MCW Office of Research
Standard Operating Procedure

EXPANDED ACCESS USE OF AN INVESTIGATIONAL DEVICE

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

Applies to: Faculty and Staff involved in human research

PURPOSE:
When a patient has a serious or life-threatening condition that is not addressed by current approved treatments, options may exist to use an investigational device (i.e. one that has not been approved or cleared by FDA) to treat the patient. A variety of FDA mechanisms exist to grant this expanded access, including:

- Compassionate Use (or Individual Patient/ Small Group Access)
- Treatment Investigational Device Exemption (IDE)

Note: This policy only addresses these pathways which still require both IRB and FDA approval prior to expanded access. If a physician needs to treat a patient in an emergency capacity in which no standard acceptable treatment is available and in which there is not sufficient time to obtain IRB or FDA approval, please see *IRB SOP: Emergency Use of Investigational Devices.*

DEFINITIONS:

Expanded Access: A pathway for patients with serious or life-threatening disease or conditions to access an investigational medical device that has not been approved or cleared by FDA for treatment outside of a clinical trial when no comparable or satisfactory alternative therapy options are available.

Clinical Trial: A research project in which one or more human subjects are prospectively assigned to one or more interventions to evaluate the effects of the interventions on biomedical or behavioral health-related outcomes.

Immediately Life-Threatening Disease: A stage of a disease in which there is a reasonable likelihood that death will occur within a matter of months or in which premature death is likely without early treatment.

Serious Disease or Condition: A disease or condition associated with morbidity that has substantial impact on day-to-day functioning. Short-lived and self-limiting morbidity will usually not be sufficient, but the morbidity need not be irreversible, provided it is persistent or recurrent. Whether a disease or condition is serious is a matter of clinical judgment, based on its impact on such factors as survival, day-to-day functioning, or the likelihood that the disease, if left untreated, will progress from a less severe condition to a more serious one

Compassionate Use: This term is used primarily by the device arm of the FDA. Compassionate use provides a pathway to accessing investigational devices that have not received FDA approval or clearance for patients for whom the treating physician believes the device may provide a benefit in diagnosing, monitoring, or treating their disease or condition.

Compassionate use can be for devices that are being studied in a clinical trial under an IDE for patients who do not meet the requirements for inclusion in the clinical investigation but for whom the treating physician believes the device may provide a benefit in treating and/or diagnosing their disease or condition. It can also be used for devices that are not being studied in a clinical investigation (i.e., an IDE for the device does not exist). This provision is typically approved for individual patients but may be approved to treat a small group.

Treatment IDE: An approved IDE specifies the maximum number of clinical sites and the maximum number of human subjects that may be enrolled in the study. During the course of the clinical trial, if the data suggest that the device is effective, then the trial may be expanded under a new IDE to include additional patients with life-threatening or serious diseases.

Humanitarian Use Device (HUD): A medical device intended to benefit patients in the treatment or diagnosis of a disease or condition that affects or is manifested in not more than 8,000 individuals in the United States per year.

PROCEDURE:

1. The treating physician should consult with the IRB office regarding the proposed treatment.
2. The treating physician should contact the medical device company to determine if an IDE has been submitted to FDA and if the company is willing to submit an IDE supplement to treat the individual patient or if a Treatment IDE has been opened.
    a. If the company is willing to provide the device, but unwilling to be the Sponsor for Compassionate Use, then the treating physician will need to contact FDA with a compassionate use request.

3. FDA has two pathways to request approval for Compassionate Use of a device.
    a. <u>If there is an IDE for the device</u>:
        i. The IDE sponsor (either the device company or a physician who has submitted the IDE to conduct the clinical study for the device) should submit an IDE supplement requesting approval under 21 CFR 812.35(a) to treat the patient.
        ii. The supplement should include
            1. A description of the patient's condition and the circumstances necessitating treatment.
            2. A discussion of why alternative therapies are unsatisfactory and why the probable risk of using the investigational device is no greater than the probable risk from the disease or condition
            3. An identification of any deviations in the approved clinical protocol that may be needed to treat the patient.
            4. Patient protection measures that will be followed including
                i. a draft informed consent document
                ii. indication that IRB approval will be obtained prior to use of the device
                iii. concurrence of the IRB chairperson

iv. an independent assessment from an uninvolved physician
v. authorization from the device manufacturer on the use of the device
vi. a monitoring schedule to meet the needs of the patient, recognizing the investigational nature of the device

b. <u>If there is no IDE for the device:</u>
    i. A compassionate use request for a single patient or group may be submitted to FDA by the physician or device company along with the information included in the supplement above and a description of the device provided by the manufacturer.

4. An eBridge submission must be completed and submitted for IRB review prior to use of the device. Refer to *IRB SOP: Submitting New Projects* for further information. The MCW IRB is responsible to conduct initial reviews and maintain ongoing monitoring of all devices used in human subjects under its jurisdiction. This includes the FDA expanded access device pathways mentioned above.

    a. <u>Compassionate Use:</u> MCW IRB requires FDA approval of the Compassionate Use request prior to issuing IRB approval.
        i. The physician must include the following information in the eBridge submission.
            1. FDA approval document, including the FDA issued approval number
            2. Draft of the informed consent document that will be used
            3. An independent assessment from an uninvolved physician
            4. Authorization from the device company on the use of the device.
            5. Device instructions for use/ device manual
        ii. Following the treatment use of an investigational device, the patient should be monitored to detect any possible problems arising from the use of the investigational device.
        iii. FDA requires submission of a follow-up report within 45 days of using the investigational device. This report should present summary information regarding patient outcome.
        iv. Investigators are required to submit continued progress reports to the IRB to continue the use once approval has been obtained. See *IRB SOP: Continuing Progress Reports (CPR)* for additional information. **Note**: The 45-day report to FDA must be included in the first CPR submission.
        v. Approval may be issued either by chair concurrence or full committee, as determined on a case by case basis.

    b. <u>Treatment IDE:</u> MCW requires FDA approval of a Treatment IDE prior to issuing IRB approval. To obtain FDA approval to use an investigational device via a Treatment IDE, the IDE Sponsor must submit <u>a new</u> IDE application to FDA to include additional patients with life-threatening or serious diseases.

        i. FDA criteria for a Treatment IDE includes the following:
            1. The device is intended to treat or diagnose a serious or immediately life-threatening disease or condition;

2. There is no comparable or satisfactory alternative device available to treat or diagnose the disease or condition in the intended patient population;
3. The device is under investigation in a controlled clinical trial for the same use under an approved IDE, or all clinical trials have been completed; and
4. The sponsor of the controlled clinical trial is pursuing marketing approval or clearance of the investigational device with due diligence.

ii. The treating physician must include the following information in the eBridge submission.
1. FDA approval document
2. IDE Sponsor protocol
3. Draft informed consent document
4. Device instructions for use/ device manual

iii. Following the treatment use of an investigational device, the patient should be monitored to detect any possible problems arising from the use of the investigational device.

iv. The sponsor of a treatment IDE must submit progress reports on a semi-annual basis to FDA [21 CFR 812.36(f)] until the filing of a marketing application. The treating physician must submit a copy of these reports to MCW IRB at the time of CPR.

v. The sponsor of a treatment IDE is responsible for submitting all other reports required under 21 CFR 812.150.

5. If any problems occur as a result of using the device, these should be reported promptly to the IRB (via a Reportable Event), the Sponsor and/or FDA.

Humanitarian Use Devices (HUD)

1. To be considered for HUD status, an investigator or the device sponsor must submit a request for HUD designation to the FDA. The FDA will determine if it should grant a Humanitarian Device Exemption (HDE) for use of the device.
2. The FDA requires IRB review and approval for local use of an HUD, including convened Committee review and, at a minimum, annual continuing review, which may be expedited. This is the only situation where federal regulations require IRB approval and monitoring of an activity that is clearly not research. However, if the HUD is being used in research or in a clinical investigation, the IRB must comply with all FDA regulations related to IRB review of research.
3. FDA regulations require that the investigator and/or sponsor clearly state that the device is an HUD and that the effectiveness of the device has not been demonstrated.
4. When an Investigator wishes to utilize a HUD to treat a patient population; the Investigator must complete and submit an initial eBridge submission for IRB review. Refer to *IRB SOP: Submitting New Projects* for further information. The MCW IRB is responsible to conduct initial reviews, grant approvals and maintain ongoing monitoring of all HUD devices, used in human subjects under its jurisdiction.
5. The Investigator must include the following information in the eBridge submission:
    - generic and trade name of the device
    - FDA HDE #
    - date of HUD designation
    - indications for the use of the device
    - description of the device
    - contraindications, warnings, and precautions for use of the device
    - adverse effects on health

- alternative practices and procedures
- marketing history
- summary of projects using the device
- A clinical consent form for the patient that includes a clear statement that the device has not been proven safe or effective in the way most devices are approved.
    - Teams may choose to use the MCW HUD Humanitarian Device Exemption (HDE) consent form template.

6. The MCW IRB will review the submission and issue an approval letter if the criteria for the use of HUD have been met.
7. Investigators are required to submit continued progress reports to the IRB to continue the use of an HUD once approval has been obtained. See *IRB SOP: Continuing Progress Reports* for additional information.

REFERENCES:
21 CFR 312 subpart I
21 CFR 812.36
FDA website and guidance documents for Expanded Access for Medical Devices

SUPPORTING DOCUMENTS:
IRB SOP: Submitting New Projects
IRB SOP: Continuing Progress Reports
IRB SOP: Emergency Use of Investigational Devices

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