

Section 8: Vulnerable Populations

8.1. Children

Policy

Federal regulations that govern the protection of human subjects ([45 CFR 46 Subpart D](#); [21 CFR 50 Subpart D](#)) provide additional protections for children involved as subjects in research. These regulations impose added responsibilities that depend on the degree of risk involved in the research and the extent to which the research is likely to benefit the subject or others. The regulations also set forth requirements for obtaining permission from parents and guardians, and, except under certain circumstances, assent by the children themselves.

Procedures

Risk/Benefit Determinations

The UIR IRB must classify studies that involve minors into one of four groups, each with specific added responsibilities. The following information describes the permissible risk categories for research that involves children.

The UIR IRB may approve only research that satisfies the following conditions:

1. **Research not involving greater than minimal risk ([45 CFR 46.404](#))** - if the IRB finds that adequate provisions are made for soliciting the assent of the children and the permission of their parents or guardians, consent from one parent is sufficient.
2. **Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects ([45 CFR 46.405](#))** - only if:
 - a. The risk is justified by the anticipated benefit to the subjects; and
 - b. The relation of the anticipated benefit to the risk is at least as favorable to the subjects as that presented by available alternative approaches; and
 - c. Adequate provisions are made for soliciting the assent of the children and the permission of their parents or guardians, as set forth below.
 - d. Consent from one parent is sufficient.
3. **Research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition ([45 CFR 46.406](#))** - only if:
 - a. The risk represents a minor increase over minimal risk; and

- b. The intervention or procedures presents experiences to subjects that are reasonably commensurate with those inherent in their actual or expected medical, dental, psychological, social, or educational situations; and
 - c. The intervention or procedure is likely to yield generalizable knowledge about the subject's disorder or condition that is of vital importance for the understanding or amelioration of the subject's disorder or condition; and
 - d. Adequate provisions are made for soliciting the assent of the children and the permission of their parents or guardians, as set forth below.
 - e. Consent must be obtained from both parents if they have custody and are reasonably available.
4. **Research not otherwise approvable that presents an opportunity to understand, prevent, or alleviate a serious problem that affects the health or welfare of children ([45 CFR 46.407](#))**, which the IRB does not believe meets the requirements of 46.404/405/406, only if:
- a. The IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem that affects the health or welfare of children; and
 - b. The secretary of the Department of Health and Human Services or the Commissioner of the Food and Drug Administration, after consultation with a panel of experts in pertinent disciplines (e.g., science, medicine, education, ethics, law) and following the opportunity for public review and comment, has determined that either:
 - 1. The research satisfies the above requirements of this section, as applicable, or
 - 2. The following:
 - i. The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem that affects the health and welfare of children; and
 - ii. The research will be conducted in accordance with sound ethical principles; and
 - iii. Adequate provisions are made for soliciting the assent of the children and the permission of their parents or guardians.
 - iv. Consent must be obtained from both parents if they have custody and are reasonably available.

Guidance in Definitions

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.

In considering the risks of a study involving children:

- The IRB interprets minimal risk in relation to the normal experiences of average, healthy, normal children;
- In evaluating risk, the IRB considers the equivalence of potential harm or discomfort anticipated in research with the harm or discomfort that average, healthy, normal children may encounter in their daily lives or experience in routine physical or psychological examinations or tests;
- The IRB considers the risk of harm or discomfort in relation to the ages of the children to be studied; and assesses the duration, as well as the probability and magnitude of potential harm or discomfort, in determining the level of risk.
- The IRB interprets the phrase used in the regulations -“a minor increase over minimal risk” – as only slightly above minimal risk.

In considering the term **condition**:

The IRB interprets **condition** as referring to a specific (or a set of specific) physical, psychological, neurodevelopmental, or social characteristics that an established body of scientific evidence or clinical knowledge has shown to negatively affect children’s health and well being, or to increase their risk of developing a health problem in the future.

8.2. Wards of the State

Policy

Children who are wards of the state may be included in research that presents minimal risk (45 CFR 46.404/21 CFR 50.51) or greater than minimal risk with a prospect of direct benefit (45 CFR 46.405/21 CFR 50.52) of Subpart D.

Children who are wards of the state may be included in research that presents greater than minimal risk with no prospect of direct benefit (45 CFR 46.406/21 CFR 50.53 or 45 CFR 46.407/21 CFR 50.54) only if the IRB determines and documents that such research is:

- Related to their status as wards; or
- Conducted in schools, camps, hospital, institutions, or similar settings in which the majority of children involved as participants are not wards.
- If wards are to be included in research with no prospect of direct benefit, the UIR IRB shall appoint an advocate for each child who is a ward.

- The advocate will serve in addition to any other individual acting on behalf of the child as guardian or in *loco parentis*;
- One individual may serve as advocate for more than one child;
- The advocate must be an individual who has the background and experience to act in , and agrees to act in, the best interest of the child for the duration of the child's participation in the research;
- The advocate must not be associated in any way (except in the role as advocate or member of the IRB) with the research, the investigator(s), or the guardian organization.

If children who are wards are to be included in any research study, the investigator must provide the IRB with detailed information about the proposed permission/assent process, as well as the identity and authority of the individuals who will provide permission for the ward subjects.

Procedures

Definitions

Ward

A ward means any child who is placed in the legal custody of the state or other agency, institution, or entity, consistent with the applicable federal, state, and local laws and regulations. (21 CFR 50.3(g)). In Illinois, a ward of the state includes but is not limited to a child placed by court under the guardianship of the Illinois Department of Children and Family Services. In Illinois, children placed in foster care are wards of the state. (Juvenile Court Act of 1987, 705 ILCS 405/ 2-7).

8.3. Prisoners

Policy

UIR reviews all federally funded research that involves prisoners as subjects, in accordance with the Department of Health and Human Services (DHHS) regulations for the protection of human subjects (45 CFR 45 Subpart C) that provide additional protections for biomedical and behavioral research that involves prisoners as subjects. Equal protections are used when the research is not federally funded. Subpart C applies when a prisoner is enrolled in research, or becomes a prisoner after the research commences. Research that involves prisoners may not be exempt from the UIR IRB review.

Procedures

Prisoner is defined as any individual involuntarily confined or detained in a penal institution. The term is intended to encompass individuals sentenced to such an institution under a criminal or civil statute, individuals detained in other facilities by virtue of statutes of commitment procedures that provide alternatives to criminal prosecution or incarceration in a penal institution, and individuals detained pending arraignment, trial, or sentencing.

Special Composition of UIR IRB and Reviewers Required for Reviews

A designated prisoner representative must be present as a voting IRB member at all IRB meetings at which protocols that involve prisoners are reviewed. This individual is to have the appropriate background and experience to serve in this capacity, including a close working knowledge of prison conditions and prison life. In addition, a majority of the IRB (exclusive of prisoner members) have no association with the prison involved, apart from their membership on the IRB. The prisoner representative IRB member will be assigned as a primary or secondary reviewer for all initial protocols, continuing reviews, and amendments that involve prisoners. They will follow all of the policies and procedures for IRB review as outlined in Section 6.2 (Expedited Review) and 6.3 (Full Committee Review) of the policy manual.

Definition of Minimal Risk as it Applies to Prisoners and Expedited Review Procedures

Minimal risk is the probability and magnitude of physical or psychological harm that is normally encountered in the daily lives, or in the routine medical, dental, or psychological examination of healthy persons ([45 CFR 46.303\(d\)](#)). The wording of the subpart C definition differs in several ways from the definition of “minimal risk” in subpart A of 45 CFR 46, which applies generally to research involving human subjects. The differences are:

- The subpart C definition refers to “physical or psychological harm” rather than “harm or discomfort” as in subpart A.
- The subpart C definition compares the probability and magnitude of harm in the research to the probability and magnitude of those harms normally encountered in daily life, or in “routine medical, dental, or psychological examinations,” rather than in daily life or “routine physical or psychological examinations or tests” as in subpart A.
- The subpart C definition identifies “healthy persons” as the comparison group against which the risks of the research should be measured, rather than leaving the comparison group unspecified, as in subpart A. OHRP interprets the term “healthy persons” in this definition as referring to healthy persons who are not prisoners.

To undergo initial expedited review, review of modifications and continuing reviews, the submission must meet the definition of minimal risk as defined above and be eligible for

expedited review in accordance with the approved list of expedited review categories. The prisoner representative must concur with the determination that the research involves no greater than minimal risk.

Research that does not involve interaction with prisoners (e.g., existing data, record review) may be reviewed by the expedited procedure, if a determination is made that the research involves no more than greater than minimal risk for the prison population being studied. Review by a prisoner representative is not required.

Additional Duties of the UIR IRB Where Prisoners are Involved

The UIR IRB must make the following seven findings within one of the categories of permissible research. These categories are as follows:

1. The research under review falls within one of the categories of permissible research. These categories are as follows:
 - **The research in categories (a) and (b)** must be **minimal risk** research, as specified in subpart C.
 - a) Study of the possible causes, effects and processes of incarceration, and of criminal behavior, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects.
 - b) Study of prisons as institutional structures or of prisoners as incarcerated persons, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects.
 - **The research in categories (c) and (d)** may require Office for Protection from Research Risks (OPRR) review by appropriate experts, and may require that a notice of intent to approve the research be published in the Federal Register if federally funded.
 - c) Research on conditions particular affecting prisoners as a class (e.g., vaccine trials and other research on hepatitis, which is much more prevalent in prisons than elsewhere; and research on social and psychological problems such as alcoholism, drug addiction, and sexual assaults) provided that the study may proceed only after the Secretary of DHHS has consulted with appropriate experts including experts in penology, medicine, and ethics, and published notice, in the Federal Register, of the intent to approve such research.
 - d) Research on practices, both innovative and accepted, that have the intent and reasonable probability of improving the health or well-being of the subject. In cases in which those studies require the assignment of prisoners, in a manner consistent with protocols approved by the UIR IRB, to control groups which may not benefit from the research, the study may proceed only after the Secretary has consulted with appropriate experts,

including experts in penology, medicine, and ethics, and published notice, in the Federal Register, of the intent to approve such research.

Please note that paragraph (d) requires OPRR to consult with appropriate experts if the research involves a control group.

2. Any advantages that may accrue to the prisoner through his or her participation in the research, when compared to the general living conditions, medical care, quality of food, amenities, and opportunity for earnings in the prison, are not of a magnitude that may impair his or her ability to weigh the risks of the research against the value of such advantages in the limited choice environment of the prison.
3. The risks involved in the research are commensurate with risks that would be accepted by non-prisoner volunteers.
4. Procedures for the selection of subjects within the prison are fair to all prisoners and immune from arbitrary intervention by prison authorities or prisoners. Unless the principal investigator provides the IRB with written justification for following some other procedures, control subjects must be selected randomly from the group of available prisoners who meet the characteristics needed for that particular research project.
5. The information is presented in language that is understandable to the subject population.
6. Adequate assurance exists that parole boards will not consider a prisoner's participation in the research when making decisions regarding parole, and each prisoner is clearly informed in advance that participation in the research will have no effect on his or her parole.
7. Where the IRB determines the need for follow-up examination or care of subjects subsequent to their participation, adequate provision is made for such examination or care that takes into consideration the varying lengths of prisoner sentences, and adequate provision is made for informing participants of the need for follow-up examination or care.

Permitted Research that Involves Prisoners

DHHS-supported research that involves prisoners requires the following two actions:

1. The UIR IRB must certify to the Secretary (OPRR) that it reviewed and approved the research in accordance with the criteria listed above; and
2. The Secretary (OPRR) must determine that the proposed research falls within one of the categories of permissible research.

Following receipt from the UIR IRB of the required certification letter, OPRR will determine whether it concurs with the UIR IRB decision to approve the research.

Participants Becoming a Prisoner when Research was Not Reviewed According to Subpart C

If a subject becomes incarcerated while enrolled in a research study that was not reviewed under subpart C and is federally funded, the following procedures apply:

1. Confirm that the participant meets the definition of a prisoner;
2. Possibly terminate the subject from the research unless the study is re-reviewed under subpart C; or
3. Before terminating the enrollment of the incarcerated subject the IRB should consider the risks associated with terminating the participation in the study;
4. If the subject cannot be terminated for health or safety reasons, the participant may remain enrolled in the study and the research reviewed under Subpart C. If some of the requirements of Subpart C cannot be met, but it is in the best interests of the participant to remain in the study, the participant may remain enrolled and inform OHRP of the decision along with the justification.

When research is **NOT** federally funded the IRB has equivalent protections that include:

1. Confirming that the subject meets the definition of a prisoner;
2. Deciding whether it is in the best interests of the subject to remain in the study or to terminate enrollment;
3. Deciding whether it is feasible for the subject to remain in the study;
4. If it is in the best interests of the participant to remain in the study, the participant may be kept in the study and the research reviewed at the next convened IRB meeting.
5. If the temporary incarceration has no effect on the study, the participant may be kept in the study. If the temporary incarceration has an effect on the study, the above guidance should be followed.

Documentation of UIR Findings

The DHHS regulations at Subpart C require that the UIR IRB make and document specific findings when approving research that involves prisoners. As part of its review process, the UIR IRB requires investigators to document how the findings will be met. Documentation of the findings is to be included in the UIR IRB Minutes.

Additional Considerations for the Investigator and the UIR IRB before Approving Research that Involves Prisoners

- The protocol containing incarcerated subjects (hereafter referred to as the “prisoner protocol”) is to demonstrate that any contact with the prisoner will occur in circumstances that provide sufficient privacy and safety.
- The prisoner protocol is to demonstrate that confidentiality will be maximized throughout the process of arranging with prison officials for contact with the incarcerated subject. To the extent possible, the nature of the study, the

enrollment criteria, and the study data are not to be disclosed to prison officials, other inmates, or anyone else who does not have a research-related reason to know. The prison must demonstrate that, to the extent possible, all of the confidentiality protections implemented for non-incarcerated subjects are implemented for incarcerated subjects.

- The prisoner protocol is to include a description of how incarcerated subjects are to be compensated. The system favored by the UIR IRB is one that provides payment to the prison administration for distribution in accordance with prison policy.
- If the study involves discussion of sensitive topics, such as substance abuse, mental health problems, criminal activities, or sexual histories, the protocol must ensure that a Certificate of Confidentiality is in place. The informed consent must explain, in language comprehensible to the study population, the protections provided by the Certificate of Confidentiality, as well as the exceptions to such protections, such as mandatory or ethical reporting requirements applicable to the researchers.
- Given the likelihood that a subject may experience severe mental distress shortly following incarceration, the prisoner protocol is to explain how the researchers will determine that a subject is competent to participate in the research at the time of the re-contact. If the subject is determined to be incompetent, the prisoner protocol is to ensure that the subject is not re-consented, and that the follow-up is not conducted with the subject.
- The prisoner protocol is to consider the risk to incarcerated subjects who participate in research that requires discussion of highly sensitive topics in light of the prisoner's access to psychological counseling. If no follow-up counseling is available, the UIR IRB must weigh this risk against the benefit of completing the follow-up with the prisoner.
- The prisoner protocol is to describe, to the extent possible, the provisions in place to assure that the parole board does not consider the prisoner's participation in the research when making parole decisions.

8.4. Pregnant Women, Fetuses, Neonates

Policy

UIR reviews all research that involves pregnant women or fetuses in accordance with federal regulations 45 CFR 46 Subpart B. UIR also considers the need for additional safeguards when reviewing research in which women of childbearing potential are possible subjects, as the potential exists for these women to become pregnant during the course of the research.

Furthermore, the Illinois Consent by Minors to Medical Procedures Act (410 ILCS 210/1) permits a pregnant minor to provide her own informed consent to the performance of a medical or surgical procedure performed by: i) a physician to practice medicine and surgery, or, ii) an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes provision of services for minors. The UIR IRB extends the provisions of the Minors Medical Treatment Act to research. Specifically, under the circumstances or for the conditions stipulated in the Act, the UIR IRB views the minor to have the same legal capacity to act and having the same powers and obligations as a person of legal age to consent for research involving such medical or surgical procedures. The minor is not deemed to be able to provide consent for research involving conditions not stipulated by the Act or involving medical or surgical procedures not covered by the Act. In these instances, assent from the pregnant minor and permission from the parent or guardian must be obtained as described in Section 7.1.

Procedures

Guidance in Definitions

Neonate	A newborn
Viable	The capability, as it pertains to a neonate following delivery, of surviving (given the benefit of available medical therapy) to the point of independently maintaining heartbeat and respiration. If a neonate is viable, it may be included in research only to the extent permitted by, and in accordance with, the requirements in Subparts A and D of 45 CFR 46.
Non-viable neonate	A neonate that, although alive following delivery is not viable.
Viable neonate	A child. Subparts A and D of the federal regulations apply (e.g., Additional Protections for Children).

Pregnant women or fetuses

To approve research that involves **pregnant women or fetuses**, the UIR IRB must determine that the research meets the following conditions:

1. Where scientifically appropriate, the conduct of preclinical studies, including studies on pregnant animals, and the conduct of clinical studies, including studies on non-pregnant women, provide data for assessing potential risks to pregnant women and fetuses;

2. The risk to the fetus is posed solely by interventions or procedures that hold out the prospect of direct benefit for the women or the fetus; or, if there is no such prospect of benefit, the risk to the fetus is no greater than minimal and the purpose of the research is the acquisition of important biomedical knowledge that cannot be obtained by any other means;
3. Any risk that is posed represents the smallest risk possible in achieving the objectives of the research;
4. If the research holds out the prospect of direct benefit to the pregnant woman, the prospect of direct benefit both to the pregnant woman and the fetus, or no prospect of benefit to the woman or the fetus, when the risk to the fetus is no greater than minimal risk and the purpose of the research is the acquisition of important biomedical knowledge that cannot be obtained by any other means, the pregnant woman's consent is obtained in accordance with all informed consent provisions.
5. If the research holds out the prospect of direct benefit solely to the fetus, the consent of the pregnant woman and the father is required. However, the father's consent need not be obtained if he is unable to consent because of unavailability, incompetence, or temporary incapacity, or the pregnancy is the result of rape or incest;
6. Each individual who provides consent is fully informed of the reasonably foreseeable impact of the research on the fetus or neonate;
7. For children who are pregnant, assent and permission are obtained in accordance with the provisions of the Special Protections for Children (45 CFR 46 Subpart D);
8. No inducements, monetary or otherwise, are offered to terminate a pregnancy;
9. Individuals engaged in the research play no role in deciding the timing, method, or procedures used to terminate a pregnancy; and
10. Individuals engaged in the research play no role in determining the viability of a neonate.

Neonates of Uncertain Viability

To approve research that involves **neonates of uncertain viability**, the following five conditions must be met:

1. Where appropriate, the conduct of preclinical studies provides data for assessing potential risks;
2. Each individual who provides consent is fully informed of the reasonably foreseeable impact of the research on the neonate;
3. Individuals engaged in the research play no role in determining the viability of a neonate.
4. The UIR IRB determines that:
 - The research holds out the prospect of enhancing the probability of survival of the neonate to the point of viability, and any risk is the smallest possible for achieving this objective; or

- The purpose of the research is the acquisition of important biomedical knowledge that cannot be obtained by other means, and the research presents no added risk to the neonate.
5. The legally effective informed consent of either parent or, if neither parent is able to consent because of unavailability, incompetence, or temporary incapacity, the legally effective informed consent of either parent's legally authorized representative, is obtained in accordance with the regulations that pertain to informed consent. However, the consent of the father or his legally authorized representative need not be obtained if the pregnancy is the result of rape or incest.

Non-viable Neonates

To approve research that involves **non-viable neonates**, the following eight conditions must be met:

1. Where appropriate, the conduct of preclinical and clinical studies provides data for assessing potential risks.
2. Each individual who provides consent is fully informed of the reasonably foreseeable impact of the research on the neonate.
3. Individuals engaged in the research play no role in determining the viability of a neonate.
4. The vital functions of the neonate are not artificially maintained.
5. The research does not terminate the heartbeat or respiration of the neonate.
6. The research presents no added risk to the neonate.
7. The purpose of the research is the acquisition of important biomedical knowledge that cannot be obtained by other means.
8. The legally effective informed consent of both parents is obtained in accordance with the regulations that pertain to informed consent; however, the waiver and alteration provisions do not apply. If neither parent is able to consent because of unavailability, incompetence, or temporary incapacity, the informed consent of one parent of a non-viable neonate is sufficient, except that the consent of the father need not be obtained if the pregnancy is the result of rape or incest. The consent of a legally authorized representative of either or both of the parents of a non-viable neonate is not sufficient to meet the informed consent requirements.

Post-Delivery, the Placenta, Dead Fetus, or Fetal Material

To approve research that involves, **post-delivery, the placenta, dead fetus, or fetal material**, the following two conditions must be met:

1. Research that involves, post-delivery, the placenta, the dead fetus, macerated fetal material; or cell tissues, or organs excised from a dead fetus, is conducted in accordance

with any applicable federal, state, or local laws and regulations that govern such activities.

2. If information associated with material described above is recorded for research purposes in a manner that enables the identification of living individuals, directly or through identifiers linked to the individuals, those individuals are considered research subjects and all pertinent subparts of this section are applicable.

Research Not Otherwise Approvable

In order to approve research not otherwise approvable, the following two conditions must be met:

1. The UIR IRB must determine that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem that affects the health or welfare of pregnant women, fetuses, or neonates.
2. The Secretary of the DHHS, after consultation with a panel of experts in pertinent disciplines (e.g., science, medicine, ethics, law), and following opportunity for public review and comment, including a public meeting announcement in the *Federal Register*, determines that:
 - The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem that affects the health or welfare of pregnant women, fetuses, or neonates;
 - The research is conducted in accordance with sound ethical principles; and
 - Informed consent is obtained in accordance with the informed consent provision of federal regulations Subpart A and other applicable subparts of the regulations.

8.5. Decisionally and Cognitively Impaired Subjects

Policy

When the UIR IRB reviews research involving a vulnerable category of subjects, it will include one or more individuals qualified to represent that group, either through personal experience or experience working with the populations. In addition, the IRB will be certain that additional safeguards to protect the rights and welfare of any vulnerable subjects will be included in the research. For research involving this population and who are able to give consent, the UIR IRB will apply the following additional criteria:

- The inclusion of the vulnerable population is acceptable because either:
 - The inclusion of the vulnerable population is likely because of the setting of the research, and the setting is not designated to target vulnerable participants; or
 - The research is designed for a disease or condition relevant to the vulnerable population under the study.

- The research does not target the vulnerable participants as a matter of convenience.
- The recruitment process includes additional safeguards to minimize coercion and undue influence.
- The UIR IRB will consider the nature of the risks, the type of vulnerability, and the nature and level of anticipated benefit in addition to the availability of alternatives.
- The consent process includes additional safeguards to minimize coercion and undue influence.
- The financial payment (if any) to participants is not coercive or unduly influential.

Procedures

Definitions

Cognitively Impaired

Having either a psychiatric disorder (e.g., psychosis, neurosis, personality or behavior disorders), an organic impairment (e.g., dementia) or a developmental disorder (e.g., mental retardation) that affects cognitive or emotional functions to the extent that capacity for judgment and reasoning is significantly diminished. Others, including persons under the influence of or dependent on drugs or alcohol, those suffering from degenerative diseases affecting the brain, terminally ill patients, and persons with severely disabling physical handicaps, may also be compromised in their ability to make decisions in their best interests. (Penslar RL, Porter JP. *Institutional Review Board Guidebook*, Ch. 6: Special Classes of Subjects, OHRP, 1993)

Competence

Technically, a legal term, used to denote capacity to act on one's own behalf; the ability to understand information presented, to appreciate the consequences of acting (or not acting) on that information, and to make a choice. Competence may fluctuate as a function of the natural course of a mental illness, response to treatment, effects of medication, general physical health, and other factors. Therefore, mental status should be re-evaluated periodically. As a designation of legal status, competence or incompetence pertains to an adjudication in court proceedings

that a person's abilities are so diminished that his or her decisions or actions (e.g., writing a will) should have no legal effect. Such adjudications are often determined by inability to manage business or monetary affairs and do not necessarily reflect a person's ability to function in other situations. (Penslar RL, Porter JP. *Institutional Review Board Guidebook*, Ch. 6: Special Classes of Subjects, OHRP, 1993)

Close Friend

In Illinois, "Any person 18 years of age or older who has exhibited special care and concern for the patient and who presents an affidavit to the attending physician stating that he or she (i) is a close friend of the patient, (ii) is willing and able to become involved in the patient's care, and (iii) has maintained such regular contact with the patient as to be familiar with the patient's activities, health, and religious and moral beliefs. The affidavit must also state facts and circumstances that demonstrate that familiarity." ([755 ILCS 40/10](#))

Decisional Capacity

In Illinois, "the ability to understand and appreciate the nature and consequences of a decision regarding medical treatment or forgoing life-sustaining treatment and the ability to reach and communicate an informed decision in the matter as determined by the attending physician." ([755 ILCS 40/10](#))

Guardian

DHHS and the FDA define a guardian as an individual who is authorized under applicable State or local law to consent on behalf of a child to general medical care. In Illinois, the term Guardian "means a court appointed guardian of the person who serves as a representative of a minor or as a representative of a person under legal disability." In Illinois, a variety of guardianship appointments exist and the investigator should take care to document that the guardian's representation of the ward is within the scope of their authority: limited guardianship, plenary guardianship, guardian of the person, guardian of the estate, and temporary guardianship. (Health Care Surrogate Act, [755 ILCS 40](#))

Incapacity

Refers to a person's mental status and means inability to understand information presented, to appreciate the consequences of acting (or not acting) on that information, and to make a choice. Often used as a synonym for incompetence. (Penslar RL, Porter JP. *Institutional Review Board Guidebook*, Ch. 6: Special Classes of Subjects, OHRP, 1993)

Incompetent

A legal term meaning inability to manage one's own affairs. Often used as a synonym for incapacity.

Legally Authorized Representative (LAR)

DHHS and the FDA define a legally authorized representative as "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. ([45 CFR 46.102\(c\)](#); [21 CFR 50.3](#))

If a prospective participant is thought to be decisionally impaired, the UIR IRB will review the situation and take the following into consideration in making a final determination:

1. Does the subject have a LAR for purposes of health care decision-making?
2. What are the risks in relationship to the benefit and does the research offer a potential "therapeutic" benefit, which is not available outside the research, or where it presents care alternatives for which there is genuine equipoise concerning which treatment is preferred?
3. Should an independent physician/psychologist outside the research team be asked to evaluate the potential participant's decisional capacity and is there little or no likelihood that the participant will regain competence within a reasonable period of time, or as established by legal determination? If this determination is made, it must be documented in the subject's research record. It should be noted that the definition of incompetence is not limited to the legal definition, but also may be a clinical judgment that a person lacks the capacity to understand the circumstances of participating in research and to make an autonomous decision to take part. Competency should be evaluated on an individual basis to avoid incorrect assumptions as to an individual's ability to make decisions. Criteria for determining competence might vary according to the degree of risk or discomfort presented by the research procedures and the extent to which therapeutic gain can be anticipated.
4. Can adequate provisions be made for obtaining consent from the participant's surrogate decision maker?

5. Can adequate provisions be made for obtaining assent from the participant, unless it is determined that assent is not appropriate as a condition of participation, or that some or all participants are not capable of providing assent?
6. Are there parameters to determine whether a subject is demonstrating signs of dissent and should be withdrawn from the study?