STATE OF NEW HAMPSHIRE

MEMORANDUM

TO: New Hampshire Election Officials

FROM: William M. Gardner, Secretary of State
Gordon J. MacDonald, Attorney General

RE: Absentee Voter Registration, Voter Registration, and Change to Undeclared

DATE: **Wednesday, June 3, 2020**

On April 10, 2020, we issued guidance about how to request absentee ballots in elections that will take place this year. We now offer this further guidance, focused on issues related to registration in the context of the public health crisis.

Absentee Voter Registration

1. September Primary and November General Elections in 2020

In our previous guidance, we indicated that because of the current public health state of emergency, Emergency Orders #16 and #26, and current public health guidance on social distancing and avoiding being in public in groups of 10 or more, all voters have a reasonable ground to conclude that a "physical disability" exists within the meaning of RSA 657:1. Therefore, all voters may request an absentee ballot on that basis.

We also believe that all voter registration applicants have a reasonable basis to conclude that a "physical disability" exists within the meaning of RSA 654:16 and 654:17. Registrants who are unable to register to vote in person because of illness from COVID-19 or because they fear registering in person may expose themselves or others to COVID-19 may use absentee registration. Therefore, all applicants may request an absentee voter registration package by mail, e-mail, fax, or phone on that basis.

Instructions must be included with each absentee voter registration package explaining that COVID-19 concerns are a legal reason that allows an applicant to use the disability provision. *See* attached sample.

2. Procedure

RSA 654:16 and 654:17 allow a person, who has his/her domicile in any town or city in this state and is qualified to vote there, to contact his/her town or city clerk or the Secretary of State's Office to request an absentee voter registration package. The law requires an applicant to:

i. Complete a voter registration form;
ii. Complete an absentee registration affidavit;

iii. Provide copies of his or her proof of identity and proof of domicile. Proof documents include:

a. A current and valid New Hampshire driver's license, an armed services identification, a photo identification issued by the United States government that shows a name or address; or

b. A copy of a current photo identification and a copy of a:

i. Current utility bill;
ii. Bank statement;
iii. Government check;
iv. Paycheck; or
v. Other document showing an individual's name and address; or

c. RSA 659:13 also allows the following as proof of identity:

i. A driver's license or non-driver ID issued by any state or the federal government;
ii. A United States armed services identification card;
iii. A United States passport or passcard;
iv. A valid student identification card issued by a New Hampshire college, university, or career school, a New Hampshire public or private high school, which is current or which expired not more than 5 years ago.

d. A letter from the administrator of a nursing home confirming that the person registering to vote is a resident there; and

iv. Have a witness fill out and sign the affidavit, confirming that the person registering to vote has proven his/her identity. <u>Any person may serve as a witness</u>.

Current public health restrictions do not prevent a person who wants to register to vote from meeting these requirements. The documents required for proof of identity and domicile, listed above, are easily available to most people. If the documents, or copies of the documents, are not immediately available, any person is allowed under Emergency Order #40 (requiring Granite Staters to stay at home) to leave home to obtain the documents or copies if needed.

A person can witness a document being signed by watching the person registering to vote sign the form from a socially appropriate distance of 6 feet or more or through a window. The document, once signed by the person registering to vote, can then be left in a place where the witness can approach after the person has backed away and the witness can then sign the document. The witness can either leave the document for the person registering to vote to mail, or the person can provide the whole packet to the witness so the witness can mail the documents after the witness signs the document.

It is important to note that New Hampshire law does not set forth a time restriction for applying for absentee ballots. The most recent version of the New Hampshire Election Procedure Manual: 2018-2019 makes clear that:

> A qualified applicant who will be absent from his or her town/city on election day may, up until the day before the election, obtain the forms necessary for absentee voter registration and an absentee ballot from the clerk, complete the application forms, provide the required copies of evidence of qualifications, complete the absentee ballot and affidavit envelope and return it all to the clerk. The clerk shall provide the application and supporting documents to the supervisors for process as an election day registration under RSA 654:7-a.

Accordingly, there is plenty of time for registrants to compile the necessary documents or copies and arrange to have the affidavit witnessed. Prospective registrants should be encouraged to begin the process as soon as possible.

Absentee ballots are not typically available for overseas voters until 45 days before an election and for absentee voters in the United States until approximately 30 days before an election. For the 2020 elections, an effort is being made to get the absentee ballots to the clerks earlier.

3. Accommodation

In addition to the above-outlined procedure, town/city clerks (or their designees) are encouraged to use any reasonable means to accommodate people who want to register to vote and do not believe they can use the absentee voter registration process.

Accommodation is appropriate if the person lacks:

- A witness;
- Documents providing identity and domicile; or
- An ability to provide copies of proof documents.

Most people will be able to easily complete the absentee voter registration forms and mail them back to the clerk. However, an accommodation would occur where a person has requested and received the forms and instructions for registering to vote by absentee, but has determined that he or she cannot locate a witness and/or provide the proof of domicile and identity.

For another example, people registering to vote who do not have a copier/scanner, or the ability to go to a business that can make copies for them, will often have phones capable of taking a picture of the documents and e-mailing that picture to the clerk. Clerks and supervisors can and should accept pictures of documents through email. See the attached COVID-19 Related Voting Instructions for instructions on how to obtain your clerk's contact information.

Clerks choosing to provide accommodations may adopt a modified in-person registration process that offers the registration service while employing practices to mitigate COVID-19 concerns.

The official must view proof documents, but does not need to copy them. Applicants without proof documents must be offered a Domicile and/or Qualified Voter Affidavit to satisfy the proof requirements.

We have outlined an example of a potential accommodation below. This is just one example. As mentioned, clerks are encouraged to use any reasonable means to accommodate people who desire to register to vote and do not believe they can complete the absentee voter registration process. We encourage officials to contact their Emergency Management Director, police, fire, or EMS chiefs for guidance on implementing their chosen accommodation safely.

<u>Example of an Accommodation</u>

- Voter contacts clerk, providing contact information and indicating he/she is unable to use the absentee voter registration due to:
    - Lack of a witness;
    - Lack of proof documents; and/or
    - Lack the ability to make copies of proof documents for identity and domicile.
- The clerk will contact the person who wants to register and determine whether use of a phone to e-mail an image of proof documents and/or a Zoom / WebEx / GoToMeeting / FaceTime session with the clerk so he or she can witness the signing of documents or view proof documents is practical. For a person who wants to register but who reports that he or she is unable to provide copies of proof documents, the clerk may view and assess the documents via any mutually convenient on-line meeting technology.
- If no practical alternative exists:
    - Clerk or designee should arrange with the person who wants to register to meet at an outdoor location (i.e. parking lot of Town Clerk's Office). If the Supervisors of the Checklist are holding additional sessions in a manner that mitigates COVID-19 risk, the voter may be offered the opportunity to register with the Supervisors. A clerk's designee may be any person recruited and trained to accept applications for voter registration, including a volunteer Supervisor of the Checklist, local emergency services personnel with experience using Personal Protective Equipment, or a person identified by the Secretary of State.
    - This type of accommodation will change the registration from absentee to in-person. The Absentee Registration Affidavit will not be needed.

- Clerk would instruct the person to complete and bring the voter registration form sent in the absentee registration package. Instruct the person to bring his/her own pen and proof of identification, age, citizenship, and domicile.

    - The clerk must tell the person that if he or she does not have proof of qualifications, the person may complete a Qualified Voter Affidavit or Domicile Affidavit in the presence of the clerk/designee as proof.
    - Do not turn the voter away for lack of documentation.

- At an agreed location clerk/designee, utilizing Personal Protective Equipment (PPE), will tell the person who wants to register to remain in his/her vehicle.

- The clerk/designee will answer any questions the person has about completing the voter registration form. The person will complete the form if not already done.

- The person will allow the clerk to view proof documents by holding them to the inside of the vehicle window. If the person does not have proof documents, the clerk shall provide the person with a Domicile and/or Qualified Voter Affidavit.

- The person who wants to register will complete the documents inside his/her vehicle.

- Once completed, the person will hand the documents to the clerk/designee through vehicle's window.

- If necessary, the clerk/designee may have the person drop the documents into a box or bag held outside the window. The clerk/designee may wait to review the documents until the recommended period to mitigate risk of COVID-19 has elapsed or may review the documents, if time permits (i.e. if it is the day before the election), wearing appropriate PPE. The clerk will then sign and forward the documents to the Supervisors.

- Just as would happen prior to the public health crisis, once the proof documents have been viewed, and affidavit(s) received with the clerk verifying the voter registration form is properly completed, the person registering to vote is finished with the process.

- When the Supervisors approve the application, the person is registered to vote. Registration might not be completed until the mandatory session held 6 to 13 days before the September 8 election.

When should accommodations be offered to voters?

The clerk shall accommodate requests made before August 26, 2020, so that the Supervisors receive the applications in time for the mandatory session held between August 26, 2020 and September 2, 2020. The clerk should accommodate requests made after the Supervisor's final session, as time permits, so the Supervisors receive the application on election day.

People who want to register to vote should obtain the absentee voter registration materials as soon as possible. If a person needs an accommodation to register, that accommodation should be requested as far in advance of the election as possible. People who wait to register after September 2, 2020, may submit the completed absentee registration application forms and proof documents to the clerk's office or register in person at the polling place on election day.

Assistance Locating Resources

The Secretary of State's Office is ready to help those communities that may want to provide accommodations, but due to concerns about the public health crisis, are unable to volunteer personnel. In such cases, clerks may contact the Secretary of State's Office, which will find people to help with the absentee voter registration process. Clerks will be required to designate the individual(s) identified by the Secretary of State to accept the voter registration application on the clerk's behalf. The Secretary of State will provide training to the designees.

We encourage clerks to contact their Emergency Management Director for guidance on appropriate protective measures to implement for accommodating voters.

The same penalties for providing false information while registering to vote pursuant to RSA 659:34 continue to be in full force and effect.

Unless supervisors of the checklist hold optional meetings at other times, supervisors are required to meet and consider pending applications for voter registration on a date determined by supervisors between August 26 and September 2, 2020 as well as October 21 and October 28, 2020, pursuant to RSA 654:27 and RSA 654:28.

4. Change to Undeclared during the Public Health Crisis

On State Primary Election Day, September 8, 2020, due to the public health crisis, election officials shall use the "Election Day Party Affiliation Change Form" for all voters who want to change back to undeclared. These forms will be used instead of the printed list of undeclared voters drawn from ElectioNet, that voters usually sign on election day, so that multiple voters do not touch the same document or form lines.

Ballot clerks shall hand an "Election Day Party Affiliation Change Form" with the party primary ballot to all voters who check-in as an undeclared voter. A box shall be placed to collect the completed "Election Day Party Affiliation Change Form" next to the ballot box or ballot counting device. Use signs to instruct voters to deposit the completed form if they wish to change back to undeclared. This process will avoid the need for a separate change back to undeclared table. It will mitigate the risks of contamination from one voter to the next by preventing multiple voters from touching the same document.

Prior to the public health crisis, clerks would include a copy of the change back form in the package mailed to voters who were registered undeclared and were voting by absentee ballot. We encourage clerks to continue this practice to accommodate those undeclared voters who may not be able to appear in person at the polling location for the 2020 elections.

5. Dissemination of this Guidance

Copies of this guidance memorandum will be distributed to the media, posted on each of our agency's websites, and be disseminated to election officials via ElectioNet. We encourage election officials to share it with the public.

COVID-19 RELATED REGISTRATION AND VOTING INSTRUCTIONS

Registering to vote and voting in person at 2020 elections may pose a health risk to some due to the COVID-19 health emergency. You may register and vote by absentee (by mail) if:

- You are ill due to COVID-19, or caring for someone with COVID-19/symptoms; or
- You are concerned that registering or voting in person will expose you or others to COVID-19.

The term "disability" in the election law extends to these circumstances. Even if you do not consider yourself a person with disability in other circumstances, this term applies for registering to vote and voting in 2020. The opportunity to register and vote absentee due to disability from COVID-19 will apply in 2020, regardless of the future development of the public health crisis. You must sign the "disability" affidavit on the forms for absentee registration and absentee voting.

REGISTERING ABSENTEE (BY MAIL)

You may request absentee voter registration forms and instructions from your clerk before requesting an absentee ballot. Supervisors of the Checklist must review and approve your application. They are required to meet on a date 6 to 13 days before the September 8, 2020 primary and again before the November 3, 2020 general election. Unless the supervisors hold voluntary sessions before then, the supervisors will review your application at that meeting. You are registered to vote when the supervisors approve the application.

If you request an absentee ballot and are not registered, the clerk will send you both your absentee ballot and your absentee voter registration forms and instructions.

VOTING ABSENTEE (BY MAIL)

Request your absentee ballot from your town/city clerk as early as possible. An Absentee Ballot Application can be downloaded from: http://sos.nh.gov/ElecForms2.aspx See below for how to obtain your Clerk's contact information.

If you are returning your completed absentee ballot by US Mail, the clerk must receive it by 5:00 p.m. on election day. To increase the likelihood the absentee ballot arrives on time and assist with an expected high volume of absentee ballots, we recommend mailing it at least two weeks before the election. After 5 days, check the Voter Information lookup, Absentee Ballot link, to see if your clerk has received the ballot. Contact your clerk if your ballot has not been received. You may also deliver it to the clerk's office in-person or by a delivery agent until 5:00 p.m. on the day before the election. A delivery agent may deliver it to the clerk at the polling place until 5 p.m. on election day. Family members, nursing home and elder care facility administrators, and a person assisting a voter with a disability who signs the absentee ballot affidavit (limited to delivering ballots for 4 voters) may be a delivery agent. See RSA 657:17: http://www.gencourt.state.nh.us/rsa/html/LXIII/657/657-17.htm

Find your clerk's contact information, your party membership status, or the status of your absentee ballot request here: http://sos.nh.gov/



