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DIRECTIVE 2016-43

November 4, 2016

To: All County Boards of Elections
Directors, Deputy Directors, and Board Members

Re: Reasonable Accommodation for a Voter with a Disability Who is Unexpectedly
Hospitalized in an Out-of-County Hospital After the Absentee Ballot Request Deadline

SUMMARY

A board of elections must contact the Secretary of State's Office if it receives an absentee ballot request from a voter *with a disability* who was hospitalized unexpectedly in an out-of-county hospital in Ohio between 12:00 p.m. on the Saturday before Election Day and 3:00 p.m. on Election Day.

EXPLANATION

Ohio law allows a board of elections to issue an absentee ballot to a voter who is hospitalized due to an accident or unforeseeable medical emergency occurring after the deadline to request an absentee ballot by mail.¹

During the time period between 12:00 p.m. on the Saturday before Election Day through 3:00 p.m. on Election Day, a qualified elector who is hospitalized, or whose minor child is hospitalized, due to an accident or unforeseeable medical emergency may apply for an absentee ballot. The voter may designate a family member to pick up the absentee ballot from the board office, may request that two election officials of opposite parties deliver the ballot to the voter at an in-county hospital, or may request that the board mail the ballot to the voter at the hospital.²

Occasionally, an unforeseeably hospitalized voter is also a voter with a disability. The Americans with Disabilities Act may require a board of elections to make a reasonable accommodation to assist an unforeseeably hospitalized voter who also is a voter with a disability when the accommodation in existing law does not offer realistic solution.³ For example, when the voter's unforeseen hospitalization is in a hospital *outside* the voter's county of residence and no request has been made for a family member to deliver the ballot, the law instructs boards of elections to mail the absentee ballot.⁴ However, the voter is not likely to receive a mailed absentee ballot quickly enough to allow its timely return, so offering a reasonable accommodation to a voter with a disability in this situation may be appropriate.

¹ R.C. 3509.08(B)(1). See also, Chapter 5 Absentee Voting, Ohio Election Official Manual.

² R.C. 3509.08(B)(2). See also, Chapter 5 Absentee Voting, Ohio Election Official Manual.

³ 28 C.F.R. 35.130(b)(7)-(8); 52 U.S.C. 20101.

⁴ R.C. 3509.08(B)(2). See also, Chapter 5 Absentee Voting, Ohio Election Official Manual.

INSTRUCTIONS

Therefore, a board of elections must contact the Secretary of State's Office for instruction when it receives an absentee ballot request between 12:00 p.m. on the Saturday before Election Day and before 3:00 p.m. on Election Day from a qualified elector who:

- **Has a disability;⁵**
- **Reports a hospitalization of the voter, or of the voter's minor child, due to an accident or unforeseeable medical emergency;**
- **Is located in a hospital outside of the voter's county of registration, but within the State of Ohio; and**
- **Does not have a family member who can deliver the ballot.**

Boards must contact Rachel Kasper or David Bowling at the Secretary of State's Office by phone at the dedicated board of elections phone line at (614) 466-2564 to receive specific instructions.

If you have any questions regarding this Directive, please contact the Secretary of State's elections counsel assigned to your county.

Sincerely,



Jon Husted

⁵ 42 U.S.C. 12102; 52 U.S.C. 20101.