

**Testimony of Association for Responsible Alternatives to Workers’
Compensation (ARAWC) to the
National Association of Insurance Commissioners (NAIC) Workers’
Compensation Task Force
4/5/16**

Thank you, Chairman Riley, Vice Chair Dwyer, Mr. Keleher and other members of this Task Force for the opportunity to be with you today. My name is Bill Minick and I am the President of PartnerSource, a consulting company. I am also the Secretary of and presenting the following testimony on behalf of the Association for Responsible Alternatives to Workers’ Compensation (ARAWC).

ARAWC is a national organization comprised of employers, workers’ compensation system providers, and industry experts dedicated to enacting state workers’ compensation alternatives (the “Option”) that deliver better outcomes for injured workers.

Let me begin by confirming that:

1. **State Oversight.** ARAWC supports state regulation of the business of insurance, including oversight of workers’ compensation and Option programs. For example, the Association supports state laws governing requirements for exemption from workers’ compensation, including mandated benefit levels, financial security controls, and an employer qualification system. The Association also applauds modernization and efficiency efforts underway through individual state insurance departments and state legislatures to ensure worker safety and to improve workers’ compensation programs.
2. **No “Opt-Out”.** ARAWC believes that all employers are obligated to provide employees with an occupational injury benefit system. The Association does not support employers being able to “opt-out” from their obligation to provide occupational injury benefits to their employees. My thanks to Jennifer Wolf Horejsh for her use of the word “Alternatives” to workers’ comp. It is an important distinction.
3. **Equal or Better Benefits.** ARAWC supports equity for all workers through a statutory framework of mandated benefits that are equal to or better than existing workers’ compensation benefits. Within that framework, insurance companies should be allowed to compete based on both price and coverage.
4. **Choice.** The Option is a voluntary alternative to a traditional workers’ compensation program. The Option and traditional workers’ compensation plans are complementary and pursue mutually reinforcing objectives, improving the lives of injured workers. Texas and Oklahoma have demonstrated that workers’ compensation and Option plans can work side-by-side to promote healthy competition on price and coverage.
5. **Data.** ARAWC is prepared to work with state insurance regulators to thoroughly review and analyze data on Option program performance. Achieving better

outcomes for injured workers, while simultaneously reducing employer costs, is not a theoretical construct or wish list.

a. There is a Substantial Amount of Industry Data clearly demonstrating that Texas and Oklahoma Option programs are resulting in:

- i. Fewer disabled employees,
- ii. Faster return to work,
- iii. Fewer claim disputes, and
- iv. Lower employer costs.

That data is currently being validated by an independent, former NCCI actuary.

b. The ARAWC Resource Guide (<http://bit.ly/1ZObep2>) **also summarizes nine past analyses and reports**, including findings by the Aon actuarial team and other respected authorities. (This guide also contains a set of Q&A's that address virtually all of the questions and concerns raised regarding WC Options to date.)

c. Two weeks ago, Stanford University released a new, 74-page study of the Texas nonsubscriber Option. Major findings (<http://bit.ly/1pOcnA0>) include:

- i. Option programs pay better wage replacement benefits.
- ii. Frequency of severe, traumatic employee injury claims is cut in half.
- iii. The percentage of employees disabled drops by a third.
- iv. Employer costs are cut in half.
- v. Coverage exclusions have minimal impact on cost savings.
- vi. Negligence liability exposure incentivizes Option employers to invest in safety.
- vii. As large Texas employers elected the Option, workers' compensation costs dropped.

The Association welcomes the opportunity to share and further review this and other new data with this Task Force as its investigation moves forward.

WHAT MAKES AN OPTION PROGRAM WORK?

Four Core Principles underlie Option program success:

- 1. Better Communication.** Employees and employers freely communicating and engaging is a pre-requisite to employee accountability and appreciation, improved service, and fewer disputes.
- 2. Fiduciary Decision Making.** As is common in the world of employee benefits, a fiduciary duty to manage claims in the best interests of employees results in less need for regulatory involvement, a more efficient court process, and lower taxpayer expense.
 - a. Contrast this fiduciary duty to injured workers under Option programs with the case on page 272 of the Exclusive Remedy report that will be presented to this Task Force today that says Texas workers' compensation prevents an injured worker from suing for unfair or bad faith claim practices.

- b. Changing the focus of on-the-job injury claims from one of “cost containment” to a process of seeking the “best interests of the injured worker” is extremely beneficial for all parties, and dramatically reduces the percentage of claims that are disputed.
3. **More Employer, Employee and Medical Provider Accountability.** Requirements for accident reporting and medical treatment can rely on widely-acknowledged best practices and medical evidence, rather than traditional system features that remove accountability and fail to achieve the best medical outcomes. Likewise, employers should be required and given the opportunity to engage in the process of delivering better benefits and customer service to injured workers, without the necessity for involvement of so many ancillary players.
4. **Free-Market Insurance Competition.** Lastly, insurance companies should be provided the opportunity to truly compete on coverage, service and outcomes, subject to a statutory framework of protections for injured workers.

LEGISLATIVE STATUS

- Enactment of a voluntary alternative to a long-standing workers’ compensation program takes time for interested parties to better understand the Option and how it can improve a state’s existing occupational injury system.
- ARAWC continues to work collaboratively with elected officials, state regulators, employers, plaintiff and defense counsel, and a variety of other trade organizations and individuals. This work has already resulted in substantial bill improvements and others may be made.
- Legislation in states happens because legislators in those states express an interest. ARAWC is encouraged by states who are expressing interest and is ready to support those who want to develop a responsible alternative.
- The resolve of employers, many current workers’ compensation system providers, and the Association for passage of Option legislation remains strong.

OKLAHOMA LITIGATION

- The State of Oklahoma has a unique history and constitution.
- For Oklahoma, the current litigation is a natural part of the process.
- We’ve known since first discussions on the OK Option began in 2011 that constitutional challenges would be made.
- The Vasquez case will be the third time the OK Option has been before the OK Supreme Court.
- It is interesting to note that, in the decision of the Oklahoma Workers’ Compensation Commission, there was no ruling on the merits of the employee’s claim for benefits. The Commission’s Order:
 - Did not mention the fact that the injured worker was provided much more information on her rights and responsibilities under the Option injury benefit plan than under WC,

- Did not address the medical and wage replacement benefits that were actually paid to this particular injured employee,
- Did not address whether the injured employee was wrongfully denied any benefits or would have received different benefits under WC, and
- Did not say the employee was denied any due process under the employer's benefit plan, ERISA or Oklahoma law.
- Over the past two years, the OK Option has proven to deliver better benefits to injured workers, result in fewer disabled employees, and dramatically reduce both employer costs and the percentage of claims disputed.
- With regard to Oklahoma's Administrative Workers' Compensation Act, the Oklahoma Supreme Court recently ruled in the Torres case that a 180-day eligibility requirement for cumulative trauma coverage violates the Oklahoma constitution.
- Some have referred to constitutional challenges in Oklahoma as a well-established, trial lawyer "cottage industry". At the end of the day, the Oklahoma Supreme Court and Oklahoma Legislature will determine how best to move forward under their unique state constitution.
- Support for both the OK Option and workers' comp reform remains strong among:
 - Senate and House legislative leaders
 - Oklahoma Attorney General
 - Oklahoma State Chamber
 - Oklahoma Independent Insurance Agents and
 - Oklahoma Insurance Department

CONCLUSION

The Association is not representing to you, today, that either the Texas or the Oklahoma Option programs are perfect. No workers' compensation system has achieved perfection, and the Association is committed to working collaboratively with elected officials, state regulators, employers and other interested parties to develop consensus around historic Option program performance and optimal Option program requirements.

We are confident that a thorough and fact-based (not hypothetical) examination of Option programs will lead NAIC members to consider adopting an Option program in their own states.

Working together, we can build upon the progress of workers' compensation reforms to ensure a fair and much improved system for all employees and employers (including those employers who make the choice not to elect the Option).

Thank you for the opportunity to be here and continue this constructive dialogue. The Association welcomes the opportunity to work with the NAIC Workers' Compensation Task Force, and will remain available to answer any questions you may have.