

# VARIABILITY, BRACKETING, AND THE STATEMENT OF VARIABILITY FORM

## Oregon Health Insurance Rates and Forms Filings

### **I. APPLICABLE STANDARDS AND LAWS**

#### **A. Oregon Product Standards**

The Oregon Product Standards have the category of “Variable text” that explains Oregon health insurance filing requirements for variable data and for variable text. It states,

- “1. Variable data is indicated by brackets and all variable ranges or options are identified. Variability is limited to benefit data applicable to the owner or insured, benefits amounts, durations, and premium information.
2. The filing includes a statement of variability that explains the conditions under which each variable item may change. A statement of variability presents reasonable and realistic ranges for each item. The filing also includes a certification that any change or modification to a variable item outside the approved ranges is submitted for prior approval of the change or modification. *(Variable data may be included within the policy and certificate or may be submitted as a separate form identified by a form number and date.)*”

#### **B. Applicable Oregon Revised Statutes (ORS)**

ORS 742.003 stipulates that all policy/certificate coverage forms, and other forms, such as applications, riders, and endorsements, requires filing and approval, prior to their use.

ORS 742.005 provides the basis for grounds for disapproval of policy forms, as related to any provision, statement of premium, label, description of contents, title, heading, or other indication of its provisions. Such basis includes: non-compliance with law; ambiguous or misleading information; not in the best interest of the insurance consumer; inequitable or unfair; benefits not reasonable in relation to premium charged (for specified health insurance products).

#### **C. Interstate Insurance Product Regulation Compact**

The Interstate Insurance Product Regulation Compact (IIPRC), Definitions, item #15, is for “Uniform Standard”. Each product requirement shall be construed, whether implied or expressly stated, to prohibit use of inconsistent, misleading or ambiguous provisions in a product and the form for the product (e.g., policy, certificate) so that the insurance contract is not unfair, not inequitable, and not against public policy. The IIPRC utilizes the National Association of Insurance Commissioners (NAIC) Models in their development of Uniform Standards for Products. As industry knows, the Oregon Insurance Division (OID) has Product Standards for different lines of insurance and different products within that line of insurance (e.g., Health Applications Product Standards (all health insurance products) and Small Employer Group Product Standards (one type of health insurance product). The IIPRC, NAIC, and OID develop Standards in order to provide reasonable protections to consumers of the insurance products.

## **II. EXPLANATION OF OREGON RATES AND FORMS FILING REQUIREMENTS**

### **A. Stricter Requirements Than Previously**

Please be advised that the Oregon Insurance Division has become stricter in the requirements for variability and bracketing, due to several issues that have arisen in general for all Insurance Companies. Variability is even more of an issue/concern for indemnity plans that provide a fixed dollar benefit, and that provide limited coverage, because the fixed amounts are unrelated to the expenses of medical services, products, and treatment.

### **B. Form Filed For Prior Approval**

The Statement of Variability form needs to have its own unique form number, in the bottom left hand corner. This could be done as simply as using the policy form number followed by "-SOV". For SERFF filings, the Statement of Variability form needs to be attached in the Form Schedule tab, as a form submitted for prior approval. For Paper filings, the Statement of Variability forms needs to be listed as a form for approval in the NAIC transmittal.

All variable options (choices) and/or variable ranges (minimum to maximum benefit amounts) must be either shown in the policy form, or submitted in a separate document called a Statement of Variability that explains in detail each variable item.

At the top of the Statement of Variability form, it needs to list the form numbers in that filing submission that the Statement of Variability applies to.

Each and every variable item needs to be bracketed and needs to provide an explanation of the variability, and in order of the corresponding form being filed (i.e., by page and paragraph).

If contract language is bracketed because it will either be in or out of the coverage or other form, then an explanation as to the circumstances of when it will be included and when it won't, needs to be provided. For example, an optional benefit rider would be bracketed on the Schedule of Benefits page of the policy form. The corresponding portion of the Statement of Variability form would explain that the rider is bracketed since it's optional, and then it will clarify if it's optional to the insured, to the policyholder, or to the insurer.

Please note that general and vague explanations, and without specific page references, are insufficient. For example, the explanation of "as necessary", "as negotiated by the policyholder", or "will comply with statutory requirements" are too vague and non-descript. The specific conditions and circumstances under which each variable item may apply need to be explained in detail.

## **II. EXPLANATION OF FILING REQUIREMENTS (continued)**

### **B. Form Filed For Prior Approval (continued)**

If the Statement of Variability form indicates that language will vary by criteria selected by Policyholder, it is insufficient. In other words, the Insurer's/Company's underwriting guidelines will stipulate the minimum and maximum parameters for acceptable risk.

As an example, if there is the option of adding a limit for the number of days of benefit coverage (duration thereof), then one hypothetical example needs to be included on the Schedule of Benefits. For example, if the form states, "[up to 30 days]", then the Statement of Variability form needs to explain that the policyholder has the option of adding a limited number of days, and the range is between 5 and 60 days. Note that it's probably not realistic or reasonable to have 1 as the minimum in the range because there is a cost associated for increasing the number of days.

Also, in the Statement of Variability form, there should not be brackets around the description of variability. The brackets are used in the coverage forms, and should not be used in the Statement of Variability form, except for referencing the bracketed item.

-- To illustrate, the incorrect way is to state the following in the Statement of Variability form: "[A] - Policyholder - [Varies by school and state]".

-- To illustrate, the correct way is to state the following in the Statement of Variability form: "[A] - Policyholder - Varies by school and state".

The reason is that it's acceptable to have brackets around the "A" because that's referencing the portion bracketed in the coverage form. However, the brackets should not be around the description of the variability in the Statement of Variability form (i.e., not around, "Varies by school and state").

### **C. Form Number Not to be Bracketed**

The form number in the bottom left hand corner of the document page cannot be bracketed for variability because Oregon reviews and approves forms by specific form numbers. On the other hand, if the Insurer/Company uses internal codes for tracking their forms/documents, it can be put in the bottom right hand corner of the document page and can be bracketed so that the insurer can revise its internal form related number without requiring a re-filing.

### **D. Insurer/Company Name Not to be Bracketed**

Since all Oregon health insurance forms have to be filed separately for each specific Insurer/Company name, the insurer name cannot be bracketed on any forms. Even for an Application form, the insurer name cannot be bracketed. However, all applicable insurers, or legally related companies can be listed on the Application with boxes next to the name for checking/selection. The Insurer/Company's address can be bracketed so that it can be updated without having to

**II. EXPLANATION OF FILING REQUIREMENTS (continued)****D. Insurer/Company Name Not to be Bracketed (continued)**

re-file. Please note that when doing so, it's a good idea to bracket the address throughout the entire policy/certificate form (e.g., cover page and in the claims/proof of loss provisions) because, technically, any numerical or text that is not bracketed for variability cannot be changed without a new filing submission. Similarly, the Company officer signatures can be bracketed so that when officers change, the forms can be updated without requiring a re-filing.

**E. Form Name Not to be Bracketed**

The name of a Policy/Certificate coverage form, Application form, Rider form Endorsement form, et al, cannot be bracketed for variability. Oregon insurance laws require that the name of the form clearly identify the type of coverage being offered or provided. Therefore, the name/title of the form is reviewed for that purpose, and approved if it's sufficient and clear. Therefore, the name or title of the form cannot be bracketed for variability and cannot be changed without re-filing that form for prior approval.

The names for Riders that are optional, or the names of Benefits that are optional coverage within the policy form, can be bracketed on the Schedule of Benefits page of the Policy and Certificate forms, the Outline of Coverage form, and the Application. However, the bracketing needs to be explained in the Statement of Variability form, such as optional to the policyholder depending on the selected plan/portfolio or optional to the individual purchasing coverage. It's helpful, for faster review, to provide a copy of the Employer's Plan Benefits Chart so that the analyst can see the various options for coverage packages. Similarly, if coverage varies by Classes or Tier Levels, that information is helpful for faster review.

The Statement of Variability form should also clarify that the Rider is bracketed as either being included or not included, but the variable benefit amounts for that Rider need to be explained separately and that they won't be changed without re-filing and prior approval. Also see the Application Form portion of this explanation for more information regarding optional Riders.

A Rider form should not have a blank line or bracketed blank area for the effective date. The reason is that the effective date of the rider is either the same as the effective date of the coverage policy form, or different when the insurer allows it to be added after policy issuance (e.g. open enrollment results in insured person choosing to buy additional optional coverage).

If a form (e.g., Schedule Page of Policy or Application) has an optional rider name bracketed in the current filing, but that Rider was previously approved and not part of the current filing, then please provide the Oregon filing number under which that Rider was approved.

**II. EXPLANATION OF FILING REQUIREMENTS (continued)****E. Form Name Not to be Bracketed (continued)**

Also, remember that Riders, Endorsements, et al, cannot reduce or otherwise eliminate existing coverage. A Policy and/or Certificate coverage form (and corresponding Application form, if applicable) need to be filed as revised forms if the Company wants to reduce coverage and/or benefit amounts provided in a previously approved form.

Also, please remember that when a Rider form for a different type of coverage, such as Accidental Death and Dismemberment, is included in a filing submission, there are separate Product Standards that need to be completed and included.

**F. Association, Trust, et al**

If the Forms in the filing submission will be issued to an Association, Trust, et al, rather than to an Employer/Policyholder, then the forms need to be filed separately for that Association, and with the Transmittal and Product Standards for Association, Trust, et al. The Association or Trust Name cannot be bracketed, in addition to the Employer name being bracketed, unless the Association or Trust was previously approved for that form number.

To illustrate, the cover page of the policy could state something similar to, “[ABC Employer Group]”.

**G. Notice of Adverse Decision**

Some forms are submitted with language bracketed that explains benefits issued as different than benefits applied for. However, including that language when applicable is insufficient notice of adverse underwriting decision. ORS. 746.650 provides the form language and requirements for such a notice to the applicant.

**H. Table of Contents - Limited Bracketing**

In the Table of Contents portion of the policy or certificate form, only those provisions that are variable should be bracketed. As you know, several policy provisions are required in every health insurance coverage form (e.g., Definitions, Eligibility, Claims Payment, Claim Forms, Renewal Agreement, Right to Examine policy, Premiums, Reinstatement, Entire Contract Changes, Time Limit on Certain Defenses, Appeal procedures, Termination and Reinstatement, et al - see Oregon Product Standards for required provisions based on type of health insurance product and form). Therefore, required policy provisions are not variable because they need to always be included in the insurance contract. Accordingly, it's inappropriate and not allowable to bracket such provisions in the Table of Contents. However, depending on other provisions that are not required and variable as in or out of the contract, could impact the corresponding page for the required provisions. Therefore, the page number can be bracketed, if will differ for that reason. For example of bracketing, in the Benefits provision, the optional coverages can be bracketed for variability of in or out of the coverage

**II. EXPLANATION OF FILING REQUIREMENTS (continued)****H. Table of Contents - Limited Bracketing (continued)**

form, and that could affect the page numbers after that provision. For example of not bracketing, the Right to Examine policy provision must always be on the first page/cover page so the page number should not be bracketed in the Table of Contents page.

The Oregon rates and forms health insurance analysts have seen the Statement of Variability explanation that the entire table of contents page is variable, so that the page numbering can vary. As explained above, that is inappropriate because some policy provisions will always be in the policy form. The brackets can be around page numbers and certain provisions for variability, but not for the entire table of contents. For example, the cover page and Schedule of Benefits pages are non-variable page numbers.

**I. Brackets and Hypothetical Data**

Variable data needs to be identified by the use of brackets. Underlining is not an acceptable means for identifying variable information or data. Brackets around blank space or blank lines cannot be approved. Brackets need to include hypothetical data that is reasonable and realistic for the coverage and the product. Fixed charges and maximum charges (as opposed to maximum benefits) cannot be filed as variable. The bracketed numerical data needs to be consistent with the Actuarial Memorandum (for rate filings) and with the other forms (e.g., Outline of Coverage, Application, et al).

**J. Schedule of Benefits Page of Policy Form****a. Only the Variable Data Should Be Bracketed**

For example, the Schedule of Benefits page lists several general categories, Such as policy number and effective date. The categories are not variable, because they will always be stated on the Schedule of Benefits page. Therefore, the brackets will only be around the hypothetical data for those categories. For example, it could state, "Insured - [John J. Doe]"; "age - [35]"; et al.

As another example, if the description of the benefit is not variable, then it should not be bracketed. Only the variable data should be inside brackets. For example, if the coverage and benefit amount varies for "Day 1 through 10", "Day 11 and over" and "Day 31 and over" then those three quoted terms should not be bracketed because they are non-variable. Rather, the benefit amount of coverage for each of those three categories should be bracketed.

Also, since the benefit is always paid in dollar amounts, the dollar sign should technically not be inside the brackets.

**II. EXPLANATION OF FILING REQUIREMENTS (continued)****J. Schedule of Benefits Page of Policy Form (continued)****a. Only the Variable Data Should Be Bracketed (continued)**

Similarly, if the benefit is on a per calendar year, or per day basis, then that terminology should not be inside brackets because it is non-variable.

Similarly, should not bracket the language of “per Covered Person” because the amounts per insured are variable, whereas the benefit description of “per Covered Person” is non-variable.

The headings should not be bracketed because they are non-variable. For example, “Section 1: What’s Covered -- Benefits” is language that should always be included, and should therefore, not be bracketed. Similarly, “Section 2: What’s Not Covered -- Exclusions” is language that should always be included, and should therefore not be bracketed.

**b. Entire Page Not Variable and Not Bracketed**

Please note that it is inappropriate and not allowable to bracket the entire Schedule of Benefits page by putting a left hand bracket in the top left hand corner of the page and the right hand bracket in the bottom right hand corner of the page. The reason is that only some items are variable and several items, especially descriptions thereof, are non-variable.

**c. Range of Minimum and Maximum Numbers**

For numerical information, the range of minimum and maximum, and increments therein, need to be shown inside the brackets in the form, or explained in the Statement of Variability form. The range of minimum and maximum needs to be reasonable and realistic for the coverage and the product. Zero should not be used in a range of minimum and maximum values. If the benefit is possibly none, then rather than showing zero in the range, it should be listed separately, as an in or out optional benefit.

Also, if the variable benefits are only two amounts, then the use of “or” is appropriate, rather than a dash that implies a minimum to maximum range of amounts. For example, when the benefit/coverage amount variability is either \$50 or \$100, it’s not explicitly clear or accurate to state the following on the Schedule of Benefits page, “...at the rate of \$[50 - 100] per day...”  
The appropriate and clear statement is, “...at the rate of \$[50 or 100] per day...”

**d. Limited Frequency and/or Duration of Benefits**

If a particular benefit is limited to a certain frequency (e.g., Inpatient Hospital Physician Visit benefit limited to one per day; Outpatient Physician Visit benefit limited to 60 per calendar year), then the Schedule of Benefits page needs to clarify such frequency maximums, in addition to the dollar amount maximums.

**II. EXPLANATION OF FILING REQUIREMENTS (continued)****J. Schedule of Benefits Page of Policy Form (continued)****d. Limited Frequency and/or Duration of Benefits (continued)**

However, when the “Maximum Number of Visits per Calendar year” always applies to a particular coverage/benefit, then that language should not be bracketed because it should always be included in the explanation of benefits on the Schedule of Benefits page of the policy. In other words, the brackets would be around the number of services that can be filed as variable (with range of minimum to maximum numbers provided), but not around the explanation of the maximum (i.e., no brackets around “Maximum Services” and/or around “per Calendar Year”).

If some benefits don't have maximum benefit restrictions for frequency or duration, then the statement of “N/A” in the maximum frequency column of the Schedule of Benefits page should not be bracketed. In other words, when there is no maximum, “N/A” always applies, and is therefore non-variable and not bracketed.

**e. First Premium**

For health insurance products that require rate filings, the First Premium category on the Schedule of Benefits page should have a bracketed hypothetical dollar amount. The description of “First Premium” should not be bracketed, only the hypothetical dollar amount. Also, the hypothetical premium amount, as well as the frequency (i.e., premium mode, such as monthly) needs to be consistent with the other benefit information (e.g., benefit/coverage amount) and hypothetical data (e.g., Individual versus Family) on the Schedule of Benefits page, and consistent with the premium charges submitted in the Actuarial Memorandum.

**f. Dependent Benefit Amounts**

The amount(s) for dependent coverage shown on the Schedule of Benefits page need to be consistent with the range of amounts provided in the Statement of Variability form and the premium charges provided in the Actuarial Memorandum.

For example, the optional Rider for Accidental Death and Dismemberment (AD&D) could indicate that the insured's coverage is \$10,000, the dependent spouse (or domestic partner) is \$5,000, and the dependent child is \$2,500. The Statement of Variability might indicate that spouse and child are optional coverage, but no other amounts of coverage are indicated. Similarly, the Actuarial Memorandum provides premium charges for only those three amounts of coverage. Therefore, the spouse and child categories should be bracketed as variable coverage for dependents. However, the dollar amounts for spouse and child should not be bracketed because they are non-variable amounts, if coverage for them is purchased by the insured member.

**II. EXPLANATION OF FILING REQUIREMENTS (continued)****J. Schedule of Benefits Page of Policy Form (continued)****f. Dependent Benefit Amounts (continued)**

As another example, the optional Rider for Accidental Death and Dismemberment (AD&D) could indicate that: the insured's coverage ranges from \$10,000 to \$50,000; the dependent spouse (or domestic partner) coverage ranges from \$5,000 to \$25,000; and the dependent child coverage ranges from \$2,500 to \$12,500.

That example illustrates that it's common for the amount of dependent coverage for the spouse to be 50% of the insured's coverage, and for the child to be 25% of the insured's coverage.

However, the Statement of Variability needs to clarify that information when there are ranges shown on the Schedule of Benefits page. In other words, it's clear what the dependent percentages are compared to the insured's coverage at the minimum amount in the range and at the maximum amount in the range. However, it's not explicitly stated and clear that the incremental amounts within that range will always be 50% for spouse and 25% for child. The preferred way to explicitly clarify that information in the Statement of Variability is to list each increment amount of coverage for the insured and for each type of dependent. Please note that those options for coverage to select also need to be explicitly clear on the Application form(s).

**g. Realistic Range of Minimum and Maximum Amounts**

The range of minimum and maximum amounts, duration, and frequency need to be reasonable and realistic for the health insurance product, and for the optional coverage.

For example, the minimum of 1 day for the range of minimum to maximum days for the optional Daily ICU benefit on the Schedule of Benefits is not reasonable or realistic. The reason is that an individual person or an employer would not pay the additional premium to buy an optional benefit for ICU coverage if it provides coverage for only one day per calendar year.

As another example, it's typically not reasonable to have a range of benefit from \$100 to \$1,000,000. The reason is that such a huge range is not typically offered to all those who apply for a particular type of insurance policy. Also, the premiums developed (whether they are required filing or not) typically don't contemplate such a large range of benefit or coverage amounts.

**II. EXPLANATION OF FILING REQUIREMENTS (continued)****J. Schedule of Benefits Page of Policy Form (continued)****h. Number of Units as Variable**

Some health insurance policies are submitted with coverage and benefit amounts that are based on the number of units purchased.

When the Statement of Variability indicates that the "number of units is case-specific" for the insured member, it is too vague and non-descriptive. The reason is that the range of minimum and maximum number of units for each and every variable benefit/coverage amount on the Schedule of Benefits page needs to be explicitly stated and explained in the Statement of Variability form.

In other words, the premium charges developed by the Company/Insurer are based on the amount of dollar coverage provided for each benefit. The Company/Insurer also has underwriting guidelines that dictate the appropriate amount of coverage to offer for each type of coverage, depending on the type of insurance and the type of risk (e.g., age class).

**i. Description of Eligible Classes**

Please note that if there is bracketing around the Description of Eligible Classes on the Schedule of Benefits page in the Policy form, then the Statement of Variability form needs to provide the alternate Description(s) and Definition(s). Also, it's preferable to have the variable conditions and definitions for Eligible Classes in the Policy provisions, rather than on the Schedule of Benefits page, so that it is in the contract language, rather than only in the Schedule of Benefits.

If the Statement of Variability form indicates that language for Eligible Classes will vary by criteria selected by Policyholder, it is insufficient and incomplete. In other words, the Insurer's/Company's underwriting guidelines will stipulate the minimum and maximum parameters for acceptable risk.

For example, variable language could be inaccurately shown as, "[Students taking 3 or more credit hours who are physically and actively attending classes for at least 31 days after their Effective Date of coverage under this Policy.]" The reason that is inaccurate is because only the number of credit hours and the number of days are variable, rather than the entire statement, for a Student policy.

Therefore, the variable language should be accurately shown as, "Students taking [3-15] or more credit hours who are physically and actively attending classes for at least [31-90] days after their Effective Date of coverage under this Policy." In other words, bracket only the variable hours and days, and include the range of minimum and maximum range the insurer will allow the policyholder (school) to select from.

## **II. EXPLANATION OF FILING REQUIREMENTS (continued)**

### **J. Schedule of Benefits Page of Policy Form (continued)**

#### **j. All Variable Data Submitted**

It's inappropriate and insufficient filing information to use vague and non-descript terminology, such as "to allow for future changes", in the Statement of Variability form for information or data shown on the Schedule of Benefits page of the Policy form.

Other examples of insufficient explanation are:

1. "will remain in policy, but are subject to change"; and
2. "The number of days, the dollar amount and multiple amounts found on the remainder of that page are bracketed so that the Company may sell different levels of these benefits in the future."

The reason is that all Oregon health insurance policy forms require filing and prior approval. Therefore, all variable terminology/language and all variable numerical data need to be provided in the filing. Also, for health products that require rate filings, all premium charges need to be provided.

Obviously, the Company/Insurer can change the amounts of coverage offered, the number of days of maximum coverage, et al. However, those changes need to be filed for prior approval.

### **K. Variability Within Policy Provisions**

#### **a. Description of Eligible and/or Active Employees**

It's common for the Definition of Eligible and/or Active Employees to be indicated as variable contract language.

Some examples are:

1. The minimum number of hours worked per week in order to be considered an Active Employee;
2. The minimum number of employees required for the minimum participation requirements of a group policy (i.e., Eligible employees); and
3. The minimum number of hours worked per week in order to be considered a Full Time Employee.

The number of hours per week can be bracketed in the policy provision so that the definition of Active Employee can vary by policyholder/employer choice. However, the Statement of Variability form needs to provide the range of minimum and maximum number of hours per week that the Company/Insurer will allow an employer to choose within its underwriting guidelines.

For example, the Company/Insurer may not be willing to accept the risk of offering the coverage to employees who only work 10 hours per week. In that case, the minimum number in the range would be more than 10 hours, as determined by the Insurance Company.

**II. EXPLANATION OF FILING REQUIREMENTS (continued)****K. Variability Within Policy Provisions (continued)****a. Description of Eligible and/or Active Employees (continued)**

The number of employees for minimum participation requirements can be bracketed in the policy provision so that the policy provision for Minimum Participation can vary by policyholder/employer choice. However, the Statement of Variability form needs to provide the range of minimum and maximum number of employees for participation requirements that the Company/Insurer will allow as acceptable risk, based on the underwriting guidelines. For example, the Company/Insurer may not be willing to accept the risk of offering the coverage to a group that has less than 50% of eligible employees enrolled for coverage. In that case, then 50% would be the minimum number in that range of percentages, as determined by the Insurance Company.

The number of hours per week can be bracketed in the policy provision so that the definition of Full Time Employee can vary by policyholder/employer choice. However, the Statement of Variability form needs to provide the range of minimum and maximum number of hours per week that the Company/Insurer will allow an employer to choose within its underwriting guidelines. For example, the Company/Insurer may not be willing to accept the risk of offering the coverage to employees who are not Full Time because they work less than 30 hours per week. In that case, the minimum number in the range would be 30 or more hours, as determined by the Insurance Company. Otherwise, if only full time employees will be covered, then that portion of the provision should not be in brackets because it's required and therefore non- variable.

As related to the above three examples, if there is other language bracketed for variability in the policy provisions, then the Statement of Variability form needs to explicitly clarify the other language or requirements that are shown as variable.

On the other hand, if the definition of Eligible Employee has two options, such as active and full time, then those two requirements should not be bracketed, because they will always apply and always be part of the policy provision language.

Also, the variable language in the Eligible Employee policy provision needs to be consistent with the language on the Application and/or Enrollment form, the other policy provisions, the outline of coverage form, and the Actuarial Memorandum.

**II. EXPLANATION OF FILING REQUIREMENTS (continued)****K. Variability Within Policy Provisions (continued)****b. Probationary Period**

The Probationary Period policy provision can have variability, such as the number of days employed with the policyholder/employer. In that case, only the number of days would be bracketed on the form. Also, either in the form itself, or in the Statement of Variability form, the range of minimum and maximum number of days need to be provided. In other words, specify the shortest amount of time that the Insurance Company would allow a policyholder to choose as the probationary period (e.g., 1 day), and specify the longest amount of time that the Company would reasonably and realistically allow a policyholder to choose as a probationary period (e.g., one year).

**c. Eligibility Waiting Period**

The Policy provision for Eligibility Waiting Period can have variability, such as the number of days employed with the policyholder/employer. In that case, only the number of days would be bracketed on the form. Also, either in the form itself, or in the Statement of Variability form, the range of minimum and maximum number of days need to be provided. In other words, specify the shortest amount of time that the Insurance Company would allow a policyholder to choose as the eligibility waiting period and specify the longest amount of time that the Company would reasonably and realistically allow a policyholder to choose as an eligibility waiting period. Also, keep in mind that there are Oregon insurance laws and federal insurance laws that may stipulate certain parameters, depending on factors such as prior insurance coverage, and the type of health insurance policy.

**d. Eligible Dependent Definition**

The eligible dependent definition policy provision can have variability, such as the age of the dependent, and whether or not he or she is enrolled in school for a specified number of hours. In that case, only the age and the number of school hours would be bracketed on the form. Also, either in the form itself, or in the Statement of Variability form, the range of minimum and maximum age and the range of minimum and maximum number of school hours need to be provided.

In other words, specify the youngest and oldest ages and the lowest and highest number of school hours that the Insurance Company would either allow a policyholder to choose, or the insurer would realistically include in the contract requirements.

Also, keep in mind that there are Oregon insurance laws and federal insurance laws that may stipulate certain parameters, depending on factors such as prior insurance coverage, and the type of health insurance policy.

**II. EXPLANATION OF FILING REQUIREMENTS (continued)****K. Variability Within Policy Provisions (continued)****e. Cancellation and Grace Period**

The Cancellation and Grace Period policy provisions can have variability for the number of days. In that case, only the number of days should be bracketed. Also, either in the form itself, or in the Statement of Variability form, the range of minimum and maximum number of days need to be provided. In other words, specify the lowest and highest number of days that the Insurance Company would either allow a policyholder to choose, or the insurer would realistically include in the contract requirements.

Also, keep in mind that there are Oregon insurance laws and federal insurance laws that may stipulate certain parameters, depending on factors such as prior insurance coverage, and the type of health insurance policy.

**f. Complaint Hearing**

The Complaint Hearing policy provision should not have brackets around the statements of, “[If you request a hearing,] or [we]”. That language should always be included in the contract language.

**g. Foreign Services**

The Foreign Services policy provision should not have brackets around “[exchange rates...processed]”. We cannot allow open-ended language. If the Company wants to bracket only “[Wall Street Journal]”, then an alternate publication must be stated in the Statement of Variability form (it cannot be as vague as “another source”).

**L. Limitations and Exclusions**

Some Limitations and Exclusions cannot be bracketed as variable if they are not allowable exclusions under Oregon health insurance laws, or for that type of health insurance product. For example, the maximum pre-existing exclusion period is 6 months, so the 6 months needs to be stated, without brackets, because it isn’t variable. If the Insurer/Company wants the time period as an option of less than 6 months, then that option only (and not the 6) can be bracketed. If the Insurer/Company wants the option of not including it all, then the entire provision should be bracketed as in or out, and explained in the Statement of Variability as the option of the policyholder/employer, rather than having a 0 inside the bracketed number for the time period.

As another example, if the definition for Experimental or Investigational Medicine refers to approval by the Federal Drug Administration (FDA), then the Exclusions and Limitations cannot exclude Experimental or Investigational Medicine. The reason is that ORS 743A.062 doesn’t allow exclusion of a drug solely because it is not FDA approved, if prescription drug coverage is included in the coverage form.

**II. EXPLANATION OF FILING REQUIREMENTS (continued)****L. Limitations and Exclusions (continued)**

Also, if Limitations and Exclusions are bracketed, for decision and negotiation by the Policyholder/Employer, they need to be consistent with other policy provisions and the coverage and benefits shown on the Schedule of Benefits page of the Policy form and on Application form.

Also, please be advised that if the Termination Provision has a bracketed condition of eligible for Medicare coverage, it needs to be changed to Medicare enrolled. The reason is that only coverage received, and not eligibility for coverage, is appropriate for termination of existing coverage.

To illustrate, an insufficient explanation in the Statement of Variability form would be shown as, "All bracketed Exclusions - [as shown, or deleted in whole or part]".

First of all, brackets are not to be used in the Statement of Variability form, only in the coverage forms. Secondly, the Statement of Variability needs to clarify the circumstances for including or not including the exclusions. In other words, if some exclusions can be added or deleted at the option of the Policyholder, then those exclusions need to be identified and explained as such. Similarly, if some exclusions will be added or deleted according to the Insurer's/Company's underwriting guidelines, then those exclusions need to be identified and explained as such. Also, for the exclusions that have bracketed language within the bracketed exclusion, the Statement of Variability needs to explain the circumstances under which that portion is added or deleted from the language for that exclusion. Also, the Statement of Variability needs to clarify that language within the brackets won't be changed without re-filing with the Oregon Insurance Division.

**M. Extensive Bracketing and Policy Variations in Entire Separate Context**

Extensive bracketing is included in some forms filings. Sometimes the bracketing is so cumbersome (such as brackets inside of brackets), that it's difficult for the Oregon Rates and Forms analyst to read it from beginning to end and understand the coverage being provided. Therefore, in such cases, it would be helpful for the Insurer/Company to provide each version of the variable contract. For example, submit one contract that includes a set of certain benefits and exclusions, based on the plan selected by the policyholder/employer (e.g., Plan A); and submit another/second contract that includes another set of certain benefits and exclusions, based on the plan selected by the policyholder/employer (e.g., Plan B). By doing so, it will help to speed our review of the forms and the filing submission. Please be advised that for certain cases, if that was not done, and the bracketing is too difficult to comprehend, we may ask the Insurer/Company to submit each variation of the entire contract/policy form.

**II. EXPLANATION OF FILING REQUIREMENTS (continued)****M. Extensive Bracketing/Policy Variations in Separate Context (continued)**

Please note that a reasonable coverage plan needs to be provided. For example, if a vision policy is submitted, and all coverages are bracketed, it isn't really a complete vision plan. The reason is that it's reasonable that a bare minimum vision policy should include at least the eye examination and the choice of contacts or glasses (frames and lenses).

**N. Consistency With Actuarial Memorandum**

The Actuarial Memorandum should list the applicable forms in that filing, and the form numbers should not be bracketed.

Please also keep in mind that the Actuarial Memorandum needs to be consistent with the variability that's explained in the Statement of Variability form. For example, if the policy form has bracketing around the ambulance benefit as optional coverage within the contract, but the Actuarial Memorandum indicates that the ambulance benefit is provided on all policies and the rating contemplates that, then the ambulance benefit should not be bracketed in the policy form as variable coverage. Similarly, if the Actuarial Memorandum indicates only one benefit amount of coverage, rather than a range of benefit amounts, then the amount should not be bracketed as variable because the submitted rates contemplate one level of coverage or benefit amount.

If the Actuarial Memorandum includes the general statement of "possibly multiple units" and "may" be sold, then the filing submission does not provide specific or explicitly stated benefit amounts.

Please be advised that all the corresponding premium charges for each benefit amount need to be included in the filing, via the Actuarial Memorandum and/or Rate Sheets (for rate filings). In other words, if a range of benefit amounts is submitted as variable, then each benefit amount within that range needs to have premium charges filed (if a rate filing is required for that type of health insurance product filing). Providing the premium for only the most common benefit or for one benefit amount/plan is insufficient premium and rate information. Otherwise, provide the Oregon filing number under which rates and premium charges were previously filed and approved. If it was a paper filing (rather than SERFF), please submit a scanned or photocopy of the perforated version.

Also, if revised and/or new forms are submitted, and a rate filing is required for that type of health insurance product, then the revised form filing needs to address the issue of potential impact to the previously filed rates, premium charges, and Actuarial Memorandum. For example, if an optional Rider is being filed as new, then the corresponding premium charges need to be filed, even if the premium charges for the base policy are not being revised.

**II. EXPLANATION OF FILING REQUIREMENTS (continued)****O. Application Form - Unique/Other Requirements****a. Only Variable Items are Bracketed**

The language and descriptions that will always be on the Application should not be inside brackets because they are non-variable.

For example, Name, Date of Birth, et al.

Insurer identification as a member of a group of insurance companies should not be bracketed.

There should not be any brackets around the Yes and No boxes on the Application form because there is no variability, the choice/answer is always either yes or no.

**b. Look Back Years**

If the number of look-back years applicable to specified questions is bracketed on the Application form, then the range of minimum and maximum number of years needs to be inside those brackets or explained on the Statement of Variability form.

**c. Premium Modes**

Since the Premium Modes are specific to the policy, the ones listed on the Application need to be consistent with the modes listed in the Actuarial Memorandum and corresponding modal premium charges.

**d. Class Basis**

If the Class Basis for Premium Charges is based on age, it's inappropriate to bracket the age portion on the Application form.

**e. Other**

It's unacceptable to list "Other" with brackets and a blank line on an Application form. Each and every variable needs to be submitted for prior approval, via the language and numerical information provided in the Statement of Variability form.

**f. Eligible Member**

It's unacceptable to list "Eligible Member" with brackets and a blank line on an Application form. Each and every variable needs to be submitted for prior approval, via the language and numerical information provided in the Statement of Variability form .

**g. Other Insurance**

Other insurance information or replacement information should not be bracketed for variability on the Application form because it should always be included (i.e., non-variable and required).

**II. EXPLANATION OF FILING REQUIREMENTS (continued)****O. Application Form - Unique/Other Requirements (continued)****h. Plan Election**

Applications commonly have plan election portions, because there are various coverages, or packages of coverage, that are offered. In those cases, the bracketing needs to be explicitly clear to the applicant (as to what options he or she has, based on specified criteria). Also, the plan options need to be consistent with the Policy and Certificate forms (including Schedule of Benefits page) and with the Actuarial Memorandum.

**i. Riders**

Please be advised that Riders that are optional should not be listed/printed on the Application form until after they have been filed and approved for use in Oregon. If the Rider form was submitted as a new form in a filing at the same time (concurrently) that the Application form was submitted in a separate filing as a revised form, then the Rider form needs to be approved either prior to or in conjunction with (concurrently) approval of the Application form. Due to prior approval requirements, "Other" used for listed Riders on the Application is inappropriate. A rider form must be filed and approved before it can be listed on the Application. Therefore, only the specific name of previously approved Rider forms should be listed on the Application.

**k. Insurer Name, Company Marketing Logo, and Third Party Administrator**

The Company/Insurer name that is on the Application forms being filed cannot be bracketed for variability because health insurance forms are submitted and approved for each insurance Company name.

However, the Company's marketing logo can be bracketed, because it can be changed without re-filing of the form, and is explained/identified in the Statement of Variability form.

Also, the name of the Third Party Administrator can be bracketed on the Application form because it can be changed without re-filing of the Application form.

**l. Premium for Rate Filings on Application**

The Application form that is included with a rate filing submission, or which will be used with health insurance products that require rate filings, needs to include a hypothetical premium amount, rather than a blank line or a blank space. Inaccurate example: "Weekly Premium \$ \_\_\_\_\_"

Accurate example: "Weekly Premium  \$[3.40] ".

Also, the hypothetical premium amount needs to match the hypothetical premium amount on the Schedule of Benefits page of the Policy form, and the premium charges provided in the Actuarial Memorandum.

**II. EXPLANATION OF FILING REQUIREMENTS (continued)****O. Application Form - Unique/Other Requirements (continued)****m. COBRA**

There should not be any brackets around the "We agree..." portion or the "COBRA..." portion of the application form. The reason is that those explanations should always be on the Application form for certain types of health insurance coverage.

**n. Dependent Benefit Amount**

If the dependent benefit amount is variable, then it needs to be explicitly clear on the Application form what amounts of coverage can be selected and purchased.

**o. Evidence of Insurability**

If Evidence of Insurability is bracketed on the Application form, then it needs to be explicitly clear to the applicant which questions need to be answered and which questions do not apply when there is no Evidence of Insurability requirements. That is especially true of medical questions.

Please note that Evidence of Insurability for group insurance is allowed for only the specific circumstances of:

1. Late Enrollees;
2. Increases to coverage/benefit amounts; and
3. Reinstatement due to non-payment of premium.

It is preferable for the Company/Insurer to have a separate Application form for late enrollees, increase of coverage, and reinstatement of coverage.

Also, the Actuarial Memorandum needs to explain the Company's Underwriting Guidelines for Evidence of Insurability and the requirements for answering certain questions. In other words, does the Evidence of Insurability and corresponding questions only apply to late enrollees? If it is that clear and simple, then it's reasonable to state that right on the Application form and not bracket those portions.

**p. Fraud Warning on Application**

Fraud Warning on the Application form can be bracketed for variability of states. However, the language for the Oregon fraud warning cannot have variable language, unless it still complies with Oregon Insurance Division Bulletin 98-5.

When the Application has fraud language for "All Other States", and there isn't a specific warning for Oregon, then "All Other States" includes Oregon.

Do not bracket the important explanation and information from around the statement, "(Please review the notice that applies in your state.)"

**III. SEPARATE AND ADDITIONAL APPLICATION PRODUCT STANDARDS**

Please remember that when an Application form is included in a filing submission, there are separate and additional Product Standards for Health Applications that need to be completed and included in the filing.

**IV. MANDATED BENEFITS COVERAGE NOT TO BE BRACKETED**

Please be advised that some contract language is mandated and therefore is not allowed to be bracketed for in or out of the coverage or other forms because it is required language. For example, the 2007 Oregon legislature passed House Bill 2007 that requires Domestic Partnership coverage equivalent to Spouse coverage, for all health insurance policies. Therefore, the language for Spouse, Dependent, et al, cannot have "Domestic Partner" bracketed for variability or in/out of coverage forms or Application forms, regardless of the policyholder's preference or negotiation with the insured. As another example, 2007 Oregon HB 2348 requires equivalent coverage of alcoholism and substance abuse for all individual health insurance policies, other than disability income, so the coverage cannot be bracketed as variable and the benefit amount cannot be bracketed as variable, as compared to the benefit amounts for other conditions. Similarly, cannot have condition/coverage as bracketed in the exclusions because it cannot be a choice to exclude in Oregon.

Depending on the type of health insurance product, when mandated coverage is required, it cannot be bracketed as optional or variable coverage. For example, an Oregon Health Benefit Plan requires pap smears, mammograms, et al, so those coverages cannot be bracketed as variable coverage. There are several other mandated coverages (e.g., prostate examinations) and mandated providers (e.g., nurse practitioner), depending on the type of health insurance policy. The mandate matrix is available on our web site. It is labeled, "Health Insurance: Required Reimbursements in Oregon Statute".

**V. CERTIFICATION OF NO OTHER REVISIONS**

Since Oregon health insurance forms require prior approval, it's beneficial for the insurer to indicate in the Statement of Variability form that the Company is certifying that any change to a variable item will be submitted for approval prior to implementation. Additionally, please be advised that Oregon Insurance Division Bulletin 2006-5, General Filing Instructions for Filing Policy Forms and Rates, item #7, states, "Versions of approved forms issued within the variables approved in the filing do not need to be refiled." Therefore, any variables that the insurer wants to change, and that were not previously submitted and approved, require a new filing submission for revised forms and/or rates.

When language is bracketed because it's either in or out of the policy, based on the policyholder choice (i.e., plan selection), then the Statement of Variability form needs to clarify that. Also, the Statement of Variability form needs to clarify that the language inside those brackets won't be changed without re-filing and prior approval or revisions.