RESEARCH INVOLVING PREGNANT WOMEN, HUMAN FETUSES AND NEONATES INVOLVED IN RESEARCH

4/18/2021

Note: This policy statement does not address the inclusion of pregnant women, human fetuses, and neonates in research determined to be exempt.

Note: Regarding neonates, this guidance is applicable to nonviable neonates or neonates of uncertain viability. For viable neonates, consult the guidances on inclusion of children as a subject population.

I. OVERVIEW

Pregnant women, human fetuses, neonates of uncertain viability, or nonviable neonates require additional protections when they are potential research subjects. These additional regulatory safeguards are codified under 45 CFR 46, Subpart B. These requirements are in addition to all other applicable requirements for review of research involving these subject populations.

II. DEFINITIONS

1. **Dead Fetus -** A fetus that exhibits neither heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles, nor pulsation of the umbilical cord
2. **Deliver -** Complete separation of the fetus from the woman by expulsion or extraction or any other means
3. **Fetus -** The product of conception from implantation until delivery
4. **Neonate –** A newborn
5. **Nonviable Neonate -** A neonate after delivery that, although living, is not viable
6. **Pregnancy -** The period of time from implantation until delivery. A woman shall be assumed to be pregnant if she exhibits any of the pertinent presumptive signs of pregnancy, such as missed menses, until the results of a pregnancy test are negative or until delivery
7. **Viable -** As it pertains to the neonate, means being able, after delivery, to survive (given the benefit of available medical therapy) to the point of independently maintaining heartbeat and respiration. If a neonate is viable then they may be included in research only to the extent permitted and in accordance with the requirements of applicable subparts of 45 CFR 46 and/or 21 CFR 50 and 56.

III. RESEARCH WITH PREGNANT WOMEN OR FETUSES

Pregnant women or fetuses may be involved in research at DUHS only if the IRB determines that all of the following ten (10) conditions are met (45 CFR 46.204):

1. Where scientifically appropriate, preclinical studies, including studies on

pregnant animals, and clinical studies, including studies on non-pregnant women, have been conducted and provide data for assessing potential risks to pregnant women and fetuses

2. The risk to the fetus is caused solely by interventions or procedures that hold out the prospect of direct benefit for the woman or the fetus; or, if there is no such prospect of benefit, the risk to the fetus is not greater than minimal and the purpose of the research is the development of important biomedical knowledge which cannot be obtained by any other means
3. Any risk is the least possible for achieving the objectives of the research
4. If the research holds out the prospect of direct benefit to the pregnant woman, the prospect of a direct benefit both to the pregnant woman and the fetus, or no prospect of benefit for the woman nor 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, her consent is obtained in accord with 45 CFR 46.116 and 117
5. If the research holds out the prospect of direct benefit solely to the fetus, then the consent of the pregnant woman and the father is obtained in accord with 45 CFR 46.116 and 117, except that the father's consent need not be obtained if he is unable to consent because of unavailability, incompetence, or temporary incapacity or the pregnancy resulted from rape or incest.
6. Each individual providing consent under Numbers 4 or 5, above, is fully informed regarding the reasonably foreseeable impact of the research on the fetus or neonate
7. For children as defined in 45 CFR 46.402(a) who are pregnant, assent and permission are obtained in accord with the provisions of subpart D of 45 CFR 46
8. No inducements, monetary or otherwise, will be offered to terminate a pregnancy
9. Individuals engaged in the research will have no part in any decisions as to the timing, method, or procedures used to terminate a pregnancy, and
10. Individuals engaged in the research will have no part in determining the viability of a neonate.

IV. RESEARCH INVOLVING NEONATES

Neonates of uncertain viability or nonviable neonates may be involved in research at DUHS only if the IRB determines that all of the following four (4) of the following conditions are met (45 CFR 46.205):

1. Where scientifically appropriate, preclinical and clinical studies have been conducted and provide data for assessing potential risks to neonates
2. Each individual providing consent under A.2 or B.5 of this section (see below) is fully informed regarding the reasonably foreseeable impact of the research on the neonate
3. Individuals engaged in the research will have no part in determining the viability of a neonate
4. The requirements of parts A or B (see below) of this section have been

met as applicable

A. Neonates of Uncertain Viability

Until it has been ascertained whether or not a neonate is viable, a neonate may not be involved in research at DUHS unless the IRB determines that the following two (2) additional conditions are met:

1. The IRB determines that:
   a. The research holds out the prospect of enhancing the probability of survival of the neonate to the point of viability, and any risk is the least possible for achieving that objective, OR
   b. The purpose of the research is the development of important biomedical knowledge which cannot be obtained by other means and there will be no added risk to the neonate resulting from the research
2. The legally effective informed consent of either parent of the neonate or, if neither parent is able to consent because of unavailability, incompetence, or temporary incapacity, the legally effective informed consent of either parent's legally authorized representative is obtained in accord with 45 CFR 46.116 and 117, except that the consent of the father or his legally authorized representative need not be obtained if the pregnancy resulted from rape or incest.

B. Nonviable Neonates

After delivery, nonviable neonates may not be involved in research at DUHS unless the IRB determines that the following five (5) additional conditions are met:

1. Vital function of the neonate will not be artificially maintained
2. The research will not terminate the heartbeat or respiration of the neonate
3. There will be no added risk to the neonate resulting from the research
4. The purpose of the research is the development of important biomedical knowledge that cannon be obtained by other means
5. The legally effective informed consent of both parents of the neonate is obtained in accord with 45 CFR 46.116 and 117, except that the waiver and alteration provisions of 45 CFR 46.116(c) and (d) do not apply. However, if either parent is unable to consent because of unavailability, incompetence, or temporary incapacity, the informed consent of one parent of a nonviable neonate will suffice to meet the requirements of this paragraph, except that the consent of the father need not be obtained if the pregnancy resulted from rape or incest. The consent of a legally authorized representative of either or both of the parents of a nonviable neonate will not suffice to meet the requirements of this paragraph.

C. Viable Neonates

A neonate, after delivery, that has been determined to be viable may be included in research only to the extent permitted by and in accord with the requirements of 45 CFR 46, Subparts A and D.

V. Research Involving, After Delivery, the Placenta, the Dead Fetus, or Fetal Material

Research involving, after delivery, the placenta; the dead fetus; macerated fetal material; or cells, tissue, or organs excised from a dead fetus, shall be conducted only in accord with any applicable Federal, State, or local laws and regulations regarding such activities.

If information associated with material described above is recorded for research purposes in a manner that living individuals can be identified, directly or through identifiers linked to those individuals, those individuals are research subjects and all pertinent Subparts of 45 CFR 46 are applicable.

VI. Research Not Otherwise Approvable Which Presents an Opportunity to Understand, Prevent, or Alleviate a Serious Problem Affecting the Health or Welfare of Pregnant Women, Fetuses, or Neonates

If the IRB does not find that the research proposal meets any of the requirements set forth above, it may still approve the application but only if:

1. The IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of pregnant women, fetuses or neonates
2. The IRB refers the research in question to the Secretary of HHS, and
3. The Secretary, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, ethics, law), and following opportunity to public review and comment, including a public meeting announced in the Federal Register, has determined either:
   a. That the research in fact satisfies the conditions of 45 CFR 46.204, OR
   b. The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of pregnant women, fetuses or neonates; the research will be conducted in accord with sound ethical principles; and informed consent will be obtained in accord with the informed consent provisions of 45 CFR 46 Subpart A, and with all other pertinent Subparts.

Previous Version Date(s): 10/4/2007, 3/1/2016