MAYO CLINIC

Planned Research in an Emergency Setting

Content Applies To

Mayo Clinic Human Research Protection Program

Purpose

This document outlines the additional requirements for conducting planned research in an emergency setting where obtaining consent may not be feasible.

Key Terms

Emergency research: Research involving human subjects who have a life-threatening medical condition that necessitates urgent intervention (for which available treatments are unproven or unsatisfactory), and who, because of their condition (e.g., traumatic brain injury) cannot provide informed consent.

Legally Authorized Representative (LAR): An individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research. Refer to the IRB document *Selecting a Legally Authorized Representative* for state specific requirements.

Family member: 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 participant is the equivalent of a family relationship.

Prospect for Direct Benefit: The information from animal and preclinical studies, other clinical data (e.g., use of the product in another setting or for another diagnosis or in a different study population) or other evidence should support the potential for the investigational product to provide a direct benefit to the individual subjects.

Therapeutic Window: The time period after onset of the event, based on available scientific evidence, within which the investigational product must be used or administered to have its potential clinical effect (diagnostic or therapeutic).

Community Consultation: Providing the opportunity for discussions with, and soliciting opinions from, the community in which the study will take place and the community from which the study subjects will be drawn. These communities may not always be the same; when they are not the same, both communities should be consulted.

Public Disclosure: Dissemination of information (i.e., one-way communication) to the community (ies), the public, and researchers about the emergency research.

Policy

The IRB may approve research in an emergency setting without requiring that informed consent of research subjects be obtained if the IRB (with the concurrence of a licensed physician who is an IRB member or a consultant to the IRB and who is not otherwise participating in the research project) finds and documents that:

1. The human subjects are in a life-threatening situation necessitating urgent intervention.
2. Available treatments are unproven or unsatisfactory.
3. 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.
4. Obtaining informed consent is not feasible because:
    - The subjects will not be able to give their informed consent as a result of their medical condition.
    - The intervention under investigation must be administered before consent from the subjects' legally authorized representatives is feasible; and
    - There is no reasonable way to identify prospectively 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:
    - 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 support the potential for the intervention to provide a direct benefit to the individual subjects; and
    - 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.
6. The research could not practicably be carried out without the waiver.
7. For investigational products, the investigator/sponsor must obtain an FDA investigational new drug application (IND) or an FDA investigational device exemption (IDE) that clearly identifies that the protocol may include subjects who are unable to provide consent.
    - If an IND or IDE already exists, protocols involving waiver of consent requirements must be conducted under a **separate** IND or IDE that clearly identifies such studies as research projects that may include subjects who are unable to consent (21 CFR 50.24(d)).

- Studies involving a waiver of consent requirement may proceed only after a sponsor has submitted an IND or IDE and received prior written authorization from the FDA and IRB approval.

8. An exception from consent in emergency medicine research is prohibited for any Department of Defense sponsored research unless a waiver is obtained from the Secretary of Defense.

Investigator Responsibilities

1. The proposed investigational plan must define the length of the potential therapeutic window based on scientific evidence, and the investigator must commit 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 must summarize efforts made to contact an LAR and make this information available to the IRB at the time of continuing review.
2. The IRB research project application must describe additional protections of the rights and welfare of the subjects including at least:
    - The charter and membership of an independent data monitoring committee (DSMB), to exercise oversight of the research.
    - A plan for consultation (including, where appropriate, consultation carried out by the IRB) with representatives of the communities in which the investigation is to be conducted and from which the subjects will be drawn.
    - A plan for public disclosure prior to initiation of the research to the communities in which the research will be conducted and from which the subjects will be drawn. The disclosure must include plans for the investigation and its risks and expected benefits.
    - The public disclosure will have or has taken place prior to initiation of the investigation.
    - Explanation of any opt out mechanisms for potential participants.
    - Procedures to inform, at the earliest feasible opportunity, each subject, or if the subject remains in-capacitated, an LAR or a family member of the subject's inclusion in the clinical investigation, the details of the investigation, other information contained in the consent document, and that the subject's participation may be discontinued at any time without penalty or loss of benefits.
        - If an LAR or family member is told about the research and the subject's condition improves, the subject must be informed of the research as soon as feasible
        - If a subject is entered into a research study with waived consent and the subject dies before an LAR or family member can be contacted, information about the research is to be provided to the subject's LAR or family member, if feasible

- A plan for 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.

3. If obtaining informed consent is not feasible within the therapeutic window and a legally authorized representative is not reasonably available, the investigator must contact, if feasible, the subject's family member who is not a legally authorized representative and ask whether he or she objects to the subject's participation in the research.
    - The Investigator must summarize efforts made to contact family members and make this information available to the IRB at the time of continuing review.
4. Prior to beginning the study, the investigator should ensure that all individuals, including first responders, who will carry out study-related tasks are informed of their obligations and associated regulatory requirements for conducting the research.

IRB Responsibilities

1. The IRB reviews and approves the proposed investigational plan as provided in the Investigator's Responsibilities #1.
2. The IRB reviews and approves the informed consent procedure and a consent document. These procedures and the consent document are to be used with subjects or their LAR in situations where use of such procedures and documents is feasible.
3. The IRB reviews and approves procedures and information to be used when providing an opportunity for a family member to object to a subject's participation in the research.
4. The IRB reviews and approves the additional protections of the rights and welfare of the subjects as provided in the Investigator's Responsibilities #2.
5. The IRB must review plans for community consultation and public disclosure. In reviewing community consultation activities, the IRB will exercise judgment in determining whether these activities are adequately designed to reach the broader communities identified in the research plan. (The FDA encourages IRB members to attend community consultation activities in order to hear the perspectives and concerns of the communities).
6. The IRB will consider concerns and objections to the research raised during community consultation activities prior to making a determination about the research.
7. The IRB must find and document that the public disclosure will have or has taken place prior to initiation of the research.

8. For research subject to FDA regulations:
    - 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 research, must find and document whether the investigation satisfies the criteria in 21 CFR 50.24(a)(1) through (7).
    - If the IRB determines that it cannot approve the research because the investigation does not meet the emergency research criteria or because of other ethical concerns, the IRB will document its findings and provide these findings promptly (within 30 days) in writing to the investigator and to the sponsor of the research.
    - The sponsor of the research project 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 research of the sponsor and to other IRB's that have been, or are, asked to review this or a substantially equivalent investigation by that sponsor.
    - The IRB retains records related to these studies for at least 3 years after completion of the research and makes them accessible for inspection by the FDA.
9. For research not subject to FDA regulations:
    - The IRB will document its finding that the research is not subject to regulations codified by the FDA at 21 CFR Part 50.
    - The IRB will document and report to DHHS its finding that the conditions of this policy have been met.

Related Documents

Selecting a Legally Authorized Representative IRB15018 - Guideline

References

Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors on Exception from Informed Consent Requirements for Emergency Research, March 2011

45 CFR 46 - Protection of Human Subjects

21 CFR 50 - Institutional Review Boards

21 CFR 812.30 - Investigational Device Exemptions

21 CFR 312.30 - Investigational New Drug Application

Effective Date

February 16, 2017

Revision History

Date	Synopsis of Change
February 16, 2017	Scheduled review. No changes made.
March 25, 2016	Changed Keywords heading to Key Terms heading.