

Guidelines for waiving informed consent when conducting emergency medicine or during emergency use.

FDA Regulation 21 CFR 50.23 does allow exception from informed consent if, before use of a test article both a physician who is not otherwise participating in the clinical investigation and the investigator certify in writing:

1. the participant is confronted by a life-threatening situation necessitating the use of the investigational article
2. informed consent cannot be obtained from the participant because of an inability to communicate with, or obtain legally effective consent from, the participant
3. time is not sufficient to obtain consent from the participant's legally authorized representative
4. there is no available alternative method of approved or generally recognized therapy that provide equal or greater likelihood of saving the life of the participant.

If there is not time to obtain the independent determination required above, the determinations of the clinical investigator must be evaluated in writing by a physician not participating in the clinical investigation and submitted to the IRB within 5 working days after use of the article.

FDA Regulations at 21 CFR 50.24 does the IRB to approve a clinical investigation without requiring that informed consent of all research participants be obtained if the IRB (with the concurrence of a licensed physician who is a member of or consultant to the IRB and who is not otherwise participating in the clinical investigation) finds and documents each of the following:

1. The human participants 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:
 - (i) The participants will not be able to give their informed consent as a result of their medical condition;
 - (ii) The intervention under investigation must be administered before consent from the participants' legally authorized representatives is feasible; and
 - (iii) 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 participants because:
 - (i) Participants are facing a life-threatening situation that necessitates intervention;
 - (ii) 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 participants; and
 - (iii) Risks associated with the investigation are reasonable in relation to what is known about the medical condition of the potential class of participants, 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 participant 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 IRB at the time of continuing review.

6. The UMCIRB has reviewed and approved informed consent procedures and an informed consent document consistent with 50.25. These procedures and the informed consent document are to be used with participants or their legally authorized representatives in situations where use of such procedures and documents is feasible. The UMCIRB has reviewed and approved procedures and information to be used when providing an opportunity for a family member to object to a participant's participation in the clinical investigation consistent with paragraph (a)(7)(v) of this section.
7. Additional protections of the rights and welfare of the participants will be provided, including, at least:
 - (i) Consultation (including, where appropriate, consultation carried out by the UMCIRB) with representatives of the communities in which the clinical investigation will be conducted and from which the participants will be drawn;
 - (ii) Public disclosure to the communities in which the clinical investigation will be conducted and from which the participants will be drawn, prior to initiation of the clinical investigation, of plans for the investigation and its risks and expected benefits;
 - (iii) 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;
 - (iv) Establishment of an independent data monitoring committee to exercise oversight of the clinical investigation; and
 - (v) 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 participant's family member who is not a legally authorized representative, and asking whether he or she objects to the participant's participation in the clinical investigation. The investigator will summarize efforts made to contact family members and make this information available to the IRB at the time of continuing review.

The IRB is responsible for ensuring that procedures are in place to inform, at the earliest feasible opportunity, each participant, or if the participant remains incapacitated, a legally authorized representative of the participant, or if such a representative is not reasonably available, a family member, of the participant's inclusion in the clinical investigation, the details of the investigation and other information contained in the informed consent document. The IRB shall also ensure that there is a procedure to inform the participant, or if the participant remains incapacitated, a legally authorized representative of the participant, or if such a representative is not reasonably available, a family member, that he or she may discontinue the individual's participation at any time without penalty or loss of benefits to which the participant is otherwise entitled. If a legally authorized representative or family member is told about the clinical investigation and the participant's condition improves, the participant is also to be informed as soon as feasible. If a participant is entered into a clinical investigation with waived consent and the participant dies before a legally authorized representative or family member can be contacted, information about the clinical investigation is to be provided to the participant's legally authorized representative or family member, if feasible.

Protocols involving an exception to the informed consent requirement under this section 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 participants 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.

If an IRB determines that it cannot approve a clinical investigation because the investigation does not meet the criteria in the exception or because of other relevant ethical concerns, the IRB 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 IRB's that have been, or are, asked to review this or a substantially equivalent investigation by that sponsor.