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Guidance to Assure Compliance with the Voting Accessibility for the Elderly and Handicapped Act and Other Laws Assuring the Voting Rights of Individuals with Disabilities and Language Needs

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Voting Accessibility for the Elderly and Handicapped Act

Congress enacted the Voting Accessibility for the Elderly and Handicapped Act (Act) ¹ in 1984 “to promote the fundamental right to vote by improving access for the handicapped and elderly individuals to registration facilities and polling places for Federal elections.”²

Definitions

As used in the Act, the following terms have the meanings described:

- 1) “Accessible” means “accessible to handicapped and elderly individuals for the purpose of voting or registration as determined under guidelines established by the [Secretary of the Commonwealth].”
- 2) “Elderly” means “65 years of age or older.”
- 3) “Handicapped” means “having a temporary or permanent physical disability.”³

Selection of polling places

Under the Act, the county boards of elections (“Boards”) are required to “assure that **all** polling places for Federal elections are accessible to handicapped and elderly voters,” with certain exceptions.⁴

These exceptions, meaning those times when Boards are excused from the above requirement, are for those polling places for which one of the following conditions apply:

- 1) The Secretary of the Commonwealth (“Secretary”) has determined that an emergency exists such that the county board of elections cannot reasonably provide an accessible polling place for one or more election districts, *or*
- 2) The Secretary has:
 - a. Based on information provided by the county board of elections, determined that all potential polling places have been surveyed and no such accessible place is available, and the county board of elections is unable to make one temporarily available in the election district; **and**

¹ P.L. 98-435; 52 U.S.C. Ch. 201.

² 52 U.S.C. § 20101.

³ 52 U.S.C. § 20107(1-2, 4).

⁴ 52 U.S.C. § 20102(a) (emphasis added).

- b. Assured that any handicapped or elderly voter assigned to an inaccessible polling place, ***upon advance request of the voter*** under procedures prescribed by the Secretary, either:
- i. Will be assigned to an accessible polling place; or
 - ii. Will be provided with an alternative means for casting a ballot on the day of the election.⁵

Voting aids

Instructions

The Commonwealth must make voting aids on federal elections available for handicapped and elderly individuals; these voting aids will include instructions, be printed in large type, be conspicuously displayed at each polling place, and include information by telecommunications devices for the deaf.⁶ It is the Boards' responsibility to provide these aids to voters.

Notice of availability of aids

The Secretary is also responsible for "provid[ing] public notice, calculated to reach elderly and handicapped voters, of the availability of aids ... and the procedures for voting by absentee ballot, not later than general public notice of registration and voting is provided."⁷ The Secretary fulfills his duties primarily through direction to and actions taken by the Boards.

Use in non-federal elections

Though the Act applies only to elections for federal office, the Secretary has determined that to assure compliance with the Americans with Disabilities Act of 1990⁸, elections officials (including the Boards) should follow the policies and procedures adopted under the Act for *all* elections, including municipal primaries, municipal elections, and special elections when no elections for federal office are usually on the ballot.

⁵ 52 U.S.C. § 20102(b).

⁶ 52 U.S.C. § 20104(a).

⁷ 52 U.S.C. § 20104(c).

⁸ 42 U.S.C. § 12101 *et seq.*

Accessibility Survey

Policy

To comply with section 3(a) of the Act⁹, the Secretary periodically directs the Boards to conduct a survey of their polling places to determine the accessibility of the polling places under guidelines issued by the Secretary and to make good-faith efforts on an ongoing basis to identify accessible polling places (or polling places that can be made accessible for voting on Election Day) for each election district in the county.

Designation of inaccessibility

For those Boards that inform the Secretary that, despite their good faith efforts to survey all potential polling places in each election district, they have been unable to locate an accessible polling place for every election district in the county or to make the polling places temporarily accessible for Election Day, the Secretary has directed the county boards of elections formally to designate as “inaccessible” those polling places that do not satisfy the guidelines issued by the Secretary.

Voting systems

A polling place may be designated as inaccessible only if the means of access to the polling place do not meet the accessibility standards. A polling place should not be deemed inaccessible because the voting systems used in the polling place cannot be used by all voters without assistance.

Notice

If a Board determines that any polling place is inaccessible, the Board should provide notice of that designation in its election notices published in the newspaper(s) and posted in other locations (including the county’s website). In addition, the Department of State recommends that the Board include in its public notices regarding inaccessible polling places a statement indicating that though a polling place is accessible, the voting system used in that polling place might not be accessible without assistance to individuals with disabilities. For those voters who are unable to vote without assistance on the county’s voting system, the voter may receive assistance in voting or may apply to vote by absentee ballot.

The Alternative Ballot

Policy

In recognition that some Boards, despite their good faith efforts, would not be able to identify accessible polling places in all election districts, the Secretary acted to assure that any handicapped or elderly voter assigned to a polling place deemed inaccessible by the county board of elections would have another means to cast a ballot on or before

⁹ 52 U.S.C. § 20102(a).

Election Day. Pursuant to federal authority,¹⁰ the Secretary declared that any qualified elector who is handicapped or elderly and assigned by their Board to an inaccessible polling place has the right, upon advance request of the elector, to cast an alternative ballot on or before Election Day.

Alternative polling place not permitted

In consideration of the strict procedures prescribed by the Pennsylvania Election Code for voting at a polling place, the Secretary has opted **not** to require or authorize Boards to assign handicapped and elderly qualified electors to an accessible polling place other than the polling place to which they have been assigned based on their residential address.¹¹

“Curbside voting” and other alternative means (including provisional ballot) not permitted

The alternative ballot is the **sole means** that a qualified elector entitled to vote under the Act might vote on Election Day by alternative means. No qualified elector may vote at the polling place by means of a “curbside” voting process outside the polling place or any other means outside the polling place except by alternative ballot. The provisional ballot also is *not* an authorized means for a voter with a disability to vote—either inside or outside the polling place—unless the voter otherwise qualifies to vote by provisional ballot under statute.

Elector assigned to an accessible polling place

Irrespective of an elector’s age or disability status, a qualified elector assigned to a polling place that the Board has determined to be accessible under the standards prescribed by the Secretary is *not* eligible to apply for or to vote by alternative ballot. Qualified electors who are assigned to an accessible polling place but who cannot attend the polling place because of illness or a disability are eligible to apply for and vote by absentee ballot. An elector assigned to a polling place determined to be accessible may also vote by mail-in ballot, regardless of disability status.

Absentee ballot voting by individuals with disabilities

Right to vote by absentee ballot

Irrespective of the accessibility of a qualified elector’s polling place, a qualified elector who is unable, because of a permanent or temporary disability or illness, to attend the

¹⁰ 52 U.S.C. § 20102(b)(2)(B)(ii).

¹¹ See U.S.C. § 20102(a)(2)(B)(i) (permitting, but not requiring, such an alternative).

polling place or to operate the voting system provided at the polling place without assistance has the right to apply for and vote by absentee ballot.¹²

Voters who need assistance in voting an absentee ballot are entitled to receive it.¹³

Unlike an elector voting by alternative ballot, a qualified elector who chooses to vote by absentee ballot cannot apply for the absentee ballot after 5:00 p.m. on the Tuesday before Election Day. Voters who have an ADA-recognized disability can authorize someone else to return their ballot for them by using this form:

<https://www.pa.gov/content/dam/copapwp-pagov/en/vote/resources/documents-and-forms/Authorize-Designated-Agent-for-Mail-in-or-Absentee-Ballot.pdf>

Seeking to vote by Emergency Absentee Ballot after the statutory deadline to apply for an Absentee Ballot

A qualified elector who is assigned to an accessible polling place and who becomes ill or disabled after 5:00 p.m. on the Tuesday before Election Day—the statutory deadline for making an application for an absentee ballot—may apply for an emergency absentee ballot. This is done through an application to the county board of elections, which must be received no later than 8:00 p.m. on Election Day.

Recommended practice

The Department of State recommends that the county boards of elections adopt policies, practices, and procedures designed to accomplish the following:

- Qualified electors who are elderly or handicapped and assigned to an inaccessible polling place understand their right to vote by alternative ballot and understand the substantial differences between an absentee ballot and an alternative ballot – particularly respecting those voters who might discover that their polling place is inaccessible after the deadline to apply for an absentee ballot.
- Applications for an absentee ballot include a notice that qualified electors who are elderly or handicapped and assigned to an inaccessible polling place have the right to vote by alternative ballot and include instructions as to how to apply for an alternative ballot.

Assistance at the polling place for individuals with disabilities and language needs

If a registered elector, by reason of blindness, disability, or inability to read or write,

¹² 25 P.S. §§ 2602(w); 3146.1(i), (k).

¹³ 25 P.S. §§ 3146.2(e), (e.1); 3146.6a

- 1) is unable to read the names on the ballot or on the voting machine labels or to read and understand ballot questions and other election material; or
- 2) the elector is unable to see or mark the ballot or to operate the voting machine or to enter the voting compartment or voting machine booth without assistance; or
- 3) the elector is unable to read or write English well enough to participate in the electoral process,

the elector is entitled to receive assistance.¹⁴

No voter is permitted to receive this assistance unless

- 1) the voter registration card records the voter's declaration that they meet the qualifications above;
- 2) the exact nature of the condition has been recorded on the registration card; and
- 3) the election officers are satisfied that the voter still suffers from the same condition.¹⁵

If the disability or the need for language assistance of a voter is not entered on the voter registration card, the elector may receive assistance if they complete a declaration in the polling place. Following the election, the registration commission will examine declarations completed at the polling place and update the elector's voter registration card to reflect the need for assistance and the nature of the disability.¹⁶

A voter who qualifies to receive assistance in voting is entitled to select a person of their choosing to enter the voting compartment or voting machine booth to assist the voter in casting their ballot. The assistance may not be rendered by the judge of election, the elector's employer or an agent of the employer, or an officer or agent of the elector's union.¹⁷

In every case of assistance rendered to a voter, the judge of election must enter in the record of assisted voters: (1) the voter's name; (2) a statement of the facts which entitle them to receive assistance; and (3) the name of the person furnishing the assistance. The judge of election must return the record of assisted voters to the county board of

¹⁴ 25 Pa.C.S. § 1504(a)(4); 52 U.S.C. § 10508.

¹⁵ 25 P.S. §§ 1504(a); 3058(c).

¹⁶ 25 Pa.C.S. § 1504(a)(4) & (5).

¹⁷ 25 P.S. § 3058(b); *see also* 52 U.S.C. § 10508.

elections, and the county board shall permit the record to be examined only upon the written order of a judge of the Court of Common Pleas.¹⁸

Form of Alternative Ballot

An alternative ballot is a paper ballot that appears in substantially the same form as an official absentee ballot.

Application for Alternative Ballot

Availability

Applications for an alternative ballot and other information regarding alternative ballots may be obtained from the board of elections in the elector's county of residence. The county board of elections should make the application for alternative ballot available (i) in person at one or more accessible locations within the county; (ii) on the Internet; (iii) through mail and other means of delivery; and (iv) through any other means that the county board of elections might deem advisable.

Public notice

The county board of elections should publicize the availability of applications for an alternative ballot to the qualified electors of the county by all means available, including at a minimum:

- Timely advertisements in newspapers of general circulation in the county.
- Notice through the county board of elections Internet website.
- Public service announcements.
- Notices and the provision of application forms to locations, organizations, and other outlets designed to reach senior citizens and individuals with disabilities, such as homes for and organizations that serve senior citizens and individuals with disabilities.

Form

An application for an alternative ballot should be in substantially the form prescribed in the Appendix. However, at the discretion of the county board of elections, an application for an alternative ballot may be combined with the application for an absentee ballot, in such forms that are approved by the Secretary.

¹⁸ 25 P.S. § 3058(c).

Identification not required for Alternative Ballot

Voters who qualify for an alternative ballot under the Act are not subject to the proof of identification requirements for absentee ballots.¹⁹

Time

An application for an alternative ballot should be returned to the county board of elections **at least seven (7) days before Election Day**, the same deadline as absentee ballots.

Emergency application

Where circumstances arise unexpectedly, including those circumstances when a handicapped or elderly qualified elector learns after the alternative ballot application deadline that the polling place to which they have been assigned is inaccessible, the qualified elector may make an emergency application for an alternative ballot at any time until the date and time that the polls close on Election Day.

The emergency application for an alternative ballot should be in the form prescribed in the Appendix.

The applicant for an emergency alternative ballot should state on the application the reason that he or she is applying for an alternative ballot after the regular time for doing so (e.g., the elector discovered after the deadline that the polling place to which they were assigned is inaccessible).

No elector assigned to an accessible polling place is eligible to apply for or to vote by alternative ballot.

Voting and delivery of the Alternative Ballot

Voting the alternative ballot

An alternative ballot may be cast

- 1) in person at the offices of the county board of elections or such other accessible location(s) that the county board might designate; or
- 2) outside the offices or accessible locations designated by the county board of elections and timely delivered or mailed to the office of the county board of elections or delivered to such other accessible location(s) that the county board might designate.

Voting in person

On any business day before Election Day, and from 7:00 a.m. until 8:00 p.m. on Election Day, a qualified elector who seeks to vote by an alternative ballot may appear

¹⁹ 25 P.S. § 3146.2(j).

at any accessible location designated by the county board of elections (at least one of which must be centrally located within the county) to cast an alternative ballot. If the elector's application has been approved, the elector must be able to cast an alternative ballot in secret at the accessible location designated by the county board of elections.

Voting off-site

When an application for an alternative ballot has been approved, the alternative ballot, at the direction of the voter, may be delivered to them personally, mailed to the voter at the address designated by the voter, or delivered to an authorized agent of the voter. In delivering the alternative ballot, the county board of elections should use envelopes and include appropriate instructions that are substantially the same as those used for absentee ballots,²⁰ except that the outer envelopes and instruction material should be clearly labeled "alternative ballot."

The alternative ballot must be received by the county board of elections no later than 8:00 p.m. on Election Day.²¹ The elector should be instructed to cast their ballot in a manner substantially the same as an elector casts an absentee ballot or mail-in ballot; the methods for returning those ballots are discussed in guidance on the Department's website, <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Pages/Election-Directive-and-Guidance.aspx>.

Envelopes

A completed alternative ballot must be enclosed inside a sealed inner (or secrecy) envelope marked "Official Ballot," with no other markings and no contents other than the completed alternative ballot. The secrecy envelope must be enclosed and sealed inside an outer envelope that indicates the election district of the elector whose completed alternative ballot is enclosed, along with the elector's declaration. The outer envelope should be clearly labeled as an alternative ballot.

Time

Upon receipt and approval by a county board of elections of an application for an alternative ballot from a qualified elector who requests that their alternative ballot be delivered to a specified address, the county board of elections should deliver or mail the alternative ballot materials to the elector no later than the second Tuesday before Election Day. As such additional applications are received and approved, the board shall deliver or mail the alternative ballot materials within 48 hours.

²⁰ These instructions are laid out in 25 P.S. § 3146.4.

²¹ See 25 P.S. § 3146.6.

Delivery of the alternative ballot to the county board of elections.

An elector casting an alternative ballot other than in person should deliver the completed alternative ballot to the county board of elections (i) in person; (ii) by U.S. Mail; or (iii) through a representative whom the elector has authorized in writing to deliver the alternative ballot to the county board of elections.

Conformity to absentee balloting process

As a general rule, unless otherwise provided, the procedures for the casting, delivery, and handling of an alternative ballot should conform to the procedures prescribed for voting by absentee electors,²² so long as they are consistent with the Act.

Canvassing Alternative Ballots

Except as otherwise provided, the canvassing of alternative ballots should conform to the procedures for the canvassing of official absentee ballots.²³

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Version	Date	Description
1.0		Initial release
1.1	09.25.23	Updates to reflect Act 77 (as amended)

²² See 25 P.S. §§ 3146.1–3146.9.

²³ 25 P.S. § 3146.8.