

MHC_RP0500

Standard Operating Procedure: Transition and IRB Review of Research Subject to the Revised 2018 Common Rule

Effective: January 21, 2019

Purpose

This Standard Operating Procedure (SOP) is an addendum to the McLaren Health Care HRPP/IRB SOP and Manual and describes the variations in requirements and procedures that McLaren Health Care HRPP/IRB, and investigators, will adhere to for research subject to the revised Common Rule that is IRB-approved, or determined exempt, on or after January 21, 2019. This SOP also applies to any studies subject to the pre-2018 version of the Common Rule that McLaren Health Care decides to transition to comply with the new rule. When the research invokes multiple regulatory frameworks (e.g., Common Rule, FDA, HIPAA), all will be applied following the procedures described in the McLaren Health Care SOPs and this addendum. It is the intent of this SOP is to serve as intermediate and accessible information on MHC's response to the newly revised Common Rule. This SOP addendum will remain in effect until such time as the McLaren Health Care HRPP/IRB SOPs and Manual has been fully updated to incorporate the revised Common Rule.

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Transition Plan of MHC Studies to the Revised Common Rule

Effective January 21, 2019, the MHC IRB will begin implementing the new requirements of the Revised Federal Policy for the Protection of Human Subjects, also known as the Common Rule found in the Code of Federal Regulations at 45 CFR 46.

On January 21, 2019 and thereafter, new protocol submissions to the MHC IRB will be required to use updated consent templates which can be found on the IRB website. If a study is approved prior to the 1/21/2019 effective date of the 2018 Common Rule, it will remain under the Pre-2018 Common Rule until its next Continuing Review. At that point, it will transition to the 2018 Common Rule. If a study is approved on or after 1/21/2019, it will automatically be governed by the new rule.

Management plan of pre-existing studies approved prior to January 21, 2019 will follow the following guidelines:

Full Board-approved Protocols - Existing full board protocols open to enrollment or still in the interventional phase will see the fewest changes under the Revised Common Rule.

Expedited-approved Protocols - Studies that are currently under an expedited protocol status may see changes in requirement for continuing reviews.

Exempt Protocols - Existing exempt studies will experience no changes. Exempt categories will change for exempt studies submitted on or after 1/21/19.

Note: MHC applies the Common Rule to all human subject research, regardless of funding, unless the funding source has different human subject regulations, or the project comes under another agency's jurisdiction. In those cases, the appropriate organization's regulations would be applied. The Common Rule regulations are separate from FDA regulations. The FDA regulations have NOT changed.

1. Definitions [45 CFR 46.102]:

The following definitions will be applied when MHC IRB reviews research subject to the revised Common Rule, and for exempt determinations and evaluations regarding whether a proposed activity is human subjects research when the research (or activity) is conducted or supported by a Common Rule agency. Likewise, the definitions will be applied, as applicable, to the conduct of the research, investigator responsibilities, and organizational responsibilities. Some of these definitions are unchanged from the pre-2018 rule but are included here for context.

Clinical trial means a research study in which one or more human subjects are prospectively assigned to one or more interventions (which may include placebo or other control) to evaluate the effects of the interventions on biomedical or behavioral health-related outcomes.

Human subject means a living individual about whom an investigator (whether professional or student) is conducting research:

- (i) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or
- (ii) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens.

Intervention includes both physical procedures by which information or biospecimens are gathered (e.g., venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes.

Interaction includes communication or interpersonal contact between investigator and subject.

Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information that has been provided for specific purposes by an individual and that the individual can reasonably expect will not be made public (e.g., a medical record).

Identifiable private information is private information for which the identity of the subject is or may readily be ascertained by the investigator or associated with the information.

An **identifiable biospecimen** is a biospecimen for which the identity of the subject is or may readily be ascertained by the investigator or associated with the biospecimen.

Legally authorized representative means 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. If there is no applicable law addressing this issue, legally authorized representative means an individual recognized by institutional policy as acceptable for providing consent in the non-research context on behalf of the prospective subject to the subject's participation in the procedure(s) involved in the research.

Minimal risk means that 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.

Research means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this policy, whether they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities. For purposes of this rule, the following activities are deemed not to be research:

- (i) Scholarly and journalistic activities (e.g., oral history, journalism, biography, literary criticism, legal research, and historical scholarship), including the collection and use of information, that focus directly on the specific individuals about whom the information is collected.
- (ii) Public health surveillance activities, including the collection and testing of information or biospecimens, conducted, supported, requested, ordered, required, or authorized by a public health authority. Such activities are limited to those necessary to allow a public health authority to identify, monitor, assess, or investigate potential public health signals, onsets of disease outbreaks, or conditions of public health importance (including trends, signals, risk factors, patterns in diseases, or increases in injuries from using consumer products). Such activities include those associated with providing timely situational awareness and priority setting during an event or crisis that threatens public health (including natural or man-made disasters).
- (iii) Collection and analysis of information, biospecimens, or records by or for a criminal justice agency for activities authorized by law or court order solely for criminal justice or criminal investigative purposes.
- (iv) Authorized operational activities (as determined by each agency) in support of intelligence, homeland security, defense, or other national security missions.

Written, or in writing, refers to writing on a tangible medium (e.g., paper) or in an electronic format.

2. IRB Composition

The requirements for the composition of the IRB under the revised Common Rule vary slightly from the pre-2018 rule. The composition of the MHC IRB complies with both rules. The following excerpt describes the requirements for the composition of the IRB under the revised Common Rule:

Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members (professional competence), and the diversity of its members, including race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. The IRB shall be able to

ascertain the acceptability of proposed research in terms of institutional commitments (including policies and resources) and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a category of subjects that is vulnerable to coercion or undue influence, such as children, prisoners, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these categories of subjects.

The IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

The IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

No IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of issues that require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB. [45 CFR 46.107]

3. Exempt Determinations and Limited IRB Review

Determinations regarding whether research subject to the revised Common Rule qualifies for exempt status will be made by IRB Chair or designee. When the research requires limited IRB review or a HIPAA determination (i.e., waivers or alterations of the requirement for HIPAA authorization), the review will be conducted by the IRB Chair or a Chair-designated member of the IRB and may be conducted using expedited review procedures. As with all other research subject to IRB review requirements, when conducting limited IRB review the IRB has the authority to approve, require modifications in (to secure approval), or disapprove all research activities. [45 CFR 46.109(a)]

Proposed modifications to the aspects of research subject to limited IRB review must be submitted to and approved by the IRB prior to implementation, except when necessary to eliminate apparent immediate hazards to the subject(s), in which case the change must be promptly reported to the IRB (i.e., within 5 business days). [45 CFR 46.108(a)(3)(iii)]

Continuing review is generally not required for research determined to be exempt, even when that research is subject to limited IRB review. However, the IRB may determine that continuing review is required for a study subject to limited IRB review, in which case it shall document the reasons for its determination in the IRB record and communicate the requirement to the investigator in the IRB determination letter. [45 CFR 46.109(f)(ii), 45 CFR 46.115(a)(3)]

3.1 Limitations on Exemptions

Children: Exemption #2(i) and (ii) for research involving survey or interview procedures or observations of public behavior does NOT apply to research in children, except for research involving observations of public behavior when the investigator does not participate in the activities being observed. Exemption #2(iii), where identifiable information is obtained and the IRB conducts a limited IRB review, is NOT applicable to research in children. Exemption #3 does NOT apply to research involving children. [45 CFR 46.104(b)(3)]

Prisoners: Exemptions do not apply EXCEPT for research aimed at involving a broader subject population that only incidentally includes prisoners. [45 CFR 46.104(b)(2)]

3.2 Exempt Categories [45 CFR 46.104(d)]

Unless otherwise required by law or a federal agency or department, research activities in which the only involvement of human subjects will be in one or more of the following categories are exempt from the additional requirements of the revised Common Rule, except as specified.

Note: Other than exempt category 6, these categories do not apply to research that is also FDA-regulated.

1. Research, conducted in established or commonly accepted educational settings, that specifically involves normal educational practices that are not likely to adversely impact students' opportunity to learn required educational content or the assessment of educators who provide instruction. This includes most research on regular and special education instructional strategies, and research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.
2. Research that only includes interactions involving educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior (including visual or auditory recording) if at least one of the following criteria is met:
 - (i) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained, directly or through identifiers linked to the subjects;
 - (ii) Any disclosure of the human subjects' responses outside the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, educational advancement, or reputation; **or**
 - (iii) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects can readily be ascertained, directly or through identifiers linked to the subjects, and an IRB conducts a limited IRB review to make the determination required by 45 CFR 46.111(a)(7): *"When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data."*
3. Research involving benign behavioral interventions in conjunction with the collection of information from an adult subject through verbal or written responses (including data entry) or

audiovisual recording if the subject prospectively agrees to the intervention and information collection and at least one of the following criteria is met:

- (i) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained, directly or through identifiers linked to the subjects;
- (ii) Any disclosure of the human subjects' responses outside the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, educational advancement, or reputation; **or**
- (iii) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects can readily be ascertained, directly or through identifiers linked to the subjects, and an IRB conducts a limited IRB review to make the determination required by 45 CFR 46.111(a)(7): *"When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data."*

For the purpose of this provision, benign behavioral interventions are brief in duration, harmless, painless, not physically invasive, not likely to have a significant adverse lasting impact on the subjects, and the investigator has no reason to think the subjects will find the interventions offensive or embarrassing. Provided all such criteria are met, examples of such benign behavioral interventions would include having the subjects play an online game, having them solve puzzles under various noise conditions, or having them decide how to allocate a nominal amount of received cash between themselves and someone else.

If the research involves deceiving the subjects regarding the nature or purposes of the research, this exemption is not applicable unless the subject authorizes the deception through a prospective agreement to participate in research in circumstances in which the subject is informed that he or she will be unaware of or misled regarding the nature or purposes of the research.

4. Secondary research for which consent is not required: Secondary research uses of identifiable private information or identifiable biospecimens, if at least one of the following criteria is met:
 - (i) The identifiable private information or identifiable biospecimens are publicly available;
 - (ii) Information, which may include information about biospecimens, is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained directly or through identifiers linked to the subjects, the investigator does not contact the subjects, and the investigator will not re-identify subjects;
 - (iii) The research involves only information collection and analysis involving the investigator's use of identifiable health information when that use is regulated under 45 CFR parts 160 and 164 ['HIPAA'], subparts A and E, for the purposes of "health care operations" or "research" as those terms are defined at 45 CFR 164.501 or for "public health activities and purposes" as described under 45 CFR 164.512(b); **or**

- (iv) The research is conducted by, or on behalf of, a Federal department or agency using government-generated or government-collected information obtained for nonresearch activities, if the research generates identifiable private information that is or will be maintained on information technology that is subject to and in compliance with section 208(b) of the E-Government Act of 2002, 44 U.S.C. 3501 note, if all of the identifiable private information collected, used, or generated as part of the activity will be maintained in systems of records subject to the Privacy Act of 1974, 5 U.S.C. 552a, and, if applicable, the information used in the research was collected subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq.
5. Research and demonstration projects that are conducted or supported by a Federal department or agency, or otherwise subject to the approval of department or agency heads (or the approval of the heads of bureaus or other subordinate agencies that have been delegated authority to conduct the research and demonstration projects), and that are designed to study, evaluate, improve, or otherwise examine public benefit or service programs, including procedures for obtaining benefits or services under those programs, possible changes in or alternatives to those programs or procedures, or possible changes in methods or levels of payment for benefits or services under those programs. Such projects include, but are not limited to, internal studies by Federal employees, and studies under contracts or consulting arrangements, cooperative agreements, or grants. Exempt projects also include waivers of otherwise mandatory requirements using authorities such as sections 1115 and 1115A of the Social Security Act, as amended.
- (i) Each Federal department or agency conducting or supporting the research and demonstration projects must establish, on a publicly accessible Federal website or in such other manner as the department or agency head may determine, a list of the research and demonstration projects that the Federal department or agency conducts or supports under this provision. The research or demonstration project must be published on this list prior to commencing the research involving human subjects.
6. Taste and food quality evaluation and consumer acceptance studies:
- (i) If wholesome foods without additives are consumed, **or**
 - (ii) If a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

Note: Exempt categories 7 & 8 related to broad consent are *not being adopted by MHC*.

4. Expedited Review

Expedited review of research subject to the revised Common Rule will be conducted using the procedures described in the McLaren Health Care HRPP/IRB SOPs and Manual with the following variations:

1. The IRB shall apply the most current list of categories of research published in the Federal Register that may be reviewed using expedited review procedures [45 CFR 46.110(a)]
2. Research that falls within the list of categories is presumed to be minimal risk unless the IRB determines and documents that the research involves more than minimal risk. [45 CFR 46.110(b)(1)(i)] If the reviewer determines that the research involves more than minimal risk, it will be referred for review by the convened IRB
3. The limited IRB review that is required for certain exempt research (See Section 3) may be conducted using expedited review procedures [45 CFR 46.110(b)(1)(iii)]
4. Continuing review of research is not required for research that qualifies for expedited review unless the IRB determines that is required and documents the rationale within the IRB record

5. Modifications to IRB-approved Research [45 CFR 46.108(3)(iii)]

Investigators must promptly report proposed changes in a research activity to the MHC IRB and must conduct the research activity in accordance with the terms of the IRB approval until any proposed changes have been reviewed and approved by the IRB, except when necessary to eliminate apparent immediate hazards to the subject.

This requirement applies to all research approved by the MHC IRB, including any aspects of exempt research subject to limited IRB review (See Section 3), and research for which continuing review is not required (See Section 6).

The MHC IRB will follow the procedures described in the MHC HRPP/IRB SOPs and Manual, and any applicable requirements and procedures in this SOP addendum, when reviewing modifications to IRB-approved research subject to the revised Common Rule.

6. Continuing Review [45 CFR 46.109(e) and (f)]

The revised Common Rule modifies when continuing review is required. Unless MHC IRB determines otherwise, continuing review of research is not required for research subject to the revised Common Rule in the following circumstances:

1. Research eligible for expedited review in accordance with 45 CFR 46.110;
2. Research reviewed by the IRB in accordance with limited IRB review as described in Section 3;

3. Research that has progressed to the point that it involves only one or both of the following, which are part of the IRB-approved study:
 - a. Data analysis, including analysis of identifiable private information or identifiable biospecimens, **or**
 - b. Accessing follow-up clinical data from procedures that subjects would undergo as part of clinical care

MHC IRB may determine that continuing review is required for any research protocol that falls within the above criteria. For example, the IRB may determine that continuing review is required when:

1. Required by other applicable regulations (e.g., FDA);
2. The research involves topics, procedures, or data that may be considered sensitive or controversial;
3. The research involves particularly vulnerable subjects or circumstances that increase subjects' vulnerability;
4. An investigator has minimal experience in research or the research type, topic, or procedures; and/or
5. An investigator has a history of noncompliance

When the MHC IRB determines that continuing review is required for such research, it will document the rationale in the IRB record and communicate the requirement to the investigator in the IRB determination letter.

When the continuing review is not required, the study team must:

- **Complete an Annual Status Report** so that we can know if the study is still active (allowing for post-approval monitoring), and institutional requirements can be assessed (training and COI status of current research team etc.)
- Remember that the requirement to submit modifications, changes to personnel, changes to recruitment material, reportable events, and final reports to the IRB have not changed.
- Take note that when you submit a modification, reportable event or annual status report the MHC IRB may evaluate if continuing review is required.
- Watch for eProtocol system automated reminder when the annual status report is due.
- Once the project is completed, submit a final report in eProtocol.

7. Criteria for IRB Approval of Research

The MHC IRB will apply the criteria for IRB approval described in the MHC HRPP/IRB SOPs and Manual to research subject to the revised Common Rule with the following variations:

Within criterion 45 CFR 46.111(a)(3), the text describing vulnerable subjects is replaced with the following:

The IRB should be particularly cognizant of the special problems of research that involves a category of subjects who are vulnerable to coercion or undue influence, such as children, prisoners, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons.

Likewise, within criterion 45 CFR 46.111(b), the description of vulnerable subjects is updated and now reads:

When some or all the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

While pregnant women are no longer described as vulnerable within the above criteria, the IRB shall continue to apply Subpart B “Additional Protections for Pregnant Women, Human Fetuses and Neonates” as described in the MHC HRPP/IRB SOPs and Manual. The revised Common Rule does not eliminate or modify Subpart B.

For **exempt research** subject to **limited IRB review**, the following criteria shall be applied:

1. For exempt categories 2(iii) and 3(iii) (See Section 3.2), the IRB may approve the research when it determines that there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.
2. Exempt category 7 and exempt category 8 will not be utilized for MHC research.

8. Informed Consent

When reviewing research subject to the revised Common Rule, the MHCIRB will evaluate the provisions for informed consent as described in the MHC HRPP/IRB SOPs and Manual. with the below variations. Investigators conducting research subject to the revised Common Rule must adhere to these requirements.

8.1 General Requirements for Informed Consent [45 CFR 46.116(a)]

In addition to the requirements for obtaining informed consent and the consent process described in the MHC HRPP/IRB SOPs and Manual, the following specific requirements for consent, whether written or oral, apply to research subject to the revised Common Rule:

1. Before involving a human subject in research, an investigator shall obtain the legally effective informed consent of the subject or the subject’s legally authorized representative (LAR)
2. An investigator shall seek informed consent only under circumstances that provide the prospective subject or the LAR sufficient opportunity to discuss and consider whether to participate and that minimize the possibility of coercion or undue influence

3. The information that is given to the subject or the LAR shall be in language understandable to the subject or the LAR
4. The prospective subject or the LAR must be provided with the information that a reasonable person would want to have in order to make an informed decision about whether to participate, and an opportunity to discuss that information *(new requirement)*
5. Informed consent must begin with a concise and focused presentation of the key information that is most likely to assist a prospective subject or LAR in understanding the reasons why one might or might not want to participate in the research. This part of the informed consent must be organized and presented in a way that facilitates comprehension *(new requirement)*
6. Informed consent as a whole must present information in sufficient detail relating to the research, and must be organized and presented in a way that does not merely provide lists of isolated facts, but rather facilitates the prospective subject's or LAR's understanding of the reasons why one might or might not want to participate *(new requirement)*
7. No informed consent may include any exculpatory language through which the subject or the LAR is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution, or its agents from liability for negligence.

8.2 Elements of Consent

In addition to the elements of informed consent described in the MHC HRPP/IRB SOPs Manual, the following additional elements are required for research subject to the revised Common Rule. The requirements for Broad Consent are described in Section 8.3.

Basic Elements 45 CFR 46.116(b)]

1. One of the following statements about any research that involves the collection of identifiable private information or identifiable biospecimens:
 - a. A statement that identifiers might be removed from the identifiable private information or identifiable biospecimens and that, after such removal, the information or biospecimens could be used for future research studies or distributed to another investigator for future research studies without additional informed consent from the subject or the legally authorized representative, if this might be a possibility; or
 - b. A statement that the subject's information or biospecimens collected as part of the research, even if identifiers are removed, will not be used or distributed for future research studies.

Additional Elements (must be included when appropriate) [§__.116(c)]

1. A statement that the subject's biospecimens (even if identifiers are removed) may be used for commercial profit and whether the subject will or will not share in this commercial profit;
2. A statement regarding whether clinically relevant research results, including individual research results, will be disclosed to subjects, and if so, under what conditions;

3. For research involving biospecimens, whether the research will (if known) or might include whole genome sequencing (i.e., sequencing of a human germline or somatic specimen with the intent to generate the genome or exome sequence of that specimen).

8.3 Waiver or Alteration of Informed Consent [45 CFR 46.116(e) and (f)]

When reviewing research subject to the revised Common Rule, the MHC IRB will evaluate requests for waivers or alterations of informed consent in accordance with the requirements and criteria specified in the revised rule and summarized below. The IRB's determination will be documented in the IRB record and communicated to the investigator as described in the MHC HRPP/IRB SOPs and Manual.

8.3.1 General Waiver or Alteration of Consent

In order to approve a request from an investigator to waive the requirement for informed consent, or to omit or alter one or more basic or additional element of consent (an "Alteration"), under this provision the MHC IRB must determine and document that the below criteria are satisfied.

1. The research involves no more than minimal risk to the subjects;
2. The research could not practicably be carried out without the requested waiver or alteration;
3. If the research involves using identifiable private information or identifiable biospecimens, the research could not practicably be carried out without using such information or biospecimens in an identifiable format;
4. The waiver or alteration will not adversely affect the rights and welfare of the subjects; and
5. Whenever appropriate, the subjects or LARs will be provided with additional pertinent information after participation.

Investigators may be asked to provide justification, or additional information or documentation, to support that the above criteria are satisfied.

Restrictions:

An IRB may not approve a request to alter or omit any of the general requirements for informed consent described in Section 8.1

8.3.2 Waiver or Alteration of Consent in Research Involving Public Benefit and Service Programs

In order to approve a request from an investigator to waive the requirement for informed consent, or to omit or alter one or more basic or additional element of consent (an "Alteration"), under this provision the MHC IRB must determine and document that the below criteria are satisfied.

1. The research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine:
 - a. Public benefit or service programs;
 - b. Procedures for obtaining benefits or services under those programs;
 - c. Possible changes in or alternatives to those programs or procedures; or

- d. Possible changes in methods or levels of payment for benefits or services under those programs; **and**
2. The research could not practicably be carried out without the waiver or alteration.

Restrictions:

An IRB may not approve a request to alter or omit any of the general requirements for informed consent described in Sections 8.1 and 8.3

8.4 Screening, Recruiting, or Determining Eligibility [45 CFR 46.116(g)]

The revised Common Rule removes the requirement for partial waivers of consent for the use of information or specimens for the purposes of screening, recruiting, or determining the eligibility of prospective subjects for inclusion in the research. Pursuant to the revised rule, the MHC IRB may approve a research proposal in which an investigator will obtain information or biospecimens for these purposes without the informed consent of the prospective subject or the subject's LAR if either of the following conditions is met:

1. The investigator will obtain information through oral or written communication with the prospective subject or LAR, or
2. The investigator will obtain identifiable private information or identifiable biospecimens by accessing records or stored identifiable biospecimens.

When research is subject to the revised Common Rule, and the above conditions are met, investigators do not have to request waivers of consent for the purposes of screening, recruiting, or determining eligibility but do have to describe the activities in the application or protocol submitted to the IRB. The above does not negate the requirements of other rules, such as HIPAA, when applicable. It also does not negate the requirement to obtain consent, or a waiver of consent, before involving a subject (including the use of their identifiable private information or biospecimens) in other research activities.

8.5 Documentation of Consent [45 CFR 46.117]

The revised Common Rule modifies the requirements for documentation of consent as described below. When reviewing research subject to the revised Common Rule, the MHC IRB will apply the requirements summarized below.

Unless the requirement for documentation of consent is waived by the IRB, informed consent must be documented by the use of written informed consent form (ICF) approved by the IRB and signed (including in an electronic format) by the subject or the subject's LAR. A written copy must be given to the person signing the ICF.

The ICF may be either of the following:

1. A written consent document that embodies the basic and required additional elements of informed consent. The investigator shall give either the subject or the subject's LAR adequate

opportunity to read the informed consent form before it is signed; alternatively, this form may be read to the subject or the subject's legally authorized representative; or

2. A short form written consent document stating that the elements of informed consent have been presented orally to the subject or the subject's LAR and that the key information required by 45 CFR.116(a)(5)(i) (See Section 8.1 #5.a) was presented first to the subject, before other information, if any, was provided. When this method is used:
 - a. The oral presentation and the short form written document should be in a language understandable to the subject; and
 - b. There must be a witness to the oral presentation; and
 - c. The IRB must approve a written summary of what is to be said to the subject (the approved full consent document may serve as this summary); and
 - d. The short form document is signed by the subject;
 - e. The witness must sign both the short form and a copy of the summary; and
 - f. The person obtaining consent must sign a copy of the summary; **and**
 - g. A copy of the summary must be given to the subject or representative, in addition to a copy of the short form.

8.6 Waiver of Documentation of Informed Consent [45 CFR 46.117(c)]

The revised Common Rule adds a third condition under which an IRB may waive the requirement for an investigator to obtain a signed informed consent form. When reviewing research subject to the revised Common Rule, in addition to the criteria described in the MHC HRPP/IRB SOPs and Manual, the MHC IRB may also approve a request for a waiver of documentation of consent if it finds that:

1. The subjects or LARs are members of a distinct cultural group or community in which signing forms is not the norm, that the research presents no more than minimal risk of harm to subjects and provided there is an appropriate alternative mechanism for documenting that informed consent was obtained.

The IRB's determination will be documented in the IRB record and communicated to the investigator as described in the MHC HRPP/IRB SOPs and Manual.

9. IRB Review of Grant Applications

The revised Common Rule removes the requirement that the IRB review the Federal grant application or proposal for consistency with the protocol submitted to the IRB. Unless required by the Federal department or agency conducting or supporting the research, or by foreign, state, or local laws or

regulations (including tribal law), the MHC IRB will no longer require submission of, or conduct review of, Federal grant applications or proposals when research is subject to the revised Common Rule.

10. Posting of Clinical Trial Consent Forms [45 CFR 46.116(h)]

The revised Common Rule includes a requirement for the posting of one IRB-approved consent form to a publicly available Federal website for each clinical trial conducted or supported by a Common Rule department or agency after the clinical trial is closed to recruitment, and no later than 60 days after the last study visit by any subject. This requirement may be satisfied by either the awardee or the Federal department or agency. If the Federal department or agency supporting or conducting the clinical trial determines that certain information should not be made publicly available on a Federal website (e.g., confidential commercial information), the department or agency may permit or require redactions to the information posted.

For federally sponsored clinical trials ICF that are required to be posted a federal website, it is recommended that you contact the sponsor of the study to determine how best meet this requirement.

11. IRB Records [45 CFR 46.115]

The revised Common Rule includes additional requirements for IRB records. When MHC is engaged in human subjects research subject to the revised Common Rule the following records will be maintained in addition to those described in the MHC HRPP/IRB SOPs and Manual.

1. Institutional Records –

- a. For nonexempt research involving human subjects covered by the Common Rule (or exempt research for which limited IRB review takes place as described in Section 5.5) that takes place at an institution in which IRB oversight is conducted by an IRB that is not operated by the institution, the institution and the organization operating the IRB shall document the institution's reliance on the IRB for oversight of the research and the responsibilities that each entity will undertake to ensure compliance with the requirements of this policy (e.g., in a written agreement between the institution and the IRB, by implementation of an institution-wide policy directive providing the allocation of responsibilities between the institution and an IRB that is not affiliated with the institution, or as set forth in a research protocol)

2. IRB Records –

- a. The rationale for conducting continuing review of research that otherwise would not require continuing review (as described in Section 6)
- b. The rationale for a determination that research appearing on the expedited review list published in the Federal Register is more than minimal risk

12. Additional SOP Content Considerations

MHC applies the Common Rule to all human subject research, regardless of funding, unless the funding source has different human subject regulations, or the project comes under another agency's jurisdiction. In those cases, the appropriate organization's regulations would be applied. The Common Rule regulations are separate from FDA regulations. The FDA regulations have NOT changed.

Approved by:

Signature on file

Justin Klamerus, MD, MMM
Executive Vice President/ Chief Medical Officer
Institutional Official of Research

Date