The Christ Hospital IRB
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STANDARD OPERATING PROCEDURE

Additional Safeguards for Individuals Without Decision-making Capacity

POLICY:

Individuals without decision-making capacity are a vulnerable population in research, and research involving these subjects warrants additional safeguards. Research involving these populations frequently presents greater than minimal risk, may not offer direct medical benefit to the subject, and may include a research design that calls for washout, placebo or symptom provocation. The IRB will require researchers to use appropriate safeguards to protect rights and welfare of these participants and those providing consent on their behalf if it determines that they may be vulnerable to coercion or undue influence.

Researchers must include in their proposals sufficient justification for inclusion of participants who lack decision-making capacity and a plan to protect them and their surrogates from coercion and undue influence. The IRB will determine whether the involvement of such individuals in research is justified and determine whether the proposed plan minimizes or eliminates the risks to vulnerable subjects. The IRB will consider additional safeguards to protect participants. Such decisions may be based on the amount of risk involved in the research and the likelihood that participants will derive health benefits from their participation. They may include: 1) requiring involvement of participant advocates, 2) requiring independent monitoring, 3) requiring waiting periods, 4) appointing a monitor to supervise the informed consent process.

In accordance with federal regulations, where an adult individual is unable to consent to participate in research for themselves, consent may be obtained from that individual's legally authorized representative. For purposes of research conducted at The Christ Hospital, a legally authorized representative is 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. Usually "the law of the jurisdiction in which the research is conducted" will be the state law where the research procedures will be performed.

Legally Authorized Representative (LAR): An individual who is authorized under the law of the state to consent to research on behalf of someone who is cognitively impaired and unable to comprehend the consent. Such consent may be obtained from a health care agent appointed by the person in a Durable Power of Attorney for Healthcare (DAHC) or similar document; court-appointed guardians for the person, or from next of kin in the following order of priority, unless otherwise specified in applicable law: spouse, adult child (18 years of age or older), parent, adult sibling (18 years of age or older), grandparent, or adult grandchild (18 years of age or older). NOTE: The preceding list contains the only surrogate entities who are allowed to

provide consent for research purposes. In Ohio, adults who are unable to consent because of decisional impairment may only participate in research under the following circumstances:

1. If the IRB waives the consent requirement under the federal regulations allowing for waiver of consent after consideration and comment by the local community on the research.
2. If a Durable Power of Attorney for Healthcare names an individual who has authority to consent specifically for research, and the state where the research is conducted recognizes the legality of the document. The state of Ohio recognizes the legality of the Durable Power of Attorney for Healthcare.
3. In emergency situations, if the researcher has obtained the consent of a family member of the participant. In states other than Ohio, the researcher must submit to the IRB a legal opinion supporting the validity of the surrogate consent.

The ability of individuals to participate in research if they are unable to consent depends on the law of the state where the research is being conducted. If the site of the research is outside Ohio, the researcher must provide a legal opinion acceptable to the IRB of the circumstances under which the law of the state where the research is conducted allows individuals who do not have the capacity to consent to participate in research. Also, the IRB or investigator may seek advice from The Christ Hospital Risk Management Department on the definition of a legally authorized representative for the applicable jurisdiction.

REFERENCE:
45 CFR 46.111(a)(3); 21 CFR 56.111(a)(3).
2317.54 Ohio Revised Code

PROCEDURE

Investigator:

- Completes the e-application process for a new protocol for review by the convened IRB or by the expedited procedure, which includes the following additional information on prospective decisionally impaired participant(s):

    - Relevance of the research to the participant. The investigator must demonstrate that there is a compelling reason to include incompetent individuals or persons with impaired decision-making capacity as subjects. Incompetent persons or persons with impaired decision-making capacity as subjects, incompetent persons or persons with impaired decision-making capacity must not be subjects in research simply because they are readily available.
    - Cause and predicted degree of decisionally incapacity and any anticipated variations in the decisional capacity of participant.
    - Level of research risk to the participant (e.g., minimal, greater than minimal). The proposed research should entail no significant risks, tangible or intangible or, if the research presents some probability of harm, there must be at least a greater probability of direct benefit to the subject. Decisionally impaired persons will not be subjects of research that imposes a risk of injury unless that research

is intended to benefit that subject and the probability of benefit is greater than the probability of harm.
    - Any potential limitations of the ability of the participant to provide sufficient interaction to satisfy study requirements.
    - Anticipated direct benefits to the participant, if any.
    - Description of plan for obtaining and documenting both the assent of the participant and the permission (consent) of legally authorized representatives (LAR) or waivers of assent or permission.
        - Where it is expected, enrolled participants will become decisionally impaired during the course of a study, includes provisions for identifying an LAR before the participant develops decisional impairment.
    - Justification for proposed waiver of assent of participant and/or permission (consent) of LAR.
        - In situations where the potential benefits of the study are such that the physicians and LAR will enroll the patient regardless of the patient's wishes, the participant should simply be told what is planned and should not be deceived. In such cases, the investigator should request a waiver for assent from the IRB.
    - Any other proposed safeguards intended to protect prospective participants (e.g., use of an advance directive or durable power of attorney for health care decision-making).

- Indicates which category applies in the e-application:
    - Permanent impairment (i.e., mentally-handicapped, late stage dementia, other).
    - Temporary/variable impairment (i.e., stupor or coma: traumatic, drug-induced; early Alzheimer's disease).

- Includes with the protocol submission a copy of any interview or questionnaire that will be used to evaluate the mental status of participants.

- Provides copies of any project-specific instruments (e.g., DVD, flip chart) used in the consenting process.

- Obtains consent, assent, or permission of LAR. In situations where the potential research subject is cognitively impaired and unable to provide informed consent, the investigator should still attempt to obtain assent from the potential subject. Some persons may resist participating in a research protocol that has been approved by their representatives. Under no circumstances may subjects be forced or coerced to participate.

- Does not approach the patient without decision-making capacity to assent to the research study until the LAR has given written permission (consent). Procedures have been devised to assure that participants' representatives are well informed regarding their roles and obligations to protect cognitively impaired persons. Health care agents (appointed under Durable Power or Attorney for Health Care) and next-of-kin or guardians must be given descriptions of both proposed research studies and the obligations of the person's representatives. They must be told that their obligation is to try to determine what the subject would do if competent, or if the subject's wishes

cannot be determined, what they think is the incompetent person's best interest.

- Describes plan for providing information to or obtaining informed consent from participant(s) who regains decision-making capacity after having been enrolled in the study while unable to make decisions.

IRB Staff:

- Verifies that the e-application is complete and contains sufficient information on safeguards for decisionally impaired participants for the IRB to review.

- Reviews, specifically, informed consent documents for consent, assent and permission for LAR, as applicable.

- Ensures the minutes reflect the deliberations of the IRB regarding any decisions rendered.

IRB Chair or Designee:

- Reviews protocol at time of initial and continuing review, and review of modifications.

- Using IRB Reviewer Checklist as a discussion guide, reviews additional protections for individuals without decision-making capacity , as outlined in 45 CFR 46.111(a)(3)*: "Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, handicapped, or mentally disabled persons, or economically or educationally disadvantaged persons."*

IRB Members:

- Utilizing the IRB Reviewer Checklist, reviews the submission documents in accordance with criteria for approval with 45 CFR 46.111 and 21 CFR 56.111 if applicable, and other applicable regulations.

- When additional expertise is required, appoints a consultant to assist with review for additional safeguards in decisionally impaired participants.

- Makes the following specific findings and determinations (may apply to all participants involved in the study, or on a case-by-case basis, as deemed necessary by the IRB):
    - The research is intended to study a disease or condition relevant to the vulnerable participant,
    - Procedures adequately account for the degree and variability of intellectual impairment,
    - Anticipated direct benefits to the participant, if any,
    - The level of risk is commensurate to the benefits, and

- Provisions for both the assent of the participant and the permission of a legally authorized representative are adequate.

- Recommends additional safeguards to protect the rights and welfare of individuals without decision-making capacity, as appropriate.

- Determines and documents that the informed consent process for consent, assent and permission of LAR, as applicable, minimizes possibility of undue influence and coercion.

- May determine that an enrolled participant without decision-making authority should receive information or provide informed consent during the research study if he/she later regains decision-making capacity.

For expedited review, the IRB Chair:

- Takes into account the decision-making capacity of the participants targeted for the study population.

- Determines that adequate provisions for obtaining consent and/or assent or waiver of assent from the participant are addressed and also how documentation of consent will be noted.

- Reviews and determines if the method of screening potential participants and controls and the factors that will be the basis for excluding potential participants from the study (e.g., mini-mental status exam or instrument to demonstrate capacity to consent) are adequate.

- May recommend additional safeguards for the decisionally impaired participants in order to secure approval of the research.

- If unable to approve the research, forwards for convened IRB review.