



## **IRB Review of Research Subject to the 2018 Common Rule**

### **I. Purpose**

The purpose of this document is to describe the Weill Cornell Medicine Institutional Review Board (WCM IRB) transition plan to the 2018 Common Rule and the management of pre-existing studies. This Standard Operating Procedure (SOP) is an addendum to the WCM Human Research Protections Program (HRPP) Policies and Procedures and describes the variations in requirements and procedures that WCM HRPP/IRB, and investigators, will adhere to for research subject to the 2018 Common Rule that is IRB-approved, or determined exempt, on or after January 21, 2019. This SOP also applies to any studies subject to the pre-2018 version of the Common Rule that WCM decides to transition to comply with the new rule. When the research invokes multiple regulatory frameworks (e.g., Common Rule, FDA, HIPAA), all will be applied following the procedures described in the WCM HRPP SOPs and this addendum. This SOP addendum will remain in effect until such time as the WCM HRPP SOPs has been fully updated to incorporate the 2018 Common Rule.

### **II. Revisions from Previous Version**

None.

### **III. Definitions**

The following definitions will be applied when WCM IRB reviews research subject to the 2018 Common Rule, and for exempt determinations and evaluations regarding whether a proposed activity is human research when the research (or activity) is conducted or supported by a Common Rule agency. Likewise, the definitions will be applied, as applicable, to the conduct of the research, investigator responsibilities, and organizational responsibilities. Some of these definitions are unchanged from the pre-2018 rule but are included here for context.

**Clinical trial** means a research study in which one or more human subjects are prospectively assigned to one or more interventions (which may include placebo or other control) to evaluate the effects of the interventions on biomedical or behavioral health-related outcomes.

**Human subject** means a living individual about whom an investigator (whether professional or student) is conducting research:

- (i) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or
- (ii) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens.

**Intervention** includes both physical procedures by which information or biospecimens are gathered (e.g., venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes.

**Interaction** includes communication or interpersonal contact between investigator and subject.

**Private information** includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information that has been provided for specific purposes by an individual and that the individual can reasonably expect will not be made public (e.g., a medical record).

**Identifiable private information** is private information for which the identity of the subject is or may readily be ascertained by the investigator or associated with the information.

An **identifiable biospecimen** is a biospecimen for which the identity of the subject is or may readily be ascertained by the investigator or associated with the biospecimen.

**Legally authorized representative** means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research. If there is no applicable law addressing this issue, legally authorized representative means an individual recognized by institutional policy as acceptable for providing consent in the nonresearch context on behalf of the prospective subject to the subject's participation in the procedure(s) involved in the research.

**Minimal risk** means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

**Research** means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities. For purposes of this rule, the following activities are deemed not to be research:

- (i) Scholarly and journalistic activities (e.g., oral history, journalism, biography, literary criticism, legal research, and historical scholarship), including the collection and use of information, that focus directly on the specific individuals about whom the information is collected.
- (ii) Public health surveillance activities, including the collection and testing of information or biospecimens, conducted, supported, requested, ordered, required, or authorized by a public health authority. Such activities are limited to those necessary to allow a public health authority to identify, monitor, assess, or investigate potential public health signals, onsets of disease outbreaks, or conditions of public health importance (including trends, signals, risk factors, patterns in diseases, or increases in injuries from using consumer products). Such activities include those associated with providing timely situational awareness and priority setting during the course of an event or crisis that threatens public health (including natural or man-made disasters).
- (iii) Collection and analysis of information, biospecimens, or records by or for a criminal justice agency for activities authorized by law or court order solely for criminal justice or criminal investigative purposes.
- (iv) Authorized operational activities (as determined by each agency) in support of intelligence, homeland security, defense, or other national security missions.

**Written**, or in writing, refers to writing on a tangible medium (e.g., paper) or in an electronic format

#### IV. Policy

##### 1. IRB Composition [§\_\_.107]

The requirements for the composition of the IRB under the 2018 Common Rule vary slightly from the pre-2018 rule. The following excerpt describes the requirements for the composition of the IRB under the 2018 Common Rule:

Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members (professional competence), and the diversity of its members, including race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. The IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments (including policies and resources) and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a category of subjects that is vulnerable to coercion or undue influence, such as children, prisoners, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons, consideration shall be given to the inclusion of one

or more individuals who are knowledgeable about and experienced in working with these categories of subjects.

The IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

The IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

No IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of issues that require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

## 2. *Exempt Determinations and Limited IRB Review*

Determinations regarding whether research subject to the 2018 Common Rule qualifies for exempt status, research requires limited IRB review or a HIPAA determination (i.e., waivers or alterations of the requirement for HIPAA authorization), will be made by the IRB Chair or a Chair-designated member of the IRB (including staff). As with all other research subject to IRB review requirements, when conducting limited IRB review the IRB has the authority to approve, require modifications in (to secure approval), or disapprove all research activities. [§\_\_.109(a)].

Proposed modifications to the aspects of research subject to limited IRB review must be submitted to and approved by the IRB prior to implementation, except when necessary to eliminate apparent immediate hazards to the subject(s), in which case the change must be promptly reported to the IRB (i.e., within 90 days). [§\_\_.108(a)(3)(iii)]

Continuing review is generally not required for research determined to be exempt, even when that research is subject to limited IRB review. However, the IRB may determine that continuing review is required for a particular study subject to limited IRB review, in which case it shall document the reasons for its determination in the IRB record and communicate the requirement to the investigator in the IRB determination letter. [§\_\_.109(f)(ii), §\_\_.115(a)(3)]

### 2.1 *Limitations on Exemptions*

**Children:** Exemption #2(i) and (ii) for research involving survey or interview procedures or observations of public behavior does NOT apply to research in children, except for research involving observations of public behavior when the investigator does not participate in the activities being observed. Exemption #2(iii), where identifiable information is obtained and the IRB conducts a limited IRB review, is NOT applicable to research in children. Exemption #3 does NOT apply to research involving children. [§\_\_.104(b)(3)]

**Prisoners:** Exemptions do not apply EXCEPT for research aimed at involving a broader subject population that only incidentally includes prisoners. [§\_\_.104(b)(2)]

### 2.2 *Exempt Categories* [§\_\_.104(d)]

Unless otherwise required by law or a federal agency or department, research activities in which the only involvement of human subjects will be in one or more of the following categories are exempt from the requirements of the revised Common Rule, except as specified.

**Note:** Other than exempt category 6, these categories do not apply to research that is also FDA-regulated.

1. Research, conducted in established or commonly accepted educational settings, that specifically involves normal educational practices that are not likely to adversely impact students' opportunity to learn required educational content or the assessment of educators who provide instruction. This includes most research on regular and special education instructional strategies, and research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.
2. Research that only includes interactions involving educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior (including visual or auditory recording) if at least one of the following criteria is met:
  - (i) The information obtained 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;
  - (ii) Any disclosure of the human subjects' responses outside the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, educational advancement, or reputation; **or**
  - (iii) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects can readily be ascertained, directly or through identifiers linked to the subjects, and an IRB conducts a limited IRB review to make the determination required by §\_\_.111(a)(7): *"When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data."*
3. Research involving benign behavioral interventions in conjunction with the collection of information from an adult subject through verbal or written responses (including data entry) or audiovisual recording if the subject prospectively agrees to the intervention and information collection and at least one of the following criteria is met:
  - (i) The information obtained 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;
  - (ii) Any disclosure of the human subjects' responses outside the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, educational advancement, or reputation; **or**
  - (iii) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects can readily be ascertained, directly or through identifiers linked to the subjects, and an IRB conducts a limited IRB review to make the determination required by §\_\_.111(a)(7): *"When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data."*

For the purpose of this provision, 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. Provided all such criteria are met, examples of such benign behavioral interventions would include having the subjects play an online game, having them solve puzzles under various noise conditions, or having them decide how to allocate a nominal amount of received cash between themselves and someone else.

If the research involves deceiving the subjects regarding the nature or purposes of the research, this exemption is not applicable unless the subject authorizes the deception through a prospective agreement to participate in research in circumstances in which the subject is informed that he or she will be unaware of or misled regarding the nature or purposes of the research.

4. Secondary research for which consent is not required: Secondary research uses of identifiable private information or identifiable biospecimens, if at least one of the following criteria is met:
  - (i) The identifiable private information or identifiable biospecimens are publicly available;
  - (ii) 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, the investigator does not contact the subjects, and the investigator will not re-identify subjects;
- (iii) The research involves only information collection and analysis involving the investigator's use of identifiable health information when that use is regulated under 45 CFR parts 160 and 164 ['HIPAA'], subparts A and E, for the purposes of "health care operations" or "research" as those terms are defined at 45 CFR 164.501 or for "public health activities and purposes" as described under 45 CFR 164.512(b) ; **or**
  - (iv) The research is conducted by, or on behalf of, a Federal department or agency using government-generated or government-collected information obtained for nonresearch activities, if the research generates identifiable private information that is or will be maintained on information technology that is subject to and in compliance with section 208(b) of the E-Government Act of 2002, 44 U.S.C. 3501 note, if all of the identifiable private information collected, used, or generated as part of the activity will be maintained in systems of records subject to the Privacy Act of 1974, 5 U.S.C. 552a, and, if applicable, the information used in the research was collected subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq.
5. Research and demonstration projects that are conducted or supported by a Federal department or agency, or otherwise subject to the approval of department or agency heads (or the approval of the heads of bureaus or other subordinate agencies that have been delegated authority to conduct the research and demonstration projects), and that are designed to study, evaluate, improve, or otherwise examine public benefit or service programs, including procedures for obtaining benefits or services under those programs, possible changes in or alternatives to those programs or procedures, or possible changes in methods or levels of payment for benefits or services under those programs. Such projects include, but are not limited to, internal studies by Federal employees, and studies under contracts or consulting arrangements, cooperative agreements, or grants. Exempt projects also include waivers of otherwise mandatory requirements using authorities such as sections 1115 and 1115A of the Social Security Act, as amended.
- (i) Each Federal department or agency conducting or supporting the research and demonstration projects must establish, on a publicly accessible Federal website or in such other manner as the department or agency head may determine, a list of the research and demonstration projects that the Federal department or agency conducts or supports under this provision. The research or demonstration project must be published on this list prior to commencing the research involving human subjects.
6. Taste and food quality evaluation and consumer acceptance studies:
- (i) If wholesome foods without additives are consumed, **or**
  - (ii) If a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.
7. **Note:** Exempt categories 7 & 8 always require limited IRB review and are only available when broad consent will be (or has been) obtained. *The WCM IRB is not implementing these categories at this time.*

### 3. Expedited Review

Expedited review of research subject to the 2018 Common Rule will be conducted using the procedures described in the WCM HRPP SOPS with the following variations:

- i. The IRB shall apply the most current list of categories of research published in the Federal Register that may be reviewed using expedited review procedures. [§\_\_.110(a)]
- ii. Research that falls within the list of categories is presumed to be minimal risk unless the IRB determines and documents that the research involves more than minimal risk. [§\_\_.110(b)(1)(i)] If the reviewer

determines that the research involves more than minimal risk, it will be referred for review by the convened IRB. *(When research subject to the 2018 Common Rule is also FDA-regulated, the IRB will continue to comply with 21 CFR 56.110(b) including use of the 1998 list of expedited categories for FDA-regulated clinical investigations and make the determination that the research activities present no more than minimal risk to human subjects.)*

- iii. The limited IRB review that is required for certain exempt research may be conducted using expedited review procedures. [§\_\_.110(b)(1)(iii)]
  - iv. Continuing review of research is not required for research that qualifies for expedited review unless the IRB determines that is required and documents the rationale within the IRB record. [§\_\_.109(f)(1)(i)]
4. *Modifications to IRB-approved Research* [§\_\_.108(3)(iii)]

Investigators must promptly report proposed changes in a research activity to the WCM IRB and must conduct the research activity in accordance with the terms of the IRB approval until any proposed changes have been reviewed and approved by the IRB, except when necessary to eliminate apparent immediate hazards to the subject.

This requirement applies to all research approved by the WCM IRB, including any aspects of exempt research subject to limited IRB review, and research for which continuing review is not required.

The WCM IRB will follow the procedures described in the WCM HRPP SOPS, and any applicable requirements and procedures in this SOP addendum, when reviewing modifications to IRB-approved research subject to the 2018 Common Rule.

5. *Continuing Review* [§\_\_.109(e) and (f)]

The 2018 Common Rule modifies when continuing review is required. Unless WCM IRB determines otherwise, continuing review of research is not required for research subject to the 2018 Common Rule in the following circumstances:

- i. Research eligible for expedited review in accordance with §\_\_.110;
- ii. Research reviewed by the IRB in accordance with limited IRB review;
- iii. Research that has progressed to the point that it involves only one or both of the following, which are part of the IRB-approved study:
  - a. Data analysis, including analysis of identifiable private information or identifiable biospecimens, **or**
  - b. Accessing follow-up clinical data from procedures that subjects would undergo as part of clinical care

Studies approved under expedited category 8b or 9 will require annual continuing review. WCM IRB may determine that continuing review is required for any research protocol that falls within the above criteria. For example, the IRB may determine that continuing review is required when:

- i. Required by other applicable regulations (e.g., FDA);
- ii. Required by the terms of a grant, contract, or other agreement;
- iii. The research involves topics, procedures, or data that may be considered sensitive or controversial;
- iv. The research involves particularly vulnerable subjects or circumstances that increase subjects' vulnerability;
- v. An investigator has minimal experience in research or the research type, topic, or procedures; and/or
- vi. An investigator has a history of noncompliance.

When the WCM IRB determines that continuing review is required for such research, it will document the rationale in the IRB record and communicate the requirement to the investigator in the IRB determination letter.

## 6. Criteria for IRB Approval of Research

The WCM IRB will apply the criteria for IRB approval described in the WCM HRPP SOPS to research subject to the 2018 Common Rule with the following variations:

Within criterion §\_\_.111(a)(3), the text describing vulnerable subjects is replaced with the following:

*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.*

Likewise, within criterion §\_\_.111(b), the description of vulnerable subjects is updated and now reads:

*When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.*

While pregnant women are no longer described as vulnerable within the above criteria, the IRB shall continue to apply Subpart B “Additional Protections for Pregnant Women, Human Fetuses and Neonates” as described in the WCM HRPP SOPS. The 2018 Common Rule does not eliminate or modify Subpart B.

For **exempt research** subject to **limited IRB review**, the following criteria shall be applied: For exempt categories 2(iii) and 3(iii), the IRB may approve the research when it determines that there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

## 7. Informed Consent

When reviewing research subject to the 2018 Common Rule, the WCM IRB will evaluate the provisions for informed consent as described in the WCM HRPP SOPS in addition to the below. Investigators conducting research subject to the 2018 Common Rule must adhere to these requirements.

### 7.1 General Requirements for Informed Consent [§\_\_.116(a)]

In addition to the requirements for obtaining informed consent and the consent process described in the WCM HRPP SOPS, the following specific requirements for consent, whether written or oral, apply to research subject to the 2018 Common Rule (*differences between the 2018 Common Rule and the pre-2018 Common Rule are noted in parenthetical italics*):

- 7.1.1 Before involving a human subject in research, an investigator shall obtain the legally effective informed consent of the subject or the subject’s legally authorized representative (LAR) (*reworded slightly for clarity that consent must be obtained before involving a subject in research*)
- 7.1.2 An investigator shall seek informed consent only under circumstances that provide the prospective subject or the LAR sufficient opportunity to discuss and consider whether or not to participate and that minimize the possibility of coercion or undue influence (*importantly, added “to discuss”; reworded slightly*)
- 7.1.3 The information that is given to the subject or the LAR shall be in language understandable to the subject or the LAR (*slight rewording – added “legally authorized” to “representative”*)
- 7.1.4 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 (*new requirement*)
- 7.1.5 Informed consent must begin with a concise and focused presentation of the key information that is most likely to assist a prospective subject or LAR 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 (*new requirement*)

- 7.1.6 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 LAR's understanding of the reasons why one might or might not want to participate (*new requirement*)
- 7.1.7 No informed consent may include any exculpatory language through which the subject or the LAR is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution, or its agents from liability for negligence. (*reworded slightly, removed "whether oral or written" as this has been elevated to the beginning of the section (applies to all), added "legally authorized" to "representative"*)

## 7.2 Elements of Consent

In addition to the elements of informed consent described in the WCM HRPP SOPS, the following additional elements are required for research subject to the 2018 Common Rule.

### 7.2.1 Basic Elements [§\_\_.116(b)]

- i. One of the following statements about any research that involves the collection of identifiable private information or identifiable biospecimens:
  - a. 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
  - b. 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.

### 7.2.2 Additional Elements (*must be included when appropriate*) [§\_\_.116(c)]

- i. 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;
- ii. A statement regarding whether clinically relevant research results, including individual research results, will be disclosed to subjects, and if so, under what conditions;
- iii. 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).

## 7.3 Broad Consent [§\_\_.116(d)]

*The WCM IRB is not implementing Broad Consent at this time.*

## 7.4 Waiver or Alteration of Informed Consent [§\_\_.116(e) and (f)]

When reviewing research subject to the 2018 Common Rule, the WCM IRB will evaluate requests for waivers or alterations of informed consent in accordance with the requirements and criteria specified in the revised rule and summarized below. The IRB's determination will be documented in the IRB record and communicated to the investigator as described in the WCM HRPP SOPS.

In order to approve a request from an investigator to waive the requirement for informed consent, or to omit or alter one or more basic or additional element of consent (an "Alteration"), under this provision the WCM IRB must determine and document that the below criteria are satisfied.

- a. The research involves no more than minimal risk to the subjects;



- b. The research could not practicably be carried out without the requested waiver or alteration;
- c. 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;
- d. The waiver or alteration will not adversely affect the rights and welfare of the subjects; and
- e. Whenever appropriate, the subjects or LARs will be provided with additional pertinent information after participation.

Investigators may be asked to provide justification, or additional information or documentation, to support that the above criteria are satisfied.

#### 7.5 *Waiver or Alteration of Consent in Research Involving Public Benefit and Service Programs*

In order to approve a request from an investigator to waive the requirement for informed consent, or to omit or alter one or more basic or additional element of consent (an "Alteration"), under this provision the WCM IRB must determine and document that the below criteria are satisfied.

1. The research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine:
  - a. Public benefit or service programs;
  - b. Procedures for obtaining benefits or services under those programs;
  - c. Possible changes in or alternatives to those programs or procedures; or
  - d. Possible changes in methods or levels of payment for benefits or services under those programs; **and**
2. The research could not practicably be carried out without the waiver or alteration.

#### 7.6 *Screening, Recruiting, or Determining Eligibility* [§\_\_.116(g)]

Pursuant to the revised rule, the WCM IRB may approve a research proposal in which an investigator will obtain information or biospecimens for screening, recruiting, or determining eligibility purposes without the informed consent of the prospective subject or the subject's LAR if either of the following conditions is met:

1. The investigator will obtain information through oral or written communication with the prospective subject or LAR, or
2. The investigator will obtain identifiable private information or identifiable biospecimens by accessing records or stored identifiable biospecimens.

When research is subject to the 2018 Common Rule, and the above conditions are met, investigators do not have to request waivers of consent for the purposes of screening, recruiting, or determining eligibility but do have to describe the activities in the application or protocol submitted to the IRB. The above does not negate the requirements of other rules, such as HIPAA, when applicable. It also does not negate the requirement to obtain consent, or a waiver of consent, before involving a subject (including the use of their identifiable private information or biospecimens) in other research activities.

#### 7.7 *Documentation of Consent* [§\_\_.117]

The 2018 Common Rule modifies the requirements for documentation of consent as described below. When reviewing research subject to the 2018 Common Rule, the WCM IRB will apply the requirements summarized below.

Unless the requirement for documentation of consent is waived by the IRB, informed consent must be documented by the use of written informed consent form (ICF) approved by the IRB and signed (including in an electronic format) by the subject or the subject's LAR. A written copy must be given to

the person signing the ICF.

The ICF may be either of the following:

1. A written consent document that embodies the basic and required additional elements of informed consent. The investigator shall give either the subject or the subject's LAR adequate opportunity to read the informed consent form before it is signed; alternatively, this form may be read to the subject or the subject's legally authorized representative; or
2. A short form written consent document stating that the elements of informed consent have been presented orally to the subject or the subject's LAR and that the key information required by §\_\_.116(a)(5)(i) was presented first to the subject, before other information, if any, was provided. When this method is used:
  - a. The oral presentation and the short form written document should be in a language understandable to the subject; and
  - b. There must be a witness to the oral presentation; and
  - c. The IRB must approve a written summary of what is to be said to the subject (the approved full consent document may serve as this summary); and
  - d. The short form document is signed by the subject;
  - e. The witness must sign both the short form and a copy of the summary; and
  - f. The person actually obtaining consent must sign a copy of the summary; **and**
  - g. A copy of the summary must be given to the subject or representative, in addition to a copy of the short form.

#### 7.8 *Waiver of Documentation of Informed Consent* [§\_\_.117(c)]

The 2018 Common Rule adds a third condition under which an IRB may waive the requirement for an investigator to obtain a signed informed consent form. When reviewing research subject to the 2018 Common Rule, in addition to the criteria described in the WCM HRPP SOPS, the WCM IRB may also approve a request for a waiver of documentation of consent if it finds that:

The subjects or LARs are members of a distinct cultural group or community in which signing forms is not the norm, that the research presents no more than minimal risk of harm to subjects, and provided there is an appropriate alternative mechanism for documenting that informed consent was obtained.

The IRB's determination will be documented in the IRB record and communicated to the investigator as described in the WCM HRPP SOPS.

#### 8. *IRB Review of Grant Applications*

The 2018 Common Rule removes the requirement that the IRB review the Federal grant application or proposal for consistency with the protocol submitted to the IRB. Unless required by the Federal department or agency conducting or supporting the research, or by foreign, state, or local laws or regulations (including tribal law), the WCM IRB will no longer require submission of, or conduct review of, Federal grant applications or proposals when research is subject to the 2018 Common Rule.

#### 9. *Posting of Clinical Trial Consent Forms* [§\_\_.116(h)]

The revised Common Rule includes a requirement for the posting of one IRB-approved consent form to a publicly available Federal website for each clinical trial conducted or supported by a Common Rule department or agency after the clinical trial is closed to recruitment, and no later than 60 days after the last study visit by any subject. This requirement may be satisfied by either the awardee or the Federal department or agency. If the Federal department or agency supporting or conducting the clinical trial determines that certain information should not be made publicly available on a Federal website (e.g., confidential commercial information), the department or agency may permit or require redactions to the information posted.

At this time, two publicly available federal websites that will satisfy the consent form posting requirement have been identified by OHRP: [ClinicalTrials.gov](https://clinicaltrials.gov) and a docket folder on [Regulations.gov](https://www.regulations.gov) (Docket ID: [HHS-OPHS-2018-0021](https://www.regulations.gov/document/HHS-OPHS-2018-0021)). If the Federal department or agency supporting the clinical trial determines that certain information should not be made publicly available (e.g. confidential commercial information), such Federal department or agency may permit or require redactions to the information posted. At WCM, the informed consent form must be posted on [ClinicalTrials.gov](https://clinicaltrials.gov) 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. To facilitate this process, a WCM [ClinicalTrials.gov](https://clinicaltrials.gov) administrator will send periodic notices to investigators whose clinical trials (supported by a Common Rule agency) have closed to recruitment, as indicated in OnCore. These periodic notices will act as reminders for the investigator to upload the informed consent document to [ClinicalTrials.gov](https://clinicaltrials.gov) no later than 60 days after the last study visit by any subject, as required by the protocol. Questions about this process should be directed to the Joint Clinical Trials Office.

#### 10. IRB Records [§\_\_.115]

The revised Common Rule includes additional requirements for IRB records. When WCM is engaged in human research subject to the revised Common Rule the following records will be maintained in addition to those described in the WCM HRPP SOPS.

- i. Institutional Records –
  - a. For nonexempt research involving human subjects covered by the Common Rule (or exempt research for which limited IRB review takes place) that takes place at an institution in which IRB oversight is conducted by an IRB that is not operated by the institution, the institution and the organization operating the IRB shall document the institution's reliance on the IRB for oversight of the research and the responsibilities that each entity will undertake to ensure compliance with the requirements of this policy (e.g., in a written agreement between the institution and the IRB, by implementation of an institution-wide policy directive providing the allocation of responsibilities between the institution and an IRB that is not affiliated with the institution, or as set forth in a research protocol).
- ii. IRB Records –
  - a. The rationale for conducting continuing review of research that otherwise would not require continuing review.
  - b. The rationale for a determination that research appearing on the expedited review list published in the Federal Register is more than minimal risk.

### V. Procedure

1. Studies approved prior to January 21, 2019 are reviewed under the Pre-2018 Common Rule.
2. Studies approved on or after January 21, 2019 are reviewed under the 2018 Common Rule.
3. At the time of continuing review or next amendment submissions, studies are being assessed for compliance with the 2018 common rule on a case by case basis. If a study is found to need revisions to comply with the 2018 Common Rule, researchers are notified of required changes.
4. The key information section of consent is added to consent documents that are longer than 6 pages. Human Research Protections Operations staff are training researchers on this requirement and assisting with updating consent documents.

### VI. References

45 CFR 46