

Meeting of the Select Committee on 2020 Emergency Election Support

Tuesday, May 13, 2020 - 2:00 p.m.

Members:

- Bradford E. Cook, Chairman
- Representative Barbara J. Griffin
- Katherine M. Hanna
- Kathy L. Seaver
- Senator Tom Sherman
- Eugene Van Loan III

Also participating:

- David Scanlan, Deputy Secretary of State
- Orville “Bud” Fitch, Legal Counsel, Secretary of State’s Office
- Nicholas Chong Yen, Assistant Attorney General

Select Committee meeting

- Chairman Cook opened the meeting at 2:00 p.m.
- Deputy Secretary Scanlan: Representatives of the healthcare community have been invited to participate in this call. Advised attendees how to raise their hand to speak.
- Chairman Cook noted the minutes from yesterday’s meeting had not yet been received so they will be taken up tomorrow. Chairman Cook called the roll; all members are remotely participating.
- Chairman Cook: Today we want to hear from representatives of the medical community.
 - Thanked Ms. Hanna and Sen. Sherman for assembling this portion of the agenda.
 - After the healthcare portion we’ll hear from members of the business community and then representatives of organized labor, both of which will provide their input to this committee.
 - Reminded everyone to please keep their presentations under five minutes and not to repeat comments to the best of their ability.
 - Sen. Sherman will chair healthcare portion.
- Sen. Sherman: Ms. Hanna and I worked together to invite as many as we could to participate in this part of today’s program. Our focus is to be on the healthcare considerations regarding people wanting to vote.
- Brendan Williams: President and CEO of NH Healthcare Association, representing most of state’s nursing homes and assisted living facilities—80 in total.
 - Last year we supported legislation that better facilitated voting in long-term care facilities. Originally just included nursing homes but we suggested that it include residential care facilities. Prior to its enactment, the only persons who could assist a voter with a disability or who is elderly or blind in the delivery of a ballot to a town clerk would’ve been a close relative. Under this legislation, the categories of relatives who could assist voters was broadened and was extended to include nursing home administrators, or their designee, or residential care administrators, or designee. We didn’t foresee present crisis but we’re glad this legislation is in effect.
 - Senator Sherman: Are there any other special concerns for your population?

- Mr. Williams: I don't think so. This is something facilities have always prioritized and facilitated. We're always here to follow direction from state or federal government. Whatever you tell us to do we will do. This is something we can certainly accomplish going forward.
- Ms. Hanna asked Mr. Williams: Now that this new law allows delivery agents to deliver to town clerk or to polls on election day, how widely known is that among the administrators? I'm asking because there was a situation in Bedford during the primary when the son of a nursing home resident tried to deliver four ballots for his mother and three other nursing home residents, and Bedford wanted to accept the ballots but could not because he wasn't considered a "delivery agent" for the three others. I got in touch with the administrator of the nursing home but he was out of town and couldn't deliver the ballots, and he didn't have a designee. The administrator ended up faxing a letter to the designee permitting her to deliver the ballots. That raised in my mind whether administrators know they have this ability, and that if they're out of state they need a designee on file.
- Mr. Williams: I think that makes sense. I think we'd work hand in hand with the Secretary of State's office, and take care of whatever guidance we need to provide to facilities. The legislation itself wasn't something we initiated, but we were happy to see it. We could do more in terms of promoting this law and we'd be happy to do so. We could also give the Secretary of State's office the email list of all nursing home and residential care facilities to further raise awareness.
- Sen. Sherman asked Mr. Williams: Is the point person for DHHS Wendy Altman? Would she be a conduit for this communication?
- Mr. Williams: Yes, she is the bureau chief and could communicate effectively to administrators. She probably has even more contacts than I do.
- Sen. Sherman asked Mr. Williams: We've had must discussion about absentee voter registration. Many of your residents are likely already registered voters. Are you aware that there is such a thing as absentee voter registration, and have you been able to incorporate that into the program for your residents?
- Mr. Williams: I'm not aware of any ongoing effort with regard to absentee voter registration, but we'd be happy to help raise awareness.
- Sen. Sherman: Perhaps we could look to ensure the ability of an administrator or designee to act on behalf of the resident, if that also applies in the absentee process, we'll want to be sure we're consistent and those facilities are aware of those opportunities.
- Rep. Griffin asked Mr. Williams: In the beginning you spoke about the members of your organization, about 80 facilities. That doesn't encompass all facilities in the state. Do you know how many other facilities there are outside of your membership?
- Mr. Williams: There are 74 nursing homes altogether; each county has their own and Coos County has two. There are probably 20 assisted living facilities that are members of our association, but there's also another association that represents exclusively residential care facilities, and another that represents exclusively nonprofit facilities.
- Sen. Sherman: There's currently about 225 licensed facilities in the state.
- Mr. Cook: It seems educating the population on how easy it is to do this remotely to keep themselves safe would be helpful. Do you have any sense what percentage of residents vote absentee and how many vote in-person?

- Mr. Williams: I assume in the nursing homes, no one is voting in-person. Residential care facility residents may be more likely to go to the polls.
 - Sen. Sherman noted the risk of voters going to polls then bringing back potential COVID-19 exposure to a facility.
- Gary Cahoon, NH Association of Residential Care Homes, statewide organization of residential and/or assisted living homes. Shares 20-30 members with NH Healthcare Association.
 - It's correct that the total number of licensed facilities is about 225; 140 are residential care or assisted living, and then there are 74 private and county nursing homes.
 - Mr. Williams talked about last year's legislation. This year's HB 1457 was a follow-up to that legislation. That bill focused more on absentee registration versus voting. It also weighed in on absentee ballots and how that would be accomplished. It would have required clerks, supervisors, and representatives of both parties to go to nursing any residential or assisted living homes in their district to register residents.
 - This year, the bigger problem will be registration rather than absentee balloting. By the nature of these homes, the average stay in a nursing home is about 1.5 years; a little bit longer in assisted living. People have recently moved, likely since the last election cycle, and they may be registered to vote, but not in the town they now live in. Need for registration is hugely important.
 - I wasn't aware there was a mechanism to remotely register to vote; that was something HB 1457 was addressing. There were flaws with the bill, but we supported its intent. It was opposed by the Town Clerks Association and the Municipal Association, largely because of flaws which required four people to go to these facilities instead of one. Their other argument was that they're already doing this, and maybe some towns are, but as a provider myself, they don't do it where I live. There's a gap there to be filled.
- Mr. Van Loan asked Deputy Secretary Scanlan: In terms of people living in one of these facilities, are they deemed to be residents of the community in which that facility is located for purposes of voting, or must they still vote by absentee in home of record?
- Deputy Secretary Scanlan: They have a choice. If they become a resident of a facility, they can continue to vote from the NH town they came from and vote by absentee ballot, regardless of how long they're in the facility. If they decide they want to vote in the town the facility is located, they have that choice, as well. Once they make that choice and vote in that new place, they are then locked in to voting there.
- Mr. Van Loan asked Deputy Secretary Scanlan: Must these individuals re-register?
- Deputy Secretary Scanlan: Yes, they'd have to register to vote in that town.
- Ms. Hanna asked Mr. Cahoon: I did not see that CCRCs are covered by the statute that allows an administrator of a facility to deliver ballots for residents. Do you know if they are included in that group?
- Mr. Cahoon: They are probably not, but the licensed portions probably would be authorized to do so. Residents in licensed part of the facility would be eligible. Those ineligible would still need to deliver or send their own.
- Dr. Richard Friedman: I want to continue discussing how best to identify best practices for voting this election, obviously focused on in-person voting, not absentee. The question that was raised yesterday was whether we can develop a single template of a best practice versus having each polling place recreate the wheel? As I considered it, I think the idea of coming up with a template

makes sense if we are looking for some of the standards that we would expect to occur for in-person voting.

- Social distancing: how will that be maintained? How does a polling location handle the movement of people in and out to maintain social distancing? That may vary tremendously around the state depending on the polling place, some of which will accommodate distancing and some won't.
- I sent an email with a few questions that arose as to maintaining social distancing. What will be the policy on face coverings? Will there be one? Should gloves be available? These are things that shouldn't be left up to individual polling places to figure out; we need guidance.
- Ideally I hope the CDC issues some guidance, but they don't seem to be doing so right now. If they wait too long to do so, we won't have time to implement those recommendations. There's a role for the state to audit the process of voting and movement of people doing so, in an attempt to understand what we'll be facing this fall.
- If there's a rule about face masks, what about voters in noncompliance? What if someone shows up to the polls sick? Do we take temperatures? How do we reduce risk to the general population? I hope these questions are things the committee will work to address and answer.
- Mr. Van Loan asked Dr. Friedman: What concerns me is that so many of the issues you raise are so important and I feel we are unprepared to answer them. What do you suggest we do?
- Dr. Friedman: It's far from my knowledge base to have specific answers. I do think we have some expert public health people at the state level who can walk through some of these things; that's why I initially proposed a process map. You can't answer the questions until you know exactly how people are moving through the system. I think the committee needs to solicit public health officials to answer these questions and provide recommendations. The tension will be that these are recommendations, not law. Someone could still show up sick at the polls. That's part of emergency preparedness and I hope we have time to develop those responses and protocols. There are a lot of what-if's here, and public health officials needs to be consulted.
- Sen. Sherman: I've thought a lot about how that flow would work. My guess is that the Chair will be inviting public health officials to address the committee about these kinds of recommendations.
- James Ziegler, Attorney at Disability Rights Center, advocating for those with disabilities:
 - People with disabilities are considered some of the most high-risk and vulnerable voting populations, and ensuring their ability to vote safe is of paramount concern.
 - Preparation in pre-voting process: Requesting an absentee ballot is currently not accessible to people with disabilities. Allowing them to submit applications electronically would be incredibly helpful. I hugely support digitizing the process for requesting absentee ballots.
 - Making absentee voting more accessible: We appreciate absentee ballots are being made more available, but we also have concerns about that. The paper absentee ballots aren't accessible to the visually impaired, and so these voters must rely on the assistance of someone else to help the vote, which strips their right to vote privately and independently. Absentee ballots can be made accessible to those who need them. The most common process involves having the voter who needs an accessible ballot to request one.

- “Accessible” means an electronic ballot that can be read with assistive technology. The ballot would be emailed to the voter, they would fill it out, print it, and mail the paper ballot in an official return envelope. This is an important priority and a requirement of HAVA.
- Concerns related to in-person voting: This pandemic has raised several problems with disabled voters who want to vote in-person. Location of some polling places will need to change and we need to ensure alternative locations are also readily physically accessible. This is a requirement of HAVA and the ADA. We’re also worried about infection prevention: Some disabled voters are immune-compromised and will require PPE to enter voting places safely. In terms of voting equipment itself, the one4all voting system uses a tablet, keyboard, headset, and microphone—all of which could spread infection. Ensuring this equipment is properly sterilized in between voters is critical. Purchasing additional headsets and microphones may be necessary.
 - In terms of social distancing, we have to assume these guidelines will still be in place this fall. This raises issues for the disabled community. ADA requires an accessible path of travel to allow large wheelchairs to move through polling place without hindrance, as well as waist-level voting tables.
 - Concerns about long lines for disabled voters: Expanding or increasing curbside voting options would be extremely helpful. There could also be an ADA accommodation for disabled voters to be moved to the front of the line.
 - The Secretary of State’s office has an election procedure manual with robust guidelines for accessibility, and it can and should be relied upon.
 - It is critical that voters who need assistance are still afforded that help, but steps need to be taken to reduce any unnecessary risk: providing PPE to these assistants would be helpful.
 - HAVA and the ADA are still in effect and must be considered when making recommendations to the Secretary of State.
 - Ms. Hanna asked Attorney Ziegler: Is it fair to assume that your comments re: absentee balloting for the disabilities community also extends to absentee registration opportunities?
 - Attorney Ziegler: Yes. It’s critical to allow voters to register absentee or request an absentee ballot accessibly and independently.
 - Sen. Sherman asked Attorney Ziegler: Do you have any notion of how many machines might be needed to do some of the work you referenced?
 - Attorney Ziegler: It would be what a UOCAVA ballot is: An absentee ballot would be emailed to the voter with the visual impairment, and they could use their own assistive technology to mark their ballot themselves and send it in. The only difference would be the voter would receive an electronic ballot versus a paper ballot. They would need to be hand-counted, just like UOCAVA ballots.
 - Sen. Sherman: In NH we pride ourselves on having a hard copy of every ballot; this would generate a printed return that would be sent back, yes?
 - Attorney Ziegler: Yes, there would be a printed return, and it would be a paper ballot that would be counted.
 - Ms. Seaver: The ballot wouldn’t have to be much different than the current UOCAVA ballot; the onus is on the other side of how to mark the ballot, is that correct?
 - Attorney Ziegler: Yes, and I’d have to check on whether the UOCAVA ballots are screen-readable.

- Gina Balkus, CEO of Home Care, Hospice and Palliative Care Alliance of NH:
 - Our members range from small, privately owned agencies to large VA's with over 500 employees.
 - Home care and hospice staff can include nurses, therapists, nursing assistants, homemakers, and hospice volunteers. These are the people who go into homes to treat patients.
 - Consumers are generally home-bound and need assistance with daily living. Under normal circumstances many wouldn't be able to vote in-person and that's even truer given the COVID-19 pandemic.
 - In 2016 we participated in Bring the Vote Home: a nonpartisan initiative to help senior citizens and disabled Americans, their family members, and home health clinicians participate in elections.
 - Our alliance kept it simple: We created a postcard that agencies included in clients' admission packets, which included a link to a page on our website: Homecarenh.org/bringthevotehome/. The page links users to the Secretary of State's website. Included buttons for how to register to vote in NH, info for voters with disabilities, how to find city and town clerk information, absentee ballot request forms, how to check absentee ballot status, and a sheet on Healthcare NH. Participation was voluntary. Those that were interested agreed their involvement would be limited to distributing the postcards; they didn't assist patients with completing any forms or ballots. We believe that would be inappropriate.
 - If the state were to develop a similar campaign, or provide us with forms we could distribute, like the absentee registration form, we could disseminate those. We'd love to be part of such an effort.
 - Ms. Hanna asked Ms. Balkus: I have a question about the procedure under which a homebound client could complete and return an absentee ballot. Under the current law, the definition of "delivery agent" probably doesn't capture the people actually helping your population. Is that correct, and if so, is there need for expansion of "delivery agent"?
 - Ms. Balkus: Most clients do live alone or with elderly spouses. Expansion of the "delivery agent" definition would be helpful.
- Daniel Frye: new administrator of Services for the Blind and Vision Impaired, part of bureau of vocational rehabilitation.
 - I work in policy areas that will globally and comprehensively improve quality of life for Granite Staters who are vision impaired. To that end I've been asked by the NH coalition of blind and vision impaired voters to bring to your attention some of the specific concerns of this community.
 - Obviously we are concerned and our priority is ensuring the virus is safely managed and well contained. That being said, we believe that can be achieved, but steps and measures also may be taken to allow our community to have independent, private, accessible opportunities to vote.
 - If we are going to do a primarily vote-by-mail system to mitigate potential harm, I'd ask that the committee consider all of the innovative solutions that have been offered that will make an absentee ballot more accessible to someone who is blind or vision-impaired. It may seem simple to say "have a family member help you out," but there's a question of dignity and

- autonomy in being able to exercise this civic responsibility by ourselves. It's something HAVA and ADA both provide for and guarantee.
- No matter the approach you take, recognize that absentee voting is largely circulated in print formats; we need to look at other solutions to be more inclusive and allow everyone to privately and accessibly vote.
 - The one4all system does work very well. Being new to NH, I thoroughly enjoyed the opportunity to participate in my first NH Primary for President. Obviously if those systems are going to be made available, certain sanitation protocols need to be adhered to. There needs to be an alternative above and beyond the use of absentee ballots for people to participate in-person, since we do have existing technology that works well.
 - Blind and vision-impaired people want to be responsible citizens and want to be part of the collective deliberation that creates new policy in this state. Toward that end, our advocacy is rooted in a desire to help fashion the world in which we live. It is not intended to create challenges or cause problems. I regard this less as an issue of healthcare and more of civil rights.
 - I do have documents from other states that have tended to use a mail-in system and they have identified a variety of solutions, which I'm happy to share in a subsequent written communication that I think this committee should consider as it moves forward.
 - Mr. Cook asked Mr. Frye: Do you have an estimate of the number of blind and visually impaired voters in NH?
 - Mr. Frye: I've seen many numbers, but according to the American Survey on Persons with Disabilities, it's somewhere between 25,000 and 30,000. Those are the most recent figures that I've seen.
- Chairman Cook is now chairing the meeting.
 - Glen Brackett, President of NH AFL-CIO, represent over 50 local unions; broad membership including thousands of essential workers.
 - All workers, including poll workers, deserve best protection we can offer.
 - Cited the Wisconsin election and the amount of voters who contracted COVID-19 because of in-person voting.
 - Earlier, Mr. Ziegler talked about UOCAVA ballot, and I hope the committee takes a hard look at expanding this option.
 - Voters in NH deserve the best, and the safest, processes available.
 - Janice Kelble, representative of American Postal Workers Union for NH:
 - I've always supported voting by mail.
 - Postal workers are under tremendous strain and crazy schedules, they're among front-line workers and need readily accessible opportunities to vote.
 - We need to expand voting opportunities to all eligible voters.
 - NH hasn't updated our voting procedures to accommodate busy workers. There's now an urgent need to do so, in light of the virus. There needs to be a clear-cut plan to enable and encourage citizens to register and vote by mail. I think it's important for us to encourage rather than to permit the use of a mail-in ballot, for the safety and health of the public.
 - A robust public education campaign is needed to inform voters on any new processes or options available to them.
 - Ms. Kelble asked how people can change their party affiliation.

- Chairman Cook: We're working on answering this question.
- Mr. Van Loan asked if there are still "postage due" options. Ms. Kelble isn't sure and can't speak on behalf of the US Postal Service.
- Ms. Seaver: UOCAVA envelopes have US postage paid on them. Maybe that's an option.
- Rep. Griffin asked Ms. Kelble: There was a reference to envelopes. We all know differently-sized envelopes require different postage and processing. We've also heard about delays in the postal service. Is there a size of envelope that is easier or quicker to process than others?
- Ms. Kelble: That's a good question for someone with more expertise.
- Jay Ward, representing state, county, and municipal SEIU Local 1984:
 - Voting in 2020 will be unlike anything we've experienced. Most important thing is that we have clear and simple processes for all citizens to understand how to register to vote, how to get absentee ballots, etc.
 - Education will be a critical piece to making this work.
 - NH should allow online and absentee registration.
 - We need speedy protocols that reduce exposure risk.
 - We should waive the ID requirement for this cycle. It prolongs the process and violates social distancing.
- Christine Seibert: There's an issue with clerks and training and consistency across the state.
- Chairman Cook: We're trying to get clear, consistent, understandable information out to everyone.
- Senator Cavanaugh: Here as a member of his union.
 - We've got to keep people safe. If we're able to mail information to people, especially front-line workers, it would be incredibly helpful.
- Attorney Chong Yen: Will review some of the questions raised today and will share that tomorrow with the group.
 - I know yesterday's question involved an inquiry of the scope of the phrase "substantially similar to", and Mr. Van Loan made some proposed changes to the current form. I think the committee's charge is to make a recommendation to the Secretary of State about what can be done to provide election relief and in context of the forms that can certainly be part of the recommendation, as these fall under his purview. I would note that the statutory language about "substantially similar to" seems to suggest that because the legislature put together a form with explicit language, perhaps additions could be made, but a substantive change where you might eliminate statutory language may pose some difficulties, in terms of overriding the original legislative intent.
- Sen. Sherman: It sounds like one of the big questions we're going to face with that form is that people who don't feel comfortable going to the polls and want to either vote or register by absentee, who want to do that because of the crisis, are reluctant to check the "disabled" box. To me, one of the specific questions would be, understanding that it's the intent to make that an option to voters, would having a separate box that captures the COVID-19 reason for voting absentee be acceptable? Would that be considered "substantially similar"?
 - We heard several times yesterday about the impact on the disabled population when COVID-19 concerns are considered to be a disability. I want to be sensitive to that. If you could answer that additional checkbox question, that would be helpful.
- Attorney Chong Yen: I think the best we can do is make a variety of recommendations and present options to the Secretary of State's office.

- Dana Trahan:
 - If it's a matter that patterns of traffic are designed for social distancing at the polling places, those of us with vision impairment will need directions because signage won't be helpful to us.
 - Cleaning of the one4all equipment will be very important.
 - It's important to have the option for in-person voting for those of us who are blind or visually impaired.
- John Lisle, City of Nashua Ward 8 Moderator:
 - Wants to hear about precautions from healthcare professionals.
- Chairman Cook said we will be soliciting that information from public health officials next week.
- Senator Sherman moved to adjourn; seconded by Ms. Seaver. The committee voted unanimously by roll call to adjourn. Meeting closed at 4:15 p.m.