

University of California, San Diego
Human Research Protections Program
Institutional Review Board
Standard Operating Policies and Procedures

Section 3.4
Informed Consent

Policy

No investigator may involve a human being as a subject unless legally effective informed consent has been obtained from the subject or the subject's legally authorized representative, or if the conditions for waiver of consent have been met. Consent will be sought only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information should be provided in language that is understandable to the subject or representative. The informed consent, whether oral or written, will not contain any exculpatory language through which the subject or representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the institution, the sponsor or its agents from liability for negligence. The investigator remains ultimately responsible, even when delegating the task of obtaining informed consent to another individual knowledgeable about the research.

In order to assess the informed consent process, the submission to the IRB should be detailed enough to allow the IRB to determine that an appropriate process will be followed. In addition to providing a description of the consent process including the person who would conduct the consent interview, and the information to be communicated to the prospective participant or the legally authorized representative, the Research Plan should include the person who would provide consent or permission; any waiting period between informing the prospective participant and obtaining consent; steps taken to minimize the possibility of coercion or undue influence; the language used by those obtaining consent; and, the language understood by the prospective participant or the legally authorized representative.

The informed consent process may be periodically audited by the IRB or appropriate compliance or designated personnel to assess conduct. Information presented in order for the IRB to approve research will be reviewed and must include, but is not limited to the following: a) The investigator obtained the legally effective informed consent of the participant or the participant's legally authorized representative. b) The circumstances of the consent process provided the prospective participant or the legally authorized representative sufficient opportunity to consider whether to participate. c) The circumstances of the consent process minimized the possibility of coercion or undue influence. d) The individuals communicating information to the participant or the legally authorized representative during the consent process provided that information in language understandable to the participant or the representative. e) The information being communicated to the participant or the representative during the consent process did not include exculpatory language through which the participant or the legally authorized representative was made to waive or appear to waive any of the participant's legal rights.

All amendments to the project or changes in the informed consent must be reviewed and approved by the IRB prior to initiating the changes, except when necessary to eliminate immediate hazard(s) to the subject(s). If the amendment addresses an issue related to biosafety or radiation safety, the appropriate committee or subcommittee must also review and approve the amendment. The IRB must document in the minutes sufficient justification of any deletion or substantive modification of information concerning risks or alternate procedures contained in the approved informed consent document.

Documentation of Written Informed Consent

The IRB requires documentation of informed consent by use of a written consent form approved by the IRB that is signed and dated by the subject or the subject's legally authorized representative. Investigators will use informed consent documents that are appropriate to the institution that is administering the project and the site of participant recruitment. Consent forms will vary somewhat in format and in language describing compensation for research injury due to administrative requirements of the University of California, and Rady Children's Hospital – San Diego. However, all consent forms must contain the elements required by federal regulations. If someone other than the investigator conducts the interview and obtains consent from a patient, the investigator needs to formally delegate this responsibility, and the person so delegated must have received appropriate training to perform this activity. The person so delegated must be knowledgeable about the research to be conducted and the consenting process, and must be able to answer questions about the study. The person explaining the study to the subject, if other than the investigator, must also sign the informed consent form on the appropriate line. A copy of the signed informed consent form and Experimental Subject's Bill of Rights will be given to the person signing the form, and the original placed in the archival research record maintained by the PI.

The written consent form may be either of the following:

1. A written consent document that embodies the elements of informed consent described in 21 CFR 50.25 and 45 CFR 46.116. This form may be read to the subject or the subject's legally authorized representative, but, in any event, the investigator will give either the subject or the representative adequate opportunity to read it and ask questions before it is signed.
2. A "short form" written consent document stating that the elements of informed consent as required above have been presented orally to the subject or the subject's legally authorized representative. When this method is used, there will be an impartial witness to the oral presentation, and the following four documents are required:
 - a) A copy of the [IRB-approved English short form](#) translated into the language in which the subject is fluent. The UCSD IRB-approved English short form has been translated into the following languages: Spanish ([form](#) and [certificate](#)), Vietnamese ([form](#) and [certificate](#)); Chinese, Simple ([form](#) and [certificate](#)) and Traditional ([form](#) and [certificate](#)); Arabic ([form](#) and [certificate](#)); and Somali ([form](#) and [certificate](#)).
 - b) A copy of the IRB-approved study consent (long form).
 - c) A copy of the UCSD "Experimental Subject's Bill of Rights" translated into the language in which the subject is fluent. The UCSD "Experimental Subject's Bill

of Rights” has been translated into the following languages: Spanish ([form](#) and [certificate](#)); Vietnamese ([form](#) and [certificate](#)); Chinese, Simple ([form](#) and [certificate](#)) and Traditional ([form](#) and [certificate](#)); Arabic ([form](#) and [certificate](#)); and Somali ([form](#) and [certificate](#)).

- d) If the procedures for using the short form were not previously approved, a revised Research Plan to clearly and specifically outline the procedures that will be used to obtain consent using this method.

These procedures should also address the ongoing process of “informed” consent and the need for providing continued, qualified interpretive services. These four documents require IRB approval before using the short form to obtain consent.

In addition, the following persons need to be present at the time short form consent is being obtained:

- a) The potential participant.
- b) The person obtaining consent.
- c) A qualified interpreter. A family member or close personal friend of the participant is not considered a qualified interpreter. The qualified interpreter may be present physically or by some other means, for example by phone or video conference. Note that the interpreter may also serve as the witness only if the interpreter can sign the appropriate documents (see below).
- d) A witness. The witness is an adult who is conversant in language of the presentation. The witness should be an impartial third party, not otherwise connected with the clinical investigation (for example, clinical staff not involved in the research or a patient advocate) and not be the person obtaining the consent. The purpose of the witness is generally to attest to the voluntariness of the subject’s consent and the adequacy of the consent process by ensuring that the information was accurately conveyed and that the subject’s questions were answered.

The following signatures are required if the potential participant agrees to enroll in the study:

- a) The participant signs and dates the translated short form and the translated “Experimental Bill of Rights.”
- b) The person obtaining the consent signs and dates the IRB-approved study document.
- c) The witness signs and dates the translated short form and the IRB-approved study consent.

Copies of all the documents are provided to the participant.

Once the participant has been consented, the English version of the IRB-approved study consent must be translated into the language in which the participant is fluent. The translated document must be submitted for approval by the IRB (typically using expedited procedures), and provided to the participant as soon as possible but no more than one month after the participant’s initial consent.

The short form method should be used only for the occasional and unexpected enrollment of non-English speaking participants.

For intervention studies, it is recommended as a best practice that a progress note documenting the informed consent process be placed in the subject's medical record and signed by the investigator. At a minimum, the progress note should include the name of the study, the person consenting the subject, a statement that the study was explained to the subject or the subject's representative, a statement that the subject or representative appeared capable of understanding, and a statement that the subject was given the opportunity to ask questions, and documentation that consent was obtained before any subject procedures were performed.

A witness signature is needed only if required by the IRB including when the short form consent method is used or consent is obtained from a subject who does not read or speak English or is illiterate. Note that the witness, except when using the short form, is required to witness only the subject's or subject's legally authorized signature, not the informed consent process, unless the sponsor or the IRB requires the witness to witness the informed consent process. The witness cannot be the person who obtained consent from the subject but may be another member of the study team or a family member unless the short form consent procedures are used.

A signature line for the subject's legally authorized representative may be included if the project meets California requirements for Surrogate Consent and the project has been approved for use of Surrogate Consent by the IRB. See SOPP Section 3.3.6, "Surrogate Consent and Review of Projects Involving Populations with Impaired Decisional Capacity" regarding research involving persons with impaired decisional capacity for additional information on this topic.

The research subject or legally authorized representative will be given a signed copy of the consent form, and a copy of the "Experimental Subject's Bill of Rights."

Use of Electronic Signatures for consenting subjects

Unless the IRB waives the requirement for signed consent, such as through 45 CFR 46.117(c), a written consent must be given to and signed and dated by the subject or the subject's legally authorized representative. An electronic signature on a consent document may be used if the procedures for obtaining electronic signature are approved by the IRB.

In order for the IRB to approve use of electronic signature on a consent form, the IRB will consider such issues as how the electronic signature is created, if the signature can be shown to be legitimate, and if the consent document can be produced in hard copy for review by the potential subject. As noted by OHRP, "If properly obtained, an electronic signature can be considered 'original' for the purposes of recordkeeping."

The Office of Human Research Protections also notes, "OHRP would allow electronic signature of the document if such signatures are legally valid within the jurisdiction where the research is conducted." Two laws that address the electronic signature of the consent include the Federal Electronic Signatures in Global and National Commerce Act (eSIGN) and California's Uniform Electronic Transactions Act (UETA). These laws include that the subject must agree to use the

electronic format, such as by clicking a “You agree” icon, and a clear statement of the subject’s rights with respect to the electronic document is provided. The rights include the right to obtain the electronic record in non-electronic form and a description of any procedures that must be followed to withdraw the subject’s agreement to use an electronic record.

In addition, for FDA-regulated research, “electronic” documents would be subject to a specialized set of requirements found at 21 CFR Part 11. Compliance with these standards is used to assure that electronic records are “trustworthy, reliable, and generally the equivalent to paper records and handwritten signatures executed on paper.”

Required Elements of Informed Consent Forms

In accordance with 21 CFR 50.25 and 45 CFR 46.116, the following information will be provided to each subject:

1. A statement that the study involves research, an explanation of the purposes of the research, the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental.
2. A description of any reasonably foreseeable tangible or intangible risks or discomforts to the subject.
3. A description of any benefits to the subject or to others that may reasonably be expected from the research.
4. A disclosure of appropriate alternative procedures or courses of treatment, if any, which might be advantageous to the subject.
5. A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained.
6. For research involving more than minimal risk, an explanation as to whether any compensation, or medical treatments are available, if injury occurs and, if so, what they consist of, or where further information may be obtained. For sponsored studies, a statement naming the organization that will pay for injury costs should be included.
7. An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject.
8. A statement that participation is voluntary, that refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and that the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.
9. If the research involves products regulated by the FDA or will be used to support applications for products regulated by the FDA (a drug with an IND or a medical device with an IDE), the consent form will include a statement disclosing that the FDA may choose to inspect research records identifying study participants.
10. When seeking informed consent for clinical trials approved after March 7, 2012 that require registration in the clinical trial registry databank, the following wording must be included in the consent, “A description of this clinical trial will be available on <http://www.ClinicalTrials.gov>, as required by U.S. Law. This Web site will not include information that can identify you. At most, the Web site will include a summary of the results. You can search this Web site at any time.”

11. All informed consent forms should be written at a level appropriate for the potential population. Use of the second person is preferred. General formatting, readability and clarity must be acceptable and medical terminology must be defined in lay terms, ideally at an eighth-grade reading level or lower.

Additional Elements Of Informed Consent

When appropriate, one or more of the following elements of information will also be provided to each subject:

1. A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus if the subject is or may become pregnant) that is currently unforeseeable.
2. Anticipated circumstances under which the subject's participation may be terminated by the investigator.
3. Any additional costs to the subject that may result from participation in the research, with consideration of Federal laws concerning veterans' eligibility for medical care and treatment.
4. The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject.
5. A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject.
6. The approximate number of subjects involved in the study.
7. Additional information pertaining to the use of biological materials for research, especially genetic research. This information should include whether the investigator believes the specimens obtained could be part of or lead to the development of, a commercially valuable product. If so, a Moore clause should be included in the consent.
8. Future use of collected specimens should specimens be retained at the end of the study including where the specimens will be retained, who will have access to them, how long they will be retained, what information will be associated with the specimens, and what information will be provided with the specimens should they be shared with other individuals outside the current project.
9. Whether subjects will be recontacted for future research.
10. Whether subjects will receive a report of the aggregate results or any results specific to the subject and the procedures associated with providing the results.
11. The amount of payment, if any, the subject is to receive, and the schedule of payment. This amount must be pro-rated over the length of the study.
12. A description of any financial or other arrangements with a sponsor or institution that may pose a conflict of interest.
13. Any additional information that may be required by state, federal, or institutional regulations in order for informed consent to be legally effective.
14. Additional information that, in the judgment of the IRB, would add meaningfully to the protection of the rights, safety, and/or well being of the subjects.

Waiver or Alteration of Informed Consent.

For FDA-regulated research, waivers of consent are not permitted. For other studies, the IRB may approve a consent procedure that alters some or all of the elements of informed consent set forth in this section, consistent with the provisions of the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Although HIPAA addresses waiver of authorization (consent) in settings using information derived from healthcare settings, for consistency the provisions of HIPAA will be applied by the IRB to all research involving person-identifiable information.

The IRB may waive the requirements to obtain informed consent if the IRB finds that all of the following conditions apply:

1. The research is minimal risk.
2. The waiver will not adversely affect the rights and welfare of the subjects.
3. The research could not practicably be carried out without the waiver.
4. Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

The HIPAA Privacy Rule 45 CFR 164 section 512(I) requires that requires that eight conditions must be satisfied in order to grant a waiver of individual authorization for research uses of Protected Health Information (PHI , i.e., person-identifiable information produced as a result of healthcare services). In addition to these criteria, the federal Common Rule (45 CFR 46 section 116(d)) stipulates that “whenever appropriate, the subjects will be provided with additional pertinent information after participation.”

The IRB may waive the requirements to obtain individual authorization for research uses of PHI provided the IRB finds and documents that all of the following conditions apply:

1. The research involves no more than minimal risk.
2. Granting of waiver will not adversely affect privacy rights and welfare of the individuals whose records will be used.
3. The project could not practicably be conducted without a waiver.
4. The project could not practicably be conducted without use of PHI.
5. The privacy risks are reasonable relative to the anticipated benefits of research.
6. An adequate plan to protect identifiers from improper use and disclosure is included in the research proposal.
7. An adequate plan to destroy the identifiers at the earliest opportunity, or justification for retaining identifiers, is included in the research proposal.
8. The project plan includes written assurances that PHI will not be re-used or disclosed for other purposes.
9. Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

Many DHHS multi-site studies such as cooperative oncology trials, cardiology trials, and behavioral studies, include a consent document that has been approved by DHHS. The approved consent document must include all information concerning risks or alternative procedures contained in the DHHS-approved sample consent document, unless the IRB has justified in the minutes any deletion or substantive modification of that information.

The IRB may also waive the requirement for the investigator to obtain a signed consent form for some or all subjects, if it finds either:

1. 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 must 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 where the written informed consent is waived, the IRB may require the investigator to provide subjects with a written statement containing information about the research and appropriate elements of informed consent. The IRB will review the written statement and will document in the minutes its specific findings that conditions permitting waiver or alteration have been met.

The informed consent requirements in this policy are not intended to preempt any applicable Federal, State, or local laws which require additional information to be disclosed in order for informed consent to be legally effective.

Obtaining Consent from Individuals Who Cannot Read or Speak English or Who are Illiterate

As noted by the FDA, "The investigators and the IRBs that review such research should carefully consider the ethical ramifications of enrolling or excluding potential subjects when a language barrier may exist between the investigator(s) and some or all of the potential subjects. Consistent with the requirement that selection of subjects be equitable (21 CFR 56.111(a)(3)), individuals should not routinely be excluded from participating in research simply because they do not understand English."

If it is likely that the study will enroll individuals who cannot read or speak English, the Research Plan must describe the procedures that will be used to obtain consent from these subjects including the use of documents translated into the subject's primary language, the use of a qualified translator, and how it will be ensured that continued, qualified interpretive services to the participant will be provided.

The subject must be given an IRB-approved translation of the consent form and the Experimental Subject's Bill of Rights in a language in which the subject is fluent. Unless the researchers are fluent in the subject's language, a qualified interpreter must be included in the consent process, either physically or by some other means, for example by phone or video conference, during the entire consent process, not just the signing of the consent form. A relative who speaks English does not qualify as an official interpreter.

If an investigator wishes to include a subject who is illiterate or cannot read the informed consent document the consent form will be read to the subject in the presence of an impartial witness. Whenever possible, accommodations should be made to permit subjects to read the consent form if possible (e.g., large type for individuals with visual impairments), rather than relying on verbal consent routinely. An impartial witness will observe the consent process and

then sign the consent form. The person who is illiterate will also sign their mark on the signature line. When a study is expected to include illiterate subjects, the investigator will describe in the Research Plan the procedures associated with obtaining consent from these subjects.

Procedures for obtaining informed consent from potential subjects who are physically unable to talk or write

If an investigator wishes to include a subject who can understand and comprehend spoken English but is physically unable to talk or write, the prospective subject must be competent and able to indicate approval or disapproval by some means. The consent will be read to the subject in the presence of an impartial third party who will witness the entire consent process, read the informed consent and any other written information provided to the subject, and sign the consent document beneath the subject signature line. An impartial third party is an individual who is independent of the trial and who cannot be unfairly influenced by people involved in the trial. By signing the consent form, the witness attests that the information in the consent form and any other written information was accurately explained to, and apparently understood by, the subject, and consent was freely given by the subject. The consent should document the specific means by which the prospective subject communicated agreement to participate in the study as well as why consent was obtained in this manner and who the impartial third party was. If it is likely that the study will enroll individuals who physically are unable to talk or write, the Research Plan must describe the procedures that will be used to obtain consent from these subjects.

Procedures

1. IRB members will review informed consent forms for compliance with applicable federal, state and institutional regulations and policies; assess reading level and general readability of the form; and make recommendations on the adequacy of the form for its intended purpose and require changes if necessary.

Applicable Regulations

[21 CFR 50.20](#)

[21 CFR 50.23\(a-d\)](#)

[21 CFR 50.25](#)

[21 CFR 50.27](#)

[21 CFR 56.104\(c\)](#)

[45 CFR 46.116](#)

[45 CFR 46.117](#)

[FDA Guide to Informed Consent – Information Sheet](#)

[Electronic Signatures in Global and National Commerce Act](#)

[Uniform Electronic Transactions Act](#)

[California Health and Safety Code Section 24170-24179.5](#)