

## Section 7: Informed Consent/Assent

### 7.1. Process and Documentation of Informed Consent/Parental Permission and Assent

#### Policy

A key requirement of human subject protection is voluntary participation. The informed consent/assent process must assure that the child/adolescent and the parent(s)/guardian(s) fully understand the research, understand what they are being asked to do, and understand the associated risks and benefits of the research for which they are providing consent/assent.

The consent document is not a substitute for discussion among investigators and research subjects. To ensure an effective informed consent process, the UIR Institutional Review Board (IRB) and investigators comply with all applicable federal regulations (e.g., [45 CFR 46.116](#), [117](#), and [21 CFR 50](#)). These regulations mandate the inclusion of eight basic informed consent elements. Six additional elements may be required, depending on the nature of the research. UIR IRB policy also specifies the information to include in the consent process. The informed consent template found in IRBNet outlines the required elements of informed consent. The informed consent document must also be written in plain and simple language. The investigator may use a short form if approved by the IRB in accord with applicable federal requirements.

It is the policy of UIR to comply with all federal and state regulations that pertain to informed consent, parental permission, and assent.

#### Procedures

#### Definitions

**Informed Consent:** Informed consent is not merely a signature on a form, but a process of mutual communication. The process starts before any form is signed and continues throughout the entire study. The process begins by meeting with subjects and discussing the research. If children are involved, this must be a family-centered activity that involves the child/adolescent, the parent/guardian, and sometimes, other caregivers.

The written consent form is a formalization of the agreement to participate, and it is used to document a process. Investigators must explain the research in terms that both the children and the parents/guardians can understand. Informed consent is not the mere disclosure of information; it is an interactive process. Subjects must be able to describe what they are consenting to do. Because informed consent continues throughout the entire research activity, subjects must be kept apprised of new information regarding the study. They must have the opportunity to ask, and be encouraged to ask, ongoing questions. Subjects are kept up-to-date

through verbal discussions, written materials, and, when necessary, by having a subject re-sign a written informed consent document that contains additional information. It is important to keep in mind that subjects retain the right to withdraw at anytime, and to remind them of that fact.

With children/adolescents the concept of informed consent shifts from that of a competent adult who grants informed consent to participate in research, to that of parents who grant permission to involve their children in research. This document uses the term informed consent for simplicity; however, it should be recognized that, in the case of children, it is actually parental permission that is being documented and granted.

**Assent:** is defined as affirmative agreement of a child or an individual with impaired consent capacity to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent.

**Permission:** is defined as the agreement of parent(s) or guardian to the participation of their child or ward in research or clinical investigation. Permission includes the element of consent set forth in federal regulations.

**Legally Authorized Representative (LAR):** is an individual who has the authority to make research participation decisions on behalf of another.

In Illinois, the terms child or children refer to all individuals less than 18 years of age unless the individual(s) is/are legally emancipated. Individuals under 18 years of age who are not emancipated meet the federal definition of “child” (e.g., DHHS, FDA, and U.S. Department of Education).

## **Informed Consent Process and Documentation**

1. An informed consent template is available in IRBNet. Investigators use this template as a guide unless the IRB grants exceptions or waivers. The consent template contains the eight required elements, the six additional elements of informed consent, and any additional requirements the UIR IRB may require.
2. At a minimum, the proposed consent process and form include the following eight federally required elements, and additional elements when appropriate:
  - **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 will be experimental.
  - **Reasonably foreseeable risks or discomforts:** a statement that describes foreseeable risks or discomforts associated with the research, the likelihood of

their occurrence, and the ramifications associated with the risks (e.g., decreased blood count may result in a need for a blood transfusion).

- Reasonably expected benefits to subjects or others: a statement that describes the benefits to subjects or others that may reasonably be expected from the research, including no benefit, if this is applicable. Payment for participation in a research project is not considered a benefit.
- Appropriate alternatives: a statement that describes with enough detail any alternative procedures or course of treatment that may benefit the subject. If no alternatives exist, the consent form must state there are no alternatives except not to participate.
- Extent of confidentiality: a statement that describes the extent to which the investigator/study personnel will maintain or not maintain confidentiality of records identifying the subject (e.g., law requires reporting child abuse, etc.) and describes how the research team will protect subject's private records during and after the conclusion of proposed research studies. Any research that is subject to audit or inspection must identify who will have access to the subject's record (e.g., FDA, National Institutes of Health (NIH), UIR, sponsors, or contract research organization).
- Compensation or treatment for injury: for studies with greater than minimal risk, a statement explaining any compensation and an explanation of any medical treatments available if injury occurs or where the subject may obtain further information.
- Contact information: a statement that describes contact information details, including telephone numbers, and whom to contact for the following situations: questions about the research (e.g., investigator and other team members), questions about subject's rights, comments, suggestions, and in the event of a research related injury (depending on the nature of the research, the PI or physician on the research team).
- Voluntary participation statement: a statement that describes clearly 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.
- Additional elements where appropriate: The IRB requires the additional elements unless the item(s) does not apply given the nature of the research or the proposed procedures (e.g., subjects will not receive remuneration for participation).
  - Unforeseeable risks to subjects, embryos, or fetuses: a statement warning subjects that some risks are currently not known or foreseeable, when applicable;

- Investigator initiated termination of participation: a statement that describes the instances in which an investigator may terminate a subject's participation (e.g., subject non-compliance, subject not benefiting from research, etc.);
  - Additional costs: a statement that describes any additional costs a subject may encounter such as transportation, time away from work, parking, health costs, etc.;
  - Early withdrawal/procedures for termination: a statement that describes a subject's right to withdraw from the study and any procedures that may be necessary after an early withdrawal for subject's safety;
  - Significant new findings: a statement that subjects will be told of any new findings which may affect willingness to continue in the research;
  - Approximate number of subjects: a statement that explains the approximate number of subjects to be enrolled in the study, nationwide and locally;
  - Disposition of subject's blood samples: DNA testing, cell lines, development of future products;
  - Payment: a statement which includes all information concerning the amount and schedule of payment for participation.
3. The PI submits a proposed informed consent procedure and document (written in simple and plain language) with his/her protocol application prior to initiation of research. The PI indicates in the application the study personnel who will participate in the informed consent process or individuals the PI will authorize to obtain informed consent on his/her behalf.
  4. If the research involves vulnerable populations or sensitive issues, the investigator addresses additional regulatory and/or institutional requirements.
  5. The IRB assesses the PI's description of the informed consent process to ensure that the process meets the general requirements of informed consent (i.e., consent be obtained from the subject or subject's LAR; be in language understandable to the subject; be obtained under circumstances that provide the subject with the opportunity to consider whether or not to participate and that minimize coercive influence; 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).
  6. The IRB determines whether disclosure of any investigator conflict of interest is warranted in the informed consent process and document.
  7. The IRB is responsible for reviewing the proposed informed consent document(s) to ensure that all applicable federal requirements are met.
  8. Once the IRB approves the study, the RSS Specialist will issue an approval stamp on the informed consent document, the first page of which includes the approval and expiration dates, and uploads it within the study package found in IRBNet. Investigators may only

enroll subjects using informed consent/assent forms which have a valid “IRB approval” stamp unless the IRB grants a waiver from the requirement for informed consent or documentation.

9. The investigator is responsible for ensuring that informed consent is obtained from each research subject or his/her LAR after the subject or subject’s LAR has had an adequate opportunity to read the form and prior to subject participation in any part of the study, using the process and form approved by the IRB.
10. The subject or the subject’s LAR and the person providing the information to the subject both sign and date the informed consent document at the time of consent. Only individuals authorized (in the IRB-approved protocol) to obtain informed consent sign on the document obtaining consent from the subject.
11. The investigator’s signature on the informed consent document verifies that the person who explained the study and obtained informed consent is qualified and that the IRB has approved him/her to do so (may not be applicable for informed consent document for non-medical protocols). The subject or LAR signing on the subject’s behalf receives a copy of the signed form.

### **Use of Short Form Written Consent Document**

1. The PI may request to use a short form written consent document stating that study personnel have presented the elements of informed consent (as required by [45 CFR 46.116](#)) orally to the subject or the subject’s LAR.
2. The IRB reviews the request and may approve the short form option for documentation only if the study meets all of the requirements outlined in [45 CFR 46.117\(b\)](#), and as applicable, [21 CFR 50.27\(b\)](#).
3. When the IRB approves use of the short form method:
  - The PI must ensure there will be a witness to the oral presentation. For participants who do not speak English, the PI must ensure the witness is conversant in both English and the language of participation.
  - The IRB must approve a written summary of the oral content presented to the subject or the subject’s LAR, which embodies the basic and appropriate elements of disclosure.
  - The subject or the subject’s LAR signs the short form. For FDA-regulated research the subject or the subject’s LAR signs *and* dates the short form.
  - The witness signs both the short form and a copy of the summary.
  - The person actually obtaining consent signs a copy of the summary.
  - The person obtaining consent gives a copy of the summary to the subject or the subject’s LAR, in addition to a copy of the short form.

### **Assent**

1. Investigators are responsible for developing a document that contains the required informed consent elements in a manner in which children can make an informed decision.
2. The PI is responsible for including in the protocol application a description of the process/procedure for obtaining and documenting assent when research includes:
  - Children and/or
  - Individuals with impaired consent capacity.
3. The IRB reviews the proposed process and, if applicable, the assent form to ensure compliance with IRB guidance and federal requirements.

## **7.2. Waivers and Alterations of Informed Consent/Parental Permission/Assent**

### **Policy**

The UIR IRB has the authority to approve a consent procedure that does not include or which alters some or all of the federally-mandated elements of informed consent, provided the approved procedure meets applicable federal regulations. A summary of applicable waiver federal regulations is as follows:

- *Non-FDA regulated studies*: to waive informed consent requirements, the IRB must find and document that the study meets the requirements in [45 CFR 46.116\(c\)\(d\)](#) which are:
  - An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent, or waive the requirement to obtain informed consent provided the IRB finds and documents that:
    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: (i) public benefit or service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits of services under those programs; and
    2. The research could not practicably be carried out without waiver or alteration.
    3. The research involves no more than minimal risk to the subjects;
    4. The waiver or alteration will not adversely affect the rights and welfare of the subjects;
    5. The research could not practicably be carried out without the waiver or alteration; and
    6. Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

- Waiver of parental or guardian permission in non-FDA regulated studies: when consent of parents or guardians is not a reasonable requirement because it poses additional risk to the potential subject or the parent's interest may not adequately reflect the child's interest (e.g., neglected or abused children), the IRB may waive parental or guardian permission in accord with [45 CFR 46 Subpart D](#) and [45 CFR 46.408\(c\)](#) and Subpart A [45 CFR 46.116](#).
  - [45 CFR 46.408\(c\)](#)- In addition to the provisions for waiver stated above ([45 CFR 46.116](#)), if the IRB determines that a research protocol is designed for conditions or for a subject population for which parental or guardian permission is not a reasonable requirement to protect the subjects (for example, neglected or abused children), it may waive the consent requirements, provided an appropriate mechanism for protecting the children who will participate as subjects in the research is substituted, and provided further that the waiver is not inconsistent with federal, state, or local law. The choice of an appropriate mechanism would depend upon the nature and purpose of the activities described in the protocol, the risk and anticipated benefit to the research subjects, and their age, maturity, status, and condition.

The UIR IRB has the authority under federal regulations to waive the documentation requirements for obtaining informed consent under special circumstances:

- FDA regulated studies: IRB may waive documentation for some or all of the subjects if the study meets the conditions listed in [21 CFR 56.109\(c\)](#) which are:
  - An IRB shall require documentation of informed consent in accordance with [21 CFR 50.27](#) , except as follows:
    1. The IRB may, for some or all subjects, waive the requirement that the subject, or the subject's legally authorized representative, sign a written consent form if it finds that the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside the research context or;
    2. The IRB may, for some or all subjects, find that the requirements in [21 CFR 50.24](#) for an exception from informed consent for emergency research are met.
- Non-FDA regulated studies: the IRB may waive the requirement to obtain a signed consent form for some or all of the subjects if the study meets the requirements in [45 CFR 46.117\(c\)](#) which are:
  - An IRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:
    1. That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject will be asked whether the

subject wants documentation linking the subject with the research, and the subject's wishes will govern; or

2. That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context.

In cases in which the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written statement regarding the research.

It is the policy of UIR to comply with all federal and state regulations that pertain to informed consent, parental permission, and assent.

## **Procedures**

### **Waivers and Alterations of Documentation of Informed Consent/Parental Permission**

The regulations allow the UIR IRB to waive written informed consent for research that meets specific regulatory criteria. DHHS and FDA have different regulations regarding waiver of consent. For DHHS-funded research, the UIR IRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:

- A. The only record that links the subject to the research is the consent document, and the potential harm that may result from a breach of confidentiality represents the predominant risk. Each subject will be asked his or her preference as to whether documentation that links him or her to the research is to exist. The subject's preference will prevail, or
- B. The research represents no more than minimal risk of harm to a subject, and involves no procedures for which written consent is normally required outside of the research context.

FDA only recognizes a waiver of informed consent documentation for category B. The investigator is required to justify in the protocol how either of these conditions are to be met, and if the UIR IRB agrees, the Minutes must document concurrence of the IRB's determination.

In cases in which the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written summary statement regarding the research. The procedure for waiving the requirement for documentation is not intended to circumvent the requirement for informed consent but rather to protect patient privacy. All required information must still be presented and discussed to ensure a voluntary informed consent process.

### **Waiver of Some or all Elements of Informed Consent**

For any research that is subject to DHHS regulations, the UIR IRB may approve a consent/permission procedure that does not include or that alters some or all of the elements of informed consent, or that waives the requirements to obtain informed consent. However, the FDA only provides an exception from informed consent requirements for emergency research. For research that is not subject to FDA oversight, the IRB may approve a consent procedure which does not include, or which alters some or all of the elements of informed consent, provided the IRB determines and documents that:

1. The research or demonstration project is to be conducted by, or is subject to, the approval of state and local government officials, and is designed to study, evaluate, or otherwise examine: (i) public benefit or service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternative to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs; and the research could not practicably be carried out without the waiver or alteration; or
2. The research (i) involves no more than minimal risk to the subjects; (ii) the waiver or alteration will not adversely affect the rights and welfare of the subjects; (iii) the research could not practicably be carried out without the waiver or alteration; and (iv) whenever appropriate, the subjects will be provided with additional pertinent information after participation.

If an investigator seeks a waiver of informed consent, the section of the protocol application that requires a justification of the means by which the waiver criteria are met for that study must be completed. If a protocol is eligible for expedited review, the reviewer is responsible for determining that the criteria are met prior to accepting a waiver. If the IRB or expedited reviewer agrees with the determinations and findings provided by the investigator in the application form, the agreement will be documented in the Minutes, or if through the expedited review, in the protocol record. In making a determination as to whether the research could not be practicably carried out without the waiver or alteration the IRB will consider the following criteria:

- a. The size of the population being researched;
- b. The proportion of individuals likely to have relocated or died since the time the personal information was originally collected or the patient was seen for clinical care;
- c. The risk of introducing potential bias into the research, thereby affecting the generalizability and validity of the results;
- d. The risk of creating additional threats to privacy by having to link otherwise de-identified data with nominal identifiers in order to contact individuals to seek their consent;
- e. The risk of inflicting psychological, social or other harm by contacting individuals or families with particular conditions or in certain circumstances;
- f. The difficulty and loss of privacy inherent in contacting individuals directly when there is no existing relationship between the organization and the individuals.

- g. The difficulty of contacting individuals indirectly through public means, such as advertisements and notices
- h. Whether, in any, of the above circumstances, the requirement for additional financial, material, human, organizational, and other resources needed to obtain such consent will make the conduct of the research impracticable because it is an undue hardship.

## **Waivers of Parental Permission**

In accordance with DHHS regulations, the waiver of parental informed consent with reliance solely on the child/adolescent's consent is permitted in two situations. The first situation is when research meets the following criteria: the research (i) involves no more than minimal risk to the subjects; (ii) the waiver or alteration will not adversely affect the rights and welfare of the subjects; (iii) the research could not practicably be carried out without the waiver or alteration; (iv) whenever appropriate, the subjects will be provided with additional pertinent information after participation. Another criterion which is not limited to minimal risk research is when it is unreasonable to obtain the parent's permission (e.g., the research involves health care issues subject to confidentiality specific to an adolescent subject). This situation is common in areas of adolescent research that involve sexually transmitted diseases, birth control, high-risk behaviors, and AIDS prevention. Parental permission is to be obtained whenever reasonable. However, in situations in which the investigator considers it unreasonable, the UIR IRB is to carefully consider the investigator's request and determine whether the waiver falls within the guidelines established by federal regulations. If the IRB determines that a research protocol is designed for conditions or for a subject population for which parental or guardian permission is not a reasonable requirement for protecting the subjects (e.g., neglected or abused children), it may waive the consent requirements, provided an appropriate mechanism is substituted to protect the children who will participate as subjects in the research, and provided that the waiver is not inconsistent with federal, state, or local law.

The FDA has not adopted the section of the federal regulations [45 CFR 46.408\(c\)](#) that allows for a waiver of parental permission. Therefore, protocols that involve children that are subject to FDA regulations may not waive the requirement for obtaining parental permission under these criteria.

## **7.3. HIPAA Authorization**

### **Policy**

For all research and research-related activities that result in health information that is created by, received from, or shared with a health care provider, clinical researcher, researcher or other person who is associated with UIR. The UIR IRB serves as a Privacy Board for research reviewed by the UIR IRB for purposes of compliance with all applicable requirements of the Health Insurance Portability and Accountability Act (HIPAA).

## Definitions

**Protected health information (PHI)** is defined as any of the [18 identifiers](#) listed in the HIPAA Privacy Regulations in combination with health information that is created or maintained by a UIR covered entity/department that relates to the past, present, or future physical or mental health or conditions of an individual.

**A UIR covered entity/department** is defined as any department that provides services that meet the definition of health care provider or health plan.

## Procedures

An investigator has the following six options for obtaining PHI from UIR for research purposes:

- *De-identified Information*: health information that cannot be linked to an individual;
- *Authorization*: a document signed by the subject that gives the researcher permission to use/disclose PHI collected during the research study for defined purposes;
- *Waiver of Authorization*: a request to forgo the authorization requirement based on the fact that the disclosure of PHI is a minimal risk to the subject and the research can not practically be done without access to/use of PHI;
- *Limited Data Set*: a subset of identifiers that contain the following elements: city, state, zip code, date of birth/death, or date of service;
- *Preparatory Work*: PHI reviewed for the purpose of designing a research study or identifying potential subjects. PHI cannot be removed from the covered entity during the review; or
- *Decedent Research*: research where PHI is collected from a subject(s) that is deceased prior to the initiation of the study.

Any research that is subject to the jurisdiction of the UIR IRB shall be reviewed to determine if the HIPAA regulations apply, and, if applicable, to ensure compliance with the HIPAA regulations. In addition, the UIR IRB shall review any request for the use and disclosure of PHI for research purposes.

In reviewing any research matters involving the use or disclosure of PHI, the IRB will make a determination as to whether the use or disclosure requires (a) Authorization by the research participant or his/her Legally Authorized Representative; or (b) the grant of a partial or complete alteration or Waiver of HIPAA Authorization requirement.

In general, if an investigator who is associated with UIR and wants to receive PHI must have a HIPAA Authorization document signed by the subject whose information is to be used/disclosed; or, alternatively, the IRB may grant a waiver of HIPAA Authorization requirement, if the study meets certain criteria. Accordingly, when investigators fill out the protocol application they

must either submit a HIPAA Authorization form for the IRB to review, or justify in the application why a waiver or alteration is needed for the research.