

To: Senate Committee on Shared Revenue, Elections, and Consumer Protection
From: Disability Rights Wisconsin (Contact: Lisa Hassenstab, Public Policy Manager, lisah@drwi.org)
Date: December 19, 2023
Re: **SB593** - relating to: absentee voting in certain residential care facilities and retirement homes and court determinations of incompetency and ineligibility to vote; and **SB631** – relating to: certain kinds of election fraud, defects on absentee ballot certificates, returning absentee ballots to the office of the municipal clerk, appointment of election officials, allowing an employee of a residential care facility or qualified retirement home to serve as a personal care voting assistant during a public health emergency or an incident of infectious disease, and providing a penalty.

Disability Rights Wisconsin (DRW) is the federally mandated Protection and Advocacy system for the State of Wisconsin, charged with protecting the rights of individuals with disabilities and keeping them free from abuse and neglect. DRW is charged with protecting the voting rights of people with disabilities and mandated to help ensure full participation in the electoral process for individuals with disabilities (Help America Vote Act, 42 U.S.C. § 15461 (2002)). With this responsibility, DRW offers the following comments on AB572.

SB593

DRW was consulted by Representative Kitchens, the bill's author, through several drafts of this bill; we are grateful for this partnership and the reception and inclusion of many of DRW's suggestions in Section 1. Section 1 addresses notification to individuals under guardianship whose right to vote has been removed due to determination of incompetency or whose right to vote has been restored, along with notification to the clerk of that individual's municipality. Providing additional notification and clarification for both the individual under guardianship and their clerk regarding voter eligibility status would be helpful for all involved in this process. When an individual's right to vote has been removed due to determination of incompetency, a simple checkbox is marked on paperwork that is a part of the guardianship process. This is something that can be easily overlooked if one does not know to look for it, so an additional line of communication to confirm this determination can provide clarity for the individual and their guardian. DRW is pleased to see many of our suggestions incorporated into this section.

Section 4 would exempt individuals whose right to vote has been removed through a determination of incompetency from being guilty of a Class 1 felony if they do vote. As previously mentioned, it can be confusing and unclear whether somebody has retained the right to vote through the guardianship process, and this change would allow for a way to address dealing with the vote cast while not punishing an individual who may be unclear about their rights. Implementation of processes outlined in Section 1 of this bill would very likely reduce the number of circumstances when this might happen.

Section 3 of this bill would amend the statutes to read: “The administrator of a qualified retirement home or residential care facility, or the administrator's designee, shall provide notice by email of the dates and times when the special voting deputies will be visiting the home or facility to each individual designated as a contact by the occupant who intends to vote by absentee ballot with the deputies.” In addition, Section 3 contains this language: “Any individual receiving a notice under this subdivision may be present in the room where the voting is conducted.” DRW understands the intent of this section is to address concerns about the capacity of some voters in residential facilities to make their own decisions during the voting process.

Currently, Wisconsin statute indicates a family member can request notification of when a special voting deputy (SVD) will be present in a residential facility. In addition, once the dates and times of SVD visits have been scheduled in a residential facility, the statutes require “(t)he municipal clerk shall give notice of each visit by special voting deputies to a qualified retirement home or residential care facility in the same manner that notices of public meetings are provided by presiding officers under s. 19.84 (1) (b) at least 5 working days in advance of each visit, indicating the date and time of the visit. The municipal clerk also shall post a notice at the home or facility and on the Internet indicating the date and time that absentee voting will take SVD.”¹ Wisconsin law already provides opportunity for observation of a voting process in these facilities and for support from family members of residents who may want assistance with the voting process. The determination of desire or need for assistance should only be made by the voter, and a determination of incompetency to vote may only be made by the court. The bill also does not provide the resident an option for opting out of contact notification or the

A requirement to notify contacts and allow them to be in the room when voting is conducted is invasive for facility residents. All voters, regardless of their circumstances, should be afforded the right to cast their ballot with privacy, independence, and dignity. In no other setting would somebody be notified about an individual's intent to vote. Requiring this kind of notification may result in contacts of residents attempting to inject themselves into the voting process of individuals who have the right to cast their ballot in private and without interference - particularly voters with disabilities, who may be more likely to have their right to vote inappropriately scrutinized and even challenged.

Because of our significant concerns with Section 3, and the inclusion of Section 1 in SB685 (with updated language in SAA1)/AB56: certain kinds of election fraud, defects on absentee ballot certificates, returning absentee ballots to the office of the municipal clerk, appointment of election officials, allowing an employee of a residential care facility or qualified retirement home to serve as a personal care voting assistant during a public health emergency or an incident of infectious disease, and providing a penalty. along with other provisions of which we are supportive, DRW is registered in opposition to this bill and in support of SB685.

SB631

DRW worked closely with Senator Bernier last session to provide feedback on the previous version of this bill during its drafting. Below are slightly modified [comments DRW submitted on SB935](#) last session which are still applicable to SB631:

Voting In Care Facilities

This bill would establish a new process to provide residents of nursing homes and other eligible care facilities with assistance needed to vote when a facility will not admit Special Voting Deputies (SVDs) because of a pandemic or other public health issues. DRW supports the creation of a statutory language to ensure residents receive the needed assistance, although the process proposed is more restrictive than we recommend.

DRW also supports allowing facility staff to be appointed as Personal Care Voting Assistants who would be trained and certified to conduct in person absentee voting, when SVDs are unable to enter due to public health restrictions. Training facility staff on voting including rights is helpful and will ensure that the assistance they provide is informed by an understanding of residents' rights as protected by Wisconsin and federal law.

This bill moves up the date by which SVDs must make arrangements to visit and requires SVD visits to be completed by no later than the "sixth working day preceding the election" instead of the current Monday, preceding the election. Recommendation: While this is an improvement on current law and provides at least a chance for absentee ballots to be sent and returned for those unable to participate in SVD visits, we would urge that SVD visits be completed no less than 10 days prior to an election and that ballots be sent out to those missing the visits the following day. This would provide at least nine days to receive, complete, and return the ballot. The current process does not provide sufficient time for ballots to be mailed to residents, and for residents to complete and return them.

Concerns

1. Residents Need Assistance with Voter Registration. When individuals move to a nursing home, they need to re-register to vote. It is important that they receive this assistance. The personal care voting assistants are not allowed to register voters and most SVDs are not allowed to register voters. Other staff may be afraid to offer assistance with voter registration, as this bill would make it a felony if an employee "coerces" a resident to register to vote. We adamantly oppose any coercion. That being said, "coercion" is not defined and could be more broadly interpreted as offering assistance. Such a severe penalty is likely to result in staff being unwilling to take the risk of providing any assistance with voter registration and leave residents disenfranchised. Our Voter Hotline has already received calls from staff who are fearful of assisting residents with any voting related support. The federal Centers for Medicare & Medicaid Services (CMS) requires nursing homes that receive Medicare or Medicaid funding to affirm and support the residents right to vote. That should include supporting residents with

registering to vote if they wish to do so. Failing to provide such assistance could put facilities at risk for listing Medicare and Medicaid funding. Recommendations:

- a. Give personal care voting assistants and SVDs the training and authority to register voters, as clerks can do at in-person absentee voting.
 - b. Include voter registration as part of the intake process. New residents should be asked if they need assistance with registering to vote, and if they wish to request an absentee ballot. This process would also help to ensure more of the smaller care facilities meet the requirement to participate in the SVD program.
2. Limiting assistance with voting to only the two assistants may restrict the residents from getting the support they need to register to vote or to complete an absentee ballot. Section 208 of the Voting Rights Act requires election officials to allow a voter who is blind or has another disability to receive assistance from a person of the voter's choice (other than the voter's employer or its agent or an officer or agent of the voter's union). In addition, Federal law requires that Medicare/ Medicaid certified long term care facilities affirm and support the right of residents to vote: "nursing homes are required to support a resident in the exercise of their right (§483.10(b)(2)) to vote, such as assisting with absentee or mail-in voting or transporting residents to polling locations or ballot drop-boxes in a safe manner." Recommendation: Align Wisconsin law with the federal law to permit people with disabilities, including nursing home residents, to receive assistance from a person of their choice with completing their ballot, and to allow staff to assist residents with voting, as requested by the resident.
3. Absentee Ballot Certificates: This bill would prohibit a municipal clerk from correcting a defect on the completed absentee ballot certificate envelope. We are concerned about the harmful impact on some voters with disabilities and older adults. The certificate envelope has very small print, is crowded, and is not accessible for many voters who have some vision loss. It's not a surprise that there are often mistakes in completing it correctly. Based on the experience of voters we assist, it has been very helpful for clerks to correct a defect on the absentee ballot certificate envelope, such as completing the witness address or honoring the voter's intent. If this process changes and clerk must return the ballot to the voter, it is highly probable that there will not be enough time for the voter to correct the problem and return the ballot. While posting information on MyVote may be helpful for those with internet access and who see the posting, it would result in inequitable access as many voters do not have ready access to the internet and to devices. In addition, unless MyVote sends a notification to the voter, they are not likely to be aware of the post. Recommendations:
- a. Redesign the certificate envelope with guidance from national usability and accessibility experts.
 - b. Provide more public education and conduct usability testing on the instructions for absentee voters and including older adults and voters with disabilities in the usability testing.
 - c. Allow clerks to complete witness address information when possible.

Thank you for your consideration of these comments, and we would be glad to provide any additional information or answer any questions.