

# Workers' Compensation and the Effects of Non-Subscription in Texas

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## Executive Summary

Texas is the only state that does not mandate that employers carry workers' compensation insurance (WC) coverage. Recently published research uses a quasi-experimental empirical design to examine the effects of switching from traditional workers' compensation to a non-subscription program in Texas (Jinks et al. 2020). Specifically, comparisons are made before and after the switch to non-subscription for employees in Texas using contemporaneously measured before and after differences for non-Texas-based employees. Importantly, the focus of the study is on large self-insured companies operating the same business in multiple states in the US; hence the non-Texas operations represent the "control" sites for the Texas "treatment" sites. The resulting difference-in-differences estimation allows for control of any companywide factors that might be confounded with switching to non-subscription. The empirical approach also controls for injury characteristics, employment characteristics, industry, and individual characteristics such as gender, age, number of dependents, and marital status. Outcomes include number of claims reported, medical expenditures, and indemnity payments. The data include 25 switcher companies between the years 2004 and 2016, yielding 846,376 injury incidents. Regression findings suggest that indemnity, medical payments, and work-loss fall substantially, while the number of injury claims filed remains unchanged.

## Introduction

WC insurance is a state system of disability payments for workers injured on the job, which covers in excess of 90% of the U.S. wage and salary workers. Although the details of the programs differ across the 50 states, the District of Columbia, and the various U.S. territories, the general crux of each program is the same. Regardless of fault, an employer must pay an injured worker's medical bills and a portion of his or her lost labor income. In return for the no-fault coverage, workers give up their right to sue their employer to recover all their lost income and any compensation for pain and suffering. As the exclusive remedy, WC shields employers from potentially expensive damage awards for negligence. State WC laws generally dictate that all employers must provide insurance coverage to their workers by either contracting with a private insurance company or a state agency or through self-insurance. Texas is the only state that allows almost all private-sector employers to opt out of the WC program, though other states are considering it.

Non-subscribing employers in Texas can, if they choose, offer injured workers disability benefits in a manner similar to those offered through the WC program. Many employers, both large and small, choose to establish a private, no-fault disability program that pays injured workers medical expenses and at least a portion of lost wages. In 2016, 65 percent of non-subscribing firms with 100 or more

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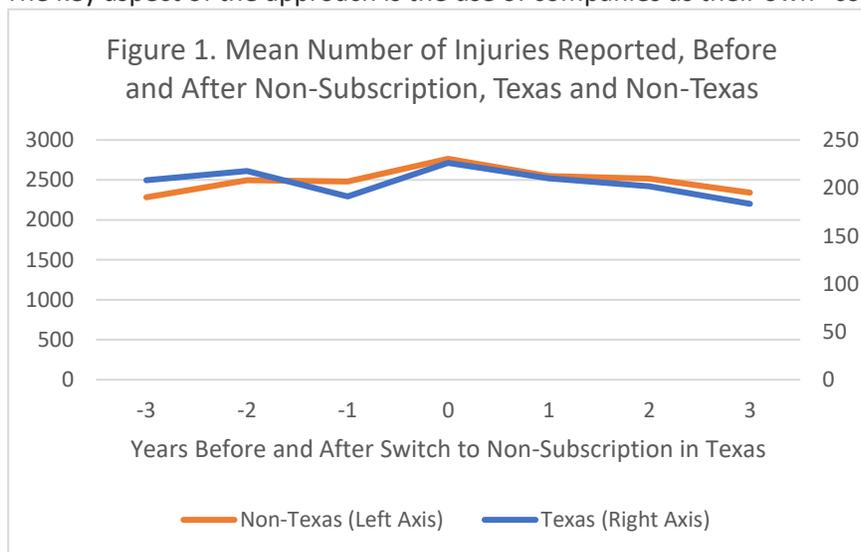
employees offered their workers occupational disability benefits resulting in 87 percent of employees in large non-subscribing firms being covered by such plans (Texas Department of Insurance: Workers' Compensation Research and Evaluation Group 2016). Private plans can be more generous than WC insurance, at least initially, but most private plans limit the duration of payments for medical expenses and lost income potentially making them less generous for workers with permanent partial or permanent total disabilities (Morantz 2010). On the other hand, the ability to recover full damages through a negligence lawsuit and employer payments falling outside of the formal disability plan to avoid such lawsuits, may make a worker's monetary recovery greater through non-subscription.

### Data and Study Design

The data were obtained from a nationwide third-party administrator that manages workplace injury claims for large, self-insured companies. For each claim, information is observed on the individual filing the claim (gender, marital status, age, and number of dependents), the company (encrypted company code, two-digit SIC), the claim type (incident report, medical expense-only, indemnity claim, and death claim), the claim status (accepted, denied, opened, closed, and litigated), the injury (nature of the injury and number of lost days), the expenses (indemnity incurred and medical expense incurred), the individual's employment status (full-time/ part time employee status, average pre-injury weekly wage, time have worked in a company), and the relevant dates (date of incident, date injury reported to the firm, date claim opened/closed, and date claimant return to work).

There are 1,218 companies in the dataset, 25 of which are observed to switch from a traditional workers' compensation program for their Texas-based operations to the non-subscription program managed by the third-party administrator from which data were obtained; a traditional workers' compensation program remains in effect at each company's non-Texas-based operations. The sample is restricted to the 25 "switcher" companies, which, after removing inconsistent and erroneous observations, consists of 846,376 workplace injury claims from 2004 to 2016 across the 50 states.

The key aspect of the approach is the use of companies as their own "controls"; that is, Texas-based



workers pre and post-switch are compared to non-Texas-based workers over the same time period.

### Results

Figure 1 displays the mean number of accepted injury claims reported among the switcher companies in Texas and outside Texas in the three years leading up to the switch to non-subscription in

Texas. The switch occurs during Year 0. While the levels are quite different, importantly the pattern of reported number of injuries is virtually identical in Texas versus outside Texas. The pattern suggests that there was no obvious diminution of injury reporting associated with non-subscription relative to the non-Texas (traditional WC) baseline.

Figure 2 displays pre and post trends in mean medical spending for the 25 companies, in Texas (right axis) relative to outside Texas (left axis). Once non-subscription takes place, we observe a sudden and substantial reduction in mean medical spending in Texas.

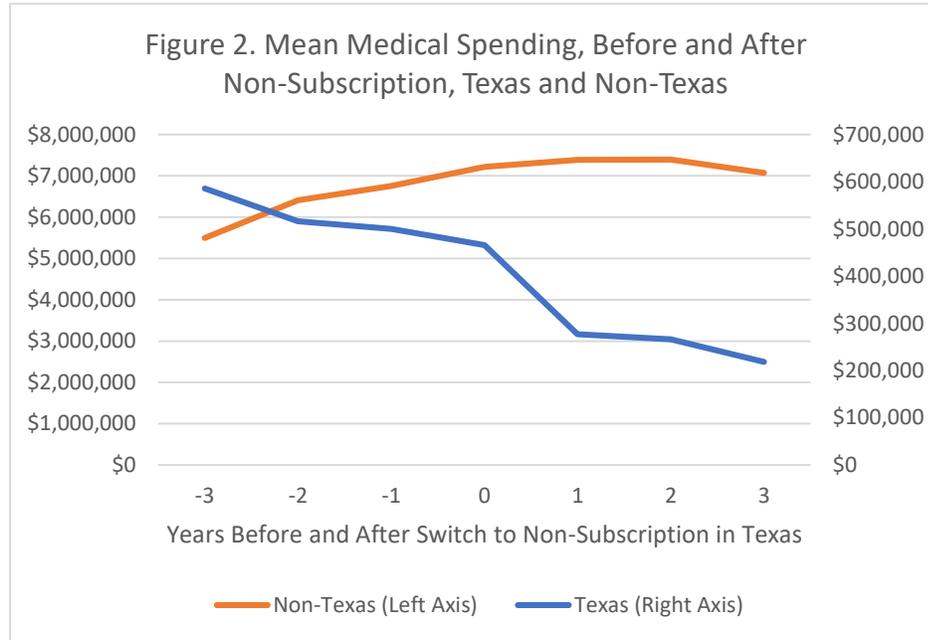
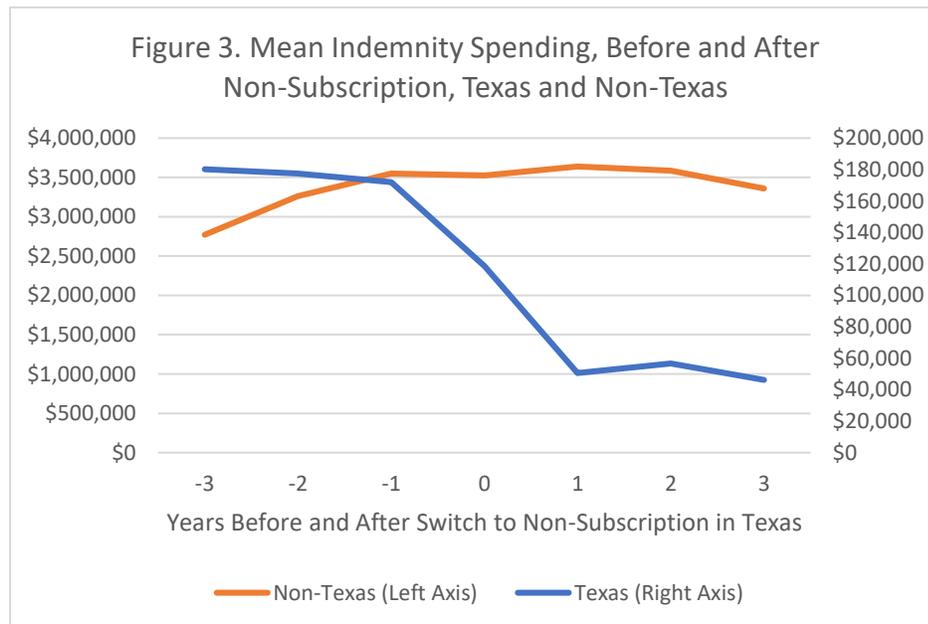


Figure 3 displays pre and post trends in mean indemnity spending for the 25 companies, in Texas (right axis) relative to outside Texas (left axis). As with medical spending, we observe a sudden and substantial reduction in mean indemnity spending after non-subscription occurs.

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**Conclusion**

The results suggest that switching to a non-subscription program from a traditional workers' compensation arrangement in Texas led to important changes in outcomes. There was no statistically significant change in the number or types of injury claims reported. Results indicate that total

medical payments dropped by roughly 40 percent, which consisted of reductions in hospital spending, physician spending, and other medical spending. Similarly, indemnity payment and work loss also

experienced significant reductions as a result of switching. Specifically, indemnity payments dropped by 70 percent and number of lost days dropped by 80 percent. Accumulating all sources of spending, we find that total expense associated with workplace injury fell by approximately 46% after switching to the non-subscription program.

Given the generally positive nature of the findings, it is worth questioning why more large employers do not switch to non-subscription plans in Texas. First, instituting a non-subscription plan in Texas for a national company entails the fixed costs of a second workplace injury management system operating in parallel to the traditional WC system in operation elsewhere in the United States. Second, our data suggest that Texas appeared to have very low rates (and dollar amounts) of lump sum settlement payments in the pre-period under the traditional WC system. After switching, lump-sum settlements increased in both their frequency and their variance. It could be that given earlier WC reforms in Texas, employers do not perceive of Texas as a problem with respect to WC. Finally, any firm serving as a building or construction contractor on state government jobs must carry WC and thus would not be eligible to choose a non-subscription plan. Because of the reasons just mentioned, it may not be a straightforward decision to choose non-subscription in a single state. In sum, the traditional workers' compensation system could likely benefit from the lessons from Texas' non-subscription experience, but more study of the effects on worker well-being is warranted.

## References

- Jinks, L., Kniesner, T. J., Leeth, J., & Lo Sasso, A. T. (2020). Opting Out of Workers' Compensation: Non-Subscription in Texas and its Effects. *Journal of Risk and Uncertainty*, 53-76.
- Morantz, Alison, (2010). "Opting Out of Workers' Compensation in Texas: A Survey of Large, Multistate Nonsubscribers," in Daniel P. Kessler, ed, *Regulation vs. Litigation: Perspectives from Economics and Law*, University of Chicago Press, pp. 197-238.
- Texas Department of Insurance: Workers' Compensation and Evaluation Group, "Employer Participation in the Texas Workers' Compensation System: 2016 Estimates," (Dec., 2016), available at: <https://www.tdi.texas.gov/reports/wcreg/documents/nonsub2016.pdf>.