HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1942

By: Bennett and Smalley of the House

and

Simpson of the Senate

COMMITTEE SUBSTITUTE

An Act relating to public health and safety; creating the Oklahoma Veterans Recovery Plan Act of 2013; requiring treatment for certain injuries; defining term; authorizing Insurance Department to draw from certain funds; creating the Oklahoma Evidence-based Practice Center; creating the Oklahoma TBI Treatment Act; requiring payment to be made from certain trust funds; requiring annual report; requiring priority for certain treatment; designating certain program as state health account; providing for expenditures from certain fund; providing for certain revenue sources; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-291 of Title 63, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 5 of this act shall be known and may be cited as the "Oklahoma Veterans Recovery Plan Act of 2013".

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SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-291.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

Effective biological repair treatments and other therapies shall be made available for treatment of brain insults and posttraumatic stress disorder, and other service-connected injuries to citizens of this state.

Treatment shall begin and payment for treatment shall be organized under observational study regulations creating controlled deployment, with shared responsibility between the state's two medical schools, medical treatment, education, data collection, workforce education and training, and capital resources as well as coordination of resources throughout the state to meet the state emergency. The Insurance Department shall begin recovery of the state's costs for delivering such treatments.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-291.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. For the purposes of the Oklahoma Veterans Recovery Plan Act of 2013, hyperbaric oxygen treatment ("HBOT") shall mean treatment in a hyperbaric chamber cleared by the United States Food and Drug Administration ("FDA") with a valid prescription, or a device with an appropriate FDA-approved investigational device exemption, at a

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location in compliance with applicable state fire codes, supervised in accordance with requirements in the Oklahoma Veterans Recovery Plan Act of 2013, which shall be deemed to meet all third-party payer requirements, and delivered by authorized, licensed or nationally certified health care providers and otherwise in accordance with state law. No other more restrictive rules restricting payment shall be placed upon the practitioner or health care provider in the state. No payment shall be denied by a third party payer when treatment is delivered under these rules, under valid prescription for any FDA-cleared HBOT indication or when delivered under the auspices of an Institutional-Review-Board-approved observational study with an NCT number. The requirement for physician supervision shall permit the use of telemedicine tools to provide such supervision. The physical presence of a physician is not necessary.

B. 1. Physician supervision shall be paid at the Centers for Medicare and Medicaid Services (CMS) published Part B facility rate. Of this fee, no less than fifty percent (50%) of the published rate shall be paid to the physician who actually provides the supervision, after contractual or institutional fees are subtracted from the gross payment.

2. Physician supervision provided by telemedicine shall be considered the equivalent of physician supervision provided by the

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physical presence of a physician under this requirement. Where possible or practicable, physical physician presence is preferable.

3. The purpose of physician supervision is to validate:

a. that the treatment protocol is being followed,

b. that clearly indicated patient risks are being avoided,

c. that symptoms of rare side effects are not being manifested, and

d. that treatment was provided for in accordance with the required FDA-approved research protocols as applicable.

4. Patient interaction is intended to ensure patient progress and reassurance as their treatment progresses. The bench marks being evaluated under the research protocols involved may be missed by personnel of lesser training. Therefore, the physician shall:

a. converse with the patient or caregiver prior to treatment to ensure the patient is making adequate progress anticipated under the specified treatment protocol,

b. perform, or cause to be performed by a qualified person, any appropriate pre-dive exam should questions during the pretreatment interview warrant such examination,

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c. record patient progress notes appropriately,

d. validate that the treatment given was in accordance with the patient prescription or protocol,

e. check with the provider during the treatment time to make sure treatment is proceeding smoothly,

f. be available posttreatment should any concerns have arisen during treatment, and

g. enter data into the patient's treatment record appropriately, validating the date of treatment, the protocol followed, the duration of treatment, and any expected or unexpected adverse events, in accordance with best practices guidelines.

5. Other physician responsibilities to other duties during the time of treatment are not to be restricted.

6. No other more restrictive requirements may be imposed in the State of Oklahoma outside of these guidelines by any payer.

7. Where HBOT has been shown to reduce the costs of treatment of certain conditions and injuries, the Oklahoma Health Care Authority shall seek any waivers or approvals required from the CMS in order to implement the safe and effective use of HBOT throughout the state Medicaid system. If a Medicare Administrative Contractor ("MAC") or Fiscal Intermediary ("FI") creates or enforces a Local Coverage Determination ("LCD") that restricts access to treatment or

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the availability of treatment for any CMS National Coverage Determination to patients needing HBOT, the Authority shall seek to have the MAC or FI override the LCD. State health care providers shall not be restricted by any such LCD and state funds and resources shall be used to pay for all treatments at all providers, whether they are facility or nonfacility under CMS rules, at the standard published Part A CMS-facility rates or higher facility rate per one-half-hour increment, with the appropriate Part B facility rate for physician supervision, as applicable.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-291.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Insurance Department shall be the state institution with authority to draw from the National Guard Relief Fund and the Trauma Care Assistance Revolving Fund ("TCARF") for all authorized expenditures. All providers who are seeking payment for services to persons receiving services under the Oklahoma Veterans Recovery Plan Act of 2013 shall bill the Insurance Department in accordance with published procedures. Providers shall be paid for those services at Medicare published rates for those services, less the appropriate administrative, program fees, capital improvement or training fees applicable to each site. The Insurance Department shall approve the installation of needed equipment and approve expenditures for

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training or education. The Center for Aerospace and Hyperbaric Medicine of the Oklahoma State University Center for Health Sciences (OSUCHS CAHM) shall have full statewide jurisdiction over all medical treatments provided to validate delivery, verify testing, and to conduct appropriate inspections, in partnership with the International Hyperbaric Medical Foundation's responsibilities under the nationally sponsored studies.

For purposes of the Oklahoma Veterans Recovery Plan Act of 2013, and treatment conducted in a state-owned facility or any treatment conducted in a private facility by a state-employed or a university-employed physician or private physician shall be covered by the Oklahoma Governmental Tort Claims Act and subject to applicable limits of liability.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-291.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Evidence-based Practice Center ("OKEBPC") is hereby created, to be located at the Oklahoma University Health Sciences Center College of Public Health ("OUHSC CPH"), and in partnership with OU-Norman's Cognitive Science Research Center ("CSRC") and the OSU College of Education, Department of Occupational Education or its successor. Each of these organizations within the state university system shall have independent jurisdiction within their

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areas of expertise, with OUHSC CPH in charge of the overall state contract, funded from treatment fee administrative costs, for biostatistical analysis and evaluation created by the Oklahoma Veterans Recovery Plan Act of 2013. The OKEBPC shall independently validate all treatment results, and certify the receipt of those results before payment is issued, as well as tracking long-term outcome measures that impact state budget expenditures such as education, labor, substance abuse, homelessness, incarceration, healthcare outcomes, and entitlement program utilization. They shall automatically receive a per-treatment fee payment from the appropriate trust fund designated for a given patient, when the site receives payment for that given patient. The Insurance Department shall rely upon the OKEBPC for biostatistical analysis and verification of treatment effectiveness as required by the Oklahoma TBI Treatment Act created in Section 6 of this act. The OKEBPC shall share their analysis with the International Hyperbaric Medical Foundation so that data can be appropriately reported under the obligations of the national studies.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-291.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. This section shall be known and may be cited as the "Oklahoma TBI Treatment Act".

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B. Payment for treatments (including diagnostic testing) for brain insults including traumatic brain injury or posttraumatic stress disorder received by residents of the state shall be paid from the respective trust funds in accordance with procedures described.

C. The approval of a treatment payment pursuant to subsection B of this section shall be subject to the following conditions:

1. Any drug or device used in the treatment must be approved or cleared by the Food and Drug Administration for any purpose. All adjunctive therapies under protocols designated below, must be available without regard to other FDA oversight;

2. The protocol or treatment must have been approved by an institutional review board operating in accordance with regulations issued by the Secretary of Health and Human Services;

3. The treatment (including any patient disclosure requirements) must be used by the health care provider delivering the treatment;

4. The patient receiving the treatment must demonstrate an improvement as a result of the treatment on one or more of the following:

a. standardized independent pretreatment and posttreatment neuropsychological testing,

b. accepted survey instruments,

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c. neurological imaging, and

d. clinical examination; and

5. The patient receiving the treatment shall be receiving the treatment voluntarily.

D. Except as provided in subsection B of this section, no restriction or condition for reimbursement may be placed on any health care provider that is operating lawfully under the laws of the state in which the provider is located with respect to the receipt of payment under the Oklahoma TBI Treatment Act.

E. The state shall make a payment for a treatment pursuant to subsection A of this section not later than thirty (30) days after a member of the Armed Forces or veteran or civilian (or health care provider on behalf of such member or veteran) submits to the state documentation regarding the treatment. The state shall ensure that the documentation required under this subsection may not be an undue burden on the patient or on the health care provider.

F. A payment under the Oklahoma TBI Treatment Act shall be made at the equivalent Centers for Medicare and Medicaid Services reimbursement rate in effect for appropriate treatment codes for the state or territory in which the treatment is received. If no such rate is in effect, payment shall be made at a fair market rate, as determined by the Secretary of Health.

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G. The database containing data from each patient case involving the use of a treatment under the Oklahoma TBI Treatment Act shall be accessible to all relevant policy makers and policy-making bodies, as well as to payers. The state shall ensure that the database preserves confidentiality and be made available only:

1. For third-party payer examination;

2. To the appropriate governmental organizations, congressional committees and employees of the Department of Defense, the Department of Veterans Affairs, the Department of Health and Human Services, and appropriate state agencies; and

3. To the primary investigator of the institutional review board that approved the treatment, in the case of data relating to a patient case involving the use of such treatment.

H. In the case of a patient enrolled in a registered institutional review board study, results may be publically distributable in accordance with the regulations prescribed pursuant to the Health Insurance Portability and Accountability Act of 1996 and other regulations and practices in effect as of the date of the enactment of the Oklahoma TBI Treatment Act.

I. The state shall include a list of all civilian institutional review board studies that have received a payment under the Oklahoma TBI Treatment Act.

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J. 1. The Secretary of a military department may assign a member of the Armed Forces under the jurisdiction of the Secretary to temporary duty or allow the member a permissive temporary duty in order to permit the member to receive treatment for traumatic brain injury or posttraumatic stress disorder, for which payments shall be made, at a location beyond reasonable commuting distance of the member's permanent duty station.

2. A member who is away from the member's permanent station may be paid a per diem in lieu of subsistence in an amount not more than the amount to which the member would be entitled if the member were performing travel in connection with a temporary duty assignment.

3. Notwithstanding any rule of any department or agency with respect to ethics or the receipt of gifts, any assistance provided to a member of the Armed Forces with a service-connected injury or disability for travel, meals, or entertainment incidental to receiving treatment under the Oklahoma TBI Treatment Act, or for the provision of such treatment, shall not be subject to or covered by any such rule.

K. No retaliation may be made against any member of the Armed Forces or veteran or other state resident who receives treatment as part of registered institutional review board study carried out by a civilian health care practitioner.

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L. For purposes of the Oklahoma TBI Treatment Act, a university-affiliated or nationally accredited institutional review board shall be treated in the same manner as a government institutional review board.

M. The state, the Secretary of Defense and the Secretary of Veterans Affairs shall seek to expeditiously enter into memoranda of understandings with civilian institutional review boards described in subsection L of this section for the purpose of providing for members of the Armed Forces and veterans to receive treatment carried out by civilian health care practitioners under a treatment approved by and under the oversight of civilian institutional review boards that would qualify for payment under the Oklahoma TBI Treatment Act.

N. The Secretary of Veterans and Military Affairs shall notify each veteran with a service-connected injury or disability of the opportunity to receive treatment pursuant to the Oklahoma TBI Treatment Act. The Secretary of Veterans and Military Affairs shall notify each member of the Armed Forces within the state with a service-connected injury or disability of the opportunity to receive treatment pursuant to the Oklahoma TBI Treatment Act.

O. Not later than thirty (30) days after the last day of each fiscal year during which the state is authorized to make payments under the Oklahoma TBI Treatment Act, the Secretary shall jointly

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submit to the Legislature and the Governor an annual report on the implementation of the Oklahoma TBI Treatment Act. Such report shall include each of the following for that fiscal year:

1. The number of individuals for whom the Secretary has provided payments under the Oklahoma TBI Treatment Act;

2. The condition for which each such individual receives treatment for which payment is provided under the Oklahoma TBI Treatment Act and the success rate of each such treatment;

3. Treatment methods that are used by entities receiving payment provided under the Oklahoma TBI Treatment Act and the respective rate of success of each such method; and

4. The recommendations of the Secretary with respect to the integration of treatment methods for which payment is provided under the Oklahoma TBI Treatment Act into facilities of the Department of Defense and Department of Veterans Affairs.

P. The authority to make a payment under the Oklahoma TBI Treatment Act shall terminate on the date that is five (5) years after its enactment.

Q. The Insurance Department of the State of Oklahoma shall have the responsibility to collect payments from the payer responsible for a given patient's treatment as specified under the Oklahoma TBI Treatment Act. These funds less the expenses of the Insurance Commissioner's office shall be paid to the respective fund from

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which original payment was made. Any requirement of medical necessity or preapproval will be deemed as having already been met regardless of a payer's objection. Medical necessity shall have been determined by whether positive health outcomes were achieved under the treatment requirements of the Oklahoma TBI Treatment Act.

To prevent retaliation against those who received treatment under the Oklahoma TBI Treatment Act, patient confidentiality shall be maintained. Independent verification procedures, such as independent auditing of patient records validating the payer's responsibility, shall be created.

R. The purchase of equipment and facility installation is authorized under the Oklahoma TBI Treatment Act in order to meet the emergency presented by the tens of thousands of injured individuals. The Insurance Department shall be in charge of approving these expenditures and collecting a fee from each treatment paid to reimburse the respective trust fund used, at a rate of Fifty Dollars ($50.00) per treatment, until the equipment or facility is completely paid for. At such time as the equipment or facility is paid for, the title of ownership for the equipment or facility will be given without further compensation, to the hosting organization.

S. To meet the emergency need for personnel to provide qualified treatment to eligible patients under the Oklahoma TBI Treatment Act, funds to pay for training may be drawn by OSUCHS CAHM

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for courses to be conducted that meet recognized standards for the particular treatment that is administered. Persons undergoing such education or training will incur an obligation to the state for this revolving scholarship, which shall be satisfied by physicians who provide supervision for treatment at the rate of Twenty-five Dollars ($25.00) per hour, and for health care practitioners at the rate of Ten Dollars ($10.00) per hour. National Guard medical personnel may be activated for both the purposes of receiving training and providing services. Continuing medical education credits, college credits, or vocational/technical school tuitions for these training courses are all eligible for payment under this scholarship. Normal other tuition or education assistance applies to training or education under these provisions.

T. 1. 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, 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. The waivers under this subsection shall expire in two (2) years. Therefore, compliance with provisions of The Oklahoma Central Purchasing Act shall not be required of the Insurance Department,

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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.

2. 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 Insurance Department, OSUCHS, OUHSC, OU-Norman or the IHMF. However, the Insurance Department, 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.

3. Compliance with provisions of the Oklahoma Surplus Property Act shall not be required of the Insurance Department, OSUCHS, OUHSC, OU-Norman or the IHMF; however, the Insurance Department, 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.

4. The Insurance Department, OSUCHS, OUHSC, OU-Norman or the IHMF shall be exempted from the requirements of the Office of

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Management and Enterprise Services to file the annual budget work program, budget request, information systems plan and telecommunications plan. However, these organizations shall continue to file an annual audited financial statement in accordance with governmental accounting standards.

5. The Insurance Department, OSUCHS, OUHSC, OU-Norman or the IHMF shall be further exempted from conversion to CORE Phase II requirements of the Office of Management and Enterprise Services.

6. The Insurance Department, 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.

7. 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 (2) years the Oklahoma National Guard shall also be exempt from procurement provisions as specified in this subsection.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 238 of Title 44, unless there is created a duplication in numbering, reads as follows:

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A. The Oklahoma National Guard Relief Program ("OKNGRF") shall be designated as the state health account to begin paying for all effective treatments and related costs at published Medicare rates for the State of Oklahoma following the rules as set forth in Section 6 of this act for all active duty, national guard, or veterans in the state who qualify for treatment.

B. A subsection of this account is designated as a revolving trust fund to be operated in accordance with state investment practices.

C. Expenditures from the OKNGRF trust fund subsection are authorized as follows:

1. Medical treatment and adjunctive therapies for all current and former members of the Oklahoma National Guard and all current and former active duty U.S. military personnel residing within the State of Oklahoma;

2. Expenditures related to receiving such treatment such as travel and housing when treatment is not locally available or specialized care is needed for a qualified person to receive treatment;

3. Purchase and installation of durable medical equipment needed to carry out treatment under paragraphs 1 and 2 of this subsection;

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4. Education or training expenses necessary to provide treatments under paragraphs 1 and 3 of this subsection; and

5. A level of Twenty Million Dollars ($20,000,000.00) is authorized as an initial level for the fund, which may be increased by written agreement between the Governor and House and Senate leadership and relevant committee representatives of the committees with jurisdiction over the National Guard and veterans who reside within the State of Oklahoma.

D. Nonveteran civilians who qualify under the Oklahoma TBI Treatment Act shall receive payment from the Trauma Care Assistance Revolving Fund ("TCARF").

E. Expenditures from the TCARF are authorized as follows:

1. Medical treatment and adjunctive therapies for all state residents who are not current or former members of the Oklahoma National Guard or current or former active duty U.S. military personnel residing within the State of Oklahoma;

2. Expenditures related to receiving such treatment such as travel and housing when treatment is not locally available or specialized care is needed for a qualified person to receive treatment;

3. Purchase and installation of durable medical equipment needed to carry out treatment under paragraphs 1 and 2 of this subsection;

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4. Education or training expenses necessary to provide treatments under paragraphs 1, 2 and 3 of this subsection; and

5. A level of Ten Million Dollars ($10,000,000.00) is authorized as an initial level for the fund, which may be increased by written agreement between the Governor and House and Senate leadership and relevant committee representatives of the committees with jurisdiction over the National Guard and veterans who reside within the State of Oklahoma.

F. Revenue sources for the revolving trust funds shall be:

1. Appropriations from the State of Oklahoma;

2. Bond issues;

3. Reprogrammed funds from other sources in the state budget as needed during the year to meet the needs of authorized residents needing treatment; and

4. Collections from third-party payers, such as Tricare, Veterans Administration, state Workers Compensation, Medicaid, or others with legal responsibility to have delivered effective treatment at the time an injury may have occurred. There will be no statute of limitations in determining this liability. Proportional responsibility for payment may be determined based upon patient injury history, severity of given injuries and related matters.

Where the individual qualifies for state Medicaid, Workers Compensation, or other public health assistance, the TCARF will be

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reimbursed accordingly at standard published facility reimbursement rates for the treatment for each carrier, or the Medicare reimbursement rate, whichever is higher.

G. 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.

H. It is recommended that the state appropriations committees apply ten percent (10%) of the documented projected or realized savings from other state programs into these respective programmatic accounts so that effective treatment can be expanded with the state. These elections shall be the responsibility of the Insurance Department.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 02/28/2013 - DO PASS, As Amended and Coauthored.

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