

**OREGON STATE BAR**  
**Legislative Proposal**

**RE: DHS applications for waiver of federal statutory or regulatory requirements**

**FROM: OSB Health Law Section**

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This bill would amend ORS 411.595.

**1. PROBLEM PRESENTED**

ORS 411.595 was enacted in 1983 to assure the public an open process whenever the Department of Human Services applies for a waiver of federal statutory or regulatory requirements. This statute requires the Department of Human Services, following the submission of any application for waiver and prior to implementation, to “conduct a hearing in accordance with ORS 183.310 to 183.550 regarding the waiver application or application for waiver renewals.”

The statute, however, fails to fulfill its purpose because once an application for waiver is submitted, changes lie in the hands of the Center for Medicare and Medicaid Services at the U.S. Department of Health and Human Services. Any public input at that point in time is virtually meaningless.

**2. SOLUTION**

The solution is to make minor wording changes to the statute to provide public hearings on the application for waiver *prior* to its submission. The statute also needs clarification of the type of hearing. It currently provides for hearings “in accordance with ORS 183.310 to 183.550” which includes both rulemaking hearings and contested case hearings. Presumably the rulemaking-type hearings were intended.

**3. PUBLIC POLICY IMPLICATION**

As the legislature originally intended, this will provide a forum for members of the public to express support or opposition to provisions of a waiver application at a point in time when such input is meaningful and can be acted upon by the Department. It will promote public trust in government and legal processes.

**4. SUGGESTED LANGUAGE**

Procedure where waiver of federal requirement involves policy change.

(1) As used in this section “policy change” includes any change in the operation of public assistance programs that affects recipients adversely in any substantial manner, including but not limited to the denial, reduction, modification or delay of benefits. “Policy change” does not include any procedural change that affects internal management but does not adversely and substantially affect the interest of public assistance recipients.

(2) The Department of Human Services may submit applications for waiver of federal statutory or regulatory requirements to the federal government or any agency thereof. ~~Following~~ *Prior to* the submission of any application for waiver *or renewal of a waiver* that involves a policy change~~, and prior to implementation~~, the department shall do the following:

(a) Conduct a hearing in accordance with ORS ~~chapter 183~~ 183.335 regarding the waiver application or application for waiver renewals ~~and the proposed rules~~;

(b) Prepare a ~~complete summary~~ *record* of the testimony and written comments received at the hearing;

(c) Submit the application for waiver or application for waiver renewals, *including any amendments made in response to the public hearing* ~~involving a policy change~~ to the legislative review agency, as defined in ORS 291.375, and present the ~~summary~~ *record* of testimony and comments described in this section; and

(d) Give notice of the date of its appearance before the Emergency Board or the Joint Committee on Ways and Means in accordance with ORS 183.335, and before the Family Services Review Commission. [1983 c.299 §§2; 1987 c.3 §§14; 2001 c.900 §§90]