HUMAN RESEARCH PROTECTION PROGRAM DEPARTMENTAL POLICY

3.1 INFORMED CONSENT REQUIREMENTS

RESPONSIBLE OFFICE: Human Research Protection Program Department **EFFECTIVE DATE: March 10, 2022**

I. POLICY STATEMENT

A. Obtaining legally effective informed consent of individuals before involving them in research is one of the central protections provided in the regulations governing research. Informed consent in research is founded on the Belmont Principle "respect for persons"

B. Informed consent is an ongoing process. The informed consent document may be used to document the process as appropriate.

C. Informed consent must be sought from each potential subject or the subject's legally authorized representative, in accordance with, and to the extent required by 45 CFR 46.116.

D. Informed consent must be appropriately documented in accordance with, and to the extent required by 45 CFR 46.117.

E. The IRB is responsible for the review and approval of the informed consent process and form submitted by the investigator. The wording on the informed consent form must contain all required elements and must meet all other requirements as described in this policy.

F. When UT Southwestern is the prime awardee for a clinical trials 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 a publicly available Federal website after the clinical trial is closed to recruitment, and no later than 60 days after the last study visit by any subject, as required by the protocol.

G. The investigator may use a short form if approved by the IRB in accord with applicable federal requirements (see 3.4 INFORMED CONSENT OF SUBJECTS WITH LIMITED ENGLISH PROFICIENCY POLICY AND PROCEDURE).

H. The IRB may determine that monitoring of the informed consent or assent process is necessary in accordance with 2.2. CONTINUING REVIEW OF RESEARCH.

II. SCOPE

A. This policy and procedure applies to the process, documentation, required elements and approval of informed consent in human subjects' research.

III. PROCEDURES FOR POLICY IMPLEMENTATION

A. General Requirements for the Informed Consent Process

1. The consent process must always:
    a. provide relevant information in language comprehensible to the prospective subject or representative;

b. provide the prospective subject or representative sufficient opportunity to consider whether or not to participate; and

c. minimize the possibility of coercion or undue influence.

2. The investigator must provide the IRB with a recruitment and consent plan which details how the study will ensure that the requirements of this policy are followed.
3. The prospective subject or the LAR 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.
4. 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. (This is not required when conducting broad consent)
5. 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 reasons why one might or might not want to participate. (This is not required when conducting broad consent)
6. No informed consent, whether oral or written, may include exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights.
7. A person knowledgeable about the consent process and the research to be conducted (i.e., a member of the project's research team) must obtain the informed consent.
8. If a member of the study team (other than the investigator) conducts the interview and obtains consent, the investigator should formally delegate this responsibility and the person so delegated must have received appropriate training to perform this activity.
9. The investigator is responsible for ensuring that informed consent is obtained from each research subject or his/her legally authorized representative after the subject or the subject's legally authorized representative has had an adequate opportunity to read the form and before that subject participates in any part of the research study, using the process and form approved by the IRB.

B. Documentation of Informed Consent (Signature Requirements)

1. Unless documentation of informed consent is waived, the informed consent must be appropriately documented in accordance with, and to the extent required by, 45 CFR 46.117 and institutional requirements:

   a. Informed consent is documented by the use of a written consent form approved by the IRB.
   b. A written copy (paper or electronic) must be provided to the person signing the consent.
   c. Informed consent may also be documented by including a visit note describing the consent interview and outcome in the research record

d. *Note:* If the IRB approves a waiver of documentation of consent, the researcher must still document the consent process in the research record.

2. The subject or the subject's legally authorized representative and the person providing the information to the subject sign (including in an electronic format), time and date the informed consent document at the time of consent. Only study team members authorized (in the IRB approved application) to obtain informed consent should sign as the person obtaining consent. The IRB may waive the requirement to obtain time and/or date if this is not possible within a given consent process.
3. The person authorized by the investigator to obtain the informed consent signs, times and dates the form and provides a copy of the informed consent form to the subject or the subject's legally authorized representative (as applicable).
4. The PI may request approval by the IRB to document the informed consent of the subject by receiving the signed and dated informed consent document from the subject by facsimile, email, mail or other means.
5. The PI is responsible for keeping the original signed informed consent form and, in accord with the requirements specified in the UT Southwestern Policy on Record Retention and the study procedures as approved by the IRB.

C. Screening, Recruiting, and Determining Eligibility

1. The UT Southwestern 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 the informed consent of the prospective subject or the subject's legally authorized representative, if either of the following conditions are met [45 CFR §46.116(g)]:
   a. The investigator will obtain information through oral or written communication with the prospective subject or legally authorized representative, or
   b. The investigator will obtain identifiable private information or identifiable biospecimens by accessing records or stored identifiable biospecimens.

D. Broad Consent

1. Broad consent for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens (collected for either research studies other than the proposed research or nonresearch purposes) is permitted under the revised Common Rule. Broad consent is not currently recognized in FDA regulation or guidance.
2. The UT Southwestern IRB may limit or constrain the use of broad consent as appropriate. Any determination where broad consent is not allowed or limited will be communicated as per 8.2 REPORTING POLICY AND PROCEDURE.
3. When obtaining broad consent, the general requirements for informed consent described in Section 8.1 apply except as noted.

E. Required Elements of Informed Consent

1. The UT Southwestern IRB provides consent form templates available for download on the IRB website. Investigators should use these templates as a guide to create study specific consent forms. The consent templates contain the nine required elements (as applicable), the nine additional elements of informed consent (as applicable), and any

additional institutional requirements for UT Southwestern research involving human subjects.

2. Federally required elements of Informed Consent. At a minimum, the proposed consent process and form include the name of the study, the name of the principal investigator and the following eight federally required elements and additional elements where appropriate:

    a. *Research statement:* a statement that the study involves research, an explanation of the purpose of the research, an explanation of the expected duration of participation, a description of the procedures involved, and identification of any procedures which are experimental. Informed consent documents should also identify any procedures that are done for research purposes.

    b. *Reasonably Foreseeable Risks or Discomforts:* a statement that describes any reasonably foreseeable risks or discomforts associated with the research, an estimate of the severity of the harms or discomforts.

    c. *Reasonably Expected Benefits to Subjects or Others:* a statement that describes any benefits to subjects or others that may be reasonably expected from the research or no benefit, if this is applicable. Payment for participation in a research project is not considered a benefit.

    d. *Appropriate Alternatives:* a statement that describes with enough detail any alternative procedures or course of treatment that may be advantageous to the subject, if this is applicable.

    e. *Extent of Confidentiality:* a statement that describes the extent to which confidentiality of records identifying the subject will be maintained or not maintained (e.g., law requires reporting child abuse, etc.), describes how the research team will protect subjects' private records during and after the conclusion of proposed research studies. Any research that is subject to audit or inspection must identify those entities that will have access to the subject's record (e.g., FDA, National Institutes of Health (NIH), UT Southwestern, sponsors, or contract research organizations).

    f. *Compensation or Treatment for Injury:* for studies with greater than minimal risk, a statement containing an explanation of: any compensation and an explanation of any medical treatments available if injury occurs or where further information may be obtained. The informed consent template contains standard statements in accordance with UT Southwestern policy.

    g. *Contact Information:* a statement that describes contact information details, including telephone numbers, and whom to contact for the following situations:

        i. questions about the research study (e.g., investigator and/or other team members),

ii. concerns about the research study or questions about the subjects' rights (e.g., the Participant Advocate),

iii. complaints, comments/suggestions, or concerns (e.g., the HRPP Director or HRPPD), and

iv. in the event of a research-related injury (depending on the nature of the research, the PI or a physician on the research team).

h. *Voluntary Participation Statement:* a clear statement that: participation in the research is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

i. *Future Research:* One of the following statements about any research that involves the collection of identifiable private information or identifiable biospecimens [45 CFR §46.116(b)(9)]:

i. A statement that identifiers might be removed from the identifiable private information or identifiable biospecimens 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 the legally authorized representative, 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.

3. <u>Additional (Federal) Elements where appropriate:</u> The IRB determines whether the additional elements are necessary (i.e., when the element(s) does not apply given the nature of the research or the proposed procedures (e.g., subjects will not be paid for participation):

a. *Unforeseeable risks to subjects, embryos, or fetuses:* a statement warning subjects that some risks are currently not known or foreseeable should be included when applicable (e.g., an early human study where very limited information related to risks);

b. *Investigator-initiated termination of participation:* a statement that describes the instances an investigator may terminate a subject's participation (e.g., subject non-compliance, subject not benefiting from research, etc.);

c. *Additional costs:* a statement that describes any additional costs a subject may encounter such as: health-related costs, etc.;

d. *Early withdrawal/procedures for termination:* a statement that describes a subject's right to withdraw from research and any procedures that may be necessary after an early withdrawal for subject's safety, and any possible harms that may result if the recommended withdrawal procedures are not followed (e.g., tapering a drug);

e. *Significant new findings:* a statement that subjects will be told of any new findings which may affect willingness to continue in the research;

f. *Approximate number of subjects:* a statement that explains the approximate number of subjects to be enrolled in the study;

g. *Use of biospecimens for commercial use:* 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;

h. *Return of clinically relevant research results*: A statement regarding whether clinically relevant research results, including individual research results, will be disclosed to subjects, and if so, under what conditions;

i. *Whole genome sequencing:* 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)

4. UT Southwestern additional elements where appropriate:

a. *Disposition of subject's biologic specimens:* a statement of what will be done with any biologic specimens collected during the study (e.g., further DNA testing, cell lines, development of future commercially valuable products);

b. *Payment:* a statement which includes all information concerning the amount and schedule of payment for participation.

c. *Conflict of Interest:* The IRB determines whether disclosure of an investigator's conflict of interest is warranted in the informed consent process and document (See 5.3 FINANCIAL CONFLICT OF INTEREST MANAGEMENT);

d. *Studies of investigational drugs, devices, or biologics:* inform the subject that the study includes evaluation of both safety and effectiveness of the test article and state the test article is investigational, and, if applicable, not approved by the FDA;

e. *The process of dose escalation*; include description of how dose will be adjusted;

f. *Reproductive Risks:* risk for an unborn child, a person's ability to procreate or ability to conceive or carry a child. Suggested wording in the consent form template may be revised to meet the needs of the study;

g. *Vulnerable populations or sensitive issues,* the investigator addresses additional regulatory and/or institutional requirements. The investigator may consult the HRPPD staff for guidance. The vulnerable populations and sensitive issues include, but are not limited to:

- Research involving children (e.g., what information may be shared/provided to parents);
- Research involving decisionally impaired subjects;
- Research involving HIV screening and/or AIDS research (e.g., mandatory reporting responsibilities);

- Research involving DNA Banking, Genetic Research or Gene Therapy;
- Research activities directed toward pregnant women;
- Research involving prisoners.
- Illiterate subjects

  1. The PI may obtain consent from an individual who is unable to read and/or write using the IRB approved consent document. A Short Form consent document is not appropriate unless document is available only in a language the individual does not understand.

  2. If the subject is unable to read but able to sign their name or "make their mark," the investigator must read the entire consent document verbally to them while a witness follows along to ensure information is being presented accurately. If the subject agrees to participate in the study, they must sign their name or "make their mark". The witness must write a note on the consent form that they were present during the entire consent process, that the entire consent form was read to the subject, and that the subject willing agreed to participate in the study.

  3. If the subject is unable to write or "make their mark," a witness must be present during the entire consent process. The witness must write a note on the consent form that they were present during the entire consent process, the subject was unable to sign the consent form, the subject willing agreed to participate in the study, and the method used to communicate their decision (e.g. nodding head, verbal agreement, etc.).

F. Elements of Broad Consent

1. The following elements of broad consent [45 CFR §46.116(d)] shall be provided to each subject or the subject's LAR:
   a. A description of any reasonably foreseeable risks or discomforts to the subject;
   b. A description of any benefits to the subject or to others which may reasonably be expected from the research;
   c. A statement describing the extent, if any, to which confidentiality of records identifying the subject must be maintained;
   d. 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;
   e. For research involving biospecimens, 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;
   f. 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);

g. A general description of the types of research that may be conducted with the identifiable private information or identifiable biospecimens. This description must include sufficient information such that a reasonable person would expect that the broad consent would permit the types of research conducted;
h. A description of the identifiable private information or identifiable biospecimens that might be used in research, whether sharing of identifiable private information or identifiable biospecimens might occur, and the types of institutions or researchers that might conduct research with the identifiable private information or identifiable biospecimens;
i. A description of the period of time that the identifiable private information or identifiable biospecimens may be stored and maintained (which period of time could be indefinite), and a description of the period of time that the identifiable private information or identifiable biospecimens may be used for research purposes (which period of time could be indefinite);
j. Unless the subject or legally authorized representative will be provided details about specific research studies, a statement that they will not be informed of the details of any specific research studies that might be conducted using the subject's identifiable private information or identifiable biospecimens, including the purposes of the research, and that they might have chosen not to consent to some of those specific research studies;
k. Unless it is known that clinically relevant research results, including individual research results, will be disclosed to the subject in all circumstances, a statement that such results may not be disclosed to the subject; and
l. An explanation of whom to contact for answers to questions about the subject's rights and about storage and use of the subject's identifiable private information or identifiable biospecimens, and whom to contact in the event of a research-related harm.

2. Investigators must include information regarding the circumstances under which broad consent will be obtained, the proposal for tracking of responses, and the proposed consent form(s) (or oral script if a waiver of documentation of consent is sought) and any other consent materials (e.g., information sheet, audiovisual materials, etc.) in their submission to the IRB. The UT Southwestern IRB will review the information provided with the aid of a checklist to ensure that all requirements are satisfied. The outcome of the IRB's review will be communicated to the investigator in writing following the procedures described in 8.2 REPORTING POLICY AND PROCEDURE.
3. When investigators propose research involving the use of identifiable private information and/or identifiable biospecimens research for which broad consent was obtained, the investigators must include documentation of the IRB approval for the storage or maintenance of the information or specimens and a copy of the consent form and/or other materials. The UT Southwestern IRB will review the information provided with the aid of a checklist to ensure that all requirements are satisfied. The outcome of the IRB's review will be communicated to the investigator in writing following the procedures described in 8.2 REPORTING POLICY AND PROCEDURE.
4.

G. Submission and Approval of Informed Consent (Process and Document)

1. Submission by the PI

    a. The PI submits a description of the consent procedure. The IRB application includes information about the location of the consent interview, the individuals from the research team who will be participating in the informed consent process or individuals who are authorized to obtain informed consent on behalf of the PI.

    b. In addition to the written form with the IRB application prior to initiation of research. The exceptions to this include situations such as:

        i. exempt research proposals (although informed consent(s) may be used- See Exempt Research Policy and Procedure), and

        ii. research that include a request for waiver of informed consent or waiver of documentation of informed consent (See 3.3 INFORMED CONSENT WAIVERS AND ALTERATIONS).

2. Review by the IRB

    a. The IRB is responsible for reviewing the proposed informed consent process and document to ensure that all applicable federal and UT Southwestern requirements are met.

    b. The UTSW IRB will consider the location of the consent interview, the timing of the consent interview, the individual(s) who will be obtaining consent (e.g., the investigator, collaborator, or qualified designee), and any other appropriate elements in determining the appropriateness of the consent process.

    c. When the timing, location, or status of the individuals participating in the proposed consent process may impair the potential participant's understanding of the research, the IRB will require an alternative process.

    d. The IRB assesses the PI's description of the informed consent process to ensure that the process meets the following general requirements of informed consent:

        i. consent be obtained from the subject or subject's legally authorized representative;

        ii. the process protects privacy;

        iii. be in language understandable to the subject;

        iv. be obtained under circumstances that provide the subject with the opportunity to consider whether or not to participate, and that minimize coercive influences;

        v. does not include language through which the subject is made to waive his/her legal rights or releases the investigator, sponsor, or institution from liability for negligence.

e. NIH-sponsored multicenter clinical trial must include a copy of the NIH-approved sample informed consent document in the IRB application. The investigator must justify in writing any deletion or substantive modification of information concerning risks or alternative procedures contained in the sample informed consent document, and the IRB must approve these deletions or modifications. For trials sponsored by the National Cancer Institute, investigators must forward copies of such IRB-approved changes, with their justifications to the appropriate Cooperative Group headquarters;

f. Once the IRB approves the study or modification, the HRPPD staff affixes an approval stamp to the approved informed consent document. Investigators may only enroll subjects using the most currently approved informed consent/assent forms unless the IRB grants a waiver from the requirement for informed consent or documentation. If the consent form is modified during the protocol approval period, the form will be revised to reflect the approval date of the modification rather than the date of the approved protocol.

H. Electronic Consent (eConsent)

1. Unless the IRB waives the requirement for the investigator to obtain a signed consent or grants a waiver of documentation of consent as described above, the standard expectation is that a signature will be handwritten using a permanent medium (i.e. ink pen) by the subject or subject's LAR. However, agreement to participate in the research study can be documented electronically.

2. Investigators should not obtain consent electronically unless this has been included in the consent plan provided to the IRB.

3. The IRB makes the following considerations regarding the electronic documentation of informed consent. The mechanism used to obtain consent should:

   a. Ensure safeguards of the protection of privacy and confidentiality;

   b. Have the ability to display or use most current version of the IRB approved consent form;

   c. Have the ability to re-consent subjects who are already enrolled in the research study (if applicable);

   d. Have a mechanism for the subjects or subjects LAR to document willingness to participate in the research study, if applicable (i.e. checkbox, capture of signature by mouse or finger pad);

   e. Allow the subject to print or download and save a copy of the consent form or updated consent form.

   f. Provide a method to ensure that the person signing the informed consent is the subject (or the subject's legally authorized representative) who will be participating in the research study, if applicable based on the risk level of the study.

I. Participant Withdrawal

1. When a participant withdraws from a study, the data collected on the participant to the point of withdrawal remains part of the study database and may not be removed. The consent document cannot give the participant the option of having data removed.
2. A researcher may ask a participant who is withdrawing whether the participant wishes to provide continued follow-up and further data collection subsequent to their withdrawal from the interventional portion of the study. Under this circumstance, the discussion with the participant distinguishes between study-related interventions and continued follow-up of associated clinical outcome information, such as medical course or laboratory results obtained through non-invasive chart review, and address the maintenance of privacy and confidentiality of the participant's information.
3. The researcher must obtain the participant's consent for this limited participation in the study (assuming such a situation was not described in the original consent document). The PI may submit:
    a. A request for a single subject exception (using the Reportable Event submission process)
    b. Modification and follow-up specific consent document
    c. Modification and revised informed consent.
    d. The IRB must approve the single subject exception or modification before the activity commences. (See 2.3 MODIFICATIONS TO RESEARCH).
4. If a participant withdraws from the interventional portion of a study and does not consent to continued follow-up of associated clinical outcome information, the researcher must not access for purposes related to the study the participant's medical record or other confidential records requiring the participant's consent. However, a researcher may review study data related to the participant collected prior to the participant's withdrawal from the study, and may consult public records, such as those establishing survival status.

J. Posting of Consent Forms for Federally-Funded Clinical Trials

1. For federally-funded clinical trials where UTSW is the prime awardee, the UTSW PI bears the responsibility of ensuring the requirement for posting of the consent form is met.
2. The consent form must be posted on a publicly available website approved for such posting. Per OHRP guidance, two publicly available federal websites have been identified that will satisfy the consent form posting requirement. These include:
    a. Clinicaltrials.gov (Note: if a study has been registered on CT.gov, the consent form must be posted to CT.gov)
    b. A docket folder on Regulations.gov
3. The UTSW PI is responsible for ensuring that only an IRB-approved consent document used to enroll a participant during the conduct of the clinical trial will be posted.

4. Any requests to redact certain information prior to posting must be submitted to the Federal department or agency supporting the clinical trial. Only the Federal agency supporting the clinical trial may permit or require redactions to the information posted.
5. Any requests for an exception to the requirement to post a consent document must be submitted to the Federal department or agency supporting the clinical trial.

IV. DEFINITIONS

SEE GLOSSARY OF HUMAN RESEARCH TERMS

V. REFERENCES

Resource
21 CFR 50 – PROTECTION OF HUMAN SUBJECTS
45 CFR 46 – PROTECTION OF HUMAN SUBJECTS
45 CFR 164 – SECURITY AND PRIVACY (HIPAA PRIVACY RULE)
21 CFR 56 – INSTITUTIONAL REVIEW BOARDS

VI. REVISION AND REVIEW HISTORY

Revision Date	Author	Description
March 2022	HRPP	Updated policy to remove requirement for the use of stamped consent form to enroll subjects.
November 2021	HRPP	Updated policy to include requirements for posting consent documents for federally-funded clinical trials.
June 2021	HRPP	Separated policy from P&P manual. Updated references to AVPHRA and IRB Director. Minor administrative edits.
January 2019	HRPP	Revision to reference 2019 common rule
August 2017	HRPP	New Policy Development
March 2012	IRB Office	IRB Written Procedures