Changes to the Common Rule: implications for informed consent

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Proposed Changes

• Alteration in the scope and applicability of the regulations

• Changes to regulatory definitions

• Revised exemption categories (and processes)

• Requirement for single IRB review of cooperative research

• Changes in some IRB review processes

• **New requirements related to informed consent**
Changes in the requirements for informed consent:

• Revision of the content, organization and **focus of consent**

• Introduction of “**broad consent**,” an (optional) approach permitting storage, maintenance and **secondary** research use of identifiable data or biospecimens

• One change to waiver requirements
Informed consent (cont’d)

• Elimination of consent for certain activities **preparatory to research**

• Improving consent form quality through **transparency and public scrutiny**

• Introduction of new rule regarding who may provide consent on behalf of **incapable subjects**
The consent form can help shape the consent process.
Framing the choice; facilitating comprehension

Informed consent...must be organized and presented in a way that does not merely provide lists of isolated facts, but rather facilitates the prospective subject’s...understanding of the reasons why one might or might not want to participate in the research.

Final Rule __.116
Framing the choice; facilitating comprehension

• The informed consent must begin with a concise and focused presentation of the key information that is most likely to assist a prospective subject in understanding the reasons why one might or might not want to participate in the research.

• This beginning portion of the informed consent must be organized and presented in a way that facilitates comprehension.

Final Rule, 2017
Reasonable person

The prospective subject or the legally authorized representative must be provided with the information that a reasonable person would want to have in order to make an informed decision about whether to participate...
New 9th “required element”

For research that involves the collection of identifiable private information or identifiable bio-specimens:

• A statement that identifiers might be removed and the information or biospecimens could then be used for future research studies or distributed to another investigator...without additional informed consent from the subject, or

• A statement that the subject’s information...will not be used in this way...
Three new “additional elements”

(7) Whether the subject’s biospecimens may be used for commercial profit and whether the subject will or will not share in this commercial profit;

(8) If and when clinically relevant research results will be disclosed to subjects

(9) Whether the research will or might include whole genome sequencing
Preconditions for Consent

• Information disclosure

• Comprehension

• Voluntariness

What are the standards?
Back to basics: some things we know

• Subject understanding of the consent form is inversely related to its length.

• Oral consent tends to focus on descriptions of purpose and procedure, rather than alternatives and risks.

• The “therapeutic misconception.”

• We often fail to adequately explain: randomization, comparison groups, the double blind and how research differs from care
“I signed that agreement, but I can’t afford to travel to the hospital.

Is it too late to get out of it?”
“Some days they give me the real pill and some days the sugar one...”
“I am sure they would have told me if they found something wrong...”
Factors influencing subject choice:

- Poor education and literacy, poor health literacy, poor scientific literacy
- The spectrum of impaired decision-making
- Urgency, captivity, desperation, limited access to care
Factors influencing subject choice:

• Failure to understand the nature of the choice (options?) at hand

• False expectations based on a confusion of research and clinical contexts

• Difficulty in understanding research concepts and methods
Further (investigator-side) complications

• Investigator bias

• Inadequate attention by the field to a process that promotes meaningful decision-making
Building a better consent form

• Use the form to **frame the choice** the subject is being asked to make

• Help the subject **find the forest**

• De-bulk

• Make important distinctions distinct

• **Identify and minimize investigator bias**

• **Stand in the subject’s shoes**
• The many research tests and assessments will not provide information that will guide your current or future medical or psychological treatment.

• You do not need to take part in research to receive treatment for your (condition).

• The treatment you will receive in this study differs from care you would receive if you did not take part in research in the following important ways....

• We do not know if the (intervention) works or if will help you.

• You will not be told which of the two study interventions you received even after your participation is complete.
The efficacy of the investigational treatment has not yet been established

vs.

We don’t know if the study drug works or if will help treat your (condition)
From a consent form:

_This new medication has already been studied in 17 people and is generally well tolerated._
The investigational drug has already only been studied in 17 people. Although it was generally well tolerated in this small group of subjects, even common and serious problems may not be known.
“There are some things you should pay special attention to as you consider this choice.”
Sample Cover Sheet for a RTC in Obsessive Compulsive Disorder

The following outline is meant to serve as a guide to help you learn about this research study and decide whether or not you want to take part. It does not replace the consent form that you will be asked to read. The consent includes much more information you’ll need to make a decision. Read the consent carefully, ask questions, and take you time or speak to others if you want to before you make your choice. Remember, even if you agree to take part in research you can change your mind at any time.

1. This is a research study—and you do not need to take part in research to receive treatment for your obsessive-compulsive disorder (OCD). There are medications and talk therapies you can choose instead. These options are described in the consent form and will be discussed with you by a study doctor.

2. This purpose of this research is to see if a drug called Excellon is safe and if treats OCD. A company called XL makes Excellon, and XL is paying for this research.

3. We do not know if Excellon works. That is what this research is trying to learn.

4. If you take part in the study, you will be receive either Excellon or an inactive pill (a placebo) for eight (8) weeks. Half the people who take part will get the Excellon and the other will get the placebo for the entire 8 weeks of the study.

5. You will not know whether you are getting Excellon or placebo, and you will not be told which one you received even after the study is over. Whether you get Excellon or placebo is decided at random, as with the flip of a coin.
Secondary research uses of identifiable information or bio-specimens (pre-2018)

- Specific consent
- Waiver of consent
- De-identification
Broad consent

When broad consent is obtained, subsequently proposed research uses of the individual’s identifiable biospecimens and data would not require additional consent, waiver or de-identification and may be exempt

- As long as the proposed use was is consistent with the terms of the consent
- As determined by a “limited IRB review”
- Implications of waiver
- Tracking requirements
Elements of broad consent

(2) A general description of the types of research...such that a reasonable person would expect that the broad consent would permit the types of research conducted;

(3) A description of the information/biospecimens that might be used, whether sharing might occur, the types of institutions or researchers that might conduct research

(4) A description of the period of time that the information/specimens may be stored and maintained
Broad consent (cont’d)

(5) a statement that they will not be informed of the details of any specific research studies that might be conducted and that they might have chosen not to consent to some of those specific research studies;

(6) a statement whether results will be disclosed to the subject; and
New waiver of consent requirement

(iii) If the research involves using identifiable private information or identifiable biospecimens...

the research could not practically be carried out without using such information or biospecimens in an identifiable format;
Screening, recruiting, or determining eligibility

Consent is not required for the purpose of screening, recruiting, or determining the eligibility of prospective subjects if the following conditions are met:

• The investigator will obtain information through oral or written communication with the prospective subject, or

• The investigator will obtain information/biospecimens by accessing records or stored identifiable biospecimens.
Required posting of consent forms for clinical trials conducted or supported by a federal agency

• One consent form used to enroll subjects must be posted to a federal website after subject enrollment completed within 60 days of last subject completing trial.
Clinical trial

A research study in which one or more human subjects are prospectively assigned to one or more interventions (which may include placebo or other control) to evaluate the effects of the interventions on biomedical or behavioral health-related outcomes.
LAR

• (i) *Legally authorized representative* means an individual authorized under *[applicable law]* to consent on behalf of a prospective subject to the... research.

• If there is no applicable law:

  *legally authorized representative* means an individual recognized by institutional policy as acceptable for providing consent in the non-research context
The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment.

Nuremberg Code, 1949