



Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: For the June 24, 2020 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Administrator

SUBJECT: Special Voting Deputy Voting for the 2020 Partisan Primary

Local election officials are preparing for the administration of voting in nursing homes and care facilities in advance of the August 11, 2020 Partisan Primary and have contacted WEC staff with questions and concerns about this process. Many clerks are reporting when they initially contacted the qualified care facilities in their municipality, they have been informed these facilities are still restricting “non-essential” visitors, including special voting deputies (SVDs). Wis. Stat. § 6.875 outlines the process for voting by special voting deputy. SVDs are individuals who are deputized by the clerk of each municipality to not only bring enough ballots to each residential care facility to vote, but to assist the voters with the voting process. Beginning Monday, July 20, municipal clerks are required to begin sending two SVDs to each facility for two visits prior to the election to conduct in-person, on-site voting with the residents.

SVDs often administer ballots to voters in a common area in the facility, and sometimes the voting occurs in individual voters’ rooms depending on the voter’s mobility and health needs. The process also requires that one observer from each of the two recognized political parties be allowed to watch the voting process in these facilities and allows family members to be present during voting. Further, the law prevents absentee ballots from being mailed to facilities that are served by SVDs until after at least two SVD visits have been attempted.

For the April 7, 2020 Presidential Preference and Spring Election and May 12, 2020 Special election the Commission determined at its March 12 special meeting that special voting deputies fell under the definition of “non-essential” individuals who are prohibited from visiting nursing homes and other care facilities. At that time, Executive Order #72 had been issued by Governor Evers that declared a public health emergency existed in the State of Wisconsin as a result of the COVID-19 Coronavirus. The Order designated the Department of Health Services (DHS) as the lead agency in responding to the public health emergency and DHS issued directives related to nursing homes and other licensed care facilities, including that all “non-essential” individuals be prohibited from visiting such facilities.

The Governor’s public health order is no longer in effect, but the state and federal agencies that regulate nursing homes and care facilities have issued guidance that non-essential visitors to these facilities, such as SVDs, should be restricted. In addition, each county or individual facility may have directives or policies in place that regulate these issues, so WEC staff believe municipal clerks should contact each qualified facility in their municipality to determine whether it is possible to schedule SVD visits. County health departments should be

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consulted to determine if any county health orders impact the ability of facilities in that county to allow SVDs entry to conduct absentee voting. Clerks have relayed to us that in their conversations with care facilities, that given the nature of COVID-19 and its impact on vulnerable populations, the health risks surrounding allowing non-essential visitors, including SVDs into these facilities represents an unnecessary risk to these residents, including those who are uninterested or unable to cast a ballot.

WEC staff believes that if municipal clerks are unable to schedule SVD visits, they should not be required to send SVDs to facilities twice only to be denied access. Instead, pursuant to Wis. Stat. § 6.875(6)(e), clerks should proceed directly to send absentee ballots by mail to residents who request a ballot. Many municipal clerks have already reported that qualified care facilities in their municipalities have notified them they will not be admitting visitors, such as SVDs, into their facilities for an indeterminate amount of time. Sending ballots as soon as possible will give the residents of these facilities additional time to vote and return their ballot ahead of election day. Once the determination has been made to mail ballots to a facility, all voters with an active request on file should be mailed a ballot and any additional requests from those facilities should be honored in accordance with absentee request processing laws.

Similar to the circumstances surrounding the elections in April and May, this approach will require some additional adjustments in the voting process for those residents. In many cases, SVDs provide assistance to residents in completing their ballot and serve as the witness for the voter. When absentee ballots are sent by mail instead, the regular rules for absentee voting will apply. The resident may need to obtain assistance from either facility staff or another individual and must also secure a witness to sign the certificate envelope. The resident will then need to return the ballot to the municipal clerk either by mail or by another individual delivering it “so that it is delivered to the polling place no later than 8 p.m. on election day.” Wis. Stat. § 6.87(6). Wis. Stat. § 6.875(4)(ar) also permits residents of care facilities to vote at the polls or during in-person absentee voting.

WEC staff recommends the following motion for Commission consideration.

Recommended Motion:

- 1) The Commission directs that municipalities shall contact each qualified care facility in their jurisdiction to determine if they are accepting “non-essential” visitors such as SVDs. If not, the clerks shall not use the Special Voting Deputy process to serve residents in care facilities and instead shall transmit absentee ballots to those voters by mail.