



Emergency Exemptions

Policy

Federal regulations recognize that, in a life threatening situation where standard treatment is unavailable and treatment with an investigational product or procedure is thought to be in the best interest of the subject, the ability to obtain full Institutional Review Board (IRB) approval may not be possible.

- The IRB may agree that a situation represents an emergency exemption for the use of an unapproved drug, device, or procedure without full IRB approval in accordance with Food and Drug Administration (FDA) and Department of Health and Human Services regulatory standards.
- FDA regulations (21 CFR 56.104(c)) contain a specific provision for this exemption from IRB review. HHS regulations do not contain such provision but contain a section 46.116(f) that specifies that nothing in the HHS regulations is intended to limit the authority of a physician to provide emergency care to the extent the physician is permitted to do so under applicable federal, state and local law

Purpose

To outline the responsibilities of the investigator and the IRB when an emergency situation requires that a subject be treated with an investigational product or procedure before the next fully convened Committee meeting.

Procedure

Criteria for Emergency Exemptions

In the interests of optimal patient care, a mechanism for the use of an emergency exemption process has been developed for situations where an individual patient:

- Presents with a life threatening condition; or;
- A situation in which the health of a ill patient may be subject to severe debilitation by waiting for the next scheduled meeting; and,
- There is no conventional or approved investigational intervention of proven clinical benefit; and,
- The proposed treatment is believed to be in the best interests of the subject.

This process should not be construed as IRB "approval", but rather an acknowledgment by the Committee that the proposed use of the investigational product or procedure meets the regulatory emergency criteria for allowing the procedure to 1) go forward without full IRB review and approval as an emergency exception, and 2) fulfills the regulatory requirements for informed consent.

Definitions

The term **life threatening** encompasses both “life threatening” and “severely debilitating”.

- **Life threatening** means diseases or conditions where the likelihood of death is high unless the course of the disease is interrupted, and diseases or conditions with potentially fatal outcomes where the endpoint of a clinical trial is survival. The criteria for life threatening do not require the condition to be immediately life threatening or to immediately result in death. Rather, the situation is likely to be life threatening before review occurs at a fully convened IRB meeting.
- **Severely debilitating** means diseases or conditions that may cause serious irreversible damage before review occurs at a fully convened IRB meeting.

What is Required?

In these situations, investigators are asked to immediately contact the Director of Clinical Research Compliance or the IRB Chair. When time permits, investigators will be asked to provide in advance:

- A brief summary of the clinical history of the patient.
- The proposed therapy and rationale for therapy.
- Copies of materials, protocols, and investigational brochures provided by the sponsor, if applicable.
- Statement on the known risks and benefits.
- A consent form with all of the required elements.
- Information regarding the sponsor and FDA IND or IDE information, if applicable.
- A statement of the reasons why the therapy cannot wait until the next scheduled meeting.

If all of the above mentioned materials are submitted and reviewed and a determination has been made that the situation fits the criteria for an emergency exemption, prior to use of the product or procedure, the above mentioned written materials meets the FDA requirements for submitting a report to the IRB within 5 working days.

In the unusual situation when there is no time to contact the IRB administrative office or Chair prior to the emergent initiation of an investigational procedure or use of an investigational product, the investigator is required to submit the written documentation listed above regarding the emergency use within 5 working days after use of the article or procedure.

Obtaining an Emergency IND for Drugs and Biologics

The emergency use of an unapproved investigational drug or biologic requires an IND. If the intended subject does not meet the criteria of an existing study protocol, or if an approved study protocol does not exist, standard procedure is to contact the manufacturer to determine if the drug or biologic can be made available for the emergency use under the company's IND.

The need for an investigational drug or biologic may arise in an emergency situation that does not allow time for submission of an IND. In such cases, the FDA may authorize shipment of the test article in advance of the IND submission. Requests for such authorization may be made by telephone or other rapid means of communication.

Additional information can be found on FDA's website [Treatment of a Single Patient in Emergency Setting](#).

Emergency Use of Unapproved Medical Devices

The FDA recognizes that emergencies arise in which an unapproved device may offer the only possible life-saving alternative, but an IDE for the device does not exist, or the proposed use is not approved under an existing IDE, or the physician or institution is not approved under the IDE. Using its enforcement discretion, the FDA does not object if a physician chooses to use an unapproved device in such an emergency, provided the physician later justifies to the FDA that an emergency actually existed.

Requirements for Emergency Use of an Investigational Device

All of the following conditions must exist to justify emergency use:

1. The patient is in a life-threatening condition that needs immediate treatment;
2. No generally acceptable alternative for treating the patient is available; and,
3. Because of the immediate need to use the device, there is no time to follow existing procedures to secure FDA approval for the use.

The FDA expects the physician to determine whether these criteria have been met, to assess the potential for benefits from the unapproved use of the device, and to have substantial reason to believe that benefits will exist. The physician is not to conclude that an "emergency" exists in advance of the time when treatment may be needed based solely on the expectation that IDE approval procedures may require more time than is available. Physicians should note that the FDA expects them to exercise reasonable foresight with respect to potential emergencies, and to make appropriate arrangements under the IDE procedures far enough in advance to avoid creating a situation in which such arrangements are impracticable.

In the event a device is to be used in circumstances that meet the criteria listed above, the sponsor must notify the FDA of the emergency use within 5 days through a submission of an IDE Report describing the details of the case and the patient protection measures that were followed.

The FDA expects the physician to follow as many subject protection procedures as possible. These include:

1. Obtaining an independent assessment by an uninvolved physician;
2. Obtaining informed consent from the patient or a legal representative;
3. Notifying institutional officials as specified by institutional policies;
4. Notifying the IRB; and,
5. Obtaining authorization from the IDE holder, if an approved IDE for the device exists.

Informed Consent Requirements

A physician is required to obtain the informed consent of the patient, or a legally authorized representative, for the emergency use of an investigational product or procedure unless both the physician and a physician who is otherwise not involved in the care of the patient certify, in writing, that the emergency situation fulfills the following criteria:

1. The subject is confronted by a life threatening situation that necessitates the use of the investigational product or procedure.
2. Informed consent cannot be obtained because of an inability to communicate with or obtain legally effective consent from the subject, if over the age of 18, or parent/guardian if under the age of 18.

3. Time is not sufficient to obtain consent from the patient's legally authorized representative.
4. No alternative method of approved or generally recognized therapy is available that provides an equal or greater likelihood of saving the patient's life.

If, in the investigator's opinion, immediate use of the test article is required to preserve the subject's life, and if time is not sufficient to obtain an independent physician's determination that the four conditions above apply, the clinical investigator is to make the determination. The physician must then have his or her determination reviewed and evaluated, in writing, by a physician who is not participating in the clinical investigation. This evaluation is to be provided to the IRB within five working days.

Emergency Exemption Review for Drugs and Devices

The request will be reviewed by the IRB Chair and/or other Committee members. Concurrence of exemption from full IRB review will be acknowledged for one patient only. Subsequent requests for the same therapy must be submitted as a research protocol to the full Committee at a convened meeting. The FDA does acknowledge that if a second patient were to require the same therapy, it would be inappropriate to deny clinically appropriate emergency treatment to the second individual if the only obstacle is a lack of sufficient time for the IRB to convene a meeting to review the issue.

If an event that qualifies for an emergency exemption occurs on a weekend or in the evening, or time is so short that it is not possible to submit the required materials prior to using the test article or procedure, the investigator may proceed to administer and/or treat the subject. Immediately following the start of business hours, the investigator must notify the IRB by phone, email, or in writing that the test article or therapy was initiated. The investigator then has five working days to submit the required written materials. The Director of Clinical Research Compliance will be provided with the retrospective documentation to determine that the criteria for an emergency were met. This will be reviewed with the Chairperson and the emergency exemption form acknowledging this retrospective review will be provided to the investigator.

When these situations arise, the Director of Clinical Research Compliance may be contacted at any time on a 24-hour pager #0617. Although the Director will not be able to formally acknowledge an emergency exemption, he or she is available to advise investigators on the course of action.

After the Emergency Exemption

After the first emergency exemption is acknowledged, investigators are to weigh the probability that additional patients may require the same treatment. If this is likely, the investigator is to immediately submit a protocol to the full IRB for future use.

Data from a patient treated by emergency exemption may not be claimed or included as prospective research in accordance with HHS regulations. However if the individual received a test article under the jurisdiction of FDA, it is considered research and the recipient of the test article is a research participant. Data from this participant may be used by FDA in support of a marketing application.

At the next convened meeting of the IRB, the Committee is to receive a copy of the full letter sent to the principal investigator that acknowledges the emergency exemption.

Related Content

Document Attributes

Title	Emergency Exemptions		
Author	Susan Kornetsky	Dates Reviewed/ Revised	04/01/05
Reviewed/ Revised by	Susan Kornetsky		06/20/05 05/04/07 02/08/08 03/25/08 03/19/2010
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