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Association for Responsible Alternatives
to Workers' Compensation



THE OPTION RESOURCE GUIDE

**SECTION 1:
OPTION Q & A**

**SECTION 2:
OPTION ANALYSES &
REPORTS**

December, 2015

Introduction

The Option is an alternative to traditional workers' compensation. The Option doesn't repeal or eliminate traditional workers' compensation, but instead, creates an optional occupational injury benefits system designed to:

1. Return to a system that focuses on the employee and employer;
2. Eliminate delays inherent in the current system that, in turn, delay employee recovery, return to work, and appropriate / timely medical treatment;
3. Ensure that employees receive improved outcomes and satisfaction

Primary Components of an Option to Workers' Compensation:

- Injury prevention with quality safety programs, training, and equipment;
- Benefit plan that describes employer and employee rights and responsibilities for injury benefit payments;
- Employee communication to current employees and new hires, in language they understand and appreciate (booklets, posters, employee meetings and computer-based learning are common);
- Claims management, including a process for notice of injuries, determining compensability, medical management, claims payment, and dispute resolution.

Benefit to Employees:

- Full range of benefits equal to or better than workers comp, with a high degree of employee satisfaction
- Access to more doctors, expedited medical care, and better outcomes;
- Higher percentage of wages replaced, fewer days without pay
- More communication and better understanding of benefits

Benefit to Employers:

- Focused on what is best for employee, not on paperwork and litigation;
- Fewer benefit claims disputes, better medical outcomes, and higher worker satisfaction;
- Greater cost savings and more plan flexibility.

Benefit to States:

- State legislature authorizes plan before, after, or at same time as worker's comp reforms;
- Competitive advantage over states without Option alternative;
- Lowers government costs as claims move into competitive market environment;
- Traditional workers' compensation and the Option are complementary; one does not detract from or invalidate the other;
- States require formal employer qualification process for participation in the Option;
- States build in proven claim and appeal process and fiduciary and enforcement rules.

Currently, Texas and Oklahoma offer alternatives, an Option, to workers' compensation. The Options are resulting in improved employee outcomes and creating significant employer savings.

The Association for Responsible Alternatives to Worker’s Compensation (ARAWC) prepared the following Option Resource Guide to answer commonly asked questions regarding the Option. Section 2, of this Option Resource Guide summarizes the many independent studies and current analyses that explain and validate existing and proposed alternatives to workers’ compensation.

ARAWC welcomes further questions and discussion regarding the Option. www.arawc.org

About ARAWC:

*The **Association for Responsible Alternatives to Workers’ Compensation** (ARAWC) was formed in 2014, and is comprised of employers, workers’ compensation system providers, and industry experts dedicated to enacting state workers’ compensation alternatives (an Option) that will deliver better medical outcomes to employees, while giving employers a choice in how they manage their injury benefits.*

For more information, contact:

AJ Donelson, ARAWC Media and Communications

202-654-7002 (O), 703-615-7188 (M), adonelson@advocomgroup.com

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SECTION 1: The Option: A Question & Answer Guide

1. Do workers' compensation and Option programs have the same objectives?

- Yes. Both pursue the same objectives of:
 - Improved medical outcomes
 - Payment only for workplace claims
 - Return to work
- We just go after those objectives in different ways.

2. Are Option programs new and untested?

- No. Option programs have been active in Texas since 1989, and in Oklahoma since summer 2014.
- Option injury benefit plans cover 1.5 million workers in Texas and 22,000 workers in Oklahoma.
- They successfully resolve approximately 50,000 injury claims per year.
- Numerous independent studies validate the success of Option programs for injured workers and employers. More studies are welcome and in process.

3. Are there supporters of Option programs within the workers' compensation industry?

- Yes. There are thousands of workers' compensation industry professionals who believe in and support Option programs in Texas, Oklahoma and beyond. For example:
 - Many sophisticated Fortune 500 risk managers, who are very aware of their brand value, manage Option programs covering billions of dollars in payroll;
 - Many "A" rated insurance companies support the Option insurance marketplace and write approximately \$150 million in annual premiums;
 - Many nationally-recognized TPAs handle Option claims, successfully resolving tens of thousands of injury claims every year, and;
 - Several nationally respected actuarial firms have confirmed Option program success.
- These professionals have openly worked together for the past two decades to deliver better results for injured workers, fewer disputes, and a better value for employers.

4. Is a workers' compensation "Option" the same as "Opt Out"?

- No. There are three kinds of employers in Texas (those that provide workers' compensation coverage, those that provide injury benefit plan coverage, and those who do nothing for injured workers). ARAWC does not support employers who do nothing for injured workers. Those are the employers who "Opt Out".

- Option legislation in Oklahoma, Tennessee, South Carolina and other states mandates benefit requirements, financial security controls and a formal employer qualification process.

5. How do Option programs compare to workers' compensation?

- Hyper-regulated, government-run workers' compensation programs can cost a state tens of millions of taxpayer dollars every year to operate and the programs often struggle with efficiency and effectiveness.
- There is a need for more employer engagement, more employee accountability, and insurance market competition operating beneath an umbrella of state and federal employee protections. That is precisely what an Option to workers' compensation delivers.
- Workers' compensation systems tell workers nothing about their rights or responsibilities until after they are injured, at which point workers find that their right to sue has been revoked.
- Workers' compensation supports delays in injury reporting and delays in medical treatment. Injured workers bear very little personal responsibility for their care and recovery. Too often, injured workers are engaged in a system that they don't understand and are vulnerable to less than ethical medical practitioners eager to resort to surgery and narcotics.
- Seriously injured workers commonly have no choice but to hire a lawyer to navigate a highly complex workers' compensation maze. Those lawyers then explain fundamental rights to an employee and family members, in a time of crisis, in exchange for a big cut of the payments. And in an Option program, it's not necessary.
- In contrast, Options to workers' compensation are about better "customer" service. All Option injury benefit plan requirements must – by law – be fully communicated to workers, in language they can understand, before an injury occurs. Employers are then allowed to further communicate and support the injured worker's needs when an injury occurs by gaining faster access to the best medical providers (many of whom will not accept workers' compensation claimants due to bureaucratic hassles and low fee payments).
- Options support more continuous medical care and earlier return to work. Options require workers to follow the direction of treating medical providers. As a result, Options result in fewer tragic cases for injured workers and their families, as described further below.

6. Is Option legislation just like workers' compensation reform legislation?

- No. Options get better medical outcomes for injured workers and save money for employers by focusing on more employee communication, earlier medical diagnosis, attracting the best medical providers, and holding injured workers accountable to participate in and promote recovery.

- Workers' compensation reforms tend to be much more difficult for a legislature to pass and commonly focus on reducing benefits, reducing physician reimbursements, and narrowing compensability. Such reforms also commonly do little (if anything) to create a more competitive insurance marketplace.

7. Do Option programs pay “reasonable and necessary” medical expenses?

- Yes. Injury benefit plans include a promise to pay reasonable and necessary medical expenses.
- Existing Oklahoma and proposed Tennessee and South Carolina injury benefit plans must pay such expenses with no dollar or duration limit, unlike workers' compensation.
- Texas injury benefit plans commonly limit medical expense payments to a lower dollar amount or duration because the employer must also pay for any economic, non-economic and punitive damage awards or settlements for employer negligence that may have caused the injury. (More detail below in Q&A on “better benefits”.)

8. Are exclusions and limitations on benefits only found in Option programs?

- Of course not. Every workers' compensation system relies on various exclusions and limitations on benefits, buried among hundreds of pages of statutes, rules, guidelines and court decisions within each state workers' compensation system.
- One difference is that Option program exclusions and limitations are much more transparent and easy to find in Option plan documents and summary descriptions. These documents are readily available to every covered employee.
- Option programs use certain exclusions and limitations on benefits primarily as a means of confirming payment for work-related injury (and in Texas, in consideration of the employer's unlimited negligence liability exposure). Those plan provisions should be continuously reviewed and refined for best practices, as employers and insurance carriers are doing in Texas and Oklahoma.

9. How do Option programs generate more competition?

- Workers' compensation insurance companies all offer the same product and compete almost exclusively on price. Option Insurance companies strongly compete against workers' compensation insurance carriers and each other to see who can offer the lowest price for the broadest possible injury benefit coverage. For example, some Oklahoma Option insurance carriers offer (in addition to benefits mandated by statute) additional non-occupational death benefits, identity theft, travel accident and other coverages for employees.

10. Do all Option programs contain the same exclusions and limitations on benefits?

- No. Texas Option programs contain unique (and more extensive) exclusions and limitations on benefits than Oklahoma Option programs and Options proposed in Tennessee and South Carolina (because of the negligence liability exposure of Texas employers).
- Oklahoma Option injury benefit plans must provide the same forms of benefits and at least the same dollar, duration and percentage limits found in the Oklahoma workers' compensation system. In exchange for this high benefit mandate, "exclusive remedy" protections preclude negligence liability claims against the employer. With this exclusive remedy protection, these programs contain far fewer exclusions and limitations than Texas Option programs.
- Option legislation proposed in both Tennessee and South Carolina goes one step further. Those new laws will mandate certain injury benefits even higher than state workers' compensation benefit levels.
- As seen in the Texas and Oklahoma Option marketplace, when provided the opportunity to compete, Option insurance carriers will continue to further broaden coverage and remove various exclusions and limitations in order to win and maintain policyholder business.

11. Do Option programs focus on saving money by reducing benefits?

- No. Option programs have never been about reducing benefits to injured workers. Instead, they rely on better communication, accountability and medical management to achieve superior outcomes for both workers and employers regarding occupational injuries.
- In Texas, Option programs deliver broad coverage through a combination of voluntary benefits and liability settlements. (More detail below in Q&A on "better benefits.")
- In other states, benefits are mandated by statute, like workers' compensation.

12. Do Option programs remain static over time?

- No. Option programs are commonly reviewed on an ongoing basis, continually improving benefit entitlements and outcomes. As workers' compensation Option systems continue to evolve, we anticipate some of the micro-limitations found in current plans to be removed.
- Change in traditional workers' compensation programs occurs at a glacial pace. The ability to more rapidly respond to best medical and claims handling practices are a key advantage of Option programs. They do not have to wait on enabling legislation and rules. If a need or new best practice is identified, it can be immediately acted upon.

13. Are Options to workers' compensation "self-insurance?"

- No. Both workers' compensation and Option programs allow employers to insure, self-fund or do a combination of insurance and self-funding. This is just a matter of how benefit claims are financed.

- Over \$150 million in Option insurance premiums are paid by Texas and Oklahoma employers every year. Virtually any deductible or self-insured retention and coverage level is available in the open market. Insurance companies vigorously compete to offer the broadest coverage at the lowest price.
- Every Texas and Oklahoma employer known to maintain an injury benefit plan has also purchased insurance to fund all or a portion of the benefit obligations.

14. Do Option programs provide financial security for injury benefits to be paid?

- Yes. We believe every employer has the responsibility to provide workers' compensation or a quality injury benefit plan and insurance coverage. Option laws in Oklahoma, and as proposed in Tennessee and South Carolina, mandate employer financial security reviews by the state insurance department and provide guaranty fund protection if an employer or insurance carrier is unable to meet its financial commitment to pay benefits.

15. Do Option programs provide protections against discrimination and retaliatory discharge of injured workers?

- Yes. Option employers are subject to federal laws that make it unlawful for any person to discriminate or retaliate against an injured worker or death benefit beneficiary for exercising any right under an injury benefit plan, including the filing of a claim.

16. Do injured workers have access to the courts for benefit disputes?

- Yes. Employees have extensive internal and external rights to appeal any benefit denial, including access to state and federal courts.
- Federal law prohibits mandatory, final arbitration of injury benefit disputes.
- Some Texas employers require arbitration of negligence liability claims by injured workers, but that does not apply to any dispute regarding payment of injury benefits. Arbitration of such negligence liability claims is entirely unique to the Texas Option.
- Injured workers covered by an arbitration agreement in Texas still retain all rights to sue for employer negligence and can recover the same damages allowed in a court of law. A neutral arbitrator is selected by both parties and any cost-sharing by employees must be limited.
- The Oklahoma, Tennessee and South Carolina Options mandate such a high level of injury benefits protection that the employer cannot be sued for negligence liability. This is the same way workers' compensation systems work. But as noted above, the employer can be sued in state or federal court for any dispute over injury benefits. Arbitration will not apply in these states.

17. Have independent studies been performed on Option programs?

- Yes. Independent studies of the “nonsubscriber” Option to Texas workers’ compensation have already been conducted by Stanford University School of Law and other prominent, national researchers, actuaries, and other authorities. More independent studies are in progress now and will be most welcome.

18. Does the Option reduce cost shifting of occupational injury costs to government programs?

- Yes. Options to workers’ compensation are saving money for federal and state governments, not costing them money.
- Cost shifting to government programs happens when employees are dissatisfied and not getting good medical outcomes. The vast majority of cost shifting relates to whether the employer or the government is paying medical and wage replacement costs on injury claims. Over two decades of experience and data on Texas Option programs, and over one year of data on Oklahoma Option programs indicates that Option programs, indicate that Option programs deliver superior medical outcomes and replace more lost wages for injured workers than workers’ compensation systems. This reality is supported by the fact that, in comparison to workers’ compensation programs, fewer injured workers covered by Option programs hire lawyers or file claim disputes.
- Public policy discussions can start with high level reviews of a few injury claims and benefit levels. But serious, objective data analysis is needed on medical outcomes for injured workers, how many claims are disputed, and which system is shifting more cost to government programs. We are confident that analysis will demonstrate that Option employers and their insurance companies are bearing much more of the cost of occupational injuries than is seen in workers’ compensation systems.

19. Do Option programs focus on paying only work-related injury claims?

- Yes. A significant number of injured workers and medical providers try hard to shift the costs of non-occupational injuries and illness (such as preexisting conditions and the natural effects of aging) into workers’ compensation and Option programs. As recently reported by the Workers’ Compensation Research Institute, this problem has been exacerbated by high deductibles, co-pays, and physician fee limits under the Affordable Care Act.
- Now that most American workers should be covered by health insurance, it is more important than ever that the costs of injury and illness be captured and paid by the particular system designed to finance those costs. Option injury benefit plans have been faster to adapt to this need than workers’ compensation programs that bear significant costs of non-work-related conditions.

20. If employers are more involved, how do we know they will do the right thing for injured workers?

- First, Social Responsibility: Most Option employers take social responsibility very seriously. They commonly compete to be recognized locally and nationally as a “Best Place to Work.”
- Second, Productivity and Profits: This is not the Industrial Age when workers were untrained. Employers today are highly incentivized to retain trained workers and return injured employees to their pre-injury status and a productive job.
- Third, Fiduciary Responsibility: The law requires it. Under Option plans, the claims administrator has fiduciary responsibility to act in the best interest of employees, and is personal liability if he/she fails to do so. No such employee protections exist within workers’ compensation programs.

21. Why do Option programs require faster injury reporting than workers’ compensation?

- This is an advantage for everyone, not a penalty.
- More immediate notice of injury has several important advantages for workers and employers:
 - Prompt injury reporting leads to:
 - early medical diagnosis
 - faster, more effective medical treatment
 - better medical outcomes
- These are simple facts supported by American Medical Association guidelines and numerous medical studies.
 - Prompt injury reporting also supports:
 - timely investigation of the claim and availability of witnesses
 - timely post-accident drug/alcohol testing
 - coworkers exposed to unsafe conditions for shorter periods of time
- Employers emphasize the reporting timeframe to their employees through multiple communication methods, including Summary Plan Description booklets, highlights brochures, computer-based learning modules, wallet cards, posters in the workplace, communication from supervisors and periodic retraining. To paraphrase the U.S. Homeland Security mantra: “If you experience something, say something.”
- Immediate notice of injury requirements must be subject to a “good cause” exception to handle unique situations. This good cause exception, coupled with the claim administrator’s duty to act as a fiduciary in application of the benefit plan’s terms, is an important “check and balance.”
- In view of the above advantages to immediate reporting, why does workers’ compensation allow 30 or more days (plus a good cause exception) to report injuries that the employee knows about? That works well for no one.

22. Why do Option programs require more employee accountability than workers’ compensation?

- Employee accountability is lacking in workers’ compensation systems because employer involvement is heavily discouraged. No workers’ compensation system we

are aware of has any proactive employee communication on their rights and responsibilities comparable to the federal legal requirements that apply to Option injury benefit plans. We cannot expect employee accountability in the absence of good communication between employers and their employees.

- On the other hand, Option programs promote and require (by law) clear and extensive employer communication of employee rights and responsibilities, both before and after an injury occurs. Such communication and other customer service is important and supported by legal requirements that claims be administered by a fiduciary acting in the best interest of employees.
- Option programs commonly suspend or deny benefits if a worker misses doctor appointments, fails to remain in communication with the claims administrator, goes to non-approved medical providers that jeopardize their recovery or fail to follow the treating medical provider's direction on how to get better. Again, customer service is important and required by law. For example, missed doctor appointments are commonly rescheduled. But timely treatment and injured worker compliance are also important so that they can resume their normal lives.
- Option programs promote return to work when released to full or modified duty, and require injured workers to refrain from activities that prevent the recovery process.
- Option programs rely on medical experts who promote returning to normal daily activity, including work, as a vital part of the recovery process.
- Option program claim administrators investigate occupational injury claims and pay generous benefits to cover damage or harm attributable to occupational injuries. However, non-occupational injuries or illness, like preexisting or degenerative conditions, should be covered under health insurance.
- These common sense methods of driving more employee accountability have been almost entirely stripped out of workers' compensation systems in the name of "employee protection."
- However, such accountability delivers better medical outcomes for injured workers, lower costs for employers, and can be expected when lines of communication are open and active.

23. Can injured workers be required to waive negligence liability claims in exchange for injury benefit protection?

- That is precisely what workers' compensation laws do. The "Grand Bargain" of workers' compensation is that injured employees receive benefits mandated by statute and generally cannot sue the employer for negligence that caused the injury.
- Under the Texas Option, pre-injury waivers of negligence claims were outlawed in 2001. Post-injury waivers were authorized by the Texas Legislature in 2005, provided that the agreement complies with several legal requirements to protect the injured worker. Very few (likely less than six out of tens of thousands) of Texas Option programs require injured workers to sign a post-injury waiver as a condition of eligibility for injury benefits.

- Waivers of negligence are never used in Oklahoma Option programs and won't be used in Tennessee or South Carolina Option programs because of statutory, mandated benefits that must be paid on a no-fault basis. Benefit mandates are so high that the employer does not have the negligence liability exposure found in Texas Option programs.

24. Do Option employers just work in safer industries like retail, which typically have less severe, less expensive claims?

- No. Option employers are generally found in industries that have a high frequency of claims, such as healthcare, retail, restaurants, hotel, trucking, distribution, and manufacturing. Unfortunately, employees in these industries sometimes experience very serious, catastrophic claims.
- Option programs have resolved hundreds of catastrophic injury claims to the satisfaction of injured workers and their families for over two decades.

25. How has the Texas Option impacted Texas workers' compensation over the past 12 years?

- Texas has gone from the 10th most expensive workers' compensation system in the U.S. (in 2003) to the 38th most expensive (in 2013), AND achieved better medical outcomes for injured workers.
- These dramatic improvements in injured worker outcomes and employer costs are due to a combination of legal reforms and competition with the Option. Insurance companies must work harder to implement reforms faster and maximize the results when competing with an alternative (Option) product.
- Many more (in numerical and percentage terms) workers are covered today by Texas workers' compensation or an Option injury benefit plan than were covered a dozen years ago.

26. Do Option programs or workers' compensation programs pay better benefits?

- The vast majority of workers' compensation and Option claims do not involve catastrophic injury. For these typical claims, all reasonable and necessary medical expenses are paid in full. However, most employees covered by Option injury benefit plans (in Texas and Oklahoma) are eligible for wage replacement benefits that are higher than workers' compensation benefits (even after adjusting for any applicable taxes). Option wage replacement benefits typically start sooner, are paid at a higher percentage, and with a higher (or no) weekly dollar cap.
- These wage replacement features are also found in Tennessee and South Carolina legislation.
- Texas Option programs often pay more defined levels of compensation faster in catastrophic claims. For example, death and dismemberment benefits in Texas injury

benefit plans are typically paid in a lump sum or installments over three years instead of weekly payments strung out over many more years.

- In some cases, Texas injury benefit plans may pay fewer benefits for catastrophic injury claims because of the opportunity for additional recoveries due to any employer negligence that caused the injury. This Texas negligence liability exposure is very real, with 84 identified settlements or judgments of \$1 million or more involving employers that do not provide workers' compensation insurance coverage. As a further example: a recent review of 155,935 Texas Option claims included 19 claims with totals incurred over \$750,000. 18 of these claims resolved through a combination of benefit plan payments plus additional amounts in exchange for a voluntary settlement or a negligence liability award by a court or arbitrator. The one remaining claim is in active litigation.

27. What about tragic injury cases?

- The sad truth is there are tragic stories under both workers' compensation and Option injury benefit plans. The questions everyone should be asking are: Which system has fewer claims go awry? Which system brings injured workers back to their jobs and supporting their families faster? Which system has fewer disputes? Those are true measures of employee satisfaction and tragedy.
- Texas nonsubscriber Option programs have outperformed workers' compensation by those standards (and, at the same time, cost employers less money) for decades. That's why other states now want to implement similar, enhanced Option programs that include mandated benefits and financial security protections that ARAWC fully supports.

28. What would you want for yourself or a family member if hurt at work?

- Better understanding of injury benefit rights and responsibilities.
- Immediate medical diagnosis and treatment by the best available physician.
- Payment of higher wage replacement benefits on the employer's normal payroll system.
- Faster return to work
- Fewer disputes
- Less red tape, resulting in a smoother process and lower taxpayer expense.

SECTION 2:

Analyses and Reports on Workers' Compensation Option Programs

The following analyses and reports have examined alternatives to workers' compensation. The reports include overviews of existing laws and pending legislation. Specific Option legislative proposals differ from state to state, just as workers' compensation systems differ from state to state. In general, however, benefits for injured workers and employers include:

- Both injured workers and employers report higher levels of satisfaction with Option programs than with workers' compensation programs.
- Injured workers receive higher quality medical care and better medical outcomes under Option programs.
- Disability durations are shorter under Option programs.
- There is less attorney involvement under Option programs.
- Workers' compensation Option systems can remove or mitigate fraud and abuse.
- State Legislatures can define benefit coverage and liability laws, then provide lean and effective oversight of an Option system.
- Federal ERISA laws that require minimal taxpayer expense and have applied to group health plans for over 40 years help deliver more predictability, efficiency and employee responsibility for their own health behaviors.
- Actuarially credible data reflects that Option programs have a positive impact on claim severities and deliver lower employer costs.

1. **[Risk and Insurance Management Society – “Alternatives to Traditional Workers' Compensation Systems”](#)** – 2015, RIMS Executive Report:

Provides a general overview of Option systems, compares and contrasts enacted and introduced legislation in different states and provides basic considerations employers should use when determining whether to elect an Option to workers' compensation. The report concludes that when employers decide on whether to elect an Option to a state's workers compensation system, the employer should take into consideration its relationship with its employee, the well-being of those employees and other factors including the reputational risks.

2. **[Texas Department of Insurance: “Employer Participation in the Texas Workers' Compensation System: 2014 Estimates”](#)**. Key findings from this latest, biennial survey include:

- a. One-third of all Texas employers do not participate in the Texas workers' compensation system.
- b. Approximately 1.43 million workers are covered by injury benefit plans. This figure increased by 200,000 workers between 2012 and 2014.
- c. Even with an elective workers' compensation system and injury benefits provided on a purely voluntary basis, 95% of all Texas workers' are covered by workers' compensation or an injury benefit plan. [Option legislation in other states mandates benefit coverage for all employers.]

- d. Satisfaction among employers who elect the Texas Option is higher than among employers who provide workers' compensation insurance. Satisfaction is higher (i) with the adequacy and equity of benefits paid to injured workers, (ii) with the degree to which those benefits are a good value for the company, (iii) with the ability to effectively manage medical and wage replacement costs, and (iv) overall.
 - e. The primary reason why employers do not participate in the state system (one of the nation's most admired) is that they believe the company can do a better job than the workers' compensation system at ensuring employees injured on the job receive appropriate benefits.
3. **Aon Risk Solutions "Retail Benchmark Analysis"** – 2014, by Tim Banick and Andrea Bode. Aon regularly performs a retail industry benchmarking analysis for workers' compensation. This 2014 study considered:
- a. Over 2.6 million non-zero value work compensation claims
 - b. Over \$19.1 billion of incurred work compensation loss and allocated loss adjustment expense ("ALAE")
 - c. Over \$16.6 billion of paid work compensation loss and ALAE
 - d. Over \$1.1 trillion of payroll
 - e. 73 participants
 - f. Over 86,000 store locations representing all 50 states, as well as United States unincorporated territories.

Texas workers' compensation and nonsubscriber Option claims data was thoroughly analyzed using multiple actuarial methods. Notable findings include this statement: "A very favorable impact in loss severities and loss costs has been experienced by those retailers who have opted out of the Texas work comp environment and formed a Texas non-subscriber program. In the most recent years, retailers have experienced Texas non-subscriber severities and loss costs approximately 40% to 50% lower than retailers who subscribe to the work comp environment." Aon ranked the costs of all programs in the United States (and its territories), and Texas non-subscription has the lowest cost.

4. **New Street Group: "What Employers Need to Know about the New Oklahoma Law"** – 2013, by Peter Rousmaniere and Jack Roberts:

The authors note that interest in the Oklahoma Option has spread nationwide, along with disenchantment with prospects of deep and lasting legislative reforms to the statutory state systems." The authors comment that the Oklahoma law creates both a legislative model and real-life laboratory for opt-out system ideas and significant reforms of workers' compensation. Thus, it is a more useful model than Texas for adoption by other states."

5. **New Street Group: "Workers' Compensation Opt-Out: Can Privatization Work?"** – 2012, by Peter Rousmaniere and Jack Roberts. Key findings include:

- a. Nationwide, employers perceive that persistent problems afflict the statutory workers' compensation system, resulting in excessive claim costs and abetting fraud and abuse. Workers' compensation Option systems can remove or mitigate these problems.
- b. Decades of employer experience with ERISA for medical, accident and disability benefits and ERISA regulation by the Employee Benefits Security Administration within the Department of Labor have brought about a high level of predictability with compliance requirements and the dispute resolution process. This certainty enables employers to plan for the efficient deployment of an Option program. It also enables insurers to design insurance products and underwrite with confidence.
- c. ERISA plans demand more aggressively than statutory systems that injured workers be responsible for their own health behaviors.
- d. State oversight of an Option system can be lean and effective.

6. [Work Loss Data Institute: "State Report Cards for Workers' Compensation 2012", a WLDI Special Study Based on data from 2000-2009 BLS OSHA Form 200/300](#) – December 2011, this report compares outcomes among different states using comparable measures, putting each state on a level playing field:

- a. WLDI compared the outcomes from all Texas employers (using Bureau of Labor Statistics data that comes from OSHA logs and therefore covers all employers) with outcomes from all cases reported within the Texas workers' compensation system.
- b. Like other studies reflecting better medical outcomes under Texas injury benefit plans, this WLDI study demonstrates that the Texas nonsubscriber Option is achieving dramatically shorter disability durations and fewer claims with delayed recovery than Texas workers' compensation. For the year 2000 the data shows:

	BLS for TX	Workers' Comp
Median duration	9 days	50 days
% 31+ days	28%	well over 50%

- c. *Another key finding:* Option employers use other effective claims management procedures, such as the direction of medical care and use of treatment guidelines.

7. [Stanford Law School: "Opting Out of Workers' Compensation in Texas: A Survey of Large, Multistate Nonsubscribers"](#) – 2010, by Alison Morantz, professor of law at Stanford Law School, Regulation vs. Litigation – Perspectives from Economics and Law, National Bureau of Economic Research, 2010. This research was supported by National Science Foundation Grant. Professor Morantz' key findings include:

- a. Virtually all survey respondents (94 percent) said they deemed the program a success.
- b. Virtually all respondents (98 percent) cited cost savings as a benefit of the Texas nonsubscriber Option, and most (86 percent) cited the magnitude of cost savings as a positive surprise. The average reported cost savings for all groups exceeded 50 percent.

- c. A substantial majority of respondents cited higher quality medical care for injured employees as an advantage.

8. [Texas Public Policy Foundation: “Workers’ Compensation: Making It Work for Texans”](#) – 2005, this study of the Texas workers’ compensation system found that:

- a. The total cost of occupational injury benefit programs under the Texas nonsubscriber Option is 25-to-50 percent less than in the state system.
- b. Medical care outside the system is more likely to result in better outcomes for injured workers than inside the system.
- c. Group health providers in Texas provide care at one-sixth the cost per worker of state workers’ compensation care, cost savings that reflect price discounts that the private sector can negotiate. Medical costs are also reduced by employer direction of care.
- d. The private sector has proven far superior to government agencies and regulations in establishing cost-effective, high-quality health care services for injured workers.
- e. The state system installs government as the intermediary between employer, employee, health provider and insurer. It eliminates economic, medical and social incentives for the system to serve the best interests of injured workers and responsible employers. The consequences are unjustifiably high utilization, uncontrolled costs, and poor medical care outcomes.
- f. Market incentives and choice work better than government mandates and regulation.

9. [Texas A&M University: “A Study of Nonsubscription to the Texas Workers’ Compensation System: The Employee Perspective”](#) – 1994, prepared by The Public Policy Research Institute at Texas A&M University for the Texas Workers’ Compensation Research Center (document 106):

Soon after Texas employers began to widely elect the nonsubscriber Option (and prior to development of industry best practices), this study directly surveyed employees of subscriber and nonsubscriber companies to ask about their perspectives on and experiences with the benefits available in the event of occupational injury or illness. Key findings from 700 completed interviews of employees and a series of case studies include:

- a. Looking at experience with medical care, 87 percent of both employees of subscribers and employees of nonsubscribers reported having had all the medical costs for their on-the-job injuries paid.
- b. Of those who received lost-wage benefits, 40 percent of employees of subscribers and 42 percent of employees of nonsubscribers reported receiving 100 percent of their lost wages, and 88 percent of employees of subscribers and 94 percent of employees of nonsubscribers reported that the coverage for wage replacement extended for the entire period away from work.
- c. In all but one case, injured employees received adequate medical treatment and necessary physical therapy.

- d. There were examples of employees of both subscribers and nonsubscribers who had satisfactory and unsatisfactory experiences with the support provided to them.
- e. Among injured employees who reported receiving occupational benefits, 44 percent of those working for subscribers and 41 percent of those working for nonsubscribers reported being "very satisfied" with the benefits received.
- f. Whether they thought they had occupational benefits or not, 25 percent of employees of subscribers reported fearing a loss of job or occupational benefits and 10 percent of employees of nonsubscribers reported fearing such a loss.

A follow up study by the Texas Department of Insurance "Research and Oversight Council on Workers' Compensation" reported in March 1997 that employers electing the nonsubscriber Option are paying medical and indemnity costs related to on-the-job injuries and that attorney involvement (as well as the propensity to file lawsuits) was relatively low among injured workers employed by nonsubscribers. As stated again by the Texas Research and Oversight Council on Workers' Compensation in a February 2002 report, past studies "suggest that satisfaction levels for injured workers employed by nonsubscribers are fairly high."