



Institutional Review Board

University of Missouri-Columbia

Standard Operating Procedure

Informed Consent Requirements

## Informed Consent Requirements

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### 1.0 Purpose

To aid in assuring knowledge and compliance of all persons involved in any aspect of non-exempt human subject research by documenting the necessary requirements of the informed consent process.

## **2.0 Scope**

The SOP applies to all human subject research falling under the purview of the University of Missouri Institutional Review Board.

## **3.0 Policy/Procedure**

The IRB is charged with adequately safeguarding all human subjects involved in research. The informed consent process assures that prospective human subjects receive the information necessary to help them understand the nature of the research so they can voluntarily decide whether to participate.

Except as provided elsewhere in this policy, no investigator may involve a human being as a subject in research covered by this policy unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative.

An investigator shall seek consent under the following circumstances:

- the prospective subject or the legally authorized representative are given sufficient opportunity to discuss and consider whether or not to participate;
- the possibility of coercion or undue influence is minimized;
- the information given to the subject or the legally authorized representative is in a language understandable to the subject or the legally authorized representative; and
- No informed consent may include any exculpatory language through which the subject or the legally authorized representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution or its agents from liability for negligence.
- 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, and an opportunity to discuss that information.

Transition Period to Revised Common Rule (January 21, 2019) - For Federally Funded Research, Clinical Trials, and/or Greater than Minimal Risk Studies:

- Informed consent must begin with a concise and focused presentation of the key information that is most likely to assist a prospective subject or legally authorized representative in understanding the reasons why one might or might not want to participate in the research. This part of the informed consent must be organized and presented in a way that facilitates comprehension.
- Informed consent as a whole must present information in sufficient detail relating to the research and must be organized and presented in a way that does not merely provide lists of isolated facts, but rather facilitates the prospective subject's or legally authorized representative's understanding of the reason why one might or might not want to participate.

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Note: These new studies approved on or after January 21, 2019 will comply with these revised common rule provisions. Studies that transition at continuing review time (e.g. studies still open to enrollment and continue to consent) will be required to comply with these revised common rule provisions. The MU IRB did not adopt broad consent, so those additional requirements will not apply to research under our jurisdiction.

### Re-Evaluation of Applying Revised Common Rules Informed Consent Requirements (April 7, 2020) – For All Studies

The two bulleted items above (and repeated below) will apply to all new non-exempt research submitted to the MU IRB. It is important to note on studies utilizing shorter consents (~1-3 pages), or non-federally funded model consents, the IRB may determine the document is already concise and includes a focused presentation of the key information; therefore, no revisions will need to be made. This determination will be made on a case-by-case basis.

- Informed consent must begin with a concise and focused presentation of the key information that is most likely to assist a prospective subject or legally authorized representative in understanding the reasons why one might or might not want to participate in the research. This part of the informed consent must be organized and presented in a way that facilitates comprehension.
- Informed consent as a whole must present information in sufficient detail relating to the research and must be organized and presented in a way that does not merely provide lists of isolated facts, but rather facilitates the prospective subject's or legally authorized representative's understanding of the reason why one might or might not want to participate.

**Under no circumstances should anyone who is not listed as key personnel (see Definitions SOP) on the IRB application and not current with IRB training requirements, obtain consent, interact or intervene with, or access identifiable data of a potential study participant.** This is considered a reportable event if they are not listed on the IRB application. See the Non-Compliance SOP for additional information. Also, see Initial Review SOP regarding training requirements.

### Maintaining Confidentiality and Security of Written Informed Consent Documents

Investigators must comply with their IRB approved confidentiality and security plans. Consent forms, regardless of type of documentation, must be obtained, stored, and maintained in a secure manner to ensure confidentiality and subject protection.

### Administrative Office Review

To assist the Board in their duties, the IRB office staff will review all consent and assent documents provided by the investigator to determine all required elements are present, or the investigator provided adequate justification for a waiver or alteration of the elements of consent. IRB staff will also determine if the consent and/or assent is written in

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understandable language and format. The consent(s) and assent(s) will be returned to the investigator if revisions are necessary.

### **Board Review**

The Board is charged with the review and approval of the consent document, assent document, and the consent process to be used.

The consent document and process are reviewed for:

- 1) potential coercive influences:
  - a. person obtaining consent;
  - b. location of consent discussion;
  - c. timing of consent discussion;
  - d. interval allowed for review of consent and discussion; and
  - e. content language of consent discussion outside of consent document;
- 2) understandable language and appropriate format; and
- 3) inclusion of all required and additional elements or justification for waiver or alteration of consent.

The Board reviews the process and/or document at initial review, continuing review, and any time there is a modification or issue surrounding the consent process.

Any suggestions or revisions to the consent will be communicated to the Principal Investigator.

The Board has the authority to request to be present and witness the consent process as performed with a potential participant at any time after indicating the desire to the Principal Investigator and study staff. Additionally, the Board may delegate to the IRB Administrative office the authority to be present at an informed consent process on the Board's behalf.

### **Child Assent/Parent Consent**

#### **Child Assent:**

In determining applicability of Subpart D, the IRB will take into consideration the legal age for consent to treatments or procedures involved in the proposed research, under the applicable law of the jurisdiction in which the research will be conducted. In instances where research will take place in jurisdictions outside of Missouri (including other states and other nations), the IRB may need to consult with legal counsel to determine the legal age for the proposed treatments/procedures within the specific jurisdiction.

The IRB shall determine that adequate provisions are made for soliciting the assent of the children, when in the judgment of the IRB the children are capable of providing assent. In determining whether children are capable of assenting, the IRB shall take into account the ages, maturity, and psychological state of the children involved. This judgment may be made

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for all children to be involved in research under a particular protocol, or for each child, as the IRB deems appropriate. If the IRB determines that the capability of some or all of the children is so limited that they cannot reasonably be consulted or that the intervention or procedure involved in the research holds out a prospect of direct benefit that is important to the health or well-being of the children and is available only in the context of the research, the assent of the children is not a necessary condition for proceeding with the research. Even where the IRB determines that the subjects are capable of assenting, the IRB may still waive the assent requirement under circumstances in which consent may be waived in accord with [§46.116](#) of the pre-2018 requirements or of the 2018 requirements, as applicable.

### Parental Permission:

In addition to the determinations required under other applicable sections of this subpart, the IRB shall determine, in accordance with and to the extent that consent is required by [§46.116](#) of the pre-2018 requirements or the 2018 requirements, as applicable, that adequate provisions are made for soliciting the permission of each child's parents or guardian. Where parental permission is to be obtained, the IRB may find that the permission of one parent is sufficient for research to be conducted under [§46.404](#) or [§46.405](#). Where research is covered by [§46.406](#) and [§46.407](#) and permission is to be obtained from parents, both parents must give their permission unless one parent is deceased, unknown, incompetent, or not reasonably available, or when only one parent has legal responsibility for the care and custody of the child.

### Guardian:

In determining who other than parent may consent on behalf of a child to their participation in research, the IRB will take into consideration who under the applicable law of the jurisdiction in which the research will be conducted meets the DHHS and FDA definition of a “guardian”, that is who under the applicable law of the jurisdiction in which the research will be conducted is authorized to consent to general medical care on behalf of the child. In instances where research will take place in jurisdictions outside of Missouri (including other states and other nations), the IRB may need to consult with legal counsel to determine who is authorized to consent to general medical care on behalf of the child within the specific jurisdiction.

### Waiver of Parental/Guardian Permission:

Per [§46.408\(c\)](#), In addition to the provisions for waiver contained in [§46.116](#) of the pre-2018 requirements or the 2018 requirements, as applicable, if the IRB determines that a research protocol is designed for conditions or subject population for which parental/guardian permission is not a reasonable requirement to protect the subjects (i.e. neglected or abused children), it may waive the consent requirements in [§46.116](#) of the pre-2018 requirements or the 2018 requirements, as applicable, and paragraph (b) of this section, provided an appropriate mechanism to protect the participating children must be substituted, and provided further that a waiver is not inconsistent with Federal, State, or local law. The choice of an appropriate mechanism would depend upon the nature and purpose of the activities described

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in the protocol, the risk and anticipated benefit to the research subjects, and their age, maturity, status, and condition.

### Re-Consent and Documentation of Consent/Assent:

A plan should be outlined to re-consent individuals who turn 18 while participating in research. At that time, they must be afforded the opportunity to consider their continued participation and to provide or deny consent.

Permission by parents or guardians shall be documented in accordance with and to the extent required by [§46.117](#) of the pre-2018 requirements or the 2018 requirements, as applicable.

When the IRB determines that assent is required, it shall also determine whether and how assent must be documented.

### **Authorization to Obtain Consent**

For some studies, the board may require consent only be obtained by certain individuals. In these studies, only they may have the consent role as authorized to obtain consent. Some of these studies may include treatment studies, greater than minimal risk studies, and studies involving research-only medical procedures. This requirement will be communicated as part of the review and approval process in ensuring the appropriate roles are being utilized. If these restrictions are in place for a study, the study team must adhere to the requirements as future personnel changes are made.

### **Studies involving MU Health**

In certain studies, where research activities are occurring within MU Health, the IRB may follow MU Health clinical policy to determine which research personnel can be authorized to obtain consent, especially for studies where there is no standard of care consent and the research consent is the only consent

MU Health policy entitled “Patient Rights & Responsibilities – Consent for Medical and Surgical Treatment” outlines their requirements for who is responsible for ensuring informed consent is properly obtained for medical and surgical treatment in the clinical setting (see excerpt from MU Health policy below):

- a. The physician/practitioner performing the procedure is ultimately responsible for ensuring informed consent has been properly obtained, as defined below.
- b. The physician/ practitioner performing the procedure must be available to the patient for the informed consent discussion or to answer additional questions at the patient’s request.
- c. The informed consent must be obtained prior to initiation of the procedure/transfusion or the administration of any medications that may affect the patient’s mental capacity.
  - i. Resident physicians may obtain the informed consent and have the informed consent document signed if they are participating in the procedure or are a

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- member of the care team and are thoroughly knowledgeable of the risks, benefits and alternatives to the procedure.
- ii. Advanced practitioners and mid-level providers (including Nurse Practitioners, Physician Assistants, Clinical Nurse Specialists and Certified Registered Nurse Anesthetists) with current collaborative practice agreements, may obtain the informed consent and have the informed consent document signed for procedures performed by their collaborating physician if they are thoroughly knowledgeable of the risks, benefits and alternatives to the procedure.
  - iii. Clinical staff may not obtain signature on the informed consent document unless that staff member also held the informed consent discussion with the patient or was present for the informed consent discussion between the provider performing the procedure and the patient.
- d. If the study involves emergency medical and/or surgical treatment, please see the MU HRPP/IRB Investigational Test Article, Compassionate Use, and Emergency Use policy for additional information regarding consenting requirements.

### **Remote Consent (Telephone, Video, Virtual)**

Remote consent is allowed under certain conditions. Some examples include:

- 1) If written consent is required by the IRB, the IRB must look at the request for remote consent and determine if it would be allowable. As a general rule with remote consent and written documentation, the consent document must be sent (certified mail, fax, or email) to the potential participant, and then the consent process is conducted remotely with both parties reviewing the consent document. The consent signed and dated by the participant or participant's LAR must be received by the study team before enrollment proceeds.
- 2) If waiver of documentation of consent is approved by the IRB, the consent document may be presented to the potential participant remotely. Consent may occur without written documentation.

### **Mailed, Faxed, Scanned, or Electronically Disseminated Consent**

When written consent is required, the use of a mailed, faxed, scanned, or electronically disseminated consent is allowable as long as it is used as a part of the complete consent process. The written consent document may be mailed, faxed, and/or electronically disseminated to the potential participant for review. The participant must be contacted by telephone or other method of communication to allow the opportunity for questions. Once all information has been obtained to the satisfaction of the participant, the participant signed and dated consent form may be returned via mail, fax, email, or other electronic means.

### **Written Consent with Electronic Signature**

The use of an electronic signature in lieu of a traditional handwritten signature may be accepted in the appropriate research context. Federal regulations and guidance listed below will be reviewed, and the IRB will determine if the study meets the requirements.

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Research subject to 21 CFR parts 50 and 56 are subject to 21 CFR part 11 (FDA regulations regarding electronic records and electronic signatures). The IRB staff will work with investigators to ensure the process proposed is in compliance with any applicable regulations regarding electronic consent. See FDA Use of Electronic Informed Consent Q&A:

<https://www.fda.gov/downloads/drugs/guidances/ucm436811.pdf>

OHRP issued joint guidance with FDA regarding electronic informed consent. For studies not subject to FDA regulations, see Use of Electronic Informed Consent: Questions and Answers:

<https://www.hhs.gov/ohrp/regulations-and-policy/guidance/use-electronic-informed-consent-questions-and-answers/index.html>

Electronic platforms being utilized for obtaining an electronic signature must also ensure the ability of the PI to maintain the appropriate, approved version of the IRB approved informed consent form is utilized at all times and documented in a manner that can be reviewed by an audit.

### **Determining a Potential Adult Subject's Ability to Consent in Research**

The decision-making capacity of a potential research subject should be evaluated when there are reasons to believe the subject may not be capable of making voluntary and informed decisions about research participation. The investigators must have adequate procedures in place for assessing and ensuring subjects' capacity, understanding, and informed consent or assent. The IRB will evaluate whether the proposed plan to assess capacity to consent is adequate.

In addition to considerations associated with the criteria for IRB approval, the IRB will take into consideration the following additional points when reviewing research involving adults with the inability to consent:

1. Adequacy of the proposed initial and ongoing consent and assent processes; and
2. Who under state or local law meets the DHHS and FDA definition of "legally authorized representative" under the applicable law of the jurisdiction in which the research will be conducted. When the research will take place in jurisdictions outside of Missouri, (including other states and other nations), the IRB will consult with legal counsel to determine the requirements within the specific jurisdiction.

**MO Rev Stat § 431.064.** Experimental treatment, tests, and drugs, consent to administer by third party--life-threatening emergencies, consent by whom.

Both investigators and IRB members must be aware that for some subjects, their decision-making capacity may fluctuate. For subjects with fluctuating decision-making capacity or those with decreasing capacity to provide consent, periodic reevaluation of capacity and re-

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consent or consent for continuing participation by a legally authorized representative may be necessary.

When a legally authorized representative is consented, documentation/notes in the study files need to include the process used to verify their role as legally authorized representative, whether based on documentation in the medical record or documents requested and reviewed during the consent process.

When assent is possible for some or all subjects, the Investigator should provide the IRB with an assent plan that describes when and how assent will be obtained, provisions that will be taken to promote understanding and voluntariness, and how assent will be documented. Under no circumstances may subjects be forced or coerced to participate.

In the event a subject becomes impaired in decision making capacity after enrollment, the PI is responsible for notifying the IRB. The PI is responsible for developing a monitoring plan, which follows the guidelines outlined above.

### **Witness and Observation of Consent**

A witness to the consent process is required under the International Code of Harmonization guidelines. However, if a potential participant or LAR is legally able to consent but is not able to read or sign their name, an independent witness must be present to view the consent process and obtaining of the consent. The witness must also sign the consent form as documentation of the witness.

The regulations do not prohibit an investigator from participating in their own study. A witness may be required when a member of the research team wants to participate in a study they are conducting. The witness may be another investigator authorized to obtain consent or an individual independent of the research. An independent witness is required when the potential participant to be consented is an employee or student of the investigator.

The MU IRB has the authority to observe or have a third party observe the consent process and the research. The research team may contact the HRPP/IRB office to request a consent witness to ensure adequate subject protection within the consent process.

In addition, the HRPP/IRB office is available to observe the consent process and provide feedback for education purposes for new researchers or for researchers working with participants that may have additional needs.

### **Consent within a Veteran's Hospital Facility**

When research is to be conducted using hospital or clinic patients in the Harry S Truman Memorial Veteran's Hospital, special consent procedures must be used. Please refer to the Truman VA Hospital Human Subject Research - Special Considerations SOP.

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For research at the VA, VA policy follows the law of the State of Missouri on research and legally authorized representatives. As needed, the IRB staff will consult with the VA Research Compliance Officer regarding legally authorized representatives.

### **Required Elements of Consent (§46.116(a)):**

1. A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures that are experimental;
2. A description of any reasonably foreseeable risks or discomforts to the subject;
3. A description of any benefits to the subject or to others that may reasonably be expected from the research;
4. A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;
5. A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;
6. For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;
7. An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject; and
8. A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.
9. One of the following statements about any research that involves the collection of identifiable private information or identifiable biospecimens: (i) A statement that identifiers might be removed from the identifiable private information or identifiable biospecimen and that, after such removal, the information or biospecimens could be used for future research studies or distributed to another investigator for future research studies without additional informed consent from the subject or LAR, if this might be a possibility; or (ii) A statement that the subject's information or biospecimens collected as part of the research, even if identifiers are removed, will not be used or distributed for future research studies.
10. If registered on [clinicaltrials.gov](http://clinicaltrials.gov), a statement that the results of the research will be posted on [clinicaltrials.gov](http://clinicaltrials.gov). For example, "A description of this clinical trial will be available on <http://www.clinicaltrials.gov>, as required by U.S. law. This website will not include information that can identify you. At most, the website will include a summary of the results. You can search this website at anytime."
11. If FDA regulated, a statement that notes the possibility that the FDA may inspect the records.

### **Additional Elements of Informed Consent (§46.116(b)):**

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When appropriate, one or more of the following elements of information shall be included in the consent:

1. A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) that are currently unforeseeable;
2. Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's or LAR's consent;
3. Any additional costs to the subject that may result from participation in the research;
4. The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;
5. A statement that significant new findings developed during the course of the research that may relate to the subject's willingness to continue participation will be provided to the subject; and
6. The approximate number of subjects involved in the study.
7. When applicable, a statement that the subject's biospecimens (even if identifiers are removed) may be used for commercial profit and whether the subject will or will not share in this commercial profit.
8. When applicable, a statement regarding whether clinically relevant research results, including individual research results, will be disclosed to subjects, and if so, under what conditions.
9. For research involving biospecimens, whether the research will (if known) or might include whole genome sequencing (i.e. sequencing of a human germline or somatic specimen with the intent to generate the genome or exome sequence of that specimen).

Note: All new studies approved on or after January 21, 2019 will comply with these revised common rule basic (#9) and additional (#7-9) elements of consent, if applicable to the study. Studies that remain open to enrollment and continue to consent at continuing review time will also be required to add any applicable basic or additional elements of consent.

### **Additional Institutional Elements the MU IRB/HRPP May Require**

1. Research Participant Advocacy contact information required for biomedical studies:
  - a. If you want to talk privately about your rights or any issues related to your participation in this study, you can contact University of Missouri Research Participant Advocacy by calling 888-280-5002 (a free call), or emailing [MUResearchRPA@missouri.edu](mailto:MUResearchRPA@missouri.edu).
2. Injury language for greater than minimal risk studies that are not industry sponsored:
  - a. It is not the policy of the University of Missouri to compensate human subjects in the event the research results in injury. The University of Missouri, in fulfilling its public responsibility, has provided medical, professional and general liability insurance coverage for any injury in the event such injury is caused by the negligence of the University of Missouri, its faculty and staff. The University of Missouri also will provide, within the limitations of the laws of the State of Missouri, facilities and medical attention to subjects who suffer injuries while

participating in the research projects of the University of Missouri. In the event you have suffered injury as the result of participation in this research program, you are to contact the Risk Management Officer, telephone number (573) 882-1181, at the Health Sciences Center, who can review the matter and provide further information. This statement is not to be construed as an admission of liability.

3. When applicable, the amount and schedule of compensation for participation

**Additional Elements Required by Other Federal Agencies Supporting/Sponsoring a Research Study**

**1. Department of Defense:**

- a. A statement that the DoD or a DoD organization is funding the study.
- b. A statement that representatives of the DoD are authorized to review research records.

**2. Department of Energy:**

- a. The identity of the sponsoring agency unless the sponsor requests it not be done. The only acceptable reason for nondisclosure is that disclosure could compromise intelligence sources or methods. Additionally, the research must be no more than minimal risk to participants; and the IRB must determine that not disclosing the identity will not adversely affect the participants.
- b. When research is classified, consent documents must state the project is classified, what it means for the purposes of the research project, and what part of the research that applies to.

**3. Department of Justice:**

- a. The name(s) of the funding agency(ies).
- b. The extent to which confidentiality of records identifying the participant will be maintained. For studies sponsored by NIJ, the participant should be informed that private, identifiable information will be kept confidential and will only be used for research and statistical purposes. If, due to sample size or some unique feature, the identity of the individual cannot be maintained, the participant needs to explicitly be notified. If the researcher intends to disclose any information, the participant needs to be explicitly informed of what information would be disclosed, under what circumstances, and to whom. The participant must be informed of any risks that might result from this disclosure and must explicitly provide written consent prior to participating in the research.
- c. When research is sponsored by the Bureau of Prisoners, consent documents must disclose:
  - i. The identity of the principal investigator(s).
  - ii. Anticipated uses of the results of the research.
  - iii. A statement that participation is completely voluntary and that the participant may withdraw consent and end participation in the project at any time without penalty or prejudice (the inmate will be returned to regular assignment or activity by staff as soon as practicable).
  - iv. A statement regarding the confidentiality of the research information and exceptions to any guarantees of confidentiality required by federal or state

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law. For example, a researcher may not guarantee confidentiality when the participant indicates intent to commit future criminal conduct or harm himself or herself or someone else, or, if the participant is an inmate, indicates intent to leave the facility without authorization.

- v. A statement that participation in the research project will have no effect on the inmate participant's release date or parole eligibility.
- vi. An offer to answer questions about the research project.
- vii. Appropriate additional information as needed to describe adequately the nature and risks of the research.

#### **4. Department of Veteran Affairs:**

- a. A statement that in the event of a research-related injury the VA has to provide necessary medical treatment to a participant injured by participation.
- b. Any payments the participant is to receive for participating in the study.
- c. Any real or apparent conflict of interest by the researchers where the research will be performed.
- d. A statement that VA will provide treatment for research related injury in accordance with applicable federal regulations.
- e. A statement that informs VA research participants that they or their insurance will not be charged for any costs related to the research.
- f. A statement that a veteran-participant will not be required to pay for care received as a participant in a VA research project except in accordance with federal law and that certain veterans were required to pay co-payments for medical care and services provided by VA.
- g. Consent for research must describe any photographs, video, or audio recordings obtained for research purposes; how they will be used, and whether they will be disclosed outside the VA.

#### **Additional Elements when Creating UM Biorepositories and Databases**

The following elements should be added to the consent and/or HIPAA Authorization:

1. The general concept and purpose of database or repository
2. The name and location of the database or repository(ies)
3. The nature and types of future research in as much specific detail as possible
4. A summary of the physical and procedural mechanisms for protecting subjects' privacy and the confidentiality of data or biospecimens
5. The conditions (if any) under which subject's may withdraw their consent/authorization to use of specimens
6. The conditions and requirements under which data or biospecimens and materials derived from biospecimens may be shared with recipient-investigators
7. The elements of PHI (if any) to be shared with recipient investigators
8. Itemization of the risks related to a breach of confidentiality including impact on privacy, insurability, stigmatization, etc.
9. Where human genetic research is anticipated, information about the consequences of DNA typing (e.g., regarding possible paternity determinations, impact on insurability, etc.) and related confidentiality risks

## **Consent Types**

The IRB will determine if the research is subject to FDA regulations when considering if the research meets the regulatory requirements for all types of consents.

### **1. Written Consent or the Electronic Equivalent**

- a. Contains all the basic elements and applicable additional elements of informed consent.
- b. The investigator shall give either the subject or the LAR adequate opportunity to read the informed consent form before it is signed; alternatively, this form may be read to the subject or the LAR.
- c. The MU IRB may require the PI or delegated members of the research team to sign the consent document as authorized study personnel for FDA regulated studies, and/or studies involving treatment/medical procedures. The signature block will be included within the consent document, if required.
- d. For studies not falling under (c) above, the signatory requirements for this document is the potential subject or LAR.
- e. A witness signature is not required on this document unless the potential subject or LAR is able to understand but is not able to read or sign their name to the document. The IRB does have the authority to require a witness if they feel the project warrants one. The signature block will be included within the consent document, if required.
- f. MU IRB determined for all written consent documents, it is required to have a subject or LAR signature and a date.
- g. A copy of the consent document must be provided to the participant or the participant's legal representative. The FDA recommends the copy be a signed consent copy.

The HRPP developed templates incorporating the necessary information and elements to be provided to the potential participant when using written consent. The template can be accessed on the HRPP website. [The utilization of the HRPP templates is not required but highly recommended, especially in the case of investigator-initiated studies. For studies that are sponsored or have model consent forms, there will still be institutional information that is required to be incorporated.](#)

### **2. Waiver of Documentation of Informed Consent**

The IRB may waive the requirement for the investigator to obtain a signed informed consent form for some or all the subjects if it finds any of the following:

- a. the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context\*; or

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- b. the informed consent document is the only record linking the subject to the research, the harm from the possible breach of confidentiality is the principal risk to the subject and each participant or legally authorized representative will be asked whether the participant wanted documentation linking the participant with the research, and the participant's wishes would govern; or
- c. If the subjects or legally authorized representatives are members of a distinct cultural group or community in which signing forms is not the norm, that the research presents no more than minimal risk of harm to subjects and provided there is an appropriate alternative mechanism for documenting that information consent was obtained.

\*If the study is regulated by the FDA, (a) is the only option for allowing a waiver of documentation of consent.

### Process for Obtaining Consent with a Waiver of Documentation

The investigator must present the IRB approved consent document to the potential subject or LAR. Many methods can be used to present the information as long as the potential participant has time to review the information/document and ask questions. Some methods include a verbal conversation, electronic sharing of the document, or sending the document via the US Postal Service or other secure, hard copy methods. If the IRB requires confirmation the consent process took place, the investigator would document the process/conversation with a note in the research records/subject binder, sometimes including the subject's medical record.

The IRB may require the investigator to provide subjects with a written statement regarding the research. The written statement in these cases would be the Consent Form with Waiver of Documentation approved by the IRB.

The HRPP developed a template incorporating the necessary information and elements to be provided to the potential participant when using waiver of documentation of consent. The template can be accessed on the HRPP website.

### **3. Waiver or Alteration of Informed Consent**

The IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent, or waive the requirements to obtain informed consent provided the IRB finds and documents that:

- 1) the research involves no more than minimal risk to the subjects;
- 2) the waiver or alteration will not adversely affect the rights and welfare of the subjects;
- 3) the research could not practicably be carried out without the requested waiver or alteration;
- 4) If the research involves using identifiable private information or identifiable biospecimens, the research could not practicably\* be carried out without using such information or biospecimens in an identifiable format; and

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- 5) whenever appropriate, the subjects or LAR's will be provided with additional pertinent information after participation.

Note: All new studies approved on or after January 21, 2019 will comply with the revised common rule waiver of consent criteria, specifically #4. At continuing review time, studies that include a waiver or alteration of consent that are still mining or pulling data will also be required to justify the additional requirement, if applicable.

### **\*Interpretation of Practicably**

*Based on a Previous SACHRP Subcommittee Recommendation*

(a) Scientific validity would be compromised if consent was required. Examples of this might include the following:

- *The sample size required is so large (e.g, population-based studies, epidemiology trials) that including only those samples/records/data for which consent can be obtained would prohibit conclusions to be drawn or bias the sample such that conclusions would be skewed.*
- *The subjects for whom records would be reviewed are no longer followed and may be lost to follow-up. For example the proportion of individuals likely to have relocated or died may be a significant percentage of the subject population and the research results may not be meaningful and lose statistical power.*
- *The disclosure of the study purpose as part of the consent process would bias the research subjects so that the results will not be meaningful.*

(b) Ethical concerns would be raised if consent were required. For example:

- *There is a risk of creating additional threats to privacy by having to link otherwise de-identified data with nominal identifiers in order to contact individuals to seek consent.*
- *There is a risk of inflicting psychological, social or other harm by contacting individuals or families.*

(c) There is a scientifically and ethically justifiable rationale why the research could not be conducted with a population from whom consent can be obtained.

(d) Informed consent should never be waived for convenience, nor waived solely for reasons of cost or speed if doing so dilutes the protection of subjects' rights and welfare.

The IRB may also approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent, or waive the requirements to obtain informed consent provided the IRB finds and documents that:

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- 1) The research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine: (i) Public benefit of service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs; and
- 2) The research could not practicably be carried out without the waiver or alteration.

For studies proposing an opt-out consent/process (sometimes referred to as passive consent), this is considered a waiver of consent and must meet the criteria to waive consent. This typically involves distributing a letter to a subject or their legal guardian and providing a method to retract permission.

The FDA does not object to an IRB approving a consent procedure that does not include, or that alters, some or all of the elements of informed consent set forth in 21 CFR 50.25 or waiving the requirements to obtain informed consent. See the FDA Rule “**Institutional Review Board Waiver or Alteration of Informed Consent for Minimal Risk Clinical Investigations**” <https://www.federalregister.gov/documents/2023/12/21/2023-27935/institutional-review-board-waiver-or-alteration-of-informed-consent-for-minimal-risk-clinical>

For studies involving in vitro diagnostic devices, see the Investigational Test Articles, Compassionate Use, and Emergency Use SOP regarding waiver of informed consent.

### **Screening, Recruiting, or Determining Eligibility – When a Waiver of Consent is NOT Required by the IRB**

An IRB may approve a research proposal in which an investigator will obtain information or biospecimens for the purpose of screening, recruiting, or determining the eligibility of prospective subjects without informed consent of the prospective subject or the subject’s LAR, if either of the following conditions are met:

1. The investigator will obtain information through oral or written communication with the prospective subject or LAR, or
2. The investigator will obtain identifiable private information or identifiable biospecimens by accessing records or stored identifiable biospecimens.

Note: This is a new rule under the revised common rule. Since the MU IRB often approved waiver for these types of screening activities, the IRB may update studies where they are no longer required.

### **Deception and Incomplete Disclosure**

A waiver or alteration of informed consent may be justified for studies involving deception or incomplete disclosure when some elements of informed consent are altered or waived.

Deception is defined as deliberately giving false information about some aspect of the research to the subject. Incomplete disclosure is defined as withholding information about the research but not giving false information.

For studies proposing deception, investigators are asked to justify the use of deception in the research and describe how it is a necessary and unavoidable component to the research design. These studies require a debriefing which is an essential part of the informed consent process. The debriefing provides the participants with an explanation of the study's goals (or hypotheses) in a manner that they can understand, procedures to deceive participants and the reasons why it was necessary. Subjects must be given the opportunity to withdraw their data as part of the debriefing process.

Studies involving greater than minimal risk will not be approved with deception.

For studies involving incomplete disclosure, investigators will be asked to describe how incomplete disclosure is used in their study and justify the use of incomplete disclosure. These studies may require a debriefing as determined by the IRB.

**4. Short Form Consent Process (occasional and unexpected enrollment of non-English participants)**

The short form method for obtaining informed consent should only be used for the occasional and unexpected enrollment of a non-English speaking subject in a study for which no consent form in the subject's language has been prepared. See Additional Protections for Vulnerable Populations, International, and Non-English Speaking Participants SOP for additional information about non-English speaking subjects.

The request to use the short form consent process is typically made because time is of the essence. As such, the IRB prioritizes the review of these requests in order to avoid denying a patient an opportunity to participate in research. An amendment is required to add the short form method before it is used. The MU IRB has some already translated short form templates available to share with investigators upon request. If unavailable, the investigator will be required to create a translated short form.

The short form process may be used a few times for a particular language in a study. After so many uses (determined by the IRB) of the short form consent process, the informed consent document will need to be translated into that particular language as it can be anticipated additional potential participants that understand that language will be encountered.

A short form written informed consent form states that the elements of informed consent required by §46.116 have been presented orally to the subject or the subject's legally authorized representative.

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If the short form will be used with a legally authorized representative, the study must be approved for the use of legally authorized representatives.

- a. The IRB shall approve a written summary of what is to be said to the subject or the legally authorized representative. The IRB approved consent document can be used as the written summary since it must contain the required elements of consent.
- b. When this method is used, there shall be a witness to the oral presentation. The witness must be an adult, fluent in both languages, who is not a member of the study team. The interpreter may serve as the witness.
- c. Only the short form itself is to be signed by the subject or the subject's legally authorized representative. However, the witness shall sign both the short form and a copy of the written summary (which may be the IRB approved consent document), and the person actually obtaining consent shall sign a copy of the summary.
- d. A copy of the written summary shall be given to the subject or the subject's legally authorized representative, in addition to a copy of the short form.

### **Posting of Federally Funded, Clinical Trial Consent Forms**

1. For each clinical trial conducted or supported by a Federal department or agency, one IRB approved informed consent form used to enroll subjects must be posted by the awardee or the Federal department or agency component conducting the trial on [clinicaltrials.gov](http://clinicaltrials.gov).
2. If the Federal department or agency supporting or conducting the clinical trial determines that certain information should not be made publicly available on [clinicaltrials.gov](http://clinicaltrials.gov) (e.g. confidential commercial information), such Federal department or agency may permit or require redactions to the information posted.
3. The informed consent form must be posted on [clinicaltrials.gov](http://clinicaltrials.gov) after the clinical trial is closed to enrollment, and no later than 60 days after the last study visit by any subject, as required by the protocol.

These requirements are for new clinical trials approved on or after January 21, 2019.

### **Translated Consent Materials:**

The following documents should be translated before enrolling non-English speaking subjects on a study:

- The IRB-approved English informed consent/assent document(s)
- HIPAA documents (when applicable).
- Any other approved document(s) as applicable (e.g. survey, recruitment material).

The IRB will typically accept documents translated by an individual fluent (i.e., can speak, read, and write) in a given language. A letter from the translator describing their qualifications must be provided with the IRB submission. The qualifications of the individual performing the translation will be assessed by the IRB, and if approved by the IRB, a certified translation will not be required.

**Certified Translation:** A certified translation may be required and is one that has been formally verified by a licensed translator or translation company for use in official purposes. Certified translators attest that the target-language text is an accurate and complete translation of the source-language text. Certified translation of consent documents ensures that the tone, meaning, and content of the translated documents remain consistent with the IRB-approved English version. The PI and research team will be notified if a certified translation is required.

### **Mandated Reporting**

When appropriate, subjects or their legal guardian must be informed about Missouri State Law mandated reporting requirements if the potential exists that reporting may occur in the context of the study. If the victim of abuse or neglect is a resident of another state or was injured as a result of an act which occurred in another state, the investigator must abide by the other state laws. Legal counsel may be consulted.

[MO Rev Stat § 565.184.](#) Abuse of an elderly person, a person with disability, or a vulnerable person — penalty.

[MO Rev Stat § 210.115.](#) Reports of abuse, neglect, and under age eighteen deaths — persons required to report — supervisors and administrators not to impede reporting — deaths required to be reported to the division or child fatality review panel, when — report made to another state, when.

### **Informed Consent Requirements in Emergency Medical Research**

Under Section 46.101(i), a waiver of the applicability of the 45 CFR Part 46 requirement for obtaining and documenting informed consent for a strictly limited class of research, involving research activities that may be carried out in human subjects who are in need of emergency therapy and for whom, because of the subjects' medical condition and the unavailability of legally authorized representatives of the subjects, no legally effective informed consent can be obtained

See DHHS Guidance “Informed Consent Requirements in Emergency Research”

<https://www.hhs.gov/ohrp/regulations-and-policy/guidance/emergency-research-informed-consent-requirements/index.html>

This waiver applies to the Basic HHS Policy for Protection of Human Research Subjects (Subpart A of 45 CFR Part 46) and to research involving children (Subpart D of 45 CFR Part 46). However, because of special regulatory limitations relating to research involving fetuses, pregnant women, and human in vitro fertilization (Subpart B of 45 CFR 46), and research involving prisoners (Subpart C of 45 CFR Part 46), this waiver is inapplicable to these categories of research.

Emergency Research Consent Waiver

Pursuant to Section 46.101(i), the Secretary, HHS, has waived the general requirements for informed consent at 45 CFR 46.116(a) and (b) and 46.408, to be referred to as the "Emergency Research Consent Waiver" for a class of research consisting of activities, each of which have met the following strictly limited conditions detailed under either (a) or (b) below:

**(a) Waiver of consent for emergency research NOT subject to FDA regulations**

The IRB is responsible for the review, approval, and continuing review of the research has approved both the research and a waiver of informed consent and has (i) found and documented that the research *is not subject* to regulations codified by the FDA at 21 CFR Part 50, and (ii) found and documented and reported to the OHRP that the following conditions have been met relative to the research:

- (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:
  - (i) the subjects will not be able to give their informed consent as a result of their medical condition;
  - (ii) the intervention involved in the research must be administered before consent from the subjects' legally authorized representatives is feasible; and
  - (iii) there is no reasonable way to identify prospectively the individuals likely to become eligible for participation in the research.
- (3) Participation in the research holds out the prospect of direct benefit to the subjects because:
  - (i) subjects are facing a life-threatening situation that necessitates intervention;
  - (ii) 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
  - (iii) 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, if any, and what is known about the risks and benefits of the proposed intervention or activity.
- (4) The research could not practicably be carried out without the waiver.
- (5) The proposed research 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 contacted for consent within that

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window rather than proceeding without consent. The investigator will summarize efforts made to contact representatives 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 in accord with Sections 46.116 and 46.117 of 45 CFR Part 46. These procedures and the informed consent document are to be used with subjects or their legally authorized representatives 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 research consistent with paragraph (b)(7)(v) of this waiver.

(7) Additional protections of the rights and welfare of the subjects will be provided, including, at least:

- (i) consultation\* (including, where appropriate, consultation carried out by the IRB) with representatives of the communities in which the research will be conducted and from which the subjects will be drawn;
- (ii) public disclosure\*\* to the communities in which the research will be conducted and from which the subjects will be drawn, prior to initiation of the research, of plans for the research and its risks and expected benefits;
- (iii) 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;
- (iv) establishment of an independent data monitoring committee to exercise oversight of the research; and
- (v) if obtaining informed consent is not feasible and a legally authorized representative 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 a legally authorized representative, and asking whether he or she objects to the subject's participation in the research. The investigator will summarize efforts made to contact family members and make this information available to the IRB at the time of continuing review.

In addition, the IRB is responsible for ensuring that procedures are in place to inform, at the earliest feasible opportunity, each subject, or if the subject remains incapacitated, a legally authorized representative of the subject, or if such a representative is not reasonably available, a family member, of the subject's inclusion in the research, the details of the research and other information contained in the informed consent document. The IRB shall also ensure that there is a procedure to inform the subject, or if the subject remains incapacitated, a legally authorized representative of the subject, or if such a representative is not reasonably available, a family member, that he or she may discontinue the subject's participation at any time without penalty or loss of benefits to which the subject is otherwise entitled. If a legally authorized representative or family member is told about the research and the subject's condition improves, the subject is also to be informed as soon as feasible. If a subject is entered into research with waived consent and the subject dies before a legally authorized representative or family member

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can be contacted, information about the research is to be provided to the subject's legally authorized representative or family member, if feasible.

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.

OR

### (b) Research Subject to FDA Regulation (Planned Emergency Research)

NOTE: Do not confuse with Emergency Use of a Test Article – See Investigational Test Articles and Emergency Use SOP.

The IRB responsible for the review, approval, and continuing review of the research activity has approved both the activity and a waiver of informed consent and found and documented:

- (1) that the research activity *is subject* to regulations codified by the Food and Drug Administration (FDA) (see **Federal Register**, Vol. 61, pp. 51498-51531) at Title 21 CFR Part 50 and will be carried out under an FDA investigational new drug application (IND) or an FDA investigational device exemption (IDE), the application for which has clearly identified the protocols that would include subjects who are unable to consent, and
- (2) that the requirements for exception from informed consent for emergency research detailed in **21 CFR Section 50.24** have been met relative to those protocols.

#### **21 CFR 50.24**

The IRB may review and approve a clinical investigation without requiring that informed consent of all research participants be obtained if 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) finds and documents each of the following:

- A. The target population for the research is 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.
- B. Obtaining informed consent is not feasible because of all of the following:
  1. The participants will not be able to give their informed consent as a result of their medical condition;
  2. The intervention under investigation must be administered before consent from the participants' legally authorized representatives is feasible; and
  3. There is no reasonable way to identify prospectively the individuals likely to become eligible for participation in the clinical investigation.

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- C. Participation in the research holds out the prospect of direct benefit to the participants, and:
  - 1. The participants are facing a life-threatening situation that necessitates intervention;
  - 2. 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 participants; and
  - 3. The risks associated with the investigation are reasonable in relation to what is known about the medical condition of the potential class of participants, the risks and benefits of standard therapy, if any, and what is known about the risks and benefits of the proposed intervention or activity.
- D. The clinical investigation could not practicably be carried out without the waiver.
- E. The proposed investigational plan defines the length of the potential therapeutic window based on scientific evidence, and the Investigator has committed to attempt to contact a legally authorized representative for each participant within that window of time and, if feasible, to ask the legally authorized representative for consent within that window rather than proceeding without consent. The Investigator must agree to summarize efforts made to contact legally authorized representatives and make this information available to the IRB at the time of continuing review.
- F. The IRB has reviewed and approved informed consent procedures and an informed consent document consistent with Federal regulations and Human Research Protections Program and/or MU IRB policies and procedures. The informed consent procedures and the informed consent document are to be used with participants or their legally authorized representatives in situations where use of such procedures and documents is feasible.
- G. The IRB has reviewed and approved procedures and information to be used when providing an opportunity for a legally authorized representative to object to a participant's participation in the clinical investigation.
- H. Additional protections of the rights and welfare of the participants 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 participants will be drawn;
  - b. Prior to the initiation of the clinical investigation, public disclosure to the communities in which the clinical investigation will be conducted and from which the participants will be drawn of plans for the investigation and its risks and expected benefits;
  - c. At the completion of the clinical investigation there are plans for public disclosure \*\*of sufficient information to apprise the community and researchers of the study. The information must include the demographic characteristics of the research population

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- and results of the clinical investigation.
  - d. Establishment of an independent data and safety monitoring committee to exercise oversight of the clinical investigation; and
  - e. If obtaining informed consent is not feasible and a legally authorized representative is not reasonably available, the Investigator must commit to attempt to contact within the therapeutic window an adult relative of the patient who is not a legally authorized representative, and ask whether he/she objects to the participant's participation in the clinical investigation. The Investigator will summarize efforts made to contact family members and make this information available to the IRB at the time of continuing review.
- I. Procedures must be in place to inform each participant, at the earliest feasible opportunity, or if the participant remains incapacitated, a legally authorized representative of the participant, of the participant's inclusion in the clinical investigation, the details of the investigation and other information contained in the informed consent document, including that he/she may discontinue participation at any time without penalty or loss of benefits to which the participant is otherwise entitled.
- J. If a legally authorized representative is told about the clinical investigation and the participant's condition improves, the participant is also to be informed as soon as feasible.
- K. If a participant is entered into a clinical investigation with waived consent and the participant dies before a legally authorized representative can be contacted, information about the clinical investigation is to be provided to the participant's legally authorized representative, if feasible.
- L. The IRB determinations and all clinical investigation records, including regulatory files, must be maintained for at least three years after the completion of the clinical investigation and will be accessible for inspection and copying by the regulatory authorities, as applicable.
- M. Clinical investigations that are granted an exception to the informed consent requirement under this section must be performed under a separate investigational new drug application (IND) or investigational device exemption (IDE) that clearly identifies that the clinical investigation may include participants who are unable to consent. The submission of these clinical investigations to the FDA for a separate IND/IDE is required even if an IND for the same drug product or an IDE for the same device already exists. Applications for this IND/IDE may not be submitted as an amendment to the existing IND/IDE.
- N. If the IRB determines it cannot approve a request for exception from informed consent requirements in emergency research because the clinical investigation does not meet the criteria according to Federal regulations, or other relevant ethical concerns, the IRB must document its findings and provide these findings promptly in writing to the clinical investigator, who will forward the findings to the sponsor of the clinical investigation.

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1. The sponsor of the clinical investigation must promptly disclose this information to the FDA and to the sponsor's clinical investigators who are participating or are asked to participate in this or a substantially equivalent clinical investigation of the sponsor, and to other IRBs that have been, or are, asked to review this or a substantially equivalent investigation by that sponsor.

\*Acceptable mechanisms of **consultation** with the communities in which the study will be conducted and from which the subjects will be drawn include, but are not limited to, the following:

1. Consultation with associations, support groups, and other agencies representing people who have survived the conditions and treatments by presentation, question and answer sessions, focus groups, and surveys;
2. Consultation with associations, groups, and agencies representing the communities in which the studies will be conducted by presentation, question and answer sessions, focus groups, and surveys. The groups may include, for example, neighborhood associations and councils, city councils, parent- teacher groups, community advisory boards, church and civic groups specific to the institution and community;
3. Community representation on the Human Subjects Review Committee specifically from survivor groups or from communities in which the studies will be conducted.
4. Development of a community advisory board specific to the proposed study.

\*\*Acceptable mechanisms of **notification** (pre- and post- study) of the communities in which the study will be conducted and from which the subjects will be drawn include, but are not limited to, the following:

1. Public meetings;
2. Press releases;
3. Presentations before interested and affected agencies, groups, or organizations

### **References:**

Combined Policies January 21, 2019:

Informed Consent – Process and Issues

Approval Dates: December 12, 2005; January 26, 2009; June 10, 2010; July 1, 2011;  
March 1, 2015; July 1, 2015; June 8, 2017

Informed Consent – Types and Elements

Approval Dates: December 12, 2005; June 10, 2010; July 1, 2011; March 1, 2015;  
July 1, 2015; June 8, 2017