

Part 11 – Laws, Regulations, and Standards

The University of Michigan and its faculty, staff, and trainees are committed to complying with the laws and regulations that govern the conduct of human research and to upholding the highest ethical standards. This section describes selected laws and regulations impacting human research conducted at UM and the University's implementation and educational activities to promote compliance with these regulations.

I. LEGAL AND REGULATORY BODIES

Refer to [HRPP OM Part 11.I](#)

II. LAWS, REGULATIONS, AND STANDARDS COMMONLY APPLICABLE TO RESEARCH

All University faculty, staff, and trainees conducting human research, as well as members and staff of IRBMED and other review units, have access to legal advice concerning application of the laws and regulations that affect human research through the Office of the Vice President and General Counsel, and in particular through Health System attorneys who specialize in human subject research and healthcare law.

Refer to [HRPP OM Part 11.II](#)

A. Informed Consent and Legally Authorized Representatives

1. General Requirements for Informed Consent

Refer to [HRPP OM Part 3.III.C.6](#) for information on the detailed explanation of the elements of informed consent.

Refer to IRBMED Guidance – [Non-English-Speaking Subjects](#)

Refer to IRBMED Guidance – [Informed Consent](#)

Refer to IRBMED [Informed consent templates](#).

2. Who May Give Consent

a) Children as Subjects

For research involving children, the IRBMED will, as it deems necessary, seek the additional expertise of consultants to assist in fully evaluating the research proposal.

In order to approve DHHS-funded research or research involving test articles that involves children as subjects, the IRBMED must apply the regulatory components of 45 CFR 46 Subpart D or 21 CFR 50 Subpart D. For research not funded by DHHS, the IRBMED complies with Subpart D in its deliberations, but may also utilize other comparable ethical guidelines, policies, or procedures.

The IRBMED shall determine whether the Principal Investigator (PI) has outlined adequate provisions for obtaining any necessary assent for the children and permission from parents/guardians according to 45 CFR 46.408 or 21 CFR 50.55. When research is funded by the Department of Education and conducted in public schools, additional regulatory requirements such as the Protection of Pupil Rights Amendment and the Family Educational Rights and Privacy Act may need to be considered.

The IRBMED will assess the PI's recruitment strategies, the environment for assenting, the additional resources to assist in the process (e.g., videos, books, and

pictures), and the age of the subjects in assessing the capacity of the child to understand the nature of the research.

The IRBMED will assess the adequacy of plans to obtain the permission of the parents/guardians according to 45 CFR 46.408(b) and (c) or 21 CFR 50.55 (e), including the instances in which both parents must provide permission and instances in which the requirement to obtain permission should be waived in order to protect the subject.

(1) Evaluation of Assent

Assent is defined in 45 CFR 46.402 (b) as "...a child's affirmative agreement to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent," and in 21 CFR 50.3 (n) as "...a child's affirmative agreement to participate in a clinical investigation. Mere failure to object may not, absent affirmative agreement, be construed as assent."

The IRBMED uses its best judgment, on a study-specific basis, to ensure that the assent is tailored to the level of comprehension of the prospective participants:

- Under age 6, assent is not generally sought.
- Ages 7-9, verbal or simple written assent.
- Ages 10-12, simple written assent.
- Full written assent, mirroring the parental permission document may be appropriate for children older than 14.

Federal regulations do not cite any specific elements of assent or an age above which assent should be possible.

When appropriate, assent will be sought from prospective subjects before enrollment in the protocol in a manner that minimizes the likelihood of coercion or undue influence and will be documented in the manner determined by the IRBMED.

The IRBMED compares the assent materials with the study protocol or application to determine the correctness of the information.

The IRBMED evaluates the procedures for obtaining assent, including the individual who will conduct the assent process. The IRBMED is granted wide discretion in determining whether children are capable of assenting and when discretion for assessing the capability of particular children to assent will be granted to investigators or others (e.g., social workers, teachers, or parents). When assent has been required for a study overall, the IRBMED can waive the requirement for assent of a particular child if the investigator provides evidence to the IRBMED that the child is not capable of assent. Investigators should contact the IRBMED Co-Chair on-call for this permission and report the exception to the IRBMED using the ORIO deviation form.

The IRBMED can grant waivers of child assent or documentation of assent if the research meets the regulatory criteria set forth in 45 CFR 46.408(a) or 21 CFR 50.55(d).

(2) Evaluation of Parental Permission

Generally, a parent (the child's biological or adoptive parent) or guardian (an individual who is authorized under applicable state or local law to consent on

behalf of the child) must agree to the child's participation in the research. If a child is a ward of the state (e.g., foster child) the [guidance on the IRBMED website](#) must be followed.

IRBMED assesses the procedures and appropriateness of the parental permission process. The IRBMED can grant waivers of parental permission if the research both meets the regulatory criteria set forth in 45 CFR 46.116 and does not fall under the FDA's definition of "clinical investigation", as defined under 21 CFR 56.102(c). Research subject to FDA oversight can be granted a partial waiver of parental permission to review medical records or otherwise obtain information necessary to recruit subjects.

21 CFR 50.24 allows the IRBMED to approve a waiver of parental permission for FDA research that has fulfilled all the requirements set forth in that regulation. See the IRBMED's [Position Statement of IRBMED on Allowing Exception From Informed Consent for Emergency Care Research January 11, 2007](#).

45 CFR 408(c) also includes provisions for waiving parental permission in research that is designed for conditions or a subject population where parental or guardian permission is not a reasonable requirement to protect subjects (e.g., research on neglected or abused children). The IRBMED will not allow a waiver of documentation of parental permission if the research is subject to FDA oversight.

The IRBMED may allow a waiver of documentation of parental permission if the research meets the regulatory criteria set forth in 45 CFR 46.117 or 21 CFR 56.10r(c)(1).

The specific requirements for obtaining parental permission for HHS conducted or funded studies are found at 45 CFR 46.406 and 46.407. *See also:*

- IRBMED Assent guidance (under "[Children in Research](#)").
- IRBMED [Wards of the State](#) guidance.

b) Research Involving Adults with Cognitive Impairment or Otherwise Impaired Decision-Making Capacity

When reviewing the informed consent process for research involving decisionally-impaired adults, the IRBMED considers additional assessments in order to ascertain whether the subjects are vulnerable to coercion or undue influence and whether these risks have been minimized. Adults may have decisional impairment due to conditions such as stroke, brain injury, or mental illness such as schizophrenia or depression. Decisional impairment is reflected in a diminished ability to reason and make sound choices. This impacts the subjects' capacity to provide full, effective informed consent. Some decisional impairment may be transient, whereas other forms are permanent. Individuals with transient impairments may be able to provide consent during lucid intervals, but those intervals may not coincide with the conduct of the research. Lesser degrees of impairment may also allow some prospective subjects to consent to participation, while individuals with more severe degrees of impairment are not competent to consent.

In addition to the usual requirements, the IRBMED assesses the informed consent document and process as outlined by the PI to assure that:

- Adequate assurances are in place to assess the prospective subject's understanding of the research.

- The consent document is written at a language/readability level appropriate to the subject.
- If the subject is likely to be unable to read, that there are provisions, compliant with informed consent requirements, to provide for an oral presentation of the informed consent materials.

The IRBMED may consider the following to provide additional assurances to the integrity of the informed consent process:

- Monitoring of the informed consent process by a third party.
- Obtaining an independent assessment of the prospective subject's cognitive capacity.
- If the subject is unable to provide legally effective informed consent, the PI should outline a plan to obtain assent from the subject and informed consent from a legally authorized representative (LAR).
- The PI should use open-ended questions to assess the individual's understanding of the goals of the study and its risks and benefits.

c) Wards

Additional state and federal requirements exist for all research involving children who are wards of the state or another entity. Investigators must follow the IRBMED guidance on [Research on Wards of the State](#). If the research falls under 45 CFR 46.406 or 46.407, or 21 CFR 50.53 or 50.54, and research does not present a potential of direct benefit to the subjects, the wards may participate only if the research meets the provisions of 45 CFR 46.409 or 21 CFR 50.56. In such cases, the IRBMED will require an advocate to be appointed for each child and will ask the PI for verification of the appointment. Specific instructions are in the guidance noted above.

d) Legally Authorized Representatives

If subjects are initially capable of providing informed consent, but it is likely that they will lose this capacity during the conduct of the research study, they should be encouraged to appoint a LAR or durable power of attorney while they are capable. Once their appointment becomes legally effective, the representative can consent to continued participation, amendments to the study, or decide to end the subject's participation in the research.

The IRBMED will review the study procedures to assure that the PI has a plan to inform the LAR about the study, its implications for the subject, and their role in providing initial and ongoing consent.

Michigan law describes who is authorized to consent for particular medical interventions.

For a detailed discussion of who may consent for whom under various circumstances, consult [HRPP OM Part 11.II.](#)

B. Confidentiality of and Access to Research Records and Other Information

Refer to [HRPP OM Part 11.II.B](#)

Refer to <http://medicine.umich.edu/medschool/research/office-research/institutional-review-boards/guidance/record-keeping-guidelines>.

Refer to [IRBMED SOP Part 8.VII.F.](#)

1. Protection of Subject Privacy and Data Confidentiality

The IRBMED will ensure that the research plan contains adequate provisions to protect the privacy of subjects and maintain the confidentiality of data. See [HRPP OM Part 3.III.C.6.g.](#) for a detailed description of points the IRBMED should consider in determining whether a protocol includes plans sufficient to address privacy and confidentiality concerns.

2. Research Involving Use or Disclosure of Patient Health Information

Refer to [HRPP OM Part 11.II.B.2](#)

3. Research Involving Student Records

Refer to [HRPP OM Part 11.II.B.3](#)

4. Research Involving Department Education-funded Surveys, Analysis, or Evaluation

Refer to [HRPP OM Part 11.I.A.6](#)

5. Mandatory Disclosure Requirements

Refer to [HRPP OM Part 11.II.B.4](#)

6. Protecting Against Disclosure: Certificates of Confidentiality

Refer to [HRPP OM Part 11.II.B.5](#)

C. Research Involving Prisoners and Other Detained Persons

Refer to [HRPP OM Part 7](#)

Refer to [HRPP OM Part 11.II.C.](#)

See also the [guidance on prisoners.](#)

D. Research Involving Pregnant Women, Fetuses, and Neonates

Refer to [HRPP OM Part 7](#)

Refer to [HRPP OM Part 11.II.D.](#)

Principal Investigators are encouraged to consult with the IRBMED about research involving these populations prior to submitting an IRBMED application.

E. Stem Cell Research

Refer to [HRPP OM Part 11.II.E](#)

F. Document Control and Record Retention and Destruction

1. Generally (including Investigator Responsibilities)

Refer to [HRPP OM Part 11.II.F.1](#)

Refer to [IRBMED SOP Part 3.III.F](#)

Refer to [IRBMED Guidance – Recording Retention](#)

2. IRB Responsibilities

Refer to [HRPP OM Part 11.II.F.2](#)

Refer to [IRBMED SOP Part 3.III.F.](#)

G. State Professional Licensing Laws and Institutional Credentialing Policies

Refer to [HRPP OM Part 11.II.G](#)

H. Clinical Trials Disclosure Requirements

Refer to [HRPP OM Part 11.II.H](#)

III. ACCESS TO LEGAL COUNSEL

Refer to [HRPP OM Part 11.III](#)