

WORKERS' COMPENSATION

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Special Report

Recommendations target criticisms of 'option'

"Opt out" is a misnomer. That's one of the reasons advocates cite for what they say is the confusion that's led to criticism of the efforts to adopt alternatives to the traditional workers' comp system in some states.

"We use 'opt-out' to describe it, but really that's only in Texas," said Mark Walls, vice president communications and strategic analysis for Safety National, which writes option benefit liability programs in addition to excess self-insurance. "In every other state it's an option ... you're replacing mandatory coverage with the mandatory option plan."

While Texas had been the only state to allow employers to opt out of its workers' comp system, Oklahoma recently adopted an option plan, and proposals have been considered — and put on hold — in Tennessee and South Carolina. Now, Texas employers who opt out of the state's workers' comp system are being encouraged to make changes to their programs (*see box*).

"Based on productive dialogue with employers, insurance companies, plaintiff and defense lawyers, claim administrators and others over the past year, PartnerSource announces industry recommendations to further clarify and expand occupational injury benefits for approximately 1.5 million Texas employees covered under 'Texas Option' programs," said PartnerSource, a company that has been instrumental in advocating for workers' comp option plans. "Some Texas option programs contain certain exclusions and limitations that trace their origin to historic group health plan and insurance policy terms. PartnerSource recommends removing many of these broad exclusions and limitations that have rarely, if ever, been applied to any injury benefit claim."

The issue of opt-out — or options — to traditional workers' comp plans has become one of the most hotly debated topics in the industry. Proponents hope the recommended coverage changes will allay some of the concerns.

"To me this illustrates what I see as an advantage of the option in that if you see a need to make changes, you can make changes; as opposed to under workers' comp if you need to make changes you must get legislation passed," Walls said. "So these option plans have the ability to respond quicker to the changing needs of the employers and their workforce."

The changes. Among the criticisms of option plans is that it gives employers too much control, allowing them to deny benefits to workers who would be entitled to them in the traditional system. Another is the shorter time frames required for workers to report their injuries, often one day or even the same-day the injury occurs, which some critics say is unreasonable.

Among the recommended changes is one to "remove blanket coverage exclusions or sub-limits to cumulative trauma, pain syndromes, experimental treatments and other medical conditions, services and supplies." Another would "consider the expansion of reporting time frames while maintaining the advantages of prompt medical care and promoting coworker safety."

While it is unlikely such recommendations would change the minds of the harshest critics, option advocates hope the suggestions will at least demonstrate their willingness to listen to and respond to the concerns.

"It's good to get these recommended coverage enhancements in writing because any outsider who picks up one of these

Recommendations

Some of the additional recommended "coverage enhancements" from PartnerSource for Texas employers who have alternatives to the state's workers' comp program are:

- Increase maximum benefit duration and dollar limits per person and per occurrence (with due regard to the Texas employer's unlimited exposure to negligence liability awards).
- Define and expand applicability of the "good cause" exception to injury reporting and other employee accountability requirements.
- Determine benefit eligibility on a no-fault basis.
- Cover mental/emotional injuries resulting from a traumatic event.
- Continue medical benefits without regard to employment status, unless employment is terminated for gross misconduct unrelated to the cause of injury.
- Make clear that injury plan benefits are not reduced by or coordinated with benefits from group medical plans or government programs such as Social Security disability, survivor or veterans benefits. ■

benefit plans, it glares at them that there are some of these exceptions and time limits that seem to be negative toward the employee,” said Steve Weatherford, vice president of finance and HR at Daryl Flood Relocation & Logistics, and cochair of the Texas Alliance of Nonsubscribers. “In reality it’s not really the way things play out. These recommendations reflect the reality of how most employers administer their plans.”

Working with opponents. Option proponents hope to initiate more discussions with industry stakeholders this year. They say the goal is not to replace any existing workers’ comp system but to allow some employers to provide benefits to injured workers in a way that is a win-win for all parties by avoiding what are often frictional costs.

“The processing of a workers’ comp claim is vastly more expensive than it is under the option,” said Jerry Murphy, EVP of AmWINS Brokerage Services. “In the last five years,

carriers are providing a lot more allocated loss adjustment expenses within loss run depiction of experience. Go back a decade, those loss runs only showed reserves, paid-to-date, maybe broke it up medical and indemnity, but not allocated adjustment experience on that run.”

Advocates also point out that, despite the criticism, employers in option plans are not the clear winners. “I think it’s really key for anybody who looks at Texas option programs to understand the lack of protection option companies have from exclusive remedy,” Weatherford said. “That is something that seems to be ignored quite a bit.”

Embracing safety and prevention, and providing quick medical treatment for employees when they do get injured are seen as crucial to successful option programs. Proponents say the recommended coverage changes for Texas injured workers is part of that mindset.

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