THE OHIO STATE UNIVERSITY

PLANNED EMERGENCY RESEARCH

1. Overview

The IRB may approve an exception to the requirements for informed consent for research on life-threatening conditions for which available treatments are unproven or unsatisfactory and where it is not possible to obtain informed consent from research participants or their legally authorized representatives.

The purpose of this policy is to outline the additional protections required by the regulations for planned emergency research where the requirements for informed consent are waived.

2. Definitions

Planned Emergency Research: Research involving human subjects who are in need of emergency medical intervention (e.g., comparison of methods for providing cardiopulmonary resuscitation), but who cannot give informed consent because of their life-threatening medical conditions and who do not have an available legally authorized representative to provide consent.

Family Member: For purposes of the waiver of informed consent for emergency research, any one of the following legally competent persons: spouse, parent, child (including an adopted child), brother, sister, spouse of a brother or sister, and any individual related by blood or affinity whose close association with the subject is the equivalent of a family relationship.

3. General Information

A. Persons with life-threatening conditions who cannot either provide informed consent or refuse research participation are considered to be a vulnerable population. The lack of subject autonomy and inability of subjects to provide informed consent require that additional protections are provided in the review, approval, and performance of this research.

B. Prior and continuing IRB reviews are required for planned emergency research. The IRB must approve both the research and the exception to the requirements for informed consent (i.e., waiver) by finding and documenting that the regulatory criteria described below are met.

C. To approve a waiver of informed consent for research conducted in emergency settings, a licensed physician who is a member (or consultant) of the IRB and who is not otherwise participating in the research must agree with the IRB's determination that the criteria for consent waiver are met. Documentation of the physician's concurrence is also required for approval; therefore, IRB meeting minutes should specifically record the physician's vote when planned emergency research is reviewed.

D. The requirements for planned emergency research subject to FDA regulations differ slightly from the requirements for research subject to DHHS regulations, as described

below. For information on activities that are defined by FDA and DHHS regulations as "research involving human subjects," see HRPP policy [Research Involving Human Subjects]. All planned emergency research at The Ohio State University must meet the requirements described below in "Exception to the Requirements for Informed Consent."

E. Planned emergency research conducted in life-threatening situations must be differentiated from the "emergency use" of an investigational drug or biologic or unapproved medical device. The emergency use provision in FDA regulations allows for a single use of an investigational drug or biologic or unapproved medical device for a human subject in a life-threatening situation for which no standard acceptable treatment is available and when there is not sufficient time to obtain IRB approval. For more information about the requirements for emergency uses, see HRPP policy [Emergency Use of Investigational Drugs, Biologics, or Devices].

4. Exception to the Requirements for Informed Consent

A. The IRB may approve emergency research without requiring that informed consent is obtained from subjects or their legally authorized representatives only if the IRB finds and documents that each of the following requirements has been met:

1. The human subjects are in a life-threatening situation
- Intervention is required before consent from legally authorized representatives is feasible

2. Available treatments are unproven or unsatisfactory
- The relative risks and benefits of the proposed intervention are unknown or thought to be equivalent (or better) compared to standard therapy

3. The collection of valid scientific evidence (including evidence from randomized, placebo-controlled studies) is necessary to determine the safety and efficacy of the intervention

4. Obtaining informed consent is not feasible because of all of the following:
- The subjects will not be able to give their informed consent as a result of their medical condition(s)
- The intervention under investigation must be administered before consent from the subjects' legally authorized representatives is feasible
- There is no reasonable way to prospectively identify the individuals likely to become eligible for participation in the research

5. Participation in the research holds out the prospect of direct benefit to the subjects because of all of the following:
- Subjects are facing a life-threatening situation that necessitates intervention
- Appropriate animal and other preclinical studies have been conducted and the information derived from those studies (and related evidence) supports the potential for the intervention to provide a direct benefit to the individual subjects
- Risks associated with the research 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, and what is known about the risks and benefits of the proposed intervention or activity

6. The research could not practicably be carried out without the IRB approval of a waiver of informed consent
    - Recruitment of subjects providing informed consent could bias the science, the science is less rigorous as a result of restricting the research to subjects who can provide consent, or the research would be unreasonably delayed by restricting it to consenting subjects
7. The protocol defines the length of the potential therapeutic window based on scientific evidence, and the investigator has committed to attempting to contact a legally authorized representative for each subject within that window of time and, if feasible, to asking the legally authorized representative for consent rather than proceeding without consent
    - Investigators will summarize efforts made to contact legally authorized representatives and provide this information to the IRB at the time of continuing review
8. The IRB has reviewed and approved an informed consent process and consent document meeting all the requirements described in regulations and HRPP policies [Informed Consent Process and the Elements of the Informed Consent] and [Documentation of the Informed Consent Process]
    - The approved informed consent procedures and consent document are to be used with subjects or their legally authorized representatives when feasible
    - The IRB has approved procedures and information to be used when providing an opportunity for a family member to object to the subject's participation (as described below)
9. Additional protections of the rights and welfare of subjects will be provided, including at least:
    - **a.** Consultation (including consultation carried out by the IRB, where appropriate) with representatives of the communities in which the research will be conducted and from which the subjects will be drawn
        - Examples: Holding a public meeting in the community from which the subjects will be drawn to discuss the research, conducting a telephone poll, establishing a separate panel of community members, including community consultants to the IRB, and adding unaffiliated members to the IRB who are representative of the community
        - The IRB will consider community input when reviewing the research
    - **b.** Prior to initiation of the research, public disclosure of plans for the research and its risks and expected benefits to the communities in which the research will be conducted and from which the subjects will be drawn
    - **c.** Public disclosure of sufficient information following completion of the research 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 to exercise oversight of the research
    - **e.** If obtaining informed consent is not feasible (and a legally authorized representative is not reasonably available), the investigator has

committed to attempting to contact within the therapeutic window the subject's family member who is not a legally authorized representative, if feasible, and asking whether he/she objects to the subject's participation in the research

- Only one family member must be consulted and agree (or object) to the subject's participation in the research
- If more than one family member is present and family members disagree, the family members must work out the disagreement to enroll the potential subject
- Investigators will summarize efforts made to contact family members and provide this information to the IRB at the time of continuing review.

Note: If a subject is enrolled in the study with waived consent and the subject dies before a legally authorized representative or family member can be contacted, information about the study (as described below) is to be provided to the subject's legally authorized representative or family member, if feasible.

B. The IRB will approve procedures to inform the subject, the subject's legally authorized representative (if the subject remains incapacitated), or a family member (if the legally authorized representative is not reasonably available) of the following at the earliest feasible opportunity:

- That the subject was included in the study
- Details of the research and other information contained in the informed consent document
- That the subject's participation may be discontinued at any time without penalty or loss of benefits to which the subject is otherwise entitled.

Note: If it is a legally authorized representative or family member that is told about the study and the subject's condition improves, the subject is also to be informed as soon as feasible.

5. Research Subject to FDA Regulations

For planned emergency research subject to FDA regulations, other specific requirements also apply, as described below.

A. The IRB will confirm and document that a separate IND or IDE is obtained for use of the investigational drug, biologic, or device to be studied in the research that clearly identifies the protocol as one that may include subjects who are unable to consent. Note: A separate IND or IDE is required even if an IND for the same drug or an IDE for the same device as the one to be studied already exists.

B. If the IRB cannot approve the research either because the criteria described above are not met or because of relevant ethical concerns, documentation of the IRB's findings will be provided in writing to the investigator and sponsor within 14 days.

- The sponsor must promptly disclose this information to FDA and to investigators who have been asked to participate in the research or a "substantially equivalent

clinical investigation" and to other IRBs that have been or are asked to review this or a substantially equivalent investigation by that sponsor.

6. Research Subject to DHHS Regulations

A. The IRB may approve research subject to DHHS regulations involving an "emergency research consent waiver" under **either** of the following two conditions:

1. The IRB finds and documents all of the following:
- The research is subject to FDA regulations
- The research will be performed under a separate IND or IDE (see "Research Subject to FDA Regulations" above)
- The FDA requirements for exception from informed consent for emergency research (see "Exception to the Requirements for Informed Consent" above) have been met.

2. The IRB finds, documents, and reports to OHRP all of the following:
- The research is *not* subject to FDA regulations
- The DHHS requirements for waiver of informed consent for emergency research (see "Exception to the Requirements for Informed Consent" above) have been met.

B. Because of the regulatory limitations relating to research involving prisoners, fetuses, pregnant women, and human in vitro fertilization, a waiver of informed consent cannot be approved for emergency research involving these populations. Note: These limitations do not apply to research subject only to FDA regulations.

7. Applicable Regulations/Guidance

21 CFR 50.24, 21 CFR 50.25, 21 CFR 50.27, 45 CFR 46.116, 45 CFR 46.117, Federal Register Vol. 61 No. 92 p. 51531-51533 (10/02/96), FDA Guidance "Exception from Informed Consent Requirements for Emergency Research" (04/13), OHRP Guidance "Informed Consent Requirements in Emergency Research" (OPRR Reports 97-01, 10/31/96)

8. History

Issued: 10/20/2008
Revised: 06/08/2009, 06/04/2012, 11/21/2016