

Each WV county considered their emergency absentee voting policies during the summer. Of the 55 counties, 25 have adopted “extended” policies, which differ slightly in each county. Because the option of extending emergency absentee ballot voting was already considered by the counties, an executive order is not necessary—especially at this late hour, with just over a week before election day.

Nevertheless, and importantly, there are opportunities for voters who are quarantined to still participate in the election safely without exposing others to potential harm. This is true even in counties that did not adopt an “extended” emergency absentee voting policy. These options are detailed below. Also laid out are recommendations for how DHHR and LHDs can assist with communicating the below information to voters, as well as the applicable laws.

### **Recommendations:**

After a statewide consultation with the counties, it will be helpful if health officials (state and local) refer voters, who are directed to quarantine, to call their county clerk to determine the most appropriate manner to vote while under quarantine. There are various voting options for these voters detailed below, which depend on each county’s adopted policy under law.

Referring voters to the county clerks is the most efficient way to ensure voters learn all their options directly from their local election official. A statewide list of county clerk contacts can be found at [GoVoteWV.com](http://GoVoteWV.com), and directly at the following link: <https://sos.wv.gov/elections/Pages/CountyClerkDirectory.aspx>. For the 25 counties that adopted “extended” emergency absentee ballot policies, a spreadsheet will be posted to our website showing those counties and their adopted policies. This spreadsheet will be shared out when it’s available this week.

### **Voting Options:**

#### **1. Voter Submits a Regular Absentee Ballot Request to County Clerk – Must be Received by County by October 28 – All Counties:**

All voters are eligible to vote an absentee-by-mail ballot. The deadline for the absentee ballot application is October 28. Importantly, the application must be *received* by the county clerk on that deadline.

If a voter learns he/she must quarantine by October 28, the safest way for these voters is to submit an absentee ballot application to the county by the deadline. The most efficient and dependable way for these voters to request an absentee ballot is through the online absentee ballot request portal at [GoVoteWV.com](http://GoVoteWV.com).

The portal will be open until 11:59pm on October 28<sup>th</sup>, so even if the USPS or county clerk’s office are closed, voters can still submit their absentee request in time via the

online portal. Once a request is received, counties are placing absentee ballots in the mail within about 24 hours.

## 2. Voter Requests Emergency Absentee Ballot Delivery to In-County Hospitals – All Counties:

Under W. Va. Code § 3-3-5c, voters who are “confined” or “expect[] to be confined in a hospital or other duly licensed health care facility within the county of residence . . . on the day of the election” may request an “emergency absentee ballot” from their county clerk beginning on Tuesday, October 27 (7 days before the election), and ending at Noon on November 3 (election day). The request must be made by phone to the county clerk’s office.

Voters whose inability to vote in person due to hospitalization or other triggering event must call the county clerk to request an emergency absentee ballot. A county clerk directory can be found online at [GoVoteWV.com](http://GoVoteWV.com).

Emergency absentee ballot deliveries are very rare, specialized, and could take some time to fulfil depending on the demand. This process require the county’s emergency ballot commissioners to personally hand-deliver an emergency absentee ballot to the requesting voter, along with an application to be completed by the voter with the ballot.

## 3. Voter Requests Emergency Absentee Ballot Delivery to Other Locations – Varies By Adopted County Policy:

Under W. Va. Code § 3-3-5c, counties have the authority to adopt “extended” emergency absentee ballot options to voters. Those policies must be adopted by each County Commission no later than 90 days before an election. There are 25 counties with extended emergency absentee policies in effect for the 2020 General Election. As noted above, a spreadsheet of those counties and policies will be posted on our website and provided to DHHR when complete (today or tomorrow).

The locations to which emergency absentee ballots can be delivered depend on each county’s adopted policy. Importantly, because of the differences in counties’ policies, voters must call the county to learn whether the local emergency absentee ballot policy covers their situation.

Here’s a short summary of the potential extended options for emergency absentee ballot delivery. Again, these are options that must be adopted by each county no less than 90 days before election day:

- Voters in hospitals or other duly licensed health care facilities within an adjacent county or within 35 miles of the county seat (note: all counties offer emergency absentee ballots *within* their counties; this policy is for

extending that option *beyond* the county border or “within 35 miles of the county seat”); or

- Voters in nursing homes within the county; or
- Voters who become confined, on or after the seventh day preceding an election, to a specific location within the county because of illness, injury, physical disability, immobility due to advanced age, or another medical reason (“other medical reason” includes COVID-19 quarantine).

4. Voters’ Options in Counties Without Extended Emergency Absentee Policies:

In counties where either (1) the county commission’s extended emergency absentee policy does not help a particular voter’s situation, or (2) the county has not adopted an extended policy, voters should contact their county clerk to learn the best location to vote safely in person.

After a statewide conference call with the county clerks, the counties will work with these voters to ensure a safe option for in-person voting. The options will vary by county. Some options available to the counties include but are not limited to:

- In-person voting at the courthouse during early voting (ends on Oct. 31), in a space designated for voters who have been exposed to COVID-19; or
- In-person voting at one or more designated locations on election day where the polling place(s) has/have a designated space, away from other voters, for COVID-19 voters to vote safely in person; or
- In-person voting at the courthouse where the county sends a deputy clerk to deliver a provisional absentee ballot to the voter’s vehicle, which will be “challenged” by law and considered by the county’s Board of Canvassers at canvass.

**Legal Considerations Requiring Counties to Provide Accommodations:**

The summarized laws below make it clear that counties cannot prevent a “qualified voter” from voting under any circumstances. Rather, the law requires election officials to challenge any ballot cast outside regular circumstances, and likewise provides a review procedure to be conducted by the Board of Canvassers at canvass to determine whether the ballots cast should be counted.

Turning to the counties’ authority to adopt “extended” emergency absentee ballot policies, the Legislature clearly left these extra-voting options up to the counties’ discretion. Therefore, *how* quarantined voters can participate may differ by county

depending on their local policies. But whether quarantined voters *can* participate is not up for debate—they shall be permitted to vote.

### **Legal Justification for Accommodating COVID-19 Voters:**

Voting is an “essential government function” by law. As such, voting is a valid reason for a quarantined person to leave their place of confinement to participate. However, the counties have a duty to ensure voting is done safely and under the procedures set forth by law. Here are a few provisions of law allowing these special accommodations:

### **Summary of Applicable Laws:**

1. WV Constitution Article 4, Section 1 provides, in part, “[t]he citizens of the state shall be entitled to vote at all elections held within the counties in which they respectively reside . . . .”
2. W. Va. Code § 3-9-7 provides, “[a]ny election officer who refuses the vote of a duly registered and qualified voter, whom he knows is entitled to vote . . . shall be guilty of a misdemeanor, and, upon conviction, fined not more than \$1,000 or confined in the county jail for not more than one year, or both, at the discretion of the court.”
3. W. Va. Code § 3-1-41(a)(5), (b) provides “[i]t is the duty of the members of the receiving board, jointly or severally, to challenge the right of any person requesting a ballot to vote in any election . . . [i]f any other valid challenge exists against the voter pursuant to section ten, article three of this chapter.”

Importantly, “[a]ny person challenged shall nevertheless be permitted to vote in the election. He or she shall be furnished an official ballot not endorsed by the poll clerks. In lieu of the endorsements, the poll clerks shall complete and sign an appropriate form indicating the challenge, the reason thereof and the name or names of the challengers. The form shall be securely attached to the voter's ballot and deposited together with the ballot in a separate box or envelope marked ‘provisional ballots’ .”

4. W. Va. Code §3-3-10 provides “[a]ny one or more of the election commissioners or poll clerks in a precinct may challenge an absent voter's ballot . . . [o]n any other ground or for any reason on which or for which the ballot of a voter voting in person at the polls on election day may be challenged.”
5. W. Va. Code § 3-6-9 provides, “[t]he commissioners of the county commission shall be ex officio a board of canvassers . . . . They may, if considered necessary, require the attendance of any of the commissioners, poll clerks or other persons present at the election to appear and testify respecting the election and make other orders as shall seem proper to procure correct returns and ascertain the true results of the election in their county; but in this case all the questions to the witnesses and all the answers to the questions and evidence shall be taken down in writing and filed and preserved. All orders made shall be entered upon the record.

*This information was provided Donald M. Kersey, III, General Counsel, West Virginia Secretary of State's Office*