

HUMAN RESEARCH PROTECTION PROGRAM DEPARTMENTAL POLICY AND PROCEDURE

2.5 EXCEPTION FROM INFORMED CONSENT FOR PLANNED EMERGENCY RESEARCH

RESPONSIBLE OFFICE: Human Research Protection Program Department (HRPPD)

EFFECTIVE DATE: June 7, 2021

I. POLICY STATEMENT

- A. *Emergency research* involves the most vulnerable population of study subjects, i.e., a population with no capacity to control what happens to them and no capacity to consent, in a setting where the emergency circumstances require prompt action. There is generally insufficient time and opportunity to locate and obtain consent from each subject's legally authorized representative. In order to protect these vulnerable subjects, the U.S. Food and Drug Administration (FDA) [21 CFR 50.24](#) places additional responsibilities on parties involved with such research, including sponsors, clinical investigators, and Institutional Review Boards (IRBs).
- B. The conduct of planned research in life-threatening emergent situations where obtaining prospective informed consent has been waived, is provided by [21 CFR 50.24](#). The research plan must be approved in advance by FDA and the IRB, and publicly disclosed to the community in which the research will be conducted. The information sheet "[Exception from Informed Consent for Studies Conducted in Emergency Settings: Regulatory Language and Excerpts from Preamble](#)," is a compilation of the wording of [21 CFR 50.24](#) and pertinent portions of the preamble from the October 2, 1996, Federal Register.
- C. In 1996, the U.S. Department of Health and Human Services (HHS) Secretary announced, under [45 CFR 46.101\(i\)](#), a waiver of the applicability of the regulatory requirement for obtaining and documenting informed consent for a strictly limited class of research, that is, research 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. This waiver applies to research involving adults or children, but does not apply to research involving pregnant women, human fetuses, neonates of uncertain viability, nonviable neonates, or prisoners.
- D. Emergency research could be:
1. Subject only to FDA regulations ([21 CFR 50.24](#))
 2. Subject only to HHS regulations ([45 CFR 46.116\(a\)](#) and (b) and [46.408](#))
 3. Subject to both FDA and HHS regulations

II. SCOPE

- A. This policy and procedures applies to all planned emergency research requesting an exception to informed consent.

III. PROCEDURES FOR POLICY IMPLEMENTATION

- A. UT Southwestern IRB reviews proposed emergency research and applies required regulations as needed. Additional information for FDA-regulated emergency research is available at [Exception from Informed Consent Requirements for Emergency Research](#) and [21 CFR 50.24](#). Additional

information for HHS regulated emergency research is available at [Informed Consent Requirements in Emergency Research](#) and [45 CFR 46.101\(i\)](#).

- B. UT Southwestern IRB requires submission of a new study application through the electronic IRB system.
- C. In addition, the investigator is required to submit at least the following information during initial and subsequent IRB reviews:
 - 1. Materials documenting that the criteria for the exception from informed consent requirements for emergency research are met according to FDA [21 CFR 50.24](#) and/or HHS [45 CFR 46](#).
 - 2. The investigator's commitment to attempt to contact the subject's legally authorized representative (LAR) to obtain consent, or provide the subject's family member an opportunity to object (if feasible) prior to administering the test article, within the therapeutic window according to FDA 21 CFR 50.24 and/or HHS 45 CFR 46.
 - 3. The proposed investigational plan, including informed consent procedures and an informed consent document, procedures and information to be used when providing an opportunity for a subject, LAR, or family member to object to a subject's enrollment and/or continued participation in the study according to FDA 21 CFR 50.24 and/or HHS 45 CFR 46.
 - 4. Procedures and information to be used to inform a subject's LAR or family members about the subject's participation in the investigation in the event of a subject's death according to FDA 21 CFR 50.24 and/or HHS 45 CFR 46.
 - 5. Plans for additional protections of the rights and welfare of the subjects, including, at least, plans for community consultation and public disclosure prior to the start of, and following completion of, the research according to FDA [21 CFR 50.24](#) and/or HHS [45 CFR 46](#). Plans for public disclosure following completion of the research.
- D. FDA Regulated Research - Approval of Exception from Informed Consent
 - 1. The IRB must find and document the following, as per 21 CFR 50.24(a):
 - a. The IRB responsible for the review, approval, and continuing review of the clinical investigation described in this section may approve that investigation without requiring prospective informed consent of all research subjects 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:
 - i. 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.
 - ii. Obtaining informed consent is not feasible because:
 - 1. The subjects 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 subjects' LAR is feasible; and

3. There is no reasonable way to identify prospectively the individuals likely to become eligible for participation in the clinical investigation.
- iii. Participation in the research holds out the “prospect of direct benefit” to the subjects because:
 1. Subjects 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 subjects; and
 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.
- iv. The clinical investigation could not practicably be carried out without the waiver.
- v. The proposed investigational plan 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 window rather than proceeding without consent. The investigator will summarize efforts made to contact legally authorized representatives and make this information available to the IRB at the time of continuing review.
- vi. The IRB has reviewed and approved informed consent procedures and an informed consent document consistent with 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.
- b. The IRB is responsible for ensuring the following with regards to informed consent:
 - i. 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 clinical investigation, the details of the investigation and other information contained in the informed consent document.
 - ii. 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.
 - iii. If a legally authorized representative or family member is told about the clinical investigation and the subject’s condition improves, the subject is also to be informed as soon as feasible.
 - iv. If a subject is entered into a clinical investigation with waived consent and the subject dies before a legally authorized representative or family member can be

- contacted, information about the clinical investigation is to be provided to the subject's legally authorized representative or family member, if feasible.
- c. If an IRB determines that it cannot approve a clinical investigation because the investigation does not meet the criteria in the exception or because of other relevant ethical concerns, the IRB must document its findings and provide these findings promptly (no longer than within 30 days) in writing to the clinical investigator and to the sponsor of the clinical investigation.
- E. IRB Approval of Additional Protections
1. For this step, the IRB must find and document the following, as per 21CFR50.24(a):
 - a. Additional protections of the rights and welfare of the participants 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 clinical investigation will be conducted and from which the subjects will be drawn;
 - ii. 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;
 - iii. 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;
 - iv. Establishment of an independent data monitoring committee to exercise oversight of the clinical investigation; 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 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.
- F. IRB review of research not subject to FDA regulations according to the waiver of applicability of the requirement in 45CFR46 to obtain and document informed consent
- a. This provision in emergency setting research is seldom used at UT Southwestern. Although there are many similarities with EFIC requirements for FDA regulated research, the OHRP guidance document should be consulted for further information when the research is not subject to FDA regulations under 21 CFR 50 (The 1996 OPRR (now, OHRP) Report titled, "Informed Consent Requirements in Emergency Research.").

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
HRPP GUIDANCE - GUIDANCE ON PLANNED EMERGENCY RESEARCH, EXCEPTION FROM INFORMED CONSENT, AND WAIVER OF APPLICABILITY OF INFORMED CONSENT
FDA INFORMATION SHEET: EXCEPTION FROM INFORMED CONSENT FOR STUDIES CONDUCTED IN EMERGENCY SETTINGS: REGULATORY LANGUAGE AND EXCERPTS FROM PREAMBLE – INFORMATION SHEET
FDA GUIDANCE FOR INSTITUTIONAL REVIEW BOARDS, CLINICAL INVESTIGATORS, AND SPONSORS - EXCEPTION FROM INFORMED CONSENT REQUIREMENTS FOR EMERGENCY RESEARCH
OHRP REPORT: INFORMED CONSENT REQUIREMENTS IN EMERGENCY RESEARCH

VI. REVISION AND REVIEW HISTORY

Revision Date	Author	Description
June 2021	HRPP	Separated policy from P&P manual. Updated references to AVPHRA and IRB Director. Minor administrative edits.
August 2017	HRPP	New Policy Development
March 2012	IRB Office	IRB Written Procedures