

## GUIDANCE: Planned Emergency Research

NUMBER	DATE	AUTHOR	APPROVED BY	AUDIENCE	USE	PAGE
HRP-022	9/15/2015	Center For Research	Institutional Official	Investigators, IRB Specialists, IRB Members	Required: X Elective:	Page 1 of 3

### 1 PURPOSE

- 1.1 This guidance establishes the process for an investigator conducting planned emergency research with a waiver of consent when more than minimal risk is involved.
- 1.2 The guidance begins when preparing for any planned emergency research or clinical investigation activity that involves human subjects.
- 1.3 The guidance ends when Institutional Review Board (IRB) involvement in the Sharp HealthCare (SHC) planned emergency research or clinical investigation activity is determined.

### 2 REVISIONS FROM PREVIOUS VERSION

- 2.1 None.

### 3 POLICY STATEMENT

- 3.1 The Health and Human Services (HHS) waiver, just as the Food and Drug Administration (FDA) regulatory change (21 CFR 50.24), provides a narrow exception to the requirement for obtaining and documenting informed consent from each human subject or his or her legally authorized representative prior to initiation of research if the waiver of informed consent is approved by an IRB. The **waiver authorization applies to a limited class of research activities** involving human subjects who are in need of emergency medical intervention but who cannot give informed consent because of their life-threatening medical condition, and who do not have available a legally authorized representative.
- 3.2 The intent of these regulations is to allow research on life-threatening conditions for which available treatments are unproven or unsatisfactory and where it is not possible to obtain informed consent, while establishing additional protections to provide for safe and ethical studies.
- 3.3 Important Notes:
  - 3.3.1 Planned Emergency Research is not the same as Emergency Use of a Test Article *GUIDANCE: Emergency Use Review (HRP-023)*.
  - 3.3.2 In addition, Federal and California State law provides for the conduct of planned research with surrogate informed consent when potential research participants are unable to consent due to decisional impairment. See *GUIDANCE: Legally Authorized Representatives (Surrogate Consent) (HRP-013)*.

### 4 RESPONSIBILITIES

- 4.1 Investigators, IRB members, and IRB specialists perform these procedures.

### 5 PROCEDURE

- 5.1 The SHC IRB reviews and may approve planned emergency research without requiring that informed consent of all subjects be obtained if the SHC IRB (with the concurrence of a licensed physician who is a member of the IRB and who is not otherwise participating in the clinical investigation) finds and documents each of the following seven points:
  - 5.1.1 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.
  - 5.1.2 Obtaining informed consent is not feasible because:
    - 5.1.2.1 The subjects will not be able to give their informed consent as a result of their medical condition.
    - 5.1.2.2 The intervention under investigation must be administered before consent from the subjects' legally authorized representatives is feasible.
    - 5.1.2.3 There is no reasonable way to identify prospectively the individuals likely to become eligible for participation in the clinical investigation.
  - 5.1.3 Participation in the research holds out the prospect of direct benefit to the subjects because:

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- 5.1.3.1 Subjects are facing life-threatening situation that necessitates intervention.
- 5.1.3.2 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 subjects.
- 5.1.3.3 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.
- 5.1.4 The clinical investigation could not practicably be carried out without the waiver.
- 5.1.5 The proposed investigational plan:
  - 5.1.5.1 Defines the length of the potential therapeutic window based on scientific evidence
  - 5.1.5.2 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 window rather than proceeding without consent.
  - 5.1.5.3 The investigator will summarize efforts made to contact legally authorized representatives and make this information available to the IRB at the same time of continuing review. *FORM: Continuation Request or Final Closure Report (HRP-212)*
- 5.1.6 The IRB has reviewed and approved informed consent procedures and an informed consent document consistent with 21 CFR 50.25. 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 clinical investigation consistent with information below.
- 5.1.7 Additional protections of the rights and welfare of the subjects will be provided, including, at least:
  - 5.1.7.1 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 subjects will be drawn.
  - 5.1.7.2 Public disclosure to the communities in which the clinical investigation will be conducted and from which the subjects will be drawn, prior to initiation of the clinical investigation, of plans for the investigation and its risks and expected benefits;
  - 5.1.7.3 Public disclosure of sufficient information following completion of the clinical investigation to apprise the community and researchers of the study, including the demographic characteristics of the research population, and its results
  - 5.1.7.4 Establishment of an independent data monitoring committee to exercise oversight of the clinical investigation
  - 5.1.7.5 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 clinical investigation. The investigator will summarize efforts made to contact family members and make this information available to the IRB at

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the time of continuing review. *FORM: Continuation Request or Final Closure Report (HRP-212)*

5.1.7.6 Consenting is an ongoing process. All applicable criteria that would trigger re-consenting a subject in any study also apply to subjects whose consent has been provided by a surrogate. See *GUIDANCE: Legally Authorized Representatives (Surrogate Consent) (HRP-013)* for additional information.

5.1.8 In addition to the situations described under section 5.3 of the *GUIDANCE: Legally Authorized Representatives (Surrogate Consent) (HRP-013)*, if the subject is entered into research with waived consent and the subject dies before a legally authorized representative or family member can be contacted, information about the research should be provided to the subject's legally authorized representative or family member, when feasible.

**6 MATERIALS**

- 6.1 GUIDANCE: Legally Authorized Representatives (Surrogate Consent) (HRP-013)
- 6.2 GUIDANCE: Emergency Use Review (HRP-023)
- 6.3 FORM: Continuation Request or Final Closure Report (HRP-212)

**7 REFERENCES**

- 7.1 21 CFR 50.24
- 7.2 FDA Guidance: Exception from Informed Consent for Studies Conducted in Emergency Settings: Regulatory Language and Excerpts from Preamble – Information Sheet  
<http://www.fda.gov/RegulatoryInformation/Guidances/ucm126482.htm>
- 7.3 OPRR Reports: Informed Consent Requirements in Emergency Research, October 31, 1996  
<http://www.hhs.gov/ohrp/policy/hsdc97-01.html>

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