

# Offering Exchange Benefit Plans Outside the Exchange



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## BACKGROUND

Section 1311 of the Patient Protection and Affordable Care Act (ACA) requires benefit plan designs offered through a health benefit exchange to be qualified health plans. ACA also provides broad criteria for a benefit plan design to be recognized as a qualified health plan. However, ACA does not preclude or require that benefit plan designs offered through an exchange be available in the market outside the exchange. This appears to be an area where states have regulatory flexibility.

## PRECLUDING EXCHANGE PLANS OUTSIDE THE EXCHANGE

A state regulation can be created that prohibits health insurance carriers from offering the benefit plan designs offered via a health benefit exchange through another distribution channel. A state's motivation for such a requirement, among other reasons, would be to limit competition. A state would need to assure that benefit plan designs offered via the exchange are attractive to purchasers, thereby leading more people to enroll via the exchange. Higher enrollment in the exchange will help the exchange to be more sustainable. If benefit plan designs offered via the exchange are not attractive to purchasers, more people will enroll via other distribution channels and thereby potentially impact the sustainability of the exchange.

## REQUIRING EXCHANGE PLANS OUTSIDE THE EXCHANGE

A state regulation could also be created that requires health insurance carriers to offer the benefit plan designs it offers via a health benefit exchange through the other distribution channels. A state may consider such a regulation to meet various objectives, including:

1. Promote competition and consumer choice; and
2. Ensure consistent pricing of benefit plan designs inside and outside the exchange.

Requiring benefit plan designs offered via an exchange to be offered in a carrier's other distribution channels will give consumers in those other distribution channels more benefit plan design choices. It will also allow consumers to choose the distribution channel that best meets their needs, thereby promoting competition between distribution channels.

Requiring that benefit plan designs offered via an exchange also be offered in a carrier's other distribution channels will help to ensure consistent pricing inside and outside the exchange, as will be required since the risk pools inside and outside the exchange are required by law to be combined. Such a regulation would create a practical barrier for carriers to over-adjust for benefit differences in plan designs offered via an exchange versus other distribution channels. If carriers are not required to offer their exchange-based benefit plan designs through other distribution channels, there is the potential for gaming whereby a carrier has a pricing differential between two plan designs, one in the exchange and one outside the exchange, that is more or less than the value of the benefit differences between the two plan designs. A carrier may be inclined to do such gaming if the risk selection or costs inside and outside the exchange are different, as they are expected to be.

A state must also consider the strength of a requirement that benefit plan designs offered via an exchange are offered in a carrier's other distribution channels. To ensure consistent pricing inside and outside the exchange, the exchange plan designs must be very visible and proactively marketed outside the exchange. Merely having the exchange plan designs available upon request outside the exchange will not serve to create the price transparency for purchasers that will ensure consistent pricing inside and outside the exchange.

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