Does the NPRM Coopt All Flexibilities?

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No
Methods: I rewrote my written procedures

- 97 documents (policies, SOPs, checklist, worksheets, forms)
- 25 had to be changed
- 6 with major changes:
  - HRP-300 CHECKLIST: Waiver of Consent HHS
  - HRP-303 CHECKLIST: Waiver of Documentation of Consent
  - HRP-421 WORKSHEET: Human Research
  - HRP-423 WORKSHEET: Exclusion and Exemption
  - HRP-400 WORKSHEET: Criteria for Approval
  - HRP-415 WORKSHEET: Waiver of Consent Recruitment

ANPRM was in part because IRBs set unneeded hurdles for minimal risk research

- Over interpretation of “research”
- Over interpretation of “human subject”
- Lack of use of exemptions
- Lack of use of expedited procedure
- Over interpretation of “minimal risk”
Do I have a bright idea?

- Let’s make the regulations more complex!

How do flexible IRBs feel?
Exclusions deemed not to be research

(1) The following activities are excluded because they are deemed not to be research:
- Oral history, journalism, biography, and history
- Program monitoring
- Quality improvement
- Public health
- Criminal justice
- Surveillance for national security

Exclusions deemed low risk research

The following activities are excluded because they are considered to be low-risk human subjects research:
- Current exempt #2 (+ Subpart D restriction)
- Current exempt #4 not involving biospecimens
Clarifications on low risk exclusions

- Research that falls into current exempt #2 or #4 is low risk
- Exempt #2 cannot include interventions
- Exempt #2 involves no influence by investigators

Problems with low risk exclusions

- Current exempt #2
  - Understanding of the term intervention:
    - “Physical procedures by which data are gathered and manipulations of the subject or the subject’s environment”
    - “Uninfluenced by the investigators”:
      - All surveys influence
      - Acceptable influence is limited to communication
New exclusion for testing biospecimens

- The following activities are excluded because they are considered to be low-risk human subjects research activities that do not meaningfully diminish subject autonomy:
  - Research use of a non-identified biospecimen designed only to generate information about an individual that already is known

Concordance of guidance is a win for flex

- Federal guidance on the requirements of this policy shall be issued only after consultation, for the purpose of harmonization (to the extent appropriate), with other Federal departments and agencies that have adopted this policy, unless such consultation is not feasible.
Large category of research removed from flex

- All clinical trials not subject to FDA are subject to OHRP, regardless of support
- Clinical trial means 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 the interventions on biomedical or behavioral health-related outcomes.

Exemptions/exclusions have expanded 3x
Flex advantage: More research not subject to core regulations

Some exemptions reflect flex

- Old exempt #4 applied to prospective record review
- Review of records protected by HIPAA
- Benign interventions
Authoritative Web site for exemptions could greatly reduce workload

- Will OHRP take responsibility?
- Will OHRP overly defer to institution?
- Remember [healthcare.gov](http://healthcare.gov)?
- Wouldn’t it be nice for OHRP to have first hand experience in granting exemption determinations?
- Why not exclusions?
- Will it detect FDA research?

New concept for flex

- For excluded and exempt research, investigators are responsible for acting ethically without having to require IRB oversight.
- Will AAHRP buy in?
Expanded definition of human subject

- Biospecimens
  - Obtaining
  - Using
  - Studying
  - Analyzing
- Consent with written documentation is required
- Required by federal law
- OHRP has no choice

How about this agreement?

- You are free to not allow scientists to do research on your tissues.
- In exchange, you may not use any advancements in health care discovered from this day forward.
The NPRM makes lemonade out of lemons – Good for flex

- Exemption categories
  - Secondary use
  - Biobank creation
  - Biobank use
- OHRP sanctioned standard consent

More burden for institutions when dealing with biospecimens

- Collecting broad consent on everyone for use of tissues
  - Similar to Notice of Privacy Practices
- Tracking who said no
- Implementation of data security practices
  - Should not be a problem for HIPAA compliant institutions
How can this broad consent be done in a valid way?

- Remember: We do this now all the time without consent.
- Most people see research as good and want to help.
- We are really placating the <1%.
- Don’t sweat this.
- Keep a flexible mind.

No more continuing review for certain research

- Research eligible for expedited review
- Research that has progressed to the point that it involves only data analysis or accessing follow-up clinical data
- Tissue specimen research
... but annual confirmation is still required

- The IRB must receive confirmation on an annual basis that the research is still ongoing and that no changes have been made to the research that would require the IRB to conduct continuing review of the research.

What if the PI does not respond to letters requesting determination?

Psuedo-flex: “Expanded” waiver of consent

- Obtaining identifiable private information without individuals informed consent for the purpose of screening, recruiting, or determining the eligibility of prospective human subjects of research.
- Flex: No documentation required!
Psuedo-flex: “Expanded” waiver of written documentation

- If the subjects are members of a distinct cultural group or community in which signing forms is not the norm, that the research presents no more than minimal risk of harm to subjects and provided there is an appropriate alternative mechanism for documenting that informed consent was obtained.

Data security requirements

- Could simplify review of confidentiality issues
- Could limit IRB variability
- Will it be appropriate for all research?
- Will burden be on the institution or the IRB?
After meeting with a few of the subjects, the IRB actually recommended that you stop stressing out so much about safety guidelines.
Q&A