Webinar: A Discussion of the Revised Common Rule

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What We Will Cover Today

- The Final Rule
  - What is included from NPRM
  - What was not retained from NPRM
- Changes to the exempt categories
- Revised requirements for informed consent
- Other changes that impact IRB operations and implementation timelines
- Questions
Final Rule

Proposals from NPRM that are in the rule

- New and revised definitions
- Revised exemptions (including some NPRM excluded activities)
- Single IRB review for cooperative research
- Revised requirements for informed consent
- Changes to expedited procedures

Final Rule

Proposals from NPRM that were not adopted

- Reliance on standards and tools that were not yet developed
  - Exempt determination tool
  - Broad consent template
  - Privacy standards
- New category of “Excluded” studies
- Requirements for research involving deidentified biospecimens
- Expansion of rule to all clinical trials
Changes to Exemptions

- The final rule makes changes to five of the six existing exempt categories of research, and adds three new categories.
- The three new categories include “limited IRB review,” so they are not completely exempt.
- In addition, some “exemptions” have been added to the definition of “research.”
- The NPRM proposed classification of “excluded” activities has been dropped from the final rule.
- Moved from section 101 to new section 104.

.104(d)(1) Education

- Research, conducted in established or commonly accepted educational settings, that specifically involves normal educational practices that are not likely to adversely impact students’ opportunity to learn required educational content or the assessment of educators who provide instruction. This includes most research on regular and special education instructional strategies, and research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.
.104(d)(2) –
Tests, Surveys, Interviews, Observation

- Research that only includes interactions involving educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior (including visual or auditory recording) if at least one of the following criteria is met:

(i) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained, directly or through identifiers linked to the subjects;

(ii) Any disclosure of the human subjects' responses outside the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, educational advancement, or reputation; or
.104(d)(2) – Tests, Surveys, Interviews, Observation

- (iii) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects can readily be ascertained, directly or through identifiers linked to the subjects, and an IRB conducts a limited IRB review to make the determination required by §___.111(a)(7).
- “(7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.”
- [The old b(3) providing lesser protections for elected officials and others is gone.]

.104(d)(3) Benign Behavioral Interventions - new

- Research involving benign behavioral interventions in conjunction with the collection of information from an adult subject through verbal or written responses (including data entry) or audiovisual recording if the subject prospectively agrees to the intervention and information collection and at least one of the following criteria is met:
  - The information obtained is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained, directly or through identifiers linked to the subjects; [or]
Any disclosure of the human subjects’ responses outside the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects’ financial standing, employability, educational advancement, or reputation; or

- The information obtained is recorded by the investigator in such a manner that the identity of the human subjects can readily be ascertained, directly or through identifiers linked to the subjects, and an IRB conducts a limited IRB review to make the determination required by §.111(a)(7).

There are additional sections defining benign behavioral interventions:

- “...brief in duration, harmless, painless, not physically invasive,...”
- “...play an online game, solve puzzles under various noise conditions,...”

Deception only allowed if “the subject authorizes the deception through a prospective agreement to participate in research...” and “the subject is informed that he or she will be unaware of or misled regarding the nature or purposes of the research.”
.104(d)(4)
Secondary research

- Secondary research for which consent is not required:
  Secondary research uses of identifiable private information or identifiable biospecimens, if at least one of the following criteria is met:
  - (i) The identifiable private information or identifiable biospecimens are publicly available;
  - (ii) Information, which may include information about biospecimens, is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained directly or through identifiers linked to the subjects, the investigator does not contact the subjects, and the investigator will not re-identify subjects;
  - (iii) The research involves only information collection and analysis involving the investigator’s use of identifiable health information when that use is regulated under 45 CFR parts 160 and 164…. [HIPAA]

- or
.104(d)(4)
Secondary research

- (iv) The research is conducted by, or on behalf of, a Federal department or agency using government-generated or government-collected information obtained for nonresearch activities, if the research generates identifiable private information that is or will be maintained on information technology that is subject to and in compliance with [various federal privacy laws.]

- Important note here: The information or biospecimens don’t have to be existing at the time of the exemption determination, they can be collected into the future.

.104(d)(5)
Federal Research and Demonstration Projects

- Research and demonstration projects that are conducted or supported by a Federal department or agency, ... and that are designed to study, evaluate, improve, or otherwise examine public benefit or service programs ....

- New requirement: Each agency must maintain a public list of these projects, to be published prior to conducting the research.
.104(d)(6)

- Taste and food quality evaluation and consumer acceptance studies.
- No changes.

.104(d)(7) - new

Storage and maintenance for secondary research

- Storage or maintenance for secondary research for which broad consent is required:
- Storage or maintenance of identifiable private information or identifiable biospecimens for potential secondary research use if an IRB conducts a limited IRB review and makes the determinations required by §.111(a)(8).
- 111(a)(8) is the new broad consent, will be covered by Dave Borasky.
.104(d)(8) - new
Use of information or biospecimens in secondary research

- Secondary research for which broad consent is required:
- Research involving the use of identifiable private information or identifiable biospecimens for secondary research use, if the following criteria are met:
  - Broad consent was obtained,
  - Consent documented or has waiver of documentation,
  - IRB conducts a limited review under 111(a)(7), and
  - The investigator does not include returning individual research results to subjects as part of the study plan.

.102(l)
Exemptions added to definition of “Research”

- Research means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities. For purposes of this part, the following activities are deemed not to be research:
.102(l)
Exemptions added to definition of “Research”

- (1) Scholarly and journalistic activities (e.g., oral history, journalism, biography, literary criticism, legal research, and historical scholarship), including the collection and use of information, that focus directly on the specific individuals about whom the information is collected.

- (2) Public health surveillance activities, including the collection and testing of information or biospecimens, conducted, supported, requested, ordered, required, or authorized by a public health authority. Such activities are limited to those necessary to allow a public health authority to identify, monitor, assess, or investigate potential public health signals, onsets of disease outbreaks, or conditions of public health importance (including trends, signals, risk factors, patterns in diseases, or increases in injuries from using consumer products)….
.102(l)

Exemptions added to definition of “Research”

- (3) Collection and analysis of information, biospecimens, or records by or for a criminal justice agency for activities authorized by law or court order solely for criminal justice or criminal investigative purposes.
- (4) Authorized operational activities (as determined by each agency) in support of intelligence, homeland security, defense, or other national security missions.

Changes to Informed Consent

- Some reorganization of existing language.
- New requirement that consent begins with a presentation of key information.
- Additional required and additional elements of consent.
- New broad consent option for some research.
- New requirement for public posting of clinical trial consent forms.
- Minor revisions to documentation requirements.
.116(a)(5)(i)
Provision of “key information”

- Informed consent* must begin with a concise and focused presentation of the key information that is most likely to assist a prospective subject or legally authorized representative in understanding the reasons why one might or might not want to participate in the research. This part of the informed consent must be organized and presented in a way that facilitates comprehension.

*Not applicable with broad consent

.116(a)(5)(ii)
Provision of “key information”

- Informed consent as a whole must present information in sufficient detail relating to the research, and must be organized and presented in a way that does not merely provide lists of isolated facts, but rather facilitates the prospective subject’s or legally authorized representative’s understanding of the reasons why one might or might not want to participate.
.116(a)(5)(ii)

Challenges

- What is “key information”?
- “Concise” and “focused” but not a list of facts?
- Appears to assume that there is one way that people consider whether or not they wish to participate.
- Guidance may be needed to help IRBs apply this requirement.

.116(b)(9)

New element: identifiable private information/ biospecimens

- (i) A statement that identifiers might be removed from the identifiable private information or identifiable biospecimens and that, after such removal, the information or biospecimens could be used for future research studies or distributed to another investigator for future research studies without additional informed consent from the subject or the legally authorized representative, if this might be a possibility; or
.116(b)(9)
New element: identifiable private information/ biospecimens

- (ii) A statement that the subject's information or biospecimens collected as part of the research, even if identifiers are removed, will not be used or distributed for future research studies.

.116(c)(7)-(9)
New additional elements of consent (when appropriate)

- (7) A statement that the subject's biospecimens (even if identifiers are removed) may be used for commercial profit and whether the subject will or will not share in this commercial profit;

- (8) A statement regarding whether clinically relevant research results, including individual research results, will be disclosed to subjects, and if so, under what conditions; and
.116(c)(7)-(9)
New additional elements of consent (when appropriate)

- (9) For research involving biospecimens, whether the research will (if known) or might include whole genome sequencing (i.e., sequencing of a human germline or somatic specimen with the intent to generate the genome or exome sequence of that specimen).

.116(d) – Broad Consent

- To be used for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens.

- Collected for either research studies other than the proposed research or nonresearch purposes.

- Permitted as an alternative to the informed consent requirements in paragraphs (b) and (c).
.116(d) – Elements of Broad Consent

● (1) Information required in paragraphs (b)(2), (b)(3), (b)(5), and (b)(8) and, when appropriate, (c)(7) and (9).

● (2) A general description of the types of research that may be conducted with the identifiable private information or identifiable biospecimens. This description must include sufficient information such that a reasonable person would expect that the broad consent would permit the types of research conducted;

● (3) A description of the identifiable private information or identifiable biospecimens that might be used in research, whether sharing of identifiable private information or identifiable biospecimens might occur, and the types of institutions or researchers that might conduct research with the identifiable private information or identifiable biospecimens;
.116(d) – Elements of Broad Consent

(4) A description of the period of time that the identifiable private information or identifiable biospecimens may be stored and maintained (which period of time could be indefinite), and a description of the period of time that the identifiable private information or identifiable biospecimens may be used for research purposes (which period of time could be indefinite);

(5) Unless the subject or legally authorized representative will be provided details about specific research studies, a statement that they will not be informed of the details of any specific research studies that might be conducted using the subject’s identifiable private information or identifiable biospecimens, including the purposes of the research, and that they might have chosen not to consent to some of those specific research studies;
.116(d) – Elements of Broad Consent

- (6) Unless it is known that clinically relevant research results, including individual research results, will be disclosed to the subject in all circumstances, a statement that such results may not be disclosed to the subject; and

- (7) An explanation of whom to contact for answers to questions about the subject’s rights and about storage and use of the subject’s identifiable private information or identifiable biospecimens, and whom to contact in the event of a research-related harm.

.116(e) – Elements of Broad Consent

- (8) A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled; and
.116(e) – Elements of Broad Consent

(9) One of the following statements about any research that involves the collection of identifiable private information or identifiable biospecimens:

(i) A statement that identifiers might be removed from the identifiable private information or identifiable biospecimens and that, after such removal, the information or biospecimens could be used for future research studies or distributed to another investigator for future research studies without additional informed consent from the subject or the legally authorized representative, if this might be a possibility; or

(ii) A statement that the subject’s information or biospecimens collected as part of the research, even if identifiers are removed, will not be used or distributed for future research studies.
.116(e) - Waivers

Public benefit and service programs

- Waiver or alteration of consent in research involving public benefit and service programs.
- IRB must find and document that the research or demonstration project is to be conducted by or subject to the approval of state or local government officials.
- IRB must find and document that the research could not practicably be carried out without the waiver or alteration.

.116(f) - Waivers

General waiver or alteration of consent

- When individuals refuse to consent under the broad consent, the IRB cannot waive consent for the storage, maintenance, or secondary research use of the identifiable.
- IRB may not omit or alter any of the requirements described in paragraph (a) of this section.
  - E.g., the "key information" requirements
- When a broad consent procedure is used, the IRB may not omit or alter any of the elements from .116(d).
.116(f) - Waivers
General waiver or alteration of consent

- Original criteria remain

- New criterion for research involving identifiable private information or identifiable biospecimens – “the research could not practicably be carried out without using such information or biospecimens in an identifiable format”

.116(g) - Waivers
Screening, recruiting, or determining eligibility

- An IRB may waive consent for the purpose of screening, recruiting, or determining the eligibility of prospective subjects if either of the following conditions are met:
  - (1) The investigator will obtain information through oral or written communication with the prospective subject or legally authorized representative, or
  - (2) The investigator will obtain identifiable private information or identifiable biospecimens by accessing records or stored identifiable biospecimens.
.116(h) - Posting of Consent Forms

- Applies to clinical trials (defined at .102(b)) conducted or supported by a Federal department or agency.
- Informed consent forms must be posted on a Federal website after the clinical trial is closed to recruitment, and no later than 60 days after the last study visit by any subject.
  - Posted by the awardee or the Federal department or agency component conducting the trial
- Applicable Federal department or agency may permit or require redactions to the posted information.

.117 - Documentation of Consent

- Recognizes electronic signature
- New waiver option for “members of a distinct cultural group or community in which signing forms is not the norm”
- Short form must indicate that “the key information required by .116(a)(5)(i) was presented first to the subject, before other information, if any, was provided”
Legally Authorized Representative

Definition changed

“Legally authorized representative means 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. If there is no applicable law addressing this issue, legally authorized representative means an individual recognized by institutional policy as acceptable for providing consent in the nonresearch context on behalf of the prospective subject to the subject’s participation in the procedure(s) involved in the research.”

“Clinical Trial” Definition Added

Clinical trial means 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.

Included because the consent forms will need to be publicly posted.

Consent forms for other types of research won’t need to be posted.
Definition of Human Subject Changed

- (e)(1) Human subject means a living individual about whom an investigator (whether professional or student) conducting research:
  - (i) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or
  - (ii) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens.

Definition of Human Subject Changed

- (5) Identifiable private information is private information for which the identity of the subject is or may readily be ascertained by the investigator or associated with the information.
- (6) An identifiable biospecimen is a biospecimen for which the identity of the subject is or may readily be ascertained by the investigator or associated with the biospecimen.
Definition of Human Subject Changed

- (7) Federal departments or agencies implementing this policy shall:
- (i) Upon consultation with appropriate experts (including experts in data matching and reidentification), reexamine the meaning of “identifiable private information,” as defined in paragraph (e)(5) of this section, and “identifiable biospecimen,” as defined in paragraph (e)(6) of this section.
- This reexamination shall take place within 1 year and regularly thereafter (at least every 4 years).

Lots of Changes to Assurances

- Assurances will no longer:
  - Be required to include a statement of ethical principles.
  - Be required to include a roster of IRB members (but the institution still has to maintain the roster).
  - List IRBs (but documentation still needs to be kept).
  - Include an option to “check the box” to voluntarily place non-federally funded research under OHRP jurisdiction. The Common Rule will only apply to federally funded research.
  - Require that IRBs review grants.
  - Require the agency head to take into consideration the adequacy of the IRB(s).
**Definition of “Vulnerable” Changed**

- All three references to examples of vulnerable subjects are now identical. (108 and 111)
- Certain examples have been removed:
  - “Pregnant women” have been removed.
  - “Handicapped” have been removed
- “Mentally disabled persons” has been changed to “individuals with impaired decision-making capacity.”

**Changes to Continuing Review**

*No Longer Required for:*

- Research eligible for expedited review in accordance with §__.110;
- Research reviewed by the IRB in accordance with the limited IRB review described in the new exempt categories;
- Research that has progressed to the point that it involves only one or both of the following:
  - (A) Data analysis, including analysis of identifiable private information or identifiable biospecimens, or
  - (B) Accessing follow-up clinical data from procedures that subjects would undergo as part of clinical care.
Changes to Expedited Review

- HHS will evaluate the expedited list every 8 years rather than “as appropriate.”
- Specific reference is added that the limited IRB review described in the new exempt categories can be expedited.

Single IRB Requirement

- Required for all cooperative research studies.
  - Applies only to U.S. research sites, unless single IRB review is required by law, including tribal law.
  - Funding department/agency can determine that single IRB is not appropriate
    - Rationale must be documented
- IRB is identified by funding department or agency or proposed by the lead institution.
- External (non-institutional) IRBs will be directly subject to OHRP regulatory oversight.
IRB Records in .115

- Three additional requirements:
  - Records of continuing review activities, including the rationale for conducting continuing review of research that otherwise would not require continuing review as described in §__.109(f)(1).
  - The rationale for an expedited reviewer’s determination under that research appearing on the expedited review list described in §__.110(a) is more than minimal risk.
  - Documentation specifying the responsibilities that an institution and an organization operating an IRB each will undertake to ensure compliance with the requirements of this policy, as described in §__.103(e).

Thank You!

For more information about the WIRB-Copernicus Group, please email us at:
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