Exempt Studies: Post Exempt Determination Submission Requirements

Introduction

Post approval submission requirements for studies deemed to be exempt from the regulations under 45 CFR §46.104 are not as stringent as those for studies approved under expedited or full board review procedures. Exempt studies are excused from the regulatory requirements detailed in The Code of Federal Regulations at 45 CFR 46. This means that they do not require an annual continuing review submission. In addition, generally, with few exceptions, only alterations that might affect a study's exempt status need to be submitted to the Geisinger IRB for review and approval prior to implementation. The principal investigator is ultimately responsible for making the determination and deciding whether specific modifications to an exempt study require an IRB submission.

General Requirement for Post Exempt Determination Submission

A study's status as exempt is dependent upon all the human subject's research activities fitting into one or more of the categories detailed at 45 CFR §46.104, as well as compliance with the requirements of the exempt category or categories that are relevant to a given research study. Any modifications to an ongoing exempt study which may result in the study no meeting criteria for the applicable exemption category(ies) would require an IRB modification/ amendment submission.

- For instance, a survey study originally approved under exemption Category 2b would now like to modify their survey to collect identifiable, sensitive information that could negatively impact the reputation of the participants if the data was accidently disclosed to the wrong individuals. This change in the survey alters the exempt category which governs the study and IRB review requirements. Therefore, an amendment submission to the IRB for review and approval is required.
- On the other hand, a survey study originally approved under exemption Category 2b that modifies the survey tool to collect additional demographic information (i.e. education level, years at current residence, household income, etc.) and other information that does not reasonably place the subjects at risk, would not need to submit the survey changes for IRB review and approval.

Submission Considerations for Data Sharing Modifications

Modifications to data sharing plans in exempt studies might also require review and approval by the Geisinger IRB. Studies governed under Exempt Category 4c are especially vulnerable to changes in data sharing as they are still required to comply with the Health Insurance Portability and Accountability Act (HIPAA) parts 160 and 164, subparts A and E.

- Studies disclosing data under Exemption Category 4c with another HIPAA covered entity generally can share additional data elements with that same entity without IRB approval. However, sharing additional identifiers should be reviewed by the IRB first to assess the necessity of the disclosure and ensure compliance with the "minimum necessary" standard. The same is true when a study was originally approved to share a limited data set or de-identified data with a HIPAA covered entity and would now like to share identifiable data.
- Sharing data with non-HIPAA covered entities is a bit more cumbersome. From the recommendation of the Secretary's Advisory Committee on Human Research Protections (SACHRP), the Geisinger IRB does not allow the disclosure of identifiable health information to non-HIPAA covered entities under Exemption 4c. Studies sharing identifiable health information to non-covered entities need to follow expedited review procedures. **Therefore, studies originally meeting exemption 4c that now wish to share identifiable health information with a non-covered entity must submit a new study with a full application and protocol for expedited review.** It is important to note, that under 4c if a study is approved to share de-identified data to a non-covered entity and wished to share additional de-identified data elements, an IRB submission is not necessary.
- **IRB review is also required when investigators of exempt studies not originally approved to share data later decide to share identifiable data with another institution.** This is regardless of the exempt categories that the study was originally reviewed under. Review is required because research determined as "exempt" is exempt from the Common Rule regulations but not HIPAA regulations.

Other Submission Considerations Post Exempt Determination

There are numerous types of changes to an exempt study that might require submission to the Geisinger IRB. Providing an exhaustive list is not possible and, it is beyond the scope of this guidance document. Below are some general examples to aid investigators in deciding whether they need to submit their exempt study modifications to the IRB for approval prior to implementation:

Require IRB Submission:

- Key Study Personnel Changes
- Changes that increase risk to participants
- Collection of additional HIPAA Identifiers or HPHI (Highly Protected Health Information)
- Changes that impact HIPAA Authorization and waivers

    - ex. modifications to study design that require the justification for a partial or full waiver or an alteration of HIPAA authorization to be reevaluated
- Addition of study procedures that meet a different exempt category than the initial determination
    - ex. a study initially given an exempt determination under 4c to collect patient data from the health record changes the protocol to add a phone call and contact patients to ask them 3 survey questions about their condition. This would now also require another exempt determination.
- Changes to study funding source
- Changes that now require limited IRB review
    - ex. addition of a measure that collects sensitive information such as a question on a survey tool when the investigator is collecting information in a manner where the identity of the individuals can readily be ascertained.
- Changes that alter compliance with the exempt requirements at 45 CFR §46.104
- Changes to Geisinger branded recruitment materials
- Addition of or alterations to participant compensation
- MyCode Data, Samples and Participants
    - ex. Modifications to pre-existing MyCode Governing Board approvals present when an exempt determination was granted
    - ex. New MyCode Governing Board approvals, for instance, when a study decides to include MyCode data or recruit MyCode participants after an exempt determination was granted for the study.

May Require IRB Submission:

- Data sharing changes
    - ex. data sharing changes that require Security, Compliance, Privacy (SCP) review
    - ex. disclosing new or additional PHI or HPHI
    - ex. disclosing identifiable data to a new individual, entity or sponsor
- Changes to data sources
    - ex. initially collecting data from a publicly available database and later adding data collection from electronic health records
- Changes to data collection methods
    - ex. changing data collection process from collecting data in a manner that the investigator cannot readily ascertain the identity of the participants, to collecting data with a linked code

Do Not Require IRB Submission:

- Correcting typographical errors and other administrative changes in study documents
- Alterations to sample sizes
- Changes that do not alter the initial exempt determination
    - ex. addition of a measure that collects non-sensitive information such as a question on a survey tool for a study exempt under category 2(b)
    - ex. extending date ranges for data collection
- Adding or revising recruitment method(s)
    - ex. add or revise MyGeisinger recruitment process

ex. add or revise recruitment letter, email or script

IRB Review of Post Exempt Determination Submissions

When modifications to an exempt study require review and approval by the IRB prior to implementation, the IRB reviews these changes to ensure that the study still meets exemption criteria. If this is the case, the Investigator will receive an approval letter and then can continue with the conduct of the study. Any changes to the applicable exemption categories will be documented prior to sending the investigator an approval. Modifications to exempt studies that are not allowable under an exempt study status will not receive approval and the investigator will be notified that a new study with a full application and protocol must be submitted for expedited review to proceed with the proposed study modifications.

It is important to note that the Geisinger IRB does not require a protocol document to be submitted with an exempt study application. Investigators that choose to submit an exempt application with a protocol document must also make sure that they include a revised protocol reflecting all applicable study changes when they submit an amendment for an exempt study.

Conclusion

It is not always clear which types of changes require IRB review and approval once a study has been granted an exemption and there can certainly be unique circumstances that create examples not covered in this guidance. Investigators are encouraged to consult with IRB staff at any point when uncertainty arises around the post exempt determination submission requirements for exempt studies. This consultation is especially important for unique situations and might require additional steps or an investigation by IRB staff to develop a clear and accurate plan of action.

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