Emergency Use of Investigational Devices / Drugs

IRB Training

October 22, 2015

Emergency Use

- Emergency use of an investigational article is NOT research
- Use of a test article in a human in a *life-threatening** situation
- No standard acceptable treatment is available
- Not sufficient time to obtain IRB approval

[21 CFR 56.102(d)]

Life-threatening
includes both life-threatening and severely debilitating

- ***Life-threatening:***
  - Diseases or conditions where likelihood of death is high unless the course of the disease is interrupted
  - Diseases or conditions with potentially fatal outcomes, where the end point of clinical trial analysis is survival.
  - Criteria for life-threatening do not require the condition to be immediately life-threatening or to immediately result in death.
  - Patient must be in a life-threatening situation requiring intervention before review at a convened IRB meeting is feasible.
- ***Severely debilitating:***
  - Diseases or conditions that cause major irreversible morbidity e.g., blindness, loss of arm, leg, hand or foot, loss of hearing, paralysis or stroke.

Criteria for Emergency Use - Drugs

- Emergency use must meet the definition above and FDA must determine:
  - Serious or immediately life-threatening disease or condition, and there is no comparable or satisfactory alternative therapy to diagnose, monitor, or treat the disease or condition
  - Potential patient benefit justifies the potential risks of the treatment use and those potential risks are not unreasonable in the context of the disease or condition to be treated
  - Providing the investigational drug for the requested use will not interfere with the initiation, conduct, or completion of clinical investigations that could support marketing approval of the expanded access use or otherwise compromise the potential development of the expanded access use

[21 CFR 312.305(a)]

Criteria for Emergency Use - Drugs

- Also, the following must be determined:
  - The physician must determine that the probable risk to the person from the investigational drug is not greater than the probable risk from the disease or condition
  - FDA must determine that the patient cannot obtain the drug under another IND or protocol

[21 CFR 312.310(a)]

Criteria for Emergency Use - Devices

All of the following must be true:

- Life-threatening disease or serious condition requiring immediate use
- No generally accepted alternative for treating the condition is available
- No time to use existing procedures to obtain FDA approval of an IDE

When Can Device be used in an Emergency Situation?

- There is no Investigational Device Exemption (IDE)
- Physician wants to use the device in a way not approved under an existing HDE or IDE
- A physician is not part of the HDE or IDE study

IRB Approval – Emergency Use

- Emergency Use of a test article is exempt from prior IRB review and approval
- Emergency use must be reported to the IRB within 5 working days *after the use*
- Expedited IRB approval is not permitted in emergency use
- Subsequent use requires prior IRB approval

Informed Consent – Emergency Use

- Informed consent must be obtained from the subject (or LAR), unless the requirements of an exception from the informed consent requirement are satisfied

[21 CFR 50.23(a)]

Exception from Informed Consent Requirement

Allowed when an independent physician, who is not otherwise participating in the clinical investigation, certify in writing:

- Life-threatening or severely debilitating situation, necessitating the use of the test article
- Informed consent cannot be obtained from the patient (because the patient cannot communicate or is incompetent to give consent)
- No time to obtain consent from the patient's LAR
- No alternative available provides an equal or greater likelihood of saving the patient's life

If, in the investigator's opinion, immediate use of the test article is required and if time is not sufficient to obtain the independent physician determination, the investigator should make the determination and, within 5 working days after the use of the article, have the determination reviewed and evaluated in writing by an independent physician.

[21 CFR 50.23]

What is Physician's Role?

Determine whether the following conditions are met:

- Patient is in a life-threatening situation
- Immediate use of the device is needed
- No alternative
- No time for FDA approval of an IDE
- Assess the potential for benefits from the unapproved use
- Have substantial reason to believe that benefits will exist

Physician Responsibilities

- Physician should follow patient protection measures
- Institutional clearance per institution policy
- IRB chairperson concurrence
- Authorization from the sponsor - if an IDE exists

Key Points

- Physicians can use unapproved drugs/devices in emergency situations
- Physicians must follow FDA-required process
- IRBs must receive reports within five working days
- IRB Chair reviews and concurs, or not
- Subsequent emergency use - needs IRB approval first