

Health Insurance for Farmworkers

I. INTRODUCTION

A recent trend in farm labor management has been the offering of numerous fringe benefits to farm employees. Like employers in urbanized industry, many farm employers provide weekend holidays, and pension and profit-sharing plans.¹ One such benefit, health insurance, has the most significant long term advantages for the employee and his family. Low-cost insurance represents a novel solution to the unique health problems of the rural poor. An analysis of the adaptation of health plans to meet these problems hopefully will illustrate a means to significantly increase the well being of agricultural laborers, aside from direct pay increases.

Several reasons have dictated the selection of health insurance as an appropriate topic for discussion. First, since health insurance is presently used in agriculture, a discussion of the benefits may demonstrate the feasibility of extending other similar benefits to farmworkers. Second, changing employer demands for farm labor require reassessing the extent that health insurance is offered agricultural workers. A better wage structure, as well as basic health protection, will provide greater incentive to skilled and semiskilled workers to remain in agriculture, rather than move to urbanized industry. Third, the privately financed health programs presently being used can, with only limited modification, be made more useful to the farmworker. Thus it will be unnecessary to advocate the utility of health insurance as would be the case with newer, unproved benefits such as profit-sharing plans.

¹See *Wall Street J.*, Oct. 1, 1968, at 1, col. 1.

The subsequent analysis, therefore, will first delineate the health needs of agricultural employees and note the utility of existing federal and state government programs designed to meet these needs. Further discussion will explore the health benefits currently offered by private farm employers and the reasons for expanding these plans.

II. THE HEALTH NEEDS OF AGRICULTURAL EMPLOYEES

The health needs of farm laborers are dramatically illustrated by their high incidence of disease and injury.

Agricultural workers have the highest rate of disabling and non-disabling occupational disease in [California], 12.4 reports per 1,000 workers in 1963; followed by construction, 5.8, and manufacturing 4.6. Agricultural workers also have the third highest rate of disabling work injuries, 68.7 per 1,000 workers in 1963, compared with the general work injury rate of 31.8.²

The health hazards most associated with agricultural employment stem from two related but distinct factors. First, the nature of the work environment presents significant health hazards. Chemicals, pesticides, the sun, and farm machinery all contribute to the high incidence of illness and injury.³ Over one-half of farm accidents are attributable to farm equipment.⁴ Tired or inexperienced workers are most susceptible to machinery-caused injury. Employees who handle or inhale the numerous pesticides and toxic materials used in controlling insects, weeds, and vermin are also exposed to disease and poisoning.

In California 76 percent of the 2,982 reports of disease among agricultural workers were for skin conditions; 10 percent for systemic

² CAL. DEP'T OF PUBLIC HEALTH, BUREAU OF OCCUPATIONAL HEALTH, OCCUPATIONAL HEALTH OF AGRICULTURAL WORKERS IN CALIFORNIA 3 (1965).

³F. TOP, *The Farmer's Health*, in COMMUNITY HEALTH: ITS NEEDS AND RESOURCES 146 (J. Porterfield ed. 1966).

⁴There have been some improvements in farm machinery. "Along with raising machine and manpower efficiency, engineering objectives were to minimize the discomforts and strain of agricultural tasks. Combines with air-conditioned cabs were more common. Portable platforms and lifts were replacing ladders for some tree work. These and similar developments were easing some of the problems of labor procurement." CAL. DEP'T OF EMPLOYMENT, CAL. ANNUAL FARM LABOR REPORT—1967, 7 (1967).

poisoning; three percent for respiratory conditions due to noxious agents; and three percent for infectious and parasitic diseases.⁵

In addition, many diseases carried by animals can be transmitted to the farmworker.⁶

The second major factor contributing to the high incidence of illness and injury is the long work day required of farm employees.⁷ A working day of twelve to fourteen hours is frequently necessary since a limited number of workers must plant or harvest large crops within a short time. Fruits and vegetables grown for fresh consumption, for example, must be harvested and shipped to the market in a matter of hours after they have reached the appropriate stage of maturity.⁸

The farmer usually works long hours. Motor driven machinery allows long periods of work without adequate rest. When farm implements were horse-drawn, the horses had to be rested frequently. Because of this, the farmworker also rested. Today, impatience or the vagaries of weather make the farmer push himself for long periods of time. His alertness is thus diminished. He must guard against chuck-holes, hidden stones, or boulders, and soft-ground areas. He may sit in the same position for hours; then, when tired, he will stand while driving.⁹

The fatigue resulting from the extended hours and the exposure to the sun and wind reduces the worker's natural resistance to many toxic substances and decreases his ability to operate machinery safely.

Even if the farm employee's exposure to physical disability were equivalent to that of other labor groups, the low income level of most workers dissuades them from purchasing adequate medical care.¹⁰ A recent manpower report of the President notes that approximately

⁵CAL. DEP'T OF PUBLIC HEALTH, *supra* note 2, at 10.

⁶Zoonosis is an animal disease which is communicable to man under natural conditions. A well-known example of such a disease is rabies. Although many people associate the transmission of rabies with dogs, almost all the animals commonly found on a farm are capable of carrying and transmitting the disease. *See* F. TOP, *supra* note 4.

⁷*See* F. TOP, *supra* note 3.

⁸CAL. SEN. FACT-FINDING COMMITTEE ON LABOR AND WELFARE, CALIFORNIA'S FARM LABOR PROBLEMS, PT. 1, at 30 (1961); SENATE COMM. ON LABOR AND PUBLIC WELFARE, THE MIGRATORY FARM LABOR PROBLEM IN THE UNITED STATES, S. REP. NO. 1549, 89th Cong., 2d Sess. 1 (1966).

⁹F. TOP, *supra* note 3, at 151.

¹⁰*See Employment and Earnings of New York Migrant Farm Workers*, 84 MONTHLY LABOR REV. 394 (1961); U.S. DEP'T OF AGRICULTURE, RESEARCH SERVICE, DOMESTIC MIGRATORY FARMWORKERS, PERSONAL AND ECONOMIC CHARACTERISTICS 22 (Agricultural Economics Rept. No. 121, 1967).

one-half of all "fully employed" farmworkers receive less than \$3,000 a year.¹¹ A person with an income of \$10,000 a year, for example, might save \$500 a year for unpredictable medical expenses. A person earning only \$3,000 a year, however, can hardly be expected to save \$500, or even \$100, a year to pay for a medical bill. The low income level of the worker stands in striking contrast to the high and constantly rising cost of adequate medical care.¹² Although science is finding methods to prevent and control previously unknown diseases, many low income farmworkers are unable to finance even the most basic health care.¹³

III. GOVERNMENT FINANCED HEALTH CARE

Several government programs have been established to help finance basic medical treatment. Workmen's compensation by the states, Medicare and disability insurance under the Social Security Act by the federal government offer some assistance to most "blue" and "white" collar workers needing medical care.

Workmen's compensation reimburses an employer for expenses resulting from an on-the-job injury or illness and provides a wage supplement if the illness or injury results in unemployment.¹⁴ The first workmen's compensation law of general applicability was adopted in New York in 1910.¹⁵ Agricultural employees were not included in

¹¹U.S. DEP'T OF LABOR, REPORT ON MANPOWER REQUIREMENTS, RESOURCES, UTILIZATION, AND TRAINING 30 (1968).

¹²"The problems of financing medical care have grown more severe as medical costs have increased rapidly in recent years. Total expenditures for health care increased by about 700% from 1928-29 to 1960-61. This has been an increase not only in absolute terms but also in relative terms: 5.7% of the gross national product was spent for health care in 1960-62, compared to 3.6% in the earlier period." E. FEINGOLD, MEDICARE: POLICY AND POLITICS 4 (1966). In 1967-68 medical expenses constituted 6.5 percent of the gross national product. U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, PUBLIC AND PRIVATE EXPENDITURES FOR HEALTH, FISCAL YEARS 1965-1968 AND CALENDAR YEARS 1965-1967, Table I, (Social Security Administration, Office of Research and Statistics, 1968).

¹³"If each family in the U.S. had to pay only the average cost of medical care, the financing of medical care would present much less of a problem. Families could budget their expenditures and save to pay their predictable medical costs; the major source of difficulty would be families with income too low to enable them to pay their share. It is the inequality and unpredictability of the burden which make some device for the spreading of costs very important." E. FEINGOLD, *supra* note 12, at 7.

¹⁴H. KLARMAN, THE ECONOMICS OF HEALTH 45 (1965).

¹⁵Brodie, *The Adequacy of Workmen's Compensation as Social Insurance: A Review of Developments and Proposals*, 1963 WIS. L. REV. 57, 59 (1963).

early compensation laws because the family farm, the relatively safe working conditions, and cumbersome administrative details made coverage of the farmworker unnecessary and impractical.¹⁶ A recent explanation for the continued exclusion of farmworkers is that states providing workmen's compensation will be at a competitive disadvantage vis-a-vis other states and foreign nations.¹⁷

As farm units grow and accidents increase in frequency and severity, the old arguments against coverage for farmworkers lose their validity. Thirteen of the 50 states have extended their workmen's compensation laws to the farmworker.¹⁸ Workmen's compensation, however, will not satisfy all the health needs of disadvantaged agricultural employees. Since coverage is limited in all cases to on-the-job injury, the law will not protect the employee's family or cover disease which is not directly related to the employment.

Health benefits are also available to the farmworker under two provisions of the Social Security Act.¹⁹ Medicare and disability insurance compensate qualifying persons for certain medical costs. Coverage by either of these programs is predicated on the worker's length of employment and amount of income. Medicare benefits only become available at the same time the worker qualifies for retirement payments.²⁰ Thus a farmworker, like any other person who qualifies for Social Security, may receive certain health benefits on retirement. This benefit, however, does nothing to protect the younger, working employee or his family.

A compensation program which is potentially more important to the farmworker is disability insurance. The disability insurance law grants benefits to an individual²¹ if he is unable to "engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous

¹⁶*Id.* at 75—76.

¹⁷Comment, *The Unemployment Relation in Workmen's Compensation and Employer's Liability Legislation*, 10 U.C.L.A. L. REV. 161, 202 (1962).

¹⁸*Cf.* U.S. DEPT OF LABOR, BUREAU OF LABOR STANDARDS, COVERAGE OF AGRICULTURAL WORKERS UNDER STATE AND FEDERAL LABOR LAWS 20 (BULL. NO. 264, 1964).

¹⁹70 Stat. 824, 42 U.S.C. §§ 401—25 (1964).

²⁰*Id.* § 409(h)(2). *See* 1 1968 P-H SOC. SEC. AND UNEMPL. COMP. ¶ 32,515 at 32,525 (1968); and *see* 1 P-H SOC. SEC. AND UNEMPL. COMP. ¶ 30,400—Q.1 at 30,368—Z.16 (1965).

²¹42 U.S.C. § 413(a)(2)(iv) (1954). Section 413(a)(2)(iv) was passed to include more farm workers under Social Security, but to exclude from coverage "the most intermittent or short-term workers" to "avoid nuisance reporting of small amounts of wages." SENATE COMM. ON FINANCE, SOCIAL SECURITY AMENDMENTS OF 1954, S. REP. NO. 1987, 83d Cong., 2d Sess. 3717 in *U.S. Code Cong. & Adm. News* (1954); *see* 42 U.S.C. § 423(c) (1964).

period of not less than twelve months."²² Although some farm injuries may meet this statutory criterion, it is probable that most will not be serious enough to cause a mental or physical impairment for a full year. A recent statutory amendment makes the recovery of benefits even more tenuous by excluding from coverage any person who can "perform any other kind of substantial gainful work which exists in the national economy"²³ Furthermore, even if the worker qualifies for protection, no benefits are paid for the first six months of the disability.²⁴ Because of the seasonal nature of the farm economy, most agricultural workers will be excluded because they lack the necessary quarters of coverage under Social Security. Even if the duration of employment necessary for coverage were reduced, the disability requirement, applicable to all workers, continues to severely limit the utility of this provision. Consequently, the disability program, like medicare, is not of much benefit to the farmworker.

The Migrant Health Act,²⁵ enacted in 1962, is a federal program specifically designed to provide medical assistance to itinerant laborers. The Act is the first overt expression of governmental concern for the unique health needs of farmworkers.²⁶ As originally adopted, the Act provided a maximum of \$3,000,000 in federal grants per year to the states for a three-year period.²⁷ A 1965 amendment to the Act extended coverage for three additional years.²⁸ The most recent amendment extends the program to 1970 and authorizes the expenditure of \$15,000,000 for the fiscal year 1969—70.²⁹ The sponsors of the

²²*Id.* § 423 (d)(1)(A).

²³*Id.* § 423 (d)(2)(A).

²⁴Arthur & Wolkstein, *Workmen's Compensation and the Social Security Disability Program: A Contrast*, 16 VAND. L. REV. 1055, 1059—60 (1963).

²⁵§ 76 Stat. 592; 42 U.S.C. § 242(h) (1962).

²⁶SENATE COMM. ON LABOR AND PUBLIC WELFARE, COMMUNITY HEALTH SERVICES EXTENSION AMENDMENTS OF 1962, S. REP. NO. 117, 89th Cong., 1st Sess. 2428, 2430, in *U.S. Code Cong. & Adm. News* (1962). The health care needs of the migrant workers posed "serious fiscal problems for local hospitals and health facilities, both public and private. For example, unpaid hospital bills are a recurring problem for hospitals located in an agricultural area to which migrant workers are attracted and in most cases these bills are beyond the capacity of hospitals to absorb. By providing migrant farm families with simple preventive care, such as immunization and improvement of environmental sanitation, the necessity for providing hospitalization could be significantly reduced." SENATE COMM. ON LABOR AND PUBLIC WELFARE, AGRICULTURAL MIGRATORY WORKERS HEALTH SERVICES, S. REP. NO. 699, 87th Cong., 2d Sess. 2632 in *U.S. Code Cong. & Adm. News* 2635 (1962).

²⁷§ 76 Stat. 592; 42 U.S.C. § 242(h) (1962).

²⁸§ 79 Stat. 435 (1965).

²⁹The Migrant Health Act was amended in 1968 to provide \$9,000,000 for fiscal

Act anticipate that it will become a permanent program.³⁰

The purpose of the Act is to provide migrant farmworkers and their families with basic preventive medical services.³¹ The program presently provides the following: care by a private physician in a clinic established for migrants, in a hospital, or in the physician's office; hospitalization for up to 30 days; dental care; home visits by medical personnel to detect health problems and to correct them; inspection for and correction of sanitation deficiencies in living areas; and health education.³² These programs are coordinated with local, state, and federal programs to avoid duplication of facilities and effort. Following federal approval of the local plan for migrant health services, grants are made to public or private nonprofit organizations to pay for a portion of the cost of providing the health services.³³

The program initially created migrant health clinics for the 100 counties with the highest concentration of migrant farmworkers.³⁴ Projects currently financed by the Act are providing health services in 450 counties. In addition, 165 of these counties have 218 clinics which provide remedial and preventive services to individual migrants of all ages.³⁵ The effectiveness of the program, however, remains limited. Of the 210,000 hired farmworkers in California, only 92,000 benefit from the Act.³⁶

The major state and federal programs clearly do not provide adequate health protection for the farmworker. Workmen's compensation is an important program but applies to farmworkers in only one-fourth of the states. The fortuitous circumstances of the state of

years 1968-69 and \$15,000,000 for fiscal year 1960. P.L. 90—574. § 201; 82 Stat. 1005 (1968).

³⁰ "[A]lthough the managers on the part of the House have agreed to an extension of this program limited to two years, they wish to emphasize that all the conferees, both on the House and the Senate side, were agreed that this program, because of its importance to the health of the American people, should also be considered as a permanent and separately identifiable program, subject to periodic congressional review, and authorization of appropriations." CONFERENCE REPORT NO. 1924, 90th Cong. 2d Sess. in 3 *U.S. Code Cong. & Adm. News* 4032, 4033 (1968).

³¹ S. REP. NO. 117, *supra* note 26.

³² U.S. DEPT OF HEALTH, EDUCATION, AND WELFARE, PUBLIC HEALTH SERVICE, 1969 DIRECTORY OF MIGRANT HEALTH PROJECTS 2 (1969).

³³ *Id.* at 1.

³⁴ S. REP. NO. 117, *supra* note 26, at 2431.

³⁵ U.S. DEPT OF HEALTH, EDUCATION, AND WELFARE, *supra* note 32, at 1.

³⁶ CAL. DEPT OF EMPLOYMENT, *supra* note 4, at 9.

employment should not govern the receipt of these benefits. Medicare is inadequate because it applies only to the retired worker. The minimum period of employment and requisite degree of disability required before insurance benefits will be paid under Social Security preclude most farmworkers from protection. Although the Migrant Health Act provides limited services for the migrant worker, it is generally unprepared to assist the resident employee. The defects in each of these programs suggest the changes that are needed. It is the purpose of the remaining discussion to demonstrate why and how the private sector can extend and improve the quality of care provided the farmworker.

IV. PRIVATE EMPLOYER CONTRIBUTIONS TO HEALTH CARE

Despite the inadequacy of the governmentally financed programs, the farmer has been reluctant to institute health insurance coverage for his workers. The primary reasons for the heretofore limited use of privately financed health insurance are the cost and the unstable nature of agricultural employment. While employees in urban industries are relatively permanent, most agricultural workers are employed for only a short period of time, and migrate to different employers with the change in the seasons.³⁷ Nonetheless, unions, increasing social consciousness, and competitive necessity have influenced the initiation of benefits such as health insurance for the long term industrial worker. The extensive use of health insurance in agriculture, however, will depend at least in part on whether agricultural employment patterns and motivations are sufficiently analogous to those in industry to prompt the adoption of comparable programs.

A. Characteristics of the Farm Labor Work Force

There were 2.9 million persons hired in 1968 to perform some type of agricultural labor.³⁸ These persons comprise three categories of employees: the casual, the seasonal, and the permanent employee.

³⁷In 1967 three-quarters of those employed in agriculture worked less than 150 days in agriculture during the year. U.S. DEPT OF AGRICULTURE, THE HIRED FARM WORKING FORCE OF 1967, at 6 (Agricultural Economics Rept. No. 148, 1968).

³⁸ U.S. DEPT OF AGRICULTURE, THE HIRED FARM WORKING FORCE OF 1968, at 1 (Agricultural Economics Rept. No. 164, 1969).

The type of employee most analogous to those in urbanized industry remain for extended periods of time in one geographical area and work for the same employer. These persons, called "permanent" employees, work in excess of 149 days each year in agriculture.³⁹ It has been to this category of employees that employers first extended the benefits of health insurance.

There are several reasons which explain why insurance programs have been successfully used with this type of employee. First, premium expenditures for the long term or permanent worker can be predicted. The continuity of employment enables the employer to estimate and provide for the costs of insurance through careful financial planning. Second, the payment of premiums for permanent workers is simplified. Since the employer will be paying the same premiums periodically for substantially the same workers, the administrative effort of providing coverage is reduced to a minimum. Third, the permanent workers will be more likely to use the facilities which health insurance makes available to them. Since a permanent worker is familiar with the hospitals and doctors in his community, and since the services provided are accessible to him, he will be more likely to seek medical attention. Fourth, the income of permanent workers is usually sufficient to permit the withholding of a portion to pay a percentage of the premium (assuming the employer does not pay the entire amount). Since the income of the employee can be forecast, the actual amount that must be withheld can be predicted as a definite portion of total earnings. The worker who has a definite income, even if relatively low, is less reluctant to have a small portion withheld for benefits which he knows will be available to him.

Although it is not certain that these four factors are determinative when the farmer considers offering health insurance to his employees, they are at least in part supported in practice. A survey taken in 1966 by the Kern County Land Company of California noted that eleven of the twelve California farms⁴⁰ surveyed provided medical insurance to permanent employees and their families.⁴¹ Nationwide

³⁹*Id.*

⁴⁰"A total of 170,617 acres are farmed by the participating firms ranging from a 370 acre citrus grower to a 75,000 acre grower of field and vine-type crops. The second smallest grower farmed 1,300 acres of peaches, grapes, and plums, while the second largest farmed 40,000 acres of field crops." Kern County Land Co., Summary of Agricultural Employment Practices Survey 1, Spring 1966 (unpublished survey).

⁴¹"A total of 2,538 regular (permanent) employees and 6,100 seasonal were directly employed by participating organizations in 1965." *Id.* These figures do not indicate the actual number of persons covered by health insurance since not all permanent workers are covered; in some cases when permanent workers are covered the dependents are also provided for, and in several instances health insurance was extended to seasonal workers.

statistics on the use of health insurance in agriculture indicate that approximately 50 to 60 percent of all permanently employed farmworkers are covered by some form of health insurance.⁴² In contrast, approximately 80 percent of all industrial workers, also permanently employed, are covered by health insurance. The disparity between industrial and agricultural practice in the use of health insurance in part may reflect the lack of motivation in the absence of unionization in agriculture or the costs incident to the high risks and uncertain returns in agricultural production.

The "casual" farmworker presents a striking contrast to the employment characteristics of the permanent worker. The casual employee is the part-time worker in agriculture, working less than 25 days during the year in agricultural production.⁴³ In 1967 the casual worker represented over one-third of all persons hired in agriculture.⁴⁴ The casual worker's short duration of employment makes health insurance of doubtful utility, since he will have terminated his employment before the completion of the administrative procedures necessary to insure him. Among the policies used in California, one does provide coverage of persons with only 80 hours of continuous employment.⁴⁵ Many casual workers would not qualify for even this liberal coverage since they either work in units of less than 80 hours duration or they terminate employment shortly after attaining 80 hours and are covered for only a short time. In addition, those engaged in such short-term farm work are usually not the primary wage earners of the family. Most are housewives, students, and "day-haul" workers.⁴⁶ Since farm employment for these people is merely a supplementary

⁴²In 1963, approximately 60 percent of the families whose main wage earner was employed full-time in agriculture were covered with health insurance. This compares with an average of from 80 to 85 percent in other industries. R. ANDERSON & O. ANDERSON, A DECADE OF HEALTH SERVICES, SOCIAL SURVEY TRENDS IN USE AND EXPENDITURES 81 (1967). Cf. E. FEINGOLD, *supra* note 12, at 14—16.

⁴³Of the 1.3 million employees who perform less than 25 days of farm work a year, 94 percent are workers drawn from the vicinity. Twenty-five percent are the chief wage earner of the family (about one-third of the seasonal work force are women). About one-half of the total number are between the ages of fourteen to seventeen years, indicating that a large portion of the seasonal work force is composed of school age children who are employed only during the peak harvest season in the summer. U.S. DEP'T OF AGRICULTURE, *supra* note 37, at 20.

⁴⁴Although casual workers constitute over one-third of the total number of persons employed in agriculture, they contribute only about 15 million of the 265 million days worked, or approximately six percent of the total work days. *Id.* at 6.

⁴⁵Kern County Land Co., *supra* note 40, at 4.

⁴⁶*See* note 38 *supra*. "Day haul" people are those who work on a day-to-day basis, meeting with labor contractors at pre-arranged "pick-up" points to bargain for transportation, wages, and meals. Reaching agreement with labor contractors, they are then bussed to work areas and returned in the afternoon.

source of income, the wages earned are usually insufficient to permit the withholding of funds to finance health insurance.⁴⁷

“Seasonal” employees, those who work between 25 and 149 days a year in agriculture,⁴⁸ have many of the characteristics common to both permanent and casual workers. They may be a part of the local labor force, or they may be migrants. If the seasonal worker is a permanent resident in the vicinity of his agricultural employment, the reasons for providing him with health insurance are similar to those favoring the offering of insurance to permanent workers. First, the resident seasonal worker is familiar with the community and the available services. Second, the use of seasonal employees is relatively predictable, although the demands for labor fluctuate from March to November during the summer planting and harvesting. Third, the income of the seasonal worker may be sufficient to permit withholding for insurance premiums.

Health protection is particularly important to the seasonal worker since he is often the primary source of income for his family. The fact that insurance will pay for a substantial medical bill leaves more of the worker’s wage for basic necessities which must be financed primarily from agricultural earnings.⁴⁹ The primary factor which makes coverage of seasonal workers difficult, however, is the relatively short duration of their employment with any one employer.

Coverage of temporary and hourly employees also presents administrative problems such as determining who is covered and when and for what period of time. Such an employee may work for a day or two with one employer or may be without work for a period of time or may go to a different area to obtain work. Health insurance coverage is generally tied to employment with a particular employer or group of employers and when employment ceases, the insurance coverage ceases at a specified time. Unless there is some central source for determining premium payment and status of coverage, it is difficult to provide any useful continuity of coverage for temporary workers.⁵⁰

Despite the administrative difficulties involved in insuring the seasonal worker, however, at least some of the larger farming units are beginning to insure him. Of the twelve California farms surveyed in 1966, two provided medical insurance to temporary employees;

⁴⁷In 1967, nonmigratory casual workers averaged \$8.10 a day; migratory casuals earned \$10.55 a day. U.S. DEP’T OF AGRICULTURE, *supra* note 37, at 5.

⁴⁸U.S. DEP’T OF AGRICULTURE, *supra* note 37, at 6.

⁴⁹In 1967, about 2 million persons were engaged exclusively in farm wage work. They were employed an average of about 129 days, and earned \$1,247. *Id.* at 6.

⁵⁰Letter from Charles A. Rummel, General Counsel, California Farm Bureau Federation, to *U.C.D. Law Review*, March 26, 1969.

one, as already noted, after 80 hours of continuous employment and the other after 160 noncontinuous hours of work in a one-year period.⁵¹

B. Private Insurance Plans Now Used in Agriculture

The most common form of insurance provided by agricultural employers is the group policy which is financed either by the employer alone or jointly with the worker. The California Farm Bureau Federation,⁵² a private organization of California farmers, provides a special group insurance program for the employees of member farmers. The program is particularly significant because it demonstrates the feasibility of using a group policy to extend health insurance to the employees of small farming units. The Farm Bureau's insurance program can be utilized only by agricultural employers with ten or less permanent workers.⁵³

The Farm Bureau has provided two alternative programs, only one of which must be selected for all the employees of the farm in unit. Plan B is a basic hospital and medical plan which makes cash payments to the insured employee to help pay for the use of hospital facilities.⁵⁴ Plan A provides not only the hospital and medical coverage contained in Plan B, but also disability benefits up to \$20,000.⁵⁵ The use of Plan A is increasingly necessary since Plan B pays only a fixed amount for hospital room and surgical care. Any expenses over this amount must be paid for by the patient. Major medical benefits are paid at the rate of 80 percent of covered expenses incurred after the deductible amount has been satisfied (not exceeding \$20,000).

⁵¹Kern County Land Co., *supra* note 40, at 4.

⁵²"The California Farm Bureau Federation, organized in 1919, with a current membership of 61,000, is a general farm organization composed of 53 County Farm Bureaus in 54 of California's 58 counties. It is one of 50 organizations in 49 states and Puerto Rico which make up the 1,700,000-member American Farm Bureau.

"Basically, Farm Bureau is a non-secret, non-profit, non-governmental self-help organization....

"Its commodity committees, covering California's over 200 commercial crops, offer mechanisms through which producers may meet, discuss problems, and propose action. Other activity areas include legislation, water, utilities, taxes and zoning, farm labor, wild game and public land use, natural resources...." CAL. AGRICULTURAL LAW: SELECTED MATERIALS 391 (M. Mickelsen, E. Barrett, J. Snyder eds. 1969).

⁵³Letter from Charles A. Rummel, *supra* note 50.

⁵⁴Farm Bureau Health Plan, Plan B. for California Farm Workers, (booklet, 1968).

⁵⁵Farm Bureau Health Program, Plan A for California Farm Workers, (booklet, 1968).

The schedule of premiums for the California Farm Bureau Health Program are illustrative of the cost of a group health insurance program for a small farming operation. A farm with five permanent male employees, for example, two of whom are under 35, and three of whom are between the ages of 35 and 49, would pay a total monthly premium of \$29.35 for all five of these employees.⁵⁶ If the farmer pays the cost of covering the workers' dependents, the premiums would increase by ten to eighteen dollars per employee each month.⁵⁷ The premium payments will add from two to fourteen cents an hour to the cost of each laborer.⁵⁸ The reasonable cost of this policy explains its widespread use in California by small farmers.⁵⁹

Although the Farm Bureau Health Program enables many small farming units to cover their workers at reasonable cost, large farming units generally find it advantageous to negotiate their own programs with commercial insurance carriers.⁶⁰ Since the larger farm often hires between 80 and 100 permanent workers, it is in a bargaining position similar to that of many moderately sized industrial employers. The advantage of negotiating one's own policy can also be attained by organizing a homogeneous functioning unit for this purpose. The Citrus Growers Health Program of Arizona and California exemplifies this approach to group health insurance. Although the average citrus grove in the west comprises approximately twenty-nine acres,⁶¹

⁵⁶The premiums for male employees covered by Plan A are \$5.00 per month for a male worker under 35 years old, \$6.45 per month for a worker between 35 and 49 years of age, and \$10.20 per month for a worker between 50 and 64 years of age. The premiums for female employees remain fairly constant regardless of age and range from \$10.20 to \$11.80 per month. Farm Bureau Health Program for California Farm Workers, (booklet, 1968).

⁵⁷The cost of insuring the spouse is approximately equivalent to that of insuring the employee. If children are also insured the premium will range from \$11.80 (male dependent under 35 and children) to \$18.60 (female dependent between 50 and 64 years of age, with children). If only the children are insured the additional premium each month is \$6.95 for all children. *Id.*

⁵⁸A worker who is under 35 years of age and has no dependents, who works an average of 50 hours a week, or 200 hours a month, will cost two cents an hour to insure. A worker who is between the ages of 50 and 64, has a spouse and dependents also covered by the program, and who works an average of 200 hours a month will cost fourteen cents an hour to insure. These are the extremes in premium payments per employee depending on his age and number of dependents.

⁵⁹The Farm Bureau Federation insurance program is now utilized by 1,200 permanent employees hired by 225 farms. Letter from Charles A. Rummel, *supra* note 50.

⁶⁰Hydrick Farms in Yolo County, California, which hires about 80 permanent workers, and Kernland Farming Company, a large Southern California farming operation, usually negotiate their own insurance contracts. Interview with Glen Gravink, Hydrick Farms, Woodland, California, December 1968.

⁶¹Citrus Growers of the West, Twenty-Nine Acres 1 (Agricultural Producers Labor Comm. Field Rep. 1968).

the creation of a larger organization to serve as a basis for insurance coverage enables the citrus industry to negotiate a policy which meets their exact needs. The organization of such units is possible among employers with substantially identical needs and geographical proximity.

V. EXPANSION OF PRIVATE EMPLOYER COVERAGE

A. Reasons for Expansion

The changing quality of and demand for employees with the competence to use and maintain complex farm machinery is altering the agricultural economy, and, indirectly, the use of fringe benefits. Although the worker who is only skilled in stoop labor still is needed in agriculture, the rapid mechanization of agricultural production⁶² has created a demand for workers with highly developed technical skills.⁶³ Farm employers now find it increasingly necessary to hire skilled and semiskilled workers. Farm employers have been competing for skilled labor with urbanized industry, which has grown rapidly in response to increased consumer demands and the necessities of war production.⁶⁴ Increasingly, the farm employer finds it necessary to offer substantial fringe benefits to his employees to attract and maintain a skilled and semiskilled work force. Farm employers also have used fringe benefits to forestall unionization of farm employees.

The external pressures favoring health insurance are not the only reasons for increasing coverage. The actual expense of employee health protection cannot be determined solely by the cost of the premiums. The beneficial treatment of health insurance by federal tax laws significantly reduces the expense. Reasonable contributions to accident and health plans which provide health or disability benefits

⁶²CAL. SEN. FACT-FINDING COMM. ON LABOR AND WELFARE, *supra* note 8 at 184; CAL. DEPT OF EMPLOYMENT, CALIFORNIA ANNUAL FARM LABOR REPORT 1967, at 7 (1967).

⁶³*Hearings on H.R. 10509 Before a Subcomm. of the Senate Comm. on Appropriations*, 90th Cong., 1st Sess. iii (1967). The competition for labor has been felt especially in California. Nonfarm employment in California increases by about 200,000 workers per year. When farm workers are given the opportunity, they move into more dependable forms of employment, particularly since the use of special training programs has eased the farmworker's entry into skilled nonfarm employment. U.S. DEPT OF AGRICULTURE, THE FARM LABOR SITUATION IN SELECTED STATES 1965—66, at 3 (Agricultural Economic Rept. No. 110, 1967).

⁶⁴*Hearings on H.R. 10509, supra* note 63, at ix.

for the workers are business expenses which are deductible from the gross income of the farmer.⁶⁵

B. Recommended Changes in Current Health Plans

In adopting an effective health insurance program, an employer must consider the unique health needs of the farmworkers. Although increasing the number of employees covered is important, it remains essential that the quality of coverage be evaluated. The final subject for consideration, therefore, will be selected recommendations for an employee policy. The suggestions will demonstrate areas of inadequacy in policies which otherwise might be suitable for urban industrial employees.

A major deficiency in health policies presently used in agriculture is the lack of immediate coverage, a system which needlessly excludes some workers solely on the basis of length of employment. Although privately financed health care can and has been extended to permanent agricultural workers, most policies postpone coverage for from two to six months.⁶⁶ Thus, it is necessary for the employee to have been with the same employer for an extended period of time before any protection becomes operative. Such a provision has the advantage of eliminating expenditures for the coverage of workers employed during this pre-effective period. Consequently, none of the casual work force would be covered and few seasonal workers could be reached if such a provision were included in the selected policy.

Since all permanent workers can and should be covered by health insurance, the value of delayed coverage of these persons seems doubtful. There is no higher incidence of injury among permanent employees during the first six months than in subsequent months. Merely because the exclusionary period is useful to eliminate the temporary worker from coverage, it should not have the effect of also eliminating permanent workers. Additionally, when health coverage is instituted for the first time many of the employees will have been employed for a considerable length of time. When such a policy is being negotiated, therefore, these workers should be covered immediately. Newly employed permanent workers should not be subject to a waiting period longer than necessary to file the application for cover-

⁶⁵Expenditures for health insurance come within the statutory provisions authorizing a deduction of "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business..." INT. REV. CODE OF 1954, § 162; 1970 CCH STAND. FED. TAX REP. ¶ 1380.015.

⁶⁶Letter from C.S. Awenius, Manager, Employee Relations, Kern County Land Company, to *U.C.D. Law Review*, March 20, 1969.

age. One possible means of eliminating the exclusionary period is to provide coverage immediately for workers engaged in jobs that are traditionally of a permanent nature. The experience of each particular employer will delineate the types of employment usually performed by people who are permanent employees: mechanics, foremen, and clerks are but a few examples.

Seasonal workers also may be covered more rapidly without unduly encumbering the administrative process with applications from casual workers. An exclusionary period of one or two months of employment should effectively exclude the latter employees. The determination of what is a reasonable exclusionary period will depend upon the hiring practices of the individual employer. If his employees come from the local area and the period of employment is predictable, a shorter exclusionary period would be feasible. The use of a reasonable exclusionary period eliminates the administrative expense of insuring the casual worker while providing coverage for the seasonal employee, an important constituent of the farm labor work force.

The health policies used in agriculture can far more effectively benefit farm employees if provision is made for financing out-patient care. Since out-patient facilities are designed for minor illnesses, they are less expensive to establish and maintain than a general hospital. Similar considerations of cost reduction should encourage the use of post-hospital care so that patients will not remain in the hospital because they lack adequate care in the home. Post-hospital and out-patient care would cost from five to ten dollars a day⁶⁷ in contrast to at least 40 dollars a day⁶⁸ for hospitalization. Clearly, the expenses of health care are reduced to the extent that out-patient care can be substituted for hospitalization.⁶⁹ In addition, since out-patient facilities are less complex than hospitals, they can be used in less densely populated areas without diminishing their efficiency.⁷⁰ The result is that more farmworkers would have basic medical care accessible to them at a lower cost to the purchaser. The clinics established to provide the out-patient care should be coordinated with clinics financed for migrants under the Migrant Health Act. Care for the

⁶⁷R. & E. BRECHER, HOW TO GET THE MOST OUT OF MEDICAL AND HOSPITAL BENEFIT PLANS 30 (1961).

⁶⁸TIME, Feb. 21, 1969, at 56.

⁶⁹"A basic trouble with today's hospitals is that, like today's doctors, they have been geared to crisis care. In fact, . . . 30% of the patients in a hospital at any one time should not be there. Either they have been admitted for what are really diagnostic procedures, to gain insurance coverage, or they are past the acute stage of their illness and should be in some sort of convalescent or other extended-care facility, in which the costs would be 40% or 50% less." *Id.* at 57.

⁷⁰*See id.* at 58 for discussion of regional planning in medical care.

migrants would be financed by the Act while private health insurance would finance care for the local worker. If one employer did not hire enough workers to make a health plan economically feasible, he could coordinate his efforts with other agricultural enterprises in the vicinity. Even if the program did not function at full capacity throughout the year, it could be available to all the workers during the peak period of employment.

The inclusion of provisions for immediate coverage and out-patient care would enable more farmworkers to be covered by health insurance. Immediate coverage of permanent workers and long term seasonal workers would provide additional job security, beneficial to employers and employees alike. Insurance which compensates for out-patient care would reduce the need for more expensive hospital facilities. The worker would thus be receiving care which he badly needs⁷¹ at less cost to the person who must purchase the insurance policy.

VI. CONCLUSION

Each farming unit should evaluate its own needs for health insurance. The decision, however, may be made by others if the farm employer does not act. Farm labor unions are becoming a powerful force motivating extension of health insurance to agricultural workers. Unionization, however, does not necessarily result in the most efficient insurance coverage for individual workers and their employers since a union often represents many workers in many different employment situations. A farmer who properly assesses the needs of his individual employees can probably purchase insurance which exactly meets both his and their needs. A second, but less obvious, motivating force is the current need for skilled workers in agriculture. If industry provides sufficiently greater security than does agriculture, skilled workers will be drawn to industry leaving the farmer without the work force he needs to operate efficiently.

⁷¹Expensive hospitalization was unnecessary for a majority of persons using the clinics established in California under the Migrant Health Act. Forty-seven percent of the 34,273 patient visits during a period from July 1, 1966 to June 30, 1967 were concerned either with pregnancy and family planning or special conditions and examinations without sickness. CAL. DEP'T OF PUBLIC HEALTH, FARM WORKERS HEALTH SERVICE, CAL. MIGRANT HEALTH PHYSICIAN SYMPOSIUM—May 1968, at B-3 (1968).

Thus, there are several factors which will determine the future of agricultural labor—management relations and the feasibility of such employees' benefits as health insurance. The use of insurance plans in agriculture hopefully will foster a greater sense of responsibility and humanitarianism among those who derive the most economic benefit from the rural poor. Wide use of health plans would accord farm-workers a measure of human dignity long denied them.

Carol Hunter