

Planned Emergency Research

SOP 122

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Purpose and Scope

This procedure establishes the process to review planned emergency research in life-threatening situations.

This SOP applies to all HSP staff, IRB members, and Investigators who may be involved in the process of planned emergency research.

Definitions

Planned Emergency Research: applies to a narrow exception to the FDA requirement to obtain and document informed consent; applies to a limited class of research activities involving human participants who are in need of emergency medical intervention, but cannot provide legally effective informed consent (See 21 C.F.R. § 50.24).

Procedures

To approve emergency research with a waiver of informed consent, the IRB must have found and documented that¹:

1. The research activity is subject to FDA regulations at 21 C.F.R. part 50 and will be carried out under an IND or an IDE, the application for which has clearly identified the protocols that would include subjects who are not able to consent, and
2. The requirements for exception from informed consent for emergency research detailed in 21 C.F.R. § 50.24 have been met relative to those protocols.

The requirements under 21 C.F.R. § 50.24 are as follows²:

1. **Prerequisites for Approval.** The IRB may approve the clinical investigation without requiring that informed consent of all research subjects be obtained if the IRB, with the concurrence of a licensed physician who is a member of or consultant to the IRB and who is not otherwise participating in the clinical investigation, finds and documents each of the following:
 - (a) The human subjects are in a life-threatening situation, available treatments are unproven or unsatisfactory, and the collection of valid scientific evidence, which may include evidence obtained through randomized placebo-controlled investigations, is necessary to determine the safety and effectiveness of particular interventions.

¹ Waiver of Informed Consent Requirements in Certain Emergency Research, 61 Fed. Reg. 51,531 (Oct. 2, 1996).

² 21 C.F.R. § 50.24. The requirements are nearly identical with those for research regulated by HHS. 61 Fed. Reg. 51533; Comparison of FDA and HHS Regs, supra note **Error! Bookmark not defined.**

- (b) Obtaining informed consent is not feasible because:
 - (i) The subjects will not be able to give their informed consent as a result of their medical condition;
 - (ii) The intervention under investigation must be administered before consent from the subjects' LARs is feasible; and
 - (iii) There is no reasonable way to identify prospectively the individuals likely to become eligible for participation in the clinical investigation.
- (c) Participation in the research holds out the prospect of direct benefit to the subjects because:
 - (i) Subjects are facing a life-threatening situation that necessitates intervention;
 - (ii) Appropriate animal and other preclinical studies have been conducted, and the information derived from those studies and related evidence support the potential for the intervention to provide a direct benefit to the individual subjects; and
 - (iii) Risks associated with the investigation are reasonable in relation to what is known about the medical condition of the potential class of subjects, the risks and benefits of standard therapy, if any, and what is known about the risks and benefits of the proposed intervention or activity.
- (d) The clinical investigation could not practicably be carried out without the waiver.
- (e) The proposed investigational plan defines the length of the potential therapeutic window based on scientific evidence; the Investigator has committed to attempting to contact an LAR for each subject within that window of time and, if feasible, to asking the contacted LAR for consent within that window rather than proceeding without consent; the Investigator will summarize efforts made to contact LARs and make this information available to the IRB at the time of continuing review.
- (f) The IRB has reviewed and approved informed consent procedures and an informed consent document, which are to be used with subjects or their LARs in situations when feasible. The IRB has also reviewed and approved procedures and information to be used when providing an opportunity for a family member³ to object to a subject's participation in the clinical investigation.
- (g) Additional protections of the rights and welfare of the subjects will be provided, including, at least:
 - (i) Consultation, including that carried out by the IRB where appropriate, with representatives of the communities in which the clinical investigation will be conducted and from which the subjects will be drawn;
 - (ii) Public disclosure to the communities in which the clinical investigation will be conducted and from which the subjects will be drawn, prior to initiation of the clinical investigation, of plans for the investigation and its risks and expected benefits;
 - (iii) Public disclosure of sufficient information following completion of the clinical investigation to apprise the community and researchers of the study, including the demographic characteristics of the research population, and study results;
 - (iv) Establishment of an independent data monitoring committee to exercise oversight of the

³ "Family member" means a legally competent spouse, parent, child, sibling, and sibling's spouse, domestic partner, or any individual related by blood or affinity whose close association with the subject is the equivalent of a family relationship. 61 Fed. Reg. 51,532. This definition is the same as that in the section on waiver of informed consent in emergency research regulated by HHS. See id.

clinical investigation; and

- (v) If obtaining informed consent is not feasible and an LAR is not reasonably available, the Investigator has committed, if feasible, to attempting to contact within therapeutic window the subject's family member who is not an LAR, and asking whether he or she objects to the subject's participation in the clinical investigation. The Investigator will summarize efforts made to contact family members and make this information available to the IRB at the time of continuing review.

2. **Additional Responsibilities of the IRB.**

- (a) The IRB is responsible for ensuring that procedures are in place, at the earliest feasible opportunity, to inform each subject, or an LAR of the subject if the subject remains incapacitated, or a family member if such a representative is not reasonably available, of:
 - (i) the subject's inclusion in the clinical investigation, the details of the investigation, and other information contained in the informed consent document; and
 - (ii) the right to discontinue the subject's participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.
- (b) If an LAR or a family member is told about the clinical investigation and the subject's condition improves and regains capacity for informed consent, the subject is also to be informed as soon as feasible.
- (c) If a subject is entered into a clinical investigation with waived consent and the subject dies before an LAR or a family member can be contacted, information about the clinical investigation is to be provided to the subject's LAR or family member, if feasible.

- 3. The IRB must retain the records of documentation required during the review on waiver of consent for at least 3 years after completion of the clinical investigation, and the records must be accessible to FDA for inspection and copying.
- 4. Protocols involving a waiver of the informed consent must be performed under a separate IND or IDE that clearly identifies as protocols that may include subjects who are unable to consent. The submission of those protocols in a separate IND or IDE is required even if an IND or IDE for the same drug product or device already exists. Applications for investigations under this section may not be submitted as amendments under 21 C.F.R. §§ 312.30 or 812.35.
- 5. If an IRB determines that it cannot approve a clinical investigation because the investigation does not meet the prerequisites or because of other relevant ethical concerns, the IRB must document its findings and promptly provide these findings in writing to the Investigator and to the sponsor. The sponsor must promptly disclose this information to FDA and to the sponsor's Investigators who are participating or are asked to participate in this or a substantially equivalent clinical investigation of the sponsor, and to other IRB's that have been, or are, asked to review this or a substantially equivalent investigation of that sponsor.

If an IRB Disapproves Exception from Informed Consent Requirements

Generally, the IRB is not required to notify the sponsor. But, if a study involving an exception to informed consent for emergency research conducted under 21 C.F.R. § 50.24, an IRB must notify the Investigator and the sponsor in writing of the IRB's determination that it cannot approve the study.⁴

⁴ 21 C.F.R. §§ 50.24(e), 56.109(e); see FDA Guidance on Continuing Review, *supra* note **Error! Bookmark not defined.**

Waiver of Written Documentation of the Consent Process

The IRB may waive written documentation of the consent process for some or all subjects in the following situations⁵:

1. when the IRB finds that the research
 - a. presents no more than minimal risk of harm to subjects and
 - b. involves no procedures for which written consent is normally required outside the research context;or
2. when the IRB finds that the requirements in 21 C.F.R. § 50.24 for an exception from informed consent for emergency research are met.

If the IRB waives the documentation requirement, the IRB will review the written description of information to be provided to participants during the consent process and may require the Investigator to provide participants with a written statement regarding the research.⁶

Materials

- None

References

- **AAHRPP Element I.7.C**
- **AAHRPP Element II.4.C.**
- 21 CFR 50.23 – Exception to informed consent
- 21 CFR 56.102(d) – Emergency Use definition
- 21 CFR 56.104 – Exception to IRB review
- 21 CFR 312.300 (Subpart I) - Expanded Access to Investigational Drugs for Treatment Use
- 21 CFR 812.35 – Exception to IDE requirement
- Emergency Use of an Investigational Drug or Biologic [FDA]
- Form FDA 1571 and Instructions - Investigational New Drug Application
- The Organization has and follows written policies and procedures for compliance with legal and regulatory requirements governing emergency use of an investigational or unlicensed test article. (AAHRPP Standard I.7.C)

⁵ 21 C.F.R. § 56.109(c).

⁶ 21 C.F.R. § 56.109(d).