

## 2010 FSHS Keynote Speaker: MICHAEL CARLTON

### “Two Hats, Two Topics: The Role of the Foundation in Research and the Health of Agriculture under Health Care Reform”



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First, let me tell you that I'm really pleased to be here. The work that you do is incredibly important to the state and it's an honor for me to be here. Secondly, as many of you are, I'm on the road a little bit from time to time, as I was last night. My wife called, a little panicked, a little breathless; we have this neighbor who has this wonderful pet rabbit, black and white. I don't know what it's called, but anyway it's this rabbit and we have a dog that likes to roam the woods and brings us presents back every now and again, like rats and last night it was a rabbit, muddy and dead. "Well," I said, "what did you do?" and she said "well, I was a little panicky, so I washed it and used the hair dryer on it, and put it back in its cage."

So this morning she called me as I was driving here and said, "Maureen called," (who is our neighbor) and said "the strangest thing happened. Our rabbit died and we buried it and it's back in the cage!!"

I really don't know what I'm going to do and it really has nothing to do with this. I'd like to make a segue, but I can't. It's kind of funny though, kind of tough but ... it's funny.

Anyway, what I'm going to do this morning is two things. Well, first let me say, when Eric called, he asked me to do this talk and I agreed, and he said you have 45 minutes. Well I thought maybe after 15 minutes of laughter we could have 30 minutes of questions.

I'm going to talk about two things today and one is a subject near and dear to my heart: that's the Florida Specialty Crop Foundation and the work that it does. And the other is something that is not terribly dear to my heart and that is the Health Care Reform plan. So I want to talk about that from my position as Director of Labor Relations at the Florida Fruit & Vegetable Association (FFVA), to just kind of go through some of the issues that the health care plan is going to bring up for the growing industry, the agricultural operators of this state and how they operate, some of the individual issues, and how those things may affect you.

#### **Florida Specialty Crop Foundation**

So the first thing we want to talk about is the Florida Specialty Crop Foundation and its mission: to benefit the general public through initiatives that provide solutions to the challenges facing specialty crop producers and their stakeholders. And first I want to talk a little about the history of the foundation. It was founded in 1991 as the Florida Fruit and Vegetable Research and Education Foundation. In 1992, it established the Hurricane Andrew Fund to provide assistance to storm victims and in 1994, established enough to provide research funds. In 2002, it received over \$2 million in funding from the Federal Specialty Crop Grant Program, with \$900,000 going for grants in food safety research; \$800,000

for research of bromides and alternatives; and \$300,000 in grants for production research hobbyists. In 2004, the annual auction at FFVA's annual convention provided funding to assist farmers who have been impacted by our wonderful state of hurricanes we had that year. We also partnered with the Catholic Charities Housing on the Casa San Juan Bosco Project, which provides housing for farmworkers. Industry and community programs totaled over \$813,000 that year.

The foundation has three main thrusts: research, education, and social responsibility. In the area of social responsibilities, the foundation supports the Redlands Christian Migrant Association (RCMA). We are a very strong supporter of RCMA, and for those of you who may not be familiar with RCMA, it was a project funded years ago primarily to provide day care for children of migrant workers. It was very important to the growers of this state for their workers to have a place where their children could go so they were not on the farms or in groves, which is illegal, and so that the families themselves wouldn't be tempted to bring them out to the farms and groves. The foundation also supports Produce for Better Health Foundation, Farm Foundation, Exploration V Children's Museum, Harvest of Hope Foundation, University of Florida Leadership Foundation, and others.

On educational issues, we've established the George F. Soren Scholarship Fund. We support the Sunripe Migrant Scholarship Fund, we produced the Agricultural Labor Relations Forum, the Florida Spring Regulatory Tour, and we do a lot of environmental and pest management outreach.

A word about the George F. Soren Scholarship Fund—many of you probably know that George Soren was president of FFVA for a good many years, and he was very intimately involved in RCMA and a number of programs supporting migrant children. The fund provides college scholarships to children of migrant farmworkers. And I must tell you that in reading those applications, one of the things on the application is an essay; reading those essays from those children is incredibly inspiring. These are kids who sometimes worked in the fields on the weekends, and still maintained exceptional GPAs. The winner this year had a 4.2 GPA and it's just very inspiring to talk with these kids, and see the work that they do and how hard they work at it.

The Agricultural Labor Relations Forum—some of you are familiar with it—is a program designed to help growers stay current on labor issues, labor laws, labor relations, and is now drawing attendance from other states from North Carolina to Texas; it's recognized throughout the country as one of the best. The Regulatory Tour brings regulators from EPA in Washington DC, from Florida DEP, and takes them literally out in the field and shows them how agriculture operates, so hopefully when they do write regulations they have a better clue as to what they're doing.

Some of the research projects that we have sponsored are field detection of citrus greening, methods of quick kill of greening trees, transmission of greening to psyllid offspring, management practices to reduce effects of greening, disruption of salmonella genes required for tomato contamination, and testing of *E. coli* levels in irrigation water used on vegetables. Additionally, we were also a sponsor of the International Research Conference on Huanglongbing, contributing partner with the UC Davis Center for Produce Safety, and a contributing supporter for University of Florida Doctor of Plant Medicine programs.

As you might expect, the current economic situation the last few years has not lent itself to gobs of contributions pouring into our foundation, or any other foundation for that matter. So we have suffered a little bit in terms of being able to provide research

dollars over the past couple of years. So what we've done is to try and help that a little bit: we have partnered with folks, in this case the University of Florida, to solicit grants from the Federal Specialty Crops Block Grant Program. The first one we received was last year; it's a two-year grant Farm Labor Contractor Certification Training Program. I saw Fritz Roka in here; Fritz is the main architect of that program. And we have a second joint request currently in place for tomato and potato late blight research.

That's a brief summary of our foundation and work we've been doing. Hopefully we'll be able to do more. We are certainly strongly interested in quiet research help. I think it is certainly private research dollars that are more and more important every day, and folks like you who, if in fact we are able to grow the Foundation like we want to, will be able to do more with it then.

## Health Care Reform

The recently passed Health Care Reform Bill impacts almost every aspect of our health care system (except of course Tort Reform) and carries with it significant costs for employees. It's about 2000 pages long and is a bear to read, but it is established to move forward in stages with each year bringing more and more of the changes involved.

In 2010, this year, for example, tax credits are available for small employers, but there are some specific requirements for that, like less than 25 employees, and wages are less than \$50,000 across the board. It is applied in two phases. Phase one is 2010 to 2013 and applies a 35% tax credit, which is 35% over the credit already issued for the health insurance and if they contribute at least 50% or more to the cost of health insurance.

## TAX CREDIT QUALIFIERS

Qualified employee of 30 hours per more each week; leased employees are included.

## ANNUAL WAGES

Seasonal employees, working 120 days or less, are not counted toward employer size, with nothing said about them "not" being covered—if it just that they are not counted for employer size totals.

## 2011

Employers must report the value of employer-provided health benefits on employee's W-2 forms. That's kind of interesting, because it certainly opens a crack in the door for some other things to take place in terms of taxes. Over-the-counter drugs are no longer going to qualify on the H-2As, flex spending plans (which could affect some of us), and tax on distribution from those accounts, those health savings accounts, that are incorrectly used or used for unqualified expenses, will be a good 20%.

## 2013

Some big issues this year: the threshold for medical expenses being deducted from your taxes will go from 7.5% to 10%. Most of us never made it to the 7.5%; we certainly won't be able to make it to 10%. Medicare part A tax rate on wages increases from 1.45% to 2.35%, almost a full percent on those wages over \$200,000, \$250,000 for couples. I assume that affects most of you.

A new Medicare tax on 3.8% on unearned income goes into effect. That tax was for the lesser of 1% of net investment income or modified adjusted gross income over \$200,000. That's a bit of

a concern I've not been able to figure out yet. I assume, which is a really bad thing to do with this government, that the retirement plans are not covered by this tax. I would not.

And then there are the Co-Op programs that begin establishing non-profit run healthcare insurance companies in all 50 states.

## 2014

Most of the big changes hit and are put in place. The health benefit exchanges from the state-based health benefit programs start, and the small business health option program begins. Those programs will be administered by a governmental agency or non-profit organization. And they're set in place for small businesses and individuals to purchase insurance from them. I think it is mostly going to be internet-based stuff that will be utilized. That's for the folks who don't have employer-sponsored plans, are unemployed or self-employed, or who don't want their company plan.

### 2014 Effects on Individuals

Most of us citizens and aliens legally present in the United States must have insurance or pay a penalty in 2014. The penalty for not having insurance in 2014 is \$95.00 or 1% of household income and it increases the next two years up to \$695.00 or 2.5% of household income. The interesting issue with this penalty is the way it is established to be collected from us from tax returns. As near as I can tell, if individuals aren't filing for taxes, there is not going to be a penalty because there is not going to be any way for them to get it. So ... they'll get it from someplace else, probably.

Then it gets very complicated with who qualifies and who doesn't. Individuals with incomes between 133% and 400% of Federal poverty level—now how do you do that? How do you get 133%? Why? I have no idea where that number comes from, 133%. Why isn't it 140% or 120%? And 400% over the Federal poverty level is over \$88,000 worth of income. The family's total income penalties kept at 300% of the flat dollar amount, in other words, in 2013 that flat dollar amount is \$95.00 for a family of 6 and you don't have it, the most your penalty can be is  $3 \times \$95.00$  or \$285.00 and stays that way.

The penalty for those under 18 is one-half of the adult penalty, and individuals whose cost toward employer-sponsored coverage exceeds 8% of household income are exempt from the penalty. So, if you're working for a company and your cost of insurance to that company is more than 8% of your household income, you don't have to take the insurance and you won't be charged a penalty.

There is a courtroom set up to provide tax benefits, but you're not eligible for premium tax credits unless the employee-sponsored program provides less than 60% of the premium or the employee's exceeds 905% of the household income.

### Effects on Employers

The employers' part of this deal really comes into play in 2014. Employers who do not provide health insurance, and it has to be a minimally qualified as defined by the plan, and I'm not going to go through all the qualifications, and, if at least one of the employees goes after the tax credit, then the employer has to pay a penalty that is equal to 1/12 of \$2000 per month. That's the way the bill is written—the bill didn't say \$166.67 per month, and it says 1/12 of \$2000.

An employer with more than 50 employees that does offer insurance, but has one of their employees going after the tax,

and get the tax credit, will pay a penalty that is the lesser of 1/12 of \$3000 for each employee that gets their tax credit or 1/12 of \$2000 for all employees each month.

I see a new industry being developed here and that is figuring out the health plans.

Some of the qualifications, the first 30 employees, if you have 51 employees or more and don't offer insurance and to pay a penalty, you'll pay it on 21 employees, 1/12 of \$2000 or \$166.67 per employee per month for 21 employees because the first 30 employees are excluded from the penalty calculations. You have to have at least 51 employees to be included in the penalty calculation. Seasonal employees that work less than 120 days, we don't think are included in this determination of size; we know they're not included in the calculation of 25 or less employees that we talked about earlier. We think this should be extended into this definition also. Leased employees are already included and employers with more than 200 employees must automatically enroll their employees into a health insurance plan, although employees may opt out of the plans rather than opt in.

This is interesting, too. Employers must also offer a voucher; a free choice voucher to employees whose income is less than the 400% of the Federal poverty level and the insurance premium is more than 8% but less than 9.8%, and who chose to enroll with a plan of their choice with the exchange. The value of the voucher is equal to the premium paid by the employer. Waiting periods for company-sponsored coverage can not exceed 90 days; we have some legal advice that tells us that you can't delay signing people up but you can delay the start of coverage. This is a very important issue to our employers; we have a very transient workforce in a lot of cases. So, employers of more than 100 employees get to report all this to the secretary of HLS and this information including the name, address, and taxpayer ID number of each full-time employee. I don't know where this is going to lead because it states that employers who do provide coverage have to do this but it doesn't say employers that don't provide coverage have to do this. My suspicion is, if you're in the rule making process then more than likely employers that don't provide coverage will also have to do this and with agriculture that creates a just position between healthcare and immigration issues. To get a tax credit in the United States, you need the president's signature on it. It is speculated that 70% to 80% of our harvesting workforce in this country is falsely documented.

So it is likely we're going to have a lot of employers who may not offer health insurance and will have no employees because of the tax credit and I suspect that's going to raise a red flag. So it's likely at some point those who don't offer healthcare coverage will have to report the same information and that's going to probably then be transmitted from HHS to the IRS to Homeland Security. We have some real challenges. And by January 31 of each year the employer must provide that information to each of their employees too. A lot of information out there; a lot of paperwork going on.

### Major Issues

We don't know about how full-time (weekly) employees who work less than a month, since the penalties are month-based. Does that guy who works for four different employers, for a week each get included? Are we going to have to pay a penalty for that guy four times? The transportability of this stuff, for our employers/employees who follow the migrant's train from here to North Carolina, to Michigan, and back again. We're not sure

of the transportability of this is going to work because each state is going to have to put together an exchange.

The H-2A guest workers that is going to become bigger and bigger as continued pressure on immigration hits agriculture. The H-2A guest program is going to become bigger. It only provides 2% of the workforce in agriculture right now, but I suspect that will grow; we're not sure yet how they'll be treated. They are legally present but penalties are based on household income. So are we going to try and calculate the household income including the income from Mexico? We don't know.

The outcome of the regulatory process, 2000 pages of a bill. And I think I saw somewhere that the words "the secretary shall" (meaning "shall determine") are in this bill 400 times or something like that. So even though we have a bill that is 2087 pages long, we don't have any clue about a lot of the issues in it because it is all up to the regulators. They are going to write the regulations to implement the bill and thus have very little control over that process, although we are trying.

We don't know the results of the legal challenges against the law. There are 17 states that have now filed challenges to this law; we don't know how that's going to pan out. I'm not comfortable that they'll be successful but they could be.

## **Future Legislative Changes**

Of course future legislative changes are possible. As you may have heard, there has been talk of congressional changes. This year, maybe; in 2 years, maybe; much of this is not implemented until 2014. So we may have a new congress in place that may decide to write bills or write additional legislation that may either weaken the law or it could bolster it.

So with regards to the big health care issue, my big point is, I don't know. There is a lot we don't know but we will obviously continue to work on it. I'm part of a work group out of Washington, DC that includes FVA out of California and Washington. We met with Health and Human Services 2 weeks ago and I was pleased that they were very receptive to our concerns; they seemed glad to see we were there starting the process.

The results were very clear that their goal is to make sure that every individual in this country is covered by health insurance, which is an honorable goal—but I'm not sure it is one that is an affordable one.

Thank you.