

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Center for Clinical Standards and Quality/Quality, Safety & Oversight Group

Ref: QSO-21-02-NH

DATE: October 5, 2020

TO: State Survey Agency Directors

FROM: Director
Quality, Safety & Oversight Group

SUBJECT: Compliance with Residents' Rights Requirement related to Nursing Home Residents' Right to Vote

Memorandum Summary

- *The Centers for Medicare & Medicaid Services (CMS) is affirming* the continued right of nursing home residents to exercise their right to vote.
- While the COVID-19 Public Health Emergency has resulted in limitations for visitors to enter the facility to assist residents, nursing homes must still ensure residents are able to exercise their Constitutional right to vote.
- States, localities, and nursing home owners and administrators are encouraged to collaborate to ensure a resident's right to vote is not impeded.

Background

CMS is providing clarification to Medicare/Medicaid certified long term care facilities (hereinafter, 'nursing homes') of their existing requirement to affirm and support the right of residents to vote. Current regulations related to exercising the right as a citizen of the United States, including voting or use of mail (including use for mail-in or absentee ballots), under Residents' Rights include (**emphasis added**):

§483.10(b) Exercise of Rights: The resident has the right to exercise his or her rights as a resident of the facility and **as a citizen or resident of the United States**.

§483.10(b)(1) The facility must ensure that the resident **can exercise his or her rights without interference, coercion, discrimination, or reprisal from the facility**.

§483.10(b)(2) 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 as required under this subpart**.

A resident's rights, including the right to vote, must not be impeded in any way by the nursing home and its facility staff.

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. If a state has specific programs to enable nursing home residents to vote, the facility should coordinate and engage with those programs, as appropriate. This may include:

- Mobile Polling in residential facilities performed by a bipartisan team of workers; and/or
- Assistance in registering to vote, requesting an absentee ballot, or completing a ballot from an agent of the Resident's choosing, including family representative, LTC Ombudsmen or nursing home staff (or other personnel permitted to perform these functions, per state law).

For information on ways to enable safe visitation during the COVID-19 public health emergency, please see [CMS Memorandum QSO-20-39-NH](#).

Whether or not external assistance is available to come into the facility, 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. Social distancing should still be maintained if a facility chooses to transport a few smaller number of residents at a time (depending on the size of the vehicle).

For residents who are otherwise unable to cast their ballots in person, nursing homes must ensure residents have the right to receive and send their ballots via the U.S. Postal Service, or other authorized mechanism allowed by the State or locality. CMS regulations specific to use of mail, which also apply to voting, for voting, include (emphasis added):

§483.10(g)(7) The facility must protect and facilitate that resident's right to communicate with individuals and entities within and external to the facility, including reasonable access to: (i) A telephone, including TTY and TDD services; (ii) The internet, to the extent available to the facility; and (iii) **Stationery, postage, writing implements and the ability to send mail**

§483.10(h)(2) The facility must respect the residents right to personal privacy, including the right to privacy in his or her oral (that is, spoken), written, and electronic communications, including the right to send and promptly receive unopened mail and other letters, packages and other materials delivered to the facility for the resident, including those delivered through a means other than a postal service

“Promptly” means delivery of mail or other materials to the resident within 24 hours of delivery by the postal service (including a post office box) and **delivery of outgoing mail to the postal service within 24 hours**, except when there is no regularly scheduled postal delivery and pick-up service.

Nursing home residents or their representatives who believe their rights under these regulations have been violated can file a complaint with their State Survey Agency, here:

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Complaintcontacts.pdf>

Allegations of voter coercion or intimidation can also be referred to the Department of Justice for [filing voting complaints](#) with the Civil Rights Division by calling 800-253-3931, emailing voting.section@usdoj.gov or by [submitting an online form](#) .

Additional information is available from the HHS Administration for Community Living related to voting rights and resources, as well as contact information for Long Term Care Ombudsmen, here: <https://acl.gov/news-and-events/announcements/voting-resources-older-americans-and-people-disabilities>.

During the Public Health Emergency, CMS is advising against the use of nursing homes as polling locations for the general public.

Contact: Questions about this document should be addressed to DNH_Enforcement@cms.hhs.gov .

Effective Date: Immediately. This policy should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators immediately.

/s/

David R. Wright

cc: Survey and Operations Group Management