HHS Final Rule

Implementation of Revised Common Rule

(January 21, 2019)

January 2019

TIMELINE

January 18, 2017 - Final revisions to the *Federal Policy for the Protection of Human Subjects* ("Common Rule") issued by HHS

January 19, 2018 – Majority of changes were scheduled to go into effect

January 25, 2018 – Single IRB compliance date for NIH submissions

April 19, 2018 – Notice of Proposed Rulemaking (NPRM) to delay for an additional 6 months (January 21, 2019)

January 17, 2018 - interim final rule (IFR), *Federal Policy for the Protection of Human Subjects: Delay of the Revisions to the Federal Policy for the Protection of Human Subjects*, was released

TIMELINE

May 1, 2018 – Geisinger IRB implemented "Geisinger 2018 New Rule" (non-FDA or federally-supported research)

July 19, 2018 – New effective & general compliance date of the revised Common Rule ("the 2018 Requirements")

January 21, 2019 – Effective & compliance date for Final Rule (revised Common Rule)

January 20, 2020 – Compliance date for single-site IRB for cooperative research

Major Regulation Changes

IMPORTANT: Does not apply to FDA-regulated research!

Why change?

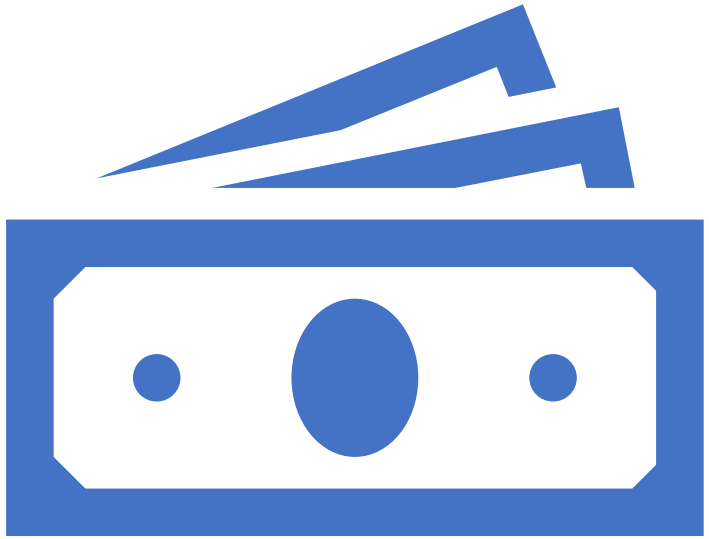
"Modernize, strengthen and make more effective" the current oversight under Federal Policy for the Protection of Human Subjects (Common Rule) since 1991

Revisions aim to:

- ✓ Better protect human research participants
- ✓ Remove ambiguity
- ✓ Reduce regulatory burden
- ✓ Facilitate research, primarily minimal risk research

To what research does this apply?

- REQUIRED - Federally-supported research
- OPTIONAL - Other research that is NOT FDA-regulated

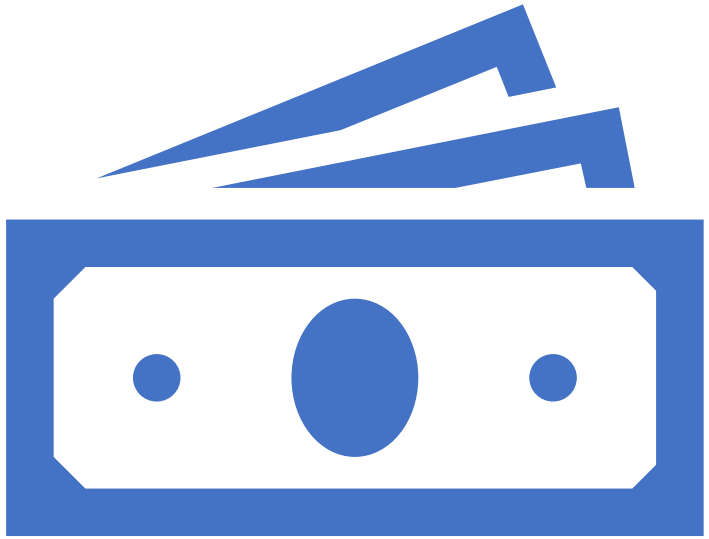


“Federally supported”

The research is supported by federal funding or other type of federal involvement

- STUDY APPLICATION – *“IDENTIFY HOW THE STUDY IS FUNDED”*
  - GIRB relies upon the information provided by the researcher, except when the provided information is inconsistent or ambiguous about federal support.

- PI responsibility to inform IRB ASAP via Amendment/Modification Form if funding changes after IRB approval



“Federally supported”

- Funding from any federal agency
  - Awards made to directly support the research;
  - No-cost extensions of awards made to support the research;
  - “Flow through” federal funds that are awarded to a non-Geisinger affiliated institution and then awarded to Geisinger or affiliate through a subcontract.
  - Federal funds that may be indirectly supporting the research such as:
    - Federally-funded training grants;
    - Federal scholarships, fellowships, or other training awards such as “K” grants;
    - Federally-funded program project grants.
- Involvement of federal personnel;
- Use of federal equipment or materials;
- Use of federal facilities;
- Any research team member (including students) whose time on the research is paid or supported (whether directly or indirectly) by any federal award.

Definitions & Terms

New, Revised, or Inferred in Regulations or Preamble

Clinical Trial (new)

*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 those interventions on health-related biomedical **or behavioral** outcomes.*

- NIH Definition of a Clinical Trial
- **Determines requirement for registering study on clinicaltrials.gov**

https://grants.nih.gov/policy/clinical-trials/definition.htm

Written or *In Writing* (new)

*Writing on a tangible medium (e.g., paper) or in an **electronic** format*

- Clarifies that it includes electronic format
- Aligns with FDA and ICH initiatives to promote electronic consent

Research (revised)

- *Lists activities specifically deemed **NOT** to be research:*
  - *Scholarly and journalistic activities*
  - *Public health surveillance activities*
  - *Collection & analysis for criminal justice purposes*
  - *Authorized activities in support of intelligence, homeland security, defense*

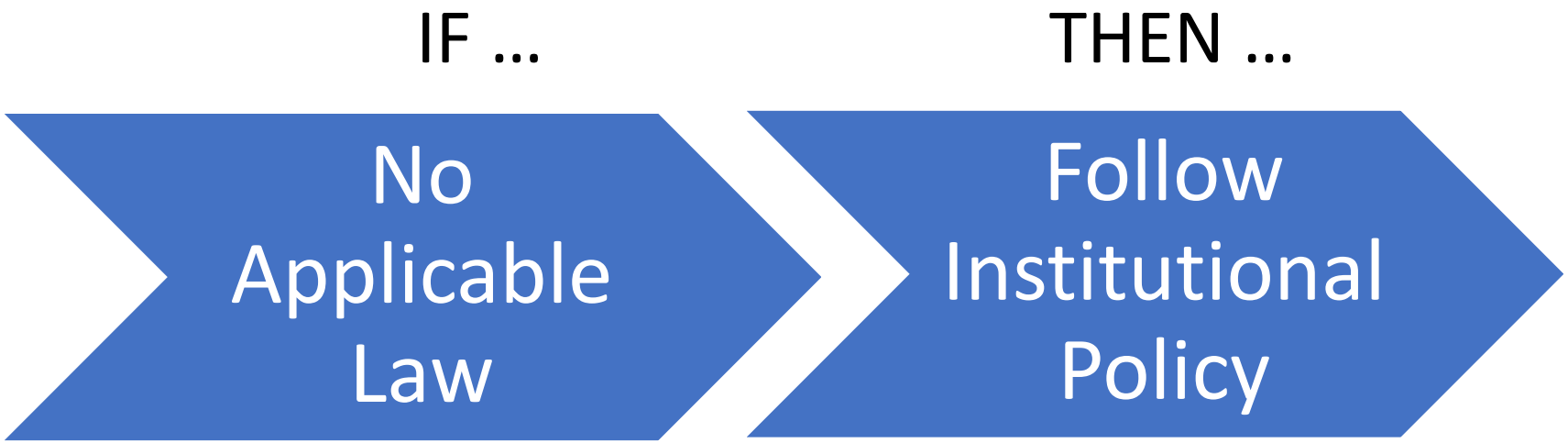
Human Subject (revised)

Living individual about whom an investigator conducting research:

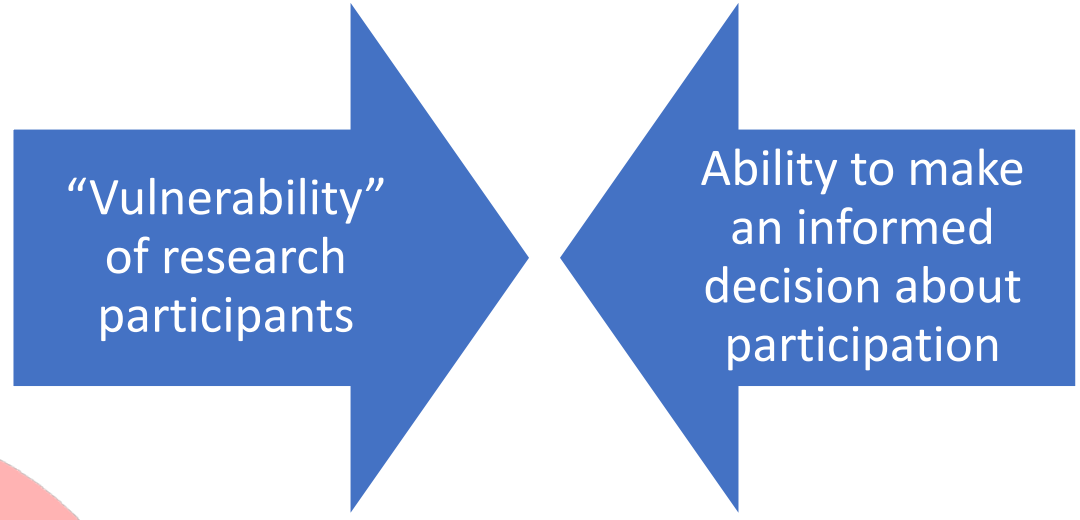
1) *Obtains "information or biospecimens" through intervention or interaction with the individual, and **uses, studies or analyzes** the information or biospecimens; OR*
2) *Obtains, **uses, studies, analyzes or generates** identifiable private information or identifiable biospecimens*

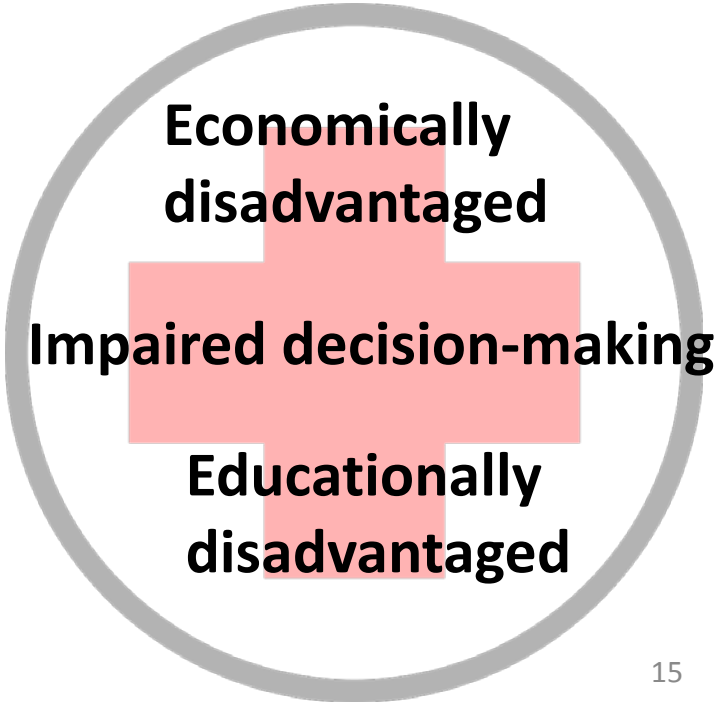
Legally Authorized Representative (LAR) (revised)

An individual or judicial or other body authorized **under applicable law** to consent on behalf of a prospective subject for participation in procedure(s) involved in the research. However …



Vulnerable (to coercion or influence)





Deception (in Final Rule Preamble)

Authorized deception

- Participant is told that s/he will be unaware or misled regarding the nature or purposes of the research before the participant agrees to participate in the research

- Allowed in new Exempt category – “Benign Behavioral Interventions”

Cooperative Research

Research involving more that one institution

- Most federal multi-site research
- Requires oversight of non-exempt human subjects research by a single IRB (commercial, academic or hospital-based)
    - NIH studies – NIH agrees which IRB will serve as single IRB in award

Key Information (new)

Informed consent must begin with:

- **Key information** that is most likely to assist a prospective subject or legally authorized representative (LAR) in understanding the reasons why one might or might not want to participate in the research.
- Concise and focused presentation
- Undefined, but important
- Order ICF section so Key Information is FIRST

Limited IRB Review

(in Final Rule Preamble)

IRB Review required in several exemption categories to ensure:

- ✓ ***There are adequate privacy & confidentiality safeguards for participants, identifiable private information and identifiable biospecimens in the proposed research*** *(Exemption Categories 2, 3)*

IRB Member expedite-like review

Documentation of IRB determination

Exemption Categories

IMPORTANT: Does not apply to FDA-regulated research!

What is “exempt” human subjects research?

Sub-set of research involving human subjects that *does not require* comprehensive IRB review and approval because the **only** research activity involving the human subjects falls into one or more specific exemption categories as defined by the Common Rule

- Exempt from HHS Common Rule requirements
- Do not have to meet criteria for IRB approval
- No continuing review requirement
- Amendments only required if:
  - Proposed changes could alter the exempt determination
  - Adding Key Study Personnel
  - PI change
  - Funding source (sponsor) change
- Exempt determination does not lessen the investigator's ethical obligations

Exempt Research & Subparts

- **Subpart B (Pregnant woman, human fetuses and neonates):** all exemptions apply
- **Subpart C (Prisoners):** exemptions do NOT apply “except for research aimed at involving a broader subject population that only incidentally includes prisoners.”
- **Subpart D (Children):** most exemptions apply with some exceptions

Exemption Category & Topic		Revised Common Rule
1	**Educational Research**	Restrictions added
2	**Interactions: surveys, interviews,**	Expanded scope **Limited IRB review** for some research in this category
3	Cat. 2 (public officials)	**Deleted** – content added to 4 and "deemed not to be research"
3 (New)	**Benign Behavioral Interventions**	New category **Limited IRB review** for some research in this category
4	**Secondary use of identifiable information or biospecimens**	Expanded by replacing "existing" with "secondary" Data not recorded with identifiers or PHI regulated under HIPAA
5	Demonstration Project	Expanded to include contractors and grantees
6	**Taste & Food Quality**	No change
7 (New)	Storage or Maintenance	New category for research data or biospecimen repository. **Requires broad consent**. **Limited IRB review** of the broad consent form and process
8 (New)	Secondary Use of Category 7 data	New category for use of identifiable data or biospecimens obtained using **broad consent; Limited IRB review** of privacy and confidentiality

Exemption Category 1 - Educational Research

Research conducted in educational settings that involves normal educational practices so long as the research is **not likely to adversely affect …**

- Students' opportunity to learn required content, OR
- Assessment of educators providing instruction

Examples - Exemption Category 1 - Educational Research

- Assessment of attitudes about learning
- Evaluation of classroom or school activities
- Innovative instructional methods – podcast v. in-person lecture
- Assess effectiveness of educational tools, such as online courses, computer software, smart phones used by GSCOM medical students

Exemption Category 2 – Tests, Surveys, Interviews or Observations

What remains the same?

ONLY includes the following **interaction(s)**:

- Surveys
- Interviews (including cognitive interviews)
- Focus groups
- Educational tests
- Observation of public behavior

CANNOT include intervention(s)

Exemption Category 2 – Tests, Surveys, Interviews or Observations

What's new?

1) Recorded information cannot readily identify the participant (directly or indirectly/linked),

2) Disclosure of responses outside of the research would not reasonably place the participant at risk (criminal or civil liability, financial, employability, educational advancement or reputation), OR

3) Recorded information is sensitive & identifiable (directly or via link) AND IRB conducts a "limited review"

Review to ensure adequate privacy and confidentiality protections in the study

Exemption Category 2 – Tests, Surveys, Interviews or Observations

What's not allowed?

- Interventions
- The collection of biospecimens
- Research with children (*except* for educational tests or some public observation)

Examples - Exemption Category 2 – Tests, Surveys, Interviews or Observations

- Online survey about internal medicine prescribing practices for RA, whether or not you collect email or IP address or any other identifying information

- Focus group discussion that is audio or video recorded with names in transcripts, and a breach of confidentiality imposes no risk, OR if poses risk – IRB Limited Review required

- Observation of behavior in a public park or on the street

Exemption Category 3 – Benign Behavioral Intervention

What's new?

New Exemption Category

Permits benign behavioral intervention with **adults** who **prospectively agree** to the research, when information collected is limited to verbal or written responses (including data entry or audiovisual recording)

Exemption Category 3 – Benign Behavioral Intervention

“Behavioral Intervention”

- Performance of a cognitive, intellectual, educational, or behavioral task, or
- Manipulation of the participant’s physical, sensory, social or emotional environment

“Benign Behavioral Intervention”

- Brief in duration,
- Harmless, painless,
- Not physically invasive,
- Not embarrassing or offensive, and
- Not likely to have a significant lasting adverse impact

Exemption Category 3 – Benign Behavioral Intervention

1) Recorded information cannot readily identify the participant (directly or indirectly/linked),

2) Any disclosure of responses outside of the research would not reasonably place the participant at risk (criminal or civil liability, financial, employability, educational advancement or reputation), OR

3) Recorded information is identifiable (directly or via link) AND IRB conducts a “limited review”

Review to ensure adequate privacy and confidentiality protections in the study

Exemption Category 3 – Benign Behavioral Intervention

What's not allowed?

- Research with children
- Deception, unless prior agreement obtained
- Physiological data collection methods (e.g., EEG; wearable devices, such as FitBit™; blood pressure monitors; eye tracking)

Examples – Category 3 - Benign Behavioral Intervention

- Play online game
- Solve puzzle under various noise conditions

Exemption Category 4 – Secondary Research of Identifiable Private Information or Identifiable Biospecimens w/o Consent

i. Publicly available,

ii. Information (including information about biospecimens) recorded without identifiers; investigator does not contact participants, AND investigator will not re-identify participants,

iii. Identifiable health information collected and analyzed is regulated by HIPAA, OR

iv. Research is conducted by, or on behalf of, a Federal department/agency or using government-generated or government-collected information obtained for non-research activities

Revised Exemption Category 4

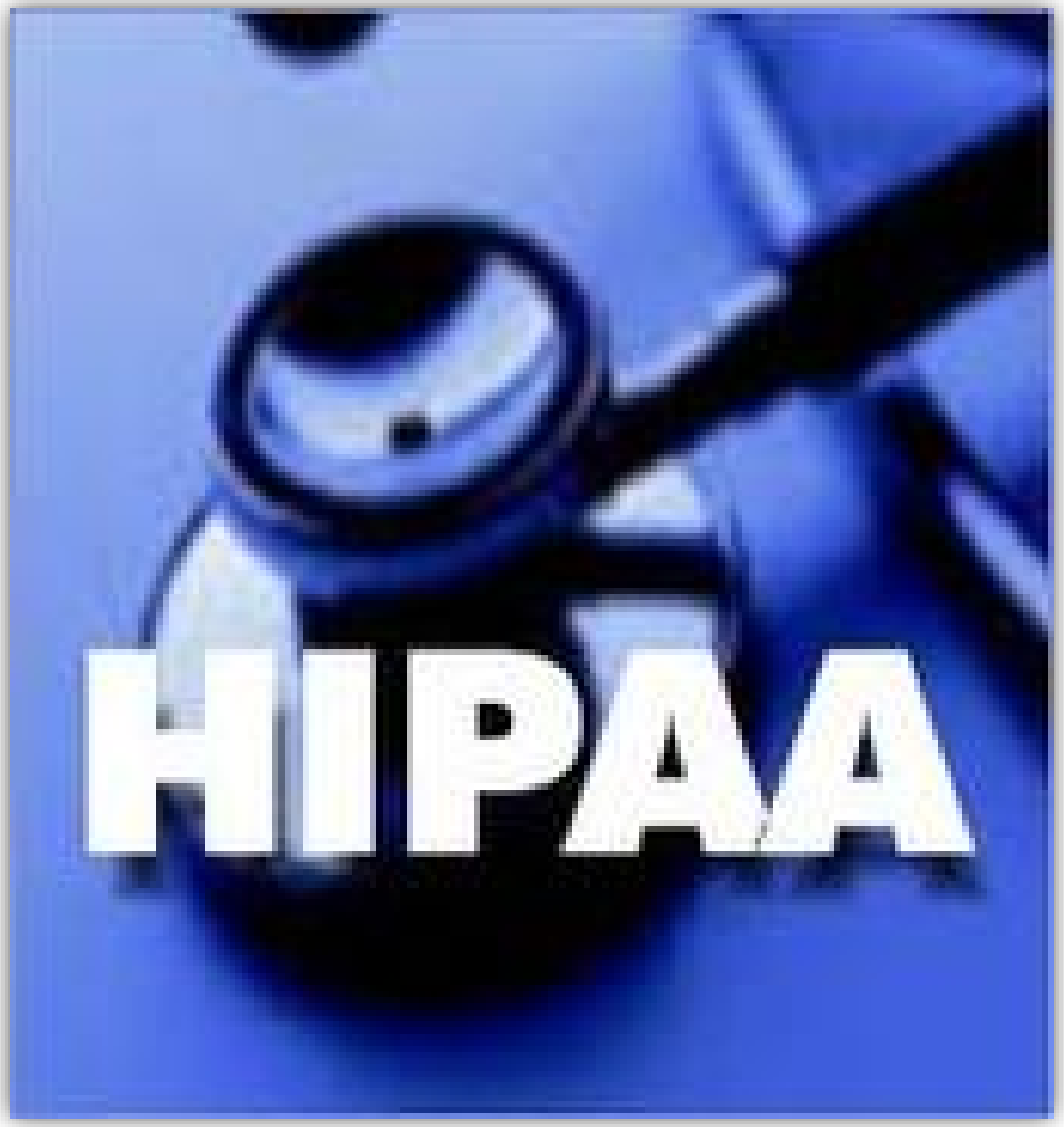
What's new?

Scope of this exemption [4(iii)] is expanded:

- Private information & biospecimens no longer have to be in existence prior to the start of the research

- **Record & maintain identifiers**, if **all** study data is protected health information (PHI) … **covered by HIPAA Privacy Rule**

- **Requires HIPAA Authorization or WAIVER of HIPAA Authorization**

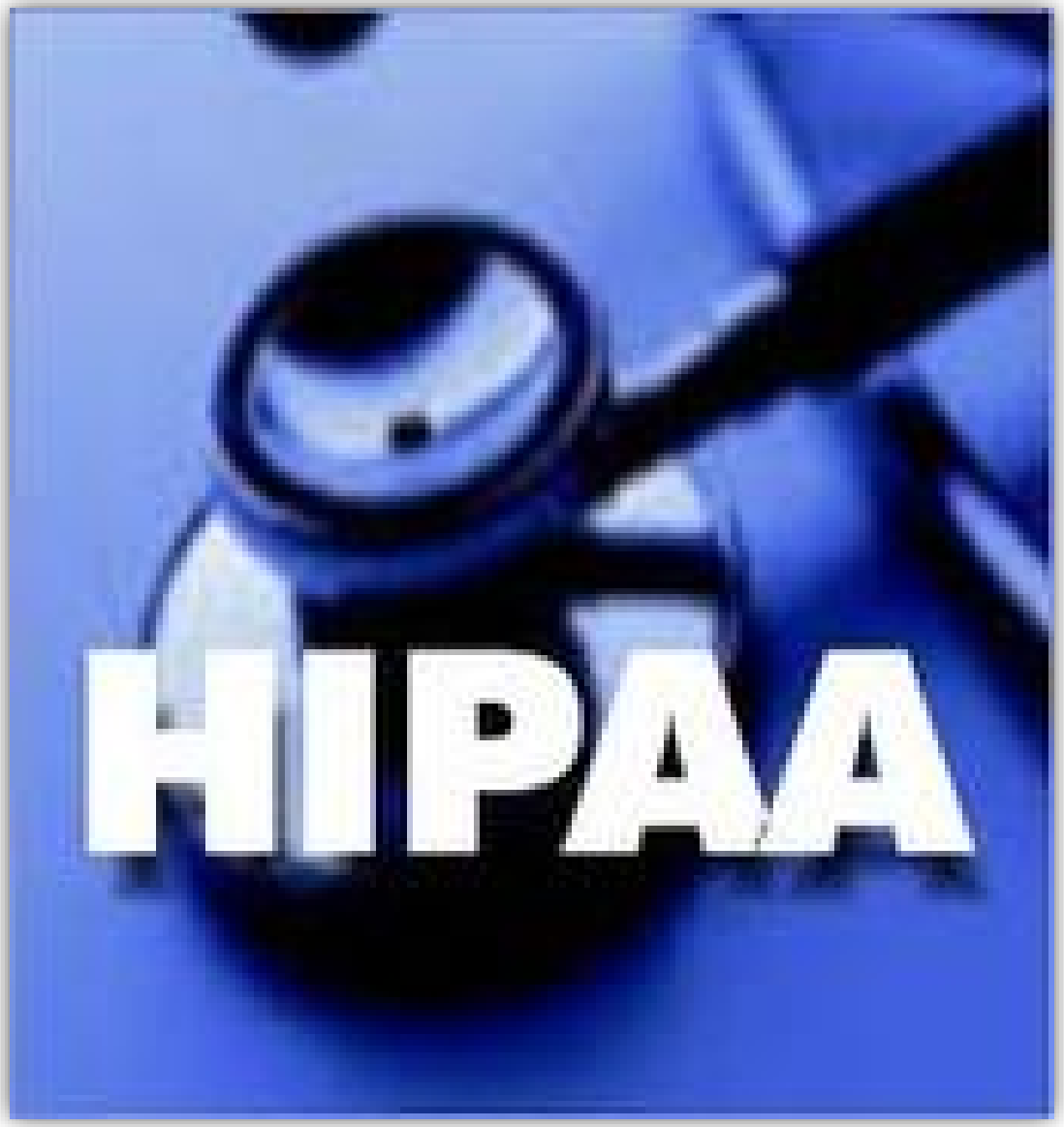


Exemption Category 4(iii) – HIPAA Exemption

Secondary use of PHI by a covered entity regulated under **HIPAA Privacy Rule***

- Treatment, payment & healthcare operations (TPO)
- Research database
- Public health purposes

*45 CFR 164.501, 512(b)



Exemption Category 4(iii) – HIPAA Exemption

- Applies to researchers working in **covered entities***
- Applies to PHI, not biospecimens
- Can only share PHI with other institutions that are **covered entities** or institutions with whom we have a **business associate agreement (BAA) for research purposes***

***NOTE: Many external sponsors & universities are not covered entities. If unsure, contact IRB to discuss.**

Examples – Category 4

- **Re-use** identifiable information or biospecimens originally collected for some other research or health care activity
  - EHR (e.g., Epic, other clinical databases)
  - GHP claims data
  - Geisinger billing data
  - Research study database
  - Clinical biospecimens

EXAMPLE: EHR review to assess relationship between oral hypoglycemic medication adherence (prescription re-fills from GHP claims data) and HgbA1C levels

Exemption Determination

Submit **Exempt Study Application**

- Investigator selects the category or categories the study fits in
- IRB member reviews submission
- Determine if research fits into one or more exemption categories
  - Example: study that includes patient surveys (Category 2) and analysis of clinical information from electronic health record (Category 4)
- Research is not “approved”; it is determined to be “exempt” from following Common Rule regulations
- Exemption Determination letter

Expedite Review

IMPORTANT: Does not apply to FDA-regulated research!

Expedite Review

- No new categories
- Research that fits into one of the Expedite categories is **minimal risk, unless IRB determines differently and documents rationale**
- Does not require convened review
- Review by 1 or 2 IRB members

Continuing Review

IMPORTANT: Does not apply to FDA-regulated research!

Continuing Review

No longer required for **most** minimal risk research:

- Exempt research, including “limited review”
- Research approved by expedited review
- Studies where the only remaining activity is:
  - Analysis of identifiable data/biospecimens or
  - Accessing follow-up clinical data from clinical care procedures

Submit Final Report when study is completed!

The IRB can override this default and require continuing review, but **rationale must be documented**.

Informed Consent

IMPORTANT:
Applies to all research!

Informed Consent

- Concise and focused presentation of key information FIRST!
- Organized and presented in a way that facilitates comprehension
- Geisinger readability standards to improve accessibility
  - Flesch-Kincaid Grade Level = 6-8
  - Flesch Reading Ease > 60
  - Font = Arial 14
  - Spacing = multiple @ 1.15

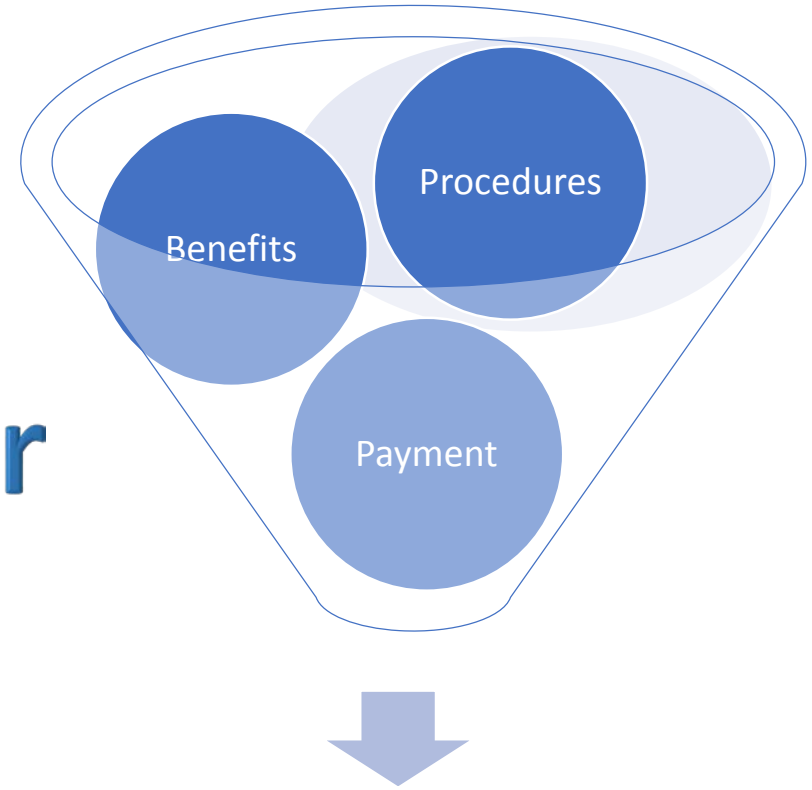
Suggested

Modified from www.citiprogram.com

Present "Key Information" First

"…most likely to assist a prospective subject or legally authorized representative (LAR) in <u>understanding</u> the reasons why one might or might not want to participate in the research"

Geisinger



Present "Key Information" First

"…most likely to assist a prospective subject or legally authorized representative (LAR) in <u>understanding</u> the reasons why one might or might not want to participate in the research"

IT DEPENDS … key information in initial summary "before the ICF" or order the ICF so Key Information FOR THE PARTICULAR STUDY is first.

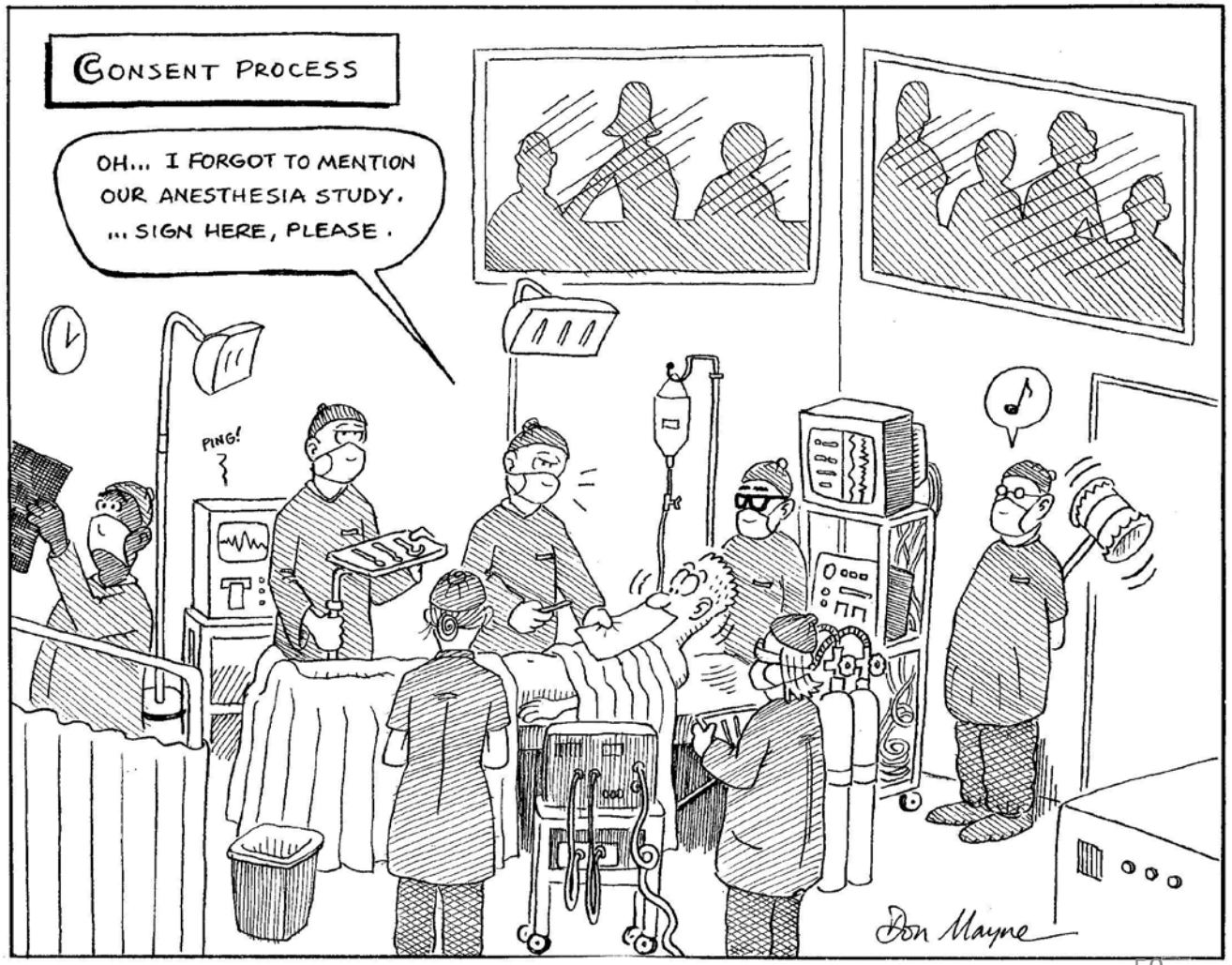
Informed Consent

New Additional Consent Elements

When your project will involve...	Include a statement indicating whether...
Collection of identifiable private information or identifiable biospecimens	• identifiers may be removed, and • **de-identified** information or biospecimens **may or may not be** used or shared for future research
Use of biospecimens	• biospecimens may be used for commercial profit, and • whether the participant will share in that profit
Clinically relevant results	• clinical results, including individual research results, will be returned to the participant, and if so, under what conditions
Whole genome sequencing	• the research will or might include whole genome sequencing

Consent Process Changes / Clarifications

- Consent form can be read to participant
- Copy of consent must be provided
- Electronic consent is OK



Consent Process Changes / Clarifications

- Waiver of informed consent for the secondary use of identifiable private information/biospecimens
  - **Additional waiver criteria:** Researcher must justify why the use of identifiers is necessary to carry out the research
  - HIPAA requirements still apply - request HIPAA waiver

Consent Process Changes / Clarifications

For federally-sponsored clinical trials, a copy of the consent form must be posted to a "publicly available, federal website"

- Clinicaltrials.gov?
- Post-recruitment
- No later than 60 days after the last study visit by any subject
- Awardee institution responsibility

Transition of Studies to Final Rule

January 21, 2019

Studies that are NOT FDA-regulated

- New studies at approval
- Current studies transition at next continuing review
- Most minimal risk studies
  - No more continuing reviews
  - Annual IRB reminders – PI requirements / Final Report if closed
- Some minimal risk studies
  - Transition to Exempt (e.g., chart review, data only)

iRIS Study Application Revisions

- IRB no longer needs to review Federal Grants
- NEW – **Is your research a "clinical trial"?**
  - Clinicaltrial.gov registration must be complete to receive IRB approval
- NEW – EUGDPR – European Union Data Protection Regulations
  - Enrollment of European Union residents requires approvals from Chief Scientific Officer (David Ledbetter, PhD) and Privacy Office

Resources

- CITI Program Final Rule Resources
- OHRP Common Rule Revisions
- OHRP Revised Common Rule Questions & Answers
- PRIM&R Focus on the Revised Common Rule

Contact

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http://infoweb.geisinger.edu/se_research/hrpp/irb/index.html