



November 8, 2012

Senator Robert Duncan
Chairman, Senate State Affairs Committee
P.O. Box 12068
Austin, Texas 78768

Dear Senator Duncan:

The choice to not subscribe to the state workers' compensation system has been an option recognized and supported by the Texas Legislature since the first workers' compensation laws were adopted in 1913. Some of our state's leading employers have elected to provide medical and wage replacement benefits to their injured workers through alternative occupational injury plans that are often better than the benefits available under the state workers' compensation system. The Texas Alliance of Nonsubscribers is a trade association comprised of Texas employers who have developed occupational injury plans for our employees in lieu of traditional workers' compensation insurance. Our mission is to educate legislators about responsible nonsubscription and maintain a voluntary workers' compensation system in Texas.

The Senate State Affairs Committee has received an interim charge to study "the dispute resolution process and benefits available from employers that do not subscribe to workers compensation". We would like to provide you with some information regarding nonsubscribers and serve as a resource for you if you have any questions or concerns you would like for us to address.

While they are not part of the workers' compensation system, nonsubscribers comply with certain provisions of the Labor Code. Specifically, nonsubscribers are required to file annual notices to TDI to indicate that they are not purchasing workers' compensation insurance. Nonsubscribers must also file a report of injury to TDI if there is an accident that results in more than one day of lost time for an injured employee. The report of injury (DWC-7 form) includes a variety of information regarding the employee and the injury. TDI also conducts a survey of participation in the workers' compensation system every two years to gather information regarding trends in employers obtaining coverage, the types of benefits offered, and reasons for employers subscribing or not subscribing.

Unlike employers that are covered by workers' compensation insurance, nonsubscribing employers have been denied the "exclusive remedy" that virtually eliminates lawsuits for those employers participating in the workers' compensation system. That is, no matter how comprehensive, well-managed and responsive a nonsubscriber's safety and occupational injury programs are, the nonsubscribing employer is subject to tort liability and can be sued for negligence by an injured employee. Many nonsubscribers utilize dispute resolution processes to address employee concerns that the employer may have been responsible for their injury. Binding arbitration is a frequently used dispute resolution feature of these plans, conducted by independent third parties. In addition, many nonsubscribers have formal claims appeal processes in their ERISA benefit plans. Federal law requires that ERISA plans meet certain claims processing and appeal timelines and processes.

Another important distinction is that nonsubscription includes two very different types of employers- small employers that don't provide insurance due to the cost or lack of need, and large employers with employee benefit plans that are typically regulated by federal law. Many of these plans provide for medical treatment and wage replacement benefits for injured workers. According to the most recent Texas Department of Insurance (TDI) survey from 2010, the percentage of employees covered by a nonsubscriber benefit plan overall is 80 percent, and for employees of large employers it is 95 percent.

There are a variety of reasons why employers choose to nonsubscribe. Access to health care providers, in particular specialists, has been a problem for many years in the workers' compensation system. Many employers are concerned about the high rate of injured workers' in the worker's compensation system who never return to work once they have an injury. The high cost of workers' compensation insurance has also been a factor, although recent reforms adopted by the legislature have decreased costs and resulted in more employers providing insurance. Some employers also provide benefits that exceed those in workers' compensation as a way to attract employees to their companies.

Over the past several legislative sessions there have been attempts by opponents of nonsubscription to force mandatory workers' compensation coverage on employers or to make nonsubscription less attractive for employers. These efforts included attempts to limit the use of arbitration, requiring additional data to be collected, and mandating workers' compensation for the construction industry. All of these proposals are attempts to weaken and diminish a statutory privilege granted by the Texas legislature a hundred years ago. Responsible nonsubscribers include some of our state's leading employers who continue to demonstrate that nonsubscription is a proven and effective choice for providing employees timely and necessary access to quality care.

We are happy to serve as a resource for the committee's review of the aforementioned aspects of nonsubscription. Richard Evans, who manages the

Alliance's legislative relations, may be contacted at 512-482-9339 if you need any additional information.

Thank you for your leadership and service to our state.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret Greenshield". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Margaret Greenshield
Chair, Texas Alliance of Nonsubscribers