

Office of the Secretary of the State

165 Capitol Avenue

Hartford, CT 06106

**MEMORANDUM OF OPINION**

To: All Town Clerks and Registrars of Voters

From: Office of the Secretary of the State

Date: September 28, 2020

Re: Supervised Absentee Balloting Voting During a State of Health Emergency

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We are writing this opinion to ensure that all eligible voters are able to participate in the upcoming November 3, 2020 general election. More specifically, we are clarifying the requirements for Supervised Absentee Balloting at a time when the Governor has declared a public health and civil preparedness emergency throughout the State of Connecticut.

This opinion is limited to absentee ballots issued for the November 3, 2020 election and is issued pursuant to Connecticut General Statutes §9-3 which states, “(a)The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the secretary’s regulations, declaratory rulings, instructions and opinions, if in written form, and any order issued under subsection (b) of this section, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title, except for chapters 155 to 158, inclusive, and shall be executed, carried out or implemented, as the case may be, provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54. Any such written instruction or opinion shall be labeled as an instruction or opinion issued pursuant to this section, as applicable, and any such instruction or opinion shall cite any authority that is discussed in such instruction or opinion….”

In the State of Connecticut, supervised absentee balloting is administered pursuant to Connecticut General Statutes §§ 9-159q and 9-159r which generally require that absentee balloting conducted at a convalescent or nursing home be supervised by the registrars of voters or their designees. Specifically, Connecticut General Statutes §9-159r states, “(a) Notwithstanding any provision of the general statutes to the contrary, if twenty or more of the patients in any institution in the state are electors, absentee ballots voted by such electors shall be voted under the supervision of the registrars of voters or their designees of the town in which the institution is located, in accordance with the provisions of this section. As used in this section, the term “institution” shall be construed as defined in section 9-159q.”

We are aware that the Governor has issued Executive Order No. 7A which allowed the Department of Public Health to issue visitor restrictions on certain institutions.

For the duration of the aforementioned public health and civil preparedness emergencies, or until such time as I repeal or modify this executive order, notwithstanding Section 19a-550(b)(12) of the Connecticut General Statutes or any other statute, regulation, local rule or ordinance or provision of law, the Commissioner of Public Health is authorized to issue any and all orders restricting entrance into nursing home facilities, residential care homes or chronic disease hospitals that she deems necessary to protect the health and welfare of patients, residents and staff.

On September 1, 2020, the Governor extended this Executive Order through February 9, 2021, unless sooner terminated by the Governor and renewed authority for the Department of Health to regulate visitors in certain institutions during the continued public health emergency.

On September 17, 2020, the Centers for Medicare and Medicaid Services (CMS) issued a memorandum to all State Survey Agency Directors setting forth new requirements regarding nursing home visitation and COVID-19 (CMS Visitation Memorandum). The CMS Visitation Memorandum directs and expands nursing home visitation beyond the parameters set forth in the Commissioner’s Order dated August 27, 2020.

These principles include, visitors being able to adhere to the core principles of COVID management. Facilities should limit the number of visitors per patient at one time and limit the total number of visitors in the facility one at a time (based on the size of the building and physical space). Facilities should consider scheduling visits for a specified length of time to help ensure all patients are able to receive visitors; and facilities should limit movement in the facility.

This office previously issued an opinion on May 1, 2020 determining that the current public health emergency of COVID-19 and Executive Order 7A and the corresponding Order by the Commissioner of the Department of Public Health eliminate the ability of the Registrars of Voters to conduct Supervised Balloting at nursing homes, residential care homes, and chronic disease hospitals for the August 11, 2020 Republican and Democratic Primaries. This opinion has not changed as a result of the September 1, 2020 order of Governor Ned Lamont, the previous August 27, 2020 order of the Department of Public Health or the CMS Visitation Memorandum.

Each Municipal Clerk shall provide a regular absentee ballot to each applicant of such facilities and allow residents of such facilities to vote using such regular absentee ballot and enlist any and all assistance of their choosing without the requirement of Supervised Absentee Ballot voting.

This opinion is also consistent with Centers for Disease Control and Prevention and Connecticut Department of Public Heath guidelines regarding the prevention of the spread of COVID-19 within our communities which indicate that older adults are at higher risk of getting very sick from this illness as well as people who have serious chronic medical conditions.

Given the risk to public health, the advice of medical experts, the Governor’s Executive Order No. 7A, after consultation with the Commissioner of the Department of Public Health, and our ability to interpret and apply Title 9 of the General Statutes to the administration of elections and primaries in the State of Connecticut, our office is duty bound to eliminate the Supervised Balloting requirement for the November 3, 2020 general election.