

# CANHR Residents' Rights Overview

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## Voting Rights For Nursing Facility and Assisted Living Residents

There's a big election coming up in November. If you live in an assisted living or nursing facility, you should be aware that **you do not lose your right to vote** just because you move into long-term care. However, **you might face a number of practical barriers to exercising your right to vote, and many of these barriers will be exacerbated in the context of COVID-19**. Below is guidance for residents planning to exercise their right to vote this November.

### Register to Vote

When you move into a nursing home or assisted living facility, your address changes. Make sure you are registered to vote at your current address by visiting <https://registertovote.ca.gov> or calling the Secretary of State's toll-free Voter Hotline at (800) 345-VOTE (8683) to receive a paper voter registration application.

Once you've registered to vote, make a voting plan based on the options below. There are many alternatives to voting in person in California. Talk with your facility Administrator or Social Services Designee in advance to tell them you plan to vote, and find out what they will do to ensure that happens. If you are not receiving help from the facility, contact CANHR at (800) 474-1116 or the California Department of Public Health (CDPH) to [file a complaint](#).

### Accessibility for Persons with Disabilities

If you are unable to travel to a polling location, California offers a number of alternatives to voting in person:

**Vote-by-Mail (also called "Absentee Ballots")**: In California, every voter may vote by mail. [California law](#) requires that every voter be mailed a Vote-by-Mail ballot prior to election day. There are many ways to return your Vote-by-Mail ballot:

- Return your ballot in the mail, with no postage required. If you have concerns that the Postal Service may not be able to deliver Vote-by-Mail ballots on time, you have other options:
- Deposit your Vote-by-Mail ballot at a [Dropbox](#) location prior to 8pm on November 8, 2022. **If you cannot leave the facility** to drop off your Vote-by-Mail ballot yourself, **you can authorize someone to drop it off for you** by filling out the "[authorization section](#)" on the back of the envelope.
- **Tip:** You can have a friend or family member to pick up your Vote-by-Mail ballot. Visitation rights have been restored for residents of both skilled nursing and assisted living facilities. Speak with your family members, the facility administrator, and if necessary, CDPH in advance to ensure that your facility has a plan to facilitate -- rather than obstruct -- your Vote-by-Mail ballot pick-up. **Nursing homes and assisted living facilities have a duty to facilitate residents' rights, including voting.**
- You or your authorized representative can also return your ballot at an [early voting station](#).
- You or your authorized representative can also return your ballot to [any polling location](#) by 8 pm on November 8th.

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**Remote Accessible Vote by Mail (RAVBM)** Effective January 1, 2020 [Remote Accessible Vote-by-Mail \(RAVBM\)](#) must be available in every county in California. See Disability Rights California for more information.

**Emergency Medical Ballot** A registered voter who is unable to vote in person [due to a medical emergency](#) can fill out a form up to six-days prior to an election to authorize someone to go to the Elections Office to pick up a ballot for them. Contact Disability Rights California for more information.

## **Voters with Cognitive Impairment**

You do **not** lose your right to vote based upon another person's perceptions of your abilities, or even a doctor's diagnosis of dementia or other cognitive impairment. In California, you retain the right to vote **unless a court determines** you are not competent to do so and specifically revokes your right to vote.

For voters who are under a conservatorship, [Elections Code 2208](#) establishes a presumption of competency to vote regardless of conservatorship status. A person may be declared mentally incompetent and therefore disqualified from voting only if a court or, in certain cases, a jury finds by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process and the person is subject to a conservatorship or is gravely disabled.

## **Nursing Facility Guidance**

Recently, the state and federal agencies that oversee nursing and assisted living facilities have issued guidance affirming the **facilities' responsibility to ensure residents can vote**.

1. CMS Memo: In 2020, the Center for Medicare and Medicaid Services (CMS) issued a memo affirming nursing facilities' obligations to ensure residents can vote: <https://www.cms.gov/files/document/qso-21-02-nh.pdf>. Of note, the memo states:
  - Nursing homes should have a plan to ensure residents are able to vote, whether in person, by mail, or other authorized process.
  - Nursing homes should provide residents with assistance in registering to vote or completing a ballot ***with an agent of the Resident's choosing, including family representative, LTC Ombudsman, or nursing home staff.***
  - For residents unable to cast their ballots in person, nursing homes must ensure residents can promptly receive and send ballots via USPS or other authorized mechanism.
  - CMS urges residents whose rights have been violated to file a complaint with their state survey agency. In California, this is the Department of Public Health. For further information, see CANHR's fact sheet on [How to File a Nursing Home Complaint](#).

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CMS also issued a letter directly to nursing home residents. You can read it here: <https://www.cms.gov/files/document/covid-dear-nursing-home-resident-letter.pdf>

2. DPH Letter: In 2020, the California Department of Public Health (DPH) issued All Facilities Letter 20-87 to remind nursing facilities of their obligation to ensure residents can exercise their right to vote: <https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/AFL-20-78.aspx>. Of note:
  - Nursing facilities should ensure that as many residents as possible are able to vote. The following is encouraged:
    - Staff should inform residents about voting timelines, help with voter registration, assist residents in reading the ballot, and help with tracking a resident's ballot.
    - If the resident misses the period to request a vote-by-mail ballot, assist the resident with a written statement that a ballot be delivered pursuant to Elections Code section 3021.
  - For residents that choose to vote in person, the facility should offer scheduled voting or staggered entry to the polling place, and encourage early voting.
  - Staff may not influence a resident's vote, tell anyone how the resident voted, determine a resident is mentally incompetent to vote, or vote by proxy.
  - LTC Ombudsman are available to assist residents with voting.

## Assisted Living Facility Guidance

On October 6, 2020, the Community Care Licensing Division (CCL) issued Provider Information Notice (PIN) 20-36: <https://www.cdss.ca.gov/Portals/9/CCLD/PINs/2020/ASC/PIN-20-36-ASC.pdf>. It states:

- Residents have the right to receive assistance in exercising their right to vote. The following is encouraged:
  - Staff should inform residents about voting timelines, help with voter registration, assist residents in reading the ballot, and help with tracking a resident's ballot.
  - If the resident misses the period to request a vote-by-mail ballot, assist the resident with a written statement that a ballot be delivered pursuant to Elections Code section 3021.
- Staff may **not** influence a resident's vote, tell anyone how the resident voted, determine a resident is mentally incompetent to vote, or vote by proxy.
- LTC Ombudsman are available to assist residents with voting.
- Residents whose rights have been violated should file a complaint with the CCL in one of these three ways:
  - Hotline: 1-844-LET-US-NO (1-844-538-8766)
  - E-mail: [LetUsNo@dss.ca.gov](mailto:LetUsNo@dss.ca.gov)
  - Mail: California Department of Social Services CCLD Centralized Complaint and Information Bureau 744 P Street Sacramento, CA 95814

For additional information on filing a complaint, see CANHR's fact sheet on [How to File a Complaint](#).

For additional information on voting rights, visit [Consumer Voice's fact sheet on Voting Rights](#).