

# ELECTION RESEARCH INSTITUTE



## Protection of Vulnerable Senior Citizens

Lucy Corrato was 91 years old when someone from her nursing home submitted a voter registration form and then an absentee ballot application on her behalf.<sup>1</sup> Her son, who described her as “a longtime, dedicated nonvoter,” said that his mother had made the conscious decision not to register and not to vote at least 30 years prior to her admission to the nursing home. Lucy did not sign either form and insisted that she did not vote although the county election office received and counted a ballot in her name. Lucy wasn’t the only resident at that nursing home who had a long history of not voting prior to being admitted to the facility.

US Citizens have the right to vote but they also have the right not to vote. The fastest growing segment of the U.S. population is seniors<sup>2</sup> and when their circumstances lead them to a nursing home, they are vulnerable to abuse. While it is not impossible that someone who has chosen not to vote for 60 or 70 years would then, upon admission to a nursing home, decide they want to start voting at the age of 80 or even older – it is certainly not a common occurrence.

Lucy was a resident of a Medicare-approved nursing home which operates under the rules enforced by the federal Center for Medicare and Medicaid Services. Despite nationwide issues with understaffing and the inability of some nursing homes to meet the basic needs of their vulnerable residents, the Center for Medicare and Medicaid is adding to the staffing crisis by requiring facilities to use staff time to conduct voter registration drives and get out the vote (GOTV) activities.

In October of 2020, when nursing home residents were living in fear of COVID and many were isolated from their families and loved ones, nursing home staff and administrators were pressured to register facility residents and increase absentee voting in nursing homes and rehab facilities across the country.<sup>3</sup> The Quality, Safety & Oversight Group of the federal Centers for Medicare & Medicaid Services (CMS) sent a memo regarding “compliance with residents’ rights requirement related to nursing home residents’ right to vote.”

Most nursing homes rely on funding from federal Medicare and Medicaid programs. In exchange for federal dollars, nursing homes agree to follow complex federal regulations that are intended to protect the health and safety of residents. Enforcement of the federal regulations involves an arrangement between the federal agency and “State Survey Agencies.”<sup>4</sup>

When the Survey Agency identifies a violation, it issues a citation. Violations identified by the State Survey Agency are made public and can be damaging to the reputation and revenue of

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<sup>1</sup> <https://web.archive.org/web/20200702093206/https://www.inquirer.com/philly/news/vote-fraud-election-seniors-pennsylvania-20171103.html>

<sup>2</sup> <https://www.census.gov/data/tables/2023/demo/popproj/2023-summary-tables.html>

<sup>3</sup> <https://www.cms.gov/files/document/compliance-residents-rights-requirement-related-nursing-home-residents-right-vote.pdf> [archived here: [Archive.org](https://archive.org/)]

<sup>4</sup> [https://www.pennlive.com/news/2016/08/qa\\_how\\_are\\_nursing\\_homes\\_regul.html](https://www.pennlive.com/news/2016/08/qa_how_are_nursing_homes_regul.html)

nursing homes. CMS can also impose other sanctions, such as limiting their reimbursement for services if the facility does not meet federal standards. Bad ratings on the Inspections can result in management being replaced and facilities being closed.

CMS and State Survey Agencies wield significant authority over the facilities subject to their scrutiny. Therefore, facilities undergoing audits are keenly aware of the potential consequences, driving them to prioritize the issues raised by CMS to avoid potential severe repercussions of being labeled non-compliant.

In 2020, in the midst of COVID, CMS informed all State Survey Agencies that they should interpret federal rule §483.10(b) “The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States” to mean that the staff must assist residents with applying for absentee or mail ballots and completing a ballot.

“CMS is providing clarification to Medicare/Medicaid certified long term care facilities of their existing requirement to affirm and support the right of residence to vote... [and to provide] assistance in registering to vote, requesting an absentee ballot, or completing a ballot from an agent of the Resident’s choosing, including family representative, LTC Ombudsmen or nursing home staff.”

Although voter registration and ballot applications are not mentioned in the rule, the agency instructed the facilities to interpret the rule to include them. The CMS memo stated that this policy should be communicated with all survey and certification staff, their managers, and the State/Regional Office training coordinators immediately. The memo was the method used to alert the surveyors that they should use the “Resident’s Rights” section of the survey to allocate deficiencies to nursing homes that did not communicate GOTV efforts to the residents. The memo included other assessed areas where deficiencies could be levied on a nursing home for their lack of GOTV efforts. For example, some violations were noted as Quality of Life deficiencies. The significant increase in nursing home voter registrations and reports of unusually high voting rates followed the distribution of the CMS memo. The requirement to provide assistance with completing a ballot had an implausible caveat that the agent should be of the Resident’s choosing. There were no instructions regarding the process or documentation for how a resident might actually choose their own agent.

In 2021, Justice Michael Gableman investigated unlawful changes made by the Wisconsin Election Commission to laws protecting nursing home residents in the 2020 Election. The investigation found that nursing home “residents were illegally assisted with ‘marking’ their ballots by nursing home staff and administrators.” Investigators suspected forgery of residents’ signature by nursing home staff. Some residents, who were suffering from severe dementia and were unaware of their surroundings, had a ballot submitted on their behalf.<sup>5</sup> The Special Counsel report concluded that “rampant fraud and abuse occurred statewide at Wisconsin’s nursing homes...in relation to absentee voting at these facilities.”

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<sup>5</sup><https://web.archive.org/web/20220302173516/https://legis.wisconsin.gov/assembly/22/brandtjen/media/1552/osc-second-interim-report.pdf>

An Activities Director in Pennsylvania Nursing Home assisted at least 17 residents with their ballots approximately 2 weeks after the CMS memo was distributed. PA law requires that if a voter receives assistance with the affidavit envelope, the person providing assistance must sign the bottom portion of the form. Further, nursing home staff may not return a mail ballot on behalf of a resident without completing a designated agent form. A person can only be a designated agent for a single resident in a nursing home.

One resident of that nursing home was admitted in May of 2020 and was labeled “not capable” upon admission. She was bedridden and unable to talk. Somehow, in October 2020, that vulnerable senior was able to register to vote, request a ballot and vote - without anyone disclosing assistance or completing a designated agent form. She was a first time voter in the 2020 election.<sup>6</sup>

A Texas social worker was charged with 134 felony counts involving election fraud for unlawfully registering residents of the Mexia State Supported Living Center<sup>7</sup>. Attorney General Paxton said, “Registering citizens to vote or to obtain mail ballots without their consent is illegal. It is particularly offensive when individuals purport to be champions for disability rights, when in reality they are abusing our most vulnerable citizens in order to gain access to their ballots and amplify their own political voice.” My office is prepared to assist any Texas county in combating this insidious form of fraud.”<sup>8</sup>

In September 2023, the Biden Administration noted, “The nursing home industry receives nearly \$100 billion annually from American taxpayers, yet too many nursing homes chronically understaff their facilities—resulting in poor, substandard care that endangers residents. When nursing homes stretch workers too thin, residents may be forced to go without basic necessities like hot meals and regular baths, or even forced to lie in wet and soiled diapers for hours. Residents also suffer avoidable injuries like falls and bedsores.”<sup>9</sup> **Mandating voter registration and get-out-the-vote requirements burdens the already burdened long term care facility workers.**

Shortly after taking office, President Biden issued Executive Order 14019 in which he commanded all federal agencies, including CMS to make plans to increase voter registration and get out the vote. Agencies were also instructed to partner with White House approved non-governmental organizations (NGO) to assist with get out the vote activities. The plans and the approved NGO partners have been kept secret, but facility management understands that failing to allocate nursing home staff to align with priorities of CMS can result in substantial consequences. This creates the potential for perceived pressure to increase registration and voting in nursing homes in 2024 -- perhaps even more so than in 2020.

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<sup>6</sup> This case has been referred to the District Attorney, so no names are included in this report.

<sup>7</sup> The victims were individuals with intellectual and developmental disabilities.

<sup>8</sup> <https://www.texasattorneygeneral.gov/news/releases/limestone-county-social-worker-charged-134-felony-counts-involving-election-fraud>

<sup>9</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/01/fact-sheet-biden-harris-administration-takes-steps-to-crack-down-on-nursing-homes-that-endanger-resident-safety/>

In 2024, there is a heightened need to protect vulnerable seniors from undue influence or unauthorized completion of their ballot by facility staff and potential agency NGO partners. Under Title 42, Public Health, Chapter IV Centers for Medicare & Medicaid Services Federal Requirements for States and Long Term Care Facilities includes a requirement for facilities to “promptly notify the resident and the **resident representative**” when there is a change in the resident’s rights. Registering to vote and applying to vote creates a change in the resident’s state and federal rights.

***42 CFR § 483.10(g)(14) Notification of changes<sup>10</sup>.***

*(iii) The facility must also promptly notify the resident and the resident representative, if any, when there is—*

*(B) A change in resident rights under Federal or State law or regulations as specified in paragraph (e)(10) of this section.*

Authorized representatives of nursing home residents could immediately inform the facility of their desire to be notified if the resident registers to vote, changes their voter registration or applies for an absentee or mail ballot. Residents who require assistance should have the option of receiving assistance from agent of their choosing and should be offered the option of receiving assistance from their authorized representative.

Local election officials should coordinate with facilities in the community to ensure that vulnerable residents are protected and, when possible, under state law, bipartisan teams of election workers should travel to nursing homes to facilitate voting of residents to alleviate the burden on nursing home staff.

Protecting vulnerable elders from exploitation and abuse should be a paramount goal of every long term care facility<sup>11</sup>. Seniors are often far more susceptible to manipulation and exploitation due to physical frailty, cognitive decline, or social isolation. Moreover, ensuring that seniors have the opportunity to vote, while also respecting their right to decline participation if they choose, reflects a commitment to honoring their autonomy and preferences.

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<sup>10</sup> <https://www.govinfo.gov/content/pkg/CFR-2011-title42-vol5/pdf/CFR-2011-title42-vol5-sec483-10.pdf>

<sup>11</sup> Older Americans Act Of 1965 includes protections for individuals who are 60 years of age or older. Exploitation is defined as the “fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an older individual for monetary or personal benefit, profit or gain, or that results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets