



ADVISORY 2020-03

March 12, 2020

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

Re: Absentee Ballots for Out-of-County Unforeseen Hospitalizations

SUMMARY

This Advisory provides guidance to boards of elections regarding getting a ballot to a voter who is both unforeseeably confined to a hospital just prior to an election in a county in Ohio that is *not* the voter's county of residence, and is unable to have a family member deliver a ballot. Ohio law allows the voter to apply for an absentee voter's ballot until 3:00 p.m. on the day of the election. This Advisory outlines the procedure to ensure that a qualified voter is promptly provided a ballot in the hospital.

BACKGROUND

Generally, voters are required to deliver their application for absentee ballot by noon on the third day before the election.¹ Ohio law, however, makes an exception to that deadline if a voter, or a voter's minor child, is "confined in a hospital as a result of an accident or unforeseeable medical emergency occurring before the election."² In that event, the voter may apply for an absentee ballot up to 3:00 p.m. on Election Day.³ The director of the board of elections, "after establishing to the director's satisfaction the validity of the circumstances claimed by the applicant, shall supply an absent voter's ballot to the applicant."⁴

If the voter, or the voter's minor child, is confined in a hospital in the county in which the voter resides and is registered to vote, then the voter may choose to have a family member⁵ obtain the absent voter's ballot from the board and deliver it to the voter at the hospital. If the voter chooses not to have a family member deliver the ballot to the hospital, or if the voter does not have a family member who can do so, then "the director shall arrange for the delivery of an absent voter's ballot to the applicant, and for its return to the office of the board, by two board employees belonging to the two major political parties according to the procedures prescribed" in [R.C. 3509.08\(A\)](#).⁶ If the voter, or the voter's minor child, is confined in a hospital in Ohio but outside the voter's county of residence/registration, then the voter may choose to have a family member⁷ obtain the absent voter's ballot from the board of elections where the voter is registered and deliver it to the voter at the hospital in the different county. If the voter chooses not to have a family member deliver the ballot to the hospital, or if the voter does

¹ [R.C. 3509.03\(D\)](#).

² [R.C. 3509.08\(B\)\(1\)](#).

³ [R.C. 3509.08\(B\)\(2\)](#).

⁴ [R.C. 3509.08\(B\)\(2\)](#). The statute contains specific requirements for such an application. Form [11-B](#) is prescribed for this class of voters.

⁵ As defined in [R.C. 3509.05](#).

⁶ [R.C. 3509.08\(B\)\(2\)](#).

⁷ As defined in [R.C. 3509.05](#).

not have a family member who can do so, the director must send the absent voter's ballot by mail. The law requires the voter to return the ballot in the same manner as other absent voters.⁸

For an absent voter's ballot to be accepted and counted, if returned by mail, it must be postmarked *no later than the day before the election* and must be received by the board no later than the tenth day after the election.⁹ If a voter or voter's family member personally delivers the ballot, it must be received no later than the close of the polls on Election Day.¹⁰

If the hospitalized voter does *not* have a family member who can pick up the ballot at the board of elections of the voter's home county and deliver it to the voter at the hospital in the other county, then the statute prescribes that the board *mail* the ballot to the voter in the hospital. But if the voter applies for an absent voter's ballot between noon the third day before the election and 3:00 p.m. on the day of the election and their board *mails* the ballot to the voter in the hospital in a different county, it is possible the voter would not receive their ballot until after the statutory deadlines to return it and have it counted.¹¹ The following instructions are intended to address this concern.

INSTRUCTIONS

Ohio law permits voters who are unforeseeably hospitalized just prior to an election to apply for an absent voter's ballot up until 3:00 p.m. on Election Day. To ensure that such voters promptly receive their ballots, boards should follow the procedure set forth below when a voter is hospitalized outside their home county and a family member cannot deliver the ballot.

Eligibility

The director of the board *where the voter resides* must determine that a voter meets *all* the following conditions:

- (1) The voter (or their minor child) is confined in a hospital as a result of an accident or unforeseeable medical emergency occurring before the election;
- (2) That hospital is in Ohio but outside of the voter's county of residence;
- (3) The voter resides in, and is a qualified elector in the director's county and is otherwise eligible to receive an absent voter's ballot;

⁸ [R.C. 3509.08\(B\)\(2\).](#)

⁹ [R.C. 3509.05\(B\)\(1\).](#)

¹⁰ [R.C. 3509.05\(A\).](#)

¹¹ *See, e.g., Mooneyhan v. Husted*, Case No. 3:12-cv-379 (S.D. Ohio 2012) (voter from Darke County hospitalized in Lucas County seven days before the election, applied for an absent voter's ballot six days before the election, the Darke County BOE mailed the ballot to the hospital but she did not receive the ballot until one day *after* the election. The voter voted the ballot the day after the election and mailed it the same day to the Darke County BOE. The court ordered the Darke County BOE to accept and count the voter's ballot even though it was postmarked one day after the election.)

(4) The voter delivered an application for an absent voter's ballot containing all the information required by [R.C. 3509.08](#) to the board of elections where the voter resides, between noon on the third day before the election and 3:00 p.m. the day of the election; and

(5) The voter did not choose to have a family member deliver the ballot to the voter or does not have a family member who can do so.

Voting Process

If the director of the board where the voter resides determines that a voter meets conditions (1) through (5) above, that board should follow the procedures set forth below for that voter:

- The board of the voter's county of residence must first contact the board of elections in the county where the hospital is located, to inform them of the situation and the incoming ballot to be voted;
- The board of the voter's county of residence must send the absent voter's ballot to the board in the county where the hospital is located, either by fax or by email as a .pdf attachment to an email;
- The board of elections of the hospital's county must then arrange for the delivery of the absent voter's ballot to the voter at the hospital by two board employees belonging to the two major political parties;
- The two board employees must deliver with the ballot an envelope into which the voter can place and seal their ballot after voting it;
- The voter should promptly vote the ballot upon receipt while the two board employees remain at the hospital;
- The board employees must immediately return the sealed, voted ballot securely to their board (the hospital's county);
- The board of elections of the hospital's county must send the original sealed and voted ballot to the board of the voter's county of residence. The sealed, voted ballot may be hand-delivered, mailed, or sent via an overnight delivery service to the board of the voter's county of residence. The board sending the ballot must ensure that it will be received by the board of the voter's county of residence no later than the tenth day following the election. If the ballot is received by the board of elections of the voter's county of residence by the tenth day following the election, the ballot may be counted; or
- If the voter does *not* promptly vote the ballot while the two board employees are at the hospital, the board employees may leave the ballot with the voter. In that event, it is the voter's responsibility to ensure their voted ballot returns to the board of elections of the voter's county of residence before 7:30 p.m. on Election Day.

If you have any questions concerning this Advisory, please contact the Secretary of State's elections attorneys at (614) 728-8789.

Yours in service,



Frank LaRose
Ohio Secretary of State