



Texas Nonsubscriber Option: *Providing Better Disability Benefits?*

Written by Russell Huber April 2017



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Better Disability Benefits

Can workers' compensation costs be dramatically reduced, while paying better disability benefits to injured workers? This report answers that important question with a definitive "YES"!

An ability to immediately implement nationally-recognized "best practices" in employee advocacy and employee and medical provider engagement, combined with Texas employer negligence liability exposure, creates an environment in which employers can and do provide better disability benefits. This report builds upon and further validates prior, credible research (see Sources on p. 18) and demonstrates how the elusive goal of improving benefit adequacy for injured workers – with a real world, positive impact on families – is being achieved every day in Texas and is available to other forward-thinking states.

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About the Author

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Russell has over 30 years experience addressing the complex insurance needs of some of the largest companies in the U.S. His 19 years in employee benefits is particularly valuable when considering the Texas Nonsubscriber Option under ERISA. Russell helps employers and their brokers determine feasibility of pursuing the Texas Nonsubscriber Option. Russell has a BBA from Texas Tech University and an MBA from Southern Methodist University.



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Introduction

This paper helps explain the better disability benefits Texas Option¹ programs commonly provide. These benefits are not mandated by the state. One of the primary advantages of an Option program is this clear tendency of employers to voluntarily provide better benefits for a legitimate workplace injury than an employee would receive in workers' compensation. These employers are focused on providing quality levels of benefits, as they have an eye on both the human capital value of their work associates and the tort liability exposure they retain in the Texas Option environment.

We'll explore 5 primary considerations for wage replacement benefits:

- I. **Duration**
- II. **Benefit Start Date**
- III. **Weekly Maximum Benefit**
- IV. **Wage Replacement Percentage & Effect of Taxation**
- V. **Payroll Deduction Differences**

What are recommended benefit levels?

PartnerSource wage replacement benefit recommendations for Texas Option employers are:

- 85% of earnings (or higher)
- No waiting period penalty
- No weekly dollar maximum limit

How have employers responded?

Since 1/1/12 (reviewing 5 years of experience as of 1/1/17), new PartnerSource plans (covering hundreds of thousands of Texas workers) provide the following:

- Average wage replacement at 92% of pre-injury pay,
- 98% of plans pay wage replacement from Day 1, and
- 88% of plans have UNLIMITED weekly benefits

Over half of all Texas workers covered by a Texas Option program are covered by PartnerSource plans.

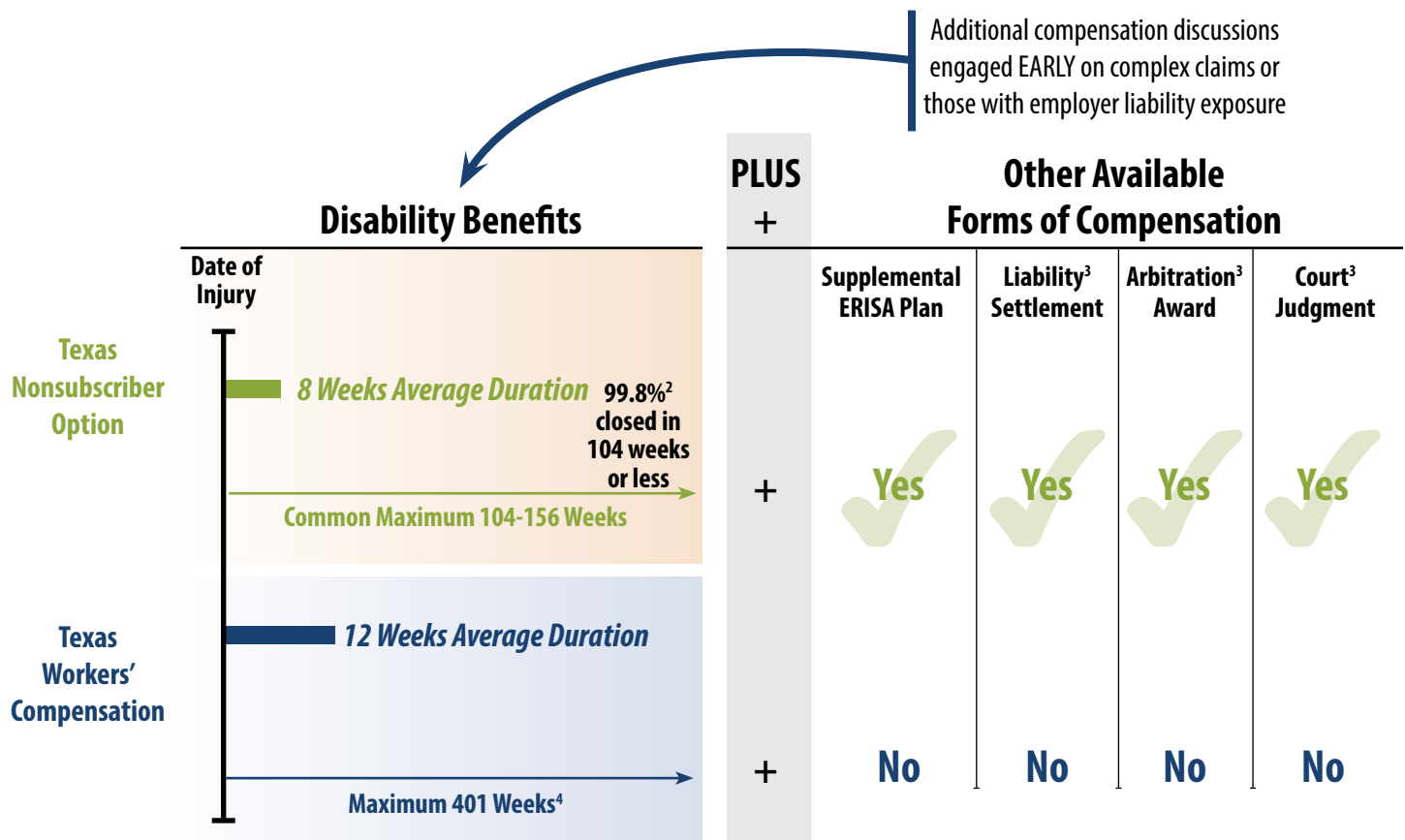
¹ Alternatives to traditional workers' compensation are known by several names: Option, Nonsubscription, Workers' Comp Option, Nonsubscriber, Opt-out, Occupational Injury Benefit Plans, ERISA Option, etc.

I. Duration

Basic Texas Option and workers' compensation disability benefits end at some point and the maximums in both programs are well-beyond the duration of almost all claims (104-156 weeks in Texas Option & 401 weeks in workers' comp). So, the question becomes, "In the rare instance when the employer needs to provide additional benefits, are there commonly utilized avenues to do so?" In the case of the Texas Option, the answer is "yes."

From PartnerSource's *Texas Nonsubscriber Option Actuarial Data Analysis – Fact Sheet*, verified by **Leigh J. Halliwell, FCAS, MAAA**, we know it is unusual to have a lengthy claim, since average claim durations for Texas Option and Texas workers' comp are 8 weeks and 12 weeks, respectively (this is after removing claims with 7 or fewer days of disability for an apples-to-apples comparison).

However, if the need arises, the Texas Option has other forms of compensation available, **commonly out of the public view**, as described below:



When comparing these programs on duration alone, there are pros and cons to each approach⁴. However, the expanded Option tort liability exposure, combined with an Option injury benefit plan, creates an environment for a number of regularly used avenues that are highly valuable to employees with catastrophic injuries.

Shorter disability durations and other available forms of compensation are important advantages for workers covered by Option programs.

²Based on PartnerSource clients across all industries, including trucking/distribution, manufacturing, hospitality, healthcare, restaurant and retail.

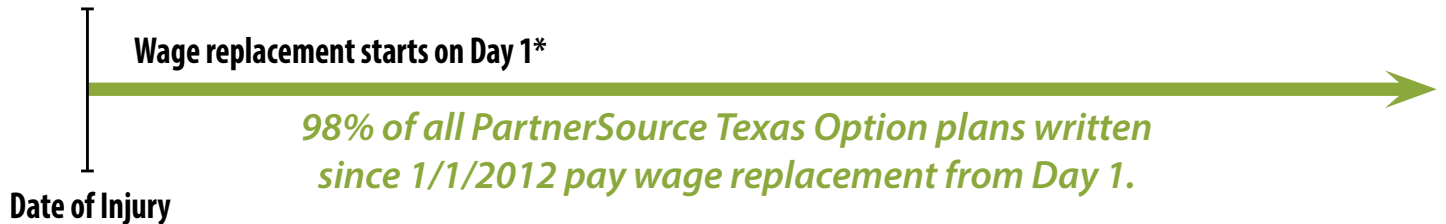
³Texas Option employer negligence liability exposure (with loss of several common law defenses) is resolved on catastrophic and other claims by a settlement agreement between the parties or through an arbitration award or court judgment. To date, PartnerSource has identified 97 Texas Option settlement and judgments of \$1 million or more.

⁴401 week limitation applies to temporary, supplemental and impairment income benefits combined (all common forms of wage replacement). This chart does not address other forms of benefit that may be available under workers' comp, as well as Texas Option programs, for double amputations, death, etc. Additional liability settlements or judgments are possible under Texas Option for simple negligence on any Option claim, but are available in Texas workers' comp only for gross negligence death claims.

II. Benefit Start Date

Under the Texas Option, it is common for wage replacement to start immediately on the first scheduled work day missed due to an on-the-job injury.*

A. Texas Nonsubscriber Option



Employees return to full or modified duty based on the advice of physicians instead of squeezing the employee's family financially. Texas workers' compensation, on the other hand, has a 7-day waiting period for disability benefits. The first week of disability is compensated only if the employee is off work for at least 15 days.

A recent review of approximately 10,000 Texas Option claims over a 10-year period, where lost time occurred and lost day metrics were available, determined that 62% of these employees do not have disabilities extend to the 15th day. Therefore, as illustrated on the next page, only 38% of these disabled workers would receive a workers' comp disability payment for the first week. With many employees living paycheck-to-paycheck, loss of one week's wages can be catastrophic. The Texas Option approach can provide a better wage replacement benefit for most disabled workers.



II. Benefit Start Date (cont.)

B. Texas Workers' Compensation



III. Weekly Maximum Benefit

In Texas workers' comp, wage replacement is currently limited to a weekly maximum of \$913 (indexed for 2016). This is a cost containment penalty on disabled workers. Employers in the Texas Option will commonly increase benefit levels beyond that amount. In fact, 88% of all new PartnerSource Texas Option plans since 1/1/2012 have benefits with an unlimited weekly maximum benefit. In other words, there is no weekly maximum penalty imposed on the injured worker.

According to the most recent data from the Texas Department of Insurance⁵, **11%** of workers' comp Temporary Income Benefit⁶ recipients were capped at the maximum benefit level, and **31%** of workers' comp Supplemental Income Benefit⁷ recipients were capped at the maximum benefit level.

Removing the weekly dollar maximum penalty is another important advantage for workers covered by Option programs.

88%
of PartnerSource plans
since 1/1/2012 have
UNLIMITED
weekly maximums

\$913/
week max



**Texas
Workers'
Compensation**

\$
No weekly max



**Texas
Nonsubscriber
Option**



⁵Texas Department of Insurance Income Benefit Adequacy in the Texas Workers' Compensation System, 2000 – 2011. Workers' Compensation Research Institute, July 3, 2013.

⁶Temporary Income Benefits are paid during the period of temporary disability (lost time from work) while the employee is recovering from an on-the-job injury for up to the earlier of attaining Maximum Medical Improvement or 104 weeks.

⁷Supplemental Income Benefits (SIBs) are paid to injured employees for ongoing disability, with all Temporary, Impairment Income and Supplemental Income Benefits ending no more than 401 weeks after the date of injury. Only employees with a 15 percent or higher impairment rating who are unemployed or underemployed as a result of their work-related injuries are eligible to receive SIBs.

IV. Wage Replacement Percentage & Effect of Taxation

When comparing wage replacement percentages, federal income and employment taxes must be considered under a Texas Option program. Using estimated 2015 pay levels⁸ and federal tax rates, the following analysis is interesting:

(Keep in mind, since 1/1/2012, the average new PartnerSource Texas Option clients' wage replacement is 92%.)

Impact of Wage Replacement (WR) Percentage Alone: Which program pays a higher benefit?

| Texas | | | | | | |
|---------|----------------------|----------------------|-------------------------------|---------------------|----------------------|----------------------|
| | 10th Percentile Wage | 25th Percentile Wage | 50th Percentile Wage (Median) | Mean Wage (Average) | 75th Percentile Wage | 90th Percentile Wage |
| | \$17,780 | \$22,200 | \$34,550 | \$46,560 | \$56,680 | \$88,450 |
| 100% WR | Option | Option | Option | Option | Option | Option |
| 95% WR | Option | Option | Option | Option | Similar | Option |
| 90% WR | Option | Option | Similar | WC | WC | Option |
| 85% WR | Option | Option | Similar | WC | WC | Option |

**92%
PartnerSource
Average-Wage
Replacement
Percentage**



The Option appears to be better at most wage points. And this does not factor in the additional advantages of removing the workers' compensation waiting period and weekly dollar maximum penalties.

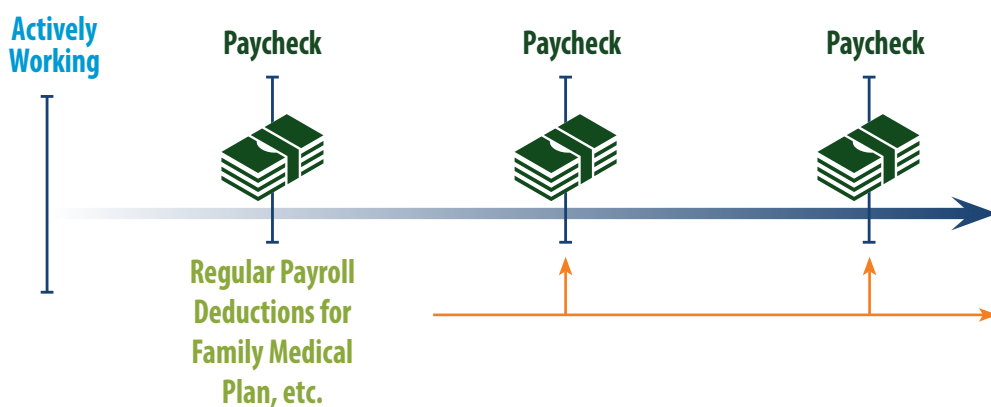
⁸ Pay levels are based on May 2015 Occupational Employment Statistics (the most current available) from the U.S. Bureau of Labor Statistics. Individual tax rates are based on Table T16-0111, Effective Marginal Tax Rates on Wages, Salaries, and Capital Income, released July 6, 2016, from the Tax Policy Center, plus 6.9% for anticipated payroll taxes. <http://www.taxpolicycenter.org> and <http://www.bls.gov/oes/current/oesrcst.htm>

V. Payroll Deduction Differences

Most households in all states (including Texas) are living paycheck-to-paycheck. A significant difference is seen in the way regular pay and disability benefits are paid with payroll deductions under the Texas Option versus the approach in workers' compensation.

A. Actively-At-Work Employee:

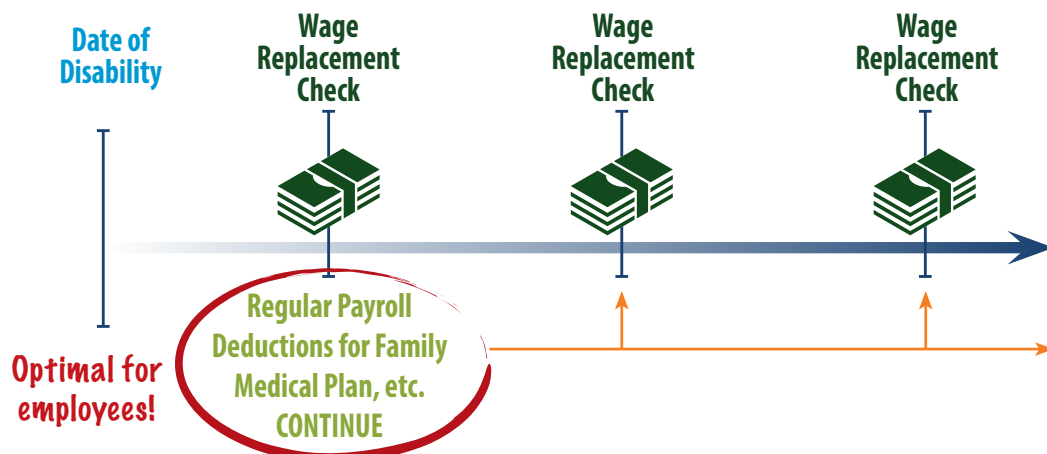
For example, an actively-at-work employee might have payroll deductions from each paycheck for their family group health, retirement, child support, union dues, and other benefits.



B. Disabled Employee – Option vs. Workers' Compensation

1. Option Program – Employee Doesn't Fall Behind!

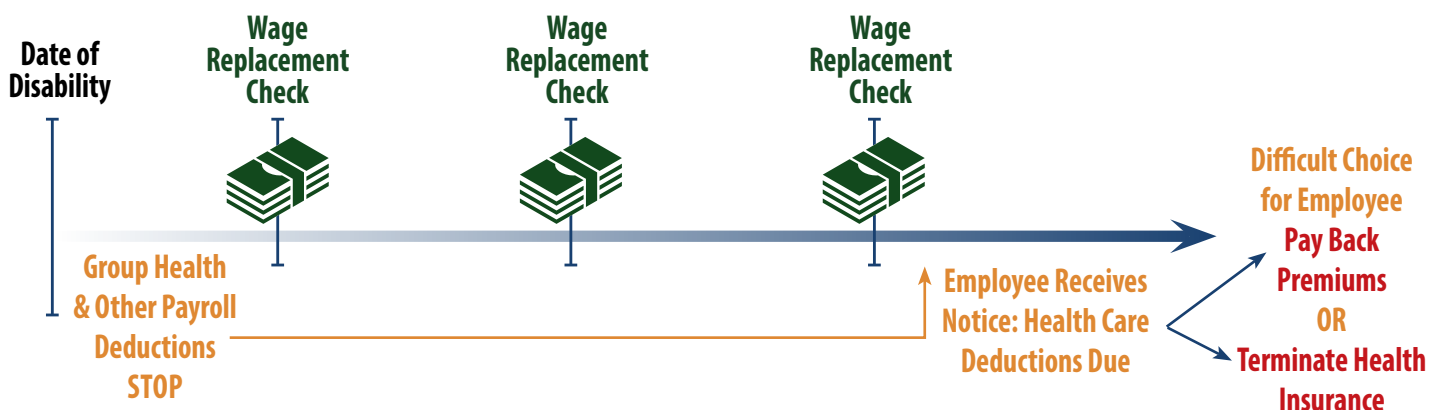
Since the Texas Option pays wage replacement through the employer's normal payroll system, paychecks are processed timely and normal payroll deductions continue while disabled.





2. Workers' Compensation – A Cash Flow Problem

Unfortunately, the structure of workers' compensation programs commonly does not allow for the continuation of benefit deductions. Therefore, when an employee is approached for payment at a later time, many of these paycheck-to-paycheck households will not have the funds to pay back insurance premiums and be faced with no other choice but to cancel healthcare coverage. Retirement plan contributions may also be missed, preventing the employee from receiving valuable employer matching contributions. Child support payments may also fall behind.



Since lifelong Democrat, plaintiff attorney Aaron Allison, JD, represents both Texas Option and Texas workers' compensation claimants, he is in a unique position to speak to this issue. [Listen to his description of worker reality.](https://goo.gl/5CRr3N)

The payroll deduction approach taken by the Texas Option is another big advantage to disabled workers.

VI. Putting It All Together



The best recent analysis of the impact of wage replacement benefits on an injured worker is Peter Rousmaniere's series for [WorkCompCentral](#) titled, [The Uncompensated Worker: The Financial Impact of Workers' Comp on Injured Workers & Their Families, January, 2016](#). Peter carefully calculates the impact on an injured worker and his family at various disability durations.

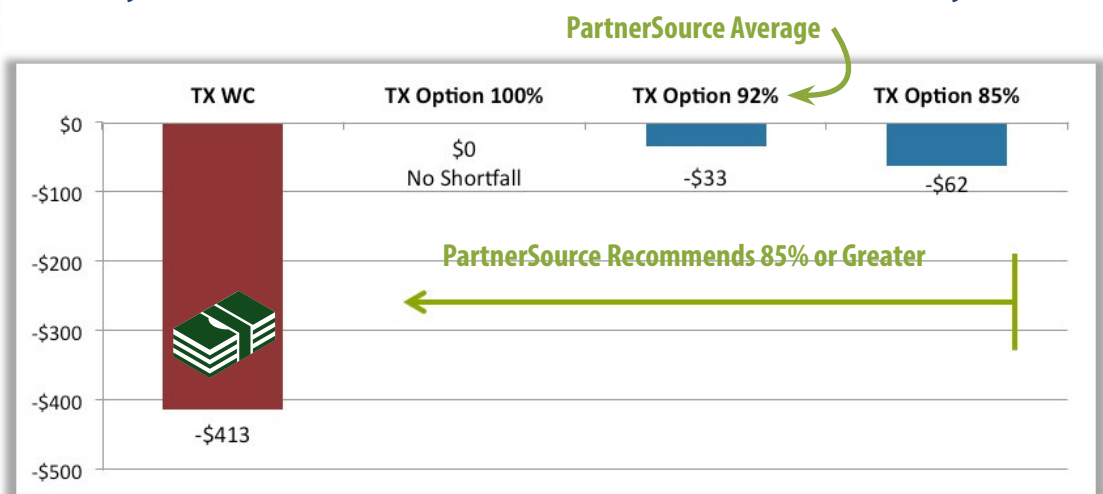
A. Tim: A Sole Earner

In Peter's report, we meet Tim, a 45 year-old electrician living in New York. We have borrowed and adapted that framework to compare the Texas Option to workers' compensation for Tim if he lives in Texas. In this example, Tim is the sole wage earner in his household, his compensation is at the average median pay for a Texas electrician, and he gets paid the same amount per day for five days of work per week.⁹

| | Electrician Median Wage | Take Home After Tax |
|--------------------|-------------------------|---------------------|
| Tim in TX for 2015 | \$43,670 | \$35,792 |

If injured at work, here is the net impact on Tim's take home pay at different disability durations after factoring in benefit waiting periods, maximum weekly benefit limits and payroll taxes:¹⁰

3 Days Lost Time: Reduction in After-Tax Take Home Pay



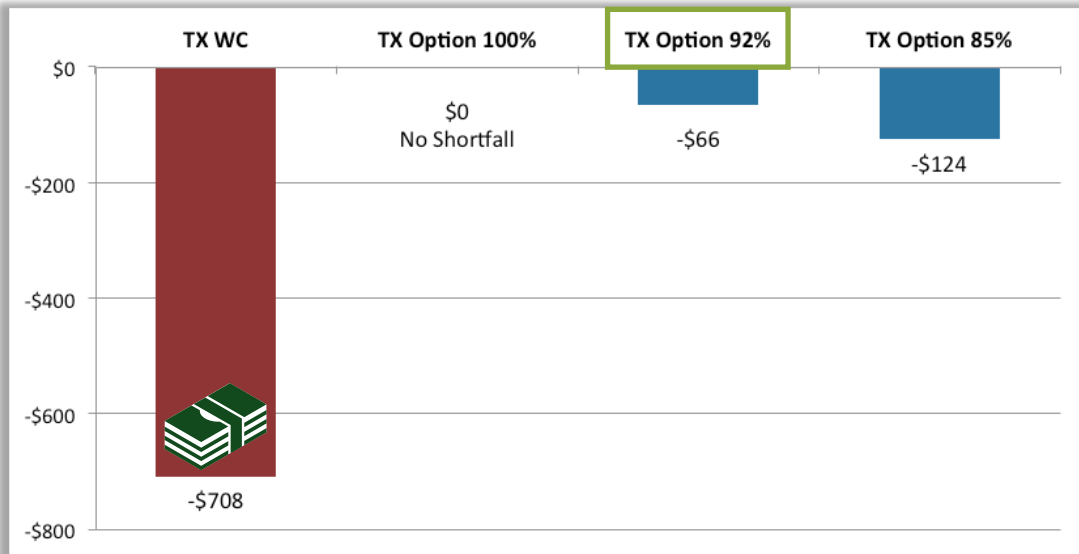
Under Texas workers' compensation, Tim receives no wage replacement benefits for missing three days of work due to the law's seven-day waiting period penalty. His take home pay is reduced by \$413 for that week. His take home pay would be reduced to a lesser extent (if at all) under the Texas Option.

⁹The annual median pay for Texas electricians (occupation code 47-2111) is based on the May 2015 Occupational Employment Statistics data released on March 30th, 2016 available at www.bls.gov/oes/tables.htm. Net take-home pay is calculated using www.paycheckmanager.com. Income and 2015 payroll taxes are estimated for a married person filing singly with two allowances.

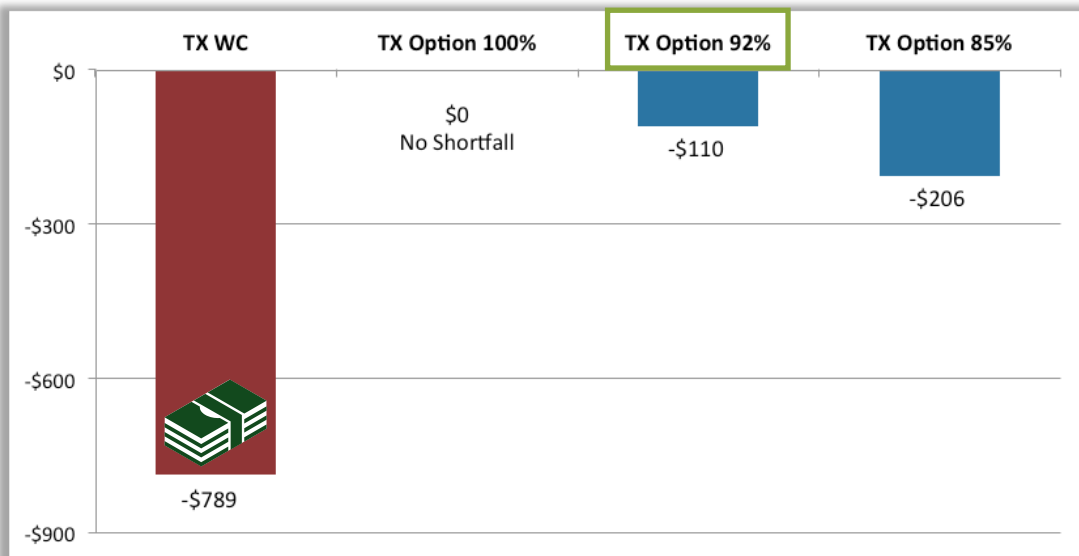
¹⁰ As previously stated, among all new PartnerSource Texas Option plans since 1/1/12 (through 1/1/17), 98% pay wage replacement from day 1, 88% have no weekly maximum, and average wage replacement is 92% of pre-injury pay.

VI. Putting It All Together

6 Days Lost Time: Reduction in After-Tax Take Home Pay



10 Days Lost Time: Reduction in After-Tax Take Home Pay



Why show three examples with fewer than 15 days of lost time?

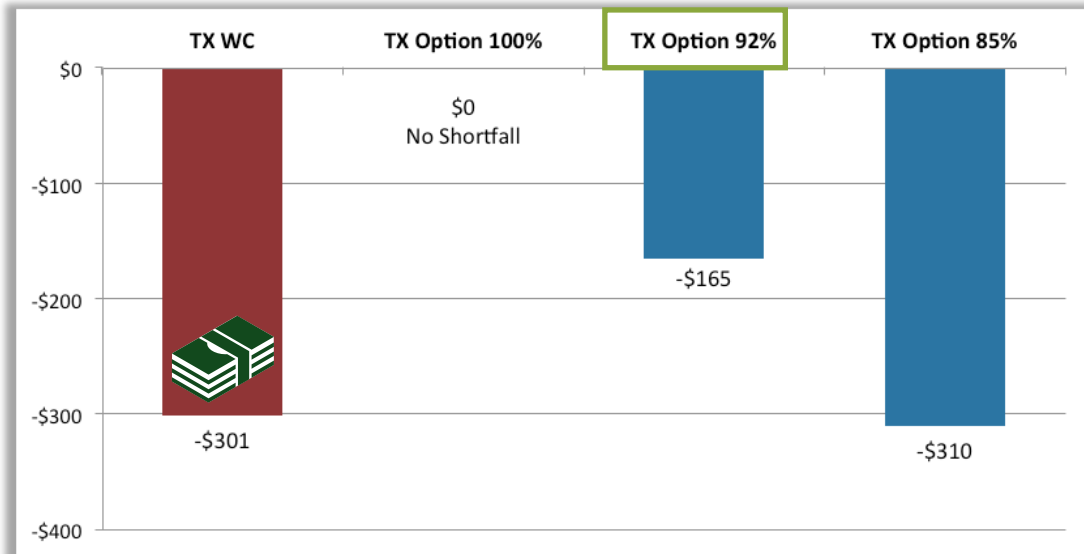
Because a majority of disabled workers covered by Texas Option programs (we estimate 62%) have disability durations less than 15 days. The Option provides better benefits for those workers, in large part, due to the seven-day waiting period penalty under workers' compensation and the law that says the first week of wages are replaced only if the employee is disabled for at least 15 days.

VI. Putting It All Together

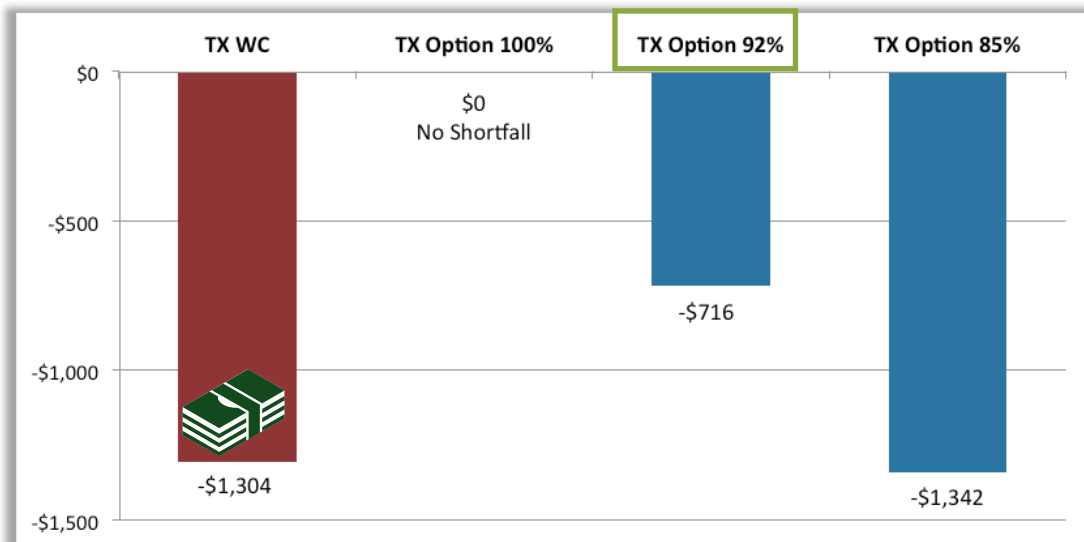
What happens if the disability extends to a longer duration?

Let's consider three additional scenarios:

15 Days Lost Time: Reduction in After-Tax Take Home Pay



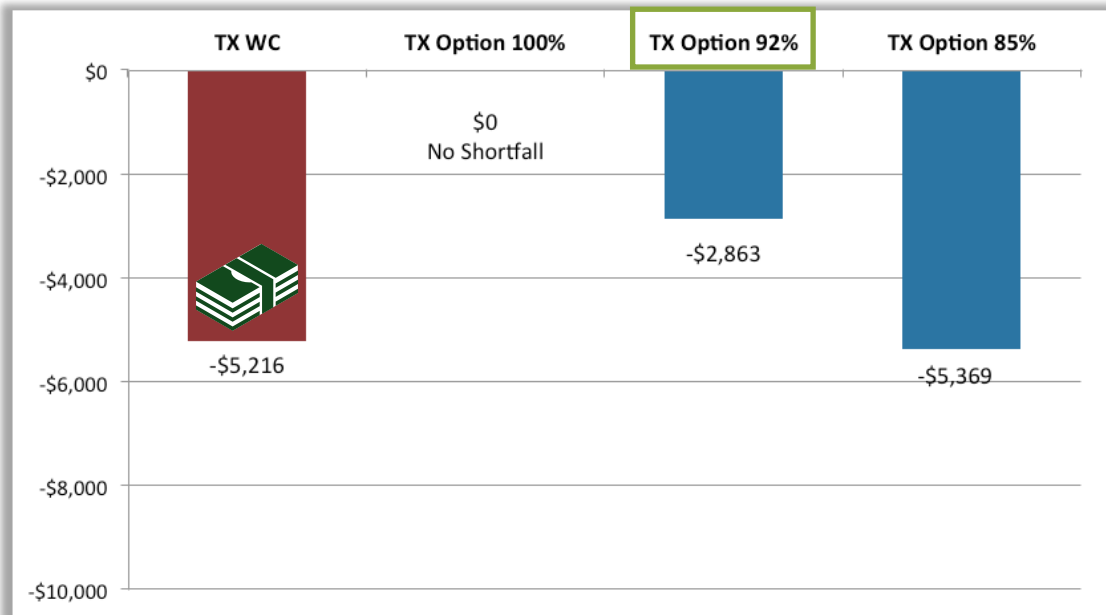
90 Days Lost Time: Reduction in After-Tax Take Home Pay



The Texas Option benefit is still equivalent (after tax) to workers' compensation at an 85% Option wage replacement level, and the Option remains the better benefit at higher wage replacement levels.

VI. Putting It All Together

1 Year Lost Time: Reduction in After-Tax Take Home Pay



At a full year of disability, the Option program generally pays the same or a better benefit!



As seen in the variety of scenarios above, these Texas Option wage replacement benefit levels provide approximately the same – and typically, more – take home pay for an injured employee as Texas workers' compensation.

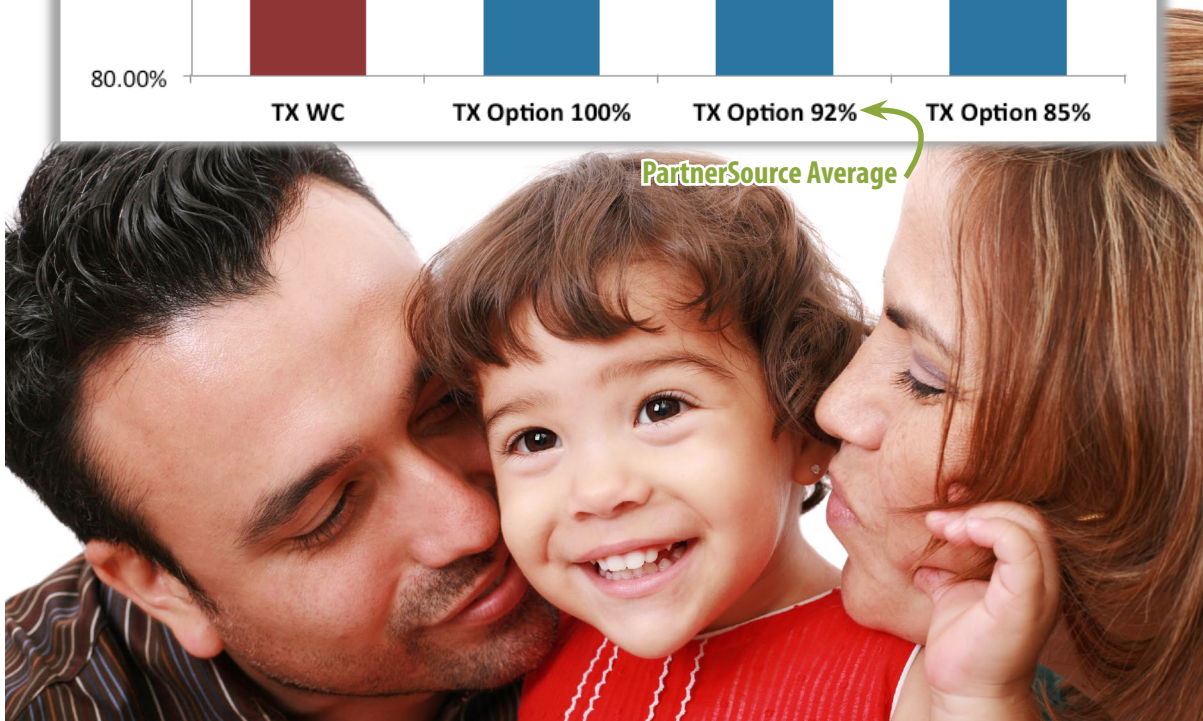
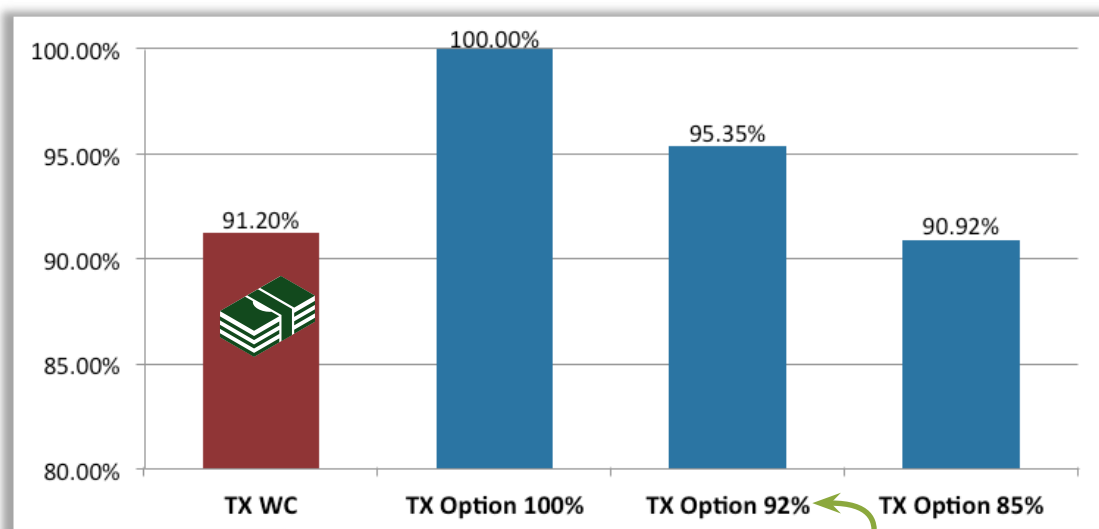
VI. Putting It All Together

B. Tim with Spouse: Wage Replacement Impact on Family Budget if Spouse Working Full Time

In Peter Rousmaniere's aforementioned "Uncompensated Worker" series, he considers the impact of an extended disability on the after-tax take home pay and equivalent budget for a two wage-earner family.¹¹

Similarly, we can study the budget impact on Tim (our electrician in Texas at the median electrician pay of \$43,670) and his spouse who makes the median pay in Texas at \$34,550. Recognizing that families are most vulnerable for an extended disability, here's the impact on Tim's family's take home pay during the second and following months, assuming he remains disabled.

Percent of Monthly Take Home Pay By Family After-Tax:



¹¹ Budget based on three-person family assuming two parents, one child. Source: Authors' analysis of Economic Policy Institute Family Budget Calculator.

Conclusion

Outside of those participating employers and industry professionals who are active in the Texas Option to workers' compensation environment, there is often misunderstanding of the advantages the Option provides. When an employer is using the tools available under the Texas Option, the Option actually has many advantages for injured workers.

In addition to better wage replacement benefits, Option programs are delivering:

- medical treatment earlier,
- from the best medical providers (including many that do not see workers' comp patients),
- with faster, sustained return to work, and
- fewer disputes, resulting in more satisfied employees and employers.

Most employers understand that employees are a vitally important asset and strive to maintain that intellectual and production capital by minimizing the risk of injury, paying good benefits and ensuring a speedy recovery when a work injury occurs. If a Texas Option employer does not demonstrate that commitment to its workforce, the injured worker is incented to pursue tort liability claims to receive greater compensation under Texas law. Therefore, employers we encounter that elect the Texas Option routinely provide a strong injury benefit program, even though not mandated by the state to do so.

Putting It All Together: A Summary

In summary, most disabled employees covered by a Texas Option program receive better wage replacement than they would under workers' compensation through these Option benefit levels:

- **85% of earnings (or higher)**
- **No waiting period penalty**
- **No weekly dollar maximum penalty**

Maximum benefit duration limits rarely come into play, especially with shorter disability durations experienced under Texas Option programs compared to workers' compensation. And when benefit duration limits do apply (or whenever else appropriate), the Texas Option has other forms of compensation available. The Texas Option also maintains normal payroll deductions for group health insurance coverage, retirement plan contributions, child support, union dues and other benefits.

Sources



Demographic Data

The Bureau of Labor Statistics reports Occupational Employment and Wage Estimates under Occupational Employment Statistics for each state. The median annual wage for electricians (47-2111) in Texas in 2015 was \$43,670.

<http://www.bls.gov/oes/current/oesrcst.htm>



Tax Computations

Income and payroll taxes are estimated for a married person filing singly with two exemptions. A calculator at www.paycheckmanager.com was used in order to imitate the take-home benefits after payroll deduction because it is reflective of what the worker receives at every payroll. The after-tax annual take-home pay for Texas electricians (47-2111) is \$35,792, or 82% of gross pay.

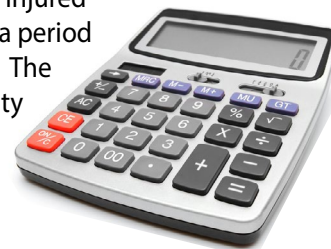


Monthly Basic Budget

To find the monthly household budget for the electrician's household, the Economic Policy Institute's Family Budget Calculator was used. The household was located in the largest city in the state (Houston) and computed for a household of two adults and one child: \$4,459 (all expenses). <http://www.epi.org/resources/budget/>

Disability Benefit Calculations

Texas workers' comp benefit calculations are generally based on 70% of the injured employee's preinjury average weekly wage, a waiting period of 7 days, and a period of 14 days after which the first 7 days of disability are retroactively credited. The maximum weekly benefit for 10/01/2015-09/30/2016 was \$895. The disability benefits, if any, in each scenario were compared to the take-home pay the worker would have received.



Additional research and reading material:

1. Actuarial data proves injured workers have better medical outcomes, such as shorter durations of disability and better sustained return to work, in Leigh J. Halliwell, FCAS, MAAA's study of 10 years of Texas Option data https://www.partnersource.com/media/1080/tx_nso_actuarial_data_analysis_fact_sheet_16_1207.pdf
2. Better medical outcomes are the key to significantly reduced employer cost, not program exclusions, as seen in the Stanford University report on "Rejecting the Grand Bargain: What Happens when Large Companies Opt Out of Workers Compensation?" <https://siepr.stanford.edu/research/publications/large-companies-opt-out-workers-compensation>
3. Option programs have made significant coverage enhancements in response to public scrutiny and constructive dialogue, as reported in "Recommendations target criticisms of 'option'" https://www.partnersource.com/media/1163/grover_article_on_benefit_plan_coverage_enhancements_-5-17-16.pdf
4. Texas Public Policy Foundation reports that public policy favors competition, which helps improve the performance of state workers' compensation programs, in "Lone star model for helping injured workers" https://www.texaspolicy.com/press_release/detail/tppf-releases-study-on-the-benefits-of-texas-private-sector-injured-worker-benefits-system. See also "A workers' compensation system for the 21st century" <https://files.illinoispolicy.org/wp-content/uploads/2016/07/illinois-workers-compensation-reform.pdf> from Illinois Policy Institute and "Don't Gut the Texas Workers' Comp System" <http://retirementblog.ncpa.org/dont-gut-the-texas-workers-comp-system/> from National Center for Policy Analysis.
5. Comparable results in the "Oklahoma Option Performance Report" <http://arawc.org/wp-content/uploads/2015/12/Oklahoma-Performance-Report-9-14-16-final.pdf> from the Association for Responsible Alternatives to Workers' Compensation – and subsequent, maturing claims experience – also clearly demonstrate the advantages of a competitive Option for both injured workers and employers.

PartnerSource Background



PartnerSource is a Dallas-based consulting firm that has developed a unique approach to the “nonsubscriber option” from Texas Workers’ Compensation. Our focus on improving medical care while increasing benefits to injured workers has a proven track record of reducing cost. We manage approximately 50% of the Texas nonsubscription industry and assist employers, based anywhere in the US, with their Texas employees. We support insurance brokers and other advisors with all the major firms.

HISTORY

Workers’ compensation was designed more than 100 years ago to provide medical care and wage replacement to injured workers. The system generally serves its purpose, but has limitations. For example, many medical providers will not accept workers’ compensation patients. Also, workers’ compensation requires an “act of congress” in each state in order to make changes. Accordingly, this creates some delay and limits the ability to implement marketplace “best practices.”

A tangible example of this delay is that almost half of all states do not use drug formularies for workers’ compensation, despite their widespread acceptance for two decades in group health plans.

There are some who believe traditional workers’ compensation programs have lost their original intent and become overly complex entitlement programs that place low expectations on employers, injured workers and medical providers, and tend to work best for special interests committed to maintaining the status quo. Consequently, there is now expanded interest in competitive alternatives to traditional workers’ compensation or “Options” which have many advantages for employees and employers, and restore a sense of engagement and balance to the system.

Acknowledgements

Helen Wolford and Alisa Garland, PartnerSource Information Services personnel assisted with benefit calculations. Sean Parker and Kelly Norwood of PartnerSource advised on certain comparisons to Workers Compensation. Amber Labry provided considerable support and feedback. PartnerSource’s Bill Minick and Jennifer Hurlless provided input and editing. Yvonne Guibert of WorkCompCentral provided direction and editing.

TIMELINE

1911 - Triangle Shirt Waist Factory Fire. Need for employee care becomes paramount

1911 - First workers’ comp programs implemented in U.S. slowly move state-by-state, across the US - first on voluntary basis, then mandatory

1948 - Mississippi is last state to implement workers’ comp program

1974 - Following the development of employee benefit industry, ERISA enacted to provide protections to employees - workers’ comp is mandatory in almost all states by this time (but not Texas)

Late 1980’s - The Texas Option begins in earnest: employers begin to “opt-out” of workers’ comp in Texas and occupational ERISA benefit programs are developed

1994 - PartnerSource is formed

2004 - PartnerSource first Fortune 100 client

2006 - [Texas Alliance of Nonsubscribers](#) (TAN) formed

2009 - PartnerSource named a “Best Small Employer to work for in Texas”

2011 - PartnerSource announces that by focusing on employee care, its clients have collectively exceeded \$1 billion in savings by nonsubscribing from Texas workers’ comp

2013 - Option to workers’ comp passes in Oklahoma

2014 - [Association for Responsible Alternatives to Workers Compensation](#) (ARAWC) formed as interest grows in other states

2016 - Oklahoma Option ceases. [ARAWC releases Oklahoma Option Performance Report](#), and [PartnerSource releases actuarial confirmation of Texas Option performance](#)

2017 - PartnerSource and WorkCompCentral published Special Report, “Texas Nonsubscriber Option: Providing Better Disability Benefits?”