STATE OF MONTANA
Procedure and Filing Guidance for Approval of Variable Text

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I. General Guidelines

A. <u>Purpose and Effective Date</u>

Insurers should comply with the following guidelines when filing for approval of policy forms that include variable material.

The purpose of this guidance is simply to clarify and formalize the long-standing position of the Department regarding the use of variable material in insurance forms.

B. <u>Montana Standards Regarding Variable Text</u>

Variable text is only permitted if it is indicated on the filed form by brackets and all variable ranges or options, along with detailed explanation of when each would be used, are included in the Statement of Variability (SOV) and approved by the Department. The range of variables may be numerical values (e.g., Bonus of 1% to 5%) or the list of all possible alternative language or items. Any language not approved in the Statement of Variability cannot be used without filing the additional language for approval. Any range of numerical values and any range/list of alternate variable text must be reasonable and realistic.

The Statement of Variability must state the specific conditions under which each variable amount/item may change. For example, language such as "will be in or out" is not acceptable. For specific language that is variable (e.g., Tax Qualified and Non Tax Qualified versions), the exact language, as it will appear on the form that is actually issued to the consumer, along with the explanation for language variability, need to be included in the Statement of Variability.

Any change in the information contained in the Statement of Variability is considered to be a change to the form to which the statement applies and an Informational filing is to be made on the Statement of Variability for approval.

C. <u>Applicable Montana Statutes</u>

33-1-501, MCA, all forms delivered or issued for delivery in Montana must be filed and approved prior to use.

33-1-502 stipulates the grounds for disapproval: (2) contains or incorporates by reference, where the incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions and conditions that deceptively affect the risk purported to be assumed in the general coverage of the contract, including a provision in a casualty insurance form permitting defense costs within limits, except as permitted by the commissioner;

D. <u>Exceptions for Certain Common Changes</u>

The Department also recognizes the need for timely implementation of routine changes so the following items are allowed to be denoted as variable text even though replacement text is not available.

❖ Change of company or service center contact information (address, telephone number, e-mail address, internet address)

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❖ Fund changes for variable life insurance and variable annuity products.
❖ Logo change

E. If Statement of Variability is Not Included

> If ~~the~~ a form filing, which includes text denoted as variable, is submitted to the Department without a Statement of Variability then the form will receive an automatic objection and review will not be started until provided. If you cannot provide the SOV in a timely manner the filing may be disapproved and will require the form to be resubmitted for approval.

II. Submission Requirements
General Requirements for Submission of Statements of Variability (SOVs):

1) It is not necessary for the Statement of Variability to have its own form number. If you choose to give the Statement of Variability its own form number, the Department will consider it to be only for your internal use.

2) Variable material ~~should~~**must** be denoted in square brackets [ ]. The Statement of Variability should clearly indicate that text shown within square brackets is variable.

3) Each instance of variable text needs to be bracketed on the form filed for review. Additionally, the Statement of Variability needs to include an explanation of the variability provided in the order that it appears on the form being filed (i.e., by page number and paragraph).

4) All variations appearing in actual issues of any forms must be included in the Statement of Variability. The use of any other variations would be considered to be the use of an unapproved form.

5) Variables may be allowed within state mandates but only when accompanied by a statement of variability verifying that the variability will never be less than required by Montana Code.

6) If contract language is bracketed because it will either be in or out of the coverage or other form, then an explanation of the circumstances of when it will be included needs to be provided. For example, if an optional benefit rider is 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 is optional. Further, the SOV will clarify if it is optional to the insured, to the policyholder, or to the insurer.

7) General and vague explanations, and without specific page references, are insufficient. For example, the explanation of "may be replaced with something else", "will be in or out", "as necessary", "as negotiated by the policyholder", or "will comply with statutory requirements" are too vague. The specific conditions and circumstances under which each variable item may apply need to be explained in detail.

7) Ideally, a separate Statement of Variability should be submitted for each form. The form number to which the SOV applies should be indicated at the top of this statement. For example: "Statement of Variability for form: XYZ-123". If the statement is used for more than one form, each form number should be clearly indicated at the top of the statement.

9) Extensive bracketing is included in some forms filings. Sometimes the bracketing is so cumbersome (such as brackets inside of brackets), that it is difficult to read it from beginning to end and understand the coverage being provided. Eliminating all unnecessary bracketing is best to be done before submitting.

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Optional coverages/benefits (such as items that could be issued as standalone or for a different type of coverage) need to be in a rider, endorsement or amendment form and be listed on the Schedule Page of the form it is attached to. Items such as ~~Waiver of Premium~~, Accidental Death & Dismemberment, Accelerated Benefits, etc. ~~are~~are -considered forms that may be issued as standalone.

10) The insurer should indicate in the Statement of Variability that the company is certifying to the following:
   ❖ The final form issued to the consumer will not contain brackets denoting variable text.
   ❖ Any variable text included in this Statement of Variability will be effective only for future issues.
   ❖ The use of variable text will be administered in a uniform and non-discriminatory manner and will not result in unfair discrimination.
   ❖ Only text included in this Statement will be allowed to be used on the referenced forms received by consumers.
   ❖ Any changes to variable text or permissible range of values will be submitted for approval prior to implementation.

11) Requirements for Electronic Filings
   When fFiling through the System for Electronic Rate and Form Filing (SERFF), the Statement of Variability should be attached for each form to which it applies under the "Supporting Documentation" tab.

III. Permissible Variable Text

General
1) Company logos: company logos are generally allowed to be denoted as variable text. If the company logo is denoted as variable text, the Department must be notified of a change in the logo through an informational filing. Please note that the company name is not allowed to be changed unless previously approved by the Department.

2) Company/Service Center Contact Information. Home office, administrative office and service office addresses, telephone numbers, e-mail addresses, officer signatures, and internet address may be denoted as variable text. The company is required to notify the Department if the contact information changes. Additionally, the company should submit an informational filing if the company or service center contact information is changed.

B. Table of Contents
1) In the Table of Contents portion of the policy or certificate form, only those provisions that are variable should be bracketed. Required policy provisions are not allowed to be variable because they always need to be included in the insurance contract. Accordingly, it is inappropriate and not allowable to bracket such provisions in the Table of Contents. However, other provisions that are not required and may be included or excluded from the contract, could impact the corresponding page for the required provisions those numbers can be bracketed and explained on the Statement of Variability. It is not allowable to have the entire table of contents page denoted as variable.

C. Specification or Data Pages / Schedule of Benefits Page
1) The form should not denote the entire specification or data page or entire sections of the specification or data page as variable. While policy-specific information may be denoted as variable, the section of the data page for inclusion of that information should not be denoted as variable.

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2) Hypothetical data. John Doe and other information that varies by customer. The hypothetical data should be bracketed or otherwise denoted as variable. For example, "Insured – [John S. Doe]"; "age – [35]". The Statement of Variability should clearly indicate that this information varies with each consumer.

3) **Please ensure that any range of values do not violate Montana law**.

IV. Impermissible Variable Text

1) There must be a base benefit in all policy/contract that isn't subject to variability.
2) The form number in the lower left hand corner of the policy form.

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