Changes to the U.S. “Common Rule” Federal Policy for the Protection of Human Subjects

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Why Revise the Common Rule?

• Improve research subject protections
• Modernize the requirements
• Reduce administrative burdens
Brief Overview of Rulemaking Process

ANPRM ➔ NPRM ➔ Final Rule ➔ Implementation

- ANPRM: July 2011
- NPRM: September 2015
- Final Rule: January 2017
- Implementation: January 2018
- Public Comment
- Public Comment
- Public Comment
- January 2017
- January 2018 (Single IRB)

Implementation Dates

- Before January 19, 2018, all activities must comply with the pre-2018 rule
  - Note that institutions can implement revised Common Rule provisions consistent with the pre-2018 rule
- All studies started on or after January 19, 2018 must comply with the revised Common Rule
- The single IRB review requirement in multi-institutional studies goes into effect January 20, 2020
General Implementation of the Transition Provision

- Pre-2018 Rule applies to all studies
  - Studies initially approved before January 19, 2018:
    - Presumption: Pre-2018 rule applies
    - Institutions may elect to apply the revised Common Rule. IRB must document this in writing.
  - Studies initially approved on or after January 19, 2018: The revised Common Rule applies

January 19, 2018

Changes

- Definition of “research”
- Informed consent
- The benign behavioral intervention exemption
- Secondary research provisions and broad consent
- Expedited review
- Continuing review
- Single IRB review
- Changing the Approval Criterion for Equitable Selection of Subjects
- Other changes
Definition of “Research”: Activities Deemed Not To Be Research

- Scholarly and journalistic activities focused on specific individuals
- Public health surveillance activities by a public health authority that is responsible for public health matters as part of its official mandate.
- Collection of information for criminal justice purposes
- Operational activities for national security purposes

§_.102(l)

The Informed Consent Standard

The revised Common Rule explicitly establishes a standard: to provide the information that a reasonable person would want to have in order to make an informed decision about whether to participate

§_.116(a)(4)
The Presentation of Information in Informed Consent

- Must begin with a concise and focused presentation of key information regarding why one might or might not want to participate, and be organized in a way that facilitates comprehension
- Must be presented in sufficient detail, and be organized and presented in a way that facilitates subject’s understanding of reasons why one might or might not want to participate

§.116(a)(5)(i-ii)

New Elements of Informed Consent

- Notice about possible future research use of information or biospecimens stripped of identifiers. (Basic element) (§.116(b)(9))
- Notice about sharing/not sharing possible commercial profit (§.116(c)(7)) (Additional element)
- Notice about possible return of clinically relevant research results (§.116(c)(8) (Additional element)
- Notice about whether research might include whole genome sequencing (§.116(c)(9)) (Additional element)
Posting of Consent Forms for Clinical Trials

For clinical trials supported by federal funding, one IRB-approved consent form used to enroll participants must be posted on a publicly available Federal website to be designated

§ 116(h)

The Benign Behavioral Intervention Exemption

New exemption for research involving benign behavioral interventions with adults who prospectively agree when information collection is limited to verbal or written responses (including data entry) or audiovisual recording, and:

- Information recorded cannot be readily linked back to subjects, or
- Any information disclosure would not place subjects at risk of harm, or
- Identifiable information recorded, and an IRB conducts a limited IRB review for privacy and confidentiality protection under § 111(a)(7)

Authorized Deception is permissible.

§ 104(d)(3)
What are “Benign Behavioral Interventions”?

“...are brief in duration, harmless, painless, not physically invasive, not likely to have a significant adverse lasting impact on the subjects, and the investigator has no reason to think the subjects will find the interventions offensive or embarrassing”

§._104(d)(3)

What is Secondary Research?

Research use of information or biospecimens collected for either research studies other than the proposed research, or for nonresearch purposes (e.g., clinical care, public health, education, criminal justice, business, government records)
Secondary Research Takes Various Forms, prompting different regulatory requirements...

- Research that does not satisfy the definition of a human subject
- Research that is exempt from some or all of the requirements of the revised Common Rule
- Research that complies with the full requirements of the revised Common Rule

Secondary Research that Does Not Satisfy the Definition of “Human Subject”

Human subject - a living individual about whom an investigator conducting research

(1) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or

(2) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens

§_.102(e)
Exempt Secondary Research

Secondary research using identifiable private information or identifiable biospecimens is exempt if ...

- The identifiable private information or identifiable biospecimens are publicly available; or
- Information, which may include information about biospecimens, is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained directly or through identifiers linked to the subjects, and the investigator does not contact the subjects, and the investigator will not re-identify the subjects.

(§_.104(d)(4)(i-ii))

Exempt Secondary Research (continued)

Secondary research uses of identifiable private information or identifiable biospecimens, if ...

- The research involves only information collection and analysis whose use by the investigator is regulated as part of “health care operations” or “research” under the Health Insurance Portability and Accountability Act (HIPAA)
- Federally conducted research using government-generated or government-collected information collected for nonresearch purposes and protected under one or more of three federal statutes.

§_.104(d)(4)(iii-iv)
Broad Consent

• Broad Consent can be used as a means of enabling subjects to agree to a range of possible secondary research studies in the future using the subjects’ identifiable information or biospecimens.
• Broad Consent may be used for secondary research studies meeting the full range of requirements under the rule, or to qualify certain secondary research activities for an exemption.
• If Broad Consent is used, all of the information described in §_.116(d) must be included.

Distinct Elements of Broad Consent

• A general description of the types of research that may be done, with sufficient information that a reasonable person would expect the consent would allow
• The identifiable materials that might be used, whether there might be sharing, and with what types of institutions or researchers
• The period of time the materials may be stored, maintained, or used
• Who to contact about subject rights, storage and use of materials, and research-related harm

§_.116(d)(2-4),(7)
Additional Elements of Broad Consent When Appropriate

• A statement that the subject will not be informed of specific studies, and that the subject might not have chosen to consent to some of those studies (§.116(d)(5))
• A statement that clinical results will not be returned to the subject (§.116(d)(6))

Implications of Broad Consent

• Broad Consent allows subjects a means to exercise their autonomy in deciding whether or not to allow secondary research use.
• The use of Broad Consent will involve some mechanism for tracking the affected information or biospecimens.
• If an individual was asked to provide broad consent and refused to consent, an IRB cannot waive consent to a secondary research study.

§.116(e)&(f)
Exemption for Storage and Maintenance of Identifiable Information or Identifiable Biospecimens for Secondary Research with Broad Consent

- Broad Consent as provided in §.116(d)
- Limited IRB review of the broad consent process and form
- Limited IRB review of privacy and confidentiality considerations if there are changes to the storage and maintenance.

§.104(d)(7)

Exemption for Secondary Research Use of Identifiable Information or Biospecimens with Broad Consent

- Limited IRB review of whether the research falls under the broad consent
- Limited IRB review of the privacy and confidentiality safeguards
- The investigator does not include returning individual research results to subjects as part of the study plan except when required by law
- Documentation or waiver of documentation of consent provisions occurred

§.104(d)(8)
Secondary Research that Complies with the Full Set of Requirements of the Revised Common Rule

Secondary Research may be carried out with IRB review and approval and Informed Consent
Secondary Research may be carried out with IRB review and approval and waiver or alteration of Informed Consent

The Revised Common Rule includes a new Criterion for Waiver of Informed Consent which serves to encourage secondary research without identifiers

“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”

§ 116(f)(3)
What are the Secondary Research Options in the Revised Common Rule?

Secondary research

- Non-identifiable information or biospecimens
  - Not human subject research
  - Publicly available or Recorded in de-identified form

- Identifiable information or biospecimens
  - Research may be exempt if:
    - Covered by HIPAA or Certain government-conducted research
    - Storage of information or biospecimens with broad consent and limited IRB review Exemption 104(d)(7)
    - Secondary Study with limited IRB Review Exemption 104(d)(8)

If research is NOT exempt (IRB REVIEW)

- Waiver of informed consent
- Informed consent per 46.116(a)
- Broad consent per 46.116(d)

Updating and Simplifying Expedited Review

- The Expedited List will be reviewed every 8 years and updated if necessary
- The presumption is that the activities listed are minimal risk, unless the expedited reviewer determines otherwise, which would make the study not expeditable and requires documentation
- Expedited Review is allowed for Limited IRB review

\[ \text{§}_110, \text{§}_109(f) \text{ and } \text{§}_115(a)(8) \]
Eliminating Some Continuing IRB Reviews

In general, no continuing review is required for:

- Research approved by expedited review
- Exempt research requiring limited IRB review
- Research that has completed interventions and only involves:
  - Analyzing data, including analyzing identifiable private information or identifiable biospecimens
  - Accessing follow-up clinical data from clinical care procedures

An IRB can override this default and require continuing review, but this must be documented

\[\text{§}_5.109(f) \text{ and } \text{§}_5.115(a)(3)\]

Requirement for Single IRB Review

- U.S. institutions engaged in cooperative research for the portion of the research conducted in the U.S.
- This requirement does not apply to:
  - Cooperative research for which more than single IRB review is required by law;
  - Whenever any Federal department or agency supporting or conducting the research determines and documents that the use of a single IRB is not appropriate for the particular context.

\[\text{§}_5.114(b)\]
Changing the Approval Criterion for Equitable Selection of Subjects

“Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted. The IRB should be particularly cognizant of the special problems of research that involves a category of subjects who are vulnerable to coercion or undue influence, such as children, prisoners, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons.” §_.111(a)(3)

Other Changes

• Eliminating IRB roster reporting to OHRP
• Eliminating grant application review
• Eliminating the option on the Federalwide Assurance to “check the box” extending regulatory oversight to research not funded by Common Rule agencies
Questions About the Revisions?

• OHRP will be developing resources to explain the revised Common Rule. Check out www.hhs.gov/ohrp

• Submit your questions to OHRP@hhs.gov