Order.
16. All National Guard commanders are authorized, as outlined in HR396, to activate any service member with the pre-requisite skills to become a health care provider of treatments under this E.O., during his/her period of training and internship, with an appropriate period of service after training, at market rates, employed in the field for which he/she was trained.

Automated Neuropsychological Assessment Metric (ANAM)

17. The Automated Neuropsychological Assessment Metric (ANAM), a product of Oklahoma University and provided to all service members deploying into theater from across the United States since March of 2008, and prior to that for Oklahoma Guard members, shall be made available to Oklahoma State University and Oklahoma University to improve the ability to compare pre-deployment baselines with post-injury and post-deployment tests. This will assist providers in measuring the recovery and effectiveness of treatment protocols, as intended when the produce was designed and when Congress authorized its deployment with active duty and National Guard forces.
 - a. The Secretary for Veterans and Military Affairs is hereby authorized to demand immediately all baseline testing for every person who has deployed from Oklahoma, and all others who may come into treatment that have baseline tests.

- b. These test results shall reside at Oklahoma University for statistical evaluation in accordance with this order. All privacy and other regulations shall be followed.
- c. All personnel departments are directed to begin implementing procedures so that persons in at-risk professions, such as police officers, fire fighters and others identified as subject to head injury as part of their professional duties, receive an ANAM baseline test.
- d. Those employees who are identified, or who self-identify as needing treatment under this Executive Order will receive treatment and be evaluated as though they were National Guard members.

Non-Discrimination against Treated Persons

- e. No one who requests treatment will be discriminated against or subsequently disciplined for receiving treatment under this Executive Order.
 - i. Therefore, to prevent such disclosure of treatment, Active Duty military personnel, National Guard members, Veterans, and others, shall have their confidentiality maintained. The State will report to the third party payer that a given subject (e.g. OK-NBIRR subject 101), of a given number of their beneficiaries were treated and will provide the treatment results, without revealing their individual identities.
 - ii. Those identities may be revealed to an independent Federal, state or private carrier inspector to validate the payment; the inspector will not reveal, by written agreement, reveal the identity of the patient treated to the primary payer.
 - iii. This provision is necessary because of threats made by both VA and Tricare to those who have previously sought treatment, and to law enforcement personnel and other personnel who have been living with their respective disabilities and not sought treatment because previously no effective treatment existed, and the H.R. system penalized them for admitting they had PTSD or brain insults suffered during service, whether in war in in their civilian occupation.

Targeted Populations for this Executive Order

- 18. Targeted Populations for this Executive Order
 - a. The nature of the emergency facing our veterans and other state residents requires both triage to make services available to those most in need, and coordination among all state agencies, non-governmental organizations, and charitable organizations within the state whose missions serve those of this population.
 - b. As controlled deployment of needed treatment equipment takes place under this act, there will be persons who need housing or transportation for themselves or family members in order to take advantage of treatment. Coordination of state resources and social services will be made to assist in this effort, and non-governmental organizations are requested to cooperate with resources that they may have available such as housing close to treatment centers, transportation, or other assistance.
 - c. Since the number in need of treatment at present is greater than available resources, priority will be provided based upon the following criteria:
 - i. National Guard or Veterans (Priority to those in Crisis or imminent danger to themselves or others)
 - 1. Suicide risks

2. Domestic violence (victim or perpetrator)
 3. All First Responders who have served in combat, or have been wounded or injured in the line of duty.
 4. Imminent redeployment
 5. Law enforcement interaction
 6. Homeless
 7. Trained Military Medical or former Military Medical Personnel
 8. Unemployment or threat of unemployment due to behavior or job performance (Priority to military trained medical personnel)
 9. Incarceration (Especially involvement in Veterans Court)
 10. Enrollment at College in Remedial Education Courses
 11. Enrollment in Vocational Technical Education when an individual already possesses a college degree
 12. Older veterans who have served in previous wars and need relief from symptoms of traumatic brain injury or PTSD. (Vietnam, Korea, World War II.)
- ii. Civilian Population:
1. Suicide risks
 2. Domestic violence (victim or perpetrator)
 3. All First Responders who have served in combat, or have been wounded or injured in the line of duty.
 4. law enforcement interaction
 5. Unemployment or threat of unemployment due to behavior or job performance
 6. Incarceration (Especially Involvement in Mental Health Court.)
 7. Homeless
 8. Enrollment at College in Remedial Education Courses
 9. Enrollment in Vocational Technical Education when an individual already possesses a college degree

Copies of this Executive Order shall be distributed to all state agencies, all Federal government grantees, all veteran service organizations, the Congressional Delegation and the Department of Defense Chairman of the Joint Chiefs of Staff and Surgeons General of each of the services, and the Secretary of Veterans Affairs.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the state of Oklahoma to be affixed at Oklahoma City, Oklahoma, this _____ day of _____, 2013.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Mary Fallin

ATTEST:

SECRETARY OF STATE

DRAFT