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Voting Rights in Long Term Care Communities

This publication is current as of the date of publication. This is for informational purposes only and does not constitute legal advice. Refer to your municipal clerk for the most updated election information.

Every United States citizen¹, age 18 and older, regardless of where they reside, has the right to vote, guaranteed by the State of Wisconsin and United States Constitutions. Residents of long-term care facilities have the same right to vote as any other citizen. Long-term care homes must ensure their residents or tenants are able to exercise their rights without impediment.² Facility staff can assist the resident in this process with the resident's permission, however, may not influence the resident's decision nor disclose to others whom the resident voted for. Assistance by facility staff could include answering questions about the voting process, sharing voting resources, assisting with voter registration, assisting with absentee voting information, or providing transportation.

General Election: November 8, 2022

The General Election is for Governor, Lt. Governor, Attorney General, Secretary of State, State Treasurer, US Senator, Representative in Congress, State Senator (odd numbered districts), Assembly Representatives (all districts) County offices of Sheriff, Clerk of Circuit Court and Coroner (if applicable).

Key Deadlines

- October 25 - In person early voting can begin (may vary by county)
- November 1- USPS Recommended deadline to have completed absentee ballot in the mail.
- November 4 - Last day to register to vote in the clerk's office before Election Day
- November 8 - Election Day
 - Polls are open from 7am-8pm
 - Voters can register in person on Election Day
 - Deadline to return an absentee ballot is 8pm

Voter Registration

To vote in Wisconsin, residents must be registered to vote. Information on voter registration can be found at <https://myvote.wi.gov/en-us/Register-To-Vote>. If you are not sure if you are registered to

¹ Unless this right was otherwise removed by a court (ex: serving a criminal felony sentence, or as later discussed in this document within a guardianship). Must be a resident of the state of WI for at least 28 days prior to the election.

² [CMS QSO-21-02-NH](#), 42 CFR § 483.10, DHS 83.32, DHS 89.34, DHS 88.10

vote, you can contact your Municipal Clerk via phone or search online at <https://myvote.wi.gov/en-us/My-Municipal-Clerk>

Special Voting Deputies

State law (Wis. Stat. § 6.875) requires municipal clerks to dispatch Special Voting Deputies (SVDs) to nursing homes and certain other residential care facilities to conduct absentee voting prior to the election. Residential care facilities include the following: adult family home, community-based residential facility, nursing home, and residential care apartment complex. Occupants of these locations are encouraged to contact facility staff as soon as possible to find out when absentee voting is scheduled.

Occupants of nursing homes and residential care facilities visited by SVDs are no longer eligible to be mailed an absentee ballot at the facility. However, occupants may still vote by absentee ballot at the clerk's office in-person or at the polls on election day. If you choose to vote in person, we encourage you to work with the facility staff or your care team to develop a plan to address transportation-or other accommodations. Each municipal clerk is also required to make reasonable efforts to comply with requests for voting accommodations made by individuals with disabilities when feasible³. Please contact your municipal clerk or facility staff for more information on this process.

Capacity and the Right to Vote

Capacity is not always black and white. When this topic comes up in our Ombudsman program, we encourage persons to ask the question: "capacity to do what?" Incapacity in one area does not automatically mean a loss of capacity or rights in all areas of life and all areas of decision-making. Under state law, a person cannot be denied the right to vote by alleging they do not understand the objective of the elective process, unless they have been adjudicated incompetent by a court.⁴

A surrogate decision-maker such as a power of attorney agent or a guardian does not have the ability to decide if someone votes or does not vote. An activated Power of Attorney for Health Care (POA-HC), Guardian of the Estate only, or the existence of a Power of Attorney for Finances does not remove someone's constitutional right to vote. A surrogate decision-maker can never vote in place of another.

Power of Attorney for Health Care

An individual may decide to complete a POA-HC to name an agent to make health care decisions for them if or when they become incapacitated. This individual is known as the principal. Incapacity means the principal has an inability to "receive and evaluate information effectively or to communicate decisions to such an extent" that they lack capacity to manage "health care decisions."⁵

A "health care decision" is an "informed decision in the exercise of the right to accept, maintain, discontinue or refuse health care"⁶. An incapacity determination is made after a personal examination

³ Wis. Stat. § 7.15(14)

⁴ Wis. Stat. § 6.03(3), "Allegations of Incompetency and the Right to Vote", <https://gwaar.org/api/cms/viewFile/id/2007234>

⁵ Wis. Stat. § 155.01(8)

⁶ Wis. Stat. § 155.01(5)

by two physicians or one physician and one advanced practice clinician (psychologist, nurse practitioner or physician assistant). The determination of incapacity relates only to the inability to make health care decisions. This limited medical determination does not affect or remove other rights, such as the right to vote.

Guardianship

Some individuals in the state are under guardianship. Guardianship is a court process whereby the court names a decision-maker, known as the guardian, to make decisions for the individual under guardianship, known as the ward. Incompetency is a legal determination. The court makes their decision after reviewing evidence and reports, including a medical examination by a physician or psychologist and the recommendation of the Guardian ad Litem (GAL) who is an attorney appointed to represent the best interests of the proposed ward. Incompetency cannot be based on older age, eccentricity, poor judgment, physical disability or having a Supported Decision-Making Agreement. Any right not expressly removed by the court, remains with the individual under guardianship⁷.

The right to vote is sometimes removed by the court in the guardianship of the person proceeding. To remove this right, the court must have found the ward to be “incapable of understanding the objective of the elective process.”⁸ Guardianships are meant to be tailored to the person under guardianship and their individual abilities and needs. Therefore, a guardianship order could look very different for each person. A ward could also be under a guardianship of the estate only. In a guardianship of the estate proceeding, the court does not make any determination regarding the right to vote.

To determine if your right to vote has been removed, you or your guardian can check on a court form called “Determination and Order on Petition for Guardianship Due to Incompetency”, or form number GN-3170. If you do not have a copy of this Order, you or your guardian can contact the Register in Probate in the County where the guardianship was ordered.

As seen below, there is a section on this court form for voting. If the box is **not** checked, then it is the sole decision of the person under guardianship if they want to exercise their right to vote. If the box is checked, then the right to vote has been removed and the ward cannot vote.

3. **GUARDIAN OF THE PERSON**

The individual is in need of a guardian of the person.

A. **Rights to be removed in full. If removed, these rights may not be exercised by any person.**

The individual has the incapacity to exercise the right to

- (1) execute a will.
- (2) serve on a jury.
- (3) register to vote or to vote in an election.

⁷ Wis. Stat. § 54.25(2)(a)

⁸ Wis. Stat. § 54.25(2)(c)1.g.

Under Wis. Stat. § 6.03(3), any elector of a municipality can petition the court for a determination that an individual residing in the municipality is incapable of understanding the objective of the voting process. The court will make this determination based on the same procedures for removing the right to vote in a guardianship action, although no guardian needs to be appointed. The clerk of court is then required to communicate this decision in writing to the election official.

The right to vote can also be restored by the court by petitioning for a review of the incompetency determination and termination or modification of guardianship.⁹ These court forms can be found online under the guardianship forms: <https://www.wicourts.gov/forms1/circuit/index.htm> (see forms GN-3650 or GN-3655).

For more information on voting, please visit:

My Vote Wisconsin: <https://myvote.wi.gov/en-us/>

Wisconsin Disability Vote Coalition: <https://disabilityvote.org/>, 1-844-DIS-VOTE

WI Elections Commission: <https://elections.wi.gov/>, 1-866-VOTE-WIS

Consumer Voice: <https://theconsumervoice.org/issues/other-issues-and-resources/voting-rights>

Referrals to the Long Term Care Ombudsman Program can be made regarding resident rights and access to information, which includes the right to vote. You can reach us at BOALTC@wisconsin.gov or at 1-800-815-0015.

⁹ Wis. Stat. 54.64(2), “Restoring the Right to Vote for People under Guardianship”, <https://gwaar.org/api/cms/viewFile/id/2007480>