

7.0 Informed Consent Requirements

7.1 Legally Effective Informed Consent Process and Documentation

- I. The HSC assures that provisions are made to obtain legally effective informed consent prospectively from each research participant or permission from his/her legally authorized representative. However, there are circumstances in which the HSC may grant a waiver or alteration of informed consent in accordance with Federal regulations.
- II. Documentation of informed consent must be obtained unless alternate procedures are approved by the HSC. The HSC reviews all informed consent documents to assure the adequacy of the information contained in the consent document, and adherence to Federal regulations regarding the required elements of informed consent.
- III. The HSC reviews all aspects of the proposed informed consent process by reviewing the application materials including, but not limited to, consent form(s), advertisements, description of consent methods, and qualifications and experience of study personnel.
- IV. The informed consent process begins when the subject is first contacted about the possibility of participation. The investigator must provide a detailed description of the intended method for identifying potential subjects and obtaining informed consent in their initial application. No investigator may involve an individual as a subject in research without obtaining legally effective informed consent of the subject or the subject's legally authorized representative, unless a waiver of consent has been approved by the HSC. The information in the protocol must match the information in the informed consent document regarding the purpose, risks, and benefits of the research.
- V. All informed consent documents (full written documents, oral scripts, short forms, letters of introduction) must be submitted for review and approval by the HSC prior to use. The HSC will affix the approval and expiration dates to all approved informed consent documents. Only HSC- dated documents can be used in obtaining consent.
- VI. Any changes in the informed consent documents must be submitted as amendments to the HSC for review and approval prior to use.
- VII. All aspects of the informed consent process and documentation must be approved by the HSC prior to their implementation. Informed consent must:
 - A. Be solicited in circumstances that minimize the possibility of coercion and undue influence;
 - B. Utilize language understandable to the participant;

- C. Not waive or appear to waive participants' rights; and
 - D. Include each of the required elements and applicable additional elements of informed consent describing the research and the nature of research participation as required by Federal regulations.
- VIII. Unless specifically waived by the HSC, informed consent is documented in writing through the use of a current HSC-approved informed consent document signed and dated by the participant, or by the participant's legally authorized representative, prior to enrollment or participation in any phase of the research study. A copy of the signed document must be given to the subject or to their representative who provides consent.
- IX. The investigator must assure the informed consent process in research is an ongoing exchange of information between the research team and the study participants throughout the course of a research study. Informed consent is a continuous process of communication and acknowledgement over time, not just a signed document. Information must be presented in a manner that enables a person to voluntarily decide whether or not to participate as a research subject. It is a fundamental mechanism to ensure respect for persons through provision of thoughtful consent for a voluntary act. Sufficient time for consideration must be provided in a non-coercive environment. The procedures used in obtaining informed consent should be designed to educate the subject population in terms that they can understand. Therefore, informed consent language and its documentation (especially explanation of the study's purpose, duration, experimental procedures, alternatives, risks, and benefits) must be written in "lay language", (i.e. understandable to the people being asked to participate) and presented in a way that facilitates understanding. The consent document should be revised when deficiencies are noted or when additional information will improve the consent process.

7.2 Assessing Capacity to Consent

- I. When the potential participant is not able to provide informed consent, permission for the research must be obtained by a legally authorized representative.
- II. Children. For children, their parents or guardian are the legally authorized representatives who may grant permission for their participation in research. Only the parents or guardian may grant permission for their child's participation in research. Assent is to be sought from the child, only after permission has been obtained from the parents. Grandparents and other relatives or caregivers may not grant permission for research participation unless they have been named the legal guardian for the child.
- III. Decisionally-Impaired Adult Subjects. If a prospective adult subject lacks the capacity to consent, his or her legally authorized representative may grant

permission, on their behalf, for their participation in research. Protections and requirements for decisionally impaired adults are further discussed in SOP 9.4.

7.3 Written Consent Forms

I. Written informed consent shall be sought as follows:

A. English Language Consents

The Human Research Protection Program provides several consent templates, to be used as appropriate to the study.

B. Non-English Consent Forms

Whenever the investigator expects to enroll non-English speaking subjects, the HSC requires the use of a foreign-language translation of the informed consent document. The translator must certify their expertise in the language. The HSC must approve the translated consent form prior to its use.

C. Short-Form Consent

There are times when a non-English speaking subject is unexpectedly found to be eligible for enrollment. In this case, investigators will not have an HSC-approved translation of the consent form. In such cases, investigators may use a written “short form” in the subject’s native language as written documentation of the consent process, accompanied by an oral translation of the complete English version of the informed consent document.

The translator may be a qualified hospital/clinic staff member or a professional translator. Family members may not serve in this role.

At the present time, short forms are available in Spanish and in Braille.

The short form indicates that the elements of informed consent have been presented orally to the subject or the subject’s legally authorized representative. When the short form is used, investigators must ensure that:

1. The short form has prior approval from the HSC Office;
2. The English version of the consent form is used in the investigator’s and translator’s discussion with the potential subject;
3. A witness is present at the oral presentation who is fluent in both English and the subject’s native language; the translator can serve as the witness;
4. The short form is signed and dated by the subject or the legally authorized representative;
5. The witness signs both the short form and the English version of the consent form;
6. The person obtaining consent signs the English version of the

- consent form.
7. A signed copy of both the short form and the English version is given to the subject or the representative.

II. Elements of Informed Consent

- A. Unless otherwise authorized by the HSC, research investigators at a minimum shall provide the following information to each subject:
 1. A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are investigational;
 2. A description of any reasonably foreseeable risks or discomforts to the subject;
 3. A description of any benefits to the subject or to others which may reasonably be expected from the research;
 4. A disclosure of appropriate alternative procedures or courses of treatment, if any, that 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. For FDA-regulated research, a statement that informs subjects that FDA might inspect the records;
 6. For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained. The following statement must be included in all consent forms "I understand that, although the University of Kansas Medical Center does not provide free medical treatment or other forms of compensation to persons injured as a result of participating in research, such compensation may be provided under the terms of the Kansas Tort Claims Act. If I believe I have been injured as a result of participating in research, I should contact the Office of Legal Counsel; Mail Stop #2013, University of Kansas Medical Center, 3901 Rainbow Blvd., Kansas City, KS 66160;
 7. An explanation of whom to contact for answers to pertinent questions about the research and research subject's rights, and whom to contact in the event of a research-related injury to the subject; an explanation of who to contact for concerns or complaints about the research; and
 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.

- B. When appropriate, the research investigator shall provide one or more of the following additional elements of information to each subject:
1. A description of standard care for the condition under study and how the proposed investigational treatment or procedure differs from standard care.
 2. 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) which are currently unforeseeable;
 3. Anticipated circumstances under which the subject's participation may be terminated by the research investigator without regard to the subject's consent;
 4. Any additional costs to the subject that may result from participation in the research and a clear delineation of which costs are medically indicated and those which accrue as a result of the research;
 5. The amount and schedule of any payments to subjects.
 6. The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;
 7. 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; and
 8. The approximate number of subjects involved in the study.
 9. Notification that the sponsor, oversight agencies and FDA (as applicable) may inspect identifiable records to verify the accuracy of the information collected.
 10. Any information relevant to research participation that is governed by state law, as specified in SOP 14.3

No consent may include exculpatory language through which the subject or the 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 sponsor, the institution or its agents from liability for negligence.

III. Documentation of Consent

- A. Except when the requirement is waived by the HSC, informed consent will be documented by the use of a written, HSC-approved consent form and signed and dated by the subject or the subject's legally authorized representative.
- B. A signed copy must be given to the person signing the form. The consent form may be either of the following:
1. A written consent document that embodies the elements of informed consent described above. This form may be read to the subject or the subject's legally authorized representative. The investigator shall give either the subject or the representative adequate opportunity to read it before it is signed; or

2. A short form written consent document accompanied by translation of the English consent form, as discussed above in section 7.3.I.C.

7.4 Modifications of the Informed Consent Process

I. Waiver of Documentation of Consent

- A. The HSC may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:
 1. That the only record linking the subject and the research would be the consent document, the principal risk would be potential harm resulting from a breach of confidentiality, and the research is not subject to FDA regulations. Each subject will 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.
- B. In cases in which the documentation (signature) is waived, the investigator must submit to HSC a description of the information that will be communicated to the subject. Whenever feasible, the investigator will provide subjects with a written summary about the research. The written summary should contain at least the basic consent elements.
- C. When the HSC approves a waiver of the requirement to document consent, the HSC file or meeting minutes document the protocol-specific reasons justifying each criterion.

II. Waiver or Alteration of Consent

- A. The HSC may approve a consent procedure that does not include, or which alters, some of the informed consent elements in section 7.3.II. above or waive the requirements to obtain informed consent provided that the HSC finds and documents that:
 1. The research involves no more than minimal risk to the subjects;
 2. The waiver or alternation will not adversely affect the rights and welfare of subjects;
 3. The research could not practicably be carried out without the waiver or alteration;
 4. Whenever appropriate, the subjects will be provided with additional pertinent information after participation;
 5. The research is not subject to FDA regulations.
- B. To be considered for such a waiver, the principal investigator must address each of the above criteria, including a justification of its applicability to the proposed research and subject population for whom the waiver is being requested.

- C. The HSC documents protocol-specific findings of these criteria in the file or in the meeting minutes.

III. Waiver of Parental or Legal Guardian Permission

- A. The HSC may waive permission by the parent or legal guardian if it determines the research meets the waiver of consent criteria described in item 2.A. above.
- B. In addition to the standard criteria for waiver of consent in all studies, federal regulations provide an additional mechanism by which parental permission may be waived. If the HSC determines that a research protocol is designed for conditions or for a participant population for which parental or legally authorized representative permission is not a reasonable requirement to protect the participants (for example, neglected or abused children), it may waive the consent requirements described above, provided that:
 - 1. An appropriate mechanism for protecting the children who will participate as subjects in the research is substituted; and
 - 2. The waiver is not inconsistent with Federal, State, or local law. The choice of an appropriate mechanism would depend upon the nature and purpose of the activities described in the protocol, the risk and anticipated benefit to the research participants, and their age, maturity, status, and condition.
 - 3. The research is not subject to FDA regulations.

IV. Waiver of Consent for Planned Emergency Research Subject to FDA Regulation

- A. The HSC may approve a study without requiring informed consent from all research subjects if the HSC (with the concurrence of a licensed physician who is a member of or consultant to the HSC and who is not otherwise participating in the clinical investigation) finds and documents each of the following:
 - 1. The human subjects are in a life-threatening situation, available treatments are unproven or unsatisfactory, and the collection of valid scientific evidence, which may include evidence obtained through randomized placebo-controlled investigations, is necessary to determine the safety and effectiveness of particular interventions.
 - 2. Obtaining informed consent is not feasible because:
 - a. The subjects will not be able to give their informed consent as a result of their medical condition;
 - b. The intervention under investigation must be administered before consent from the subjects' legally authorized representatives is feasible; and

- c. There is no reasonable way to identify prospectively the individuals likely to become eligible for participation in the clinical investigation.
3. Participation in the research holds out the prospect of direct benefit to the subjects because:
 - a. Subjects are facing a life-threatening situation that necessitates intervention;
 - b. Appropriate animal and other preclinical studies have been conducted, and the information derived from those studies and related evidence support the potential for the intervention to provide a direct benefit to the individual subjects; and
 - c. Risks associated with the investigation are reasonable in relation to what is known about the medical condition of the potential class of subjects, the risks and benefits of standard therapy, if any, and what is known about the risks and benefits of the proposed intervention or activity.
4. The clinical investigation could not practicably be carried out without the waiver.
5. The proposed investigational plan defines the length of the potential therapeutic window based on scientific evidence, and the investigator has committed to attempting to contact a legally authorized representative for each subject within that window of time and, if feasible, to asking the legally authorized representative contacted for consent within that window rather than proceeding without consent. The investigator will summarize efforts made to contact legally authorized representatives and make this information available to the HSC at the time of continuing review.
6. The HSC has reviewed and approved informed consent procedures and an informed consent document consistent with standard informed consent procedures. These procedures and the informed consent document are to be used with subjects or their legally authorized representatives in situations where use of such procedures and documents is feasible. The HSC has reviewed and approved procedures and information to be used when providing an opportunity for a family member to object to a subject's participation in the clinical investigation consistent with item 7(e) below.
7. Additional protections of the rights and welfare of the subjects will be provided, including, at least:
 - a. Consultation (including, where appropriate, consultation carried out by the HSC) with representatives of the communities in which the clinical investigation will be conducted and from which the subjects will be drawn;
 - b. Public disclosure to the communities in which the clinical investigation will be conducted and from which the

subjects will be drawn, prior to initiation of the clinical investigation, of plans for the investigation and its risks and expected benefits;

- c. Public disclosure of sufficient information following completion of the clinical investigation to apprise the community and researchers of the study, including the demographic characteristics of the research population, and its results;
 - d. Establishment of an independent data monitoring committee to exercise oversight of the clinical investigation; and
 - e. If obtaining informed consent is not feasible and a legally authorized representative is not reasonably available, the investigator has committed, if feasible, to attempting to contact within the therapeutic window the subject's family member who is not a legally authorized representative, and asking whether he or she objects to the subject's participation in the clinical investigation. The investigator will summarize efforts made to contact family members and make this information available to the HSC at the time of continuing review.
- B. The HSC is responsible for ensuring that procedures are in place to inform, at the earliest feasible opportunity, each subject, or if the subject remains incapacitated, a legally authorized representative of the subject, or if such a representative is not reasonably available, a family member, of the subject's inclusion in the clinical investigation, the details of the investigation and other information contained in the informed consent document. The HSC shall also ensure that there is a procedure to inform the subject, or if the subject remains incapacitated, a legally authorized representative of the subject, or if such a representative is not reasonably available, a family member, that he or she may discontinue the subject's participation at any time without penalty or loss of benefits to which the subject is otherwise entitled. If a legally authorized representative or family member is told about the clinical investigation and the subject's condition improves, the subject is also to be informed as soon as feasible. If a subject is entered into a clinical investigation with waived consent and the subject dies before a legally authorized representative or family member can be contacted, information about the clinical investigation is to be provided to the subject's legally authorized representative or family member, if feasible.
- C. Protocols involving an exception to the informed consent requirement must be performed under a separate investigational new drug application (IND) or investigational device exemption (IDE) that clearly identifies such protocols as protocols that may include subjects who are unable to consent. The submission of those protocols in a separate IND/IDE is

required even if an IND for the same drug product or an IDE for the same device already exists.

- D. If the HSC determines that it cannot approve a clinical investigation because the investigation does not meet the criteria in the exception provided under item A of this SOP or because of other relevant ethical concerns, the HSC must document its findings and provide these findings promptly in writing to the clinical investigator and to the sponsor of the clinical investigation. The sponsor of the clinical investigation must promptly disclose this information to FDA and to the sponsor's clinical investigators who are participating or are asked to participate in this or a substantially equivalent clinical investigation of the sponsor, and to other IRBs that have been, or are, asked to review this or a substantially equivalent investigation by that sponsor.
- V. Waiver of Consent for Planned Emergency Research That Is Not Subject to FDA Regulation
- A. The HSC may approve a study without requiring informed consent from all research subjects if the HSC finds and documents each of the following:
 - 1. The human subjects are in a life-threatening situation, available treatments are unproven or unsatisfactory, and the collection of valid scientific evidence, which may include evidence obtained through randomized placebo-controlled investigations, is necessary to determine the safety and effectiveness of particular interventions.
 - 2. Obtaining informed consent is not feasible because:
 - a. The subjects will not be able to give their informed consent as a result of their medical condition;
 - b. The intervention under investigation must be administered before consent from the subjects' legally authorized representatives is feasible; and
 - c. There is no reasonable way to identify prospectively the individuals likely to become eligible for participation in the research.
 - 3. Participation in the research holds out the prospect of direct benefit to the subjects because:
 - a. Subjects are facing a life-threatening situation that necessitates intervention;
 - b. Appropriate animal and other preclinical studies have been conducted, and the information derived from those studies and related evidence support the potential for the intervention to provide a direct benefit to the individual subjects; and
 - c. Risks associated with the research are reasonable in relation to what is known about the medical condition of the

potential class of subjects, the risks and benefits of standard therapy, if any, and what is known about the risks and benefits of the proposed intervention or activity.

4. The research could not practicably be carried out without the waiver.
5. The proposed research protocol defines the length of the potential therapeutic window based on scientific evidence, and the investigator has committed to attempting to contact a legally authorized representative for each subject within that window of time and, if feasible, to asking the legally authorized representative contacted for consent within that window rather than proceeding without consent. The investigator will summarize efforts made to contact legally authorized representatives and make this information available to the HSC at the time of continuing review.
6. The HSC has reviewed and approved informed consent procedures and an informed consent document consistent with standard informed consent procedures. These procedures and the informed consent document are to be used with subjects or their legally authorized representatives in situations where use of such procedures and documents is feasible. The HSC has reviewed and approved procedures and information to be used when providing an opportunity for a family member to object to a subject's participation in the research consistent with item 7(e) below.
7. Additional protections of the rights and welfare of the subjects will be provided, including, at least:
 - a. Consultation (including, where appropriate, consultation carried out by the HSC) with representatives of the communities in which the research will be conducted and from which the subjects will be drawn;
 - b. Public disclosure to the communities in which the research will be conducted and from which the subjects will be drawn, prior to initiation of the research, of plans for the investigation and its risks and expected benefits;
 - c. Public disclosure of sufficient information following completion of the research to apprise the community and researchers of the study, including the demographic characteristics of the research population, and its results;
 - d. Establishment of an independent data monitoring committee to exercise oversight of the research; and
 - e. If obtaining informed consent is not feasible and a legally authorized representative is not reasonably available, the investigator has committed, if feasible, to attempting to contact within the therapeutic window the subject's family member who is not a legally authorized representative, and asking whether he or she objects to the subject's participation in the research. The investigator will

summarize efforts made to contact family members and make this information available to the HSC at the time of continuing review.

- B. The HSC is responsible for ensuring that procedures are in place to inform, at the earliest feasible opportunity, each subject, or if the subject remains incapacitated, a legally authorized representative of the subject, or if such a representative is not reasonably available, a family member, of the subject's inclusion in the research, the details of the investigation and other information contained in the informed consent document. The HSC shall also ensure that there is a procedure to inform the subject, or if the subject remains incapacitated, a legally authorized representative of the subject, or if such a representative is not reasonably available, a family member, that he or she may discontinue the subject's participation at any time without penalty or loss of benefits to which the subject is otherwise entitled. If a legally authorized representative or family member is told about the research and the subject's condition improves, the subject is also to be informed as soon as feasible. If a subject is entered into research with waived consent and the subject dies before a legally authorized representative or family member can be contacted, information about the research is to be provided to the subject's legally authorized representative or family member, if feasible.
- C. For the purposes of this waiver "family member" means any one of the following legally competent persons: spouses; parents; children (including adopted children); brothers, sisters, and spouses of brothers and sisters; and any individual related by blood or affinity whose close association with the subject is the equivalent of a family relationship.

7.5 Surrogate Consent

- I. Federal regulations require informed consent to be provided by the individual or by their legally authorized representative. For research conducted by KUMC, the legally authorized representative is defined by state law governing surrogate decision-makers for research. Effective July 1, 2004, Kansas law defines the group of individuals who may act as surrogate decision-makers for participation in clinical research. The law applies to decisions made on behalf of adults or emancipated minors who are incapable of giving informed consent for a research protocol. The ability of these decision-makers to consent on another's behalf only applies when the clinical research is being conducted by a licensed physician with medical staff privileges and when the research has been reviewed and approved by an institutional review board. If these two conditions are met, a hierarchy of preferred decision-makers may provide informed consent on behalf of the incapacitated individual.
- II. This law supports the priority of decisions made by either a legal guardian or an attorney-in-fact with the authority to make health care decisions for the individual.

However, if neither such role exists, or if the person acting in the capacity cannot be contacted using reasonably diligent efforts, informed consent for research participation may be granted by a family member in the following order:

- A. The adult or emancipated minor's spouse, unless they are legally separated;
 - B. An adult child;
 - C. A parent;
 - D. An adult relative by blood or marriage.
- III. The law places a caveat on surrogate decision-making, in that no decision in favor of research participation may be made if the incapacitated person has previously expressed contrary wishes, either orally or in writing.
- IV. KUMC researchers who are conducting clinical trials that may involve incapacitated persons must use a consent form that has been specifically designed for such purpose. The consent form must be reviewed and approved by the Human Subjects Committee prior to its use.
- V. KUMC researchers who conduct research involving incapacitated persons outside the state of Kansas must inform the HSC of the laws for surrogate consent in the other state. Representatives of the HSC will consult with KUMC Legal Counsel to determine which state's laws are more restrictive. The more restrictive law will be followed.

7.6 Observation of Informed Consent Process

- I. Under federal regulation, the HSC may exercise its prerogative to observe the informed consent process.
- II. Protocols may be chosen for observation of the informed consent process by one of the following methods:
 - A. At the request of the HSC;
 - B. As a result of a known or suspected problem;
 - C. As part of a randomly selected monitoring visit;
 - D. At anytime the study is enrolling participants. The level of risk or complexity may dictate the implementation of this process.
- III. Once a protocol is identified, the designated observer will notify the investigator and research staff of the planned informed consent review visit and explain the procedures surrounding the observation. The investigator will be requested to inform the observer when a prospective participant is scheduled for a visit in which the informed consent will be presented. The observer will attend at this time if scheduling permits.

- IV. Before the informed consent process is implemented, verbal permission to be present for the informed consent discussion will be secured from the participant. The observer will introduce him/herself to the participant and give an explanation for presence and assurance that confidentiality will be maintained.
- V. The observer will document his/her observations of the informed consent process. At the conclusion of the informed consent process, the observer will interview the participant regarding their understanding of the consent.
- VI. A post-approval monitor may also interview a participant after starting the study if no further enrollment into the study is planned. This interview may be done in person or by phone. The monitor will again obtain the participant's (or participant's legal representative) verbal permission to proceed with the interview.
- VII. At the conclusion of the observation visit, phone interview, or in person interview, the monitor will include a report of informed consent process. This will be sent to the IRB Administrator and the Chair of the HSC as well as the principal investigator of the study.

7.7 Retention of Consent Forms

- I. The original of the signed consent form must be kept on file by the investigator and is subject to recall and review by the HSC at any time.
- II. Consent forms, and all other study documentation, must be retained in accordance with the **KUMC Research Records Retention Policy**. This policy states, in part, that research records are to be retained by the investigator for a minimum of fifteen (15) years unless a longer retention period is specified by the sponsor, funding source, or regulation. Research records involving pediatric subjects must be retained for a minimum of 25 years after completion or termination of the study.

References:

45CFR 46.111
21 CFR 56.111
45 CFR 46.116
21 CFR 50.25
45 CFR 46.117
21 CFR 50.27
45 CFR 46.115
21 CFR 56.115