

Policy Forum

## Policy statement on voting by persons with dementia residing in long-term care facilities

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### 1. Preamble

The purpose of this policy statement, which was approved by the Public Policy Committee of the Alzheimer's Association national Board of Directors, is to identify steps that should be taken by federal agencies, state legislatures, election officials, staff of long-term care facilities, and long-term care residents and their families to assure that residents' voting rights are respected while preventing fraud in elections.

### 2. Background and Statement of the Problem

Voting is among the fundamental rights of United States citizenship. Considerable social, political, and legal efforts have been aimed at assuring that virtually all adult citizens are entitled to register, to cast a ballot, and to have that ballot counted [1]. In the last several decades, these efforts have expanded beyond their focus on the voting rights of racial minorities to assure access for non-English speakers and persons with physical disabilities. Considerably less attention has been paid to access for persons with disabilities caused by cognitive impairments or physical disabilities that keep them away from official polling places altogether.

Dementia is a common problem for residents of long-term care facilities, and the voting rights of persons with dementia warrant particular attention [2]. By the time afflicted persons reach a moderate stage of dementia, they have substantial impairments in orientation and in the abilities to plan and organize tasks and to use transportation.

They may have lost the capacity to vote, but even if they retain capacity to vote and seek to do so, they may need to be reminded about the deadlines for registration and voting and be assisted in registering to vote, getting to a polling booth or ordering an absentee ballot, and completing the ballot.

Although other causes of cognitive impairment such as mental retardation raise similar issues, dementia compounds the political and personal costs of a failure properly to attend to these issues. Dementia is one of the most common causes of cognitive impairment with an estimated 4.5 million Americans affected in 2000 [3], and it is uniquely prevalent in the elderly, a group with a high voter turnout, whose numbers are growing [4]. In addition, the estimated numbers of persons residing in assisted living and nursing home facilities are 789,000 [5] and 1.6 million [6] people, respectively, and nearly two thirds of these residents have dementia [7–9]. Available data, although limited, suggest that persons with mild dementia and many persons with moderate dementia retain the capacity to exercise their voting rights [10]. However, residents' actual opportunity to vote in long-term care settings may be effectively determined by the attitudes and practices of the facilities' staff members. Some residents who want to vote and have the capacity to vote may be unable to do so because their rights are neglected or because staff members incorrectly assume that they lack the necessary capacity.

At the same time, inattention by election officials and long-term care staff to fraudulent activities by unscrupulous persons or political organizations could compromise the integrity of elections. Losers of several recent local elections decided by narrow margins, for example, have con-

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tested the results, claiming that the results reflect illegal behavior connected with long-term care facilities [11–14].

Although federal regulations for long-term care facilities require respect for residents' voting rights, these regulations and related Center for Medicare and Medicaid Services guidelines do not provide clear guidance on how a facility should achieve this goal [15]. Twenty-three states have guidelines for voting in long-term care facilities, but the content of these guidelines varies [16]. Some guidelines require election officials to engage in outreach only if a facility meets a threshold number of residents or absentee voters, whereas others require election officials to supervise voting in all cases. Some guidelines leave most of the responsibility with facility staff, acting with minimal supervision by election officials, whereas others confer extensive responsibilities on election officials for all aspects of registration and voting.

### 3. Policy Recommendations

#### 3.1. Respecting Voting Rights

- A. Residents of long-term care facilities should have access to **timely information** about upcoming elections so that they can determine whether they desire to register and vote.
- B. Residents who express a desire to vote should be **presumed competent** to do so, unless determined to be incompetent under procedures and criteria prescribed by state law.
- C. Residents of long-term care facilities have the **right to request assistance** in voting from whomever they desire (subject only to limitations imposed by federal or state law). Trained persons should be available to residents who request or require assistance. This training and assistance should be provided on a nonpartisan basis.
- D. States should define competence to vote in **functional terms**, focusing on whether the voter understands the nature and effect of voting. Provisions of state law excluding people from voting based categorically on a diagnosis of mental disorder or being under a guardianship order are unconstitutional and should be repealed.
- E. The responsible federal agencies should promulgate **guidelines defining accommodations** required for cognitively impaired voters under the Americans with Disabilities Act, and specifying the obligations of long-term care facilities and state election agencies to provide such accommodations.

#### 3.2. Protecting the Integrity of Elections

- A. Although at some point in the course of a dementing illness a person will lose the capacity to vote, it is unlawful for any person, including family members, to vote on behalf of an incapacitated person.

- B. While individual voters within a facility are entitled to request the assistance of the person of their choice in registering or in requesting or casting a ballot, no facility should assign exclusive control over residents' voting activities to a single person.
- C. Registration and balloting at a long-term care facility should be overseen either by election officials selected and trained in the same manner as officials performing these functions in other contexts (such as government offices or polling places) or by 2 or more persons connected with a particular long-term care facility and trained by election officials to serve this function. Failure to monitor carefully both registration and voting increases the risk of fraud.

#### 3.3. Guidelines for Voting in Long-Term Care

- A. Election officials should promulgate guidelines for voting in long-term care settings that address issues related to physical and cognitive impairments. These guidelines should address voter registration, access to absentee ballots and polling places, and assistance in voter registration and casting a ballot. Because facility staff already bear heavy burdens and are not well situated to carry out electoral responsibilities, these guidelines should repose primary responsibility for assuring respect for residents' voting rights and for preventing fraud in election officials, rather than facility staff.
- B. The long-term care industry should develop model guidelines for long-term care facilities identifying the steps that should be taken by staff to protect the rights of residents to vote and minimize fraud by clarifying the responsibilities of staff in relation to the responsibilities of election officials.
- C. Appropriate funds should be provided to election officials to assure that they have the ability to implement guidelines for voting in long-term care facilities.
- D. Applicable guidelines should preclude systematic screening of competence to vote based exclusively on a diagnosis of dementia or on residence in a long-term care facility while encouraging assessments for residents whose voting competence is reasonably in doubt, including the use of validated assessment instruments as they become available.

#### 3.4. Ballot Format and Presentation

- A. State election officials should develop ballot formats and mechanisms for voting that minimize complex visual-spatial representation. In addition, font size of printed materials should be reasonably large, and ballots should clearly state how persons unable to read the standard ballot can obtain a more readable version or receive other assistance in casting their votes.

B. The effectiveness of ballot design changes in decreasing voter confusion, and mistakes in voting should be systematically evaluated.

### 3.5. Education and Training

A. Federal and state educational and training programs, such as those supported pursuant to the Help America Vote Act (HAVA) or regulated under the National Voter Registration Act (NVRA), should include education and training for long-term care staff and for election officials whose responsibilities include overseeing voting in long-term care facilities. This training should include the nature and scope of the right to vote as well as the accommodations that are available to facilitate exercise of the right to vote by people in long-term care facilities.

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