

REMINDER TO NURSING HOMES: DON'T FORGET RESIDENTS' RIGHT TO VOTE IN THE UPCOMING ELECTION

October 19, 2020

On October 5, 2020, the Centers for Medicare and Medicaid Services ("CMS") issued [QSO-21-02-NH, Compliance with Residents' Rights Requirement Related to Nursing Home Residents' Right to Vote](#) (the "Guidance"), reminding nursing home providers of their obligation to honor residents' right to vote in the upcoming 2020 Presidential Election. As CMS's Guidance highlights, "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." The Guidance further directs that:

"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)."

WHAT THIS MEANS FOR PROVIDERS

Providers are encouraged to contact state and local election boards as well as local long-term care trade associations for information on voting options for nursing home residents, including absentee and mail-in voting options. Providers should also develop a coordinated plan to communicate these options to residents and their families/decision-makers. All such efforts should be clearly and thoroughly documented. To the extent a resident may complain that his or her right to vote was not honored, such documentation may be critical to the facility's ability to demonstrate compliance with the above requirements.

Providers are reminded that, as long as an individual is able to express a preference with respect to voting, diagnoses of dementia and other cognitive impairments will not render that individual unable to vote or absolve the provider of the responsibility to assist such an individual in voting. In the event an individual has been adjudicated incompetent and had a guardian appointed, providers should review the court's guardianship order and applicable state law, and should also communicate with the appointed guardian to determine whether the resident's right to vote remains in effect. Certain states do not automatically terminate an individual's right to vote in the event a guardian is appointed, and may reserve termination

of voting rights to the judge's discretion in a particular case. Consequently, providers should not assume that an individual's voting rights have been terminated simply because they have a guardian.

Concerning resident voting preferences, providers must ensure that residents are free from coercion or intimidation in voting. Although providers may assist residents in completing their ballot, they are cautioned against advocating any particular candidate. Providers are reminded that residents have absolute freedom in expressing their own preferences with respect to voting. Residents are not required to cast a vote for each election listed in a ballot (for example, a resident may choose to cast a vote for the presidential race only and leave the remainder of the ballot choices blank). Residents are also not required to vote for any particular candidate, and may "write in" candidates as they see fit (for example, if a resident wishes to vote for "FDR" or "Mickey Mouse," they are free to do so, even if such individuals are not candidates for the election).

Finally, providers are reminded that they must continue to adhere to applicable nursing home visitation requirements. This includes visits from state/local election officials who may visit the facility in order to collect resident ballots or assist in voter registration. Further information regarding CMS's most recent guidance on nursing home visitation (current as of the date of this advisory) is available [here](#).

If you have any questions or need further guidance regarding CMS's new visitation guidance, please contact a member of Hancock Daniel's [Long-Term Care & Post-Acute Care](#) team.

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