

# Policy *Perspective*

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## Workers' Compensation: Making It Work for Texans

By **Chris Patterson and John Colyandro**

**T**he Texas Workers' Compensation System is considered one of the worst systems in the nation today. The state Legislature has struggled to improve the system for decades; massive reforms were introduced in 1989 and again in 2001. During the 78th Legislative Session, 23 bills were enacted to address critical problems in workers' compensation, and interim committees were established to prepare the 79th Session for comprehensive reform.

Despite aggressive efforts to improve the system, there is broad recognition in Texas that the Texas Workers' Compensation System does not meet the needs of either employees or employers, and it is widely accepted that the state system compares poorly with systems throughout the nation.

The failure of the Texas Workers' Compensation System affects every Texan, young and old. The high price of compensation insurance premiums is driving employers, particularly small employers, to drop out of the system, and a growing number of Texans now work in jobs that are not covered by the state system. For workers who are covered by the state system, the quality of medical care offers little assurance of returning to productive work and financial independence. The high costs borne by employers participating in the system place Texas companies at substantial competitive disad-

vantage with companies located in other states; decreased profitability undercuts job and wage growth and diminishes growth of the state economy.

The Texas Sunset Advisory Commission recommends aggressive, comprehensive reforms of the state workers' compensation system – dismantling the Workers' Compensation Commission and dividing its activities between the Texas Department of Insurance and Texas Workforce Commission.<sup>1</sup> The Texas AFL-CIO calls for reform, describing the state system as “woefully ineffective” and “in crisis” during testimony to the Senate.<sup>2</sup> The Texas Association of Business has called for major re-organization of the compensation commission – creating a single commissioner to administer the system and allowing the employer or insurance carrier to establish a network of medical providers.<sup>3</sup> Texans for Workers' Compensation Reform, a coalition of employers and medical providers, echoes the association's call for reforming how the system directs medical care.<sup>4</sup>

While the proposed reforms offer promise of improving the Texas Workers' Compensation System, a reformed state system cannot provide better opportunities for affordable insurance and higher quality medical care than is presently available in the private sector. Reform should focus on two fundamental questions. Can the private sector do a better job than government in providing workers' compensation benefits? Is a state system of workers' compensation necessary? This report examines these questions and offers a market-based framework for workers' compensation reform that is based on economic incentives of the marketplace and limited government.



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## Questions for Reformers

Can the private sector do a better job than government in providing workers' compensation benefits?

Is a state system of workers' compensation necessary?

### **Reach, Results, and Research**

State regulation of compensation for workers injured on the job was first introduced by the Texas Legislature in 1913, and the state system was constructed in 1917.<sup>5</sup> Although the system has changed considerably over the years, the ability of employers to elect whether they wish to participate in the state system remains fixed. This provision is unique in the United States; all other states require employers to participate in the state workers' compensation system, although a number of states do not require coverage by particular industries or small private sector businesses.<sup>6</sup> The freedom of employers to opt in and out of the state system provides a singular opportunity to compare the costs and outcomes of the state workers' compensation system with those of the private sector.

Most employers participate in the Texas Workers' Compensation System. In exchange for participation, state law shields them from being sued by injured workers if they provide statutorily approved medical care and wage replacement. In 2004, approximately 62 percent of Texas businesses, employing approximately 76 percent of the state's workforce, participated in the system.<sup>7</sup> A small proportion of participating employers – about 1 percent – procure approval (certification) from the state to self-insure workers' compensation benefits.<sup>8</sup>

The Texas Workers' Compensation Commission is responsible for overseeing and regulating delivery of workers' compensation benefits. It is an independent state agency, governed by a commission of six members. The commission is relatively small when compared to other state agencies; in 2003, the commission employed 961 individuals and operated a \$55 million budget, including \$2.3 million in federal funds.<sup>9</sup> To offset administrative costs, the commission levies a tax on workers' compensation insurance premiums paid by

employers. In 2003, a tax rate of 1.125 percent provided 2.4 percent of total agency revenue; the remaining operating funds came from the state's General Revenue.<sup>10</sup>

The commission's small size belies the immense authority it wields over private sector businesses and employees. Table 1 lists the commission's primary activities, which range in scope from auditing businesses for workplace safety to approving legal fees for attorneys of injured employees. It can be said that the commission regulates everything related to workers' compensation except the rates of insurance premiums (fee regulation was phased out in 1991-1992).

The commission governs the expenditure of vast private sector financial resources – a little over \$2 billion in insurance premiums purchased by employers participating in the workers' compensation system during 2003<sup>12</sup> and \$2 billion in medical benefits and in-

**Table 1**

#### **Texas Workers' Compensation Commission Duties**<sup>11</sup>

1. Reviews and audits employers' health and safety plans
2. Inspects workplaces
3. Operates 24-hour hotline for reporting health and safety violations
4. Provides accident prevention and training programs to employers
5. Administers and oversees delivery of wage and medical benefits
6. Ensures appropriate health care for injured employees and reasonable reimbursement for health care providers
7. Defines income and medical benefits
8. Develops approved list of doctors to provide services
9. Identifies medical services that require pre-authorization before care
10. Develops list of approved pharmaceuticals
11. Adopts health care reimbursement policies and guidelines
12. Establishes medical fee, treatment, and return-to-work guidelines
13. Controls medical costs and ensures quality care
14. Resolves medical fee and treatment disputes
15. Ensures employees, employers, and insurers comply with state law
16. Resolves wage and benefit disputes
17. Certifies and oversees employers who self-insure workers' compensation benefits
18. Reviews insurance carriers to enforce compliance with state laws
19. Approves legal fees for workers' attorneys

## Factors Driving Workers' Compensation Outcomes

- The number of services provided for specific injuries is increasing
- A growing percentage of care is being provided by chiropractors, with less care being provided by physicians
- A small percentage of providers account for a majority of medical costs
- Workers treated in the Texas Workers' Compensation System have a higher number of medical visits/services per claim than workers in 11 other states
- Texas physicians treat injured workers with more office visits for each claim than physicians in 10 other states who treat similar claims
- Chiropractor treatments account for 30 percent of Texas workers' compensation claims, whereas 5 percent to 10 percent is typical among all states
- Service by chiropractors accounts for 20 percent of each medical dollar associated with Texas workers' compensation – in 1996, this was 7 percent (in other states 1 percent to 3 percent was the norm)
- Texas chiropractors treat patients longer and charge more than chiropractors in a 12-state median

come replacement benefits in 2002 (the most recent data available).<sup>13</sup>

The Texas Workers' Compensation System is also governed by the Texas Department of Insurance. The department oversees rate regulation and certain reporting requirements, conducts research, and ensures solvency of insurance companies.<sup>14</sup>

The state auditor also bears some responsibility for the state workers' compensation system. The Texas Labor Code charges the Auditor's Office to audit the Workers' Compensation Commission's (1) structural and internal controls, (2) levels and quality of services, and (3) adoption and administration of rules.<sup>15</sup>

Despite the regulatory activities of the Texas Workers' Compensation Commission, the Texas Department of Insurance, and the state auditor, there is little evidence of benefit to employers and employees.

Although the incidence of non-fatal job injuries<sup>16</sup> has declined significantly – falling 33 percent just in the last decade – and remains significantly below the national average,<sup>17</sup> employers are paying significantly more for workers' compensation medical benefits in Texas than in other states. The higher costs do not result from higher rates of injury, as might be thought, but instead reflect increased utilization of medical services, according to analyses conducted by the Texas Department of Insurance.<sup>18</sup>

However, increased medical services and higher costs do not translate into better care or quicker recoveries. The average amount of time that injured Texans remain off work while receiving workers' compensation benefits has doubled over the past five years. Today, the average amount of time away from work is 21 weeks.<sup>19</sup> The longer employees are off work, the less likely they

will be able to return to productive lives. Today, 25 percent of injured workers in the Texas system do not recover sufficiently to return to their jobs if they remain off work for more than seven days after the injury.<sup>20</sup>

However, longer time out-of-work does not translate into better medical outcomes or higher patient satisfaction for Texans participating in the state workers' compensation system.<sup>21</sup> When compared to employees with similar injuries who were treated by workers' compensation systems in Massachusetts and Pennsylvania, Texas workers had poorer recovery of physical health.<sup>22</sup>

While it is impossible to measure the high human costs of the Texas Workers' Compensation System, financial costs to employers can be quantified. From 1999 to 2001, the average medical cost for each claim processed by the Texas Workers' Compensation System increased 21 percent.<sup>23</sup> Texas' average cost per claim was the highest of 12 states studied by the Workers Compensation Research Institute in 2003. Average medical costs were 78 percent higher than the 12-state median,<sup>24</sup> despite the fact that Texas' fees charged by providers were in line with other states'.<sup>25</sup>

Higher medical costs translate into higher insurance costs. Employers in the Texas Workers' Compensation System pay the third highest insurance rates in the nation, based on covered payroll.<sup>26</sup> Between 1997 and 2001, businesses that participate in the Texas Workers' Compensation System experienced a 38.4 percent increase in benefit indemnity payments, the fourth highest increase in the nation.<sup>27</sup>

Medical costs, according to all studies of workers' compensation systems, serve as the primary driver of costs. Rising costs generally result from over-utilization of treatment, extended duration of treatment, and

costly, unnecessary treatment. In its *State Report Cards for Workers' Compensation*, the Work Loss Institute uses six measures to evaluate state systems. In 2004 Texas came in dead last in the nation on three of the six measures.

Texas was:

- a. Lowest in the nation on median disability durations,
- b. Lowest in the nation on recovery from back strain, and
- c. Lowest in the nation on recovery from carpal tunnel syndrome.<sup>28</sup>

Only four states earned a lower rating than the D-minus the institute awarded to the Texas Workers' Compensation System.<sup>29</sup>

Research conducted by the Workers' Compensation Research Group of the Texas Department of Insurance<sup>30</sup> and the Workers Compensation Research Institute<sup>31</sup> mirrors findings of the Work Loss Data Institute. High utilization is cited by these groups as the primary reason for the system's high costs. It should be noted, however, that the preponderance of medical costs are associated with a small percentage of health care providers in Texas.<sup>32</sup>

Although the effects of administration are difficult to quantify, the Work Loss Data Institute identifies the important impact of "friction" on workers' compensation costs. A state's system of rules, procedures, disputes, delays, discretionary changes, and patterns of practice (such as lawsuits) can significantly affect financial burdens for employers and health care outcomes of workers.<sup>33</sup> Assuming that design largely determines outcomes, it is worth examining the Texas Workers' Compensation System to determine how its design leads to poor outcomes. This examination is most easily accomplished by comparing Texas' system to systems created by other states.

Interestingly, there are only a few significant ways that the Texas Workers' Compensation System differs from most other state systems.<sup>34</sup>

The majority of states:

- ◆ Allow employers or insurers to limit the selection of health care providers used by injured employees in some fashion (*Texas does not allow employers to participate in the selection of providers*);
- ◆ Require injured employees to wait five to seven days before receiving disability income benefits (*Texas requires a 7-day waiting period*);
- ◆ Pay disability benefits for the full duration of the worker's temporary total disability (*Texas limits pay to 104 weeks*);
- ◆ Pay a slightly lower average wage benefit for maximum weekly payments for temporary total disability;
- ◆ Pay a slightly lower average wage benefit for permanent partial disability;
- ◆ Establish a single commissioner to oversee the workers' compensation system; and
- ◆ Attach responsibilities for the workers' compensation system to a larger state agency.

From this list, the most outstanding way that Texas' system differs from other states' is in the degree of involvement that states allow employers and insurers in the selection of health care providers – an activity that

has been strongly correlated to utilization of services and higher costs.

It is important to recognize that high utilization, high costs, and poor health outcomes associated with the Texas Workers' Compensation System are not uniform within the system. The state system works better for some Texans than for others. A study produced by the Texas Department of Insurance shows that

self-insured employers who are certified by the Texas Workers' Compensation System experience significantly lower workers' compensation claim rates than

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employers who use state-approved insurance plans – and claim rates are lower because workers in self-insured businesses have more rapid recoveries and return more quickly to work.<sup>35</sup>

### Working outside the State System

Even better workers' compensation outcomes are experienced by employers and employees who do not participate in the state system. In 2004, 38 percent of Texas businesses elected not to participate in the Texas Workers' Compensation System. "Non-subscribers" employ approximately one-quarter of the Texas workforce.<sup>36</sup> This number has grown slightly since 2001 (3 percent) but is significantly lower than non-participation in 1993 (44 percent).<sup>37</sup> Three-quarters of the businesses that elect not to participate in the state workers' compensation system are engaged in retail trade or service industries, and almost half of the businesses had just one to four employees.<sup>38</sup>

The primary reason that non-subscribers decline to participate in the state system is that they believe they

“Outside the Texas Workers’ Compensation System, medical care is more likely to result in better outcomes for injured workers.”

can provide better benefits for their employees at a lower cost.<sup>39</sup> For many businesses, the low quality of care provided by the Texas Workers' Compensation System is the main reason for non-subscription. A survey conducted by the Texas Department of Insurance indicates almost 40 percent of non-subscribing employers would continue to select an alternative to the state system even if the system offered significant reductions in the cost of insurance premiums.<sup>40</sup>

A study by the Research and Oversight Council on Workers' Compensation on non-subscribers to the state system in 2001 provides the most recent and detailed information about businesses that work outside the state workers' compensation system (See Table 2).<sup>41</sup>

Medical care for injured workers is less costly for workers outside the Texas Workers' Compensation System. Group health providers in Texas provide care at one-sixth the cost per worker of state workers' compensation system care,<sup>42</sup> cost-savings that reflect price discounts that the private sector can negotiate. Medical costs are also reduced by employer direction of care. When businesses assign a physician or offer employees the opportunity to select a physician from an employer-approved list, costs are reduced 7 percent to 10 percent, according to the Workers Compensation Research Institute.<sup>43</sup>

The total cost of workers' compensation benefits is significantly less when procured outside of the state system. Depending on the size of the employee population, businesses that leave the Texas Workers' Compensation System realize savings of between 25 percent and 50 percent, according to testimony provided to the Senate Interim Committee on Workers' Compensation by a private insurer.<sup>44</sup>

Outside the Texas Workers' Compensation System, medical care is more likely to result in better outcomes for injured workers. A recent study of employed Texans by the Work Loss Data Institute indicates that medical recovery is quicker and time off work shorter for work-

Table 2

#### Facts about Businesses That Work outside the State System

- ◆ Approximately 60 percent of businesses that elect not to join the state system provide workers' compensation benefits to their employees through private insurance programs
- ◆ Over 60 percent of non-subscribing businesses pay medical expenses and approximately 60 percent pay income replacement for employees with job-related injuries
- ◆ About 80 percent of the workforce employed by non-subscribing businesses are protected with medical and wage benefits for job-related injuries
- ◆ The majority of non-subscribing businesses select a physician or offer a list of approved physicians to employees for work-related care
- ◆ The majority of non-subscribing businesses indicate satisfaction with their decision to provide non-governmental workers' compensation benefits
- ◆ Only 3 percent of non-subscribing businesses were sued over job-related injuries, a rate that remains unchanged since 1996



ers employed by non-subscribing employers.<sup>45</sup> Generally, injured workers who are employed by non-subscribing businesses are satisfied with their treatment, according to several studies conducted by the Texas Research and Oversight Council on Workers' Compensation.<sup>46</sup>

### **Improving the Texas Workers' Compensation System**

Extensive analyses of the Texas Workers' Compensation System and comparisons to other state systems offer insights into how the Texas system can be improved:

1. Allow employers or insurers to establish an exclusive network of physicians to serve as primary caregivers for injured workers, a network that replicates preferred provider organizations (PPOs) established for managed health care plans by such insurers as Blue Cross/Blue Shield or Humana;
2. Require workers to notify employers of occupational injuries within seven days;
3. Allow injured workers to select a primary care physician from the established network and to change physicians at will;
4. Require all medical services for injured workers to be authorized by their network primary care physicians;
5. Identify the injury for each workers' compensation claim and limit covered treatment to the diagnosed injury and associated medical conditions for which causal relationships and evidentiary standards have been scientifically established by the medical community;
6. For permanently injured workers, establish managed care plans with nominal co-payments or create health savings accounts with major medical insurance;
7. Eliminate state regulation of workers' compensation benefits, including approving physicians, approving pharmaceuticals, establishing treatment guidelines, defining health and medical benefits, adopting health care reimbursement guidelines, and approving legal fees;
8. Eliminate the six-member Workers' Comp-

sation Commission;

9. Establish a workers' compensation commission as a division of the Department of Insurance, headed by a director of workers' compensation who reports to the commissioner of the Texas Department of Insurance;

10. Focus the workers' compensation division on consumer-related activities, such as establishing a clearinghouse of information about medical providers and insurers (including price, recovery rate, return-to-work time) to enable employers and employees to identify and select the best care;

11. Transfer workplace health and safety activities to the Texas Workforce Commission; and

12. Contract out dispute resolution to independent, expert arbitration services that use federal rules of evidence and rely on a tribunal of medical experts selected by the arbitrator – and require employers and employees to solve workers' compensation disputes through binding, employer/insurer-paid arbitration if there is no violation of Occupational Health and Safety Administration (OSHA) standards.

Although reforms are likely to improve the Texas Workers' Compensation System, there are sound reasons to believe the state system can never provide the efficient, effective delivery of medical care and wage replacement that is urgently needed by Texans – services equal to or better than those currently provided to non-subscribing employers and employees in Texas by private insurers outside the state system today.

The reasons for this are clear.

First, there is not one government system in Texas or elsewhere that can compete with the efficiency and effectiveness of market competition in the private sec-

#### **Inferiority into Perpetuity**

The Texas Workers' Compensation System will never:

- ◆ Beat private sector insurance providers in quality and efficiency;
- ◆ Be reformed to the point where it can compete with the private sector; or
- ◆ Have the best interests of workers in mind

tor. The private sector has proven far superior to government agencies and regulations in establishing cost-effective, high quality services – particularly health care and more particularly health care for injured workers.

Second, aggressive reforms instituted over the past several decades have incrementally improved the Texas Workers' Compensation System, but even so Texans still have the worst performing workers' compensation system in the nation.

Lastly, because third parties – government agents and insurers – manage the state workers' compensation system, the interests of employers and employees will never be fully represented, nor will their best interests ever be the top priority.

### **Conclusion**

State law establishes a compact with Texas employers and employees. Employers give up rights to oversee wage replacement and medical benefits related to workplace safety in exchange for state immunity from employee health and safety lawsuits and a system that returns employees to work quickly at reasonable cost – provided the employer complies with workplace standards. Employees give up rights to sue employers for workplace injuries in exchange for a state system that provides quality medical care with quick recovery and reasonable wage replacement. This compact has been violated by the failure of the Texas Workers' Compensation System to meet its obligations to employers and employees.

The state system fails because it 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 employees and responsible employers. The consequences are unjustifiably high utilization, uncontrolled costs, and poor medical care outcomes.

These problems are intractable and associated with all government-subsidized health care programs, including Medicaid and the Children's Health Insurance Program (CHIP). Although not subjected to the same scrutiny, Medicaid and CHIP experience the same deficiencies as the state workers' compensation system. The system is merely a microcosm of the difficulties facing large state programs; over-utilization, rising costs, and

declining standards of care are endemic to government-run health care programs.

The state could fulfill its compact with employers and employees by creating the conditions necessary for successful workers' compensation programs in Texas. The most important of these conditions is the extension of full liability protection to all employers, regardless of their participation in the state-run program. The current system, for all its defects, is most deficient because it unjustly penalizes businesses that opt out by denying them immunity from liability; consequently, workers employed by companies who opt in are denied the best options available for health care if injured on the job. As a matter of principle, the state should not punish companies that make a rational decision to obtain better insurance and occupational benefits for their employees. Nor should workers be punished with low quality of care simply because their employer seeks the shelter of liability protection extended to them by the state.

Today, many of the original reasons for creating the Texas Workers' Compensation System no longer exist, and many of the functions performed by the state system duplicate functions performed by professional associations or are functions now governed by federal regulation. Medical protocols have been established by the American Medical Association, state boards certify health care providers, and the federal Occupational Health and Safety Administration oversees workplace safety.

Workplaces are not the dangerous places chronicled during the past century. In Texas, workplaces are generally safe; injury rates have been declining for decades and Texas has a better record for workplace safety than many states. Most employers comply with federal health and safety regulations. A state system for establishing standards, monitoring workplaces, and enforcing compliance is now duplicative and unnecessary. Economic incentives, more than government regulations, drive improvements in workplace safety. Companies that violate OSHA standards face punishing costs, and worker safety is a high priority for employers because today's workforce is highly mobile and profit margins rely heavily on productivity.

Market incentives and choice always work better than government mandates and regulation. This comparison between the Texas Workers' Compensation Sys-

tem and private sector programs demonstrates this fact.

Workers' compensation is a vitally important responsibility for employers and an essential benefit for employees, and strengthening the contract between employer and employee represents one of the state's highest interests. This interest would be best served by eliminating the Texas Workers' Compensation System and allowing all Texans to benefit from private sector workplace health and safety programs.

### **Recommendations for Improving Workers' Compensation for All Texas Workers**

- ◆ Replace the state system of workers' compensation with private sector management of occupational injury and benefits.
- ◆ Provide employers the freedom to select and manage workers' compensation insurance by stopping government regulation of insurers,
- ◆ rates of premiums, and wage replacement, and government definition/distribution of medical services.
- ◆ Allow injured workers to select and change at will primary care physicians for diagnosis and management of care through the physician network established by the employer or the employer's insurer.
- ◆ Eliminate the separate and different system of care for injured workers – individuals with occupational injuries should be treated by the same physicians who treat individuals with non-occupational injuries, using identical medical protocols and rendering services at the same price.
- ◆ Focus government on consumer protections – ensuring solvency of insurers and providing a clearinghouse of information (cost of insurance premiums, insurers' experience, medical

### **Workers' Compensation Facts**

- ◆ Texas is the only state that allows private sector employers the option of not purchasing workers' compensation insurance, although several states allow small employers this option<sup>47</sup>
- ◆ The percentage of employers that do not provide workers' compensation benefits in Texas grew from 35 percent in 2001 to 38 percent in 2004<sup>48</sup>
- ◆ The percentage of employees working for Texas employers without workers' compensation benefits grew from 20 percent in 1993 to 24 percent in 2004<sup>49</sup>
- ◆ 46 percent of Texas employers who do not provide workers' compensation benefits have fewer than 5 employees, and 40 percent say the cost of insurance is too high<sup>50</sup>
- ◆ \$1,193,789,281 was spent on medical payments for Texas workers' compensation in 2003<sup>51</sup>
- ◆ 62 percent of Texas employers carry workers' compensation insurance, covering about 76 percent of the state's workers<sup>52</sup>
- ◆ 25 percent of injured workers treated within the state workers' compensation system do not return to work<sup>53</sup>
- ◆ Texas ranks last in the nation on worker recovery rate<sup>54</sup>
- ◆ The average medical cost per claim in Texas increased 21 percent from 1999 to 2001<sup>55</sup>
- ◆ Cost of the average workers' compensation claim in Texas was the highest in a 12-state survey – Texas' average cost was 68 percent higher than the median cost<sup>56</sup>
- ◆ 53 percent of Texas businesses that provide workers' compensation benefits say they would consider dropping it if premiums increase by 20 percent<sup>57</sup>
- ◆ The average price of workers' compensation treatment in Texas was 31 percent lower than the median price in a 12-state survey, but the average payment per claim in Texas was 38 percent higher than the median<sup>58</sup>
- ◆ Workers covered by compensation insurance in Texas scheduled 35 percent more visits to physicians and 94 percent more visits to chiropractors than were scheduled in the median state of a 12-state survey<sup>59</sup>
- ◆ Non-fatal injury rate of Texas workers has declined since 1991 and is lower than the national average<sup>60</sup>
- ◆ Only 1 percent of workers' compensation claims represent injuries that permanently impair Texans from returning to their old job or profession<sup>61</sup>
- ◆ Medical costs for workers' compensation in Texas were six times higher than the cost of care for a similar injury treated by a group health plan<sup>62</sup>
- ◆ Texas received a D-minus in a ranking by the Work Loss Data Institute of how well states design and run workers' compensation systems<sup>63</sup>
- ◆ The Texas Workers' Compensation Commission regulates a system that cost employers \$1.9 billion in insurance premiums in 2002 and affected medical outcomes of approximately 200,000 employed Texans<sup>64</sup>

care, providers, and patient outcomes).

- ◆ Contract out dispute resolution to independent, expert arbitration services that use federal rules of evidence and rely on a tribunal of medical experts selected by the arbitrator, and require employers and employees to solve workers' compensation disputes through binding, employer/insurer-paid arbitration if there is no violation of OSHA standards.

Limit the liability of responsible employers by:

- ◆ Extending occupational benefits only for the injury claimed and
- ◆ Extending immunity to all employers that maintain occupational injury programs if employers comply with federal health and safety standards.

### About the Authors

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### Notes

<sup>1</sup> Texas Workers' Compensation Commission, Staff Report, Sunset Advisory Commission, Austin, Texas, April 2004, pages 3-6.

<sup>2</sup> *Testimony of the Texas AFL-CIO on the State of Workers' Compensation in Texas* before the Senate Select Committee on Workers' Compensation by Richard Levy, Legal Director, March 25, 2004.

<sup>3</sup> *Cashing In On Workers' Compensation: Addressing the Cost Drivers of The Workers' Compensation System 2003 Report*, Texas Association of Business, Austin, TX, 2003, page 9.

<sup>4</sup> "Workers' Comp Coalition Promotes New Provider Network," *The Quorum Report*, edited by Harvey Kronberg, October 12, 2004, <http://www.quorumreport.com>.

<sup>5</sup> *About Workers' Compensation*, Texas Workers' Compensation Commission, <http://www.twcc.state.tx.us/information/aboutwc.html#history>.

<sup>6</sup> *Employer Participation in the Texas Workers' Compensation System: 2004 Estimates*, Workers' Compensation Research Group, Texas Department of Insurance, August 2004, page 2.

<sup>7</sup> *Employer Participation in the Texas Workers' Compensation System: 2004 Estimates*, page 7.

<sup>8</sup> Texas Workers' Compensation Commission, Staff Report, page 70.

<sup>9</sup> Texas Workers' Compensation Commission, Staff Report, page 102.

<sup>10</sup> *Ibid.*

<sup>11</sup> Texas Workers' Compensation Commission, Staff Report, pages 8, 9, and 131.

<sup>12</sup> *Presentation to Senate Select Committee on Workers' Compensation Rates and Premiums*, Texas Department of Insurance, October 12, 2002, [http://www.senate.state.tx.us/75r/Senate/commit/c780/Downloads/testimony/101204/TDI\\_Presentation.pdf](http://www.senate.state.tx.us/75r/Senate/commit/c780/Downloads/testimony/101204/TDI_Presentation.pdf)

<sup>13</sup> *Fiscal Data For State Workers' Compensation Systems 1991-2001*, UWC Research Bulletin, National Foundation for Unemployment Compensation and Workers' Compensation, Washington, DC, 2003, page 25.

<sup>14</sup> *Workers' Compensation Insurance*, Texas Department of Insurance, <http://www.tdi.state.tx.us/comsuemr/consum79.html>.

<sup>15</sup> Texas Labor Code, Section 401.003.

<sup>16</sup> Although non-fatal injuries declined in Texas over the decade, the incidence of fatal injuries began to rise in 2002 and has continued to rise annually. Most recent statistics indicate that Texas' occupational fatalities increased by 17.7 percent in 2003, while fatalities only increased by 1 percent nationally. Texas' increased fatalities resulted from a higher number of transportation-related accidents and assaults/violent acts – incidents that are unrelated to workplace conditions, that cannot be prevented by employers, and that do not impact workers' compensation benefits or costs (*Fatal Occupational Injuries in Texas, 2000*, Texas Workers' Compensation Commission, Austin, TX, 2002; and "TWCC: Texas Occupational Fatalities Increased in 2003," *Insurance Journal*, September 22, 2004, <http://www.insurancejournal.com/news/southcentral/2004/09/22/46182.htm>).

<sup>17</sup> *Biennial Report of the Research and Oversight Council on Workers' Compensation*, Research and Oversight Council on Workers' Compensation, Texas Department of Insurance, Austin, TX, 2000, page 12, and *Texas Workers' Compensation System Data Report*, Texas Workers' Compensation Commission, Austin, TX, 2004, page 1.

<sup>18</sup> *Medical Cost and Quality of Care: Trends in the Texas Workers' Compensation System*, Workers' Compensation Research Group, Texas Department of Insurance, page 36.

<sup>19</sup> Texas Workers' Compensation Commission, Staff Report, page 23.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> *Outcomes for Injured Workers in California, Massachusetts, Pennsylvania and Texas*, Workers' Compensation Research Institute, Cambridge, MA, 2003.

<sup>23</sup> *Medical Cost and Quality of Care Trends in the Texas Workers' Compensation System*, page 36.

<sup>24</sup> *Anatomy of Workers' Compensation Medical Costs and Utilization: Trends and Interstate Comparisons 1996-2000*, Workers' Compensation Research Institute, Cambridge, MA, 2003, page 266.

<sup>25</sup> *Benchmarks for Designing Workers' Compensation Medical Fee Schedules*, WCRI Research Brief, Workers' Compensation Research Institute, Cambridge, MA, 2003, pages 5-7.

<sup>26</sup> *State Report Cards for Workers' Compensation 2004*, Work Loss Data Institute, Encinitas, CA, 2004, page 74.

<sup>27</sup> *Fiscal Data For State Workers' Compensation Systems 1991-2001*, UWC Research Bulletin, National Foundation for Unemployment Compensation and Workers' Compensation, Washington, DC, 2003, page 6, and *Medical Cost and Quality of Care Trends in the Texas Workers' Compensation System*, Texas Department of Insurance, Workers' Compensation Research Group, page 36. <http://www.tdi.state.tx.us/general/pdf/>

wc0904qctrend.pdf.

<sup>28</sup>State Report Cards for Workers' Compensation 2004, page 74.

<sup>29</sup>Ibid.

<sup>30</sup>Biennial Report of the Research and Oversight Council on Workers' Compensation, page 12.

<sup>31</sup>Testimony before Texas Senate Select Interim Committee on Workers' Compensation, Workers' Compensation Research Institute, April 29, 2004, <http://www.senate.state.tx.us/75r/senate/commit/c780/Downloads/testimony/042904/WCRI.pdf>.

<sup>32</sup>Medical Cost and Quality of Care Trends in the Texas Workers' Compensation System, page 37.

<sup>33</sup>State Report Cards for Workers' Compensation 2004, pages 6 and 7.

<sup>34</sup>Comparison of State Workers' Compensation Systems, Workers' Compensation Research Group, Texas Department of Insurance, Austin, TX, 2004.

<sup>35</sup>Certified Self-Insurance and the Frequency and Severity of Workplace Injuries, Texas Department of Insurance, Austin, TX, November 1997, <http://www.tdi.state.tx.us/company/roc/self-ins.html>.

<sup>36</sup>Employer Participation in the Texas Workers' Compensation System: 2004 Estimates, Workers' Compensation Research Group, Texas Department of Insurance, Austin, TX, August 2004, pages 7- 8.

<sup>37</sup>Ibid.

<sup>38</sup>A Study of Nonsubscription to the Texas Workers Compensation System: 2001 Estimates, Research and Oversight Council on Workers' Compensation, Texas Department of Insurance, [www.tdi.state.tx.us/company/roc/2001nonsub.html](http://www.tdi.state.tx.us/company/roc/2001nonsub.html).

<sup>39</sup>"Nonsubscription to the Texas Workers' Compensation System: 2001 Estimates," Research and Oversight Council on Workers' Compensation, Texas Department of Insurance, *Texas Monitor* 6:4, Winter 2001.

<sup>40</sup>Employer Participation in the Texas Workers' Compensation System: 2004 Estimates, page 27.

<sup>41</sup>Ibid.

<sup>42</sup>Cashing In On Workers' Compensation: Addressing the Cost Drivers of The Workers' Compensation System, Texas Association of Business, Austin, TX, 2003, page 3.

<sup>43</sup>Testimony before Texas Senate Select Interim Committee on Workers' Compensation, Workers Compensation Research Institute, April 29, 2004, <http://www.senate.state.tx.us/75r/senate/commit/c780/Downloads/testimony/042904/WCRI.pdf>.

<sup>44</sup>Proposed Legislative Remedies for the Texas Workers' Compensation System, testimony to the Senate Select Committee on Workers' Compensation and House Committee on Business and Industry, Ron Gaiser, President, ONECOMP, August 24, 2004.

<sup>45</sup>State Report Cards for Workers' Compensation 2004, page 8.

<sup>46</sup>Nonsubscription to the Texas Workers' Compensation System: 2001 Estimates.

<sup>47</sup>Employer Participation in the Texas Workers' Compensation System: 2004 Estimates, page 2.

<sup>48</sup>Employer Participation in the Texas Workers' Compensation System: 2004 Estimates, pages 7- 8.

<sup>49</sup>Ibid.

<sup>50</sup>Ibid, pages 10 and 15.

<sup>51</sup>Texas Workers' Compensation System Data Report, page 42.

<sup>52</sup>Employer Participation in the Texas Workers' Compensation System 2004 Estimates, pages 7 and 8.

<sup>53</sup>Texas Workers' Compensation Commission, Staff Report, Sunset Advisory Commission, page 23.

<sup>54</sup>State Report Cards For Workers' Compensation 2004, page 66.

<sup>55</sup>Medical Cost and Quality of Care Trends in the Texas Workers' Compensation System, page 36.

<sup>56</sup>"Texas Workers' Compensation Costs Per Claim Continue Double Digit Rise, New WCRI Study Reports," WCRI Media Release, January 21, 2004, [http://www.wcrintet.org/media\\_release\\_TX\\_1.21.94.html](http://www.wcrintet.org/media_release_TX_1.21.94.html).

<sup>57</sup>Employer Participation in the Texas Workers' Compensation System 2004 Estimates, page 26.

<sup>58</sup>Testimony before Texas Senate Select Interim Committee on Workers' Compensation, Workers Compensation Research Institute, April 29, 2004, page 11, <http://www.senate.state.tx.us/75r/senate/commit/c780/downloads/testimony/042904.pdf>.

<sup>59</sup>Ibid, page 12.

<sup>60</sup>Biennial Report of the Research and Oversight Council on Workers' Compensation, page 12, and *Texas Workers' Compensation System Data Report*, page 1.

<sup>61</sup>Texas Workers' Compensation Commission, Staff Report, Sunset Advisory Commission, Austin, TX, April 2004, page 62.

<sup>62</sup>Cashing In On Workers' Compensation: Addressing the Cost Drivers of The Workers' Compensation System 2003 Report, page 9.

<sup>63</sup>State Report Cards For Workers' Compensation 2004, page 66.

<sup>64</sup>Presentation to Senate Select Committee on Workers' Compensation Rates and Premiums and Fiscal Data For State Workers' Compensation Systems 1991-2001, page 25.



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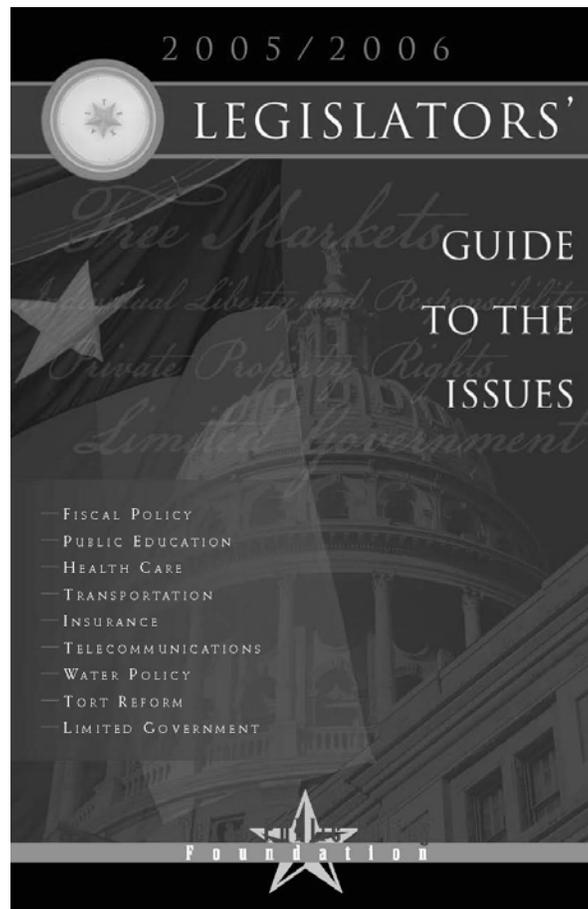
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