

United States Senate

WASHINGTON, DC 20510

November 15, 2011

The Honorable Donald M. Berwick, MD
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, SW, Room 314G
Washington, DC 20201

Dear Administrator Berwick:

We are writing to bring to your attention a potentially unintended, and unwanted, consequence of the Affordable Care Act, which may cause disruption for farmers and others in the agricultural sector who currently purchase their coverage through their farmer cooperatives.

Under the Affordable Care Act, certain middle-income individuals are eligible for significant premium tax credits if they purchase qualified health plans through the state exchanges. We believe that this was one of the most important and laudable provisions in the new law because it lends a vital hand to millions of Americans who might otherwise find decent coverage to be unaffordable.

Unfortunately, this provision might also create an incentive for some lower income farmer cooperative members – as many as 20 percent of their membership -- to leave their cooperative-provided coverage for exchange-provided coverage in pursuit of the premium tax credits. And because farmer-owned health care cooperatives restrict membership to people involved in agriculture, the cooperatives are ineligible to list on the exchange and provide an equal tax credit incentive. At first glance this may not seem to create an unwanted outcome but as currently interpreted this incentive is harmful for farmers' cooperatives and bad for farmers.

Today, farmer-owned cooperatives provide affordable health care coverage for thousands of their members, families, and employees across the country. Although defined as “large group,” these cooperatives are comprised of thousands of individuals who have joined together to negotiate lower rates and better benefits from the insurance companies. Wholly owned by the farmers, these cooperative-offered plans return any and all profits to their farmer-owners.

The coverage members receive through their agricultural cooperatives is trusted, affordable, and worthy of maintaining. In many cases, the benefits provided under these plans have been specifically designed by the farmers themselves to meet a need that was not being met in the general insurance market. Many of these benefits, for example, such as milk deduction check-off, 24-hour live access to customer service, and special wrap-around options for accident coverage, are very farmer-specific, and unlikely to be offered in the exchanges.

We share the concern of the cooperatives that unless they are allowed to provide coverage to their members on an even playing field with the exchanges, they will inevitably lose significant participation from their membership, thus putting at risk the integrity of their risk pool, increasing the premiums for remaining members, and ultimately threatening the viability of their model. At the same time, individual lower-income cooperative members who seek the subsidized prices in the exchanges will no longer have access to the farm-friendly coverage policies they have come to rely on, nor will they benefit from the profit-sharing aspect of the cooperative.

It is of little help to today's farmer cooperatives that their members would be eligible for premium tax credit support if they were to transform themselves into health care cooperatives as defined in the Act, or if they were to reconstitute as health insurers and offer their plans to the general public through the exchanges. Both solutions would require today's cooperatives to become completely different entities than they currently are, and therefore offers them no workable resolution.

We urge you to allow subsidy-eligible farmers to purchase their coverage from their trusted cooperatives without losing access to premium assistance provided that the plan meets all of the Act's minimum benefit requirements. Such an approach, offered through Section 1331's state waiver provision, could provide HHS or the States with the authority to recognize coop-offered plans as qualified for the purposes of the premium tax credit.

We would be open to any alternative that would assist farmer cooperatives in subsidizing eligible members' purchase of coverage to avoid the unwanted outcomes we outlined in this letter.

We respectfully ask you to remedy the challenge facing farmer cooperatives, and request a response within 45 days that addresses our concerns. If you have any questions, please do not hesitate to call Joy McGlaun in Senator Kohl's office at (202) 224-5364.

Sincerely,



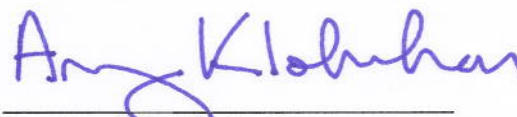
Senator Herb Kohl



Senator Charles E. Schumer



Senator Robert P. Casey, Jr.



Senator Amy Klobuchar



Senator Kirsten Gillibrand