MCW IRB Committee Procedures

RESEARCH WITH SUBJECTS LIKELY TO MANIFEST OR DEVELOP DECREASED DECISIONAL ABILITY

Unit: Human Research Protections Program (HRPP), Office of Research

Applies to: Institutional Review Board Committees

PURPOSE:
To outline the criteria IRB Committee Members should apply when reviewing projects that seek to enroll or that may enroll subjects with decreased decisional ability.

DEFINITIONS:
Minimal risk: the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

Decreased Decisional Ability: Persons who evidence decreased ability to understand, reason, and/or decide. The impairment may be due to disorders of a psychiatric, organic (including those suffering from delirium or degenerative brain diseases), developmental (e.g., intellectual disability), substance misuse (e.g., those under the influence of or dependent on drugs or alcohol), or other nature that affects cognitive or emotional functions. Trauma patients, for example, may transiently lack decisional ability due to debilitating pain, taking medication to relieve debilitating pain, having strong medication side effects, or having trouble communicating.

PROCEDURE:
1. Per *IRB SOP: Research with Subjects Likely To Manifest or Develop Decreased Decisional Ability,* Investigators must address the following 3 questions within the eBridge submission.
    a. **Can the research objectives be satisfied without enrolling decisionally impaired subjects?** The investigator must provide rationale for why the project includes individuals who have decreased decisional ability or may develop decreased decisional abilities, and explain why the project could not be done without enrolling decisionally impaired subjects.
    b. **How does the investigator propose to assess the decisional ability of subjects prior to project enrollment?** An assessment of the subject's ability to consent should take place before each subject is enrolled in the project. The investigator should include a detailed description of the screening process and instruments to be employed. If the investigator believes that it is not necessary to assess decisional competence prior to enrollment into the project the investigator should provide a clear rationale for not performing an assessment.
    c. **How does the investigator propose to monitor the decisional ability of subjects over the course of the project?** If there is a likelihood that a subject's decisional ability may change or decline during the course of a project, then the investigator should describe procedures for monitoring the

subjects over time to evaluate decisional ability, detect loss of ability, and remove subjects with decisional impairment from the project.

2. In addition to addressing the above questions both the protocol and consent form(s) should indicate:
    a. who will do the assessment and monitoring;
    b. the frequency of monitoring, including a justification for the intervals between monitoring as this relates to the disease process;
    c. the site at which monitoring will be done {hospital, office, or home); and
    d. an itemization of the tests, lab data, examinations, etc. that will be employed to monitor the subject's decisional ability.

Research participants (actual and potential) with permanent or transient decisional impairment are particularly vulnerable to misunderstanding the difference between research and standard treatment. The potential for misunderstanding is greatest when subjects' caregivers are engaged in the clinical research endeavor (i.e., the conundrum often referred to as "therapeutic misperception" or "therapeutic illusion"). Therefore it is essential that the consent process (including the consent documents) clearly demarcates the differences between individualized treatment and research protocol, between caregiver and clinical investigator.

For most projects, informed consent should not be elicited and documented on the same day that the subject is first presented with information about the project. This principle is particularly important for projects that raise questions about decreased decisional ability in some subjects. Questions from potential participants and family members should be encouraged, and handouts of frequently asked questions and answers regarding specific human subject protections may be prepared. Communication between members of the research team, participants, and their families is key to successful research participation.

Individuals who are decisionally impaired may need more time to consider the information they are given about a research protocol. Information should be provided incrementally to facilitate understanding. Planning built-in waiting periods within the consent process may be useful to allow potential participants time to consult with family members about whether or not to participate.

Finally, for all projects that raise questions about some of the subjects' ability to participate in the informed consent process, the Principal Investigator should plan and deliver ongoing educational efforts with subjects during the lifetime of the project to enhance research participants' understanding and appreciation of their role in the research. Because informed consent is an ongoing process throughout the course of a protocol, assessing and enhancing comprehension at each stage is essential. Single sheet summaries of important information about key elements of a project may be useful when provided on a regular basis.

IRB POINTS OF CONSIDERATION

1. When reviewing protocols posing a possibility that some subjects will evidence decreased decisional ability, it is essential for the IRB to include one or more voting members who are knowledgeable about and experienced in working with similar subjects, or else ask for consultation by a similarly qualified person. In these situations, the IRB should consider involving consultants whose professional training and credentials are suitable given the nature of the subject's illness and the nature of the project [45 CFR 46.107(a)]. In these situations, the IRB should also consider involving extra community representatives (e.g., representatives of patient advocacy groups) who are not affiliated with MCW.

2. Not all research projects proposing to involve decisionally impaired persons should be approved, and not all such persons should be enabled to participate in research projects. The MCW/Froedtert IRB should exercise heightened vigilance in the review of protocols involving persons with decreased decisional ability, in accordance with 45 CFR 46.111(b).
3. Safeguards for human research subjects should be proportional to the degree of decisional impairment, the magnitude of experimental risk, or both. Provisions for additional safeguards should be in place prior to involving individuals with decreased decisional ability in research that poses greater than minimal risk.
4. When reviewing a project focusing on groups of subjects likely to show decreased decisional ability, the IRB will determine (and record in its minutes) the following:
    a. which projects invoke application of the IRB policy on "decreased decisional ability;"
    b. whether the research project poses greater than minimal risk (or: risk represents a minor increase over minimal risk);
    c. if the project poses greater than minimal risk, a finding as to whether the research project poses a prospect of direct benefits to the individual subject (if so, specify those benefits); or is likely to yield "generalizable knowledge about the subjects' disorder or condition which is of VITAL importance for the understanding or amelioration of the disorder/condition (if so, specify why the knowledge may be vital).
    d. the specific "additional safeguards" judged appropriate.
    e. the IRB recommends that the investigator to become thoroughly familiar MCW IRB policy on who can be Legally Authorized Representatives for research consent purposes and any other applicable state laws, and to consider consultation with the MCW or Froedtert General Counsel (as applicable) before or during the project.

IRB Review

1. The IRB Committee member will review the submission using the *IRB Member Form: New Protocol Reviewer Checklist* to determine if it meets the criteria for approval. Additionally, if the project involves subjects with decreased decisional ability, the Committee member will also complete the *IRB Member Form: Research involving Subjects with Decreased Decisional Ability Checklist*.
2. If one or more of the required criteria are not present or are deemed not sufficient, IRB Committee members will request modifications to the protocol submission.

REFERENCES:

45 CFR 46.107(a)
45 CFR 46.111(b)

SUPPORTING DOCUMENTS:

IRB SOP: Research with Subjects Likely to Manifest or Develop Decreased Decisional Ability
IRB SOP: Legally Authorized Representatives (LARs): Who Can Consent to Research on Behalf of an Adult Subject with Decreased Decisional Ability
IRB Member Form: New Protocol Reviewer Checklist
IRB Member Form: Research involving Subjects with Decreased Decisional Ability Checklist

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Effective Date:	06/15/2018
Version number:	6.0
Previous Version/date:	5.0; 10/01/2013
Responsible Office:	HRPP Office
Approval Date:	06/07/2018

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