**IRB Standard Operating Procedures for Evaluating and Monitoring Planned Emergency Research**

**SCOPE**

This standard operating procedure (SOP) will apply to planned emergency research that involves human participants in which an MD Anderson investigator participates.

**PURPOSE**

The purpose of this SOP is to outline the IRB requirements for conducting planned emergency research as defined by the Department of Health and Human Services (DHHS), Office of Human Research Protections (OHRP) and the Food and Drug Administration (FDA). The SOP stipulates the additional protections required by the regulations for planned emergency research where the requirements for informed consent are waived.

This SOP does not cover a single IND or compassionate use of an investigational agent or device for an individual patient. These uses are covered in the MD Anderson Policy for Compassionate Use of an Investigational or Label Drug (CIND).

**DEFINITIONS**

<table>
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<tr>
<th>Planned Emergency Research</th>
<th>Research involving human participants who are in need of emergency medical intervention (e.g., comparison of methods for providing cardiopulmonary resuscitation), but who cannot give informed consent because of their life-threatening medical conditions and who do not have an available legally authorized representative to provide consent.</th>
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<tr>
<td>Legally Authorized Representative (LAR)</td>
<td>An individual who is authorized under applicable law to grant permission on behalf of a prospective participant for their participation in research.</td>
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<td>Family Member</td>
<td>Both FDA and DHHS define a “family member” as any one of the following legally competent persons: spouse; 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.</td>
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**PROCEDURE**
I. Background

Planned emergency research conducted in life-threatening situations must be differentiated from the “emergency use” of an investigational drug or biologic or unapproved medical device. The emergency use provision in FDA regulations allows for a single use of an investigational drug or biologic or unapproved medical device for a human participant in a life-threatening situation for which no standard acceptable treatment is available and when there is not sufficient time to obtain IRB approval. For more information about the requirements for emergency uses not pursuant to this policy, please see Chapter 16.010 of the Human Subject Research Manual or the FDA regulations at 21 CFR 50.24.

Persons with life-threatening conditions who either cannot provide informed consent or refuse research participation when there are no standard life-saving interventions available are considered to be a vulnerable population. The lack of participant autonomy and inability of participants to provide informed consent require that additional protections are provided in the review, approval, and performance of this research.

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

The FDA regulations apply to most research conducted in emergency settings because it usually involves FDA regulated drugs, biologics, or devices (see 21 CFR Part 50.24). Non-FDA regulated research may fall under requirements almost identical to the FDA regulations based on a waiver of applicability of sections of the DHHS regulations at 45 CFR 46. The DHHS requirements are essentially identical to the FDA regulations, with the restriction that the waiver is not applicable to research involving prisoners, fetuses, women or in vitro fertilization.

A separate protocol submission to the IRB and a separate IND/IDE is required to conduct planned emergency research.

The regulatory criteria include:

A. Participants 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.

B. Obtaining informed consent from the participant is not feasible because:

- The participants will not be able to give their informed consent as a result of their medical condition.
- There is no reasonable way to identify prospectively the individuals likely to become eligible for participation in the clinical investigation.
C. **IRB approval of an exception to the informed consent is feasible** because:

- Participants 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 participant; and
- 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. **Public Disclosure and Community Consultation:**

   - Appropriate *public disclosure* including community consultation is required prior to the initiation of the study as well at the completion of the study.

   Consultation (including, where appropriate, consultation carried out by the IRB) includes informing with representatives of the communities in which the clinical investigation will be conducted and from which the participants will be drawn about the study.

   Examples include: Holding a public meeting in the community from which the participants will be drawn to discuss the research, conducting a telephone poll, establishing a separate panel of community members, including community consultants to the IRB, and adding unaffiliated members to the IRB who are representative of the community.

   - **Prior to study initiation:** There should be public disclosure of plans to conduct the research and its risks and expected benefits to the communities in which the research will be conducted and from which the participants will be drawn.

   - **Following completion of the study:** There should be public disclosure following completion of the research to apprise the community and researchers of the study results, including the demographic characteristics of the research population and its results.

F. Establishment or use of an independent data monitoring committee to exercise oversight of the research.
II. Informed Consent Considerations

A. Exceptions to Informed Consent

To approve a waiver of informed consent for research conducted in emergency settings, a licensed physician who is a member (or consultant) of the IRB and who is not otherwise participating in the research must agree with the IRB’s determination that the criteria for consent waiver are met. Documentation of the physician’s concurrence is also required for approval.

The IRB meeting minutes will specifically record the physician’s vote when planned emergency research is reviewed.

The investigator should consider the following when requesting a waiver of informed consent when conducting planned emergency research:

1. If obtaining informed consent is not feasible (and a LAR is not reasonably available), the investigator has committed to attempting to contact within the therapeutic window the participant’s family member who is not a LAR, if feasible, and asking whether he/she objects to the participant’s participation in the research.

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

3. The IRB will approve procedures to inform the participant, the participant’s LAR (if the participant remains incapacitated or dies), or a family member (if the LAR is not reasonably available) of the following at the earliest feasible opportunity:
   a. That the participant was included in the study.
   b. Details of the research and other information contained in the informed consent document.
   c. That the participant’s participation may be discontinued at any time without penalty or loss of benefits to which the participant is otherwise entitled.
NOTE: If it is a LAR or family member that is told about the study and the participant’s condition improves, the participant is also to be informed as soon as feasible.

B. Summaries of Attempts to Obtain Consent:
   1. Investigators will need to document and summarize their attempts to contact family members to obtain their consent if obtaining informed consent is not feasible and a LAR is not reasonably available. The consent process including the procedures for contacting LARS or family members should be detailed in the study plan.

   2. At the time of initial review, the IRB will determine if a continuation consent is necessary for the study. Generally, and continuation consent will not constitute consent sine the treatment had already occurred. The continuation consent will simply serve to document that the participant consent to continued participation in the study.

C. Withdrawing from the Study
   1. The participant, the participant’s LAR or family member may discontinue the participant’s participation in the study at any time without penalty or loss of benefits.

III. Research Subject to FDA Regulations

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

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

   B. If the IRB cannot approve the research either because the criteria described above are not met or because of relevant ethical concerns, documentation of the IRB’s findings will be provided in writing to the investigator within 14 days. The investigator is responsible for providing a copy of the IRB’s determination to the sponsor.

   C. The sponsor must promptly disclose this information to FDA and to investigators who have been asked to participate in the research or a “substantially equivalent clinical investigation” and to other IRBs that have been or are asked to review this or a substantially equivalent investigation by that sponsor.

IV. Research Subject to DHHS Regulations
The IRB may approve research subject to DHHS regulations involving an “emergency research consent waiver” under either of the following two conditions:

A. The IRB finds and documents all of the following:
   1. The research is subject to FDA regulations (see 21 CFR 50).
   2. The research will be performed under a separate IND or IDE (see “Research Subject to FDA Regulations” above).
   3. The FDA requirements for exception from informed consent for emergency research (see “Exception to the Requirements for Obtaining Informed Consent” above) have been met.

B. The IRB finds, documents, and reports to OHRP all of the following:
   1. The research is not subject to FDA regulations.
   2. The DHHS requirements for waiver of informed consent for emergency research (see “Exceptions to Informed Consent” above) have been met.

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

V. Protocol and Informed Consent Document Requirements

A. Documentation in the Protocol:

The issues raised in the sections below will need to be documented in the appropriate sections of the application. The five points are summarized as follows:

- The participants are in a life-threatening situation, available treatments are unproven or unsatisfactory, and the collection of valid scientific evidence is necessary to determine the safety and effectiveness of particular interventions;
- Obtaining informed consent is not feasible;
- Participation in the research holds out the prospect of direct benefit to the participants;
- The study could not practicably be carried out without the waiver of informed consent; and
- The study defines the length of the potential therapeutic window and the investigator has committed to attempting to contact a LAR or family member to ask for consent for each participant within that window of time.

B. Informed Consent Document(s) Requirements:

The use of more than one Informed Consent Document (ICD) may be utilized when conducting planned emergency research. The types of ICD include:

A. An ICD for the LAR or family member
B. An ICD for the participant if he or she regains capacity to consent that allows for:

1. The participant to continue in the study.
2. The participant not to continue in study but to allow data collected so far to be used for research purposes.
3. The participant not to continue in the study and not to allow data already collected to be used.

The ICD must include disclosures related to research team conflicts of interest as per the MD Anderson IRB procedures and the MD Anderson COI Policy.

VI. Requirements for Continuing Review, Notification to Regulatory Agencies and Sponsors and Retention of Records

A. Continuing IRB review is required for planned emergency research. The IRB must find and document that the regulatory criteria as described above for the research and the exception to the requirements for informed consent have been met during the initial and the continuing review of the research. The investigator must submit a summary describing attempt to consent and/or re-consent the participant or the LAR or family member during the continuing review process.

B. If an IRB determines that it cannot approve a clinical investigation because the investigation does not meet the criteria as outlined in this policy, or because of other relevant ethical concerns, the IRB must document its findings and provide these findings promptly in writing to the clinical investigator and to the sponsor of the clinical investigation. The sponsor of the clinical investigation must promptly disclose this information to 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 IRB's that have been, or are, asked to review this or a substantially equivalent investigation by that sponsor.

C. The IRB determinations and relevant documentation as required by this policy are to be retained by the IRB for at least 3 years after completion of the clinical investigation, and the records shall be accessible for inspection and copying by FDA in accordance with 56.115(b).

REFERENCES

FDA Guidance: [Exception from Informed Consent for Studies Conducted in Emergency Settings: Regulatory Language and Excerpts from Preamble - Information Sheet](#)

OPRR Reports: [Informed Consent Requirements in Emergency Research, October 31, 1996](#)

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<th>Date</th>
<th>Action</th>
<th>Initials</th>
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<td>3-25-15</td>
<td>REV</td>
<td>WQ</td>
<td>IRB3 Review and Approval</td>
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<td>6-27-19</td>
<td>REV</td>
<td>JH</td>
<td>Updated name of department and updated formatting</td>
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