

Summary of Changes Since 7/11 Version

MANUAL FOR HUMAN SUBJECTS

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8.B. Informed Consent/HIPAA Authorization

8.B.1. Consent Requirements/Elements

Basic Elements of Informed Consent:

- j. The amount of compensation, if any, for participation. ~~(There are many forms of compensation, but any compensation (gifts, tokens, gift certificates) totaling more than \$25 needs prior approval by the IRB.)~~

8.B.1.a. Ongoing Consent

Note: Consent form version numbers or dates

The Committee requests that a consent form version number or date appear on the consent form document footer. This assists both the investigator and the Committee in making sure that we are all working on the appropriate consent version for a specific amendment.

Some sponsors, however, are requesting that investigators update their consent form every year at time of continuing review or with every protocol amendment, even if there have been no actual changes to language in the consent form. The Committee does not allow this practice for the reason stated below. The consent version number or date must remain the same if there have been no actual changes to the consent language. When actual language changes are necessary as a result of new information, only then can the version number or date be changed.

8.B.1.b. Children Reaching Legal Age of Consent While Enrolled in a Study Policy **(NEW 11/11)**

When a child who was enrolled in research with parental or guardian permission subsequently reaches the legal age of consent to the procedures involved in ongoing research, the subject's participation in the research is no longer regulated by the requirements of 45 CFR part 46.408 regarding parental or guardian permission and subject assent.

The researcher should seek and obtain the legally effective informed consent, as described in 45 CFR 46.116, for the now-adult subject for any ongoing interactions or interventions with the subjects. This is because the prior parental permission and child assent are not equivalent to legally effective informed consent for the now-adult subject.

As long as the participation continues to meet the regulatory definition of "human subjects research" (for example, it involves the continued analysis of specimens or data for which the subject's identity is readily identifiable to the researcher), then it would be necessary for the researcher to seek and obtain legally effective informed consent of the now-adult subjects.

However, the IRB could approve a waiver of informed consent under 45 CFR 46.116(d), if the IRB finds and documents that the required conditions for a waiver of consent are met. Complete and submit the "Request for Waiver of Informed Consent" form to the IRB for this determination.

The IRB has created a sample consent for "[Continued Participation in a Research Study](#)" that should be used for consenting the now-adult subjects. This consent form is essentially a continuation consent that explains why they are being consented at this time. A copy of the originally signed parental permission and assent (if applicable) should be attached to this continuation consent form and presented to the now-adult subject. The HIPAA authorization must also be obtained at this time. Subjects should be reminded of their right to withdraw from the study including: (a) their right to revoke HIPAA authorization, to the extent that such authorization is revocable under the terms of the informed consent and the authorization signed by their parents or guardian; and (b) their right to revoke any other right granted in the study, (e.g., rights with respect to use of tissue samples) to the extent it would be revocable by their parents or guardians were they still minors.

9.A. Continuing Review

Continued Approval Policy: (updated 11/11)

In order to resolve the issue of indefinitely reviewing and reapproving protocols annually for which work has not ever been started and wasting valuable staff and IRB reviewer time, the IRB approved the following policy:

If the work on a research protocol has not yet begun after a three-year period, the protocol will be **administratively closed by the IRB**. A new protocol must be submitted for review at the point in time when activity is anticipated to begin. Exceptions may be made if the funding period exceeds three years and the human subjects' protocol is not scheduled to begin until after that time period. You must indicate that that is the case on your continuing review form.

In addition, the committee will be closing at time of continuing review any non-treatment protocols in which there has been no activity within the last 5 years.

9.A.2. When to Report:

The Committee will send a Request for Continuing Review form to the PI approximately three months before the approval is due to expire. Reminders will be sent at two months and one month prior to expiration.

Identifying the Point When Continuing Review is no Longer Necessary

The Committee requires the PI to submit a final closeout report for all protocols when a research study is completed or no longer involves human subjects. The PI **must** ~~can~~ submit a continuing review form **to officially change the designation to "Not Human Subjects"**. ~~which asks this specific question, or an amendment form may be submitted to inform the Committee of this change in activity. In both cases,~~ A "Not Humans Subjects" certification will be forwarded to the PI for their records. Once the protocol has been certified with this designation, continuing reviews are no longer required.

9.D. Notice of **Protocol Closure or Request to Reopen a Closed Protocol**

Investigators have the responsibility to formally close a study with current IRB approval once it is completed or discontinued. A protocol can only be considered completed once all subject interventions are complete, all follow-up has ceased, and the data analysis is final. Notification must be done by completing a continuing review form. This provides the opportunity for the researcher to summarize all the activities into a final report. Researchers cannot use an amendment form to close a protocol.

If the investigator needs to reopen a protocol and it has been less than one year after closure, a completed continuing review form must be submitted for review and approval. If the study is billable, it will be invoiced for this review regardless of the amount of time that has passed. If the study has been closed for greater than one year, a new protocol submission is required. If the study is billable, the review will be invoiced.

Note: If the investigator is leaving the institution, it is the investigator's responsibility to contact the IRB to discuss their institutional status in regards to ongoing research activities and to close

or appropriately transfer protocols before their departure. If this is not accomplished prior to leaving the institution, all protocols may be administratively closed by the IRB. See above requirements if a protocol needs to be reopened after an IRB administrative closure.

~~The IRB should be notified when a protocol has been closed. Report of closure can be done at the time of continuing review. Another option to report closure is to submit the Request for Modification/Amendment to Approved Protocol.~~

10.B.4. Provide Reports on the Progress of the Study

g. Study closures or requests to reopen closed protocols

~~The IRB should be notified when a protocol has been closed. A study cannot be closed until all subject interventions are complete, all follow-up visits have ceased and the data analysis is final. See [Section 9.E.](#) for reporting requirements.~~

10.B.6 Investigator's Responsibilities when Leaving the University

If the investigator is leaving the institution, it is the investigator's responsibility to contact the IRB to discuss their institutional status in regards to ongoing research activities and to close or appropriately transfer protocols before their departure. If this is not accomplished prior to leaving the institution, all protocols may be administratively closed by the IRB.

~~When a researcher plans to leave the institution, his/her current protocols need to be either closed or transferred. It is preferable, especially if there are many protocols, for the researcher to contact our office for some guidance and assistance in closing/transferring the protocols in a timely manner. To close the protocol you must submit an amendment form with a final report detailing where the final protocol materials and resultant data or specimens to date will reside. (e.g., destroyed, banked within the institution, or going with the researcher) To transfer the protocol to another principal investigator, you must submit an amendment form to change the PI on the protocol.~~

~~If the researcher fails to do either of these, the IRB will administratively close the protocol when they become aware that they are no longer at the Institution.~~

10.C.5. Human Subject Recruitment/Retention Guidance

Subject Retention

Any items such as money, small tokens, gift certificates, etc, which are given to the subject to retain their participation in research is considered a form of compensation and needs prior approval by the IRB.

12.C. Humanitarian Use Devices

POLICY: Guidelines for Humanitarian Use Devices

Revised 09/21/11 Original policy 1/15/03

Background Information (quoted from FDA guidelines):

On June 26, 1996, FDA issued a final rule to carry out provisions of the Safe Medical Devices Act of 1990 regarding humanitarian use devices (HUDs). This regulation became effective on October 24, 1996. **An HUD is a device that is intended to benefit patients by treating or diagnosing a disease or condition that affects fewer than 4,000 individuals in the United States per year.** A device manufacturer's research and development costs could exceed its market returns for diseases or

conditions affecting small patient populations. FDA, therefore, developed and published this regulation to provide an incentive for the development of devices for use in the treatment or diagnosis of diseases affecting these populations.

The regulation provides for the submission of an humanitarian device exemption (HDE) application, which is similar in both form and content to a premarket approval (PMA) application, but is exempt from the effectiveness requirements of a PMA.

An HDE application is not required to contain the results of scientifically valid clinical investigations demonstrating that the device is effective for its intended purpose. The application, however, must contain sufficient information for FDA to determine that the device does not pose an unreasonable or significant risk of illness or injury, and that the probable benefit to health outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment. Additionally, the applicant must demonstrate that no comparable devices are available to treat or diagnose the disease or condition, and that they could not otherwise bring the device to market.

An approved HDE authorizes marketing of the HUD. **However, a HUD may only be used after IRB approval has been obtained for the use of the device for the FDA approved indication.** The labeling for an HUD must state that the device is an humanitarian use device and that, although the device is authorized by Federal Law, the effectiveness of the device for the specific indication has not been demonstrated.

Initial and Continuing Review

The proposed use of the humanitarian use device must be reviewed and approved at a convened meeting of the IRB, in accordance with the FDA's "Final Guidance for Industry." **Prospective consent is not always attainable or necessarily in the best interest of the patient in these cases. Often, the use of the particular HUD is not anticipated yet does not meet the criteria for an "Emergency Use" either. FDA regulations and guidance leave it to the discretion of the local IRB whether or not to require prospective written consent. Thus, the Committee concluded that written consent for all HUD protocols is no longer required. Physicians should document consent in the medical chart whenever possible.**

FDA recommends the use of an expedited procedure for subsequent continuing review because a HUD is a legally marketed device and no safety and effectiveness information is being collected systematically, as is required for a research protocol.

Guidelines for Initial Submission

In addition to the usual requirements for full committee review, (25 copies of the Common Protocol Cover Sheet, 3 copies of the Protocol, and ~~25 copies of the Consent Form~~), 3 copies each of the following information is required: the FDA HDE approval letter, the HUD manufacturer's product labeling, clinical brochure, and any other pertinent manufacturer informational materials.

~~Guidelines for Consent Forms~~

~~Since the HUD is approved through this HDE mechanism for clinical use, words such as "research" or "study" should be avoided in the consent form. In addition, the disclaimer language for injuries related to research and the contact information for questions about rights as a research participant is not applicable. See forms section of our website for a sample consent form. <http://www.uvm.edu/irb/inst-guide-template/hud-consent-temp.doc>~~

Reporting/Administrative Requirements:

1. Submit any proposed changes to the protocol ~~and/or consent~~ for approval prior to initiation on the Committees on Human Research "[Request for Modification/Amendment to Approved Protocol](#)" form.
2. Report adverse events and unanticipated problems to subjects or others related to the use of the device to the IRB and the sponsor in accordance with FDA regulations and UVM/FAHC Adverse Event and Unanticipated Problems Reporting Policy and Procedures.
3. Complete and submit continuing review forms as requested (at least once annually). Attach a copy of the current FDA-approved product labeling for the HUD.

Using HUDs in Compassionate Use Situations

If a HUD is used outside its approved indication(s), FDA recommends that the physician obtain informed consent from the patient and ensure that reasonable patient protection measures are followed, such as devising schedules to monitor the patient, taking into consideration the patient's specific needs and the limited information available about the risks and benefits of the device. FDA further recommends that the physician submit a follow-up report on the patient's condition to the HDE holder.

In such circumstances, the physician shall, after the use of the device, notify the Committee of the use within five working days. The date on which the device was used, along with the reason for the use should be reported using the Unanticipated problem form found here:

http://www.uvm.edu/irb/form/UAP_deviation_form.doc

Using HUDs in Emergency Use Situations

If a HUD is used in an emergency situation and consent is unable to be obtained then the Committee's policy on waiver of consent for emergency use is applied, [see policy Guidelines for Emergency Use](#).

~~“B. Waiver or Alteration of Informed Consent: “Emergency Use” If your protocol includes an FDA regulated test article (drug or device), an exemption from the consent requirement is permitted for “Emergency Use” providing the additional following four conditions are met and certification of compliance is provided to the IRB by both the investigator and a physician who is not otherwise participating in the clinical investigation prior to use of the test article, if possible.~~

- ~~1) The human subject is confronted by a life-threatening situation necessitating use of the test article;~~
- ~~2) Informed consent cannot be obtained from the subject because of an inability to communicate with or obtain legally effective consent from the subject;~~
- ~~3) Time is not sufficient to obtain consent from the subject's legal representative; and~~
- ~~4) 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. (21 CFR 50.23(a))~~

~~If certification of compliance with the four conditions specified above cannot be obtained prior to using the test article, certification (See Attachment A) must be submitted to the IRB within 5 working days after the use of the test article.~~

~~The Committee is aware of the difficulty in addressing these issues; however, this is a specific regulatory requirement.”~~