



# Wisconsin Elections Commission

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**DATE:** For the September 10, 2020 Wisconsin Elections Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Meagan Wolfe  
Administrator

**SUBJECT: Nursing Home and Care Facility Voting Program for the November General Election**

At the September 1, 2020 of the Wisconsin Elections Commission, staff were directed by the Commissioners to provide research regarding the possibility of reinstating the Special Voting Deputy (SVD) program for the November 3, 2020 General Election. State law requires that municipal clerks appoint and send SVDs into nursing homes and care facilities to conduct absentee voting for the eligible voters who reside in those facilities. This program was suspended by the Commission earlier this year due to concerns over COVID-19 and in consideration that residents of these facilities are among the most vulnerable populations in regard to infection rates and COVID-related deaths. When discussing the suspension of SVD voting during the September 1 meeting, Commissioners specifically cited concerns raised by the disability and aging advocacy community as one reason to revisit this decision, so the member organizations of the WEC Accessibility Advisory Committee have been surveyed as a part of this research and their feedback has been incorporated into this document. This memorandum will also provide a history of the Commission's previous actions regarding the SVD program and summarize the information provided by public health officials regarding the resumption of SVDs entering care facilities to conduct absentee voting.

## History

The Commission first considered the complications surrounding COVID-19 and SVD voting during a special meeting held on March 12, 2020. At this meeting, the Commission determined that special voting deputies fell under the definition of "non-essential" individuals who are prohibited from visiting nursing homes and other care facilities due to the COVID-19 public health emergency declared by Governor Evers in Executive Order #72. The Governor's public health order is no longer in effect, so the Commission later reconsidered this decision ahead of the fall 2020 election cycle. The state and federal agencies that regulate nursing homes and care facilities continued to emphasize their guidance that non-essential visitors to these facilities, such as SVDs, should be restricted. Therefore, the Commission directed that clerks should not send SVDs into care facilities for the August Partisan Primary or November General election and should instead mail absentee ballots to residents who request them. The decision for the August and November elections was made during a special meeting on June 24, 2020 and staff notified local election officials of this decision on the same day (<https://elections.wi.gov/node/6939>). Staff have not issued any guidance contrary to this decision since the Commission made this determination.

## Public Health Considerations

*Wisconsin Elections Commissioners*

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark L. Thomsen

Administrator  
Meagan Wolfe

In preparation for this meeting, staff arranged for a call with several staff members at the Department of Health Services to discuss the viability of resuming SVD visits at nursing homes and care facilities for the November election. Participating on the call were public health policy advisors, representatives from the Division of Quality Assurance (the Division that regulates care facilities), assisted living and nursing home program management staff, a Respiratory Disease Epidemiologist and the public health official who has assisted previous agency efforts to develop elections-related public health guidance. WEC staff outlined the SVD voting process for these individuals and asked them to identify if and how this type of voting could be done safely and consistently across facilities. The consensus among these eight individuals was that their public health guidance from prior elections has not changed they would not advise that SVDs be used for this election. DHS representatives then provided feedback regarding possible procedures that could be used during SVD voting and updates on the availability of rapid result testing at the facilities.

Almost all counties across the state are seeing high numbers of positive tests for COVID-19. According to activity level data provided by DHS, 64 of 72 Wisconsin counties are currently showing high activity levels for COVID-19, and the remaining 8 are currently showing medium activity levels (<https://www.dhs.wisconsin.gov/covid-19/local.htm>). In April, the state was seeing an average of 100-200 new cases of COVID-19 per day and those numbers have risen to an average of 700-900 new cases per day, according to recent data. While some/much of this increase can be attributed to an increase in the availability of testing, the percent of people tested that are positive is similar in recent weeks (9-11%) to the percent positivity we had in April (9-10%), and is trending upward (<https://www.dhs.wisconsin.gov/covid-19/data.htm>).

Restrictions on group activities and facility visitation policies would also make deploying SVDs difficult to coordinate and voting difficult to conduct in a safe and controlled manner. DHS officials reported that visits are still significantly restricted at these facilities and no guidance has been issued for inside visits. In addition, group activities that involve congregation are not allowed, a fact that would make it difficult for SVDs to efficiently conduct voting in a common area or activity room. Public health officials and facility management staff also indicated it would be unlikely SVDs would be able to make room visits, which is another component of the process that would not be uniform across facilities and increase the likelihood that voters in facilities served by SVDs would still have to vote a by mail absentee ballot.

Public health officials also indicated that influenza season is approaching and is a complicating factor that may make it unlikely that a facility would consent to SVD visits. Influenza activity is currently low in Wisconsin, but these rates have historically risen into the fall. Residents in facilities served by SVDs are also at high risk for influenza and facility administrators are concerned about protecting residents from exposure to both COVID-19 and influenza. SVD visits would represent risk of exposure to both of these viruses.

WEC staff also discussed recommendations for how this voting could be conducted if the decision was made to send SVDs into nursing homes and care facilities. Issues such as COVID-19 testing, health screenings, personal protective equipment (PPE), room set up and voting procedures were also discussed during this call. A potential process was discussed that would involve screening all SVDs for COVID-19 symptoms prior to conducting visits, requiring SVDs to use a type and level of PPE determined by facility rules, and creating a partitioned room with separate air circulation systems on each side of the room so that contact and air flow could be limited between voters and SVDs. Public health officials also expressed concern about SVDs making visits to multiple facilities in the same day, or over the course of several days due to the increased risk of exposure and spread. Any limitations on SVD usage and scheduling would complicate the planning process for local election official who are required to appoint and train SVDs and coordinate multiple visits to each facility.

Representatives from DHS also discussed the availability of onsite COVID-19 testing at nursing homes and care facilities. Rapid onsite testing is currently under development and expected to be available soon at some

facilities, but it was unclear when this testing would be available at all facilities served by SVDs. Public health officials stated that this testing was not a perfect solution as the rapid tests have accuracy issues and there might also be a window that a test might not cover where a test could come back negative for an SVD who has since become infected or developed a detectable level of infection.

This discussion made it clear that consistency of facility availability and consistency of procedures across facilities and jurisdictions would be unlikely, if not impossible. While there is always some discrepancy between procedures employed at different facilities, SVD voting is generally conducted in a uniform manner and conducted in accordance with state law and the administrative procedures outlined in the WEC *Absentee Voting in Residential Care Facilities and Retirement Homes* manual.

### **Feedback from Aging and Disability Advocates**

In preparation for this meeting, WEC staff also requested feedback regarding SVD voting for the November General Election from advocates in the aging and disability community. Staff also reviewed previous testimony that these groups have provided on this topic for both the June 10 and June 24, 2020 Commission meetings. From this review it is apparent that the Wisconsin Disability Vote Coalition (WDVC) was in favor of the Commission's decision to direct clerks to mail absentee ballots to all voters in facilities in facilities normally served by SVDs. They also felt that the Commission should provide additional training and guidance for care facility staff regarding the voting process for residents and any assistance opportunities that are available for these voters. The WDVC testimony provided for the June 24, 2020 meeting listed these specific bullet points as recommendations for increased support of care facility residents and facility staff in advance of the August 11, 2020 Partisan Primary:

- Mail absentee ballots to voters who have a request on file (as was done in April).
- Provide a consistent process for other residents to receive assistance with requesting an absentee ballot and with voter registration as needed.
- In the absence of SVDs, care facility staff should be allowed to assist voters, and should receive training.
- Care facility social service staff should keep voter registration forms and absentee ballot request forms on file and make them available to residents who wish to vote. New residents should be given the option to for assistance with voter registration, and to request an absentee ballot as part of the intake process.

(Statement to Wisconsin Election Commission Regarding Special Voting Deputies for the August Primary, June 24, 2020)

In addition, feedback provided from these groups in advance of this meeting stressed the importance of keeping residents of these facilities safe and following the guidance from public health officials when determining if SVD voting should resume. Both the Wisconsin Disability Vote Coalition and the Greater Wisconsin Agency on Aging Resources (GWAAR) submitted remarks that have been provided to the Commission in advance of the meeting. The WDVC stated, in part:

“Based on the most recent guidance from health experts at DHS, it’s our understanding that DHS health leaders continue to have significant concerns and their consensus was they would **not** advise that SVDs be used for this election. Given the high vulnerability of so many care facility residents, we would defer to the health experts and their conclusion that it is not safe to dispatch SVDs for the November election.”

When asked “Despite any concerns you may have, would you be supportive of resuming SVD visits for the November General Election?” a representative from GWAAR provided the following response:

“No, while I, like most, wish we were not in the middle of a pandemic; we are, and we must make decisions that keep SVDs, residents, staff, and families safe. While it is a hard decision to curtail the SVD visits, making the decision early allows advocates, WEC staff, clerks, families, facility staff, and residents time to plan and prepare for alternate options. This hard decision made earlier, is far less negative and disruptive than the chaos that results from numerous last minute changes to the voting process.”

Instead, these groups urged the WEC to update existing training resources, partner with DHS on additional training opportunities and utilize existing and new distribution channels to provide materials to support facility staff who assist residents with the voting process. Staff have already created a template letter that municipal clerks can use to send to facility administrators and staff of facilities normally served by SVDs to inform them of the deadlines associated with voter registration and absentee ballot requests and provide information about absentee voting. Staff have also created an information packet that care facility staff can use with voters that outlines processes for voting the ballot, assisting voters, witnessing and returning the ballot and this information was posted to the agency website in July 2020. The packet was also sent out to about 15,000 email addresses by DHS to all nursing homes and assisted living providers in the state in addition to other entities that provide residential treatment services.

### **Additional Training Opportunities**

Staff plan to update both the template letter and care facility staff information packet ahead of the November General Election and use the distribution channels provided by both DHS and agency aging and disability advocacy partners to distribute this information to relevant parties. Staff has already agreed to participate in a webinar offered by care facility providers regarding the voting process for voters who reside in those facilities and have discussed the possibility of presenting and answering questions during weekly webinars offered by the DHS Department of Quality Assurance staff for the long term care facility administrators and staff. Staff would also welcome the opportunity to partner with the WDVC on a training webinar for staff in facilities normally served by SVDs, as suggested in the comments they submitted for this meeting.

### **Potential Impact on Clerks**

Any change made to reinstate SVD voting prior to the November General Election would also impact clerk preparation for the election. Staff contacted leadership at the Wisconsin Municipal Clerks Association to discuss the potential reinstatement of SVD voting with them and they reported several concerns for consideration by the Commission. Clerks stated they have already generated labels for many of their care facility voters and it will be difficult to identify those voters and recreate those records in the statewide election management system to accurately reflect the ballot delivery method. The planning process for these visits has not begun as clerks were informed after the June 24, 2020 Commission meeting that SVD voting will not take place for the remainder of 2020 elections. This process takes time and resources to complete as the clerks have to liaise with each qualified facility in their jurisdiction to identify appropriate times for both required visits and prepare the appropriate notices.

Clerks also expressed concern over recruiting enough staff to serve as SVDs. Many clerks use existing staff or poll workers as SVDs and many of those individuals are at increased risk for COVID-19 and may have

concerns about entering nursing homes and care facilities. At this point, no training has been created for the safe administration of SVD voting and clerks would have to train their SVDs on these procedures along with the normal voting procedures used for care facility voting. Lastly, clerks have indicated they have already begun to reach out to care facilities in their jurisdiction to explain that ballots will be mailed to residents and provide guidance on how facility staff can assist with voting. They have also developed processes for the efficient delivery and return of ballots to these facilities. All of this preparation would have to be reconsidered if it was decided to serve these facilities with SVDs.

## **Conclusion**

Staff has conducted the research regarding the possibility to reinstate Special Voting Deputy voting as directed by the Commission. Public health officials, advocates for the aging and disability community and clerks have been asked to provide feedback on the viability of this program for the November General Election and all have identified concerns with reversing this decision. Each of these issues is a significant individual barrier and when combined would make it even more difficult to send SVDs into care facilities and nursing homes to conduct voting. Even if the program were reinstated, it is probable that SVD voting would not be available at all qualified facilities and that lack of uniformity would create training and messaging complications for voters who reside in those facilities, interested family members and facility staff. Throughout the pandemic, we have asked for guidance from public health officials on how to conduct voting safely in Wisconsin and those officials all expressed significant concerns over the reinstatement of this program. This fact, coupled with the concerns cited by advocates and clerks, suggest that staff efforts could be redirected to provide additional training, support and resources to ensure that voters who reside in care facilities normally served by SVDs are able to vote efficiently using a by mail absentee ballot.