Harvard Pilgrim Health Care, Inc.
Harvard Pilgrim Health Care Institute, LLC
Office of Sponsored Programs

Policy and Procedure

TITLE: Additional Protections for Vulnerable Subjects

PURPOSE:

To describe the policy and procedure for determining the risks to prospective subjects who may be vulnerable to coercion or undue influence and for ensuring that additional protections and safeguards for minimizing these risks are in place.

PERSONS AFFECTED:

This policy & procedure (P/P) applies to all Harvard Pilgrim Health Care, Inc. (HPHC) and Harvard Pilgrim Health Care Institute, LLC (HPHCI) (collectively, HPHC/I) personnel engaged in research, teaching or research administration activities in support of the charitable and educational mission of HPHC.

POLICY:

Prior to approving research, the Institutional Review Board (IRB) shall evaluate the research to judge whether the research involves prospective subjects who may be vulnerable to coercion or undue influence. When any of the subjects include children, pregnant persons, neonates, fetuses, prisoners, and adults who lack the ability to consent, as well as other vulnerable groups not otherwise protected by specific laws, the IRB shall ensure that investigators have put in place additional safeguards that minimize the possibility of coercion and undue influence.

The IRB must consider that other groups such as disabled persons, employees, students, terminally ill patients, the elderly, the homeless and others may also be vulnerable to coercion and undue influence. In addition, conducting research at institutions that provide services to subjects may be perceived as implying that continued service is dependent upon participation in the research. For example, students in the educational setting may be concerned that refusal to participate will affect their grades. Prisoners may anticipate that participation will impact parole considerations. These institutional pressures should be addressed in the research design. The protocol must adequately preserve the right to refuse participation.

There are many other examples of possible sources of undue influence on subjects. It may not be possible to remove all sources of undue influence; however, through thorough review of the protocol and other submitted materials, the IRB shall determine that the investigator has made every effort to minimize these potential risks to vulnerable subjects.

DEFINITIONS:

Assent
A positive indication of willingness to participate in a study.

Capacity to Consent
The ability to provide legally effective consent to enroll in a research study.

Fetus
The product of conception from implantation until delivery.

Minimal Risk for prisoners
The probability and magnitude of physical or psychological harm that is normally encountered in the daily lives, or in the routine medical, dental, or psychological examination of healthy persons. The IRB must find that the risks involved in the research are commensurate with risks that would be accepted by non-prisoner subjects.

Neonate
Newborn.

Pregnancy
The period of time from implantation until delivery. A person shall be assumed to be pregnant if they exhibit any of the pertinent presumptive signs of pregnancy, such as a missed menses, until the results of a pregnancy test are negative or until delivery.

Prisoner
Any individual involuntarily confined or detained in a penal institution. The term is intended to encompass individuals sentenced to such an institution under a criminal or civil statute, individuals detained in other facilities by virtue of statutes or commitment procedures which provide alternatives to criminal prosecution or incarceration in a penal institution, and individuals detained pending arraignment, trial, or sentencing.

PROCEDURE:

1. <u>Identification of vulnerable populations and safeguards in the protocol, application, and supplements.</u>
The investigator must identify vulnerable subject populations as well as a description of additional safeguards to protect the rights and welfare of those vulnerable populations in the protocol and the application form, and when applicable in the application *Supplement A: Children, and Supplement B: Pregnant Women and Fetuses.*

Prior to submission, the IRB staff shall confirm the existence of this information. During review, the IRB shall determine whether the appropriate safeguards are included in the protocol to protect the subjects' rights and welfare. The IRB will summarize their findings in the *Reviewer Sheet – Initial Review*.

2. Requirements for consent/assent of adults who have diminished decision-making capacity.
   a. The IRB shall determine whether the research involves subjects with diminished functional abilities and review whether the risks to these subjects are reasonable in relation to the importance of the knowledge that may reasonably be expected to result. Impaired capacity is not limited to individuals with neurological, psychiatric, or substance abuse problems. Conversely, individuals with these problems should not be presumed to be cognitively impaired.
   b. The IRB shall determine whether the research involves individuals who have diminished decision-making capacity and if so, it shall provide additional safeguards to ensure an appropriate consent process, an understanding of the difference between research and treatment or the dual role of the investigator, when appropriate, and assurance that the consent process clearly indicates the differences between individualized treatment (e.g., special education in classroom settings) and research.
   c. Investigators and/or the IRB may consider using an independent expert to assess the subject's capacity to consent or assent. Consent from a Legally Authorized Representative (LAR) must be obtained if subjects are not capable to consent.
   d. The Principal Investigator (PI) must evaluate whether subjects who are not capable to consent should be required to assent to participation. The IRB will only approve research involving adults that cannot consent provided the following criteria are met:
      (1) the research question cannot be answered by using adults able to consent;
      (2) the research is of minimal risk or more than minimal risk with the prospect of a direct benefit to each individual subject;
      (3) the assent of the adult will be a requirement for participation unless the adult is incapable of providing assent;
      (4) when assent is obtained, the PI will document the assent by noting on the consent or assent form that the subject assented to participate in research;
      (5) in the event that a subject unexpectedly experiences a substantial impairment to their functional abilities that is not foreseeably temporary, investigators should notify the IRB. In such cases, the IRB will determine whether it is necessary to re-evaluate the subject's capacity to consent and whether this subject should remain in the study.

3. Requirements for consent of pregnant adults.
   a. The IRB shall follow 45 CFR 46 Subpart B of the U.S. Department of Health & Human Services (DHHS) regulations regardless of funding source and will confirm that the pregnant adult's consent is obtained when the research holds out:
      (1) the prospect of direct benefit to the pregnant adult; or
      (2) the prospect of direct benefit both to the pregnant adult and the fetus; or
      (3) no prospect of benefit for the pregnant adult or the fetus when risk to the fetus is not greater than minimal and the purpose of the research is the development of important biomedical knowledge that cannot be obtained by any other means.

b. If the research holds out the prospect of direct benefit solely to the fetus, then the consent of the pregnant adult and the other parent must be obtained, except that the other parent's consent need not be obtained if he/she is unable to consent because of unavailability, incompetence, or temporary incapacity or the pregnancy resulted from rape or incest.
c. Each individual providing consent above must be fully informed regarding the reasonably foreseeable impact of the research on the fetus or neonate.

4. Pregnant minors.

For minors who are pregnant, assent and permission must be obtained in accord with 45 CFR 46 Subpart D and applicable state law for studies involving children as described in the *Policy and Procedure on Informed Consent* unless informed consent is waived by the IRB.

5. Requirements for review when prisoners are identified as subjects in a study.

When prisoners are identified as subjects in a biomedical research or behavioral research study, refer to the *Policy and Procedure on IRB Composition and Membership Appointments.*

6. Waiver or alteration of informed consent under the Family Educational Rights and Privacy Act (FERPA).

The IRB shall determine whether the investigator followed the appropriate process when obtaining student records or personal education information from a program principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education. Under FERPA, an educational agency or institution may disclose personally identifiable information from an education record of a student without consent if the disclosure is part of an agreement between organizations or investigators conducting studies for, or on behalf of, educational agencies or institutions to:

a. develop, validate, or administer predictive tests;
b. administer student aid programs; or
c. improve instruction.

A school district or postsecondary institution that uses this exception is required to enter into a written agreement with the organization or investigator conducting the research that specifies:

a. the determination of the exception;
b. the purpose, scope, and duration of the study;
c. the information to be disclosed;
d. that information from education records may only be used to meet the purposes of the study stated in the written agreement and must contain the current requirements in U.S. Department of Education regulations on re-disclosure and destruction of information;
e. that the study will be conducted in a manner that does not permit personal identification of parents and students by anyone other than representatives of the organization with legitimate interests;
f. that the organization is required to destroy or return all personally identifiable information when no longer needed for the purposes of the study; and
g. the time period during which the organization must either destroy or return the information.

Education records may be released without consent under FERPA if all personally identifiable information has been removed including:

a. student's name and other direct personal identifiers, such as the student's social security number or student number;
b. indirect identifiers, such as the name of the student's parent or other family members;
c. the student's or family's address, and personal characteristics or other information that would make the student's identity easily traceable; and date and place of birth and mother's maiden name;
d. biometric records, including one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual, including fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting; and
e. other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

7. The IRB may consider review of studies that involve vulnerable subjects more frequently than once a year based on the nature of the research and the level of risk.

REVISION HISTORY:

Department: OSP - Research Integrity & Compliance	**Title**: Additional Protections for Vulnerable Subjects
Effective Date: 01/21/19	**Owner:** Senior Compliance Manager, IRB
Replaces P/P Dated: IRB SOP (02/17)	
Related Documents: Policy and Procedure: *IRB Composition and Membership Appointments*; Initial Application; Initial Application Data Health Information Only Studies; Reviewer Sheet - Initial Review; Supplement A: Children; Supplement B: Pregnant Women and Fetuses; IRB Minutes Template	
References: 45 CFR 46.111(b); 45 CFR 46 Subpart B; 45 CFR 46 Subpart C; 45 CFR 46 Subpart D; 45 CFR 46.205; Federal Register, Vol. 68, No. 119, pp. 36929-36931, (Friday, June 20, 2003); 21 CFR 50.3, 21 CFR 50 Subpart D; 21 CFR 56.111(b); 21 CFR 56.111(c); ICH-GCP: 4.8.13, 4.8.14; AAHRPP Elements: II.4.A, I.4.A, III.1.C, and III.1.F; AAHRPP Tip Sheets: 1, 11, 18, 20, 26	