Legally Effective Informed Consent

The requirement to obtain informed consent of subjects before involving them in research is one of the key principles of ethical conduct. Research personnel are required to obtain "legally effective informed consent" from subjects unless the study qualifies as exempt research or unless a waiver of the informed consent requirement has been granted. When consent is required, it must occur before any research-specific procedures take place. Legally effective informed consent is a process by which:

- consent is obtained from the subject (or the subject's representative, when the research involves a pediatric population or adults with cognitive impairment);
- consent is documented as required by regulations;
- consent is obtained under circumstances that allow the subject sufficient opportunity to consider whether or not to participate;
- consent is obtained in an environment that is free from coercion (overt or implicit threat of harm) or undue influence (offer of excessive or inappropriate reward); and
- consent information is provided in language that is understandable to the subject.

The Process of Informed Consent

When federal regulators state that informed consent is a process, they mean that informed consent is much more than having the subject sign a document at a single point in time; it is an ongoing exchange of information between the investigator and the subject. The process begins when the potential subject first learns about the research opportunity, and it continues during the entire course of the study. Throughout the research, the subject needs information to make an informed, voluntary decision about entering and remaining in the trial. The investigator is charged with facilitating the understanding of what has been disclosed and keeping subjects aware of any new information that may impact their safety or their willingness to participate.

The Setting

The potential subject should be presented with the informed consent document in a private setting, apart from noise and other distractions that may lead the subject to feel rushed or pressured to sign the consent. Ample time must be provided to allow the subject to consider the study. When time permits, investigators are encouraged to discuss the study and allow the potential subject to take home the consent form, returning to discuss and sign at a subsequent visit.

The Consent Document

Federal regulations prescribe certain elements that must be discussed in the consent document. Investigators are encouraged to use the consent form templates posted on the IRB website. Multiple versions of the consent form may be necessary if the study includes both adults and children or adults with and without cognitive impairment.

Investigators must ensure that subjects sign only the **current, IRB-approved version** of the consent form. The approved version will have the IRB stamp in the lower right corner, indicating the valid dates. If the consent form is amended during the approval period, investigators must ensure they use the correct amended version.

The Consent Conversation

In order for the consent process to be legally effective, investigators must explain the study to the potential subject in terms the subject can understand. **Simply handing the consent form to the patient and returning later for the signature does not accomplish legally effective informed consent.** The investigator and subject should engage in a conversation about the study, "talking through" the various sections of the informed consent document in addition to having the subject read the document.

Federal regulations allow consent to be obtained either by the principal investigator (PI) or by other study personnel/investigators who are knowledgeable about the study. Even if the principal investigator is not the primary individual who obtains consent, he or she should be available to answer questions. The PI remains ultimately responsible for the consent process, even when delegating the task of obtaining informed consent to another knowledgeable individual.

During the consent conversation, the principal investigator and/or other members of the study team should cover the following topics:

a. voluntariness of study participation
b. background information that led to the scientific question being investigated
c. the purposes of the study
d. details about the drugs, devices, supplements or therapies being tested (if applicable)
e. the expected duration of the project
f. the procedures to be followed
g. use of placebo (if applicable)
h. whether or not investigators will be unblinded (for randomized trials)
i. procedures or data collection that are being done solely for research purposes
j. whether or not subjects will be told about results of study assessments
k. foreseeable risks and discomforts
l. possible benefits of the study
m. provisions for confidentiality of the data
n. additional costs incurred by research participation and any payments to subjects
o. provisions for care, in the event of a research-related injury
p. alternatives to participating in the study
q. assurance that questions can be asked at any time
r. commitment to keep subjects informed of new information that could impact their willingness to continue participating
s. subjects' right to decline participation or withdraw from the study without penalty
t. conditions under which subjects might be removed from the study without their consent
u. contact information, if subjects have questions or problems during the study

Documenting the Subject's Consent

Obtaining appropriate signatures is an important element of legally effective informed consent. The subject, parent or surrogate decision-maker must personally sign and date the consent. The consent is also signed by the study team member who obtained informed consent. For some pediatric studies, children will sign the "assent" section of the consent form. After consent is obtained, subjects must be provided with a signed copy of the consent form for their records.

Some consent forms have blanks that need to be filled in at the time of consenting. For instance, the contact names and phone numbers may vary by location, or subjects may be choosing among several options in the research. **When the consent process is complete, the person obtaining consent must ensure that every "blank" in the document is filled in, whether for study information in the body of the consent or for signatures, times and dates at the end.**

For studies involving an FDA-regulated product, a health care professional should place a note in the medical record that informed consent for research was obtained. In general, documentation will be in the form of a progress note. When applicable, investigators should be aware of and follow the sponsor's requirements for documenting consent for research in the medical record.

Obtaining Assent from Children and Adolescents

When research involves children or adolescents, the IRB is required to ensure adequate provisions are made for soliciting participant assent, if they are capable of providing assent.

"Assent" means a child's affirmative agreement to participate in research. In determining whether children are capable of assenting, the IRB takes into account the ages, maturity, and psychological state of the children involved. This judgment may be made for all children to be involved in research under a particular protocol, or for each child, as the IRB deems appropriate. The child should be given an explanation of the proposed research procedures in a language that is appropriate to the child's age, experience, maturity, and condition.

For healthy children, assent is generally appropriate for ages 7 and older. For children whose age and maturity level limits their ability to fully comprehend the nature of the research activity but who are still capable of being consulted about participation in research, the assent procedure should reflect a reasonable effort to enable the child to understand, to the degree they are capable, what their participation in research would involve.

For research activities involving adolescents whose capacity to understand is similar to adults, the assent procedure should likewise include information similar to what would be provided for informed consent by adults or for parental permission. Depending on the nature of the study, investigators may want to consider having a private conversation with the adolescent subject. This separate conversation will confirm the willingness to participate apart from the parent's permission and provide an opportunity to discuss any private questions the adolescent may have.

The format of the assent form will vary, depending on the age and health of the subjects. The assent should be brief with very simple sentences. A diagram or picture may be helpful in communicating the requirements of the study. A larger font size is suggested. The assent form and the assent conversation should:

- tell why the study is being conducted;
- describe what will happen and what the child will be asked to do;
- communicate the child's freedom to decide whether to participate and the freedom to withdraw before the study is over;
- explain if procedure(s) will hurt and for how long and how often;
- describe any possibility that participation might provide a benefit to the child;
- outline the child's other choices in lieu of study participation;
- provide the child an opportunity to ask questions.

When studies involve therapeutic interventions, the IRB may determine that parental permission overrules the child's decision to participate and the child's dissent would not be honored. Under those circumstances, the assent process should not indicate that the decision to participate is up to the child. Instead, it should simply provide information about the study and an opportunity for the child to ask questions.

Use of Surrogate (Proxy) Decision-Makers

The state of Kansas has special rules about persons who can provide surrogate consent when adult research subjects are not capable of giving informed consent. Incapacity may arise from cognitive impairment, trauma or severe illness. If a legal guardian or durable power of attorney has not been named, then permission may be provided by (in order of preference):

1. The subject's spouse, unless they are legally separated;
2. An adult child;
3. A parent;
4. An adult relative by blood or marriage.

The law places a caveat on surrogate decision-making, in that no decision in favor of research participation may be made if the potential research subject has previously expressed contrary wishes, either orally or in writing.

When conducting the initial review of a study, the IRB must specifically approve involvement of persons who cannot consent for themselves. From an ethical perspective, a study may enroll these vulnerable subjects only if the research goals cannot otherwise be accomplished.

If the IRB approves enrollment of decisionally-impaired subjects, investigators should use a Surrogate Decision-makers version of the consent form that documents permission by an appropriate proxy and the relationship of that person to the research subject. Investigators must contact the IRB office if they wish to enroll a person with decisional impairment on a study that has not been approved for vulnerable subjects. Such a change would constitute a protocol amendment and would need prior approval from the IRB.

Record-keeping

Investigators are responsible for retaining originals of all signed consent documents along with other study documentation. The KUMC Records Retention Policy requires study records to be maintained for at least 15 years. If the research involves pediatric subjects, then the records must be retained for a minimum of 25 years after completion or termination of the study.

Re-consenting

During the course of the study, the IRB must give prior approval to any changes in the research, unless an overriding safety concern dictates that those changes be made immediately. When the consent form is changed during the study, the IRB evaluates whether or not former or current subjects need to be re-consented. Current subjects should be re-consented if the new information effects their study participation, if the new information relates to safety or risks, or if the new information could otherwise impact subjects' willingness to continue in the study. Former subjects must be notified if the new information could impact their safety or welfare.