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**NCOIL COMMITS TO INVESTIGATE “OPT-OUT” WORKERS’ COMP,  
STAND UP TO FEDERAL INTERVENTION**

**San Antonio, Texas, November 15, 2015** — NCOIL—responding to a new study that raises serious concerns regarding workers’ compensation systems in which employers are not required to participate, and in recognition of mounting federal interest in intruding on state workers’ comp authority—determined at its Annual Meeting to investigate costs and benefits of opt-out/opt-in approaches and to weigh in as needed on calls for federal intervention. The decision by the Workers’ Compensation Insurance Committee to examine the issue in 2016 aligns with NCOIL commitment to promoting fair benefit systems and to protecting state insurance regulatory authority.

According to Sen. Jerry Klein (ND), chair of the Committee:

The issues brought forward by the recent NPR/ProPublica study regarding the Texas and Oklahoma workers’ compensation programs are of significant concern to state legislators responsible for the protection of injured workers. Though NCOIL has taken no position on these unique programs, we’d be remiss if we didn’t look at the issue further—especially since there’s movement in other states to let employers opt out of state workers’ compensation requirements.

“In addition,” Sen. Klein asserted, “the growing federal interest in getting involved with state authority to oversee how injured employees are paid means that NCOIL must be ready to stand up for state consumer protections and regulations.”

The October 14 report alleged that opt-out/opt-in workers’ compensation systems result in scaled-back benefits and that employers use various techniques to deny coverage, such as narrowly defining what a workplace injury is and imposing tight rules on when an employee must report an injury (e.g., by the end of the shift).

Opponents—which include plaintiff attorneys, worker advocates, insurers, medical providers, and other entities—also say that these non-traditional workers’ compensation programs deviate from state law by requiring employees to accept all-or-nothing settlements offered by employers. Opponents note that opt-out benefits are taxable, unlike in traditional workers’ compensation.

Opt-in/opt-out supporters say that these approaches bring much-needed savings for employers without compromising benefits. In fact, advocates say, these plans often require an employer to pay a higher

percentage of worker wages than standard plans do—while eliminating inefficiencies found in traditional markets. According to supporters, opt-out programs are governed by ERISA, not state laws.

Though federal intervention is not certain, an October 20 letter from Democratic leaders on key U.S. House and Senate committees dealing with workers' compensation issues wrote the Department of Labor (DOL) urging the agency to weigh in. The letter cited the NPR/ProPublica study in its argument that state workers' comp laws no longer protect injured employees.

Texas has maintained an opt-in system since the state established its workers' compensation program in 1913. Employers who do not provide traditional coverage are called "non-subscribers." In Oklahoma, a 2013 law allows companies to opt-out of buying workers' compensation coverage but requires such companies to meet financial and other standards. Tennessee and South Carolina are considering opt-out legislation.

The Annual Meeting took place November 12 to 15 at the Hilton Palacio del Rio in San Antonio, Texas.

NCOIL is an organization of state legislators whose main area of public policy interest is insurance legislation and regulation. Most legislators active in NCOIL either chair or are members of the committees responsible for insurance legislation in their respective state houses across the country. More information is available at [www.ncoil.org](http://www.ncoil.org).

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