Voting for Long-Term Care Residents

It’s axiomatic: the older you are, the more likely you are to vote. Approximately 70 percent of people over 65 vote in presidential elections, compared to 45 percent of the voting age population overall. (Less than 40 percent of 18- to 24-year-olds voted in 2012). However, this truism breaks down as voters reach 75 and above, according to the U.S. Census Bureau. At that point, voting drops off.

Why? As we age:

- Transportation to the polls can become difficult.
- Voting accessibility for people with disabilities may be a challenge, despite federal law.
- Ballots can stymie people with limited vision.
- Dexterity declines to the point that managing a paper ballot becomes tricky.

Sometimes, “all of the above” can apply.

There’s reason to believe the decline is particularly steep for people living in long-term care facilities (LTC), such as nursing homes and assisted living facilities. Often, access to a ballot is a problem, but the issues relating to voting for LTC residents are complicated.

To simplify matters, The Canvass will address these questions:

- What’s competency got to do with it?
- How is access denied and how can it be restored?
- Where does election integrity and fraud prevention fit in?
- What is the administrative, real-world perspective?
- What can state lawmakers do?

(Note: LTC residents are not just the frail elderly. Veterans with serious injuries and others with disabilities can face the same physical, logistical and cognitive barriers to voting. See sidebar for more on veterans and voting.)

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Voting for Long-Term Care Residents

What’s competency got to do with it?

Whether suffering from traumatic brain injury, as is the case for many veterans in residential care, or from age-related forms of cognitive decline, many LTC residents are grappling with diminishing mental capacities. Does that mean these people can’t vote?

Not necessarily. Most state constitutions require mental competency for a person to be an eligible voter, but mental competency decisions must be made in the context of voting, not based on a blanket ruling on competence. “The fact that people can’t balance their checkbooks is not an indicator of their ability to make a value judgment” for voting, says Nina Kohn, a Syracuse University law professor who specializes in elder law.


How is voting access denied and how can it be restored?

Every state permits voters who can’t get to the polls, including residents of LTC facilities, to “vote absentee.” And yet, people who need help with daily tasks are likely to need help getting a ballot, too. This year, Oklahoma enacted SB 276, a bill sponsored by Representative Joe Dorman (D) that makes it easier for a person in a LTC facility to get an absentee ballot. “We had an individual who delivered an absentee ballot request to the county election board on behalf of a nursing home resident,” but the law didn’t allow for hand-delivery of a request, Dorman said. “That wasn’t common sense, so we changed it so any individual who is incapacitated could have an agent deliver a request. It won’t be a lot of cases, but for those who are in that position, it matters a great deal.”

Help doesn’t begin or end with obtaining a ballot. Voters also may need help updating voter registration information, keeping track of key election dates and even remembering how to complete a ballot. Voting isn’t a daily task, after all.

The options on who can help are limited and vary according to state law, but often include family members; agents appointed by the voter; staff at the facilities or staff or volunteers from the local election office.

A recent study, Voting by Senior Citizens in Long Term Care Facilities, looked at voting in 246 Virginia nursing homes and assisted living facilities. Not surprisingly, facilities that offered the most support for voter registration and casting a ballot had the most residents voting. Less support meant less voting. Institutions that provide more voting assistance are to be commended.

And yet relying on facility staff means that “voting access becomes idiosyncratic based on the facility and its practices,” says Kohn. “No one wants to empower facilities to decide who in your community votes, and that’s what we’re doing in this country.”

“My belief is that states should be providing polling in the place of residence for people in institutions,” Kohn said. This goes by the name of “mobile polling” or “supervised voting.” With this plan, bipartisan teams of election officials go to LTC facilities and offer voter registration and voting (with assistance as needed). It has proved popular with residents, staff and local election officials.

In Oregon these teams have used tablet computers to facilitate marking ballots because it requires less dexterity to touch and swipe a screen than to write with a pen. How do local jurisdictions decide when to provide in-facility mobile polling? State law plays a role. For instance, in South Dakota, the law states “If the county auditor might reasonably expect five or more absentee applications, he or she will provide for supervised voting at the facility.”

“The wrong way to do it is to base it on the number of requests for ballots and that’s because there are barriers to even making that request,” says Kohn. “Do it on the number of registered voters.”

Where does election integrity and fraud prevention fit in?

Voting for people in LTC facilities “is an access and integrity question,” says Rebecca Green, director of the Election Law Program at William and Mary Law School. “Absentee voting, which by definition takes place when no election officials are present, is a real focus of concern. Processes should be put in place to ensure that nefarious actors or people who aren’t helping in the ways they should are prevented from distorting or disrupting eligible LTC residents’ ability to cast a valid vote.”

When does “helping” become “voting on behalf of…?” “Reports of residents pressured by partisan poll workers, absentee ballots lost or incorrectly marked, or votes cast by seniors too cognitively impaired to have made an independent choice are common,” according to the “Voting by Senior Citizens” study.

In Wisconsin, Senator Glenn Grothman (R) introduced SB 297 in September 2013 specifically to forestall nursing home fraud. The bill would require special voting deputies (bipartisan teams) to not just go to nursing facilities but also to other residential facilities, and provide five days notice.

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Voting for Long-Term Care Residents (cont. from page 2)

What is the administrative, real-world perspective?

Mobile polling sounds good, but “without bipartisan teams of volunteers, the program is not going to work,” said Neal Erickson, Deputy Secretary of State for Elections in Nebraska. The lack of sufficient paid staff to visit facilities during election season makes mobile voting impractical on a uniform basis. In Nebraska most LTC residents vote by mail.

Erickson reports that in the past, the social director for a nursing home would bring in a set of absentee ballot applications, and would receive a stack of blank ballots. “I put a stop to that; we now mail ballots individually, and the mail has to be delivered unopened.” From receipt of an absentee ballot, it is “voter’s choice” on who assists with actually casting and returning the ballot.

What can state lawmakers do?

First, lawmakers can use NCSL’s Voting in Long Term Care Facilities to see what the law dictates in their own state and can then consider other states’ policies to:

--make it easier for residents of LTC facilities to get absentee ballots, as Oklahoma did this year.

--increase the people who can assist with voting, as North Carolina did this year.

--restrict employers and unions from helping, as Texas did this year.

--ensure that residents of veterans’ homes receive the same kind of voter assistance as residents of other facilities, as Illinois did in 2011.

--require or encourage bipartisan teams to conduct mobile polling, as at least 18 states do.

--update statutory language, as Louisiana did in 2009, when it changed “mental retardation” to “intellectual or cognitive disabilities” and “physically handicapped” to “physical disability.”

--require posters that make it clear that ballot coaching is illegal, as Michigan does.

--make it a crime to coerce a voter, as California did in 2011.

--ask administrators to create state-level directives to guide local election officials, such as Wisconsin’s Absentee Voting in Nursing Homes, Retirement Homes and Adult Care Facilities Manual, published in May 2013.

Final thoughts

Helping LTC residents to vote isn’t just a mom-and-apple-pie nice thing to do. Because voting is a right, providing reasonable assistance is a duty. And, as our population ages, careful policymaking to protect voting rights throughout all life’s stages will become crucial to ensuring a voice in democracy to those who need the most help expressing it.

— Wendy Underhill

Additional Resources

Elderly Voters: Information on Promising Practices that Could Strengthen the Integrity of the Voting Process in Long Term Care Facilities (General Accountability Office)

Nursing Home Inspect, a database with three years of data on all kinds of deficiencies in nursing homes (ProPublica)

Convention on the Rights of Persons with Disabilities (United Nations)

Longtime Elections Expert Smolka Dies

Newsletter He Founded To Continue

Richard “Dick” Smolka, a leading expert on elections and the founder of the bi-weekly newsletter Election Administration Reports, died Nov. 5 at his Mesa, Ariz., home. He was 81.

He taught at American University, served as an election observer in developing democracies, and was widely sought after for his analyses of races that ranged from the 2000 U.S. presidential election to local races in Washington.

“Dick was such an important part of modernizing the world of elections,” John Willis, current editor of Election Administration Reports said.

Smolka, who guided Election Administration Reports as its editor for more than four decades, was careful to ensure that his life’s work through the newsletter would endure, Willis said, adding that the publication is strong and will continue on with its work.

A memorial service to celebrate his life will be held on Monday, Dec. 30 at Holy Cross Catholic Church in Mesa, Ariz. In lieu of flowers, contributions can be made in Richard Smolka’s name to the Annual Fund at St. Ignatius High School, 1911 W. 30th St., Cleveland, Ohio 44113.

— Michael D. Hernandez
Veterans’ Advocate: States Should Offer Voting Help to Disabled Veterans

Does voting for veterans differ from voting for other stateside citizens?

No, for those who have returned to their normal civilian lives. But for the 50,000 servicemembers who have been wounded since 2001, voting can be different—and difficult, says Chip Levengood, of Operation BRAVO Foundation. It can even differ between disabled veterans and other disabled people. That’s because the “signature injury” for wounded warriors is traumatic brain injury (TBI), which affects cognitive functioning.

“When these men and women are injured and are still on active duty they have a tremendous support system from the Department of Defense,” says Levengood. “We expected that once a wounded warrior becomes a civilian again, they would continue to get a high level of support.” Not necessarily so.

When Operation BRAVO, which is committed to making voting easier for U.S. vets, heard there were unique voting difficulties for wounded warriors, it determined to investigate. The result is the 2012 report, Making Voting More Accessible for Veterans with Disabilities. The report is based on data gathered from 48 out of 55 states, territories and the District of Columbia. The results showed that “no state does something specifically targeted toward voting for severely wounded warriors,” Levengood said.

Special help is needed not just because the injuries are unique. Additionally, “many (wounded warriors) are undergoing medical treatment and rehabilitation in facilities away from their place of residence; thus they are separated from their families and support networks, and must vote absentee, following the same procedures as other civilians. To do this, they must navigate a complex and varied set of state requirements to request, receive, mark, and return their ballot,” the report found.

Levengood would like to see at least two proven avenues used more often: expanding mobile polling, where local election officials bring voting to rehabilitation and long term care residences, and fully harnessing the best of assistive technology and good design. For instance, he says that voters with cognitive difficulties do better with an electronic screen instead of a cluttered paper ballot, with simple how-to instructions and with just one question or race per screen.

— Wendy Underhill

One big number

7. That’s the number of states participating in the Electronic Registration Information Center (ERIC), which aims to improve voter registration rolls by enhancing access to registration and by improving the accuracy of voter rolls through regular list maintenance. A new report about ERIC shows that participating states had an increase in new voter registration rates and a drop in the number of people reporting registration problems.

Colorado, Delaware, Maryland, Nevada, Utah, Virginia and Washington are part of the project that is facilitated by The Pew Charitable Trusts. Key findings of the report include that participating states showed a net improvement in registration of 1.23 percent over states not participating in the project, and a net increase in voter turnout of 2.36 percent over non-participant states.
From the Chair

Alabama Senator Bryan Taylor understands the importance of public service. Prior to his current role as chair of Alabama’s Senate Committee on Constitution, Campaign Finance, Ethics and Elections, Senator Taylor served in the Army and was deployed during the Iraq War. The small business owner and practicing attorney continues to serve as a major in the Alabama National Guard.

The Canvass interviewed Senator Taylor on Dec. 16.

Excerpts:

- “It’s a tragedy any time a servicemember is locked out of an election simply because of the delay and the snail mail, especially when we have got all the new technology we have at our fingertips.”

- “The personal communication and contact with other members is vitally important. Nobody has time to go to a committee meeting that they are not on and listen to the testimony so working those votes on the floor, visiting other senators in their offices after-hours or before hours when they have a little bit of time and letting them know what your most important pieces of legislation are, and letting them know how it impacts their voters, their constituents, is critical.”

- “Real signature reform has been in the area of campaign finance. We passed a bill two years ago to require the secretary of state to put all of our campaign contributions and expenditure reporting online in a searchable database.”

- I work very closely with our secretary of state and, in Alabama, our probate judges are responsible for voting in each county. I speak with them, with their association, throughout the session. We always talk about every single bill that affects the local voting process.

Read the full interview here for more with Senator Taylor.

The Election Administrator’s Perspective

Election season still has not faded in Virginia where the race for attorney general has sparked a statewide recount. This month, Linda Lindberg, the general registrar for Arlington County, and her staff unsealed hundreds of voting machines and re-tallied results for her community of 218,000 just outside of Washington. The Canvass spoke with Lindberg on Dec. 6.

Excerpts:

- “The more complicated (lawmakers) make the process, the more we have to work in order to implement it. They are not always taking into consideration what the impact might be on our offices and the local resources.”

- “As our county board starts approving more growth, we work with the planning commission to see what the impact that might be on our polling places. So we try as much as possible to have them work with developers to build in a space such as a party room or something similar – a club room in a building – that we can use for voting purposes as part of a site-plan condition.”

- “Now we really need to have an ongoing replacement plan (for voting equipment) at the outset saying ‘OK, here is some funding available each year to put into that pot so that five years down the line, six years down the line, we will have the funds to replace our aging equipment.’”

Read the full interview here for more with Linda Lindberg.
Worth Noting

● The Washington Post wrote about NCSL’s panel discussion on election predictions for 2014 and, in particular, the importance of using clarity in the crafting of election policy. Ned Foley, an Ohio State University professor and election law expert, listed clarity atop a list of goals a new election law should achieve. But Alysoun McLaughlin, deputy director of the Montgomery County Board of Elections in Maryland, warned that an overreliance on clarity can sometimes yield requirements that are hard for local election offices to meet. See NCSL’s blog post on the same session.

● Rick Hasen of the University of California, Irvine School of Law helped explain to California state lawmakers this month the effect of the Supreme Court’s June decision on the Voting Rights Act. His prepared testimony for the joint legislative committee in California includes a breakdown of the court’s Shelby County decision, details what parts of the Voting Rights Act remain enforceable, and provides his analysis of Congress’ reaction to the decision and possible legislation that could be offered.

● Utah recorded 187,674 absentee ballots cast by mail in 2012, according to The Pew Charitable Trusts. Pew’s 2012 Election Snapshot for Utah shows a considerable uptick in the number of absentee ballots cast by mail. Only 85,887 ballots were cast that way in 2008 before the state offered all voters the opportunity to register for permanent absentee voting. The data, which shows that 18 percent of all ballots cast in Utah were sent by mail, comes from Pew’s more extensive Elections Performance Index, an interactive tool that looks at 17 indicators of how well elections are being run in each state.

● This November, 17,931 people used Ballot TRACE, Denver’s cutting edge ballot tracking system during the 2013 general election. The Ballot Tracking, Reporting, and Communication Engine allows a voter to receive status updates about their mail ballot as it enters the mail system, while it is being processed by the United States Postal Service and when it has been returned to the Denver Elections Division. Voters can track their mailed ballot on the city’s elections website or by receiving emails or text messages.

● U.S. Senate action this month could help revive activity for the U.S. Election Assistance Commission, the national clearinghouse of information on election administration tasked with helping states meet voting guidelines laid out by the Help America Vote Act of 2002. The Senate’s Committee on Rules and Administration received testimony this month from Thomas Hicks and Myrna Perez, Democrats who have been nominated to be members of the independent, bipartisan commission. Currently, all four commissioner positions are vacant. Hicks is a House Administration Committee staffer; Perez is a deputy director at the Brennan Center for Justice at New York University School of Law.

● Elizabeth Bergman, a political science professor at California State University East Bay, has compiled the statutes related to voter information for each state in a handy document. For more information about state requirements for voter information, NCSL offers a breakdown that includes which states issue voter pamphlets, provide sample ballots and employ other approaches.

From NCSL’s Elections Team

NCSL is pleased to welcome Michael Hernandez to our elections team. He comes to us directly from the Texas House Research Organization. Equally exciting, he’s a former newspaperman from the El Paso Times. Between his legislative and journalism skills, we’re expecting good things as Michael takes over the lead role in producing The Canvass. You can welcome him at Michael.Hernandez@ncsl.org, 303-856-1474.

Happy Holidays.

Wendy Underhill