

# **Elections Commission: Submits notice of emergency administrative rulemaking on special voting deputies for spring election**

Posted on Friday, Mar 5, 2021

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MADISON, WI – The six-member, bipartisan Wisconsin Elections Commission on March 2 unanimously approved new guidance for Wisconsin municipal clerks regarding voting in nursing homes and other care facilities for the April 6 Spring Election.

The Commission also directed staff to start the emergency rulemaking process, and today submitted to the Department of Administration a notice of its intent to make an emergency administrative rule regarding special voting deputies (SVDs) to ensure that all residents of nursing homes and other care facilities are able to vote at the April 6, 2020 Spring Election.

Previous guidance the Commission gave to clerks about how to handle SVD voting during the pandemic for earlier elections has expired, and is no longer in effect.

Changes in the COVID-19 pandemic and new public health guidance may now permit some nursing homes and care facilities to accept visits from SVDs and observers, but an unknown number may still not accept non-essential visitors. The proposed emergency rule advises municipal clerks on how they can comply with a state law which requires them to make two attempts to send SVDs to nursing homes and other care facilities before mailing absentee ballots to registered voters who have valid requests on file.

At a public meeting held on March 2, the WEC unanimously passed several motions regarding SVDs and the administrative rulemaking process. The first motion approved states:

Specific to the April 6, 2021 election, Clerks shall contact all eligible facilities in their municipality no later than March 12, 2021 to determine whether special voting deputies will be admitted. If SVDs are permitted, SVDs should schedule their SVD visits immediately in the allowable SVD period and consolidate such visits to the greatest extent possible, so that there are at least 14 days prior to the election for any voter who does not vote with SVD assistance may receive and return their absentee ballot. These visits should be scheduled no later than March 19, 2021. SVDs and observers must comply with any requirements of the care facility and of state and local health departments to conduct the visits safely, recognizing the importance of preserving a resident's right to vote. If the clerk is informed that SVDs will not be permitted entry to the facility, the SVDs should schedule two tele-visits with the administrator of the facility. These tele-visits should be scheduled immediately in the allowable SVD period so that if attempted visits are denied that there are at least 14 days prior to the election for the voter to receive and return their absentee ballot. SVDs should use the tele-visit to confirm that SVDs are not permitted to enter the facility. If SVDs are denied access to the facility, then clerks must proceed to the provisions of Wis. Stat. §6.875(6)(e) and send voters their ballots.

Two additional motions passed unanimously by the Commission directed WEC staff to incorporate the first motion into a communication to Wisconsin clerks and to "use this policy to create a scope statement to submit in pursuance of a temporary emergency administrative rule regarding the April 6 election."

Finally, the WEC directed its staff to research possible changes to the law needed in order to implement an alternative to SVD voting, which could be necessary in the event that future pandemics, epidemics or natural disasters would restrict access to nursing homes and other care facilities, which are not contemplated by current law. Recommended changes to the law could be incorporated into the WEC's 2021 legislative agenda, which it provides to lawmakers.

The first step in the administrative rulemaking process is the Commission's approval of the drafting of a scope statement, which briefly describes the scope of the proposed rule and its possible impacts. The scope statement is then submitted to the Department of Administration for review and forwarding to the Governor's

Office, which reviews it before additional statutory procedures commence. For more information about the administrative rulemaking process please refer to the [Department of Administration website](#).

More information about the Commission's guidance, including the scope statement, is available on the agency's website: <https://elections.wi.gov/node/7361>.