Research Involving Children

Definitions

Child: a person under eighteen years of age who has not been judicially emancipated under Civil Code Article 366, emancipated by marriage under Civil Code Article 367, or limitedly emancipated by authentic act per Civil Code Article 368.

FDA and HHS regulations at 45 CFR 46.402(a) define "children" as "persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted." This provision means that the law of the site of the research will determine the legal age of consent of the participant.

Guardian: an individual who is authorized under applicable state or local law to consent on behalf of a child to general medical care (45 CFR 46.402(e)). The role of a guardian in the context of research involving a child who is a ward is to provide permission, in lieu of a child's biological or adoptive parents, for the ward to participate in the research (45 CFR 46.402(c)).

Any person designated by Court Order as the minor's legal guardian or as a person who can otherwise make medical decisions on behalf of the minor. The term 'guardianship' means the judicial placement of a child under the care of a person who will have the duty and authority of a guardian to make decisions in matters having a permanent effect on the life and development of the child, as set forth in article 719. 'Legal custody' means the right to have physical custody of the child and to determine where and with whom the child shall reside; to exercise the rights and duty to protect, train, and discipline the child; the authority to consent to major medical, psychiatric, and surgical treatment; and to provide the child with food, shelter, education, and ordinary medical care, all subject to any residual rights possessed by the child's parents. Citation: Ch. Code Art. 116.

Minor: a person who has not attained the age of eighteen years.

Newborn: a child who is not more than thirty days old, as determined within a reasonable degree of medical certainty by an examining physician.

Parent: any living person who is presumed to be a parent under the Civil Code or a biological or adoptive mother or father of a child.

Tutor: one other than a parent who has qualified for the office and has been confirmed or appointed by a court.

Ward: Any child who has been adjudged dependent by a court and who is under the control of a public official, agency, or tutor.

For information regarding assent of children and parental permission for children to participate in research, please refer to the Assent of Children policy.

Protections for Children in Research:

45CFR46 subpart D outlines regulations for protection of children in research. Subpart D's additional protections include:

- Requiring IRB review of some research activities involving children that would be exempt if the research subjects were adults

- Use of parental permission and child assent instead of the procedures for obtaining informed consent used for research involving adults

- Conditions for IRB approval of proposed research activities, depending on the level of risk and other features of the proposed research activity.

- Review by the Secretary for research that an IRB finds not approvable under any of the categories

- Additional conditions for certain research activities involving children who are wards of the State.

IRB Review of research involving children

Definition of minimal risk: the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological exams or tests.

There are four determinations of risk possible:

- Not greater than minimal risk *(Category 404; permission from one parent required)*
- Greater than minimal risk; possibility of direct benefit *(Category 405; permission from one parent required)*
- Greater than minimal risk; no direct benefit; yields knowledge of child's condition *(Category 406; permission from both parents required)*
- Greater than minimal risk; yields knowledge of health of children in general *(Category 407; permission from both parents required)*

Equivalent categories appear in the FDA regulations at 21 CFR 50 Subpart D, and are to be applied to all FDA-regulated clinical investigations that will include children as participants.

Category 405: If the IRB finds that more than minimal risk to children is presented by an intervention or procedure but that the intervention or procedure holds the prospect of direct benefit for the individual subject, or by a monitoring procedure that is likely to contribute to the subject's well-being, the IRB may approve the research only if the IRB finds that:

- the risk is justified by the anticipated benefit to the subjects;

- the relation of the anticipated benefit to the risk is at least as favorable to the subjects as that presented by available alternative approaches; and

- adequate provisions are made for soliciting the assent of the children and permission of their parents or guardians

Category 406: If the IRB finds that more than minimal risk to children is presented by an intervention or procedure that does not hold out the prospect of direct benefit for the individual subject, or by a monitoring procedure which is not likely to contribute to the well-being of the subject, the IRB may approve the research only if the IRB finds that:

- the risk represents a minor increase over minimal risk;

- intervention or procedure presents experiences to subjects that are reasonably commensurate with those inherent in their actual or expected medical, dental, psychological, social, or educational situations;

- the intervention or procedure is likely to yield generalizable knowledge about the subjects' disorder or condition which is of vital importance for the understanding or amelioration of the subjects' disorder or condition; and

- adequate provisions are made for soliciting assent of the children and permission of their parents or guardians.

Category 407: Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children (45 CFR 46.407). (See equivalent FDA category at 21 CFR 50.54 if applicable.) 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:

- 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 children; and

- the Secretary of the Department of Health and Human Services, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, education, ethics, law) and following opportunity for public review and comment, has determined either that the research in fact satisfies the conditions of §46.404, §46.405, or §46.406, as applicable, or §50.51, §50.52, or

§50.53, as applicable, or the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; the research will be conducted in accordance with sound ethical principles; and adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians, as set forth below.

FDA regulations at 21 CFR 50.54 provide for reporting to the FDA Commissioner in circumstances when this research category applies.