

QCARE Website Q&A

1. What is the “Texas Model” of workers’ compensation?

Texas employers can now:



2. Where can I find information about the Texas injury benefit industry? See these [Fast Facts](#) and this [“Q&A on Texas Injury Benefit Programs”](#).
3. Where can I find studies and reports on Texas injury benefit programs? See these [Articles & Reports](#).
4. What are ARAWC goals? The [Association for Responsible Alternatives to Workers’ Compensation](#) has five goals, all detailed in videos and articles in the [“Innovation Series”](#) on this ARAWC website:
 - a. [Employee Advocacy](#)
 - b. [Active Engagement](#) – including employer liability exposure
 - c. [Better Medical Outcomes](#)
 - d. [Improved Benefits](#)
 - e. [Lower Costs](#)
5. What is “QCARE”? QCARE (Qualified Compensation Alternative for Recovering Employees) is a [simple, no-cost, online designation](#) to recognize employers with a responsible Texas injury benefit program that satisfies high industry standards. QCARE was created by ARAWC (“A-Rock”), the [Association for Responsible Alternatives to Workers’ Compensation](#) following a review of research on medical outcomes for millions of injured workers, and engaging in constructive dialogue with workplace injury thought leaders, including employee advocates, from across the United States. [Ten requirements](#) emphasize legal compliance, fairness in benefit delivery, insurance protections, and professional claims administration. QCARE raises the bar for companies that do not provide

Texas workers' compensation insurance. It delivers the clarity and coverage that injured Texas workers deserve, and the credibility that responsible employers deserve. Responsible employers are moving now from "Opt Out" to the QCARE designation. For more information on QCARE, go to www.qcare.org.

6. **Is new legislation or regulations needed to implement QCARE?** No. We are clarifying and raising the standard of responsibility within the existing Texas system.
7. **Is QCARE like the "Oklahoma Option" or is it being promoted by ARAWC in other states?** No. See ARAWC website tab on "The Basics" for ARAWC's position on the [Oklahoma Option](#) and [Other States](#).
8. **What are QCARE goals?**
 - a. **Expand coverage to more Texas workers that have no injury benefits.** 95% of all Texas employees are eligible for benefits under either traditional workers' compensation or an injury benefit program. But some employers are still not taking care of their employees. On-the-job injuries are a natural cost of labor, so medical coverage, wage replacement, and other injury benefits should be provided by employers, at no cost, to all employees. Also, every worker should ask themselves, "Would I work first, then ask to get paid?" Of course not. So why go to work, end up getting hurt, and then ask your boss, "who is going to take care of me?" From the time of hire, Texas employees deserve to know and understand their rights if they get hurt at work.
 - b. **Know who cares.** QCARE raises the bar and identifies the most responsible employers. QCARE distinguishes the "bad actors" from the "good guys" who provide quality injury benefits for their employees. All Texas employers should meet the QCARE standards or provide workers' compensation insurance coverage.
 - c. **Simple injury outcomes.** Workers' comp can be complicated when someone gets hurt at work and there is a benefits claim or dispute. On the other hand, Texas injury benefit programs have a 30-year track of simply working well for injured Texas employees, their families and employers. QCARE supports the delivery of injury benefits that are easy to understand, not delayed with a lot of red tape, often provide better wage replacement, support access to the best medical providers in the state, and respect the employee's legal rights to sue for injury benefits, as well as any employer negligence.
9. **How was the QCARE program developed?** QCARE was developed with input from injured worker and employer attorneys, other worker advocates, physicians and other medical professionals, service providers, employers, judges, academics, workers' compensation and broader insurance thought leaders, government regulators, third party claim administrators, data analytics professionals and others with experience in injured worker care and workers' compensation systems.
10. **Why are the [10 QCARE standards](#) presented in this order?**

- **#1** – Loss of the “exclusive remedy rule” immediately highlights the rights of the injured worker, and provides context to all of the benefit plan design requirements #3 to #8.
- **#2** – State law compliance is important. ARAWC is NOT advocating for a federal takeover of workers’ compensation. Also, federal employee benefit laws (ERISA) do NOT preempt (or knock out) all state-level control. ARAWC is supporting the Texas Division of Workers’ Compensation in its current (and no expanded) mission to gather information on employers that do not provide workers’ compensation insurance coverage.
- **#3 through #8** all deal with injury benefit plan design, so they are grouped together.
- **#9 and #10** (insurance and approved claims administration) also go together. They are placed at the end because QCARE is primarily focused on employee legal rights and the need for employers to deliver quality injury benefits.

11. What controls support the QCARE program’s employer self-certification? The integrity of the QCARE program is supported by:

- Third Party Program Administrator.** Virtual, Inc. administers the QCARE program. Virtual provides management services for ARAWC and 90 other trade associations nationwide, including administration of several other certification and designation programs, through team of over 200 employees.
- Verification Procedures.** Not every employer that provides Texas injury benefit coverage will satisfy the 10 QCARE standards. ARAWC has worked with Virtual to develop verification procedures that help ensure QCARE standards are met.

12. What updates are needed for our Texas injury benefit plan and employee communications to get the QCARE designation? This market has matured dramatically in recent years. QCARE formalizes and reflects those improvements. So, most employers that already have insurance coverage and approved claims administration, and have kept their injury benefit program current with state and federal laws and best practice, will comply with the 10 QCARE standards. Employers should check with their insurance broker, attorney or other adviser if they have questions about how to comply with these standards and receive the QCARE designation.

13. Is QCARE perfect? No. But we are moving from almost no well-understood and recognized standards for Texas injury benefit programs to these [10 essential standards](#). They are simple, to the point and effective.

All 50 state-run workers’ compensation systems are different and all have challenges. None are perfect. Benefits coverage, costs and results all vary. What matters most is results for the two key stakeholders, injured workers and employers. Medical outcomes, benefits paid, employee satisfaction and costs for Texas injury benefit programs are reflected in these [“Articles & Reports”](#). Information is also available from many of America’s most respected employers, insurance companies, actuaries and third party claim administrators. Rather than speculate on what “could, might or would” happen under Texas injury benefit plans, there is a long, successful track record.

The Texas injury benefit plan industry is constantly innovating and improving, and QCARE is a big step forward.

- 14. Does QCARE provide a guarantee of legal compliance or program performance?** No. The same is true when an employer buys a workers' compensation insurance policy.
- 15. Are QCARE benefits better than workers' compensation in all cases?** No one insurance or benefits system is better in every case. Sometimes Texas workers' compensation or an injury benefit plan may be better on a particular case. But injury benefit plans are good and most frequently better for the injured worker. See the "[Articles & Reports](#)" on the ARAWC website. We welcome more independent research.
- 16. Five percent of Texas employees do not have workers' compensation or injury benefit plan coverage?** Correct.

Number of TX Private-Sector Employees covered by workers' comp ¹	8.4 mil
Number of TX Private-Sector Employees covered by injury benefit plans ²	1.2 mil
Number of TX Private-Sector Employees not covered by WC or injury benefit plan ³	0.6 mil
Number of TX Government Employees (all covered by workers' comp) ⁴	<u>2.0 mil</u>
TOTAL Texas employees ⁵	12.2 mil
PERCENTAGE of Texas employees not covered by WC or injury benefit plan	5% ⁶

- 17. Would a mandatory workers' compensation system in Texas cover all employees?** No. A century of experience across the United States shows that even mandatory workers' compensation laws don't result in injury benefit protection for all employees. And when there is no competition, a lot of people lose. Employer costs can be astronomically higher, and it's the workers who lose the most, as injury medical outcomes go down under a more complex, less competitive, and more expensive healthcare delivery system. Speculation about what "could, might or would" happen is

¹ Texas Department of Insurance 2018 study on [Employer Participation in the Texas Workers' Compensation System](#), page 26. Two main points can be gleaned from TDI's biennial studies: (1) Injury benefit plans are a large and thriving part of the social safety net for 1.2 million Texas workers; and (2) employer and employee satisfaction levels remain high. Like all prior surveys, Texas employers with injury benefit plans reported higher levels of satisfaction in 2018. These biennial surveys previously reported higher levels of employee satisfaction, but those survey questions and reporting were discontinued by TDI in 1997. ARAWC supports continued improvement in the accuracy of nonsubscriber research. ARAWC continues to pursue active engagement between the TDI Research and Evaluation Group and the Texas injury benefit program community, including direct input from insurance companies, third party administrators or other leaders that build, insure and manage these programs. More accurate research would support government and ARAWC efforts to cover more Texas workers by either workers' compensation or a quality injury benefit program.

² Id.

³ Id.

⁴ [Texas Workforce Report 2018-2019](#) from the Texas Workforce Commission, page 15. Workers' compensation coverage is required for all government employees under Texas Labor Code 406.002 ("Except for public employers and as otherwise provided by law, an employer may elect to obtain workers' compensation insurance coverage.")

⁵ Total employment reported by Texas government agencies vary based on timing, methods and data sources.

⁶ 600,000 divided by 12,200,000.

not as important as actual, proven outcomes across the vast majority of injury claims under the Texas system.

- 18. Is QCARE just for big companies? No.** The vast majority of companies that do not provide Texas workers' compensation insurance are small employers. Here's the percentage of companies – based on employment size – that elect to not be covered by Texas workers' compensation: ⁷

1-4 Employees	36%
5-9 Employees	27%
10-49 Employees	16%
50-99 Employees	10%
100-499 Employees	10%
500+ Employees	20%

- 19. What forms of benefits are provided by QCARE programs?** QCARE programs provide specific medical, wage replacement, death and dismemberment benefits with clearly defined benefit levels that may vary from one employer to the next.
- 20. Does the QCARE designation require a particular duration or dollar amount of injury benefits and related insurance?** No. However, such specificity is required by the Employee Retirement Income Security Act (ERISA) and all insurance companies writing insurance for Texas injury benefit programs.

First, remember that employers with no workers' compensation insurance give up the "exclusive remedy" protection of workers' compensation. As a result, injured Texas workers have two avenues of recovery: (1) the employer's injury benefits program, and (2) settlements and awards for any employer negligence that caused the injury. This employer negligence liability exposure is not found in any state workers' compensation system.

Over the past three decades, employers and insurers have developed market standards within this context of employee care and incentives for workplace safety. With regard to employee care, ERISA requires any actual payment of injured employee medical and disability benefits to be specifically defined and communicated through a formal injury benefit plan. Most employers are highly motivated to voluntarily establish such a plan to support healing and return to work for injured employees. This helps protect their hiring and training investments, employee morale and productivity, which is the key to company profitability.

With regard to workplace safety, ALL Texas employers that do not provide workers' compensation insurance can be sued for any employer negligence that causes or contributes to an employee injury. As stated in the detail on QCARE requirement #1 [found here](#), the employer and its insurers

⁷ Texas Department of Insurance 2018 study on [Employer Participation in the Texas Workers' Compensation System](#).

cannot defend against negligence liability claims based on common law defenses of assumption of risk, contributory (or comparative) negligence, or negligence of a fellow employee. This means employer liability for ANY failure to train, provide safe equipment to perform the job or maintain a safe work environment. As discussed in [Part 3 of the ARAWC Innovation Series](#), negligence liability exposure is real and a powerful force for good, supporting more robust job training and safety programs. Employers and their insurance companies further reduce this liability exposure by paying – on a no-fault basis, as required by QCARE – all medical, wage replacement and related bodily injury damage and expenses under the injury benefit plan. Where appropriate, payments can also be made under the terms of a supplemental benefit plan, court or arbitrator award, or settlement agreement.

This combination of incentives for employee care and workplace safety have functioned within a competitive marketplace for over 30 years, successfully addressing the needs of over one million injured workers and their families. More information on this system structure and recent benefit improvements can be [found here](#).

21. So, what injury benefit levels are commonly found in QCARE-eligible programs? Insurance companies and agents that offer and support QCARE-eligible insurance policies vigorously compete on both the breadth of injury benefit and employers’ liability insurance coverages and pricing. See information on the QCARE insurance requirement #9 [found here](#). Rather than provide ARAWC’s own detailed analysis of these Texas insurance products, ARAWC relies on insurers and insurance agents to provide their own marketing materials and coverage comparisons.

Any comparison of benefit levels between a QCARE program and a workers’ compensation policy must consider the employer’s negligence liability exposure and related payments. As described above and [on the ARAWC website here](#), such negligence liability exposure is not found in workers’ compensation programs, but is unlimited for employers that do not provide workers’ compensation coverage. With that in mind, and although specific plan levels vary, these are ranges found in most injury benefit plans:

- 100% of medical expenses for up to 104 to 156 weeks.
- 75% to 90% wage replacement beginning on the 1st day of disability, subject to a weekly maximum of \$600 or higher (with many programs not specifying any weekly maximum).
- Death or dismemberment benefits up to \$100,000 to \$250,000.
- \$250,000 maximum payable per employee
- \$250,000 to \$500,000 maximum payable per occurrence

Due to the employer’s desire for employee care, as well as negligence liability exposure, additional medical, disability and other payments – beyond the above benefit limits – are made on almost every severe injury claim. For more information and specific case studies, see Part 3 of the ARAWC “Innovation Series” on [Active Engagement](#) and Part 5 on [Improved Benefits](#).

For additional information on insurance products available from ARAWC members, go to:

- [Combined Group](#) (Swiss Re)
- [CPro Associates](#) (Nationwide)
- [Great American Insurance Company](#)
- [Midlands Management Corporation](#) (Lloyds and Safety National)
- [Special Insurance Services](#) (ACE/Chubb)

Several other name-brand insurance companies, as well as the nation's most-respected names in third party claims administration, support the QCARE insurance and claims marketplace.

Sample Texas injury benefit plans are readily available. Every Texas employee covered by an injury benefit plan must receive a comprehensive summary of their rights and responsibilities under such a plan. Sample copies of ERISA injury benefit plans and summary plan descriptions are also found at the links above or upon request from the insurance company, and elsewhere on the internet. Not all injury benefit plans will meet QCARE's 10 essential standards.

22. Can Texas injury benefit plans simply reduce benefits after an injury occurs? No. In general, the right to alter benefits is reserved to the employer in all Texas injury benefit plans and has long been recognized with respect to all ERISA welfare benefit plans.⁸ However:

- a. **Benefit durations coincide with the statute of limitations on negligence liability.** Most Texas injury benefit plans promise voluntary benefit payments for at least two years.⁹ This voluntary, no-fault benefit obligation coincides with the two-year statute of limitations for an injured employee to file a negligence liability claim. Employers with no Texas workers' compensation insurance lose the "exclusive remedy" defense – exposing them to such liability claims by injured workers, including all actual damages (like medical bills, lost wages, loss of earning capacity, pain and suffering, etc.), as well as punitive damages. To pursue such a claim, an injured worker need only show the employer was responsible, in some small measure, for a failure in safety or training. In addition to the other reasons described below, this liability exposure strongly deters an employer from making (and its insurance carrier from ever agreeing to) any plan amendment that would reduce benefits or otherwise be adverse to the interests of an injured worker. Unlike the typical group health plan for non-occupational illness or injury, changes to Texas injury benefits cannot be made

⁸ See, e.g., *McGann v. H&H Music Company*, 946 F.2d 401 (5th Cir. 1991).

⁹ Beyond the benefit duration limits, employers and insurers rely on individual supplemental plans and negligence liability settlement agreements between the employer and injured employee to fund additional medical and disability payments, as well as other compensation for loss of earning capacity, physical and mental impairment, pain and suffering, harm to family members, punitive damages, etc.

solely based upon the cost of benefits. Any change in benefits must also consider this negligence liability exposure.

- b. Desire for an enforceable agreement to arbitrate negligence liability claims.** To avoid some of the common delays, expense and unpredictability of going to court on negligence liability claims, the vast majority of Texas companies sponsoring an injury benefit program require arbitration of negligence liability claims as a condition of employment.¹⁰ Contractual consideration for such an arbitration requirement is the employee's mutual promise to arbitrate, continued employment by the employer, and/or the employee's eligibility for injury benefit coverage. Texas case law¹¹ has made clear that if the employer reserves the unilateral right to change or terminate an arbitration agreement (in particular, with regard to a past incident), the agreement is illusory and unenforceable.
- c. Benefit reduction is prohibited by the terms of most injury benefit plans.** Employers and their liability insurance carriers want these arbitration agreements to be enforceable under state law, and ERISA also relies on state contract laws. So, the following (or similar) language can be found in most Texas injury benefit plans:
- “The Company shall have the right and power at any time and from time to time to amend this Plan, in whole or in part, on behalf of all Employers, and at any time to terminate this Plan or any Employer's participation hereunder; provided, however, that no such amendment or termination shall reduce the amount of any benefit payable to, or with respect to, a Participant under the Plan in connection with an Injury occurring prior to the date of such amendment or termination.”
- d. Fiduciary responsibility also restricts any administrative effort to reduce benefits.** Due to the application of ERISA, Texas injury benefit plans must be administered by fiduciaries in the best interests of the injured worker. Once the terms of a Texas injury benefit plan are confirmed in writing by an employer in a non-fiduciary (settlor) capacity, all administration of benefits under such plan is a fiduciary act.
- e. Full communication to all covered employees of any material change in a Texas injury benefit plan.** ERISA requires the terms of these plans to be fully communicated to all covered employees, including any material change in coverage or other plan amendment. The impact of a reduction in benefits on employee morale, as well as the time and expense

¹⁰ Note that ERISA prohibits mandatory arbitration of injury benefit claims. Also, the requirements for and enforceability of an agreement to arbitrate negligence liability claims have been established through decisions of the U.S. Supreme Court and Texas Supreme Court over several decades. Arbitration does not waive any substantive rights of the worker, who can fully pursue the negligence liability claim and the same remedies available at the courthouse. Both federal and state court decisions have also imposed numerous standards of fairness on such arbitration agreements for selection of the arbitrator by both parties, cost sharing, discovery, etc. These standards of fairness are also dictated by arbitration administration service providers.

¹¹ See, e.g., [Davidson v Webster, 128 S.W. 3d 223 \(Tex.2003\)](#). For example, in the “Analysis” section of this opinion, see section C.1. on “*The ADR Policy does not contain consideration.*”

of such communications, are strong disincentives to any alteration of benefit plan terms that are adverse to covered employees.

- f. **Actual industry administrative practice.** Employers, insurers and claim administrators understand that contractual commitments in the injury benefit plan cannot be altered after the date of injury for the reasons above.

23. How do the 10 QCARE Standards compare to standards recommended by the [1972 National Commission on State Workmen’s Compensation Laws](#)? The fundamental structure of workers’ compensation programs was developed over 100 years ago and is commonly referred to as the “Grand Bargain”. In exchange for injury benefits mandated by statute (which vary in every state), this bargain eliminated an injured workers’ right to sue for an employer’s negligence that may have caused the injury. In 1970, Congress established the National Commission on State Workmen's Compensation Laws (the “Commission”) to "undertake a comprehensive study and evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation."

As recently stated by one of America’s most prominent workers’ compensation scholars, “Why would you imagine that the workers’ compensation system envisioned over 100 years ago is what we should do today.” The same is at least partially true of this national commission’s report from almost 50 years ago.

Nevertheless, here is a summary of how the five major objectives for a “modern” workers’ compensation system (as recommended in the final 1972 report) compare to Texas injury benefit programs today:

Five Major Objectives for a Modern Workers’ Compensation Program: Met by Texas Injury Benefit Programs?	
Broad coverage	Yes
Substantial protection of income	Yes
Sufficient medical care and rehab	Yes
Encouragement of safety	Yes
Effective system for delivery	Yes

As reflected in the QCARE standards, current Texas and federal laws,¹² and all known, credible data and public policy research on actual outcomes for injured workers in the administration of over

¹² See “[System Structure & Improvements](#)” on the ARAWC website.

one million injury benefits and negligence liability claims during the past 30 years,¹³ these five objectives have been met.

The Commission also made “19 Essential Recommendations”, the vast majority of which are premised upon workers’ compensation being mandatory for all workers, who have no rights to recover from the employer for any employer negligence liability that caused the injury. That premise has been rejected by the State of Texas in favor a competitive model that has made the Texas workers’ compensation system one of the most-respected, high-performing programs in the country. Texas injury benefit programs also, in fact, make medical, disability and other expense and damage payments that – we believe, in most cases – meet or exceed payments available under the Texas workers’ compensation system.

24. How can employers and service providers use the QCARE logo? ARAWC encourages employers to communicate the QCARE designation to employees covered by their Texas injury benefit program. Service provider members of ARAWC can also use the QCARE logo to show they are a supporter. All use of the QCARE logo is subject to these [Trademark and Brand Guidelines](#). You must not incorporate any of the QCARE brand assets, or variations of them, into your own product features, product names, service names, trademarks, logos, company names, domain names, or social media accounts unless otherwise authorized by ARAWC and permitted by the QCARE Trademark & Brand Guidelines. You must not adopt marks, logos, or any other features that are confusingly similar to the QCARE brand assets, and you must not market any product or service under a name that is confusingly similar to the QCARE brand name. Questions and requests related to the QCARE brand should be directed to info@arawc.org.

Additional information on any item above is available by contacting info@arawc.org.

¹³ See “[Articles & Reports](#)” on the ARAWC website.