



## PENNSYLVANIA VOTING ASSISTANCE GUIDANCE

### Who is allowed to cast a mail-in ballot?

All qualified electors in Pennsylvania have the right to vote by mail-in ballot. 25 Pa. Stat. § 3150.11. An application for a mail-in ballot must be received by the appropriate county board of elections no later than 5:00 PM on the Tuesday preceding Election Day (i.e., by October 27, 2026). 25 Pa. Stat. § 3150.12a(a).

The mail-in ballot request form can be completed online at <https://www.pavoterservices.pa.gov/OnlineAbsenteeApplication/#/OnlineAbsenteeBegin>

A Pennsylvania voter who has a disability that prevents them from applying in person for their mail ballot or delivering their mail ballot can use the following form to designate an agent to assist them: <https://www.pa.gov/content/dam/copapwp-pagov/en/vote/resources/documents-and-forms/Authorize-Designated-Agent-for-Mail-in-or-Absentee-Ballot.pdf>

Note that Pennsylvania has two types of mail voting: (1) mail-in ballots (which can be requested by any registered Pennsylvania voter as described above) and (2) absentee ballots (which can only be requested by voters who belong to the specific categories outlined in 25 Pa. Stat. § 3146.1, one of which is “[a]ny qualified registered and enrolled elector who because of illness or physical disability is unable to attend his polling place”). Although the absentee voting provisions have essentially been superseded by the broader mail-in voting laws that were enacted in 2019, they have never been repealed and so remain a legal option for disabled voters. However, given that any registered voter is now legally permitted to request a mail-in ballot, the vast majority of voters will likely opt for the mail-in rather than the absentee voting option.

Additionally, registered Pennsylvania voters with disabilities who have applied for either a mail-in or absentee ballot may request an accessible remote ballot to mark their ballot electronically here: <https://www.pa.gov/agencies/vote/voter-support/accessible-voting/accessible-remote-ballot-marking-solution-for-mail-voting>.

### Can nursing home staff assist all residents with mail-in voting?

No, the Pennsylvania code does not have a blanket mail-in voting assistance provision that would be applicable to all nursing home residents. Guidance published by the

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Pennsylvania Department of State in September 2024<sup>1</sup> explains that the following categories of voters are entitled to request voting assistance:

- Is blind;
- Has a disability, meaning a physical or mental impairment that substantially limits one or more major life activities;
- Is unable to read or write; or
- Requires an interpreter.

Assistance is not available to voters who do not have a qualifying disability, nor does it apply to qualified disabled voters who fail to designate an agent in writing.

State law requires that “*the mail-in elector shall, in secret, . . . mark the ballot;*” “[*t*]he elector shall then fill out, date and sign the declaration printed on such envelope;” and “*the elector shall send same by mail, postage prepaid, . . . or deliver it in person to said county board of election.*” 25 Pa. Stat. § 3150.16(a) (emphases added). The only statutory exception pertains to “[a]ny elector who is unable to sign the declaration because of illness or physical disability[.]” 25 Pa. Stat. § 3150.16(a.1).

### **Can nursing home staff assist a disabled resident in voting?**

Yes. Under Section 208 of the federal Voting Rights Act of 1965, “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508. Guidance from the Department of Justice Civil Rights Division states that “[v]oters with disabilities may receive assistance in all aspects of the voting process, including in requesting, completing, and returning a ballot, whether in person, absentee, or by mail-in ballot. For example, if a voter with a disability requires assistance to mark a ballot, the voter must be allowed to receive assistance from the person of their choosing and is not limited to assistance from an election worker.”<sup>2</sup>

Federal law defines a qualifying “disability” as “a physical or mental impairment that substantially limits one or more major life activities.” 42 U.S.C. § 12102(1)(A). Pennsylvania

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<sup>1</sup> Pa. Dep’t of State, *Fact Sheet for Voters in Long-Term Care Facilities* at 3, (Sept. 2024), <https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/fact-sheet-voters-long-term-care-facilities.pdf>.

<sup>2</sup> U.S. Dep’t of Justice Civil Rights Div., *The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities* (Apr. 18, 2024), <https://www.ada.gov/resources/protecting-voter-rights/#rights-to-assistance-in-the-voting-process>.

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law refers specifically to voters who are “unable to sign the [mail-in ballot] declaration because of illness or physical disability,” and requires a disabled voter seeking assistance completing their mail-in ballot declaration to declare that “I am unable to sign my declaration for voting my mail-in ballot without assistance *because I am unable to write* by reason of my illness or physical disability.” 25 Pa. Stat. § 3150.16(a.1) (emphasis added). Department of State guidance confirms that “[v]oters with disabilities have the right to designate an agent of their choice, and long-term care administrators and staff must permit disabled residents to designate a willing agent of their selection.”<sup>3</sup>

Likewise, a voter who has requested an absentee ballot may only “receive assistance in voting (1) if there is recorded on his registration card his declaration that he has a physical disability which renders him unable to see or mark the official absentee ballot, the exact nature of such disability being recorded on such registration card; (2) if such elector requiring assistance submits with his application for an official absentee ballot, a statement setting forth the precise nature of the disability which renders him unable to see or mark the official absentee ballot and that to the best of his knowledge and belief he will still suffer from the said physical disability at the time of voting his official absentee ballot.” 25 Pa. Stat. § 3146.6a. In other words, it does not matter whether the voter has requested a mail-in ballot or an absentee ballot: any disabilities that are unrelated to a voter’s ability to read or mark their ballot do not qualify for assistance.

It is important to note that even under the federal exception for assisting disabled voters, the voter must still have the ability to make an effective request for assistance.

Pennsylvania law specifically requires that a disabled voter “shall be excused from signing [their own mail-in ballot] upon making a declaration” concerning their need for assistance due to their inability to read or write. 25 Pa. Stat. § 3150.16(a.1). The same is true for a voter casting an absentee ballot, who is required to “designate in writing the person who will assist in marking the ballot.” 25 Pa. Stat. § 3146.2a(a.3)(7). If the voter is unable to make such a declaration or offer instructions to the person assisting them concerning their desired vote choice, then assistance cannot be rendered.

### **If nursing home staff are not allowed to assist residents in voting, then who can?**

Pennsylvania law does not make general provision for voting assistance for voters who are not disabled as described above.

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<sup>3</sup> Pa. Dep’t of State, *supra* note 1, at 4.

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Under both federal and state law, a disabled voter is entitled to request the assistance of any individual “[p]rovided, however, [t]hat the person rendering assistance may not be the elector’s employer or an agent of the employer or an officer or agent of the elector’s union.” 25 Pa. Stat. § 3146.6a; see *also* 52 U.S.C. § 10508. Hence, nursing home staff may lawfully assist disabled voters in completing their ballots if an effective request for assistance is made.

Any person who assists a disabled voter in casting their absentee ballot “shall complete, date and sign the declaration . . . that the person has caused the elector’s ballot to be marked in accordance with such elector’s desires and instruction.” 25 Pa. Stat. § 3146.6a. Again, if the voter is unable to indicate their desires or instruct the assister in marking their ballot, then assistance cannot be rendered.

Note that Pennsylvania also criminalizes a variety of different acts under the umbrella of “[u]nlawful assistance in voting,” some of which apply to the voter and some to the person assisting them. See 25 Pa. Stat. § 3530. Such unlawful forms of assistance include:

- “without having made the [disability] declaration under oath or affirmation . . . , or when the disability which [the voter] declared before any registration commission no longer exists,” to “permit another . . . to mark his ballot;”
- To “state falsely to any election officer that because of illiteracy [the voter] is unable to read the names on the ballot or ballot labels or that by reason of physical disability he cannot see or mark the ballot . . . without assistance;”
- To “state, as his reason for requiring assistance, a disability from which [the voter] does not suffer;”
- For “any person giving assistance” to “attempt to influence the vote of the elector whom he is assisting or who shall mark a ballot . . . in any other way than that requested by the voter whom he is assisting, or who shall disclose to anyone the contents of any ballot which has been marked . . . with his assistance[.]”

25 Pa. Stat. § 3530.

### **How should voted mail-in ballots be returned?**

Voted mail-in ballots can be returned to the appropriate county board of elections in one of two ways:

1. Return by the voter “by mail, postage prepaid”; or
2. “deliver it in person to said county board of election.”

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25 Pa. Stat. § 3150.16(a). “Voters who do not require assistance should return their own ballot.”<sup>4</sup> A Pennsylvania voter who has a disability that prevents them from applying in person for their mail ballot or delivering their mail ballot can use the following form to designate an agent to assist them: <https://www.pa.gov/content/dam/copapwp-pagov/en/vote/resources/documents-and-forms/Authorize-Designated-Agent-for-Mail-in-or-Absentee-Ballot.pdf>

According to state law, a person designated to assist a voter with any aspect of the voting process “shall be otherwise eligible to provide assistance to electors eligible for assistance,” meaning that there is no longer any limit on the number of disabled voters that a single individual may be designated to assist. 25 Pa. Stat. § 3146.2a(a.3)(7).

All mail-in ballots must be received by the appropriate county board of elections “no later than eight o’clock P.M. on the day of the primary or election” to be counted. 25 Pa. Stat. § 3150.16(c). “Mail ballots postmarked by that time but received after 8 p.m. on Election Day do not count.”<sup>5</sup>

### **What conduct indicates that illegal activity may be occurring in a nursing home?**

There are several factors that may be indicative of illegal absentee voting activity:

- Someone completing a voter’s ballot outside the voter’s presence, which should **never** happen.
- An unusually high number of requests for the same person to provide assistance.
- Individuals seeking to assist voters residing in a nursing home who do not have a qualifying disability.
- Individuals aggressively seeking to assist disabled voters residing in a nursing home without any initial request for assistance from those voters.
- Individual seeking to interfere with or influence the voter’s selection while they are voting, which is illegal.
- Individuals sharing how a voter voted, which is illegal.
- Individuals forging a voter’s signature on an absentee ballot application or absentee ballot.
- Individuals altering any information on a voter’s absentee ballot.

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<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.* at 1.

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If you are aware that any of the above activities are occurring in a particular nursing home, you should report that information to the Pennsylvania Department of State using this online form: <https://www.pavoterservices.pa.gov/Pages/ReportElectionComplaints.aspx>

**What other criminal offenses related to absentee voting should nursing home staff be aware of?**

It is a misdemeanor for a person rendering assistance in voting to “attempt to influence the vote of the elector whom he is assisting or [to] mark a ballot . . . in any other way than that requested by the voter whom he is assisting, or [to] disclose to anyone the contents of any ballot which has been marked . . . with his assistance.” 25 Pa. Stat. § 3530.

It is a second-degree misdemeanor to willfully “destroy or deface any ballot” or willfully “delay the delivery of any ballots,” punishable by a fine of up to \$5,000, up to two years’ imprisonment, or both. 25 Pa. Stat. § 3517.

CENTER FOR VULNERABLE VOTERS

Please contact our National Training Coordinator, Laura Williams, OTR/L for inquiries at:

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[Centerforvulnerablevoters.org](http://Centerforvulnerablevoters.org)

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