



# 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

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**DATE:** For the March 12, 2020 Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Meagan Wolfe, Administrator  
Wisconsin Elections Commission

**SUBJECT: Guidance Regarding Election Procedures and Public Health Emergency**

Governor Evers issued Executive Order #72 today proclaiming that a public health emergency exists in the State of Wisconsin as a result of the COVID-19 Coronavirus. The Order designates the Department of Health Services as the lead agency in responding to the public health emergency and directs all state agencies to assist in the State's ongoing response to the emergency. A copy of the Executive Order is attached.

Also today, the Department of Health Services (DHS) issued directives related to public health, vulnerable populations and large public gatherings. The DHS directives included provisions related to nursing homes and other licensed care facilities, including that all "non-essential" individuals be prohibited from visiting such facilities. The directive includes some exceptions such as a visit from one family member per day but all individuals entering care facilities must be screened for coronavirus infection and recent travel.

The Executive Order and DHS directive make it necessary to provide guidance to local election regarding specific election procedures for the Spring Election and Presidential Preference Primary as well as the May 12, 2020 Special Election in the 7<sup>th</sup> Congressional District. The two most immediate issues requiring Commission attention relate to the Special Voting Deputy process and polling places which are currently located at care facilities. WEC staff has received numerous inquiries from local election officials expressing concerns and seeking guidance regarding these issues.

## Special Voting Deputy Process

Wis. Stat. § 6.875 outlines the process for voting by special voting deputy (SVD). SVD's 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, March 16, municipal clerks are required to begin sending two SVD's to each facility for two visits prior to the election to conduct in-person, on-site voting with the residents.

Sometimes this process happens 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 public observers be allowed to watch the voting process in these

*Wisconsin Elections Commissioners*

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*Administrator*  
Meagan Wolfe

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 SVD's until after at least two visits have been attempted.

Given the DHS directives, WEC staff believes that Special Voting Deputies fall under the definition of "non-essential" individuals who are prohibited from visiting nursing homes and other care facilities. In order to protect the health and safety of both the vulnerable populations in the facilities and the individuals who serve as SVD's, and also ensure that residents of those facilities can exercise their right to vote, WEC staff believes that municipal clerks should not be required to send SVD to facilities twice only to be denied access, and that, pursuant to Wis. Stat. § 6.875(6)(e), clerks should proceed directly to send absentee ballots by mail to residents who request a ballot.

This approach will require some additional adjustments in the voting process for those residents. In many cases, SVD's 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 also need to return the ballot to the municipal clerk, either by mail or by another individual delivering it. Wis. Stat. § 6.875(4)(ar) also permits residents of care facilities to vote at the polls or during in-person absentee voting.

### Moving Polling Places

Nursing homes and other care facilities are often used as polling places because they are generally considered accessible. Wis. Stat. § 5.25(3) requires that polling places be established at least 30 days before an election, and § 5.25(2) requires that polling places be established by the local governing body (or the municipal election commission in the City of Milwaukee). Wis. Stat. § 7.37(1) outlines a process for municipalities to relocate polling places in an emergency, but that process is generally reserved for election day and requires decisions to be made by the election inspectors.

Given the Governor's Executive Order and the DHS directives, WEC staff also believes that polling places should not be located at nursing homes and other care facilities while those directives are in place. In addition, relocating polling places in advance of Election Day will permit municipalities to educate voters about the new location.

The Spring Election and Presidential Primary is 26 days from today. Some local governing bodies may not have another regularly scheduled meeting in time to provide adequate notice of new polling locations. Under these circumstances, WEC staff believes that municipal clerks can exercise their discretion to designate a new polling location in advance of the election without first obtaining approval of the local governing body. It would be helpful for the Commission to weigh in on this proposed guidance so that staff can properly advise local election officials and respond to any concerns or complaints if such changes are made.

WEC staff recommends the following two motions for Commission considerations.

**Recommended Motions:**

- 1) In light of Executive Order #72 and directives of the Department of Health Services, the Commission finds that Special Voting Deputies are “non-essential” individuals who are not permitted to enter nursing homes and other care facilities without completing a screening process that is not feasible to implement prior to the Spring Election and Presidential Primary. For that election and the May 12, 2020 Special Election in the 7<sup>th</sup> Congressional District, the Commission directs that municipalities 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.
  
- 2) In light of Executive Order #72 and directives of the Department of Health Services, the Commission finds that it is impossible or inconvenient for municipalities to conduct Election Day voting at nursing homes and other care facilities. The Commission finds that the municipal clerk or municipal elections commission executive director may relocate such polling places without obtaining the prior approval of the local governing body or municipal elections commission.