

The future of informed consent



Part 3 of MESM's series on proposed federal research regulation amendments and the impacts on commercial sponsors and research organisations

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Introduction

In part one of this series, we introduced a broad overview of the proposals and proposed timelines for changes to the Common Rule of HHS Regulation (45 CFR 46, Subpart A) and the Notice of Proposed Rule Making (NPRM).

In part two, we discussed the reclassification of biospecimens as human subjects under the NPRM and the potential impacts of these proposed changes on clinical researchers.

In this article, we review the proposed changes to informed consent and the potential impacts for life science companies and academic research institutions.



The proposed changes are designed to ensure prospective trial participants can make informed decisions about taking part in research.

Proposed changes to informed consent

The NPRM aims to improve informed consent by increasing transparency and imposing strict new requirements regarding information that must be given to prospective subjects. Over the years, informed consent forms have become highly technical, complex and lengthy documents which are difficult for prospective trial subjects to understand.

The proposed changes are designed to ensure that prospective trial participants have sufficient information to make a well-informed decision about participating in research, with information presented in an accessible manner and easy to read format to help individuals understand the reasons why they may or may not wish to participate in the trial. It is hoped that these changes will better protect research subjects' trust relating to informed consent, and minimise the possibility of coercion.

The other change to be aware of is that informed consent will be required for secondary research with a biospecimen, even if the investigator has no information that could enable identification of the original donor. Informed consent will not have to be obtained for each research use of the same biospecimen provided that a broad consent was given at the time of collection that specifically provides consent for future unspecified research uses.

These changes will impact both research organisations and sponsors, as SOPs and documentation will need to be updated.

What specific changes to informed consent are proposed?

Format

Proposed changes to informed consent forms are intended to substantially shorten consent documents and ensure that key information for participants is not buried in highly complex and overly long legal documents.

Informed consent forms will be required to present the consent elements outlined in the NPRM before providing any other information. The informed consent form will only be permitted to include the information specified by the Common Rule, with any other information included in an appendix.

This will ensure prospective participants can easily find and understand the core elements they are consenting to by signing the form.

HIPAA authorisation

If Health Insurance Portability and Accountability Act (HIPAA) authorisation is combined with informed consent, the required HIPAA elements must be included within the informed consent document itself and must not be relegated to the appendix.

Future use of data for research

Informed consent forms will now need to inform participants that information identifiers could be removed from their data and that the non-identified data could be used for future research studies or distributed to another investigator for future research studies without additional informed consent being sought.

Alternatively, investigators may state that participant data collected as part of the research will not be used or distributed for future research studies, even in a non-identified form. However, the NPRM does not anticipate that many investigators would choose to offer this option due to significant challenges in marking and tracking both samples and data.

New elements

The NPRM proposes three new criteria as part of the informed consent process.

Prospective trial subjects must be informed:

- 1.** Whether clinically relevant results of research will be disclosed to research subjects, and if so, under which conditions.
- 2.** That their biospecimens may be used for commercial profit. Consent documents must specify whether the subject will share in this profit or not.
- 3.** That they have an option to consent or refuse to consent to later contact by investigators who may be seeking additional information, additional biospecimens, or an invitation to participate in a different research study.

Public posting of consent forms

For clinical trials that are conducted or supported by a Common Rule department or agency, a particularly significant proposed change is a requirement that the final version of informed consent forms must be posted on a publicly available federal website within a 60 day period after the trial is closed to recruitment.



Consent forms will now be made available for scrutiny by government agencies, legal attorneys and the public.

This amendment is intended to improve the quality of consent forms in federally supported research by ensuring that they become available to public scrutiny.

As consent forms will now be publicly available for scrutiny and analysis by government agencies and legal attorneys, researchers will need to author these documents very carefully from a risk management perspective.

It can be anticipated that academic medical centres will adopt template informed consent forms for federally sponsored research, and in turn, these will also become the standard for industry sponsored trials. Life science companies should expect to start seeing consent forms that reflect the new NPRM provisions for sponsored research.

Additionally, if the NPRM is issued as a Final Rule in its current form, academic medical centres are likely to start implementing the infrastructure required for obtaining broad consent for biospecimen collection and storage in the immediate future, even for research that is sponsored or funded by a life sciences company. This will be done to preserve the potential for that research facility to use those biospecimens for future research that may be funded by federal agencies.

What does the revised definition mean for research?

The NPRM adds a new waiver criterion, permitting waiver of consent for research involving access to or use of identifiable biospecimens or identifiable information only if the research could not be carried out without accessing or using identifiers.

Additionally, the NPRM places new limits on an independent review board's (IRB) ability to waive or alter the consent procedure for research involving biospecimens with the aim of reinforcing the ethical principle of respect for persons. In practical terms, these requirements will mean informed consent must be gained for the vast majority of biospecimen research.

Two new waiver criteria for biospecimen research are proposed:

- 1.** The research must have a compelling scientific purpose.
- 2.** The research must not be able to use biospecimens where consent exists or could be obtained.

To mitigate the burden of this requirement, the NPRM endorses a new type of consent labelled as a 'broad consent', which will have its own required elements and for which the Secretary of HHS will provide a template once the Final Rule has been published.

However, even the use of 'broad consent' presents its own issues with regards to waiver applications. This requirement of the NPRM means that not only must broad consents be obtained and observed, but refusals to give broad consent must be tracked until the death of the patients who declined. Without such tracking it will be impossible to assure the consent status of human donors of biospecimens as part of waiver applications.

Furthermore, determining whether a research project could be conducted using other biospecimens for which consent has been or could be obtained will create considerable practical challenges for researchers. All potential biobanks will need to be searched to find suitable banked and available biospecimens.



Summary

The most important points to take away from this article are:

- Forms used to gain informed consent from clinical trial participants are being updated in line with the proposed changes to regulations for federally funded research in the US.
- There are two primary reasons that requirements for consent forms will be changed – to make them easier for research subjects to read and understand; and to ensure informed consent is gained for secondary use of biospecimens. This second point is important in light of the growing potential for anonymised data to become identifiable at a later date due to new technologies, advances in genome sequencing and other scientific breakthroughs.
- Research organisations will soon be required to post their consent forms on public websites, so that their practices are available for scrutiny by the public and regulatory authorities.

Life science companies can expect to see substantial changes in how academic research centres collect and store informed consent for biospecimens, and may need to update internal SOPs and documentation if the NPRM is adopted as a 'Final Rule' in its current form.

In part four of this article series, we will examine exclusion and exemption criteria under the NPRM proposals; IRBs for co-operative research and changes to requirements for continual review of studies.



Sources

U.S. Department of Health and Human Services. Notice of Proposed Rulemaking for Revisions to the Common Rule. Federal Register. 2015;80:53 933-4061. <http://goo.gl/GOmByB>

Impact of Proposed Federal Research Regulation Amendments (the Common Rule NPRM) on Life Sciences Companies – Bloomberg Law <http://goo.gl/kLoLty>

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