



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

MEMORANDUM

DATE: October 14, 2020

TO: Nursing Home Ombudspersons

FROM: Khyla Craine, Deputy Legal Director, Michigan Department of State
Sally Marsh, Director of Special Projects, Michigan Department of State

SUBJECT: Voting Rights in Long-Term Care Facilities

I am writing to follow-up on questions raised in our recent calls.

1. Can nursing homes have ballot drop boxes?

- a. Response: In order for a nursing home to have a ballot drop box, it would have to be placed there by the local city or township clerk. You should contact your city or township clerk to ask about this. It is worth noting that drop boxes are specific to the city or township where the nursing home is located. Residents who are registered to vote in a different city or township would not be able to return their ballot via a drop box in this example because it would be outside of their own city or township.

2. Do drop boxes have to be precinct-specific or can they be general for collection?

- a. Response: Drop boxes are not *precinct*-specific, but they are specific to each *city or township*. In order for the ballot to be counted, it must be delivered to the clerk that issued it in that clerk's drop box. That is, a hypothetical voter from Lansing cannot return their ballot in an Ann Arbor drop box.

3. What are the restrictions for staff or an ombudsperson in handling completed ballots (chain of custody concerns)?

- a. Response: Staff cannot take the ballot to the clerk's office or a ballot drop box unless they are a member of the voter's immediate family or a person residing in their household. MCL 168.764a. If a person regularly handles the mail (i.e. mail room staff) they can place the absentee ballots in the mailbox to be sent. Voters may also request that a representative from the clerk's office come and pick up their ballot.

4. Can there be state staff assigned to come out and collect ballots from residents-- either directly or picking it up from a ballot box?

- a. Response: No, state staff are not authorized to collect ballots from voters. However, voters may request that a representative from the clerk's office come and pick up their ballot.

5. Can a staff member mail the ballot or drop it in a ballot drop box?

- a. Response: No, staff cannot place the ballot in a ballot drop box unless they are a member of the voter's immediate family or a person residing in their household. MCL 168.764a. A person who in the normal course of their duties handles the mail, can place the sealed ballot into the mail, as with other pieces of outgoing mail. Voters may request that a representative from the clerk's office come and pick up their ballot.

6. Can a staff member assist a resident to complete the ballot?

- a. Response: Yes, if requested by the voter. If a voter requests and receives assistance completing their ballot, the person who assisted them must complete the section on the return envelope entitled, "To be completed only if voter is assisted in voting by another person." MCL 168.764a.

7. Who can assist a voter in completing their ballot?

- a. Response: Any person that the voter asks. If a voter requests and receives assistance completing their ballot, the person who assisted them must complete the section on the return envelope entitled, "To be completed only if voter is assisted in voting by another person." MCL 168.764a.

8. Can state staff be assigned for people who have complete immobility? Someone to read and actually mark the ballots for them? Like for people with ALS? Or, could a family member or staff do this?

- a. Response: While state staff will not be able to perform this function, as noted above in Question #7, voters with disabilities may ask any person to assist in completing their ballot. Voters with disabilities now also have the ability to request an accessible electronic absent voter ballot online, receive it electronically, and then use a computer to have it read to them and mark their ballot before printing it to be returned to the clerk. For more information, please go to the Michigan Department of State's website at: https://www.michigan.gov/sos/0,4670,7-127-1633_8716-27710--,00.html. To apply for an accessible electronic absent voter ballot online, please go to: <https://sites.omniballot.us/26/absentee/app/home>.

9. What if the same person ended up assisting many residents in the same home? Is that a problem?

- a. Response: No, it is not necessarily a problem, but could raise questions. It is important that the individual only assist people at their explicit request. It is, of course, also crucially important that the individual providing assistance not attempt to influence the absent voter on how he or she should vote, which would be a crime. Anyone who provides such assistance to a voter must complete the section on the return envelope entitled, "To be completed only if voter is assisted in voting by another person." MCL 168.764a.

10. Would this trigger concern that the ballots are invalid or coerced?

- a. Response: It is not possible to say for sure whether or not this *would* trigger that concern. What is clear is that the law anticipates such questions being asked and

provides certain checks in the process—such as the requirement of someone who assists a voter to disclose their assistance and provide their name and information—so that appropriate investigation may be made if necessary.

11. Can the voter have a ballot mailed to a different address than the one on their voter registration? (This wasn't asked on the call, but I think it would be helpful to know.).

- a. Response: Yes. Absentee ballot request forms have a section to provide a temporary mailing address where the clerk would mail your ballot. If they received their absentee ballot in their permanent home area, they can have their ballot sent to the facility to complete. If the resident is going to permanently live in the home, we would encourage them to change their voter registration to the place they currently live.

12. You touched on the Disability Liaison, Dave Foster, and accessible ballots for those who are visually impaired, use sip and puff, or are unable to read, write, or use printed materials. Is there a resource with this information that can be posted and shared?

- a. Response: Yes, if you go to [Michigan.gov/vote](https://mivic.sos.state.mi.us/vote) then to our Voters with Disabilities link, there is plenty of information.
<https://mivic.sos.state.mi.us/Home/AccessibleVoting>
<https://mivic.sos.state.mi.us/Home/AccessibleVoting/#ballot> (absentee ballot application)

13. You were going to research if a person with a court appointed guardian maintains the right to vote if the guardianship is plenary and doesn't exclude voting as a retained right.

- a. Response: Just because someone has a guardian it does not strip them of their right to vote—independently. The voter alone has the right to choose the candidate. The assistant should not be voting FOR them. Indeed, it is a crime under Michigan law for a person to “suggest or in any manner attempt to influence the absent voter on how he or she should vote.” MCL 168.764a.

14. What about residents living with Dementia and if a BIMS score excludes them from voting? –

- a. Response: Michigan does not have a mental acuity restriction from voter registration. That said, again, the voter themselves must identify their preferred candidate. As noted above, it is a crime under Michigan law for a person to “suggest or in any manner attempt to influence the absent voter on how he or she should vote.” MCL 168.764a.

15. What is the quick resolution if a resident is being blocked from voting?

- a. Response: If a resident is being blocked from voting please contact our office at Michigan.gov/ContactSOS-- or 866-OUR-VOTE for more information.

16. Could ombudspersons be deputized to assist residents with voting? (Not sure we have adequate resources to do this across the state.) Is there a better alternative?

- a. Response: Deputization is handled by each individual city or township clerk. As noted above, it is not required to assist a voter with completing their absent ballot.

17. Union was mentioned in a response to limits on who can assist with voting. Does this mean a person who is a union member or a union representative? Many nursing home staff members are unionized.

- a. Response: The law prevents a union rep assisting a member of their own union. (The law also prevents an employer from assisting their employee.)

18. What about individuals having to quarantine if they wish to vote in person?

- a. Response: We found no evidence that this would be required. In fact, CMS has asked for facilities to do all they can to assist persons with exercising their right to vote. Including relaxing visitation regulations. If you encounter something other than this please contact our office with specifics (facility, location, etc.) at Michigan.gov/ContactSOS-- or 866-OUR-VOTE.

19. Renewal of State IDs and Driver's Licenses for those who must renew in-person. This could result in the resident being in 14 day quarantine upon return from an outdoor visit.

- a. Response: Remember, voters do **not** need a current, valid ID in order to vote. Any further guidelines about quarantining for non-voting business outside of a nursing homes must be issued by DHHS.

20. One of our ombudsman shared concerns that there are transportation issues in her area to get people to the voting locations and with COVID most transportation options are not currently available. And, they'd all have to be quarantined upon return.

- a. Response: First and foremost, we remind you that every Michigan citizen has the constitutional right to vote an absentee ballot. If transportation issues are a concern, we strongly consider all voters—especially during this unprecedented pandemic—to avail themselves of their right to vote absentee. For those individuals who prefer to vote in-person, but are having difficulties from their nursing home, we would refer those nursing homes to the formal instructions issued by the Centers of Medicare and Medicaid Services. The Centers of Medicare and Medicaid Services have requested that all nursing home facilities assist their residents to exercise their right to vote, including transporting them to polling locations, etc. You can read more about CMS' guidance here <https://www.cms.gov/files/document/qso-21-02-nh.pdf>.