



Human Research Protection Program Procedure

EXCEPTION FROM INFORMED CONSENT IN CLINICAL RESEARCH

DESCRIPTION

Documentation of informed consent may not be possible in clinical research that is conducted in emergency settings. The Institutional Review Board (IRB) may approve a waiver of the consent process for either (1) use of a test article in a life threatening emergency or (2) use of a test article in planned emergency research, as described in Human Research Protection Program (HRPP) Policy III.05 *Emergency Use of Investigational Drug, Biologic, or Device in Human Subject Research*.

RESPONSIBILITY

The IRB Chair or designee must review a request for waiver of the consent process in an unplanned emergency. Documentation of the rationale for the researcher's request for waiver of consent, as required in 21CFR50.23, must be included in the final determination.

The IRB must review a request for exception from informed consent (EFIC) in planned emergency research at a convened meeting and document the additional protections that will be used to satisfy regulatory requirements.

PROCESS

LIFE-THREATENING EMERGENCY

- A. Waiver of the requirement to obtain informed consent requires that both the investigator and a physician who is not otherwise participating in the clinical investigation certify in writing all of the following:
 - a. The human subject is confronted by a life-threatening situation necessitating the use of the test article.
 - b. Informed consent cannot be obtained from the subject because of an inability to communicate with, or obtain legally effective consent from, the subject.
 - c. Time is not sufficient to obtain consent from the subject's legally authorized representative (LAR).
 - d. There is available no alternative method of approved or generally recognized therapy that provides an equal or greater likelihood of saving the life of the subject.
- B. If immediate use of the test article is, in the investigator's opinion, required to preserve the life of the subject, and time is not sufficient to obtain the independent determination

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required above in advance of using the test article, the determinations of the clinical investigator shall be made and, within 5 working days after the use of the article, be reviewed and evaluated in writing by a physician who is not participating in the clinical investigation.

- C. The documentation required in the above sections shall be submitted to the IRB within 5 working days after the use of the test article.

PLANNED EMERGENCY RESEARCH

- A. 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, must find and document each of the following:
1. 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.
 2. Obtaining informed consent is not feasible because:
 - a. The subjects will not be able to give their informed consent as a result of their medical condition;
 - b. The intervention under investigation must be administered before consent from the subjects' LAR is feasible; and
 - c. There is no reasonable way to identify prospectively the individuals likely to become eligible for participation in the clinical investigation.
 3. Participation in the research holds out the prospect of direct benefit to the subjects because:
 - a. Subjects are facing a life-threatening situation that necessitates intervention;
 - b. 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
 - c. 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.
 4. The clinical investigation could not practicably be carried out without the waiver.

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5. The proposed investigational plan defines the length of the potential therapeutic window based on scientific evidence, and the investigator has committed to attempting to contact an LAR for each subject within that window of time and, if feasible, to asking the LAR contacted 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.
6. The IRB has reviewed and approved informed consent procedures and an informed consent document (ICD) consistent with 21 CFR 50.25. These procedures and the ICD are to be used with subjects or their LARs in situations where use of such procedures and documents is feasible. The IRB has reviewed and approved procedures and information to be used when providing an opportunity for a family member to object to a subject's participation in the clinical investigation consistent with paragraph 7(e) below.
7. Additional protections of the rights and welfare of the subjects will be provided, including, at least:
 - a. Consultation (including, where appropriate, consultation carried out by the IRB) with representatives of the communities in which the clinical investigation will be conducted and from which the subjects will be drawn;
 - b. 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;
 - c. 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 its results;
 - d. Establishment of an independent data monitoring committee (DMC) to exercise oversight of the clinical investigation; and
 - e. 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 the 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.
 - f. The investigator will summarize efforts made to contact family members and make available to the IRB at the time of continuing review.
 - g. Procedures are in place to inform, at the earliest feasible opportunity, each participant, or if the participant remains incapacitated, a legally authorized representative of the participant, or if such a representative is not reasonably available, a family member, of the participant's inclusion in the clinical

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- investigation, the details of the investigation and other information contained in the consent document.
- h. There is a procedure to inform the participant, or if the participant remains incapacitated, a legally authorized representative of the participant, or if such a representative is not reasonably available, a family member, that he or she might discontinue the participant's participation at any time without penalty or loss of benefits to which the participant is otherwise entitled.
 - i. If a legally authorized representative or family member is told about the clinical investigation and the participant's condition improves, the participant is also to be informed as soon as feasible.
 - j. If a participant is entered into a clinical investigation with waived consent and the participant dies before a legally authorized representative or family member can be contacted, information about the clinical investigation is to be provided to the participant's legally authorized representative or family member, if feasible.
 - k. The protocol is performed under a separate investigational new drug application (IND) or investigational device exemption (IDE) that clearly identified such protocols as protocols that might include participants who are unable to consent.
 - l. The submission of those protocols in a separate IND/IDE is required even if an IND for the same drug product or an IDE for the same device already exists.
 - m. If an IRB determines that it cannot approve a clinical investigation because the investigation does not meet the criteria in the exception or because of other relevant ethical concerns, the IRB must document its findings and provide these findings promptly (no longer than within 30 days) in writing to the clinical investigator and to the sponsor of the clinical investigation.
- B. All other requirements specified in 21CFR50.23-24 and HRP Policy III.05 must also be met.

For the purposes of this waiver "family member" means any one of the following legally competent persons: spouses; parents; children (including adopted children); brothers, sisters, and spouses of brothers and sisters; and any individual related by blood or affinity whose close association with the subject is the equivalent of a family relationship.

Applicable Regulations and Documents:

21CFR50.23-25

45CFR46.116-117

Policy I.06 *Participant Outreach Program*

Policy II.01 *Obtaining Informed Consent*



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Policy III.05 *Emergency Use of Investigational Drug, Biologic, or Device in Human Subject Research*

Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors: Exception from Informed Consent Requirements for Emergency Research, Draft Guidance, July 2006

<http://www.fda.gov/OHRMS/DOCKETS/98fr/06d-0331-gd10001.pdf>

OHRP Guidance Informed Consent Requirements in Emergency Research

<http://www.hhs.gov/ohrp/humansubjects/guidance/hsdc97-01.htm>

Adoption Date:	Created by:	Date of Revision:	Revised By:	Summary of Revision:
8/2006	C. Norman	5/2009	C. Norman	Revise instructions to follow Medical IRB ICD template. References required basic elements from Policy II.02. Clarifies minor assent for SBR research.
		10/2009	J. Gerlach per AAHRPP	Revise elements of informed consent to comply with ICH-GCP (E-6).
		8/2012	C. Norman	Major revision changing from description of SBR consent to EFIC. Addition of Applicable Regulations and Documents.
		9/2012	C. Norman	Correction of Revision History and correction of typo in header's Revised date.
		6/2014	A.Braggs-Brown	Revised to reflect organizational changes
		9/2014	A.Braggs-Brown	Revised to include AAHRPP recommendations
3/2015		3/2015	J. Strasser	Revisions for clarification

Date Adopted <u>March 2015</u> Signature <u>signed copy on file</u>
