Health Variability Guidelines
(ORS 742.003 and ORS 742.005)

What is variability?
Variability means any bracketed provision may be included, excluded, or changed. Contract language, benefits, exclusions, terms, items, or application questions that may be altered based on specified conditions is considered variable text. Contracts, policies, certificates, applications, riders, endorsements, amendments, advertisements and other forms may have variable information. Each variable must comply with Oregon law independently and within the context of the form being reviewed.

Variability in forms must be identified by brackets ([ ]) at the beginning and end of the variable data. Language, benefits, or numbers that are not bracketed may not be altered without refiling the entire document. If a form contains variable language, the Oregon Division of Financial Regulation (DFR) requires the insurance company to either file a statement of variability or explain variable items through drafter's notes.

What is a Statement of Variability?
A Statement of Variability (SOV) explains all variable options or ranges that appear in a form. All variable options and ranges must be shown in the policy forms or submitted in a separate SOV that explains each variable item in detail. Changes to variable text are limited to what is included in a SOV. Language options, benefits, or numbers outside of the range listed in the SOV may not be used.

The SOV is required to be submitted for prior approval and should be attached under the Form Schedule tab in SERFF. It should have its own unique form number located in the lower left hand corner and must clearly identify which forms it applies to. DFR authority to review and approve the SOV comes from ORS 742.003 and ORS 742.005.

What are drafter's notes?
Drafter's notes explain variability inside the form rather than in a separate document. They must appear above, below, or to the side of the variability they explain and provide the same level of detail as the SOV. They should be highlighted in some way or a different color of text used to clearly indicate they are not a part of the form being filed for approval.

Certification
The filing should include a certification that any change or modification to a variable item outside the approved ranges is submitted for prior approval. This certification may appear in a signed cover letter or in the general filing description.

Variable numbers

- If a variable benefit includes numbers (such as a percentage, dollar amount, or day limit), a range including the minimum and maximum numbers must be provided. The range provided should be reasonable for the benefit listed.

Example: Variable numbers
Permitted
- [1- 365] days
- [60-70] percent or %
- $[5-50]
Prohibited
- [0] days
- [0 percent]
- [$]

- If the full numerical range is encompassed within the brackets (as shown above in the Permitted examples), the explanations do not need to be listed on the SOV or through drafter's notes.
- The number may be bracketed; however, the unit of measurement (example: percent or dollar amount) may not be bracketed.
- Be cautious when using "zero" within the range of a benefit. Some products do not permit "zero" to be included within the range. If "zero" is included an explanation of the benefit must clearly explain how "zero" is considered a policyholder benefit. "Zero" may not be used to give the impression of a consumer benefit if none exists.
- If brackets include hypothetical data it should be reasonable and realistic for the coverage of the product. Hypothetical data is sometimes referred to as a "John Doe" form and illustrates the product being filed.

Variable provisions
- Variable language includes all optional text, changes in language, and choices in terms or provisions.
- Most categories or section headings will not be variable. Only headings for categories or sections that may be optional or changed should be bracketed. If categories or sections may be removed, the SOV or drafter's notes should clearly explain when the benefit or provision will be included or excluded or varied and why.

> **Example: Variable categories and headings**
>
> **<u>Permitted</u>**
> - Deductible: $[500-1000]
> - Emergency Services: $[50 -100] Copay per visit
> - [[Acupuncture]: $[5-25] Copay per visit]]
>   *From SOV: Acupuncture benefit will be included for groups over 100 employees. Acupuncture benefit excluded for groups with 99 employees or less.*
>
> **<u>Prohibited</u>**
> - [Emergency Services: $50-100 Copay per visit]

- The entire provision that may be changed or removed should be bracketed. Language that is not bracketed is considered static by DFR.

Explaining variability

The variable item needs to be explained in sufficient detail for the analyst to determine compliance with applicable laws. The following items should be addressed in the SOV or drafter's notes:
- An explanation of why the language will be included or removed from the contract.
- An explanation of why the bracketed text is variable and what conditions in which it will change.
- All language options or numerical ranges that will be considered by the company.
- Any conditions or circumstances that will impact which variable option is chosen.

Variability reasons

Each variable item explanation must include a reason for the variability.

Vague explanations of variable text or data will not be allowed. The following explanations for variability *are not* acceptable:
- As necessary.
- As negotiated by policyholder.
- Will comply with statutory requirements.
- To be determined.
- Number of units case specific.
- Other.
- To allow for future changes.
- Will remain in policy, but subject to change.

Consistency
Bracketed data and ranges should be consistent throughout all documents that apply to the product including the outline of coverage, the application, the benefit summary, advertisements, and binder filing.

<u>Application consistency</u>
If an application lists plan numbers or benefits elected by the member the name of the plan or benefit must be consistent with what is filed and approved within the form filing.

<u>Binder consistency</u>
In health benefit plan form filings, the minimum and maximum numerical ranges should encompass all possible plan variations, including standard plans. Benefits listed in the filed Plan and Benefits template must be numbers that are included within the approved range filed in the form filing. When benefit values in the Plan and Benefits template do not match what is approved in the associated form filing, objections will be sent.

Appropriate use of bracketing and variability:
- Bracketing within the table of contents is permitted to accommodate optional benefits or coverage provisions. Benefits, provisions, or language required by law *may not* be bracketed in the table of contents or elsewhere in the policy or certificate.
- Some variable data may indicate two or more benefit options (example: copay or coinsurance). It is permissible to bracket these options to indicate either the copay amount or the coinsurance amount will be selected. An explanation of how the benefit will be selected must include enough detail to determine if the selection will not be discriminatory.
- Eligible classes of employees may be bracketed to comply with employer group contract provisions. The SOV or drafter's notes must indicate the minimum and maximum participation requirements the insurer will allow policyholders to choose from.

Example: Eligible classes

Permitted
- Employees working [17.5 – 40] hours per week are eligible for coverage.
Drafter's note: Minimum hour requirement will be chosen by policyholder from listed range.
- The affiliation period for coverage eligibility of enrollees is [1 – 45] days.

Prohibited
- Employees working [determined by group policyholder] hours per week are eligible for coverage.
- The affiliation period for coverage eligibility of enrollees is [1-45 days].

Inappropriate use of bracketing and variability:

- Logos may not be bracketed and must be filed with DFR in a separate filing before they are changed. When a logo is being changed, please complete and submit the Changes to Business Operations product standard ([Form 440-3637](#)).
- Form numbers may not be variable. DFR uses the form number located in the lower left corner of each form to review, approve, and track the product. When an insurer wishes to change a form number, the insurer must refile the entire form.
- Product type (for example, "major medical" or "accident only") should be clearly specified on the front page of the policy or certificate and may not be bracketed. However, the marketing name of the plan (for example, "Super Duper Plan" or "Super Awesome 1500 Plan") may be bracketed. If the product type changes, the form must be refiled for approval. The product type description must clearly identify the type of coverage being offered.

Example: Product types and plan marketing names
Permitted
ACME [Super Duper Plan] Accident Only Insurance
Prohibited
ACME [Super Duper Plan Accident Only Insurance]   ACME [Super Duper Plan] [Accident Only Insurance]

- For major medical, bracketed marketing names for plans must represent the correct metal level, if a metal level is included in the plan name. For example, [Acme Standard Silver Plan] cannot be changed to [Acme Standard Bronze Plan].
- Entire pages may not be bracketed and DFR does not permit insert pages.
- Brackets around blank spaces or blank lines are not permitted.
- Fixed benefits may not be bracketed or listed as variable. Fixed benefits include statutorily required provisions, mandated cost shares, or required reimbursements.

Example: Fixed Benefits
Permitted
Hearing Aids: [1-3] Hearing Aid(s) per ear every [two-four] years
Prohibited
[Hearing Aids: 1 Hearing Aid(s) per ear every four years.]

- State- and federally-required language or benefits may not be bracketed. Oregon's mandated benefits may be found in ORS chapter 743A. Oregon's essential health benefits and standard plan requirements may be found in OAR 836-053-0008 and OAR 836-053-0009, respectively.
- Benefits with a frequency or duration limitation should only have the numerical value bracketed itself and not include the text of "days" or "months".

Example: Benefit limitations
Permitted
Biofeedback: [10 – 20] visits per year.
Prohibited
Biofeedback: [10 – 20 visits per year]

- Extensive variability and bracketing is discouraged. Variability that is difficult to understand or bracketing that prevents the analyst from determining the actual coverage provided is discouraged. In cases with extensive variability, the analyst may request sample policies be submitted or if the variability is ambiguous, the analyst may disallow the variable text.
- Oregon specific fraud warnings may not be variable. Bulletin 2010-3 presents guidelines for fraud or misstatement warnings that are permissible.

General tips
- State and federal laws may require certain language or benefits. Major medical health benefit plans must contain many Oregon mandates. The standard plan, for example, has required benefit parameters that are not variable and should not be bracketed.
- If a variable provision is bracketed to be an included or excluded benefit, an agreeable variable provision should also exist in the exclusion section. An example of this is when a religious employer is not required to offer the voluntary termination of pregnancy benefit. Voluntary termination of pregnancy provisions may be bracketed in both the benefits exclusion sections to accommodate this religious-employer need.
- If the policy contains extensive variability, consider creating more policies with less variability to facilitate ease of review and speed to market.
- If using color to identify various contract provisions or to distinguish unique benefits, the color theme needs to be fully explained in the cover letter, SOV, or through drafter's notes. Please limit use of colors to help ease review.
- The most common reasons for form delay approvals are based on excessive bracketing and the uncertainty of intended purpose.