UNIVERSITY OF SOUTH ALABAMA

IRB SOP 1002
Emergency Use:
Investigational Drugs, Biologics or Devices

Purpose

This Standard Operating Procedure (SOP) establishes the process to assist treating physicians with the FDA requirements for emergency use of a medical product including a drug/biologic/device in a life-threatening situation.

Scope

This SOP applies to IRB administrative staff, IRB members, investigators and sponsors.

Definitions

Emergency Use: means the use of an investigational drug or biological product with a human subject in a life-threatening situation in which no standard acceptable treatment is available and in which there is not sufficient time to obtain IRB approval.

Life-threatening: means diseases or conditions where the likelihood of death is high unless the course of the disease is interrupted, as well as diseases or conditions with potentially fatal outcomes. The criteria for a life-threatening disease or condition does not require the condition to be immediately life threatening or to immediately result in death. Rather the subjects must be in a life-threatening situation requiring intervention before review at a convened meeting of the IRB is feasible.

Severely Debilitating means diseases or conditions that cause major irreversible morbidity including blindness, loss of arm, leg, hand or foot, loss of hearing, paralysis or stroke.

Test Article means an unapproved investigational drug, biologic or device for human use, including human food additive, color additive, electronic product, or any other article subject to regulation under the act or under sections 351 or 354-360F of the Public Health Service Act.

Policy

1.0 Requirements for Emergency Use

Each of the following conditions must exist to justify emergency use:

- the patient is in a life-threatening condition that needs immediate treatment;
- no generally acceptable alternative for treating the patient is available; and
- because of the immediate need to use the device, there is no time to use existing procedures to get FDA approval for the use.

FDA expects the physician to determine whether these criteria have been met, to assess the potential for benefits from the unapproved use of the device, and to have substantial reason to believe that benefits will exist. The physician may not conclude that an "emergency" exists in advance of the time when treatment may be needed based solely on the expectation that IND/IDE approval procedures may require more time than is available. Physicians should be aware that FDA expects them to exercise reasonable foresight with respect to potential emergencies and to make appropriate arrangements for procedures far enough in advance to avoid creating a situation in which such arrangements are impracticable.

FDA would expect the physician to follow as many subject protection procedures as possible. These include:

- obtaining an independent assessment in writing, documented in the patient/subject's medical record by an uninvolved physician;
- obtaining informed consent from the patient or a legal representative;
- notifying institutional officials as specified by institutional policies;
- notifying the Institutional Review Board (IRB); and
- obtaining authorization from the IND/IDE holder, if applicable

Whenever possible physicians are required to notify the IRB in advance of a proposed emergency use of a test article (drug, biologic, or device) in a life-threatening situation in advance of the use.

- The one-time emergency use of a test article is permitted provided a patient is in a life threatening situation in which no standard acceptable treatment is available, and when there is not sufficient time to obtain IRB review and

approval. Any subsequent use of a test article at the institution shall have prospective IRB review and approval.

The emergency use provision is an exemption from prospective review and approval by the IRB. The exemption, which may not be used unless all of the conditions described in 21 CFR 56.102(d) exist, allows for one emergency use of a test article. These are typically situations in which the intent is not to conduct research but to act in the best interest of an individual patient.

Procedures

1.0 Full Board approval is normally required for emergency use of a test article. If it is not feasible to convene a quorum before the treatment must be administered, then the emergency use may proceed without IRB approval only with advance notification to the IRB Office and review by the IRB Chair. If the treatment will be administered in any other institution, emergency use may proceed without IRB approval only if the IRB Chairperson concurs and the investigator obtains institutional clearance or approval according to the institution's policies and procedures. IRB approval using an expedited review procedure is not allowed.

2.0 IRB approval or concurrence for emergency use of a drug or biologic will occur only if all of the following conditions (specified at 21 CFR 56.102(d)) are satisfied:

- 2.1 The patient has a life-threatening or severely debilitating condition requiring treatment before review at a convened meeting of the IRB is feasible;
- 2.2 There is no generally acceptable alternative treatment available; and
- 2.3 There is not sufficient time to submit a protocol/amendment to the IRB for approval.

3.0 IRB approval or concurrence for emergency use of a medical device will occur only if all of the following conditions are satisfied:

- 3.1 The patient is in a life-threatening or severely debilitating condition that needs immediate treatment;
- 3.2 No generally acceptable alternative for treating the patient is available; and
- 3.3 Because of the immediate need to use the device, there is no time to use existing procedures to secure FDA approval for the use.

4.0 If the IRB approves or the Chairperson concurs with the emergency use, then:

- 4.1 The IRB Office/IRB Chair will notify the physician seeking emergency use approval or concurrence.

4.2 The IRB will use the date of concurrence to initiate tracking to ensure the investigator provides a report to the IRB within five working days as required by 21 CFR 56.104(c) and again at one month after use of the test article.

5.0 For any emergency use, the investigator is required to obtain informed consent of the subject or the subject's legally authorized representative unless both the investigator and a physician who is not otherwise participating in the clinical investigation certify in writing all of the following (21CFR50.23(a)):

5.1 The subject is confronted by a life-threatening or severely debilitating situation necessitating the use of the test article;
5.2 Informed consent cannot be obtained because of an inability to communicate with, or obtain legally effective consent from the subject;
5.3 Time is not sufficient to obtain consent from the subject's legally authorized representative; and
5.4 No alternative method of approved or generally recognized therapy is available that provides an equal or greater likelihood of saving the subject's life or preventing a severely debilitating condition.

6.0 If, in the investigator's opinion, immediate use of the test article is required to preserve the subject's life or prevent a severely debilitating condition, and if time is not sufficient to obtain an independent physician's determination that the four conditions specified in Section 5.0 above apply, the clinical investigator should make the determination and, within **5 working days** after the use of the article, have the determination reviewed and evaluated in writing by a physician who is not participating in the clinical investigation. The investigator must submit the written documentation regarding the decision to proceed without informed consent to the IRB within **5 working days** after the use of the test article [21 CFR 50.23(c)].

7.0 The investigator must provide a report on the use of the test article and the outcome for the patient to the IRB within **five working days** as required by 21 CFR 56.104(c) and again at one month after use of the test article. All correspondence and documentation relevant to the use of the test article must be submitted to the IRB as soon as possible, but no later than 5 working days after notification of the use. The written report submitted to the IRB must include a cover letter explaining the medical condition, reason for use, and date administered as well as a copy of the signed Informed Consent Document. The investigator must also include any manufacturer information available on the product from the manufacturer (e.g., drug brochure).

8.0 If the Sponsor requires a written statement that the IRB is aware of the proposed use and considers the use to meet the requirements of 21 CFR 56.104 (c) in order to

approve shipment of the test article, the USA IRB will provide such correspondence upon request.

9.0 After emergency use of a medical device, the investigator must notify the sponsor of the emergency use, if an IDE for the particular use exists. If an IDE does not exist, the investigator must notify the FDA of the emergency use and provide the FDA with a written summary of the conditions constituting the emergency, subject protection measures, and results. If the emergency use involves a humanitarian use device, the report should be submitted to the HDE holder. Copies of the correspondence should be submitted to the IRB.

10.0 If the emergency use of the test article has occurred without approval of the full Board, the Chair will review the documentation submitted, report to the full IRB at the next convened meeting after the documentation is received, and notify the physician seeking emergency use that the Board acknowledges its use.

11.0 If the emergency use of the test article has occurred without prior approval of the full Board or concurrence of the Chair, he/she will review the documentation submitted, report to the full IRB at the next convened meeting after the documentation is received, and notify the physician seeking emergency use whether the Board agrees that the conditions for emergency use were satisfied.

12.0 USA IRB will include in its correspondence to the investigator/physician a statement indicating that any subsequent use of the test article at the institution requires prospective IRB review and approval, unless in the investigator's opinion, immediate use of the test article is required to preserve the subject's life or prevent a severely debilitating condition.

13.0 If the emergency use involves a test article utilized in an IRB-approved study, a copy of all correspondence and documentation concerning the emergency use will be retained in IRBNet.

14.0 Exceptions from informed consent requirements for emergency research

Even for planned, emergency research, the investigator is required to obtain informed consent of the subject or the subject's legally authorized representative prior to the administration of any test article whenever possible. The IRB may approve retrospective consent for studies that meet the qualifications under 21 CFR 50.24. All of the following conditions must be present:

- The subject is confronted by a life-threatening situation necessitating the use of the test material.
- Available treatments are unproven or unsatisfactory
- Collection of valid scientific evidence is necessary to determine the safety

and effectiveness of the intervention
- Obtaining informed consent is not feasible because the subjects are not able to give their informed consent as a result of their medical condition
- The intervention must be administered before consent can be obtained from the subject's legally authorized representative
- There is no reasonable way to identify prospectively individuals likely to become eligible for participation
- Participation in the research holds out the prospect of direct benefit to the subjects
- The clinical investigation could not practicably be carried out without the waiver

For each subject unable to provide informed consent, the clinical investigator participating in emergency research must commit to attempting to seek written informed consent within the therapeutic window, if feasible, from the subject's legally authorized representative. If no LAR is available, the clinical investigator must commit to attempting to contact a family member to provide an opportunity to object to the participation of an individual, before administering the test article without informed consent, if feasible.

The IRB is responsible for ensuring that procedures are in place to inform, at the earliest feasible opportunity, details of the investigation and other information contained in the informed consent document. The IRB shall also ensure that subjects may discontinue participation at any time without penalty or loss of benefits to which the subject is entitled. 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. If a subject is entered into a clinical investigation with waived consent and the subject dies before a legally authorized representative or family member is contacted, information about the study is provided to the subject's legally authorized representative or family member, if feasible.

If an IND or IDE already exists, protocols involving an exception to the informed consent requirement must be performed under a separate IND or IDE that clearly identifies such protocols as protocols that may include subjects who are unable to consent. Studies involving exception from consent requirements may proceed only after a sponsor has submitted an IND or IDE and received prior written authorization from FDA and IRB approval.

Regulated Documents

21 CFR 50(a)-(c); 21 CFR 56.102(d); 21 CFR 56.102(l); 21 CFR 56.104(c)

Guidance Documents

FDA Guidance on Treatment Use of Investigational Drugs

FDA Guidance on IDE Policies and Procedures

FDA Guidance on Emergency Use of an Investigational Drug or Biologic - Information Sheet

Frequently Asked Questions about Medical Devices – Information Sheet

Exception from Informed Consent Requirements for Emergency Research

Guidance on IDE Policies and Procedures, Chapter III, Emergency Use of Unapproved Medical Devices

HISTORY

Effective Date:
Revisions: November, 2018

Responsible Party:

Office of Research Compliance and Assurance