
Yale University Institutional Review Boards

600 PR.1 Emergency Use of an Investigational New Drug (IND) or Device (IDE)

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Overview

Clinicians should follow the procedures noted below when seeking to use an investigational drug(s) or device in a therapeutic or diagnostic manner in an emergency.

Patient Consent Considerations

Clinicians are required to obtain patient (or legally authorized representative/surrogate) consent for emergency use of an investigational drug or device, unless the criteria for exception to this requirement are met. The consent form should include a description of the clinical protocol (length of administration, dosage, method of evaluation of efficacy, side effects, etc.). (See 600 FR.2, Informed Consent Document for Emergency Use Investigational Drug or Device.) Informed consent is required unless the clinician and a physician who is not otherwise participating in the intervention certify in writing that all of the criteria noted below are met:

- the patient is confronted by a life-threatening or severely debilitating situation necessitating the use of the test article;
- consent cannot be obtained because of an inability to communicate with, or obtain legally effective consent from, the patient;
- time is not sufficient to obtain consent from the patient's legal representative or surrogate;
- no alternative method of approved or generally recognized therapy is available that provides an equal or greater likelihood of saving the patient's life.

If, in the opinion of the clinician, consent cannot be obtained and an independent physician is not available to determine that the 4 criteria mentioned above have been satisfied, the clinician should proceed. Within 5 days of the intervention the clinician who performed the intervention should obtain the opinion of an independent physician as to whether consent could have been obtained. This information, along with the information noted above, is to be submitted to the IRB by the treating clinician within 5 days of the intervention via the NOTIFICATION OF EMERGENCY USE REPORT - 600 FR. 1.

Emergency Use of an Unapproved Device

The FDA recognizes that emergencies arise where an unapproved device may offer the only possible life-saving alternative, but an Investigational Device Exemption (IDE) for the device does not exist, or the proposed use is not approved under an existing IDE, or the clinician or institution is not approved under the IDE. The clinician is not required to obtain an IDE prior to using the unapproved device to treat a medical emergency. FDA permits a clinician to choose to use an unapproved device in such an emergency, provided that the clinician later justifies to FDA that an emergency actually existed.

The requirements of prior FDA and IRB approval of a supplement to the approved research use of an investigational device **do not apply** in the case of a deviation from the investigational plan to protect the

life or physical well-being of a patient in an emergency. Such deviation shall be reported to the IRB by the clinician (via the NOTIFICATION OF EMERGENCY USE REPORT - 600 FR. 1) within 5 working days of its use, and to the FDA within 5 working days after the sponsor learns of it (see 812.150(a)(4)).

Criteria for use of an Investigational Device for Emergency Treatment/Diagnosis

To use an investigational device for emergency treatment/diagnosis, each of the following conditions must exist:

- the patient is faced with a seriously debilitating or an immediate life-threatening situation or disease;
- no generally acceptable alternative for treating/diagnosing the patient is available; and
- there is no time to use existing procedures to get FDA approval for the use because of the immediate need to use the device.

The clinician must determine whether these above criteria have been met, assess the potential for benefits from the unapproved use of the device, and have substantial reason to believe that benefits will exist. The clinician may not conclude that an "emergency" exists in advance of the time when treatment may be needed based solely on the expectation that IDE approval procedures may require more time than is available. The clinician must follow as many subject protection procedures as possible including:

- obtaining an independent assessment by an uninvolved physician;
- obtaining informed consent from the patient or his/her legally authorized representative/surrogate (see 620 FR.2, Informed Consent Document for Emergency Use Investigational Drug or Device);
- notifying the relevant Vice President or Service Line Director at Yale-New Haven Hospital and the Legal and Risk Services Department. These individuals must be notified of any use by the PI as soon as possible thereafter in the event of an emergency use.
- notifying the Institutional Review Board (IRB) and obtaining the IRB Chairperson's concurrence; and
- obtaining authorization from the IDE holder, if an approved IDE for the device exists, or, if an IDE does not exist, notifying FDA of the emergency use (CDRH Program Operation Staff 301-796-5640) and providing FDA with a written summary of the conditions constituting the emergency, subject protection measures, and results.

For additional information, see

<http://www.fda.gov/ScienceResearch/SpecialTopics/RunningClinicalTrials/GuidancesInformationSheetsandNotices/ucm118823.htm>

Information Required for IRB Consideration

The clinician presents the following information to the IRB Chair for the single use of this investigational device:

- assurance from the prescribing clinician that this use is NOT part of a project that is currently awaiting IRB approval;
- assurance that the use of the device is to treat/diagnose a patient with a seriously debilitating or immediate life-threatening condition or disease;
- assurance that there is no generally acceptable alternative available for treating/diagnosing the patient;
- a written statement explaining the rationale for the use of the investigational device;

- a copy of the consent form that will be used by the prescribing clinician to obtain informed consent from the patient or the patient's legally authorized representative/surrogate (See 620 FR.2, Informed Consent Document for Emergency Use Investigational Drug or Device);

Obtaining an Emergency IND

The emergency use of an unapproved investigational drug requires an IND. If the intended patient does not meet the criteria of an existing study protocol, or if an approved study protocol does not exist, in most cases the clinician will need to contact the manufacturer to determine if the drug can be made available for the emergency use under the company's IND. If the emergent situation does not allow time for an IND submission, the FDA may authorize use of the drug in advance of the IND submission. A clinician's request for FDA authorization may be transmitted to FDA by telephone or other rapid communication means (21 CFR 312.36). For additional information, see <http://www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ApprovalApplications/InvestigationalNewDrugINDApplication/default.htm#emergency>.

Information Required for IRB Consideration

The clinician presents the following information to the Chair for the single use of this investigational drug:

- assurance from the prescribing clinician that this use is NOT part of a project that is currently awaiting IRB approval;
- assurance that the use of the drug(s) or biologic is primarily to treat a patient with a specific, clinically urgent condition, and that the patient is not a research subject;
- a brief written statement explaining the rationale for the use of the investigational drug;
- a copy of the consent form that will be used by the prescribing clinician to obtain informed consent from the patient or the patient's legally authorized representative/surrogate (See 620 FR.2, Informed Consent Document for Emergency Use Investigational Drug or Device);
- a formal statement that the prescribing clinician has received from the manufacturer (or distributor) of the investigational drug approval for its use for the purpose outlined in the consent document.

Notifying the IRB

If time permits, the prescribing clinician should notify one of the Chairs of the IRB in writing of his/her intent to utilize an investigational drug or device for a therapeutic or diagnostic reason to obtain Chair concurrence at least 24 hours prior to the planned date of the first administration of the drug or use of the device. Review by the IRB Chair for such use is specific and limited to the individual patient.

If, in the clinician's opinion, immediate use of the test article is required to preserve the patient's life, and if time is not sufficient to obtain prospective IRB Chair review, the clinician should make the determination and proceed. Within 5 working days after the use of the article, the clinician performing the intervention must submit the material noted above for review and evaluation by the IRB Chair.

If the Chair concurs, the Chair will issue a letter to the clinician indicating that the clinician has complied with University policy and procedures and FDA regulations regarding the emergency treatment use of an investigational drug or device.

Subsequent Emergency Use of the Drug or Device

Subsequent emergency use of the drug or device for the same indication should **not** occur unless the clinician or another person obtains approval of an IND or IDE for the drug or device and its use. If an IND or IDE application for subsequent use has been filed with FDA and FDA disapproves the application, the drug or device may not be used even if the circumstances constituting an emergency exist.