



# Wisconsin Elections Commission

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**DATE:** March 4, 2021

**TO:** All Wisconsin Election Officials

**FROM:** Meagan Wolfe  
Administrator

**SUBJECT:** SVD Voting for the April 6, 2021 Spring Election

The guidance provided in this document was approved by unanimous vote of the Wisconsin Elections Commission during a public meeting on March 2, 2021, and is being issued in conjunction with the promulgation of an Emergency Administrative Rule.

**Previous COVID-19 pandemic guidance regarding SVD visits to nursing homes and other care facilities for the 2020 elections and the February 2021 Spring Primary is now expired and is no longer in effect. This guidance has been approved by the Commission, but clerks may also wish to consult with their own legal counsel on how to implement this guidance in their municipality.**

The motion passed by the Commission is as follows:

Specific to the April 6, 2021 election, Clerks shall contact all eligible facilities in their municipality no later than March 12, 2021 to determine whether special voting deputies will be admitted. If SVDs are permitted, SVDs should schedule their SVD visits immediately in the allowable SVD period and consolidate such visits to the greatest extent possible, so that there are at least 14 days prior to the election for any voter who does not vote with SVD assistance may receive and return their absentee ballot. These visits should be scheduled no later than March 19, 2021. SVDs and observers must comply with any requirements of the care facility and of state and local health departments to conduct the visits safely, recognizing the importance of preserving a resident's right to vote. If the clerk is informed that SVDs will not be permitted entry to the facility, the SVDs should schedule two tele-visits with the administrator of the facility. These tele-visits should be scheduled immediately in the allowable SVD period so that if attempted visits are denied that there are at least 14 days prior to the election for the voter to receive and return their absentee ballot. SVDs should use the tele-visit to confirm that SVDs are not permitted to enter the facility. If SVDs are denied access to the facility, then clerks must proceed to the provisions of Wis. Stat. §6.875(6)(e) and send voters their ballots.

Wisconsin municipal clerks will be required to send Special Voting Deputies (SVDs) to qualified nursing homes and care facilities prior to the April 6, 2021 Spring Election. The Wisconsin Department of Health Services (DHS) has indicated that COVID-19 rates in many Wisconsin counties will allow for the possibility of visitor access at facilities normally served by SVDs, meaning that it may be possible to deploy SVDs to these facilities. This document will provide suggestions to consider when planning SVD visits, information regarding procedures to ensure a safe voting experience for voters, SVDs and care facility staff, and answer questions WEC staff have received from local election officials. It will also provide information about how SVDs can

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meet the statutory obligation to make two visits to each qualified care facility, in the event a facility is still not open to visitors, prior to mailing absentee ballots to registered voters with a valid absentee ballot request on file.

### **The Basics**

- State law requires municipal clerks to dispatch SVDs to qualified nursing homes and care facilities to conduct absentee voting prior to each election.
- Due to visitation policies dictated by COVID-19 infections rates and concerns for virus spread, facilities normally served by SVDs were not available for SVD visits for recent elections.
- The COVID-19 rates in most Wisconsin counties have now improved enough to make SVD visits a possibility.
- Clerks shall contact all eligible facilities in their municipality no later than March 12, 2021 to determine whether special voting deputies will be admitted.
- State statutes require, and the Commission concurs, that clerks must dispatch SVDs to care facilities for the two required visits, even if the clerk has been unable to confirm access to the facility or has been told that access will be denied. This is based on a legal opinion obtained by the Joint Committee on the Review of Administrative Rules.
- If the clerk is informed that SVDs will not be permitted entry to the facility, the SVDs should schedule two tele-visits with the administrator of the facility. These tele-visits should be scheduled immediately in the allowable SVD period so that if attempted visits are denied there will be at least 14 days remaining before the election to allow the voter time to receive and return their absentee ballot by mail.
- Clerks will have to coordinate any possible SVD visits in consultation with facility administrators, local public health officials, their SVDs, and observers from political parties to determine facility availability and any required public health procedures. The mechanics of how SVD voting should proceed will also have to be coordinated in accordance with facility and public health guidelines that may impact both the number of residents able to congregate at one time and the ability to conduct SVD voting using room visits.
- Information regarding SVD procedures can be found in the Absentee Voting in Residential Care Facilities and Retirement Homes manual: <https://elections.wi.gov/publications/manuals/nursing-home-absentee>

### **Tips for Planning for SVD Visits:**

#### **1. Work with care facility to determine its visitor policies for SVDs and observers.**

We recommend that clerks contact care facilities as soon as possible to determine whether they will accept SVDs, what their visitor policies are, and if there are any precautions the SVDs can take to protect public health. It is a good idea for clerks to begin planning whether SVDs will be able to enter the facility with additional steps, or if they will be prohibited altogether.

In order for SVD voting to occur, observers must also be allowed into the facility, which may further complicate SVD visits. While observers are statutorily limited to one election observer from each of the two recognized political parties whose candidate for governor or president received the greatest number of votes in the municipality at the most recent general election per SVD team (Democratic and Republican parties for the April 6, 2021, election), the SVDs cannot conduct voting if the care facility is not allowing observers to enter.

Observers must wear face coverings and may be required to follow additional procedures required by the care facility. We suggest SVDs conduct voting in large spaces in the care facility and have SVDs stationed at least six feet away.

Movement throughout the facility may also be restricted, which could impact the ability of SVDs to make room visits to administer ballots to residents who cannot travel to common areas where voting normally takes place. This may result in more voters than usual who are not available during the two visits and would require their ballot to be sent to them by mail instead as permitted by Wis. Stat. § 6.875(6)(e).

## **2. Schedule visits early in the SVD voting cycle to ensure timely delivery of mailed ballots if necessary.**

Under Wis. Stat. § 6.875(6)(e), Special Voting Deputies must make two attempts to visit the care facility before clerks begin mailing the ballots. For the Spring Election, SVDs may start visiting the care facility on March 15, 2021. The Commission has directed that clerks should reach out to the care facility by March 12 to begin planning dates to visit and try to plan those dates as close as possible to March 15. There is no required time in between visits, so it is possible to plan a visit on March 15 and March 16 and then mail the ballots after the second visit to residents who were unable to vote with an SVD. It is important that SVD visits are planned early so if they are not admitted, voters will have enough time to receive and return their ballot before Election Day.

As soon as the dates and times are selected (but not less than five days), clerks must prepare and post a notice at the facility five working days before the visit. The notice must also be provided to news media who have filed a written request for such notice, the municipality's official newspaper or, if none exists, to a news medium likely to give notice in the area. Finally, the notice must also be placed on the municipality's website, if any. Wis. Stat. § 6.875(6)(a). Notice of multiple visits to a facility may be made and posted at the same time. We suggest that the notice includes additional information about the visit, so residents and potential observers are aware of any special instructions associated with the visits. For example, if care facility policies will prohibit the SVDs from entering, note that it is likely that SVD voting will be attempted, but will not occur at the facility, and ballots will be mailed after the two attempted visits.

## **3. Work with each care facility to determine appropriate public health procedures for visits.**

There may be precautions that SVDs and care facilities are able to take to promote health and allow entry to the care facility. Some potential options that should be discussed when planning SVD visits with care facility administrators are listed below. Some of these items, such as quarantine and vaccination requirements, would be entirely optional.

- Moving SVD voting to larger spaces within the care facility to promote social distancing.
- If weather permits, holding SVD voting in outdoor areas.
- SVD and observer quarantining prior to entering the care facility.
- Temperature checks and health assessments prior to entering the facility.
- Getting the COVID-19 Vaccine.
- Negative COVID-19 Test(s) prior to entry.
- Wearing masks, face shields, gloves, or other PPE as required by the facility.
- Scheduling voters in groups so that all residents who wish to vote are not required to be in common areas at the same time.

In addition, facilities may require SVD visits to be administered following the public health procedures they have implemented to protect their residents and staff. Examples of topics to discuss when contacting facility

administrators are listed below. Due to the varying requirements in each county and facility, we will not be able to provide clerks with standard procedures that will be required at each facility. Clerks will have to develop a plan for each facility that is consistent with the status of COVID-19 rates in their county, public health procedures required by local health ordinances and the requirements of the facility.

- Facilities may require proof of a recent negative COVID-19 test result or require visitors to submit to onsite COVID-19 testing before being granted entry to a facility.
- Facilities trying to limit the number of visitors may be concerned with allowing required entry to election observers in addition to the two SVDs.
- Facilities may require visitors to don full PPE, but this should be provided by the facility to ensure it is not compromised and meets their standards.
- Movement through the facility may be limited, which would reduce the ability for SVDs to make room visits.
- Communal gathering may still be restricted so residents may have to be separated into smaller groups if voting will take place in a common area.
- SVDs who make visits to multiple care facilities within a short time period may not be allowed into certain facilities due to concern over virus spread. Clerks may have to appoint and train additional teams of SVDs to account for this possibility.

When working with care facilities and health departments to make arrangements, clerks must also heed the statutory provisions that state care facility staff cannot assist or handle any election materials during SVD voting. Additionally, observers can be required to follow basic public health guidance. In some instances, facilities may have policies that require observers and visitors to be vaccinated, pay for additional testing, or quarantine for 10 days prior to observing at a care facility, which some observers may not be able to comply with. Clerks may also need to work with care facilities to understand what may be possible for private, remote observation that does not infringe on resident's privacy.

Further, there is no statutory mandate that requires care facilities to allow SVDs or observers access to a facility if they have a legitimate reason to deny access such as a health or safety concern. There is also no requirement that facilities, or clerks, provide remote observation technology or opportunities. The availability of these options, or resident's willingness to participate, will vary by facility.

#### **4. Contact your local health departments to see if any local health orders impact access.**

The municipal or county health department can help clerks navigate health orders, including face coverings, quarantining, vaccinations, and potential prohibitions on visitors to care facilities. There may be certain precautions that SVDs must take prior to entering the facility and best practices to protect both the SVDs and residents of the care facility. In addition, local health departments may also have restrictions in place regarding the size and type of gathering in common areas of these facilities.

#### **Guiding Principles for Safe Visits**

State public health officials have developed guiding principles for safe visit in nursing homes and care facilities that should be considered when planning any visits. These principles and other information helpful to your preparation can be found here: <https://www.dhs.wisconsin.gov/covid-19/assisted-living.htm#safer-visits-in-assisted-living-facilities---relaxing-restrictions>. While this is the guidance for facilities to consider when implementing safe visits, the specifics of implementation and enforcement will rest with the individual facilities.

- Screening of all who enter the facility for all signs and symptoms of COVID-19 (e.g., temperature checks, questions or observations about signs or symptoms), and denial of entry of those with signs or symptoms.
- Hand hygiene (use of alcohol-based hand rub is preferred).
- Face covering or mask (covering mouth and nose) unless contraindicated. If there are barriers to masking, alternatives will be discussed with resident visitors and an individualized, acceptable plan will be implemented. Suggested alternatives could include:
- Maintain physical distancing in a well-ventilated room.
- In addition to physical distancing other protective measures include wearing face shields and using clear physical barriers, such as a clear divider (Plexiglas or similar product) barrier on a table.
- Social distancing at least 6 feet between persons, and reminders to maintain distancing even during the visit, as possible.
- Instructional signage throughout the facility and proper visitor education on COVID-19 signs and symptoms, infection control precautions, other applicable facility practices (for example, use of face covering or mask, specified entries, exits and routes to designated areas, hand hygiene).
- Cleaning and disinfecting high frequency touched surfaces in the facility often, and designated visitation areas after each visit.
- Appropriate staff use of personal protective equipment (PPE).
- Effective cohorting of residents (for example, separate areas dedicated COVID-19 care)
- Resident and staff testing conducted as recommended.

These core principles are consistent with the Centers for Disease Control and Prevention (CDC) guidance for assisted living facilities and should be adhered to at all times. By following a person-centered approach and adhering to these core principles, visitation can occur safely.

Also, assisted living facilities should enable visits to be conducted with a careful consideration for privacy. Visitors who are unable or unwilling to adhere to the core principles of COVID-19 infection prevention should not be permitted to visit or should be asked to leave. (WI Department of Health Services)

### **Frequently Asked Questions**

1. Q: What constitutes a visit to a care facility required to be served by SVDs?  
A: Special Voting Deputies may make a physical attempt to visit the facility in order to satisfy the requirement under state law or they can use tele-visits with the care facility administrator to satisfy this requirement if the facility is unavailable for SVD visits. A tele-visit could include a phone conversation or other virtual meeting with care facility administration.
2. Q: Should clerks physically send SVDs to facilities even if they have no realistic chance of being granted access to the facility?  
A: SVDs have the option of physical visits to facilities or they can use pre-arranged tele-visits with the care facility administrator to satisfy this requirement if the facility is unavailable for SVD visits.
3. Q: Can the SVD visit happen if proper notice has not been posted due to a lack of cooperation on the part of the facility?  
A: The notice for SVD voting is required by law to be posted five days prior to each visit. SVD visits should not take place if not properly noticed.

4. Q: Can clerks appoint care facility staff as SVDs?

A: No, they cannot. Care facility staff are prohibited by law from serving as SVDs while employed by a facility and for two years after employment ends.

5. Q: Can a care facility be required to remotely allow family to observe while a resident votes?

A: No, but many facilities may be able to accommodate this request and have been facilitating video calls with friends and family since visitation has been restricted.

6. Q: What happens if a facility will allow SVDs but not observers?

A: Observers from the two major political parties are required by law to be present when SVD voting takes place.

Thank you for your attention to this important information regarding care facility voting prior to the April 6, 2021 Spring Election. Please contact us at [elections@wi.gov](mailto:elections@wi.gov) or (608)261-2028 with any questions you may have.