



**Division of Provider Services
and Quality Assurance**

Office of Long Term Care

<http://humanservices.arkansas.gov/dms/Pages/oltcHome.aspx>

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MEMORANDUM

LTC-A-2019-06

TO: Nursing Facilities; ICFs/MR 16 Bed & Over; HDCs;
 ICFs/MR Under 16 Beds; ALF Level I; ALF Level II;
 RCFs; Adult Day Care; Adult Day Health Care;
 Post-Acute Head Injury Facilities; Interested Parties;
 DHS County Offices

FROM: Craig Cloud, Director, Division of Provider Services & Quality Assurance

DATE: August 13, 2019

RE: Advisory Memo – Clarification of ADA regulation for Long Term Care Facilities

A handwritten signature in blue ink, appearing to read "Craig Cloud".

As you know, the Arkansas Department of Human Services is dedicated to making sure all Arkansans get the healthcare they need. It has recently been brought to my attention that some providers have been interpreting OLTC regulations in a manner that is inconsistent with federal law.

Specifically, I am referring to OLTC regulation 309.1, which states that a facility must have admission policies which require applicants to "not have a communicable disease that poses a direct threat to the health or safety of other residents or staff." Apparently, some providers are interpreting this regulation as a blanket prohibition on accepting residents with conditions such as HIV. However, when read in conjunction with the Americans with Disabilities Act ("ADA"), this regulation does not act as a blanket prohibition. If a condition constitutes a "disability" under the ADA and it is within a facility's ability to make a reasonable accommodation for that condition, then the ADA requires that this accommodation be made.

All OLTC regulations are subordinate to federal law and must be interpreted in a manner consistent with federal law. It would be a good idea for all providers to consult with their legal counsel to ensure that their facility policies and application of those policies are compliant with the ADA.

Please do not hesitate to reach out to me should you have any questions.

If you need this material in alternative format such as large print, please contact our Americans with Disabilities Act Coordinator at 501-682-8307 (voice) or 501-682-6789 (TDD).

CC/lp