



Legal Alert: Dealing with Long Term Care Insurance under Healthcare Reform

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As most people know by now, many of the rules governing health plans have been changed – in some cases drastically – by The Patient Protection and Affordable Care Act ("PPACA"). However, not everyone has considered that long-term care ("LTC") benefits are considered "health benefits" and may also need to be addressed.

Employers are increasingly using LTC policies as a cost-effective benefit for their executives who are approaching retirement age. Such benefits are tax-free to the executive, while the employer is entitled to an income tax deduction for the cost of the policy.

One of the changes made by PPACA is to apply nondiscrimination requirements to insured health plans. Accordingly, a fully insured LTC policy for only one (or for a few) senior executive will be a discriminatory health plan and the employer will be subject to an excise tax of \$100 per day per covered executive, unless the policy is "grandfathered." (See our [Legal Alert](#) dated June 23, 2010 regarding "grandfathered" plans, which can be found at <http://www.fordharrison.com/shownews.aspx?Show=6300>.)

Furthermore, an LTC policy often will be structured to require payment of premiums over a 5- or a 10-year period; since the policy would presumably be discriminatory for the entire period, and since the excise tax is applied based upon number of days, this could result in quite a significant excise tax liability to the employer. (For example, 10 years, @\$100/day would be \$365,000.)

Employers would be well-advised to familiarize themselves with the health care reform legislation, including specific issues that potentially affect them, such as the extension of nondiscrimination requirements to insured plans, to be better able to make necessary decisions about their benefit programs. Ford & Harrison's Employee Benefits group can help you do this. If you wish to discuss how healthcare reform affects you, please contact the author of this Alert, Jeffrey Ashendorf, jashendorf@fordharrison.com, any member of Ford & Harrison's [Employee Benefits](#) group, or the Ford & Harrison attorney with whom you usually work.

You may also visit the health care reform tab of the Ford & Harrison website, <http://www.fordharrison.com/HealthcareReform.aspx>, for more helpful resources and tools on health care reform.