411-085-0040 Alternative Methods, Waivers  
(Effective 08/01/2004)

(1) APPLICATION. While all nursing facilities are required to maintain compliance with The Department's rules, these requirements do not prohibit the use of alternative concepts, methods, procedures, techniques, equipment, facilities, personnel qualifications, or the conducting of pilot projects or research. Requests for waivers to the rules must:
(a) Be submitted to The Department in writing;
(b) Identify the specific rule for which a waiver is requested;
(c) Describe the special circumstances relied upon to justify the waiver;
(d) Describe what alternatives were considered, if any, and why alternatives (including compliance) were not selected;
(e) Demonstrate that the proposed waiver is desirable to maintain or improve the quality of care for the residents, will maintain or improve resident potential for self-direction and self-care, and will not jeopardize resident health and safety; and
(f) Identify the proposed duration of the waiver.

(2) APPROVAL PERIOD. Upon finding that the licensee has satisfied the conditions of this rule, The Department may grant a waiver for a specified period of time, not to exceed a period of three years.

(3) REVOCATION. The Department may revoke any waiver or variance issued by The Department immediately upon finding that the facility's operation under the waiver or variance has endangered, or if continued would endanger, the health or safety of one or more residents.

(4) IMPLEMENTATION. The facility may implement a waiver only after written approval from The Department.

Stat. Auth.: ORS 410 & ORS 441  
Stats. Implemented: ORS 441.055 & ORS 441.615

411-087-0030 Waivers for Physical Environment Requirements (Effective 1/1/92)

(1) REQUEST. Any request for a waiver of these building requirements (OAR Chapter 411, Division 087) shall comply with OAR 411-085-0040 (general waiver requirements), except as otherwise provided by this rule.

(2) DURATION. The Division may grant waivers for building requirements for a period not to exceed ten years; however, such waiver may be rescinded if the Division determines continuance of the waiver has a potential adverse impact on resident well-being, privacy or dignity.

Stat. Auth.: ORS 410  
Stats. Implemented: ORS 441.055 & 441.615
(4) BATHTUBS and SHOWERS.
(a) Number. Bathtubs or showers shall be provided at the rate of one for every 25 beds which are not otherwise served by bathing facilities within the residents' rooms.
(b) Whirlpool Tubs. In addition to the requirements listed in subsection (4)(a) of this rule, at least one therapeutic whirlpool tub designed for disabled assist shall be provided on each floor. The facility shall have at least one therapeutic whirlpool-type tub for every 60 beds.
(c) Privacy. Each tub or shower shall be in an individual room or enclosure which provides space for the private use of the bathing fixture, for drying and dressing, and for a wheelchair and an attendant.
(d) Shower Dimensions.
(A) Each facility shall have at least one shower that is a minimum of 4 feet square, without curbs, and designed to permit use by a wheelchair resident with an assisting attendant.
(B) Showers for ambulatory residents shall be not less than 4 feet by 3 feet.
(e) Non-slip Surface. Shower bases and tubs shall provide non-slip surfaces.
(f) Toilet/sink access. A toilet and handwash sink shall be accessible to each bathtub/shower without going through the central corridor.

(5) EXCEPTIONS.
(a) Whirlpool Tubs. The number of whirlpool tubs in facilities which have been continuously licensed since January 1, 1992 without modification of number or type of bathtubs/showers shall be considered to be in compliance with subsection (4)(b) of this rule unless otherwise provided by OAR 411-087-0010. Facilities which lack the required number of therapeutic tubs shall have a hospital-type tub on each floor which does not have a therapeutic whirlpool tub. As of January 1, 2000, all facilities shall have at least one therapeutic whirlpool tub (waivers may be provided on a case-by-case basis).
(b) Showers. Facilities which have been continuously licensed since January 1, 1992 shall not be required to meet the dimensions or design criteria defined in subsection (4)(d) of this rule or requirements for dressing and drying areas adjacent showers and tubs.
(c) Toilets. Facilities continuously licensed since January 1, 1992 shall be exempt from section (2) of this rule unless otherwise provided by OAR 411-087-0010.
(d) Handwash Sinks. In facilities with rooms continuously licensed since January 1, 1992, without meeting subsection (3)(a) of this rule, such rooms shall be exempt from this requirement unless otherwise provided by OAR 411-087-0010.
(e) Spouts, Faucet Handles. Facilities continuously licensed since January 1, 1992 without meeting paragraph (3)(a)(E)) of this rule shall be exempt from such paragraph unless the spouts/faucets are replaced or otherwise provided by OAR 411-087-0010.
(f) Accessibility. Facilities continuously licensed since January 1, 1992 without meeting subsection (3)(a) of this rule shall be exempt from such subsection unless the spouts/faucets are replaced or otherwise provided by OAR 411-087-0010.

Stat. Auth.: ORS 410
Stats. Implemented: ORS 441.055 & 441.615 411-