

Appendix C

Absentee Voting in Care Facilities Manual

Chapter/Manual	Page	Action Taken	Material	Type of Update
Absentee Voting in Care Facilities	5	insert	July 4 (Fourth of July holiday clarification)	staff updated
Absentee Voting in Care Facilities	9	modify	Same grounds guidance updated to reflect Wis. Stat. § 6.875(3)(b)	staff updated
Absentee Voting in Care Facilities	10, 11,12, 13	modify	New absentee certificate envelope shown, information about using new EL-122SVD envelope added when care facility is visited by SVDs and the EL-122SP is used for voters in a care facility not visited by SVDs and photo ID	staff updated

Introduction

The Wisconsin Legislature has determined that the vigorous exercise of our constitutional right to vote should be strongly encouraged. The Legislature also recognizes that it is difficult for some individuals to get to their polling place on Election Day. This is particularly true for individuals residing in Residential Care Facilities such as nursing homes, community-based residential facilities (CBRFs), qualified retirement homes, residential care apartment complexes, and adult family homes. Wis. Stat. §§ 6.84(1), 6.875.

In order to meet this need, the Legislature has established the privilege of absentee voting as an extension of the right to vote on Election Day. The Legislature recognizes that the privilege of voting absentee is exercised wholly outside the traditional safeguards of the polling place. The privilege of absentee voting must be carefully regulated to prevent the potential for fraud or abuse, overzealous solicitation of absent electors who may prefer not to participate in an election, and undue influence on an absentee elector to vote for or against a candidate or referendum. Wis. Stat. § 6.84(1).

The purpose of this manual is to describe the procedures for absentee voting in Wisconsin residential care facilities and qualified retirement homes. These procedures have been developed in order to encourage occupants of these facilities to participate in the process of choosing their elected representatives.

Definitions

Adult Family Home – a facility that is certified or licensed to operate as an adult family home under Wis. Stat. §§ 50.032 or 50.033. Wis. Stat. § 6.875(1)(ab).

Community-Based Residential Facility (CBRF) – a facility licensed under Wis. Stat. § 50.01(lg), except that it must be occupied by at least 10 unrelated adults who are not related to the operator or administrator. Wis. Stat. § 6.875(1)(ae).

Facility – an area or location that is defined by the license which governs its operations as described below. There may be several facilities within a single building or complex located, for instance, on separate floors or in separate wings.

Nursing Home – a facility occupied by 10 or more unrelated individuals for the primary purpose of obtaining full-time personal or nursing care which is necessitated by their physical or mental conditions, but does not include a hospital. Wis. Stat. § 6.875(1)(am).

Proof of Residence – a document that establishes a registrant’s connection to a particular location. Only documents listed under Wis. Stat. § 6.34(3) are acceptable.

Qualified Retirement Home – a *Retirement Home* is a facility occupied as a primary place of abode by 10 or more unrelated individuals. The clerk is not required to send SVDs to a

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Retirement Home. However, the municipal clerk or board of election commissioners may determine that SVDs will be sent to the *Retirement Home* if a significant number of the occupants lack adequate transportation to the appropriate polling place, need assistance in voting, are aged 60 or over, or are declared as indefinitely confined electors. Wis. Stat. § 6.875(1)(at), (2)(c). The clerk’s decision to send SVDs to a *Retirement Home*” makes it a “**Qualified Retirement Home**.”

Relative – a spouse or individual related within the 1st, 2nd or 3rd degree of kinship.

Kinship	Relative
1 st degree	The voter’s children or parents
2 nd degree	The voter’s grandparents, grandchildren, brothers and sisters
3 rd degree	The voter’s great-grandparents, great grandchildren, uncles, aunts, nephews, nieces

Residential Care Apartment Complex – a facility that is certified or registered to operate as a residential care apartment complex under Wis. Stat. § 50.034. Wis. Stat. § 6.875(1)(asm).

Residential Care Facility – an adult family home, community-based residential facility, nursing home or residential care apartment complex as described below. Wis. Stat. § 6.875(1)(bm).

Retirement Home – a facility occupied as a primary place of abode by ten or more unrelated individuals. Wis. Stat. § 6.875(2)(a).

Same Grounds – to determine whether separate facilities are on the “same grounds” a clerk may look at several factors, including (but not limited to) whether the facilities are under the same ownership, whether they were built at the same time, whether their services are coordinated, or whether they are in the same geographic vicinity. Facilities do not need to be on the same parcel of land or on the same side of the street to be considered on the “same grounds”.

Special Voting Deputies (SVDs) – individuals appointed by a municipal clerk or board of elections to conduct absentee voting at certain care facilities. SVDs are the exclusive method by which absentee voting may be conducted within a care facility. The municipal clerk may choose to utilize SVDs in retirement homes. A person who is appointed an SVD:

1. Must be a qualified elector of the county.
2. Must attend training.
3. May not currently be employed by the facility.
4. May not have been employed by the facility within two years of the appointment.
5. May not be an immediate family member of anyone currently employed by the facility or employed by the facility with two years of the appointment.

Working Day – any day except Saturday, Sunday and the following holidays:

January 1 (New Years’ Day)
Third Monday in January (MLK Day)
Last Monday in May (Memorial Day)
July 4 (Fourth of July)
First Monday in September (Labor Day)
Fourth Thursday in November (Thanksgiving Day)
December 24 (Christmas Eve)
December 25 (Christmas Day)
December 31 (New Years’ Eve)
The day following if January 1, July 4 or December 25 falls on Sunday.

Wis. Stat. §§ 6.875(1)(d), 230.35(4)(a).

If you are uncertain if there are any licensed facilities in your municipality or whether a certain facility fits into one of the above definitions, a full list of licensed facilities by county can be found on the Wisconsin Department of Health Services website: <https://www.dhs.wisconsin.gov/guide/seek.htm>.

Designation of Residential Care Facilities and Retirement Homes Served by SVDs

Municipal clerks are required to use SVDs in residential care facilities (see above definitions) if there are at least five registered electors of the municipality who are occupants of the facility and if the clerk has at least one absentee ballot application from an occupant of the facility. Retirement homes may be served by SVDs if the municipal clerk determines that a significant number of the occupants lack adequate transportation to the appropriate polling place, need assistance in voting, are aged 60 or over, or are declared as indefinitely confined electors. However, once the clerk has made this determination, the facility will be designated as a **qualified** retirement home which will require SVD service for all elections until the clerk makes a contrary formal determination as to the facility’s eligibility for future SVD service.

Clerks should NOT switch a facility’s SVD eligibility in the period between a partisan primary and a general election, between a spring primary and a spring election, or between a special primary and a special election. Clerks are also strongly recommended to inform the administrator of any facility of the clerk’s determination so that the administrator can properly inform the facility’s occupants regarding the change in status.

Prior to Voting Day

Special Voting Deputies (SVDs) are appointed by the municipal clerk to bring absentee ballots to qualified care facilities. The two major political parties may submit a list of potential SVDs to the municipal clerk. If lists are submitted, then SVDs who represent each of the political parties must be selected from the lists. No person who is or was in the last two years employed or retained at a qualified facility, or is a member of the

immediate family of such an individual, may serve as an SVD. Wis. Stat. § 6.875(4)(b). Once SVDs are appointed, they will take the Oath of Special Voting Deputy (see EL-155, page 37). Wis. Stat. § 6.875(5). Special Voting Deputies may not deputize other individuals to administer the voting process.

The municipal clerk shall arrange one or more convenient times with the administrator of the facility to conduct absentee voting for the election. The municipal clerk shall contact the administrator of the facility as soon as possible, but no later than 5:00 p.m. on the sixth working day before an election. Absentee voting may be conducted no earlier than the fourth Monday before the election and no later than 5:00 p.m. on the Monday before the election.

Prior to sending SVDs to a facility, the municipal clerk should compile a list of occupants at the facility who have absentee ballot requests on file. This list should be shared with the facility administrator. The social worker for the facility may be consulted if there is a question of voter competency. The administrator should survey the occupants on the list to inform them of the date and time of the SVDs' visit. The administrator should also note on the list which individuals will be able to meet the SVDs for voting and which are unable or unwilling to meet the SVDs at the designated time. The municipal clerk must coordinate with the complex administrator to verify which individuals will be served by SVDs in a multi-facility complex.

Public Notice

As soon as possible after arrangements are made for the visit, but not less than five working days before the visit, the municipal clerk shall prepare and post a notice at the facility indicating the date and time that absentee voting will take place at that facility (see Sample Notice, page 20). The notice must also be provided to those 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.

Upon the request of a relative of an occupant of a facility, the administrator of the facility may notify the relative of the time or times at which SVDs will conduct absentee voting and permit the relative to be present in the room where the voting is conducted. Wis. Stat. § 6.875(6)(c)2.

Voter Qualifications

Any qualified elector who for any reason is unable or unwilling to appear at the polling place on Election Day may vote by absentee ballot. Wis. Stat. § 6.85. A qualified elector is a United States citizen, age 18 or older on Election Day, who has resided in an election district for 28 consecutive days before any election where the person offers to vote and is not currently serving a felony sentence (including any term of extended supervision) or has not been adjudicated incompetent to vote. Wis. Stat. §§ 6.02(1), 6.03.

Adjudications of incompetency to vote are only made by a judge after a court proceeding. Wis. Stat. § 6.03(3). It is not a medical or family decision or a determination of facility staff. A person adjudicated incompetent should have a guardian appointed for them and the order from the court appointing the guardian should specifically indicate that the person's right to vote has been removed. See Determination and Order on Petition for Guardianship Due to Incompetency (see Form GN-3170, pages 21-22). If an individual has been adjudicated incompetent to vote, that information is provided to the Wisconsin Elections Commission, which then inactivates his or her registration to vote.

Voter Registration

Occupants of care facilities must be registered to vote prior to being issued an absentee ballot. Wis. Stat. § 6.86(1). If a person is voting for the first time in Wisconsin, or has changed his or her name or address since the last time they voted, they are required to complete a Voter Registration Application (see EL-131, pages 35-36) before they vote.

An individual may register to vote a variety of ways:

- A qualified elector may register to vote by mail no later than the third Wednesday before an election. Wis. Stat. § 6.30(4). An elector may also register in-person at the municipal clerk's office until 5:00 p.m. the Friday before the election. Wis. Stat. § 6.29(2). Electors may also register to vote in-person at the polling place on Election Day. Wis. Stat. § 6.55(2).
- Election Registration Officials (EROs) may be appointed by the municipal clerk to register individuals at qualified care facilities and retirement homes until the third Wednesday before an election. Wis. Stat. § 6.28. Note that this registration window overlaps with the window of time available for visits to facilities by Special Voting Deputies (SVDs), so it may be desirable to also appoint SVDs as EROs. Alternatively, it can be helpful to appoint a staff member of the facility as an ERO so they can register occupants to vote as they move to the facility. For more information about EROs, please refer to the "Election Officials" section of the Election Administration Manual, available on the WEC website.
- Electors who have a current and valid State of Wisconsin Driver License or State of Wisconsin ID card issued by the Wisconsin Department of Motor Vehicles can register to vote online on the MyVote Wisconsin website at <https://myvote.wi.gov>. An elector without these documents can also complete the form online, and print and mail it with their proof of residence to the municipal clerk's office. Registering online and by mail is available through the third Wednesday before an election.
- Registration forms may also be obtained by request from the municipal clerk or from the Wisconsin Elections Commission's website, <https://elections.wi.gov/forms/el-131-fillable>.

Occupants of care facilities are also required to present proof of residence when registering to vote. The proof of residence document must contain the current name of the voter and the address the individual is using for voter registration purposes. There are a variety of documents that may be used as proof of residence(see Wis. Stat. § 6.34), but the most common types of proof of residence for occupants of care facilities are:

1. A bank or credit union statement, including credit card statements from retailers.
2. A contract or intake document from an occupant of a residential care facility that specifies that the occupant currently resides in the facility.
3. A residential lease (Not valid when registering by mail).
Most facilities will have the occupant sign some sort of contract or agreement that may serve as a lease if it identifies the “landlord”, the “tenant”, the address which the tenant will occupy, a specific term that the agreement covers, an amount of rent to be paid by the tenant, and the signatures of both the tenant and landlord. If you are unsure if a particular document is acceptable as a residential lease, please contact the WEC.
4. A check or other document issued by a unit of government.
 - a. Units of government include local, state, and federal agencies.
 - i. Local (clerk or treasurer’s office, etc.)
 - ii. State (Department of Transportation, Department of Natural Resources, Department of Health Services, etc.)
 - iii. Federal (IRS, Medicare, Social Security, etc.)

For more information on voter registration and proof of residence, see the Election Administration or Election Day Manuals, available on the WEC website on the manuals page.

How to Obtain an Absentee Ballot

Any elector wishing to vote absentee at an election must make a written request to the municipal clerk or board of election commissioners. Wis. Stat. § 6.86(1). The Wisconsin Elections Commission has developed an Application for Absentee Ballot (see EL-121, pages 29-30) An elector may also apply for an absentee ballot by submitting a written request to the municipal clerk in person, by regular mail, fax, email or through the [myvote.wi.gov website](http://myvote.wi.gov). Absentee ballots may NOT be requested by telephone. An elector may request an absentee ballot for a single election or all elections in a calendar year with a single application. Indefinitely confined voters may also make a single request to receive absentee ballots automatically for each election.

Unless the elector indicates that some special status applies (indefinitely confined, hospitalized, etc.), this written application must be received no later than 5:00 p.m. on the Thursday preceding the election. Applications from indefinitely confined electors must be received no later than 5:00 p.m. on the Friday preceding the election. However, if

SVDs are visiting a care facility, they may accept an application for absentee ballot from a qualified elector and offer an absentee ballot while at the facility. Wis. Stat. § 6.875(6). If an application for absentee ballot is signed, the application must be signed by the absentee elector. Absentee requests that are received via email and the myvote.wi.gov website may not contain signatures, but these requests should still be honored. If a request contains a signature, it cannot be signed by anyone else on behalf of the elector unless the absentee elector needs assistance in signing his or her name. If someone else signs the application for the elector, that person must certify that the individual is unable to sign his or her name. However, a Power of Attorney may request an absentee ballot for his or her principal without signing the certification of assistance (see Power of Attorney section, page 17).

Occupants of residential care facilities and qualified retirement homes visited by SVDs are no longer eligible to be mailed an absentee ballot at the facility, but instead may vote absentee in-person via SVDs pursuant to the procedures included in this manual. Alternatively, occupants may still vote by absentee ballot at the clerk’s office or alternate absentee voting site, or at the polls on Election Day. If an occupant maintains a residence outside the facility or home, he or she may also apply for an absentee ballot by mail at that residence.

Occupants of retirement homes not served by SVDs may request a ballot by mail, vote by absentee ballot in the clerk’s office or alternate absentee voting site, or at the polls on Election Day. Occupants of such a retirement home that is on the same grounds as one or more residential care facilities serviced by the SVDs may ~~not~~ come to the care facility and vote with the SVDs. Municipal clerks shall obtain a list of the names and addresses of occupants from the management of the retirement home to verify ~~that they are not~~ ~~which~~ ~~may be~~ eligible to vote via SVD. This verified list should then be provided to the SVDs.

Application by an Indefinitely Confined Elector

Many occupants of the facilities visited by SVDs may qualify as “indefinitely confined electors.” This means they are confined indefinitely due to age, physical illness, infirmity, or because they are otherwise disabled for an indefinite period. These electors may make a single absentee ballot request and will receive absentee ballots automatically for each election. Wis. Stat. § 6.86(2). Electors must certify in writing with their request that they are indefinitely confined in Section 6 of the Application for Absentee Ballot.

The municipal clerk maintains a list of indefinitely confined electors and automatically sends or arranges for delivery of an absentee ballot to the indefinitely confined elector for each primary and election. Indefinitely confined electors residing in a facility served by SVDs must receive their absentee ballot from the SVDs rather than by mail. If an elector does not return a ballot for a spring, general or special election sent under this provision, the clerk shall notify the elector that he or she must reapply within 30 days of receiving the notice in order to automatically receive an absentee ballot for the next election. This process does not apply to voters who do not return a ballot for a primary election.

If the clerk receives reliable information that an indefinitely confined elector is no longer eligible for this service, he or she shall remove the elector from the indefinitely confined voter list. The clerk shall send the voter a notice within five days, if possible. Wis. Stat. § 6.86(2)(b).

Proof of Identification Requirements

~~Indefinitely Confined Absentee Voter Residing at Home or in a Care Facility or Retirement Home not Served by SVDs~~

A voter who has requested an absentee ballot as an indefinitely confined elector and who is living at home, at a care facility or at an unqualified retirement home not visited by SVDs, only needs the signature and address of a witness to satisfy the photo ID requirement. Clerks should use the EL-122 Standard Absentee Certificate Envelope with their ballot.

~~A -voter who has not applied as indefinitely confined should be sent the EL-122SP Absentee Certificate Envelope with their ballot. The EL-122SP contains the certification of care facility authorized representative section in step 4. The signature of the Care Facility Representative satisfies the photo ID requirement. The Representative may also serve as the witness. The witness to the voted ballot is verifying that the name and address of the voter is correct by signing the “Certification of Witness” section on the Absentee Ballot Certificate Envelope. Wis. Stat. § 6.87(4)(b)2. See example, page 31.~~

~~Clerks are not required to keep an inventory of EL-122SP special envelopes. If a circumstance arises that requires an EL-122SP special, the text of the envelope may be downloaded from the WEC website, cut to fit, and taped or glued on an EL-122 standard envelope.~~

STEP 4 CARE FACILITY REP. must complete this part

I certify I am an authorized representative of the facility listed. I further certify that this facility is registered or certified as required by law, that the above voter is a resident, and I verify that the name and address of the voter described above are correct.

X
Care Facility Authorized Representative Signature

Name of Facility

~~Indefinitely or Non Indefinitely Confined Absentee Voter Residing in a Care Facility or Qualified Retirement Homes Served by SVDs~~

Voters living in residential care facilities or qualified retirement homes visited by SVDs, are not required to provide proof of identification, regardless of whether the resident has applied for ballots as indefinitely confined. The signatures and addresses of both SVDs in

the “Certification of Witness” section on the EL-122SVD Absentee Ballot Certification envelope verifies that the name and address of the voter is correct and satisfies the photo ID requirement. State law does not specify any required steps to verify the voter’s name or address, so the SVDs or witness can use any available information to verify the voter’s name and address are correct as shown on the absentee certificate envelope. §§ 6.875(6)(c). See example.- page 32.

STEP 3 SVD must complete this part

I the undersigned witness, subject to the penalties for false statements of Wis. Stat. § 12.60(1)(b), certify that:

- I am an adult U.S. citizen
- I am not a candidate for any office on the enclosed ballot (except in the case of an incumbent municipal clerk).
- I did not solicit or advise the elector to vote for or against any candidate or measure.
- I further certify that the name and address of the voter is correct as shown

X	X
Deputy #1 Signature	Deputy #2 Signature
Deputy #1 Printed Name	Deputy #2 Printed Name
Deputy #1 Address (Number, Street Name, City)	Deputy #2 Address (Number, Street Name, City)

Special Absentee Certificate Envelope (EL-122)

There are two versions of the Absentee Ballot Certification envelope: EL-122, and EL-122sp. For examples, see pages 31-32. The EL-122 is used in the majority of circumstances and does not contain the “Certification of Care Facility Authorized Representative” section.

Clerks are required to mail the ballot to any voter with an absentee ballot request on file who did not vote with the SVDs during their two scheduled visits. A voter in a care facility or retirement home who has not applied as an indefinitely confined voter and does not have proof of identification on file with the clerk will need to provide photo ID or reapply as an indefinitely confined voter if they qualify.

Proof of Identification Requirements

Indefinitely Confined Absentee Voter Residing at Home or in Care Facility or Retirement Home not Served by SVDs

A voter who has requested an absentee ballot as an indefinitely confined elector and who is living at home, at a care facility or at an unqualified retirement home not visited by SVDs, only needs the signature and address of a witness to satisfy the photo ID requirement. The

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~~witness to the voted ballot is verifying that the name and address of the voter is correct by signing the “Certification of Witness” section on the Absentee Ballot Certificate Envelope. Wis. Stat. § 6.87(4)(b)2.~~

~~Indefinitely or Non Indefinitely Confined Absentee Voter Residing in Care Facilities or Qualified Retirement Homes Served by SVDs~~

~~Voters living in residential care facilities or qualified retirement homes visited by SVDs, are not required to provide proof of identification, regardless of whether the resident has applied for ballots as indefinitely confined. The signatures and addresses of both SVDs in the “Certification of Witness” section on the Absentee Ballot Certification envelope verifies that the name and address of the voter is correct and satisfies the photo ID requirement. State law does not specify any required steps to verify the voter’s name or address, so the SVDs or witness can use any available information to verify the voter’s name and address are correct as shown on the absentee certificate envelope. §§ 6.875(6)(e).~~

~~**Special Absentee Certificate Envelope (EL-122)**~~

~~There are two versions of the Absentee Ballot Certification envelope: EL-122, and EL-122sp. For examples, see pages 31-32. The EL-122 is used in the majority of circumstances and does not contain the “Certification of Care Facility Authorized Representative” section.~~

~~The EL-122 special contains the “Certification of Care Facility Authorized Representative” section and is used in limited and specific circumstances which are outlined in the two examples below. Clerks are not required to keep an inventory of EL-122 special envelopes. If a circumstance arises that requires an EL-122 special, the text of the envelope may be downloaded from the WEC website, cut to fit and taped or glued on an EL-122 standard envelope.~~

~~The following circumstances require the EL-122 special:~~

~~1. Non-Indefinitely Confined Absentee Voters Residing in SVD-Served Facilities Voting After SVDs have Visited the Facility Twice~~

~~A voter who resides in a care facility or retirement home who has *not* applied as an indefinitely confined voter, and who receives a ballot by mail after the SVDs have visited the facility twice, must either provide acceptable proof of identification with the returned ballot or have an authorized representative of the facility verify their name and address by signing in the “Certification of Care Facility Authorized Representative” section. This is in addition to the witness signature and address. The Facility Authorized Representative may also be the witness.~~

~~Reasoning: The voter is not indefinitely confined so the signature of their witness does not suffice for the mailed ballot. The voter did not vote with the SVDs. If the voter had voted with the SVDs, no proof of identification would have been needed.~~

~~2. Non-Indefinitely Confined Absentee Voter Residing in SVD-Eligible Facility Not~~

~~Served by SVDs~~

~~The same requirement applies to a resident of an SVD-eligible care facility where SVDs are not sent and who has not applied as an indefinitely confined voter. The voter is sent a ballot, but either the “Certification of Care Facility Authorized Representative” section must be completed or a copy of acceptable Proof of Identification must accompany the voted ballot and may be inside the ballot envelope. The voter’s ballot envelope must also be witnessed. The Care Facility Representative may also be the witness.~~

~~Reasoning: The voter’s witness signature does not suffice as proof of identification because the voter has not applied as indefinitely confined.~~

Residence of Absentee Voter

In Wisconsin an elector can maintain a voting residence, even if temporarily absent, so long as he or she continues to have an intent to return to his or her residence. Wis. Stat. § 6.10(5). Electors temporarily residing in a residential care facility or qualified retirement home located in a municipality other than the municipality in which they were last registered to vote may continue to vote from their former residence, rather than voting in the municipality where the facility is located. Alternatively, any person living in a residential care facility or qualified retirement home for at least 28 consecutive days before any election, who is registered to vote, and who also meets the other qualifications of an elector may vote in the municipality in which the facility is located. Wis. Stat. §§ 6.02(1), 6.03.

If a clerk receives an absentee ballot application from a resident who lives in a residential care facility or qualified retirement home served by SVDs located in another municipality, the absentee ballot is sent to the municipal clerk where the facility is located for delivery to the voter by the SVDs of the municipality where the facility is located. If a clerk receives an absentee ballot application from a voter living in a residential care facility or qualified retirement home located in the municipality, but who is a registered voter of another municipality, the clerk must, as soon as possible, notify the clerk of the municipality in which the elector is registered, and request that an absentee ballot be issued to the voter living in the facility and sent to the municipal clerk for the facility for delivery by the SVDs of the municipality where the facility is located. Wis. Stat. § 6.875(3).

Family Members

Some family members of voters residing in care facilities served by SVDs may express concerns that the relative must vote absentee in this manner. In such cases, clerks, facility administrators and SVDs should explain to the relative that this method of voting is required by law if the resident has requested an absentee ballot. Family members should be informed that they may be present when the SVDs conduct absentee voting at the facility, and that they may assist the voter if the voter so requests. The resident also has the option to vote at the polling place or in the municipal clerk’s office rather than with the SVDs.

Rules for Observers

The SVDs may exercise the authority granted to the chief inspector under Wis. Stat. § 7.41 to regulate the conduct of observers. Observers should direct all questions and concerns to the special voting deputies.

The WEC has established a set of rules for observers at locations where votes are being cast. A summary of the rules is required to be provided to each observer. The *Wisconsin Election Observers Rules-at-a-Glance* brochure may be used to meet this requirement (see Election Observer Rules, pages 25-26).

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 may accompany the SVDs to each facility where absentee voting will take place. Political parties may have multiple observers present to match the number of SVD teams if the municipal clerk is sending multiple pairs of SVDs to a facility due to its size or other factors. Each party wishing to have an observer present shall submit the name of the observer to the municipal clerk no later than the close of business on the last business day prior to the visit. Wis. Stat. § 6.875(7). Except for family members, no other observers may be present during absentee voting conducted by SVDs. This includes members of the media.

An observer shall legibly list his/her full name, street address and municipality, and the name of the political party the observer represents on the Election Observer Log (see EL-109, page 27). The observer shall also sign this form acknowledging the observer understands the rules and will abide by them. Additionally, an observer must present photo identification to an SVD. Any type of photo identification is acceptable so long as it features a photo of the observer and the observer's name. The SVD shall verify by marking on the EL-109 that the observer's name listed on the EL-109 matches the photo identification. If the observer does not want to provide photo identification or the information on the photo identification does not match the information on the observer log, the individual will not be permitted to serve as an observer.

The SVDs shall attach the EL-109 to the Special Voting Deputy Log of Absentee Voting Activity (see EL-104SVD, pages 23-24). Unless permitted by the SVDs, the EL-109 may not be viewed by members of the public, including other election observers, during the voting day at the facility. After Election Day, a copy of the EL-109 may be obtained from the municipal clerk or board of election commissioners through a public records request.

An observer must wear a tag or badge which reads "Election Observer," and which shall be worn at all times the observer is inside of the polling place or other location where votes are being cast, counted, canvassed, or recounted. The name of the observer need not appear on the Election Observer tag or badge.

The SVDs shall establish observation areas to allow observers to view all public aspects of the absentee voting process without disrupting the voting process. Typically, the

distribution of absentee ballots will be located in a common area of the facility. The observation area shall be not less than 3 feet nor more than 8 feet from the location at which electors are marking their ballots. Wis. Stat. § 7.41(2). If observers are unable to hear the election inspectors and voters, they may ask for the instructions or information to be repeated. However, there is no requirement that the instructions or information be broadcast at a specific volume.

If space permits, observers may move within the designated observer area to better view and/or hear the SVD's instructions to the voter. However, once the ballot is distributed to the voter, observers shall not be situated to allow observing the voter marked their ballot or to permit listening to any conversation between the elector and an individual who is assisting in marking the ballot, whether the assistor is a Special Voting Deputy or another individual.

There may be instances when voting occurs in a resident's room. If space permits, observers are allowed inside the resident's room, and in an observation area from 3 to 8 feet where the voting occurs, as determined by the SVDs. If space constraints prevent accommodating an observation area within that distance, the special voting deputies shall document the actual location of the observation area and the reasons why it could not be located within the 3 to 8 feet distance. Notwithstanding the 3 to 8 feet distance requirement, the observation area shall not be situated to permit observers to hear any conversation between the elector and an individual who is assisting the elector in marking the ballot, whether the assistor is a Special Voting Deputy or another individual. As an election official, SVDs must enforce the voter's constitutional right to cast a secret ballot, just as the individual is entitled to in other absentee or polling place settings.

Challenges to a voter's eligibility may not be made at the facility but must be made at the municipal clerk's office or at the polling place on Election Day. Wis. Stat. §§ 6.48, 6.93.

Observers are prohibited from electioneering or interfering with the orderly conduct of the voting process. Any observer who engages in loud, boisterous or otherwise disruptive behavior that the SVDs believe interferes with voting shall receive a warning from the SVDs. If a warning has been issued, and the offending observer continues the disorderly behavior, the SVDs shall order the offending observer to depart the location. If the offending observer declines or otherwise fails to comply with the order to depart, the SVDs shall summon local law enforcement to remove the offending observer.

In the event that both SVDs order an observer to leave a location, the election officials shall provide a written order to the observer (see EL-110, page 28) which includes the reason for the order and the signatures of both SVDs. The SVDs shall have sole authority to order the removal of an observer. If the SVDs do not agree that an observer should be ordered to leave a location, the disagreement should be documented on the Special Voting Deputy Log of Absentee Voting Activity (EL-104SVD), and the observer shall be allowed to remain at the location.

When an EL-110 is completed, the municipal clerk or board of election commissioners shall notify the WEC of the incident within seven days. This notification should include a copy of the EL-110, if available, and the portion of the Special Voting Deputy Log of Absentee Voting Activity (EL-104SVD) which documents the incident. WEC staff will use this information to provide a summary to the Commission after each election of all reported incidents.

Observers may silently use cell phones in the polling area. Observers may not use cell phones to take or make voice calls (ringer should be silenced). Observers may not take photographs or videos inside the facility during the hours that absentee voting is being administered. The SVDs may prohibit an observer from using a cell phone if it is deemed disruptive.

Delivery of Ballots and Voting

Absentee ballots are brought to the care facility by the SVDs. The municipal clerk (or deputy clerk or board of election commissioners) shall issue a supply of ballots sufficient to provide for the number of absentee ballot applications received from residents of the care facility. The clerk should also issue the SVDs an additional number of ballots and absentee ballot application forms to handle any requests the SVDs may receive while at the facility. The municipal clerk should initial all ballots given to the SVDs. For each ballot issued to a voter at the care facility, both SVDs will initial under “Absentee Ballot Issued By.” If unused ballots containing the clerk’s initials are left over, they are returned to the municipal clerk. The municipal clerk may choose to destroy the initialed but unused ballots or they may be used for in-person voting.

The municipal clerk or board of election commissioners is required to keep a careful record of all ballots issued to the SVDs and require the SVDs to return every ballot. Wis. Stat. § 6.875(6)(b). SVDs should complete the EL-104SVD, a log of voting activity at the facility.

The municipal clerk or board of election commissioners shall issue all ballots to be used by the SVDs in a ballot container or envelope that is secured with a tamper-evident serialized tag or seal. The municipal clerk or board of election commissioners should record the number of the serialized tag or seal on the EL-104SVD. The SVDs should also be issued another tamper-evident serialized tag or seal to secure the container after the facility visit is complete. The number of this second serialized tag or seal should also be recorded on the EL-104SVD by the SVDs after the facility visit is complete.

Both SVDs must verify the seal or tag number and that the seal or tag is intact before opening the ballot container. The SVDs should indicate that this verification was completed by initialing the respective section of the EL-104SVD. Upon opening the ballot container, the SVDs should confirm the total number of issued ballots is the same as the number indicated on the EL-104SVD and that they have the correct ballot styles. During the facility visit, both SVDs are jointly responsible for the security of the ballots issued to them and shall keep the opened ballot container in their presence at all times.

Two SVDs shall visit the facility at the time designated in the posted notice. Wis. Stat. § 6.875(6)(a). The SVDs shall conduct absentee voting as a team. Both SVDs, together, shall personally offer each absentee elector who has filed the proper application an opportunity to cast his or her ballot. Clerks with large care facilities in their municipalities may find it advantageous to send multiple pairs of SVDs, working in teams of two. **Facility staff may not handle ballots.**

Voting shall be conducted in a common area of the facility. Also, SVDs shall visit the room of each occupant with an absentee ballot request on file who is unable or unwilling to meet in the common area to offer the elector a ballot or to confirm the elector does not wish to vote in the election. This includes visiting the rooms of occupants who already have informed the administrator (or staff member) of the facility of their intent not to vote. The SVDs should also visit the rooms of any occupants who have informed facility staff of their intent to vote, but whose names do not appear on the absentee ballot log. Special Voting Deputies, election observers, family members and facility staff should afford the voter privacy to vote his or her ballot. After marking the ballot in the presence of the SVDs, the voter places the marked ballot in the certificate envelope (see EL-122, page 31) and seals the envelope. The voter completes and signs the certification on the envelope. **Both** of the SVDs must sign as witnesses on the certificate envelope. Wis. Stat. § 6.875(6)(c)1. The SVDs may provide the municipality's address as part of the certification of witnesses on the certificate envelope.

Elector Decline of Ballot

An indefinitely confined or calendar year elector whose name appears on the absentee ballot log may not wish to vote an absentee ballot, but may want to maintain his or her status as an indefinitely confined or calendar year elector. In that case, the SVDs should print the elector's name on the Elector Decline of Ballot in Residential Care Facilities and Retirement Homes form (see EL-126, page 33) in the appropriate section. Both SVDs must sign the form.

Any communication by a voter to decline a ballot or ballot(s) should be between the voter and clerk prior to voting day or between the voter and Special Voting Deputies on voting day. The municipal clerk should direct the SVDs as to which methods a voter may employ to decline a ballot to ensure that the voter's decision has been documented and to maintain the integrity of the voting process in residential care facilities. The municipal clerk may determine whether the following methods are acceptable for their particular situation:

- Voter declines a ballot via telephone
- Voter declines a ballot by signing a printed memo distributed by facility staff
- Voter places signed note declining a ballot on door to room

The clerk must arrange for a second visit if an occupant is unable to vote at the time scheduled for the facility due to any reason, including a quarantine, or if the clerk receives a new absentee application after the first visit. If the requesting occupant is still

unable to vote after the second SVD visit, the municipal clerk may mail the absentee ballot to the occupant of the facility in the same manner as other absentee ballots are mailed. Wis. Stat. §§ 6.87(6), 7.515(3). Completed absentee ballots issued and returned by mail must be postmarked and received by Election Day.

NOTE: The SVDs may accept a written request for an absentee ballot from a registered, qualified voter and offer an absentee ballot while at the qualified care facility. Wis. Stat. § 6.875(6)(c)1. However, unlike in-person absentee voting at the clerk’s office, a separate written request (EL-121) must be completed. The completed absentee certificate envelope (EL-122) is not sufficient.

Persons Assisting Voters with Physical Disabilities

Absentee ballots must be voted only by the absentee elector, unless the voter requests assistance. A voter may request assistance in reading and/or marking his or her ballot and completing the absentee certificate envelope. Generally, a voter may select any person (except his or her employer or officer/agent of a labor union who represents the voter) to assist them with the voting process. However, when voting by SVD, assistance with these two tasks is limited to an SVD or a relative of the voter. Wis. Stat. § 6.875(6)(c)1. The SVDs shall assist the elector if requested. An assistor must always act under the direction of the voter. The SVD or relative providing the assistance must certify in the space provided on the ballot that it was completed with his or her assistance. If assistance is required to complete the Absentee Certificate Envelope, the SVD or relative providing the assistance must certify in the space provided on the envelope that it was completed with his or her assistance. Wis. Stat. §§ 6.82(2), 6.875(6)(c)1.

There are other types of assistance that any person (except his or her employer or officer/agent of a labor union who represents the voter) may provide to a voter with a physical disability upon request. This person may assist a voter in completing election forms, such as the Voter Registration Application (EL-131), Application for Absentee Ballot (EL-121) or letter requesting an absentee ballot. If the voter is unable to sign any document necessary for voting, the voter may direct the assistor to sign the voter’s name to the document. Unless acting as a Power of Attorney, the assistor must sign the certificate of assistance.

Who May Undertake the Following Actions for Electors Voting by Special Voting Deputy

The following table summarizes the rules related to assisting voters served by SVDs.

Action	Anybody	Family Member*	SVD	Power of Attorney or Guardian
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Assist a voter in completing a Voter Registration Application. +	Yes	Yes	Yes	Yes
Assist the voter by signing the voter's name on the Voter Registration Application.+	Yes	Yes	Yes	Yes
Assist a voter in completing a request for absentee ballot.	Yes	Yes	Yes	Yes
Assist the voter by signing the voter's name on an absentee ballot request.	Yes	Yes	Yes	Yes
Assist a voter in marking a ballot at the direction of a voter.	No	Yes	Yes	No
Assist the voter by completing the Absentee Certificate Envelope.	No	Yes	Yes	No
Assist the voter by signing the voter's name on the Absentee Cert Envelope.	No	Yes	Yes	No
Assist a voter by requesting an absentee ballot for the voter.	No	No	No	Yes

+ Before the open registration cut off only.

* Includes a family member employed by the facility.

Power of Attorney and Guardianship

The basic difference between a power of attorney and guardianship is that the power of attorney is a private, pre-planned arrangement between the principal and the agent where the court is involved only if there is a dispute. A guardianship is not planned in advance by the ward, but is ordered by a court, usually after a medical evaluation of competency.

Power of Attorney

A "Power of Attorney (POA)" is a contract in which one person (the principal) transfers certain rights to act on behalf of the principal to another person (the agent). The agent is able to make certain decisions and perform certain actions for his or her principal. However, voting is not a transferable right. The two basic types of POA are financial and health care.

A POA designation is not indicative of the principal's mental capacity, nor is the agent able to declare the principal to be incompetent without court intervention. A POA may file a guardianship action in probate court seeking a court determination of incompetency, but the POA acting alone without court intervention does not have the ability to conclude that the principal is incompetent to vote.

The actions that an agent may take on behalf of his or her principal with respect to the electoral process are limited. A POA may not register his or her principal to vote. A POA may not vote a ballot for his or her principal; this includes completing the Absentee Certificate Envelope for his or her principal. However, the agent may request an absentee ballot for his or her principal. Also, a relative of an elector in a facility may act as an assistor, at the elector's request, whether or not the relative is the elector's POA.

Guardianship

A “guardianship” is a legal relationship created by a court which authorizes the guardian to make decisions for another person (the ward). Guardianships are usually created only after an evaluation of competency. The court’s appointment of a guardian includes a finding regarding competency. However, appointment of a guardian, even with a general finding of incompetency, does not automatically mean that the ward is not competent to vote.

The format used currently for court guardianship orders indicates that a ward is competent to retain all rights unless a specific right has been indicated as forfeited. The format of older guardianship orders finds the ward incompetent to retain any rights unless specific rights are indicated as retained.

Return of Ballots

Upon completion of absentee voting at the facility, the SVDs shall count the number of voted, unvoted, and spoiled ballots, record those numbers on the EL-104SVD, and confirm all ballots are accounted for. Voted ballots, unvoted ballots, spoiled ballots, and any other voting materials, except for the EL-104SVD, are placed in the ballot container. The SVDs should then re-secure the ballot container with a new tamper-evident serialized tag or seal, recording the number of the tag or seal on the EL-104SVD before signing the certification section.

As soon as possible, but no later than 18 hours (including weekends) after visiting each residential care facility or qualified retirement home, the deputies shall deliver any absentee ballot applications and the sealed certificate envelopes containing each ballot to the municipal clerk of the municipality in which the elector casting the ballot resides. Wis. Stat. § 6.875(6)(d).

Special Precautions

In order to ensure the integrity of the absentee voting process, the Wisconsin Elections Commission recommends that the personnel in care facilities familiarize themselves with the absentee voting process. Administrators of these facilities should communicate regularly with the municipal clerk concerning the status of absentee voters at their facility. The administrator should also make an effort to ensure that any occupant who desires to vote is properly registered. Persons who are found by a court to be incapable of understanding the electoral process are not permitted to vote. Wis. Stat. § 6.03(1)(a), (3). The facility should have a social worker available who may be consulted regarding any competency determinations made by a court for an occupant. Facility administrators and personnel, election observers, and occupants of care facilities should be aware that failure to comply with these requirements may result in invalidation of the votes of occupants. Wis. Stat. § 6.84(2). It is also a misdemeanor to interrupt or disturb the voting process. Wis. Stat. § 12.13(3)(x). It is a felony to impede or prevent the free exercise of voting through an agent or by duress or any fraudulent device or

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contrivance. Wis. Stat. § 12.09(2). In the event that facility staff impede or do not cooperate with the SVD process, the municipal clerk should share this Manual with the facility staff and/or owner. The clerk may also request the assistance of WEC staff or ask the facility staff to contact the WEC.

Candidates may visit care facilities to present their positions to occupants of these facilities, subject to any rules or regulations of the facility. Additionally, candidate literature may be distributed to occupants. However, the same restrictions on electioneering as would apply to a polling place on Election Day apply to the facility while SVDs are conducting absentee voting. Candidates are not allowed in the voting area. Additionally, there should be no campaign activity in the facility or within 100 feet of any entrance to the facility while voting is taking place, except on private property. Wis. Stat. § 12.03(2)(b)3.

Any questions concerning any aspect of voting in Wisconsin should be directed to the municipal clerk or the Wisconsin Elections Commission. (see contact information below).