The Christ Hospital IRB
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(II.3.F, II.4.B, III.1.F)

Number: 2.02
Effective Date: 1/09/09
Revised/Revised Date: 07/24

STANDARD OPERATING PROCEDURE

Informed Consent: Elements, Process and Documentation

POLICY:

It is The Christ Hospital's policy that research may not include human subjects without the informed consent of the subject or his/her Legally Authorized Representative (LAR) unless a recognized exception or waiver applies under federal regulations (ref. TCH IRB SOP 3.15, Waiver of Informed Consent). An investigator shall seek informed consent in accordance with federal regulations at 45 CFR 46.116 and, if applicable, 21 CFR 50.20, 50.25, and any applicable regulations of the sponsor unless the IRB grants a waiver of informed consent in accordance with 45 CFR 46.116(f)(1), 46.116(d) and, if applicable 21 CFR 50.23(d), 50.23(e), 50.24 and DHHS waiver for emergency research at 61 FR 51531, or any applicable regulations of the sponsor. Additionally, an investigator will document informed consent in accordance with 45 CFR 46.117 and, if applicable, 21 CFR 50.27 or other applicable regulations of the sponsor unless the IRB waives documentation of informed consent in accordance with 45 CFR 46.117(c)(1), and, if applicable, 21 CFR 56.109(c), 56.109(d) or other regulations of the sponsor. The principal investigator is responsible for ensuring informed consent is obtained from each subject before the subject participates in a research study. Although the principal investigator may delegate duties for obtaining informed consent to other members of the research team, he/she remains ultimately responsible for the informed consent process.

If consent or documentation of consent has not been waived by the IRB, in order to approve research, the IRB will determine that informed consent will be (1) sought from each prospective subject or his/her Legally Authorized Representative and (2) appropriately documented in accordance with and to the extent required by federal regulations at 45 CFR 46.111, 46.116 and 46.117; and 21 CFR 50.20, 50.25, 50.27 and 56.111, if applicable, and any applicable regulations of the sponsoring agency. The IRB will determine whether additional information required by federal regulations should be included in the informed consent process in accordance with 45 CFR 46.109(b), and whether any other disclosures should be included in the informed consent process as required by other federal, state or local laws or regulations to make the informed consent process legally effective. All IRB determinations under this policy will be made at the time of initial review, continuing review and review of modifications to research.

Additional Safeguards for Vulnerable Groups: In addition to the other responsibilities described in this policy, the IRB and investigators will employ additional safeguards to preserve the informed consent process when some or all subjects are likely to be vulnerable to coercion or undue influence. At the time of initial review, continuing review, and review of modifications to research, the IRB will systematically evaluate whether the research involves subjects likely to be vulnerable to coercion or undue influence, and will consider appropriate additional safeguards for the informed consent process. Research will incorporate safeguards for pregnant women, fetuses, and neonates in accordance with 45 CFR Part 46, Subpart B, and if applicable, any applicable

regulations of sponsoring agencies. Note: The Christ Hospital does not engage in research on prisoners.

Where federal regulations or guidance exist to provide standards for safeguards to preserve the informed consent process for subjects vulnerable to coercion or undue influence, such safeguards will conform to specific institutional policy and procedure or, when no institutional policy and procedure exists, written procedures developed by the IRB. IRB procedures developed for the informed consent process in vulnerable groups will take into account:

1. The decision-making capacity of the subjects,
2. Likely circumstances producing coercion or undue influence,
3. The magnitude of the effect on subjects' ability to knowingly and voluntarily consent,
4. Appropriate options to neutralize coercive or undue effects, and
5. If subjects are unable to give legally effective consent, that adequate provisions are made for soliciting the assent of the subjects and the permission of their legally authorized representatives.

(Ref. SOP 3.18 Additional Safeguards for Decisionally Impaired Adults in Research)

The IRB or IRB Chair may authorize an IRB staff member, or a disinterested third party, to observe the informed consent process. This may typically be requested if the study is felt to have more than minimal risk involved, or if the study has the potential to enroll vulnerable populations. This observation may only be performed with the consent of the research subject. Ref. 45 CFR 46.109(e); 21 CFR 56.109(f)

Illiterate English-Speaking Subjects: A person who speaks and understands English but does not read and write can be enrolled in a study by "making their mark" on the consent document, when consistent with applicable state law. A person who can understand and comprehend spoken English, but is physically unable to talk or write, can be entered into a study if they are competent and able to indicate approval or disapproval by other means. If the person (1) retains the ability to understand the concepts and risk and benefit of being in the study when it is explained verbally (still competent), and (2) can indicate approval or disapproval to study entry, they may be entered into the study. The consent form should document the method used for communication with the prospective subject and the specific means by which the prospective subject communicated agreement to participate in the study. An impartial third party should witness the entire consent process and sign the consent document.

PROCEDURE:

Investigator Responsibilities

1. **Initial IRB Submission**
   At the time of initial IRB submission, the investigator shall:

   a. Submit the e-application having completed the appropriate sections describing the consent process including:
      - Individuals who are authorized to conduct informed consent discussions with subjects

- When and where may informed consent be obtained
- How much time will be given to subjects to consider participation in the research (Note: Adequate time should be provided for the potential participant to read the informed consent document and consider the risks and benefits prior to signing. If consent is obtained the same day that the subject's involvement in the study begins, the subject's medical record/case report form should document that consent was obtained prior to participation in the research.)
- How it will be determined that the subject understands the information provided
- How consent will be handled when a subject's decision-making capacity is in question
- Any information to be disclosed to participants which meets the requirements for the informed consent process that is NOT exhibited in the proposed informed consent documents
- Any additional safeguards added to the informed consent process to protect vulnerable populations from undue influence and coercion, if applicable
- Requesting a waiver or alteration of informed consent requirements, including documentation, when appropriate (ref. TCH IRB SOP 3.15 Waiver of Informed Consent)
- Identifying and requesting exceptions to the informed consent process, as appropriate, for clinical investigation subject to FDA regulation (ref. TCH IRB SOP 1.10 Emergency Use)
- Requesting approval for the use of a Legally Authorized Representative to consent on a subject's behalf, if appropriate for the subject population (Note: IRB-approval is required for the use of Legally Authorized Representatives.

b. Submit the proposed informed consent document(s) including, but not limited to, the following requirements for informed consent process unless a waiver or exception of informed consent process requested (Ref. TCH IRB Informed Consent Template):
   - Basic elements of consent in accordance with federal regulations at 45 CFR 46.116(a) and, if applicable, 21 CFR 50.20
   - Additional elements of consent, when appropriate, in accordance with federal regulations at 45 CFR 116(c)
   - Use of simple language at the appropriate reading and comprehension level, or that is appropriate to the specific subject population (approximately 6th grade reading level for adult consent documents)
   - Avoidance of complicated or medical/technical language, replacing such language with lay terms to ease subject comprehension

2. **Consent**
   At the time of consent, the investigator shall:

   a. Verify, when applicable, that a LAR meets the order of priority for granting permission for participation of the proposed research participant

b. Obtain signatures and dates of signatures on the informed consent document for the following individuals, unless the IRB has waived documentation of informed consent process:
    - Participant or LAR, if applicable
    - Witness/person obtaining informed consent: In the case of illiterate subjects, an impartial third party should witness the entire consent process and also sign the consent document
c. Provide a copy of the signed IRB-approved informed consent document to the individual who signed the form (participant or LAR, as applicable, unless waived by the IRB)
d. Supply a copy of the signed informed consent document to performance sites in accordance with the performance site's policy
e. Keep the original signed consent form in the subject's research file
f. Retain the signed consent and documents for at least three years after termination of IRB approval and closure of the protocol, unless the research falls within the purview of the Food and Drug Administration (FDA)
f. Retain the signed documents for the period specified in the applicable FDA regulations for research that falls under FDA authority
g. Submit any revisions to the informed consent process or documents to the IRB for review and approval using the amendment/modification procedure (ref. SOP 2.03 Proposed Modifications/Amendments in Previously Approved Research Studies)

IRB Chair Responsibilities

1. **Initial Review of Consent Processes**
   At the time of Initial Review, the IRB Chair shall:

    a. Review submissions to assess whether sufficient information on the proposed informed consent process and documentation for informed consent has been provided for convened IRB review; request additional information if necessary
    b. Examine submissions for requests for waiver of informed consent, waiver of consent documentation, or HIPAA partial waiver requests (ref. TCH IRB SOP 3.15 Waiver of Informed Consent)
    c. Review all informed consent documents submitted for IRB review for required and additional elements, as appropriate
    d. Request additional information, as needed, to the protocol or informed consent documents and correspond with the investigator requesting such information

2. **Initial Expedited Review of Consent Processes**
   At the time of Initial Expedited Review, the IRB Chair shall:

    a. Review submissions to assess whether sufficient information on the proposed informed consent process and documentation for informed consent has been provided for convened IRB review; request additional information if necessary
    b. Examines submissions for requests for waiver of informed consent, waiver of consent documentation, or HIPAA partial waiver request (ref. TCH IRB SOP 3.15 Waiver of Informed Consent)

c. Review all informed consent documents submitted for IRB review for required and additional elements, as appropriate
d. Request additional information as needed, for the protocol or informed consent document; correspond with the investigator requesting such information.

3. **Minor Modifications: Expedited Review of Previously Approved Research**
The IRB Chair reviews minor modifications to the informed consent documents by the expedited procedure or refers modification requests for review to the convened IRB (ref. TCH IRB SOP 2.03 Proposed Modifications/Amendments in Previously Approved Research Studies)

4. **Consent Observation**
The IRB Chair may request that an observation of obtaining informed consent be performed by a member of the IRB staff or by a third party.

Convened IRB Responsibilities

At the time of initial IRB submission, the convened IRB shall review the consent process including:

1. Review of all informed consent documents for required and additional elements, as appropriate

2. Reviewing the nature of the proposed participant population including vulnerable targeted populations

3. Assessing whether the purpose, risks and benefits in the informed consent agree with the research protocol

4. Review the circumstances under which the consent process will occur including:
    a. Personnel involved
    b. Manner and setting, and any waiting period involved
    c. Opportunities for exchange of information between the patient and the individual obtaining consent

5. Consider additional protections for informed consent for vulnerable populations including:
    a. Plans for non-English speaking participants: involving a translator fluent in both English and participant's language
    b. Determining that requests for the use of an LAR is justifiable for the subject population, if applicable
    c. Incorporation of consent procedures in accordance with policies and procedures for pregnant women and fetuses, and decisionally impaired adults, as applicable.

6. Consider any other procedures proposed to minimize coercion and undue influence
7. Approve the research only if the IRB determines and documents that the requirements for informed consent are satisfied by confirming the following, unless the IRB waives or alters informed consent:

a. The informed consent process appears legally effective
b. The informed consent process provides the participants ample opportunity to consider whether or not to participate
c. The information given to the participants will be in language understandable to participants
d. For non-English-speaking participants, translation of informed consent documents are certified by qualified personnel
e. No exculpatory language is present in which the participant waives or appears to waive legal rights
f. The informed consent process minimizes risk to coercion and undue influence including use of additional protections for vulnerable targeted populations
g. The informed consent disclosures accurately portray the purpose, risks and benefits of the study

8. Approve the research only after determining that the requirements for documentation of informed consent are satisfied, unless the IRB waives documentation of informed consent, by assuring that:
    a. The written informed consent document embodies the elements and disclosures of informed consent
    b. The informed consent provides for the document to be signed and dated by the participant, witness, and (if applicable) the investigator
    c. The study gives the participant adequate time to read the consent
    d. The consent states that a signed copy will be given to the person signing the form

9. Review all amendments to the informed consent process or documentation of informed consent process that potentially changes the risk-benefit ratio to participants and determines whether information affects participants' willingness to participate and, if so, the appropriate manner to inform participants

IRB Office Responsibilities

1. Prepare and send correspondence as directed by the IRB Chair requesting more information, or granting approval, of informed consent documents reviewed by expedited review

2. Prepare and send correspondence, as outlined in the IRB meeting minutes, granting approval, or requesting modifications, to the informed consent document reviewed by the IRB

3. Issue the informed consent documents with the current IRB approval stamp; the informed consent bearing the approval stamp must be used when consenting participants

4. Provide the stamped approved informed consent documents and appropriate correspondence to the investigator and/or their designee

5. Manages scheduling of any observation of obtaining informed consent, as directed, with the investigator and reports findings to the IRB; reporting shall include assurance that no patient identifiers are contained in the report

Informed Consent Posting

The revised Common Rule (i.e., 2018 Requirements) at 45 CFR 46.116(h) requires that for each clinical trial conducted or supported by a federal department or agency (see list below), one IRB-approved consent form used to enroll subjects must be posted on a publicly available federal website (noted below) by the awardee or the federal department or agency component conducting the trial.

1. **Purpose**
   The purpose of this requirement is to be more transparent about the consent forms being used and, over time, improve the quality of consent forms.

2. **Clinical Trial**
   A clinical trial is defined as a research study in which one or more human subjects are prospectively assigned to one or more interventions (which may include placebo or other control) to evaluate the effects of the interventions on biomedical or behavioral health-related outcomes (ref. 45 CFR 46.102(b)). Posting is required for two categories of clinical trials:

   Category 1
   Nonexempt clinical trials (as defined by 45 CFR 46.102(b)) conducted or supported by HHS, *initially approved by an IRB on or after January 21, 2019*

   Category 2
   Nonexempt clinical trials (as defined by 45 CFR 46.102(b)) conducted or supported by HHS, *initially approved by an IRB before January 21, 2019, that continue on or after January 21, 2019*, and for which both of the following are true:
   - An institution transitions a clinical trial to comply with the 2018 Requirements in compliance with the transition provision (45 CFR 46.101(l)), and
   - The transition determination was documented and dated by the IRB or institution before the timeframe specified in 45 CFR 46.116(h)(3) has passed (i.e., the clinical trial is closed to recruitment and 60 or fewer days before the last protocol-required study visit by any subject enrolled in the protocol).

3. **Policy Implementation**
   The revised Common Rule requires clinical trials post one IRB-approved version of a consent form that has been used to enroll participants on a public federal website designated for posting such consent forms.

   a. **When must a consent form be posted for clinical trials initially approved on or after January 21, 2019?**
      The 2018 Requirements state that a consent form must be posted to a designated federal website after the clinical trial is closed to recruitment, and no later than 60 days after the last study visit by any subject, as required by the protocol. While a consent form could be posted before a clinical trial closes recruitment, it does not satisfy the requirement at 45 CFR 46.116(h). If a consent form is posted before a

clinical trial closes recruitment, it would have to be re-posted after the clinical trial closes recruitment in order for 45 CFR 46.116(h) to be satisfied.

b. **Who may post the consent form?**
Under the 2018 Requirements, "the awardee(s)" or a federal agency component(s) conducting a trial is (are) responsible for compliance with this posting requirement. For the purposes of Ref 45 CFR 46.116(h), the Office for Human Research Protections interprets the term "awardee" to refer to the institution (or one of the institutions) engaged in the HHS-conducted or -supported research. However, the posting responsibility may also be assigned to an investigator or IRB staff person, among others. Ref. OHRP Informed Consent Posting Instructions

c. **Uploading an Informed Consent Form**
At this time, two federal websites have been identified as places where consent forms can be posted to satisfy 45 CFR 46.116(h):

- **ClinicalTrials.gov**
  - An IRB-approved version of the form can be uploaded to the ClinicalTrials.gov study record. (Note that ClinicalTrials.gov does not accept non-English documents.)
  - Specific instructions on how to register with ClinicalTrials.gov and upload clinical trial informed consent forms may be found at https://clinicaltrials.gov/ct2/manage-recs.
- **Regulations.gov**
  - An IRB-approved version of the form can be uploaded to Regulations.gov, Docket ID: HHS-OPHS-2018-0021. Note:
  - Submit the informed consent form as a comment to the appropriate docket folder.
  - Instructions for uploading can be found on the OHRP website.
  - Be sure to maintain a copy of your Regulations.gov receipt

The awardee or the federal department or agency conducting the clinical trial may select either website to satisfy the posting requirement.

d. **Redacting Confidential Information on the Consent**
If the consent form has information that should not be publicly available, the Federal department or agency supporting the research may permit or require redactions of proprietary, sensitive, or non-public information in the consent form (e.g., confidential commercial information). The Administrative Grant Specialist of the Federal department or Agency should be contacted to inquire about the process for redacting such information from the informed consent form prior to posting.

e. **Exceptions to the Posting Requirement**
The Administrative Grant Specialist of the Federal department or Agency should be contacted to request an exception to the posting requirement.

References/Additional Information

- Office for Human Research Protections: Informed Consent Posting Instructions

- Office for Human Research Protections: Uploading a Clinical Trial Informed Consent form to Regulations.gov
- National Institutes of Health: Posting Clinical Trial Informed Consent Forms

Common Rule Departments/Agencies

- Department of Homeland Security (DHS)
- Department of Agriculture (DOA)
- Department of Energy (DOE)
- National Aeronautics and Space Administration (NASA)
- Department of Commerce (National Institute of Standards and Technology [NIST])
- Social Security Administration (SSA)
- Agency for International Development (USAID)
- Department of Housing and Urban Development (HUD)
- Department of Justice (National Institute of Justice [NIJ])
- Department of Labor (DOL)
- Department of Defense (DOD)
- Department of Education (ED)
- Department of Veterans Affairs (VA)
- Environmental Protection Agency (Research and Development [EPA])
- Department of Health and Human Services (DHHS)
- National Science Foundation (NSF)
- Department of Transportation (DOT)
- Office of the Director of National Intelligence (ODNI)
    - National Counterterrorism Center (NCTC)
    - National Counterproliferation Center (NCPC)
    - National Counterintelligence and Security Center (NCSC)
    - Cyber Threat Information Integration Center (CTIIC)
    - Office of the Program Manager for the Information Sharing Environment
- Central Intelligence Agency (CIA)
- Consumer Product Safety Commission (CPSC)