

**Michigan State University  
Human Research Protection Program**

*Subject:* Informed Consent

*Section:* 6-4

*This policy and procedure supersedes those previously drafted.*

*Original Reviewed by: IRB, URC, UGC, MSU  
Legal Counsel; Revision reviewed by HRP/IRB  
Administrative Committee*

*Approved by: Vice President of Research and Graduate  
Studies, 4-21-2005, Revision approved by the Vice President  
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*Related Sections: 6-4-A, 6-4-B, 6-4-C, 6-5, 6-8, 7-4, 12-4*

Obtaining informed consent is typically a fundamental ethical requirement in connection with research involving human subjects; it reflects the basic principle of respect for persons. Respect for persons requires that subjects, to the degree they are capable, be given the opportunity to choose what shall or shall not happen to them. Informed consent assures that prospective human subjects will be informed of the nature of the research and can knowledgeably and voluntarily decide whether or not to participate. Informed consent must be obtained voluntarily, without coercion, especially when vulnerable populations are involved, such as children, mentally handicapped persons, prisoners, and institutionalized persons. See Section 6-8, "Special Categories of Subjects", of the HRP Manual for policies and procedures regarding vulnerable populations. See Section 6-4-C, "Parental Consent and Child Assent", of the HRP Manual for policies and procedures relevant to research involving children. However, in some cases, informed consent can be waived. See Section 6-4-B, "Waiver or Alteration of Informed Consent", of the HRP Manual for policies and procedures on waiver of informed consent.

When evaluating the consent process, the Institutional Review Board (IRB) will consider the general regulatory requirements for informed consent.

45 CFR 46.116 and 21 CFR 50.20 "General requirements for informed consent"

1. "Except as provided [elsewhere in this policy (DHHS), §§50.23 and 50.24 (FDA)], no investigator may involve a human being as a subject in research covered by this policy unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative."
2. "An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence."
3. "The information that is given to the subject or the representative shall be in language understandable to the subject or the representative."
4. "No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative 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."

IRB members should also evaluate the consent document using the basic and additional elements of consent (see tables below).

<b>TABLE 1 – Basic Elements</b>	
DHHS - 45 CFR 46.116	“(a) Basic elements of informed consent. Except as provided in paragraph (c) or (d) of this section, in seeking informed consent the following information shall be provided to each subject:”
FDA - 21 CFR 50.25	“(a) <i>Basic elements of informed consent.</i> In seeking informed consent, the following information shall be provided to each subject:”
Regulation (1) <i>DHHS &amp; FDA</i>	“(1) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental.”
Consideration (1)	An estimate of the total amount of time required in the part of the subject (number of sessions, frequency of testing, etc.) should be included.
Regulation (2) <i>DHHS &amp; FDA</i>	“(2) A description of any reasonably foreseeable risks or discomforts to the subject.”
Consideration (2)	<p>If there is a risk of injury to the subject(s) one of the following statements must appear on the consent form. The Responsible Investigator is responsible for assuring that appropriate financial arrangements have been met, if appropriate, and providing documentation (e.g., contract).</p> <p>1. No costs will be paid</p> <p>“If you are injured as a result of your participation in this research project, Michigan State University will assist you in obtaining emergency care, if necessary, for your research related injuries. If you have insurance for medical care, your insurance carrier will be billed in the ordinary manner. As with any medical insurance, any costs that are not covered or are in excess of what are paid by your insurance, including deductibles, will be your responsibility. The University's policy is not to provide financial compensation for lost wages, disability, pain or discomfort, unless required by law to do so. This does not mean that you are giving up any legal rights you may have. You may contact <a href="#">[insert Principal Investigator's name and phone number]</a> with any questions or to report an injury.”</p>

	<p>2. Third party will pay</p> <p>“If you are injured as a result of your participation in this research project, Michigan State University will assist you in obtaining emergency care, if necessary, for your research related injuries. If you have insurance for medical care, your insurance carrier will be billed in the ordinary manner. Any costs that are not covered or are in excess of what are paid by your insurance, including deductibles, shall be paid by <a href="#">[insert name of payee]</a>. The University’s policy is not to provide financial compensation for lost wages, disability, pain or discomfort, unless required by law to do so. This does not mean that you are giving up any legal rights you may have. You may contact <a href="#">[insert Principal Investigator’s name and phone number]</a> with any questions or to report an injury.”</p> <p>3. For projects that are funded - If the sponsor has requirements different or in addition to the statements above (i.e., U.S. Army), language will be negotiated with the IRB and other appropriate individuals (e.g., responsible project investigator, department, sponsor, legal counsel). In any case, “no informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative 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.” (45 CFR 46.116, 21 CFR 50.20)</p>
Regulation (3) <i>DHHS &amp; FDA</i>	“(3) A description of any benefits to the subject or to others which may reasonably be expected from the research.”
Consideration (3)	If treatment is involved, include a statement that beneficial effects cannot be guaranteed.
Regulation (4) <i>DHHS &amp; FDA</i>	“(4) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.”
Consideration (4)	<p>When a treatment is involved, alternative treatments/therapies, including standard therapy, must be described BEFORE the description of the research protocol.</p> <p>The alternative treatment description should include a record of the alternative treatment’s successes.</p>
Regulation (5)	For research subject to DHHS regulations:

** <i>DHHS</i>	“(5) A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained.”
Regulation (5) ** <i>FDA</i>	For research subject to FDA regulations:  “(5) A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained and that notes the possibility that the Food and Drug Administration may inspect the records.”
Consideration (5)	<p>Statements concerning confidentiality should include language equivalent to the following: "Your privacy will be protected to the maximum extent allowable by law." Since there are situations in which a researcher may be compelled to break the confidentiality of subjects (e.g., in response to a subpoena or at the request of an MSU IRB), no absolute guarantees of privacy are possible.</p> <p>For projects to which <u>FDA</u> policies and procedures apply: a statement that notes the possibility that the Food and Drug Administration may inspect the records</p>
Regulation (6) <i>DHHS &amp; FDA</i>	“(6) For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained.”
Consideration (6)	See Consideration (2) listed above.
Regulation (7) <i>DHHS &amp; FDA</i>	“(7) An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject.”
Consideration (7)	<p>All consent forms should include the researcher's contact information and MSU's IRB contact information. Participants should be invited to contact the researcher to discuss any questions about the research or research related injuries or to lodge a complaint. Additionally, the consent form should plainly state that if participants have questions regarding their role and rights as subjects of research, they may contact the IRB separate from the project investigator. See Section 12-4, "Consent Form Guidelines", of the HRP Manual for recommended language.</p> <p>IRB contact information should be incorporated into the body of the consent document. It is not acceptable as a footnote or in a smaller typeface than the regular text.</p>

Regulation (8) <i>DHHS &amp; FDA</i>	“(8) A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.”
Consideration (8)	Explanation should include that the subjects may refuse to participate in certain procedures or answer certain questions.

<b>TABLE 2 – Additional Elements</b>	
DHHS - 45 CFR 46.116	“(a) additional elements of informed consent. When appropriate, one or more of the following elements of information shall also be provided to each subject”
FDA - 21 CFR 50.25	“(a) <i>Additional elements of informed consent.</i> When appropriate, one or more of the following elements of information shall also be provided to each subject”
Regulation (1) <i>DHHS &amp; FDA</i>	“(1) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable.”
Consideration (1)	Medical consent forms should include a phrase explaining the possibility of unforeseeable risks.
Regulation (2) <i>DHHS &amp; FDA</i>	“(2) Anticipated circumstances under which the subject’s participation may be terminated without regard to the subject’s consent.”
Regulation (3) <i>DHHS &amp; FDA</i>	“(3) Any additional costs to the subject that may result from participation in the research.”
Consideration (3)	<p>Such a statement should be included when subjects are paying some kind of fee for service. Investigators should distinguish between: (1) fees from ordinary care or service, (2) fees that might result from the subject’s participation in research. See Section 7-4, “Charging for Investigational Drugs”, of the HRP Manual for policies and procedures.</p> <p>For medical projects, investigators must incorporate one of the following three paragraphs in their consent forms:</p> <p style="text-align: center;">“Your participation in this research project will not involve any additional costs to you or your health care insurer.”</p>

	<p style="text-align: center;"><b><u>OR</u></b></p> <p>“Your participation in this research will necessitate additional procedures [indicate procedures, e.g., obtaining medical tests and examinations] which will be discussed with you. The cost may be covered by your insurance. Those costs not covered by the insurance will be provided by research funds. However, you will still remain responsible for the insurance deductibles and co-pays.”</p> <p style="text-align: center;"><b><u>OR</u></b></p> <p>“Your participation in this research project may involve additional costs to you for [indicate source of cost, e.g., drugs, device, diagnostic procedure, therapeutic procedure]. Your health care insurance probably will not pay for all of these additional costs. We [or your health care provider] estimate that the additional, unreimbursed costs to you will not exceed (\$     ). If actual costs exceed this estimate, you are still responsible for them.”</p>
Regulation (4) <i>DHHS &amp; FDA</i>	“(4) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject.”
Regulation (5) <i>DHHS &amp; FDA</i>	“(5) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject.”
Regulation (6) <i>DHHS &amp; FDA</i>	“(6) The approximate number of subjects involved in the study.”

In addition to the regulatory requirements, the following issues should be considered when evaluating the consent process and document:

### **Informed Consent Process**

Informed consent should be thought of as an educational process that takes place between the investigator and the prospective subject rather than simply a form that must be signed. In the process of obtaining informed consent, each element of consent should be carefully, patiently, and simply explained to the prospective subject in terms he/she can understand. Therefore, informed consent language and its documentation must be written in "lay language" (i.e. understandable to the people being asked to participate). Use of scientific jargon and legalese is not appropriate. Simple declarative sentences are most appropriate for explaining the study's purpose, duration, experimental procedures, alternative treatments (if applicable), risks, and benefits. The

consent form is primarily a teaching tool as well as a legal instrument. To ensure that the subject will be able to make an informed decision about whether to participate (particularly in instances where research involves significant risk, or prospective subjects are likely to have difficulty understanding the procedures that will involve them), investigators may want to use audiovisual aids, enlist the help of lay people in explaining informed consent, or periodically assess the prospective subject's understanding of informed consent by asking questions.

### **Foreign Language Consent**

If subjects are not fluent in English, translations of the consent form into the subject's primary language(s) must be submitted to the IRB before these subjects can be enrolled. It is solely the responsibility of the investigator to ensure that any translation is error free. An English version of the consent must be submitted, reviewed and approved by the IRB with the translated consent.

### **Observation of Informed Consent**

Per 45 CFR 46(s), the IRB has the authority to observe or have a third party observe the consent process and, when necessary, the IRB may require such observation as part of the consent process.

IRB observation of consent may be required in situations in which the competence of the subject to provide informed consent is questionable, e.g., research subjects with diminished capacity.

### **Subject Withdrawal of Consent**

A decision by any subject to withdraw his/her consent and to discontinue participation in the investigation shall be honored promptly and unconditionally. Investigators may not withhold benefits to subjects that they would be otherwise entitled to (e.g., other extra credit opportunities for students or medical/psychological care for patients that would be normally available).

### **Passive Consent**

Passive consent is a practice of providing the subjects with information and informing them that they will be included in the research unless they explicitly object to their inclusion. This does not meet the regulatory criteria for informed consent process unless the IRB approves a Waiver or Alteration of Informed Consent. See Section 6-4-C, "Waiver or Alteration of Informed Consent", of the HRP Manual.

Although the practice of "passive" consent may be used in non-research contexts and legally appropriate for some purposes, its use is restricted under the regulations protecting human subjects. Informed consent means that the subjects or their legal guardians must have sufficient information to understand the nature of the research to decide knowingly and voluntarily whether or not to participate. They may need to ask questions of the researchers to obtain needed information. It is the investigator's responsibility to assure that the subjects or their parents/guardians legally authorized representatives have provided informed consent. Therefore, affirmative active consent

is required, usually as a signature on the consent form, although under certain circumstances the IRB does permit oral consent.

### **Waivers**

See Section 6-4-C, “Waiver or Alteration of Informed Consent”, and Section 6-4-A, “Documentation of Informed Consent: Waiver of Documentation”, of the HRP Manual for policies and procedures.

### **Incentives**

Incentives should be described in consent form. See Section 6-5, “Selection of Subjects and Recruitment”, of the HRP Manual for policies and procedures.

### **Placebo control studies**

The IRB requires that the following paragraph be placed in the consent form of placebo-controlled studies. It may be modified as necessary for the terms of the research study.

“This is a placebo-controlled study. There will be two (or more) groups of patients; one or more groups will receive the active drug which is being studied; the other(s) will receive a placebo. A placebo is an inactive substance which will have no direct effect on your illness. The patients in the study will be assigned at random, that is, by a method of chance, to one of the groups. You will have an equal chance of being in a placebo group or an active drug group. Neither you nor your physician will know which group you are in.”

### **Consent Form Guidance**

See the Section 12-4, “Consent Form Guidelines”, of the HRP Manual for guidance on consent form requirements.