411-085-0040 Alternative Methods, Waivers

(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.

Nursing Services: Staffing

(3) MINIMUM STAFFING, GENERALLY. Resident service needs must be the primary consideration in determining the number and categories of nursing personnel needed. Nursing staff must be sufficient in quantity and quality to provide nursing services for each resident as needed, including restorative services that enable each resident to achieve and maintain the highest practicable degree of function, self-care and independence, as determined by the resident's care plan. Such staffing must be provided even though it exceeds other requirements specified by this rule or specified in any waiver.
(4) MINIMUM LICENSED NURSE STAFFING.

(e) The facility must have a licensed charge nurse on each shift, 24 hours per day.

(C) Section (4)(e) of this rule may be waived by the Seniors and People with Disabilities Division (SPD). The request for waiver must comply with OAR 411-085-0040 and must be reviewed annually. This waiver shall be considered by SPD if the facility certifies that:

(i) It has been unable to recruit appropriate personnel despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities);

(ii) The waiver must not endanger the health or safety of residents; and

(iii) A RN or physician is available and obligated to immediately respond to telephone calls from the facility.

411-087-0030 Waivers for Physical Environment Requirements

(1) Request. Any request for a waiver of these building requirements (OAR 411, division 087) shall comply with OAR 411-085-0040

(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.

(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);