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## Protect the Right to Vote

The right to vote is the cornerstone of our democracy. Recent investigations have called into question the voting rights of care facility residents and people with cognitive impairments. As the federally mandated Protection and Advocacy system for our state, Disability Rights Wisconsin has a responsibility to set the record straight.

Every Wisconsin citizen, age 18 and older, regardless of where they reside, has the right to vote, guaranteed by the State of Wisconsin and United States Constitutions if they have:

- Resided in Wisconsin at least 28 days prior to the election
- Are not currently serving a sentence for a felony conviction, including probation, incarceration, and supervision
- Have not been determined by a court to be ineligible to vote.

Residents of long-term care facilities have the same right to vote as any other citizen, whether they are cognitively impaired or unimpaired. People with cognitive disabilities have the same right to vote as other citizens.

The right to vote may only be taken away by a court, usually in a guardianship proceeding, but only if the court decides that the person is "incapable of understanding the objective of the elective process."

As affirmed by the [American Bar Association](#), "a medical diagnosis does not disqualify a person from voting. A diagnosis of Alzheimer's disease, traumatic brain injury, or other cause of cognitive impairment does not disqualify a person from being eligible to vote."

The opinion of a care provider, family member, friend, or any other person about the competency of a person should not be allowed to prevent that person from registering to vote or from voting if that person has not been adjudicated by a court to be incompetent for purposes of registering to vote or voting. A surrogate decision maker such as a power of attorney does not have the right to decide if someone does or does not vote.

Recent investigations have questioned the role of care facility staff in supporting residents to vote. Federal law requires that Medicare/ Medicaid certified long term care facilities affirm and support the right of residents to vote. In advance of the November election, the US Department of Health & Human Services Center for Medicaid and Medicare Services (CMS) released a guidance document, [Compliance with Residents' Rights Requirement related to Nursing Home Residents' Right to Vote](#). The document notes that

“nursing homes are required to support a resident in the exercise of their right (§483.10(b)(2)) to vote, such as assisting with absentee or mail-in voting, or transporting residents to polling locations or ballot drop-boxes in a safe manner.” .... “Nursing homes should have a plan to ensure residents can exercise their right to vote, whether in-person, by mail, absentee, or other authorized process.”

Care facility staff have the responsibility to assist residents with voting, as requested by the voter, with their permission. Staff may not influence the resident’s decision in any way: The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights and to be supported by the facility in the exercise of his or her rights. No one should ever be coerced or otherwise influenced as part of exercising their right to vote. If a care facility resident had their ballots improperly completed, that is against the law. Those concerns should be promptly reported when they occur and investigated by the district attorney or other law enforcement.

In the face of a worldwide pandemic, election officials had to make very difficult decisions about how to balance the voting rights and health and safety of our most vulnerable community members. Care facility residents were at high risk for COVID 19 and comprised a high percentage of COVID related deaths. Facilities normally served by Special Voting Deputies (SVDs) were closed to visitors due to the COVID-19 pandemic. In addition to SVDs, state law also requires that public observers be allowed to watch the voting process in care facilities and allows family members to be present during SVD voting. SVDs, observers, and family members would not have been granted access to care facilities, due to public health restrictions.

Clerks were instructed to follow the statutorily provided procedure for when residents or facilities are not available for SVD voting and send absentee ballots to voters in those facilities with an active absentee ballot request. This process has been used in the past for other public health concerns such as the flu or MRSA. Without this action, many residents in Wisconsin care facilities would have been disenfranchised and not able to vote in the 2020 elections. It would be discriminatory and unconscionable to disenfranchise Wisconsin citizens simply because they live in a care facility; their voting rights must be upheld.

Repeated investigations of the 2020 election have concluded that it was safe, secure, and accurate. As policy makers review election administration, these investigations must also examine if voter rights are protected, including to what extent election officials across the state are complying with laws that protect the rights of voters with disabilities and older adults, and that ensure the accessibility of our elections.