

Human Research Protections Manual

For the UNM HSC HRRC

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Section 1: Introduction (Updated 10/10/08)

Welcome to the manual for the Human Research Review Committee (HRRC), the Institutional Review Board (IRB) for the University of New Mexico Health Sciences Center (UNMHSC). IRBs are established under federal law to ensure the rights, welfare, and protection of all human subjects.

Purpose of this Manual

This manual is intended to serve as a **guide for investigators and their staff** who conduct human subject research. While this manual provides a general overview of the HRRC process and the main regulatory requirements designed to protect human subjects of research, the field of human subject research is continually evolving.

Therefore, investigators should ensure that they and their staff understand the information contained in this manual and follow any mandatory requirements, obtain additional information on any regulatory requirements or expectations relevant to their specific research, and contact the Human Research Protections Office with any questions. As policy evolves and rules change, the manual will be updated. Please make sure you have the latest information by checking our [Website](#).

Human Research at UNMHSC

Research involving human subjects to be **conducted at** or sponsored by the **UNMHSC**, or that is conducted by or under the direction of a faculty, staff or student of the UNMHSC, or which uses any confidential information of patients at the UNMHSC, **cannot commence until it has been reviewed and approved by an HRRC**.

In addition to reviewing all biomedical and behavioral research at the UNMHSC, the HRRCs will review biomedical research proposals, or other research proposals requiring access to the UNMHSC patient population submitted by main campus faculty, staff, and students.

1.1 HRRCs Oversee "Human Subject Research" and Clinical Investigations"

The HRRCs oversee "[human subject research](#)" and "[clinical investigations](#)" at the UNMHSC.

In review of human subject research, the HRRCs have jurisdiction **over all aspects of research** involving human subjects, **including but not limited to:**

- Methods of identifying potential subjects
- Methods proposed for contacting potential subjects
- Materials to recruit subjects and proposed compensation
- Pilot Studies
- Proposals to use or provide stored blood, tissues, or confidential data
- Surveys and interview questions
- Informed consent process and form

- Protocol and summary of research
- Proposed changes to research
- Unanticipated problems involving risk to the subjects or others
- Continuing Reviews
- Use of investigational drugs and devices in emergencies
- Humanitarian Use devices
- Collection of individually identifiable information on any deceased or living individual

These activities cannot be carried out without prior HRRC review and written approval.

1.2 The Foundation for Human Subject Protection: The Belmont Report

The basic ethical principles on which the federal regulations for the protection of human subjects are founded are set forth in **The Belmont Report** developed by the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. The report sets forth **three principles** that are **basic to the protection** of human subjects: Respect for person, Beneficence, and Justice.

Respect for Persons

Involves the **recognition of the personal autonomy and dignity** of individuals, and the need for special protections of individuals with diminished autonomy. Under this principle, individuals must be given sufficient information to decide whether to participate in a study, they must be able to comprehend the information, and their consent must be given voluntarily, **free from coercion and undue influence**. Respect for Persons also means honoring the subjects' privacy and confidentiality

IRBs are expected to be particularly sensitive to these factors when vulnerable subjects are involved, to ensure that extra measures are taken to protect the immature and incapacitated, and may even require that they be excluded from participating in certain research.

Beneficence

Entails an obligation to protect persons from harm by **maximizing anticipated benefits** and **minimizing possible risks** of harm. This principle requires assessing the nature and scope of the risks and benefits. All possible harms must be considered: not just physical and psychological injury. All possible benefits including societal benefits that might be gained from research must also be considered. Benefits to the subjects, or generalizable knowledge to be gained from the research should always outweigh the risks.

In assessing the risks and benefits, the appropriateness of involving vulnerable populations is considered.

Justice

Requires that the **benefits and burdens** of research **be distributed fairly**. Subjects must be fairly selected, and may not be selected either because they are favored by a research or held in disdain. Social justice requires an order of preference in selection of

classes of subjects, for example, adults before children. The principle cautions that researchers should not systematically select subjects because of their easy availability, their compromised position, or their social, racial, sexual, or economic position, or because of cultural biases institutionalized in society. Investigators should base inclusion criteria on those factors that most appropriately address the research problem.

To see the full text of the Belmont Report, [check out this NIH history page](#).

1.3 The UNMHSC Federal Wide Assurance and the Federal Regulations

Federal government agencies, such as the United States Department of Health and Human Services (HHS), require institutions and persons who apply for federal funding to conduct human subject research to sign an assurance that they will comply with federal human subject research regulations and requirements.

FederalWide Assurance (FWA)

A FWA, which is approved by the federal Office for Human Research Protections (OHRP) at the Department of Health and Human Services (HHS), allows an institution to conduct federally funded research without obtaining a single project assurance for each separate project. The UNMHSC has an FWA, which sets forth a number of conditions with which it, the HRRCs, and the UNMHSC investigators are required to comply. In this assurance, the UNMHSC has agreed that it will apply these standards to all human subject research, whether or not it is federally funded. Therefore, **all UNMHSC research falls under the requirements of our FWA.**

[Memo with the UNMHSC FWA information](#)

Federal Regulations

Various federal regulations contain **requirements for** the review and conduct of **human subject research**. Those regulations include:

- 45 CFR Part 46 Protection of Human Research Subjects (HHS regulations)
- 21 CFR Part 50 Project of Human Subjects (FDA regulations)
- 21 CFR Part 56 Institution Review Boards (FDA regulation)

Other applicable FDA regulations include:

- 21 CFR Part 312 Investigational Drugs
- 21 CFR Part 812 Investigational Devices

1.4 The HRRCs

Under federal regulations and the UNMHSC FWA, the UNMHSC **must** establish Institutional Review Boards (IRBs) that meet certain requirements and **follow specific criteria** for reviewing and approving human subject research. These IRBs (the HRRCs) are required under the law to review all human subject research before it may begin and may approve only that research that meets the established regulatory and ethical criteria. In conducting

their reviews and providing feedback to investigators on required changes, etc. the HRRCs serve to educate UNMHSC investigators on important human subject research issues.

The **UNMHSC has four HRRCs**. Each HRRC meets once a month. There are four meetings a month at which UNMHSC research protocols may be reviewed. Once a project is assigned to one of the HRRCs, all subsequent matters related to the initial approval of that project will be reviewed by that HRRC. At each meeting, the HRRCs review new projects, conduct continuing review, and any problems or difficulties encountered in studies under their auspices.

Section 2: Oversight of Human Subject Research at UNMHSC (Updated 11/19/2010)

2.1 Jurisdiction of HRRCs

In review of human subject research, the HRRCs have jurisdiction over all aspects of research involving human subjects, including but not limited to:

- Research that is sponsored by the UNMHSC;
- Research that is conducted by or under the direction of any employee or agent of the UNMHSC in connection with his or her responsibilities, even if conducted elsewhere;
- Research that is conducted by or under the direction of any employee or agent of the UNMHSC using any property or facility of the UNMHSC;
- Research that uses UNMHSC non-public information, including its use to identify or contact potential human subjects for research
- Research that targets UNMHSC students, employees or patients
- Research conducted by the New Mexico VA Health Care System
- Research conducted by the New Mexico Cancer Care Alliance (NMCCA)
- Specified research conducted under an approved assurance from Office for Human Research Protections (OHRP) in which all the HRRCs are listed and an executed IRB Authorization Agreement is in place

The HRRCs also oversee all uses of investigational drugs and devices. These categories cover all research in which the UNMHSC and its faculty, staff, and students may be involved. In addition, the UNMHSC HRRCs may review research submitted by faculty, staff, or students from main campus who are conducting biomedical research, with the appropriate departmental or other approvals.

Under the FWA, the HRRCs must review research even if it will be conducted at another institution with an IRB (for instance, under a sub-award agreement). In such situations, the investigator and institution remain legally responsible for the conduct of research at the other institution. Where another IRB also has jurisdiction over the research, the investigator should inform the HRRC Support Office. The general policy of the HRRC is to require submission of the project to the HRRCs for review first, with submission to the other institution's IRB to follow. Final HRRC approval of the project (consent document, etc.) as amended by the other IRB is required.

2.2 Authority of the HRRCs

2.2.1 Reporting Relationships

The Vice President for Translational Research (under the general direction of the Executive Vice President for Health Sciences) is responsible for overseeing the effective operation, policies, and compliance of the HRRCs and the conduct of human subject research at the UNMHSC. The Executive Vice President for Health Sciences is the UNMHSC's signatory for its FWA, and ultimately responsible for the oversight of human subject research activities.

2.2.2 Delegation of Authority

The Executive Vice President for Health Sciences grants the HRRC the following independent authority as required by federal regulations for the protection of human subjects in research (Memorandum for the Record):

- To approve, require modifications to secure approval, or disapprove all research activities overseen and conducted by the organization;
- To suspend or terminate approval of research not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to participants;
- To observe, or have a third party observe, the consent process; and
- To observe, or have a third party observe, the conduct of the research.

Research that has been approved by the HRRC may be subject to further appropriate review and approval or disapproval by officials of the UNM HSC. However, those officials may not approve any research that has not been approved by the HRRC. No person or other committee--whether internal or external--can overturn an HRRC decision to disapprove, terminate, or suspend a research protocol. 45 C.F.R. 46.112

2.2.3 Inappropriate Influence of the HRRCs

Attempts to inappropriately influence the HRRC should be reported to the Director of Research Protections or an HRRC Chair at 272-1129. These individuals are granted the responsibility and authority to respond to attempts to unduly influence the HRRC and will respond to such attempts as follows:

- Conduct a prompt and thorough investigation of all allegations of attempts to unduly influence the HRRC;
- Provide a written report to the Senior Associate Dean of Research, Dean of the School of Medicine and/or Executive Vice President for Health Sciences;
- Take appropriate corrective action with the HRRC to ensure that their decisions are not or have not been unduly influenced; and
- Using appropriate methods, communicate inappropriateness of attempts to unduly influence the HRRC to HRRC members, staff, and researchers.

2.3 Requirement for Department and Other Committee Reviews

2.3.1 Departmental/Scientific Review

In addition to HRRC review, all human research projects must be reviewed for scientific merit and institutional appropriateness by a department chair, dean or designee or other accepted scientific review committee. A signed and completed [HRRC Departmental Review of Research Using Human Subjects](#) form must accompany applications for HRRC review.

Ideally, this review should be accomplished by a research committee; however an individual with sufficient expertise is satisfactory. Accepted scientific review committees include:

- VA Research & Development Committee
- SOM Medical Student Research Committee
- New Mexico Cancer Care Alliance Scientific Review Committee
- UNMHSC Cancer Center Protocol Review Committee
- SOM Resident Research Committee

The departmental/scientific review should focus on, among other things, the research methodology/scientific merit of the proposal, qualifications of the investigator, adequacy of facility and resources to conduct the study, and proposed subject population.

Any concerns about the project should be forwarded to the HRRC Support Office. An investigator may appeal a departmental disapproval to the Sr. Associate Dean for Research, SOM. A faculty member, including a Chair, **may not review** his or her **own research** project.

In addition to HRRC approval, the following committees or entities also must approve research projects falling within their purview:

2.3.2 VA Research Committee

Review and approval is required for any research conducted at VA facilities or using VA patients, in addition to HRRC approval. Call the VA research office at (505) 256-2810.

2.3.3 Radiation Safety Committee, Human Uses Subcommittee

Investigators should be aware of regulations and guidelines concerning use of radioisotopes and x-rays in the research environment. Review and approval is required for any research involving ionizing radiation in excess of standard of care, in addition to HRRC approval. Call (505) 277-2753.

2.3.4 General Clinical Research Center (GCRC)

Review and approval is required for all research proposals that will use these facilities. Call UH 5-East, (505) 272-2366.

2.3.5 Indian Health Service IRB

Research activities that are conducted in IHS facilities (including IHS-funded Tribal* or urban health facilities), or involving IHS personnel or other IHS resources, shall submit a research application to an IHS IRB. For more information you can contact the [IHS IRB](#).

Researchers planning to conduct research on a reservation or pueblo are subject to the jurisdiction of the Tribal government and must obtain the approval of either the Tribal Council or the Tribal health authorities. The IHS IRB will review non-IHS research based upon request of the Tribal authorities. Research conducted off-reservation but planning to target members of such communities as their subject population, should determine whether Tribal authorities need to be consulted.

*IHS-funded: The exception to this rule is that if a Tribe has filed its own Federal Wide Assurance (FWA), then the Tribe will tell you which IRB to take the proposal to. The IHS IRB must review studies for Tribes that do not have their own FWA.

2.4 Responsibilities of the Principal Investigator (PI)

The Principal Investigator has many responsibilities when initiating, conducting and closing a research study.

The following are requirements:

The research cannot be initiated (new study application) until final, written approval is received from the UNM HSC HRRC.

The Principal Investigator and study personnel are aware of, and agree to conduct the research in accordance with state law, Good Clinical Practices and regulations presented in the Code of Federal Regulations (CFR) Title 21 Parts 50, 56, 312 and 812 / Title 45 Part 46 and Title 45 Parts 160-164 (the HIPAA Privacy Rule).

The Principal Investigator will maintain records of their research according to federal and state regulations and guidelines, including keeping copy of the new study application for the investigator's records. If this application is approved, the PI must maintain copies of all HRPO correspondence for at least 3 years (for VAMC research check with the VA Research Office) after the completion of the study; or longer if required by study sponsor. For forms to help you keep information organized, check out our Research Investigator Startup Evaluations - [RISE program](#).

If and once research is approved:

- Must seek and obtain prior written approval from UNM HSC HRRC for any changes (amendment) in the proposal, including, changes in procedures, co-investigators, etc.
- Must submit request for continuation (progress report) for review by UNM HSC HRRC at least 30 days prior to the approval expiration date determined by the HRRC (applies unless the HRRC provides written determination that research is exempt).
- Will promptly report any Unanticipated problems involving risks to subjects or others in the course of this study to the UNM HSC HRRC in accordance with UNM HSC HRRC Policy for Reporting Unanticipated Problems (see section 8).

- Will close the study upon its completion or close studies that local enrollment is closed, local research-related interventions are complete and participant follow-up is complete; And that data analysis is complete or there are no links to identifiers remaining.
- Will report in writing any significant new findings that develop during the course of this study that may affect the risks and benefits to participants to UNM HSC HRRC and to subjects
- Will comply with all UNM HSC HRRC requests to report on the status of this study.

Consent:

- The PI or someone under the PI's supervision will explain the consent form to all prospective subjects before obtaining their signature (unless waiver or alteration of consent is approved).
- When consent is required, it is the responsibility of the PI to ensure that ethical and legal informed consent has been obtained from all research participants.

Privacy:

- Ensure that appropriate administrative and physical safeguards are in place to protect the privacy of participants.

Confidentiality:

- Ensure that appropriate administrative, technical and physical safeguards are in place to protect the confidentiality of protected health information.

Also see Section 8: HRRC Monitoring and Investigator Requirements Regarding Research in Progress

2.4.1. Clinical Investigator Requirements/Responsibilities

Researchers (PIs or co-investigators) involved in clinical research have the following requirements:

- Must be a qualified physician (or dentist, when appropriate) and is responsible for all clinical trial-related medical (or dental) decisions.
- Must follow the clinical trial's randomization procedures, if any, and ensures that the code is broken only in accordance with the protocol. If the clinical trial is blinded, the investigator promptly documents and explains to the sponsor any premature unblinding.
- Must maintain a list of appropriately qualified persons to whom they have delegated significant clinical trial-related duties.
- Must ensure that during and following a participant's involvement in a clinical trial that adequate medical care is provided to a participant for any adverse events, including clinically significant laboratory values, related to the clinical trial.

Depending upon the study design, participant willingness, and consent documentation, the researchers (PI or co-investigator) will:

- Inform participants when medical care is needed for other illnesses of which the researcher becomes aware.
- Inform the participant's primary physician about the participant's involvement in the clinical trial if the participant has a primary physician and if the participant agrees to the primary physician being informed.
- Make a reasonable effort to ascertain the reason for a participant withdrawing prematurely from a clinical trial while fully respecting the participant's rights. Although a participant is not obliged to give his or her reasons.

2.5 Scope of Authority of HRRCs

The HRRCs have the following authority and responsibility over research at UNMHSC:

- Review all research projects that will involve human subjects prior to contact of subjects or involvement of human subjects;
- Approve, disapprove, or require changes in all research (including the protocol, consent document, etc.);
- Notify federal government agencies and sponsors of approvals and disapprovals, or forward such notifications to investigators for submission as applicable; Ensure prompt reporting by investigators to the HRRC of any planned changes in approved projects prior to making them, except when necessary to eliminate apparent immediate hazards to subjects;
- Ensure prompt reporting by investigators to the HRRC as well as OHRP, FDA (if applicable) and any sponsoring agency, of unanticipated problems involving risk to subjects or others;
- Ensure prompt reporting to the HRRC by investigators of noncompliance with the HRRC or federal policies or regulations, and report serious or continuing noncompliance to appropriate federal agencies;
- Suspend or terminate a previously approved project and notify applicable agencies;
- Conduct continuing reviews of ongoing research as well as any other monitoring such research may require; and
- Review and monitor the treatment use of investigational drugs, biologicals and devices outside of the context of research.
- Ensure IRB approval has been obtained from collaborating sites when appropriate.

2.6 Effect and Review of HRRC Approval or Disapproval Decision

The HRRC Support Office notifies investigators by written document of approval, revisions, and disapprovals (or terminations). If research is disapproved the letter will have detailed information to explain the disapproval to the investigator.

Although research may receive HRRC approval, the department chair and other UNMHSC administration may conclude that the research does not meet the policies and goals of the UNMHSC, or other obligations (legal or otherwise), and may disapprove, suspend, or terminate a project. 45 C.F.R. 46.112.

Should the HRRC disapprove or terminate a research project, the principal investigator may request to present more information either in person or in writing to the HRRC, explaining why he or she believes the project should be approved or continued. However, a final HRRC decision to require modifications in, disapprove, suspend or terminate a project is final. No other committee or official (University or Federal) can override these HRRC decisions. Further, no committee or person can approve an investigator to conduct any research that an HRRC has not approved. 45 C.F.R. 46.112.

2.7 Non-Compliance with Human Research Protection Program Requirements

2.7.1 Definitions of Non- Compliance

Non-compliance includes failure to comply with federal regulations, VA requirements and guidance, if applicable, or the requirements and determinations of the HRRC. Failure to report adverse events in a timely manner or failure to submit progress reports is considered non-compliance.

Serious Non-compliance includes failure to comply with the federal regulations, VA requirements and guidance, if applicable, or the requirements and determinations of the HRRC which affect the rights and welfare of research subjects or increase the risks to the subjects.

Continuing Non-compliance includes a pattern of failing to comply with the federal regulations, VA requirements and guidance, if applicable, or the requirements and determinations of the HRRC or a lack of knowledge which may affect the rights and welfare of research subjects or lead to increased risks to the subjects.

2.7.2 Identifying & Reporting Non-Compliance

The Office of Research, Division of Research Protections and the Human Research Review Committee (HRRC) may become aware of possible non-compliance by any of several venues. These include initial and continuing review of submitted proposals, adverse event reports, quality improvement reviews and reports from investigators, research staff, visitors, study participants and others.

Reports of possible noncompliance should be made via one of the following mechanisms:

- Call Human Research Protections (HRRC Support Office) at 272-1129 (ask for the Director or HRRC Executive Chair)
- Memo or personal visit to the HRRC at MSC 08 4560, BMSB B71, 1 University of New Mexico, Albuquerque, NM 87131-0001
- E-mail communication to the Director. A [contact list](#) may be found on our site.
- Call the HSC Hotline at 1-888-899-6092 (Calls may be made anonymously)

Any employee or student of the UNMHSC or agent of another organization whose human research falls under the jurisdiction of the HRRC must report suspected non-compliance. Anyone, regardless of affiliation, who suspects non-compliance, is invited to report. The person submitting the allegation (complainant) may be asked to submit a written description of the information surrounding the alleged non-compliance. To the extent

possible every effort will be made to maintain confidentiality regarding the individual(s) submitting the allegation. Non-compliance may also be reported by the investigator as an adverse event/unanticipated problem. Reports should include a description of the concern, names of individuals involved and their department or organization, how the complainant became aware of the information and complainant's contact information (unless made anonymously).

2.7.3 Evaluation of Non- Compliance by staff

If the HRRC staff becomes aware of non-compliance that is clearly neither serious nor continuing in which the investigator may simply respond and remediate (i.e. missing document or incomplete submission), the staff member may request required information, verify its appropriateness and take no further action. If there is any question about whether something could constitute serious or continuing non-compliance or the staff member feels he/she cannot handle it appropriately then it is brought to the Director of Research Protections or Manager of Research Protections Operations. All other allegations of noncompliance must be brought to the Director of Research Protections or Manager of Research Protections Operations.

If a report of noncompliance is submitted as an adverse event/unanticipated problem or accompanies a progress report for continuing review HRRC staff will refer it to an HRRC Chair.

2.7.4 Evaluation of Non- Compliance by Director

The Director of Research Protections may initiate an investigation, if additional information is needed to determine if non-compliance has occurred. The Director of Research Protections will direct the investigation. An investigation may consist of an interview with the complainant or others, inquiries via telephone or email, and/or a Quality Assurance Review of an investigator's project(s). Such a review may also examine research data, informed consent/assent documents, medical records, inclusion/exclusion criteria, HRRC records, and other relevant information. A summary of the allegations will be prepared to which the complainant is given an opportunity to comment.

The person directing the investigation will determine the extent of the investigation based on the type of information needed to determine the truth of the allegation, and whether the allegation represents serious or continuing non-compliance.

The Director of Research Protections may determine that the allegation was false, or does not constitute serious or continuing non-compliance and take no further action. Unless such a determination is made, the allegation will be shared with an HRRC Chair. If in the judgment of the Director of Research Protections or Manager of Research Protections Operations the allegation cannot be investigated adequately through the HRRC review mechanism, the Director of Research Protections or Manager of Research Protections Operations will refer the allegation to UNMHSC Legal Counsel, Risk Management, Clinical Affairs, or other appropriate administrator or administrative body. The results of this investigation will be referred to an HRRC Chair.

2.7.5 Evaluation of Non- Compliance by an HRRC Chair

If an HRRC chair judges the allegation/complaint to be unjustified, it may be dismissed without further action. If an HRRC Chair judges non-compliance to be clearly neither serious nor continuing, the HRRC may work with the investigator to implement the corrective action plan; or if the HRRC Chair judges that the corrective action plan to be adequate to protect participants, and that the investigator understands the need to implement the corrective action plan, no further action need be taken. Otherwise the HRRC Chair refers the matter to the convened IRB for review.

2.7.6 Review by the Convened HRRC

The HRRC chair who handled the allegation will serve as a primary reviewer or will designate a primary reviewer.

The primary reviewer and all HRRC members will be provided and are expected to review:

- The most current application form
- The current protocol
- The current consent document(s)
- Copies of any reports or correspondence related to the non-compliance

The convened HRRC determines whether the non-compliance is serious or continuing.

The HRRC considers what actions should be taken and specifically considers the following actions:

- No action
- Request for more information pending a final decision
- Approval of continuation of study without changes and notification of researcher indicating no further action is needed
- Approval subject to requested changes to the research protocol, procedures and/or consent documents
- Investigator plan for corrective actions
- Suspension or termination of study following the SOP on Suspension and Termination of Approved Research
- Initiate Quality Improvement review or monitoring of enrollment in one or more of investigator's active research studies including the observation of the consent process
- Initiate more frequent continuing review of research study
- Limiting the numbers or types of studies for which an individual may be principal investigator
- Required additional training of investigators/research staff
- Disqualification of investigator from conducting human subjects research at UNM
- Disallowance of research use of data collected
- Notification of research participants regarding study problems (required when such information may relate to subjects' willingness to continue participation) or re-consent of participants
- Notification of past participants of additional information
- Recommendation to UNM Administration that further action be taken
- Notification to investigator indicating that non-compliance has not been found and no further action is needed

- Notification of complainant regarding decisions and/or outcome of the investigation

Investigators may appeal the decisions of an HRRC with regard to non-compliance. Investigators must outline the reasons for their appeal in writing within 30 days of an HRRC decision. The HRRC that made the determination regarding non-compliance will review the appeal. If the appeal is denied, the initial determination of the HRRC stands. This determination is final and is not subject to further appeal.

2.7.7 Scientific Misconduct

The University of New Mexico has a separate [policy and procedure](#) for dealing with Research Misconduct (fabrication, falsification or plagiarism in proposing, conducting, reporting or reviewing sponsored or unsponsored research). The Director of Research Protections will forward all such allegations to the Vice President for Research or Vice President for Health Sciences, as appropriate.

2.8 Serving as the IRB for an Unaffiliated Entity

Generally, the HRRCs review only research conducted at or involving UNM employees, sponsorship, or information. However, on occasion, such as where another entity that does not have an IRB is the recipient of a grant under which UNMHSC faculty will be conducting the research (under a subcontract/award) the UNMHSC may agree that an HRRC can serve as the IRB for the grantee.

Where the UNMHSC agrees to this arrangement, the federal granting agency will require the company to file an FWA designating the UNMHSC HRRC as the IRB (assuming the arrangement has been sanctioned). An IRB Authorization Agreement must also be signed by the company and UNMHSC outlining the conditions of the agreement. Different federal requirements may apply for different arrangements. The HRRC Support Office coordinates with the Office of the University Counsel for the HSC to ensure that any necessary legal documents for these arrangements (such as an IRB Authorization Agreement) will also be drafted and signed.

2.9 Collaborative Research

The model for collaborations needs to include either the UNM HRRC signing as an IRB for another institution where the research is to be conducted or UNMHSC sub-awarding funding to another institution to conduct research, including the following:

1. Identification of a responsible HSC faculty member as the principal investigator on the projects to be conducted at the community institution or office, and establishment of an acceptable oversight process for the research that will be conducted at that institution. This should include, at a minimum, required reporting to the principal investigator of the data and on the progress of the studies, and ideally, site visits to the other institution. These requirements may vary depending upon the funding award and the nature of the project.
2. Review by the HRRC of the qualifications of the sub-investigators in the outlying communities where such investigators will actually be conducting research, and the ability of the community institution to carry out the requirements of the protocol. Participation in UNM HSC HRRC overseen projects by persons with a known history of

noncompliance with human subject research requirements should be prohibited. Agreeing to take on IRB responsibilities, which include monitoring, where such a person is involved in the research would likely require additional oversight mechanisms to be employed to avoid a negligent review claim (and to ensure adequate subject protection). It has been agreed that we are not in the position to embark on such measures at this time. (Depending upon the community involved in the research, the HRRC may need to be supplemented by a member of the particular community where the research would take place, per OHRP requirements.)

3. For projects that require UNM HSC HRRC to sign as the IRB for the other institution an IRB Authorization Agreement should be entered with the other institution. This is separate from the OHRP assurance. This Agreement would specify the requirements that the other institutions must abide by to assure that our institution can fulfill out IRB review requirements (such as providing access to their research records, assistance in any monitoring activities, resolution of conflicts, etc.) and any other parameters to which we may agree under Paragraph 1 as part of an oversight process (e.g., submission of reports, site visits, etc.) and address liability. Where we enter a sub-award agreement, these issues are addressed in that agreement.
4. Review of the structure of the proposed collaborations by the HRRC Executive Chairman, Director of Research Protections, School of Medicine Sr. Associate Dean for Research, and University Counsel's Office.

Section 3: HRRC's Membership (updated 1/15/2008)

The HRRCs are comprised of regular voting members and alternate voting members. They may utilize, as they deem necessary, non-voting members and consultant reviewers as well.

3.1 Regular Voting Members

3.1.1 Membership Composition

Regular Voting members. The federal regulations and the UNMHSC FWA require each HRRC to have at least five regular voting members, including the Chair. At least one member on each HRRC must have primarily scientific concerns, one must have primarily nonscientific concerns ("community or lay member"), and one must be unaffiliated with both the University and the Albuquerque VA Medical Center 45 C.F.R. 46.107; 21 C.F.R. 56.107, VHA Handbook 1200.5. The UNMHSC HRRCs generally will have more than the minimum number of members to ensure adequate and efficient reviews, as the Sr. Associate Dean for Research, SOM, deems appropriate.

The Sr. Associate Dean for Research, SOM, will appoint members to each HRRC so that all HRRCs will be sufficiently qualified through the experience and expertise of its members, and the diversity of its members, including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. Further, each HRRC will be able to ascertain the acceptability of proposed research in terms of

institutional commitments and regulations, applicable law, and standards of professional conduct and practice. 45 C.F.R. 46.107; 21 C.F.R. 56.107; IRB Guidebook.

Scientific members: Generally will have had experience in research involving human subjects, and will be recruited from among active members of the faculty of the SOM, the Colleges of Pharmacy and Nursing, or staff, as appropriate.

Nonscientific members: will have as their primary focus a non-scientific area, such as law, ethics, human or patient rights, etc., and may be recruited from among others, active members of the faculty or the full-time staff of the UNMHSC or its clinical components.

Community members: will be knowledgeable about the local community and willing to discuss issues and research from that perspective. They are chosen from Albuquerque and its vicinity. Neither they nor their immediate families may have an affiliation with UNM. Candidates for these positions include, among others, clergy, lawyers, teachers, and businesspersons.

Unaffiliated members: are those who are not otherwise affiliated with UNM or Albuquerque VA Medical Center and who are not part of the immediate family of a person who is affiliated with these institutions.

3.1.2 Terms

HRRC membership is reviewed periodically by the HRRC Executive Committee and recommendations are made to the Sr. Associate Dean for Research, SOM for recruitment, retention or dismissal of members. This review includes examination of attendance, specialty, expertise, education, affiliation and diversity.

3.1.3 Appointments

The Sr. Associate Dean for Research, SOM, is responsible for ensuring the appropriate composition of the HRRCs. To determine what expertise is needed, and who might be recommended to be appointed, he/she solicits recommendations for appointments from the HRRC members as well as the Chairs of various departments within UNMHSC schools and colleges. In addition, as he/she deems appropriate, the Sr. Associate Dean for Research, SOM may solicit self-nominations from the faculty, full-time staff or others. Where a new community member is sought, the Sr. Associate Dean for Research, SOM, may receive recommendations from knowledgeable UNMHSC employees or may choose an alternative method of securing nominations, such as advertising in media. Solicitations for new members will highlight the desired qualifications based on gaps in the expertise of the HRRCs noted by the HRRCs and/or the Sr. Associate Dean for Research, SOM. The Sr. Associate Dean for Research, SOM, appoints new members at his or her discretion.

3.2 Alternate Voting Members

Each regular voting member of an HRRC generally will have an alternative member from the other HRRCs identified as his or her alternate, who may serve in his or her place. Such alternate members will have similar experience to the regular member. Alternate members may be called upon to serve where regular members will be absent from a meeting and

there will be less than a quorum at an upcoming meeting. Alternate members will have voting rights and be counted in a quorum only when they replace their respective regular members.

3.3 Non-Voting Members

Members of the UNMHSC staff or faculty may serve as non-voting members of the HRRCs should it be decided that such persons would be of assistance to the HRRCs in conducting their duties. A non-voting member cannot be counted in the quorum and cannot vote, but can participate in discussions and deliberations. The Associate Dean of Research, SOM, may appoint a non-voting member (or delegate this responsibility to the HRRC Chair), who will serve for only as long as requested.

3.4 Consultants

The HRRCs may invite consultants to participate in discussions and deliberations on particular projects where they believe that additional expertise would assist it in reviewing a particular protocol. The HRRC Chair has the authority to invite such persons to participate. A consultant cannot be counted in a quorum, however, and cannot vote.

3.5 HRRC Chair, Vice Chair, and Executive Chair

The HRRCs generally will have a Chair, Vice Chair, and Executive Chair. The Chair and Vice Chair each serve as Chair for two HRRCs. The Executive Chair is a member of all four committees and may serve as the Chair for any of the HRRCs if needed. Each of these will be chosen from the membership of the HRRCs, and will typically be filled by members of the faculty of UNM who are knowledgeable in human subject research, including the regulations, University and agency policies, and ethics relevant to such research. The Chair and Vice Chair generally are three-year positions (although the Sr. Associate Dean for Research, SOM, may in his/her discretion extend these terms). The Executive Chair may serve indefinitely, subject to the discretion of the Sr. Associate Dean for Research, SOM, as the Executive Chair undertakes additional administrative duties as discussed below.

3.5.1 Duties

The Chair, Vice Chair and Executive Chair are responsible for oversight of physician emergency or "compassionate" uses of investigational products (Sections 9.1 - 9.3), expedited reviews (Section 5.2), initial reviews of adverse event reports (Section 8.2), and reviews of requests for exemption (Section 5.1). The Chair, Vice Chair and Executive Chair are also responsible for ensuring that the HRRC members are adequately informed about the requirements of the regulations and that they conduct appropriate reviews. The Executive Chair and Director of Research Protections are responsible for overseeing the day-to-day administrative operations and compliance activities of the HRRCs. Among other things, the Executive Chair and Director of Research Protections are responsible for answering investigator questions on regulatory issues and HRRC policies, and coordinating, obtaining and disseminating legal advice on issues that arise at HRRC meetings, and informing the HRRCs on regulations and policies.

Whenever the Chair or Vice Chair is not available, the Executive Chair will assume the responsibilities of the Chair during the period of his or her absence.

3.6 Duties of HRRC Members

Serving on an HRRC is considered to be an important role of faculty and staff, as well as an honor. It is recognized and appreciated that members serve in addition to their regular UNMHSC duties. Therefore, it is understood that on occasion a member may need to miss a scheduled HRRC meeting. However, it is very important for continuity, scheduling, and well-rounded reviews that members attend HRRC meetings. Membership is chosen based on the unique expertise that each member brings to an HRRC. If a member cannot make a meeting, he/she should notify the HRRC Support Office well enough in advance (two weeks before meeting in writing or by telephone) that his/her alternate may be secured as necessary. Because members serve at the pleasure of UNMHSC, failing to regularly attend meetings or the lack of diligence in performing duties could result in removal of a member from an HRRC.

3.7 Notification to OHRP of Changes in Membership

The HRRC Support Office, as overseen by the Executive Chair and Director of Research Protections, will promptly notify OHRP in writing of any changes in HRRC membership.

3.8 Conflicts of Interests in HRRC Member and Consultant Reviews

An institution may have a **conflict of interest** in human subject research whenever the financial interests or other **conflicts of interest** of the institution, or of an institutional official acting within his or her authority on behalf of the institution, might affect or reasonably appear to affect institutional processes for the conduct, review, or oversight of human subjects research.

Conflict of interest means a situation associated with an individual's participation in review of a proposal where it reasonably appears, on an actual or potential basis, that:

- a. The individual's significant financial interest could directly and significantly affect the review of research activities; or
- b. The individual's situation could directly and significantly compromise his or her professional commitments or allegiance to the HRRC and/or UNM; examples of which include:
 - o Participating as an investigator on the research being considered
 - o An immediate family member participating as an investigator on the research being considered

Some individuals may feel that they have a conflict of interest due to other circumstances in their lives or professional careers. Examples may include being in the same department as an investigator on the research being considered or being in a subordinate or supervisory (or advisory) role to an investigator on the research. If it is felt by the

individual that their objectivity may be in question, they should respond as though they do have a conflict of interest.

Currently IRB members are already required by federal regulation to recuse themselves from voting upon or participating in any deliberations concerning protocols in which they have conflicting interests. In order to proactively deal with HRRC Member Conflicts of Interest, the HRRC institutes the following:

For all new full review studies to be reviewed at a convened HRRC meeting, the sponsoring company is identified and included in the review materials that members receive prior to the meeting.

HRRC Members will be requested to notify the HRRC Support Office as soon as they become aware that there is a project scheduled for HRRC review for which they have a potentially conflicting significant financial interest^[1] or any other conflict of interest that might affect or reasonably appear to affect their review of a study.

In an effort to avoid potentially losing quorum at the HRRC meeting and to avoid assigning a primary reviewer who has a potential conflict of interest, the HRRC asks members to inform the HRRC Support Office of any potential conflicts related to sponsors, investigators or other situations to help guide the HRRC Support Office in assigning reviews and projecting quorum.

The HRRC Chairperson will poll the HRRC about any potential conflicts of interest at the start of each meeting and the members' responses will be documented in the meeting minutes.

Any member who has a potential conflict of interest will recuse himself or herself from voting upon or participating in any deliberations concerning those protocols and the recusal will be documented in the meeting minutes.

All consultant or expert reviewers will be asked if they have a potential conflict of interest at such time they are contacted to provide guidance to the HRRC. If they do, other individuals without the conflict will be considered to provide the review. In such cases where a potentially conflicted individual is needed to provide guidance to the HRRC and no other reasonable alternatives exist, the circumstances regarding the conflict will be documented in the HRRC record and disclosed to the HRRC prior to any final approval of the research.

¹ Significant Financial Interest as defined by [UNM's Conflict of Interest Policy](http://www.unm.edu/~counsel/research/policies/COIP5-12-03.PDF) (Adopted 4/11/2000), <http://www.unm.edu/~counsel/research/policies/COIP5-12-03.PDF> and the Conflicts of Interest in Research Supplemental Policy for Employees and Staff of The University of New Mexico Health Sciences Center

Section 4: HRRC Meetings (updated 10/12/2008)

Each HRRC committee is scheduled to meet once a month to conduct reviews.

4.1 Committee Meetings/Deadlines

HRRC meetings are held on the first, second, third and fourth Tuesday of each month to review research proposals and to conduct related business. Categories for submission are as follows:

- Full Committee Review: Proposals are reviewed on a first come, first served basis. In most cases, all studies undergo administrative preliminary review by Human Research Protections Office staff prior to review by a fully convened HRRC. Any revised documents must be received two (2) weeks prior to the scheduled meeting of the full committee in order to be put on an agenda. Note: There is a limit of four new studies on the agenda for each meeting.
- Expedited Category: Proposals will be processed and reviewed upon receipt of the protocol. Proposals will be reviewed on a first come first served basis
- Exempt Category: Proposals will be processed and reviewed upon receipt of the protocol. Proposals will be reviewed on a first come first served basis
- Time Sensitive Category: Proposals in this category will be processed and reviewed upon receipt of the protocol. Refer to section 4.8 for eligibility and procedures.

4.2 Assignment of Projects to an HRRC for Review

New project submission applications are assigned to a particular committee for review (as noted, each committee meets once a month). Once a project is assigned to one of the committees, all initial review matters related to that project that require full committee review will be reviewed by that same committee.

4.3 Assignment to and Presentation by Primary Reviewer(s)

Applications requiring full committee review are generally assigned to at least one primary reviewer (usually two reviewers are assigned to each project and one may be designated a "secondary reviewer"). These reviewers are provided all documents submitted by the investigator, while the remainder of the HRRC members receive only copies of the consent documents, the full review applications and any recruitment materials, although they have access to all other documents upon request. The primary Reviewer(s) may request additional information from investigators to resolve questions prior to the meeting. The primary reviewer(s) will present the project to the HRRC members at the committee meeting, after which the full committee will discuss the project and vote. The project may also be assigned to a consultant reviewer at the HRRC's discretion.

Reviews of projects involving acute care/emergency research informed consent waivers may be handled differently, under separate policy designed to ensure compliance with the additional requirements of that waiver. See Section 7.5.5 for more information.

4.4 HRRC Meeting Agenda

The HRRC Support Office prepares an agenda for each HRRC meeting, listing all projects that will be reviewed at the upcoming meeting (new and continuing), any adverse event

reports to be reviewed by the committee, the projects that have been approved by expedited review, and any other items for discussion.

4.5 HRRC Meeting Procedures

Reviews of all full review applications (all projects other than exempt or expedited) will be conducted only at convened meetings at which a majority of the members of the HRRC are present, including at least one member whose primary interests are in nonscientific areas. Thus, for example, if HRRC-1 has 12 members, at least seven members must be present, one of whom is a nonscientific member, during review of the protocols. The attendance of the vulnerable population representatives must be assured prior to the meeting and these representatives must be present during the discussion and vote of each study on the agenda that involves children or pregnant women, prisoners or veterans. To approve a project, the majority of the members present at the meeting must have voted for approval. Any HRRC member who is involved in any way in a research project being reviewed, or who has any other conflict of interest, may not participate in the deliberations (other than to provide information as requested), nor vote on it. The HRRCs' policy is to have such member leave the room during deliberations. The meetings will be chaired by the Chair or Vice Chair, or in his/her absence, the Executive Chair.

4.6 Actions that the HRRCs May Take at Meetings

HRRC members will discuss each project and vote to approve or disapprove the project or proposed modification to an already approved project, or to defer a decision until revisions are implemented, additional information is provided, or further expert review is obtained (including invitation of consultants, Section 3.4). The members will also determine the date of the next review of new or continuing projects. Under certain circumstances, if minor revisions in the submitted documents are required or a missing document of minor importance is to be obtained, the HRRC may delegate the Chair, Executive Chair, or primary reviewer to subsequently approve the project on behalf of the HRRC, upon completion of these tasks.

4.7 HRRC Notification of Meeting Decisions

After each HRRC meeting, the HRRC Support Office will notify the principal investigator, in writing, of whether the project was approved, whether it requires revisions before approval may be granted, whether additional information is needed from the investigator before approval can be voted upon, or whether it was disapproved (in sufficient detail for the investigator to understand). The investigator will also be informed at the time of approval, in writing, when the next continuing review is required.

4.8 Time Sensitive Protocols

Normally, human research protocols must be received at least two weeks prior to the committee meeting at which they will be reviewed. This allows assigned reviewers enough time to conduct a thorough review prior to the scheduled meeting of the full committee.

On certain occasions, however, some protocols require a rapid response due to extenuating circumstance that fall beyond the control of the Principal Investigator. Protocols in this category may warrant a waiver of the required two-week submission period to allow a review by the HRRC at the earliest regularly scheduled meeting. These protocols will be designated "Time Sensitive" and will be placed on a "Fast Track".

The Executive Chair of the HRRC is responsible for reviewing protocols in this category, which must be submitted with a memorandum explaining the circumstances giving rise to the request in enough detail that the request may be considered. The Executive Chair will make a determination whether the protocol qualifies for special handling and if it does, will advance the protocol to the very next HRRC meeting for early review. * A memorandum will be sent to the investigator documenting the granting of this request.

*Please be reminded that most research protocols involving protected populations (fetuses, pregnant women, children, cognitively impaired persons, prisoners, or human invitro fertilization refer to section 6.3 on vulnerable subjects.) must go before the full committee for review and recommendations.

4.9 HRRC Appeals Policy

If an investigator disagrees with an HRRC request or decision, she or he may appeal that request/decision by submitting a written defense outlining, in detail, why the HRRC request/decision should be reconsidered.

If the appeal addresses a relatively minor request, the investigator's defense will be considered at an administrative level. If the appeal addresses more substantive issues, the HRRC will appoint an appropriately constituted sub-committee to consider the issue. The sub-committee will be chaired by the HRRC Chair, Director, or Executive Chair.

The sub-committee will review the appeal and present it, along with their recommendations, to the full HRRC. If the HRRC has additional questions about the protocol and the appeal, they may invite the investigator to attend their next scheduled meeting.

The full HRRC will vote to approve or disapprove the appeal; this decision will be final.

Section 5: Levels and Types of HRRC Review and Applications (updated 2/06/08)

Not all projects fit the federal regulatory definitions of human subject research or clinical investigation (45 C.F.R. 46.102, 21 C.F.R. 56.102) which require HRRC review. The federal regulations do not apply to such projects that meet neither definition; however, HRRC recommends that anyone who is unsure whether their project requires HRRC review contact the HRRC office for guidance.

There are several ways an investigator can submit such inquiries to the HRRC: Send an [email](mailto:HRRC@salud.unm.edu) to HRRC@salud.unm.edu which includes the project title, the Principal Investigator's name, and a brief but detailed description of the project, call the HRRC office at 272-1129 and ask to speak to the New Studies Operations Team, or submit an Exempt Review Application to the HRRC office. Qualified HRRC staff or an HRRC Chair will determine if the

project is human subject research and requires approval by the HRRC. When a written determination of the HRRC's findings is required by the investigator, a written request for determination must be submitted.

Not all human subject research or clinical investigations require review and approval by the fully convened HRRC. Some research is "exempt" from the federal regulations and may be granted a determination of exempt status by an experienced reviewer. However, investigators are required to submit all human subject research to the HRRC Support Office and the HRRC will determine whether it may issue a written notice of exemption or requires review under the federal regulations. Investigators may apply for each category of review as follows:

Case Studies

The NIH defines a case study as "an uncontrolled (prospective or retrospective) observational study involving an intervention and outcome in a single patient."

For individual case studies, the HRRC has determined that:

- 1-2 case studies are not research
- 3-4 case studies may be research and requires a determination by a qualified staff member (should be discussed with the HRPO staff)
- 5 or more case studies are considered research

5.1 Exempt Research

Under the HHS regulations (45 C.F.R. 46.101(b)), some research is exempt from having to meet the requirements set forth in the regulations. These exemptions do not apply to research involving prisoners. Further, the exemption for certain research involving surveys or interviews (Section 5.1.2) does not apply to research involving children. No research involving FDA regulated products is exempt under FDA regulations except for those involving taste and food quality evaluation as indicated in Section 5.1.3.

5.1.1 Existing Records or Specimens, Recorded Anonymously

The most commonly cited exemption for research at UNMHSC is found at 45 C.F.R. 46.101(b)(4):

Research, involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

This provision permits the HRRC to grant an exemption only when the data, specimens, etc. that the investigator proposes to use for the study already exist (i.e., are "on the shelf") at the time the investigator submits the proposal. If any specimens, data, etc., will be collected after the proposal is submitted--even if it is collected for non-research purposes--the research is not exempt. Similarly, if the data recorded can be linked back to the subject (i.e. by codes), the research does not fall into this category (though it may

qualify for expedited review). This exemption does not apply to research involving FDA regulated products (e.g., medical device development).

5.1.2 Surveys, Interviews, Public Observations, and Educational Tests

This exemption, found at 45 C.F.R. 46.101(b)(2), is available for research falling in these categories involving adults unless the information is both recorded in such a way that the human subjects can be identified (by links or otherwise) and the disclosure of the subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, insurability, or reputation. Thus, surveys involving sensitive topics (such as drug or alcohol use, sexual habits, etc.) where there is any code or other link between the information and the subject is not exempt. However, research under this category that would not otherwise be exempt is exempt if it involves elected or appointed public officials or candidates for public office. The exemption does not apply to research involving children, except for research involving educational tests (cognitive, diagnostic, aptitude, achievement), and observations of public behavior when the investigator does not participate in the activities being observed. This exemption does not apply to research involving FDA regulated products (e.g., medical device development).

5.1.3 Other Exemptions

Other categories of exemptions include 1) research conducted in established or commonly accepted educational settings involving normal educational practices (45 C.F.R. 46.101(b)(1)); 2) research and demonstration projects which are conducted by or subject to the approval of department and agency heads and which are designed to study, evaluate, or otherwise examine: public benefit or services programs; procedures for obtaining benefits or services under those programs; possible changes in or alternatives to those programs or procedures; or possible changes in methods or levels of payment for benefits or services under those programs (45 C.F.R. 46.101(b)(5); and 3) taste and food quality evaluation and consumer studies if a) wholesome foods without additives are consumed or b) a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe by the FDA, or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture. (45 C.F.R. 46.101(b)(6) and 21 C.F.R. 56.104(d)).

5.1.4 Applying for Exemption

An investigator seeking an exemption should submit one [HRRC Exempt Review Application](#) and include the material requested therein to allow the Chair or Executive Chair to determine whether an exemption may be granted. This application also requires that the investigator submit any interview or survey questions, and any consent form that might be considered. Changes to studies which have been previously exempted must be submitted to the HRRC for review prior to being implemented.

5.2 Expedited Review

5.2.1 Categories of Research Eligible for Expedited Review

If the proposed research is minimal risk and it is of a type of research that falls into one of the categories of research listed in table below and published in the Federal Register by HHS and FDA, the Chair or Executive Chair (or an experienced reviewer designated by one of them) may review and approve the research. This responsibility would only be designated to a voting member who is deemed by the Chair to have sufficient expertise and experience in IRB review to ensure review in accordance with 45 CFR 46.110.

"Minimal risk" means "that 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 examination or tests." (45 C.F.R. 46.102(i)). Investigators should note that "risks" include more than just physical risks, thus risks due to possible breaches of confidentiality, social/economic or psychological repercussions, etc. must be considered in determining the degree of risk as well. For this reason, although research on specimens may require only minimal intervention (or no intervention where specimens may be archived), some such research may not fall into this category of review.

1. Clinical studies of drugs and medical devices only when condition (a) or (b) is met.

(a) Research on drugs for which an investigational new drug application (21 CFR Part 312) is not required. (Note: Research on marketed drugs that significantly increases the risks or decreases the acceptability of the risks associated with the use of the product is not eligible for expedited review.)

(b) Research on medical devices for which (i) an investigational device exemption application (21 CFR Part 812) is not required; or (ii) the medical device is cleared/approved for marketing and the medical device is being used in accordance with its cleared/approved labeling

2. Collection of blood samples by finger stick, heel stick, ear stick, or venipuncture as follows:

(a) from healthy, non-pregnant adults who weigh at least 110 pounds. For these subjects, the amounts drawn may not exceed 550 ml in an 8 week period and collection may not occur more frequently than 2 times per week.

(b) from other adults and children, considering the age, weight, and health of the subjects, the collection procedure, the amount of blood to be collected, and the frequency with which it will be collected. For these subjects, the amount drawn may not exceed the lesser of 50 ml or 3 ml per kg in an 8 week period and collection may not occur more frequently than 2 times per week.

3. Prospective collection of biological specimens for research purposes by noninvasive means. Examples:

(a) hair and nail clippings in a non-disfiguring manner;

(b) deciduous teeth at time of exfoliation or if routine patient care indicates a need for extraction;

(c) permanent teeth if routine patient care indicates a need for extraction;

(d) excreta and external secretions (including sweat);

(e) uncannulated saliva collected either in an unstimulated fashion or stimulated by chewing gumbase or wax or by applying a dilute citric solution to the tongue;

- (f) placenta removed at delivery;
- (g) amniotic fluid obtained at the time of rupture of the membrane prior to or during labor;
- (h) supra- and subgingival dental plaque and calculus, provided the collection procedure is not more invasive than routine prophylactic scaling of the teeth and the process is accomplished in accordance with accepted prophylactic techniques;
- (i) mucosal and skin cells collected by buccal scraping or swab, skin swab, or mouth washings;
- (j) sputum collected after saline mist nebulization.

4. Collection of data through noninvasive procedures (not involving general anesthesia or sedation) routinely employed in clinical practice, excluding procedures involving x-rays or microwaves. Where medical devices are employed, they must be cleared/approved for marketing. (Studies intended to evaluate the safety and effectiveness of the medical device are not generally eligible for expedited review, including studies of cleared medical devices for new indications.) Examples:

- (a) physical sensors that are applied either to the surface of the body or at a distance and do not involve input of significant amounts of energy into the subject or an invasion of the subject's privacy;
- (b) weighing or testing sensory acuity;
- (c) magnetic resonance imaging;
- (d) electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity,
- (e) moderate exercise, muscular strength testing, body composition assessment, and flexibility testing where appropriate weight, and health of the individual.

5. Research involving materials (data, documents, records, or specimens) that have been collected, or will be collected solely for non-research purposes (such as medical treatment or diagnosis).

6. Collection of data from voice, video, digital, or image recordings made for research purposes.

7. Research on individual or group characteristics or behavior (including, but not limited to, research on perception, cognition, motivation, identity, language, communication, cultural beliefs or practices, and social behavior) or research employing survey, interview, oral history, focus group, program evaluation, human factors evaluation, or quality assurance methodologies.

8. Continuing review of research previously approved by the convened IRB as follows:

- (a) where (i) the research is permanently closed to the enrollment of new subjects, (ii) all subjects have completed all research-related interventions; and (iii) the research remains active only for long-term follow-up of subjects; or
- (b) where no subjects have been enrolled and no additional risks have been identified; or
- (c) where the remaining research activities are limited to data analysis.

9. Continuing review of research, not conducted under an investigational new drug application or investigational device exemption where categories two (2) through eight (8) do not apply but the IRB has determined and documented at a convened meeting that the research involves no greater than minimal risk and no additional risks have been identified.

Additional items which may undergo expedited review:

In addition, the HRRC may approve minor changes to already approved projects through expedited review (e.g., changes of an administrative nature, minor revisions in the text of an informed consent document or advertisement, corrections in the text of documents, and other minor changes), provided that the changes do not increase the risks involved. Similarly, Adverse Event Reports (Section 8.2) that in the judgment of the Chair or Executive Chair (or an experienced reviewer designated by one of them) do not appear to be serious or to be occurring with some frequency, and do not appear to affect the degree of risk to subjects, may be reviewed by expedited review. Continuing review may be conducted by expedited review only where the study falls into one of the above categories and is minimal risk, or where a study has been closed to accrual, and intervention has been completed, but the investigator is still collecting follow-up data.

An investigator may apply for expedited review, or the designated HRRC member may review a full submission by expedited review if it meets the regulatory criteria. If the reviewer determines that the project submitted for expedited review requires full board review, the investigator will be notified and the investigator may be required to submit the information requested in Section 5.3.

An HRRC member who reviews research under this expedited process may not disapprove the research protocol or minor changes through this process. Instead, if he/she disagrees with the submission, the materials will be submitted to a full HRRC committee for review and decision.

5.2.2 Applying for Expedited Review

A principal investigator requesting expedited review for an initial study must fill out, submit a [Full/Expedited Review Application](#), and include the material requested therein.

5.3 Full Committee Review and Application Process

All other research related issues will be reviewed by the full HRRC. To obtain such review, investigators must submit a completed [Full/Expedited Review Application](#) and include the material requested therein.

Section 6: Criteria for HRRC Review and Approval of Research (Updated 11/17/10)

6.1 General HRRC Review

Federal regulations dictate the criteria the HRRCs must follow to approve a protocol. The criteria required to be met are set forth below:

6.1.1 Conflicts of Interest

Investigator disclosure of conflicts of interest must be reported to the HRPO. The HRPO will forward the information to the Conflict of Interest Office. The conflict of interest must be resolved with conflict of interest office and committee before it can be approved by the HRRC.

If the Conflicts of Interest Committee determines that an investigator has a conflict of interest in UNM research, it will recommend to the Executive Vice President for Health Sciences how the conflict should be managed so the research may proceed, if at all possible.

The COI Committee decision is forwarded to the office in which it originated and the investigator under review, as well as, to the following people:

1. Executive Vice-President for Health Sciences Center
2. Vice-President of Research, Health Sciences Center
3. Principal Investigator
4. Department Chair
5. Associate Director of the Office of Research

The HRRC will then determine if the interest and management, if any, allows the research to be approved.

6.1.2 Risks and Benefits

(45 C.F.R. 46.111(a)(1) and (2); 21 C.F.R. 56.111(a)(1) and (2)): One of the HRRCs' major responsibilities in reviewing research is to ensure that risks* to subjects are minimized, and that the risks are reasonable in relation to the anticipated benefits**, if any, to subjects and the importance of the knowledge that may reasonably be expected to result.

***Risk:** *Risk: Means the probability of harm, including: **physical** (for example, in biomedical studies, the risk of adverse events or the risk of randomization and not receiving the treatment that turns out to be more efficacious), **psychological** (for example, depression, confusion, fear, stress, loss of self-esteem), **social or economic** (for example, breaches of confidentiality and privacy in research involving drug or alcohol use, sexual behavior, mental illness, or illegal activities, or in genetic research, could lead to embarrassment in a social group, prosecution, or loss of employment, insurability concerns, etc.). Both the probability and magnitude of possible harm may vary from minimal to significant. Risks include immediate risks of study participation as well as risks of long term effects.

****Benefit:** A benefit is a valued or desired outcome--an advantage. Anticipated benefits may express the probability that subjects and society may benefit from the research procedures. Research may benefit the individual, for example, by alleviating a condition or providing a better understanding of his or her disease. Research that has no therapeutic intent may still benefit society as a whole. If research will not benefit individuals, it is

required to provide a reasonable likelihood of resulting in benefits to society, e.g., the advancement of important knowledge.

In reviewing the risks to ensure that they are minimized, IRBs may consider whether previous animal and human studies have been done, whether the investigators serve a dual physician/investigator role to the subject and if so, whether any safeguards are necessary, whether the research is designed to yield useful data, whether there are any monitoring mechanisms if necessary, and whether follow-up counseling or other care will be provided (for instance, with genetic research), as applicable. Thus, the HRRCs may consider the study design in reviewing investigators' studies, since putting subjects at any risk or even inconveniencing them with a study that is methodologically flawed such that little or no reliable information will be obtained would be unethical.

6.1.3 Selection of Subjects is Equitable

[45 C.F.R. 46.111(a)(3); 21 C.F.R. 56.111(3); 38 CFR 16.111(b); 38 CFR 17.45, 17.92] In making this determination, the purpose of the study, as well as the setting of the study, are relevant.

Proposed uses of vulnerable populations such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons (Section 6.2) are more closely scrutinized. The principles in FDA's Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs, 58 Fed. Reg. 39,406 (July 22,1993), are considered to ensure that women of child bearing age are not inappropriately restricted from entering Phase 1 and 2 trials, but that there are sufficient methods proposed to monitor for pregnancy.

For VA research, the following groups of subjects cannot be enrolled unless identified requirements are met:

- Non-veterans unless there are insufficient veterans available to complete the study
- Fetus, in vitro fertilization
- Children, Prisoners (unless waiver granted by Chief R&D Officer)
- Pregnant women, Mentally Disabled/Impaired Decision-making capacity (unless VA specific requirements are met per VHS Handbook 1200.5 Appendix D)

6.1.4 Issues of Privacy and Confidentiality

The HRRCs address issues of patient and subject privacy and confidentiality. Privacy is about persons and their sense of being in control of the access of others to themselves. In research, privacy typically refers to whether the subject considers it the researcher's business to delve into the subject's life concerning whatever matter is the topic of the research. In short, privacy refers to persons and to their interest in controlling the access of others to themselves. For example, a young child would want a parent present at a session with a researcher. A teenager has different issues of personal privacy and perhaps would want the parent absent. When designing research, investigators should consider steps that will be taken to protect subject privacy during the consenting process as well as during research procedures and followup procedures and address these issues of privacy under the applicable section of their HRRC application.

Confidentiality is an extension of the concept of privacy; it refers to (a) identifiable data^[1] and (b) agreements about how those data are to be handled in keeping with respondents' interest in controlling the access of others to information about themselves. This definition indicates the critical role of the informed consent, which states how the researcher will control access to the data and secures the participant's agreement to participate under these conditions. Confidentiality issues are of particular concern in requests to review databases and medical records without patient consent, and research that will elicit potentially sensitive or damaging information (for instance, interview or genetic research) about the subject or a group to which the subject belongs. Factors that may be considered include the importance of the research, the sensitivity of the information sought to be obtained and to which the investigator will have access, whether links to identifiers will be maintained, the procedures the investigator has devised for protecting the information, and, if the review is for the purpose of identifying potential subjects, whether there are other feasible methods for recruiting subjects. Investigators should address these issues of confidentiality under the applicable section of their HRRC application.

Investigators may consider applying for a "Certificate of Confidentiality" for certain types of biomedical, behavioral, clinical, or other research where the disclosure of information learned about a subject could be particularly damaging. 42 U.S.C. Section 241(d). The Certificate protects against compulsory disclosure (such as a subpoena or court order) of research data that identifies a specific individual (not information in the aggregate), although review by federal agencies, such as FDA, is still permitted. Certificates are issued only "when the research is of a sensitive nature where the protection is judged necessary to achieve the research objectives." The categories of research explicitly covered include:

1. Research relating to sexual attitudes, preferences, or practices;
2. Research relating to the use of alcohol, drugs, or other addictive products;
3. Research pertaining to illegal conduct;
4. Research involving the collection of information that if released could reasonably be damaging to the individual's financial standing, employability, or reputation;
5. Research involving the collection of information that would normally be recorded in a patient's medical record which, if disclosed, could reasonably lead to social stigmatization or discrimination; and
6. Research involving the collection of information pertaining to an individual's psychological well-being or mental health.

In addition, Certificates may be issued for other categories of research considered sensitive because of specific cultural or other factors, upon justification.

Various agencies within HHS provide these certificates. [NIH Contacts](#)

[1] Some information about a person that would permit others to identify the specific person, such as an identifiable survey, notes or a videotape of the person.

6.1.5 The Informed Consent Process

(45 C.F.R. 46.111(a)(4-5); 21 C.F.R. 56.111(4-5)): The HRRCs carefully review the proposed informed consent method and form to ensure that human subjects will be adequately informed regarding the proposed research. See Section 7 for more detailed information on informed consent requirements.

6.1.6 Additional Monitoring or Safeguards

(45 C.F.R. 46.103 (b)(4) and 111(a)(6); 21 C.F.R. 56.108(a)(2) and 56.111(a)(6)): The HRRCs may decide in a review of a protocol that it requires more than annual review (see Section 8.4, Continuing Review) or that it needs verification from other sources that no material changes have been made since the previous review, and/or that the project needs additional monitoring or safeguard procedures to ensure the safety of the subjects in their reviews. Both of these determinations generally will be based on the degree of risk in the study, taking into account any vulnerability of the subject population.

6.2 Additional Requirements for Review of Vulnerable Populations

Certain groups of human subjects are considered to be particularly vulnerable to coercion or undue influence in a research setting. Vulnerable populations include children (also indirectly an infant, if a nursing mother is a subject of research), mentally disabled (cognitively or decisionally impaired) persons, prisoners, pregnant women, and economically or educationally disadvantaged persons. 45 C.F.R. 46.111(b); 21 C.F.R. 56.111(b). In addition, terminally ill persons may be vulnerable as well since they may be willing to "try anything." The regulations identify and the HRRC follows additional requirements for review and approval of research involving fetuses, pregnant women, and human in vitro fertilization, 45 C.F.R. 46 Subpart B, prisoners, 45 C.F.R. 46 Subpart C, and children, 45 C.F.R. 46 Subpart D. In reviewing research projects involving all categories of vulnerable subjects, the HRRCs ascertain that their use is adequately justified and that additional safeguards are implemented to minimize risks unique to each group, as appropriate. A summary of the additional requirements for review and approval of research involving children, prisoners, and pregnant women and fetuses is presented below:

6.2.1 Review of Research involving "Minors" and "Children"

Under federal law, "children" are defined 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 (45 C.F.R. 46.402(a)). In New Mexico all individuals under the age of 18 are considered to be children for purposes of research unless the individual:

- a. is or ever has been married even if the marriage was annulled;
- b. is currently on active duty in military service of the United States of America; or
- c. is age 16 or 17 and has been emancipated by Court Order AND the Order does not exclude the emancipated minor's authority to make health care decisions for himself or herself.

New Mexico law allows some minors to consent to health care procedures in limited circumstances, such as psychotropic medications, HIV/AIDS testing, termination of pregnancy, treatment for sexually transmitted disease, family planning services, pregnancy services, and drug and alcohol abuse counseling. However, these individuals are still considered children for the purposes of research even if the research procedures are limited to these treatments.

Parents under the age of 18 may provide permission for their children to take part in research. However, parents under the age of 18 are still considered children when they take part in research.

Even though the minor is authorized by law to consent to the treatment, and by parallel application, to treatment involved in research, the law may require reporting to another authority such as Public Health Division of Department of Health or Child Protective Services of the Children Youth & Families Department. For instance, HIV/AIDS, sexually transmitted diseases, and certain wounds must be reported to the Public Health Division. Moreover, if HIV/AIDS, sexually transmitted diseases, or pregnancy is the result of a relationship with an adult in a position of authority over the child (a parent, teacher, coach, babysitter, etc.), a report of abuse or neglect must be made to Child Protective Services and the minor should be informed that such reporting will be or may be reported. See New Mexico Department of Health, Public Health Division web-site for reportable injuries, illnesses and diseases.

When human research is conducted outside of New Mexico, the Human Research Protections Office will verify 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 through on-line sources or obtain consultation with the UNM Office of University of Counsel.

45 C.F.R. 46, Subpart D, classifies research involving children into one of four categories depending upon the risks and benefits of the proposed research, which can be approved as follows:

- **Research involving no greater than minimal risk.** "Minimal risk" means that 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 examination or tests. This research is approvable in accordance with the general IRB review criteria provided that adequate provisions are made for soliciting the assent of the child and parental permission. The HRRC will determine whether permission from one parent/guardian is adequate.
- **Research involving greater than minimal risk, but presenting the prospect of direct benefit to individual subjects.** This research is approvable in accordance with the general IRB review criteria if a) the risk is justified by the anticipated benefit to the subjects; b) the relationship of risk to benefit is at least as favorable as any alternative approach; and c) adequate provisions are made for soliciting the assent of the children and permission of their parents or guardians. The HRRC will determine whether permission from one parent/guardian is adequate.
- **Research involving greater than minimal risk and no prospect of direct benefit to individual subjects but likely to yield important generalizable knowledge about the subject's disorder or condition.** This research is approvable in accordance with the general IRB criteria if a) the risks represent a minor increase over minimal risk; b) the 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; c) 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 d) adequate provisions are made for soliciting assent of the children and permission of their parents or guardians. The HRRC and federal regulations require both parents' permission, unless one is not reasonably available, deceased, unknown,

legally incompetent, or does not have legal responsibility for care of the child; and child assent.

- **Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children.** This research is generally not approvable by an HRRC without the appointment of and review by a separate panel of experts.

Assent and Permission Required. The federal regulations require both "assent" of a child and "permission" by a parent or legal guardian for research. See Section 7.4.3 on informed consent requirements for studies involving children for more information.

Wards of State. Where children are wards of the state or another agency or institution, additional restrictions apply, and they may only be included in research that is related to their status as wards, or which is conducted in schools or other institutions in which a majority of children are not wards. If the HRRC approves research under this provision (45 C.F.R. 46.409), it must appoint an advocate for each child that is a ward.

No Exemption for Research Involving Surveys or Interviews. Unlike research involving adults, the exemption at 45 C.F.R. 46.101(b)(2) for research involving survey procedures, interviews, educational tests, or public observations (except where the investigator does not participate in the activities being observed) does not apply to research involving children. 45 C.F.R. 46.401(b).

Child Abuse Reporting. The State of New Mexico has a law (Section 32A-4-3 NMSA 1978) that requires the reporting of suspected child abuse or neglect. Investigators are not exempt from that law. If the protocol involves interviewing children about topics that might lead to a suspicion or to knowledge on the part of the investigator of child abuse or neglect, the HRRC may require that the child (and parent or guardian) be informed of the reporting requirement as part of the informed consent process. In accordance with the HIPAA Privacy Regulation, 164.520(b)(1)(ii)(B), UNMHSC informs patients in the Notice of Privacy Practices that information related to child abuse may be disclosed without their permission.

[NIH Policy and Guidelines on the Inclusion of Children as Participants in Research Involving Human Subjects.](#) Investigators submitting proposals to the NIH for human subject research must include children in the study unless there are scientific or ethical reasons not to include them. The proposals must specifically include a description of plans for including children. And, if children will be excluded, the application must present an acceptable justification for the exclusion. Investigators should review the NIH policy and guidelines before submitting their proposals.

Considerations for research involving children. What follows are some questions that may be appropriate, depending upon the study, for investigators and IRBs to consider in conducting or reviewing research-involving children:

* Has the research been addressed first in adults if possible (NIH guidelines provide that "while children usually should not be the initial group to be involved in research studies, in some instances, the nature and seriousness of the illness may warrant their participation earlier based on careful risk and benefit analysis")? Will older children rather than younger be used?

- Have any adult research results shown that the research is likely to benefit children or that it will at least not be harmful?

- Are normal volunteers and the number of subjects justified?
- Does the research hold out a prospect of direct benefit to individual children and can that benefit be obtained in a less intrusive way?
- Are the proposed techniques the least invasive to achieve the desired result?
- Will efforts be made to ensure that parental permission is uncoercive and that their expectations are realistic? That child assent is appropriate?
- Are special needs of adolescents such as counseling or confidentiality addressed?
- Are there any issues of confidentiality and reporting in sensitive research about child abuse, sexuality, drug use, etc. that need to be addressed?
- Does the research address whether parents should/will be present.

6.2.2 Requirements for Review of Research Involving Prisoners

Investigators must disclose if they anticipate enrollment of subjects who meet the definition of a "prisoner" during the course of the study. This would include any follow-up activity where data is being collected. It is not an HRRC requirement to obtain initial approval (IRB and OHRP) to include prisoners in research if the research is not targeting this population. It is, however, strongly encouraged if the investigator's subject population is at increased risk for becoming a "prisoner" that approval be requested at the time of initial submission for enrollment of prisoners. Once the study has HRRC approval and OHRP certification under 45CFR46 Subpart C to include "prisoners" (if applicable), all amendments and continuing reviews will be reviewed under Subpart C criteria as well.

If a research subject is subsequently incarcerated (and thus considered a prisoner) and the research was not initially reviewed under subpart C, the investigator must complete a reportable event form and either:

- Withdraw the subject from the research
- Submit a request for amendment to the research to allow participation (and enrollment if this is being requested) of prisoners and withhold further research interventions until inclusion of prisoners is granted (by HRRC and OHRP if applicable*). If withholding of interventions could be harmful to subjects, notify HRRC immediately (**)

*All DHHS conducted or supported research is subject to DHHS certification under subpart C if research involves prisoners.

** Note: OHRP has allowed one important exception. In special circumstances in which the principal investigator asserts that it is in the best interests of the subject to remain in the research study while incarcerated, the IRB chairperson may determine that the subject may continue to participate in the research until the requirements of Subpart C are satisfied.

45 C.F.R. 46, Subpart C, provides additional safeguards for prisoners since "Prisoners may be under constraints because of their incarceration which could affect their ability to make a truly voluntary and uncoerced decision whether or not to participate as subjects of research." This directly relates to the principle set forth in the Belmont report of respect for persons in that a prisoner may have markedly restricted liberty and autonomy.

Research involving prisoners at the VA must also be granted a waiver by the Chief Research and Development Officer at the Central VA office.

Per Federal Regulations, 'Prisoner' is defined as follows: "Any individual involuntarily confined or detained in a penal institution. The term is intended to encompass individuals sentenced to such an institution under a criminal or civil statute, individuals detained in other facilities by virtue of statutes or commitment procedures which provide alternatives to criminal prosecution or incarceration in a penal institution, and individuals detained pending arraignment, trial, or sentencing."

A further interpretation of the definition of 'prisoner' includes people (children and adults) who are:

- Being held in a jail or prison
- Detained pending arraignment, trial, or sentencing
- Under court order as an inpatient in a hospital or alcohol/drug treatment facility as an alternative to incarceration
- Wearing a court ordered monitoring device (consult HRRC with specifics for any individual in this category)
- In a court ordered juvenile detention residential setting

The following do not meet the Subpart C definition of "prisoner"

Individuals who do not meet any of the above and who are:

- Under court order in non-residential or out-patient treatment programs (as an alternative to incarceration) This applies to individuals living in the community
- Released from prison to a halfway house, if not under court mandate
- On probation or parole and living in the community

Research involving prisoners does not qualify for an exemption (Section 5.1).

Research involving prisoners is approvable only if it falls into one of the following four categories (45 C.F.R. 46.306(a)):

1. Studies' regarding the possible causes, affects, and processes of incarceration, and of criminal behavior, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects.
2. Studies of prisons as institutions, or of prisoners as incarcerated persons, if those studies present no more than minimal risk or inconvenience to the subjects.
3. Research on conditions affecting prisoners as a class after HHS publishes a notice in the federal register.
4. Research on practices that are intended, and reasonably likely, to enhance the well-being of the subjects; however, if some of the prisoners will be assigned to control groups which will not benefit from the research, then the study must first be approved by HHS (Note: According to OHRP guidance, research must provide direct benefit to individual subjects.)

In addition to the general requirements for review (Section 6.1), in reviewing prisoner research, IRBs are required by 45 C.F.R. 46.304 to:

- Ensure that the membership of the IRB reviewing the protocol includes a prisoner or a prisoner representative with appropriate background and experience to serve in that capacity, and that the majority of the HRRC is not associated with the penal institution

involved. (When the HRRC alters its membership to meet these criteria, its FWA provides for it to notify OHRP).

45 CFR 46.305 requires the IRB to do the following prior to approving research involving prisoners:

- Review that any advantages that prisoners will realize as a result of participating in the research, when compared to the general living conditions within the prison, are not so great as to impair prisoner's ability to weigh the risks and benefits of participation and freely choose whether to participate.
- Review that the risks involved in the research are commensurate with risks that would be accepted by non-prisoner volunteers.
- Review procedures for selecting subjects to determine whether they are fair, and free from arbitrary manipulation by prison authorities or prisoners.
- Review that control subjects will be selected randomly from among the group of eligible volunteers, unless the principal investigator justifies a different procedure.
- Review the information presented during the recruitment and consent procedures to ensure that it is in a language, and level of complexity, that is understandable to the subject population.
- Ensure that the parole board will not take participation in the study into account, and that each prisoner will be informed that participation will have no effect on parole.
- Ensure that adequate provision will be made for follow-up care as necessary.

6.2.3 Requirements for Review of Research Involving Fetuses, Pregnant Women, in vitro fertilization; and dead fetuses, fetal material, and placenta

45 C.F.R. 46, Subpart B, provides additional protections for research involving fetuses, pregnant women, and in vitro fertilization.

In addition to the general requirements for review (Section 6.1), the HRRCs are required to:

* Determine that adequate consideration has been given to the manner in which potential subjects will be selected, and adequate provision has been made by the applicant for monitoring the actual informed consent process, including, where appropriate, involvement of the IRB or subject advocates in such oversight.

With regard to *fetuses in utero* (for research aimed at the mother or the fetus), the regulations prohibit any research unless:

- Appropriate animal studies and studies with nonpregnant women are completed;
- The risk to the fetus is minimal unless the activity is to meet the health needs of the mother or the health needs of the fetus; in all cases, it is the least possible risk for achieving the objectives of the study;
- Individuals engaged in the research will have no part in any decisions as to the timing, method, or procedures used to terminate the pregnancy or in determining the viability of the fetus at the time of termination;
- No procedural changes which may cause greater than minimal risk to the fetus or the pregnant woman will be introduced into the procedure for termination of the pregnancy solely in the interest of the activity;

- No inducements, monetary or otherwise, may be offered to terminate the pregnancy; and
- Informed consent of both the mother and father has been obtained unless the research is for the health needs of the mother or the father is not reasonably available, the pregnancy resulted from rape, or the father's whereabouts or identity is unknown.

With regard to research involving *fetuses ex utero*:

- No research is permitted until it has been determined whether the fetus is viable unless: 1) there will be no added risk to the fetus resulting from the activity, and the purpose is the development of important biomedical knowledge which cannot be otherwise obtained; or 2) the purpose is to enhance the possibility of survival.
- No research may be conducted on a nonviable fetus (one that cannot possibly survive even with available medical therapy) unless vital functions will not be artificially maintained, experimental activities would not terminate the heartbeat or respiration of the fetus, and the purpose of the activity is to develop important biomedical knowledge which cannot otherwise be obtained.

Research involving **dead fetuses, fetal material, and the placenta** has been permitted since a Presidential memorandum lifting the moratorium was issued in February, 1993. Such research must be conducted in accordance with state and local laws. Currently, New Mexico has no laws that specifically govern research involving dead fetuses, fetal material, or the placenta. Where fetal tissue transplantation research is conducted or supported by HHS, 42 U.S.C. 289g-1 governs the research and its provisions must be followed. This law requires, among other things, written informed consent of the woman (to include disclosure of the physician's interest, if any, in the research), which consent may only be obtained after the decision to abort, no alteration in the timing or methods of the procedure, informed consent of the donee and a statement by the researcher to include that the tissue may have been obtained from a spontaneous or induced abortion, and that the researcher had no part in the timing, method, or procedures used to terminate the pregnancy.

In addition, the purchase or sale of fetal tissue is prohibited, as is the directed solicitation or donation or solicitation of such tissue obtained from an induced abortion. 42 U.S.C. 289g-2.

6.2.4 Research Involving Decisionally Impaired Subjects

When the research objectives can be met by enrolling subjects capable of consent, individuals who are unable to consent should not be used. If decisionally impaired subjects are to be used, and there is no benefit to the subjects, the risks to the subjects must be no more than minimal.

6.3 Additional Requirements for Drug Studies

6.3.1 Investigational New Drug Application

Drugs that have not been approved for marketing by FDA under an approved new drug application ("NDA") may only be studied pursuant to an investigational new drug application ("IND") in effect for a particular use (unless an exemption applies). This requirement applies regardless of the phase of study. A "drug" includes not only products

listed in the USP, but also any substance that is intended for use in the diagnosis, mitigation, or cure of disease, or that is intended to affect the structure of function of the body of man. Thus, research involving the administration of naturally occurring substances or dietary supplements (products not typically thought to be "drugs") generally require submission of an IND to FDA.

Typically, a drug company will be the holder of the IND and will contract with the UNMHSC to conduct research using the investigational drug. In these cases, the investigator does not submit the IND application to the FDA. Occasionally, however, an investigator may seek to initiate studies him/herself, using an investigational drug, or a marketed product that requires an IND (section 6.3.2). In such cases, the investigator is responsible for preparing the FDA Form-1571 (the IND application) according to the requirements set forth in 21 C.F.R. 312.23, but should list UNMHSC as the "sponsor" of the study and forward the form and attached documentation to the HSC Controller's Officer for review and signature.

Requirements of Investigator-Sponsors:

Investigator-Sponsors who submit protocols to the HRRC involving an FDA investigational drug must include all supporting FDA documentation for their IND or provide evidence that the investigational drug meets IND exemption criteria.

Additionally, if the IND product will be manufactured at UNMHSC, the Principal Investigator must submit documentation that:

- The product preparation and manufacture meets the standards for current Good Manufacturing Practice (GMP) or any modification to those standards approved by the FDA in issuing the IND.
- The GMP plan has been approved by the applicable UNMHSC official, appointed by the Vice President of Translational Research.

The IND product must be stored, secured, dispensed, and documented in accordance with documented policies and procedures.

An investigator-sponsor for an IND protocol must follow the FDA regulations in 21 CFR 312 applicable to sponsor responsibilities, particularly Subpart D. This includes:

- The record keeping requirements of 21 CFR 312.57 and
- Promptly reporting as required in 21 CFR 312.55(b) to the FDA and all participating investigators of significant new adverse effects or risks with respect to the drug or biologic.

A qualified auditor must site visit the investigator-sponsor before initiation of the research to determine compliance with these FDA regulatory requirements. If compliance has been demonstrated, the investigator-sponsor may begin the research. The audit must be repeated at the time of, and prior to the renewal, of the protocol by the HRRC.

Note: The Investigator can assign responsibility of compliance with some FDA regulatory requirements to a Contract Research Organization and can obtain an audit from a Contract Research Organization to ensure that procedures are in place so that all other FDA regulatory requirements of sponsors will be met.

The principal investigator will become responsible for fulfilling the additional requirements of a sponsor as set forth in FDA regulations at 21 C.F.R. 312.50-312.59, and must familiarize him/herself with these requirements. Investigators may not begin these studies until 30 days have passed since the submission of the IND application. Within this period, FDA will have provided the IND number and communicated with the investigator regarding any necessary changes/additions.

Investigators should inform the HRRC in their application that their study is investigator initiated, and attaches the IND application and the FDA's IND response letter. If investigators have any questions regarding these regulatory matters and whether an IND is required, they should contact the HRRC Support Office.

Additional Veterans Affairs (VA Requirements)

VA policy requires that all research comply with the VA human subjects regulations, as well as with all applicable regulations and requirements regarding storage and security procedures for investigational agents.

Investigators shall provide a signed copy of Form 10-1086 to Pharmacy Service and monitored by the Research and Development (R&D) Committee.

Upon Approval of the research by the HRRC and the VA R&D Committee, a Report of Subcommittee on Human Studies (VA Form 10-1223) must be forwarded to the PI and the Chief of Pharmacy Services.

Investigator shall inform the Chief of Pharmacy Service, and the R&D Committee when a study involving investigational drugs has been terminated.

Research involving FDA-regulated test articles will be approved only after the HRRC:

- Has received documentation that the research will be conducted under an applicable IND or
- Has formally determined that satisfactory justification has been provided by the investigator to why an IND is not required.

6.3.2 Studies involving Marketed Drugs

Questions sometimes arise regarding whether research involving an approved drug (for instance, marketed drugs for different uses) requires the submission of an IND. FDA does regulate studies involving marketed drugs, and an IND is required for such a study unless all of the following are met:

1. The investigation is not intended to be reported to FDA as a well-controlled study in support of a new indication for use nor intended to be used to support any other significant change in the labeling for the drug;
2. If the drug that is undergoing investigation is lawfully marketed as a prescription drug product, the investigation is not intended to support a significant change in the advertising for the product;
3. The investigation does not involve a route of administration or dosage level or use in a patient population or other factor that significantly increases the risks (or decreases the acceptability of the risks) associated with the use of the drug product;

4. The investigation is conducted in compliance with the requirements for institutional review set forth in 21 C.F.R. Part 56 (IRB approval) and with the requirements set forth in 21 C.F.R. Part 50 (Informed Consent); and
5. The investigation is conducted in compliance with the requirements of 21 C.F.R. 312.7 (restrictions on promotion and charging for investigational drugs).

21 C.F.R. 312.2(b). If an investigator is uncertain whether FDA would require an IND (e.g., it is not clear whether FDA may consider the proposed use to significantly alter the risks), he/she should contact FDA. Investigators should address these criteria in their HRRC submission and, if they have submitted an IND application, attach it and the FDA IND response letter (if received).

6.3.3 Radiopharmaceuticals

Certain research designed only to study the basic metabolism of a radioactive drug or to gather basic information about human physiology, pathophysiology, or biochemistry, but not intended for immediate therapeutic, diagnostic or similar purposes, or to determine the safety and effectiveness of the drug in humans for such purposes, is exempt from the IND requirement provided that the radiation dose falls within the limits prescribed by FDA, the study design meets certain criteria, and the protocol is approved by a Radioactive Drug Research Committee that has been approved by FDA. See 21 C.F.R. 361.1 for specific information. These studies still require HRRC approval. Investigators should note if they believe this exemption applies in their HRRC application, and call the HRRC Support Office with any questions.

6.4 Additional Requirements for Device Studies

6.4.1 Investigational Device Exemption

Medical devices are subject to FDA regulation 21 CFR 812. A "device" includes any instrument, machine, implement, or other product that does not achieve its primary intended purpose by chemical action or by being metabolized and which is intended for use in the treatment, cure, diagnosis, or mitigation of disease or other conditions in man.

With limited exceptions, devices that have not been approved by FDA under the pre-market approval process ("PMA") or cleared for marketing under the 510(k) process (or an exemption) cannot be used on humans except pursuant to an approved investigational device exemption application ("IDE"). The approved IDE permits a new device to be studied for its safety and/or effectiveness. In addition, a device that is sought to be studied for a different indication from its approval may also be subject to this requirement.

Typically, a biotech company will be the holder of the IDE (Sponsor) and will contract with the UNMHSC to conduct research using the investigational device. In these cases, the Sponsor is responsible for the FDA IDE application and required reporting set forth in FDA regulations at 21 CFR 812. The investigator must meet the requirements set forth in Subpart E of 21 CFR 812.

The investigator should provide all relevant documents at the time of HRRC submission. (i.e. NSR claim or IDE number, the data safety monitoring plan, device accountability and storage procedures, labeling information, etc.). The HRRC will evaluate the appropriateness

of the data safety monitoring plan and device accountability procedures to ensure subject safety as well as protection against accidental use of the controlled device.

6.4.2 Significant Risk and non-significant Risk medical device Studies.

The FDA Information Sheet on Investigational Devices provides a list of devices which FDA believes may be SR and NSR. Because the NSR determination includes the proposed use of the device in the study, the list may not be conclusive.

The Investigation Device Exemption regulations (21 CFR 812) describe two types of device studies, significant risk (SR) and non-significant risk (NSR).

1. A **SR device study** is defined (21 CFR 812.3(m)) as one that is 1) Intended as an implant and that presents a potential for serious risk to health, safety, or welfare of a subject; 2) purported or represented to be for use in supporting or sustaining human life and that presents a potential for serious risk to health, safety, or welfare of a subject; or 3) for a use of substantial importance in diagnosing, curing, mitigating, or treating disease, or otherwise preventing impairment of human health and that presents a potential for serious risk to health, safety, or welfare of a subject; or 4) otherwise presents a potential for serious risk of harm to a subject.
2. A **NSR device study** is one that does not meet the definition of a significant risk study. For NSR device studies the HRRC acts as the FDA's surrogate with respect to review and approval.

The SR/NSR determination is important to research sponsors and investigators. SR device studies are governed by the IDE regulations 21CFR812. NSR device studies have fewer regulatory controls than SR studies and are governed by the abbreviated requirements set forth in 21 C.F.R. 812.2(b). The major differences are the approval process and reporting requirements.

6.4.3 SR/NSR Studies and the HRRC: the Decision

A NSR claim is generally initially made by the sponsor. In such cases, the HRRC makes the following two separate determinations (unless it concludes that the study is exempt under 21 C.F.R. 812.2(c)):

1. **Non-significant Risk Determination.** If the device study is NSR, the sponsor provides their assessment to the reviewing HRRC. The risk determination is based on the proposed use of the device in the investigation, not solely on the device alone. Thus, if a subject must undergo a procedure as part of the study, the potential harm from the procedure as well as from the device is considered. The full HRRC determines whether the device study is NSR and then agrees or disagrees with the sponsor's assessment.
2. **Study Approval or Disapproval.** If the HRRC concludes that the device is NSR, the HRRC next considers whether the study should be approved using the same criteria as is standard for any study review (Section 6.1). NSR studies may proceed after approval by the HRRC. If the HRRC disagrees with the NSR assessment, per 21 812.66, the investigator must notify the sponsor who would in turn must notify the FDA that a SR determination has been made. The study can be conducted as a SR investigation following FDA approval of an IDE application and HRRC approval.

6.4.4 Investigator Responsibilities

Investigators must meet the requirements set forth in Subpart E of 21 CFR 812. Investigators should familiarize themselves with the requirements set forth in 21 CFR 812, Subpart E.

Investigators are required to report each use of an investigational device on a subject, among other device-specific study requirements, even for NSR device studies.

6.4.5 Investigator Initiated Device Study

Occasionally a UNMHSC/VA investigator may seek to initiate studies using an investigational device. In this instance, the investigator would be working with the FDA to determine if the device would be NSR or SR. The investigator is responsible for preparing the device application according to the requirements set forth in 21 CFR. 812. The principal investigator should list UNMHSC as the "sponsor" of the study and forward the application and attached documentation to the UNMHSC Controller's Office for review and signature.

Investigator-Sponsors who submit protocols to the HRRC involving an FDA test article must include all supporting FDA documentation for their IDE or provide evidence that the test article meets IDE exemption criteria.

Additionally, if the IDE product will be manufactured at UNMHSC, the Principal Investigator must submit documentation that:

- The product preparation and manufacture meets the standards for current Good Manufacturing Practice (GMP) or any modification to those standards approved by the FDA in issuing the IDE.
- The GMP plan has been approved by the applicable UNMHSC official, appointed by the Vice President of Translational Research.

The IDE product must be stored, secured, dispensed, and documented in accordance with documented policies and procedures.

An investigator-sponsor for an IDE protocol must follow the FDA regulations in 21 CFR 812 applicable to sponsor responsibilities, particularly Subpart C. This includes:

- The record keeping requirements of 21 CFR 812.40(b) and
- The required notification under 21 CFR 812.150(b)(1) to the FDA and all participating investigators of any evaluation of an unanticipated device effect within ten (10) working days of first receiving notice of the effect.

The principal investigator will become responsible for fulfilling the additional requirements of a sponsor as set forth in FDA 21 CFR. 812 regulations, subpart B and C as well as Subpart E (investigators responsibilities) and must review these requirements with a designated person within the HRRC. The HRRC encourages the investigator to contact the HRRC during the FDA pre-application process to discuss the elements of 21CFR812 and the required reporting and monitoring plans expected from an investigator acting as "sponsor" for investigational device research studies.

Investigators must inform the HRRC in their HRRC application that their device study is investigator initiated, and attach relevant documents (the IDE application, FDA response letter, etc).

Research involving FDA-regulated test articles will be approved only after the HRRC:

- Has received documentation that the research will be conducted under an applicable IDE; or
- Has formally determined that satisfactory justification has been provided by the investigator as to why an IDE is not required; or
- Has formally determined and documented that the proposed use of any unapproved device satisfies the FDA criteria for non-significant risk devices.

6.5 Compensation or Payment in Human Research Studies

6.5.1 Compensation Amounts and Advertisements in Human Research Studies

The amount of compensation offered should not appear to be coercive - it should be commensurate with the amount of subject involvement. If the research involves an overnight stay(s), multiple procedures, multiple visits, or an extensive time commitment this would help to justify larger compensation amounts. Any amount of compensation that is paid as a bonus for completion of the study must be reasonable and not so large as to unduly induce participants to stay in the study when they might otherwise withdraw.

All consent forms include a "Payment for Participation" section. If the study involves subject compensation, the consent should include:

- How much subjects will be compensated
- Why subjects are being compensated (for their time and inconvenience)
- When subjects can expect compensation (i.e. after each study visit, 4-6 weeks after completion of the study, etc.)
- How subjects will be compensated (i.e. cash, check, gift certificate, etc.)
- If payments are prorated (i.e. if they will be paid only for the study visits that the complete)
- Compensation for research participation is considered taxable income. Amounts of \$600 or more will be reported by UNM to the Internal Revenue Service (IRS) and this must be stated in the informed consent form if the total amount within a year is potentially \$600 or more.

See section 11.2 for guidelines when developing advertisement materials for your study.

Note: for FDA-regulated research, compensation is not allowed in the form of a coupon good for a discount on the purchase price of the product once it has been approved for marketing.

6.5.2 Payment for Subjects in VA Human Research Studies

(From VHA HANDBOOK 1200.5 - July 15, 2003)

VA policy prohibits paying human subjects to participate in research when the research is integrated with a patient's medical care and when it makes no special demands on the patient beyond those of usual medical care. Payment may be permitted, with IRB approval, in the following circumstances:

1. **No Direct Subject Benefit.** When the study to be performed is not directly intended to enhance the diagnosis or treatment of the medical condition for which the volunteer subject is being treated, and when the standard of practice in affiliated non-VA institutions is to pay subjects in this situation.
2. **Others Being Paid.** In multi-institutional studies, when human subjects at a collaborating non-VA institution are to be paid for the same participation in the same study at the same rate proposed.
3. **Comparable Situations.** In other comparable situations in which, in the opinion of the IRB, payment of subjects is appropriate.
4. **Transportation Expenses.** When transportation expenses are incurred by the subject that would not be incurred in the normal course of receiving treatment and which are not reimbursed by any other mechanism.

VA Investigators who wish to pay research subjects must in their application:

1. Substantiate that proposed payments are reasonable and commensurate with the expected contributions of the subject;
2. State the terms of the subject participation agreement and the amount of payment in the informed consent form; and
3. Substantiate that subject payments are fair and appropriate, and that they do not constitute (or appear to constitute) undue pressure or influence on the perspective research subjects to volunteer for, or to continue to participate in, the research study; and that the payments do not constitute (or appear to constitute) coercion to participate in, or continue to participate in, the research study.

6.6 Additional Requirements for Research Involving Students as Subjects

University students and particularly health professional students (as future physicians and possibly researchers) may be in a position to participate in some research because of their ability to comprehend the procedures and evaluate the risks involved, which may not be as easily achieved with other normal volunteers. Offering course credit is controversial, though common in the social and behavioral sciences (particularly in Psychology departments). Educational benefit to be gained by the individual is widely cited as supporting student participation in research. Likewise, participation of students is seen by faculty-investigators as necessary to the conduct of their research. Grant budgets often do not allow investigators to pay subjects and therefore giving course credit or extra credit is a means of obtaining sufficient participation rates.

The HRRC feels that prohibiting all student participation in research is over protective. However, the HRRC's stance is that offering credit for student research participation to partially fulfill a course requirement should be restricted to only research involving no more than minimal risk (including physical, psychological, social, and privacy risks) and care must be taken to protect student autonomy and confidentiality. Students are in a position where there is the risk of them being coerced into participating in studies and in these circumstances it may be difficult to determine whether consent to participate is freely given. Therefore care should be taken to eliminate or reduce the risk that undue influence

of faculty or coercion affects student participation in research. This is particularly important when course credit is offered for student research participation. Therefore the HRRC is offering the following guidelines for research projects in which students will be asked to be subjects:

1. Students should be of the age of majority in New Mexico (18 years old).
2. Students who enroll in response to general advertisements soliciting research volunteers are less likely to be subject to coercion than those who participate for course credit.
3. When credit is offered for participation in research or participation in research is a course requirement there is the concern that students will enroll because they believe it is necessary to get a good grade or to please a professor. The following are means by which the risk of coercion may be reduced:
 - a. Students must be given the option of participating in any one of a number of studies and not required to participate in any particular study.
 - b. Students must be given the choice of other means of satisfying the credit requirement such as attending research seminars, writing a brief research paper/abstract, book report or completing a similar project. These projects should be comparable in terms of time, effort and educational benefit to participation as a research subject. If projects are to be graded, a "Credit/No Credit" scale should be used.
 - c. Students must be allowed to withdraw from the study at any time.
4. Researchers must take great care to avoid any inference that volunteering to join a study will place students in good favor with them or other faculty and must avoid coercion.
5. Students must not be given any reason to believe that failure to participate will negatively affect their relationship with the investigator or other faculty. Any offer of better grades, recommendations, or employment is strictly forbidden.
6. Because of the special risks of confidentiality in the close environment of the university, special attention should be given to full disclosure of these risks in the consenting of a student to participate. The plan for handling research data should also be designed to minimize the risk that confidentiality will be breached. In addition, ordinarily students should not be invited to participate in research that will give their mentors and peers access to confidential information that may embarrass or compromise students. Therefore studies that require disclosure of information on sensitive topics such as sex, mental health, and substance abuse are not appropriate for student participation for credit.

In reviewing research being offered for student credit, the HRRC will give additional consideration to the following:

- Whether special protections should be adopted to restrict participation of students
- Whether it appears that student agreement to participate can be freely given
- The close environment of the university and any amplified concerns related to confidentiality particularly with regard to research involving the collection of data on sensitive subjects
- If measures are built into the research to ensure students that their participation is strictly voluntary and that they may withdraw their participation at anytime without penalty

6.7 Studies Involving Decedent Information or Tissue

Research Using Autopsy Data or Specimens

Regulation of human subject research by Institutional Review Boards (IRB) pertains only to *living* human subjects. Consequently, when a research subject is deceased, such research does not fall under the federal regulations.

If research with a deceased individual extends to include information obtained about living individuals (e.g. grieving process of relatives, medical history of other family members) then this research is subject to IRB review since interaction with living individuals is now occurring.

UNMHSC research requesting to use decedent data or specimens may also require review by the Scientific Review Committee of the Human Tissue Repository. See section "*Types of Decedent Research and Requirements*" section below for further clarification.

Research using Decedent's Tissue(s)

HRRC will review all requests for research using autopsy specimens and provide the principal investigator with written documentation for their research file. Generally, these proposals do involve *research*, but do not involve *human subjects*. Therefore, it is recommended that the PI obtains and maintains HRRC documentation stating that the research "Does not Apply"

Research using Decedent's Protected Health Information (PHI)

The HIPAA Privacy Rule applies to research on all human subjects, living (or deceased), regardless of whether the research is supported by the federal government, or regulated by the Food and Drug Administration (FDA). The HRRC, which also serves as the HIPAA Privacy Board for UNMHSC research, must review requests to use decedent's Protected Health Information (PHI). In order to complete their review, HRRC must obtain from the researcher a written request on the [Research on Decedents PHI Form](#).

Some decedent health information is not deemed to be "Protected" Health Information and is considered public information. For more information on what is deemed public information please see the [OMI website](#) regarding this topic.

Informed Consent for Decedent Research

At UNM, autopsies are performed with consent from the decedent's next-of-kin for natural deaths attended by University physicians (either in or out of the hospital). Additionally, autopsies are performed under the state statutory authority of the Office of the Medical Investigator (OMI) on deaths that fall under their jurisdictions. Both of these types of autopsies are performed by forensic pathology faculty at OMI. In these cases, the electronic records, tissue blocks, and microscopic slides are available at OMI.

The standard UNMH autopsy consent form for attended deaths allows attending physicians to prospectively request to use autopsy tissues for research. Please refer to the [OMI website](#) for more information.

To prospectively obtain research tissues that are not routinely obtained during OMI statutory autopsies requires the consent of the deceased's next of kin. An interactive OMI consent

template for research should be used to obtain this consent. Please refer to the [OMI website](#) for more information.

Types of Decedent Research and Requirements

For submission requirements, see criteria below that apply to your proposal:

- 1. My research involves talking to the next of kin to obtain information about themselves or their living family member(s).**
 - a. Requires HRRC review and approval of protocol.
 - b. Requires HRRC approval of [HRRC consent](#) form for next-of-kin.
 - c. Requires [OMI review](#) of proposal for scientific merit and impact on OMI function.
- 2. My research involves talking to the next of kin to obtain information about the decedent.**
 - a. No HRRC review or approval of protocol needed.
 - b. Requires [OMI review](#) of proposal for scientific merit and impact on OMI function.
 - c. No consent form necessary.
- 3. My research involves using protected health information (PHI) about the decedent.**
 - a. Requires submission to HRRC of PHI request form.
 - b. Requires [OMI review](#) for scientific merit and impact on OMI function.
 - c. No consent form necessary.
 - d. No HRRC review of protocol necessary.
- 4. My research involves using archived/banked autopsy tissue or tissue ordinarily taken at autopsy.**
 - a. Requires [OMI review](#) for impact on OMI function.
 - b. Requires scientific review by the [Scientific Review Committee of the Human Tissue Repository](#).
 - c. No HRRC review of protocol necessary.
 - d. No consent form required
- 5. My research involves extra tissue that will be prospectively collected and used specifically for research.**
 - a. Next-of-kin [consent](#) required for tissue use.
 - b. No HRRC review of protocol required.
 - c. Requires [OMI review](#) for impact on OMI function.
 - d. Requires scientific review by the [Scientific Review Committee of the Human Tissue Repository](#).
- 6. My research involves the use of data that is not protected health information (e.g., epidemiologic studies).**
 - a. No HRRC review of protocol required.
 - b. No next-of-kin consent required.
 - c. Requires [OMI review](#) for scientific merit and impact on OMI function.
- 7. My research does not fall under any of these categories.**
 - a. Contact [HRRC](#) and [OMI](#).

Section 7: Informed Consent Requirements (Updated 11/17/10)

7.1 The Process of Informed Consent and its Exceptions.

Informed consent is an ongoing process during which information is presented to an individual to enable them to voluntarily decide whether or not to participate in or continue participation in a research study. Informed consent for research involves presenting the research information (the categories of which are required by the federal regulations) orally obtaining written consent on an HRRC approved consent form prior to entering a subject into a study and documenting the consent process in the subjects' medical record or research file.

The HRRCs may waive the requirement for both obtaining informed consent (Sections 7.5.4 and 7.5.5) and for documenting consent (Section 7.5.3) under certain circumstances. However, unless an investigator has obtained approval for other than the standard, written informed consent from the HRRC, the investigator may not alter the method by obtaining consent in any other way, including over the telephone. FDA does not recognize "telephone consent," with a consent form signed after entry of the subject, as legally sufficient informed consent. (FDA does permit emergency treatment without informed consent, Section 9.2, but the patient may not be included in any report of prospectively conceived research activity.)

Investigators should keep in mind that informed consent is an ongoing process. Thus, where an investigator obtains new information that may impact the subject's continued willingness to participate in the research (e.g., new information about the drug, adverse events, and alternative new treatments), this information should be provided to the subjects, after review and approval by the HRRC. Investigator should also refer to the "[HSC Clinical Research Working Guidelines on Obtaining and Documenting Consent](#)" located on the HRRC web site.

7.2 Presentation

In presenting research information and obtaining informed consent, investigators should consider:

1. The consent form document does not replace the verbal presentation provided where the participant has the opportunity to ask questions
2. The potential subject's physical and mental state when choosing an appropriate time to present the research information.
3. The consenting process should occur over a period of time (which may include days or weeks) to allow time for the individual to consider whether to participate and to discuss the research with his/her family.
4. It is best to present the research information separately from standard clinical or hospital information, and emphasize the difference between the conduct of the research and regular patient care. A copy of the consent form should be provided to the participant to take home.
5. The Principal Investigator and a member of the study team are to be available to answer any questions or concerns the participant may have during the decision process.
6. If a treatment study, a family member or person involved in the care of the participant should be encouraged to participate in the consenting process.

7. Where particularly complex issues are discussed, an investigator might consider testing the subjects understanding of the information by asking questions about the presentation.
8. The Investigator and/or research staff conducting the consent process should ask the subject if they have been given adequate time to make a decision and if the consent is written in a language they can understand.
9. The investigator and/or research staff must minimize the possibility of coercion or undue influence, while providing information about the research and during the consenting process.

Once the participant has agreed to participate, the subject reads the consent form (or it is read to him or her) then signs and dates it. The research member involved in the consent process and present at time of signature must also sign and date the consent form.

Any new information that may impact the subject's continued willingness to participate in the research will require the information be presented to the participant and often requires the participant to sign a revised consent form. This can only occur after HRRC approval of new information.

10. The HRRC may choose to have representatives observe the informed consent process in response to concerns about study risks, the conduct of the study, about alleged non-compliance or as part of the Clinical Research Quality Improvement Monitoring Program.

For VA-sponsored research:

If someone other than the investigator conducts the interview and obtains consent, policies and procedures have the investigator formally delegate this responsibility and the person so delegated to have received appropriate training to perform this activity.

Consent will be documented through the use of the VA consent form.

IRB approval of the wording of the consent document is documented through the use of a stamp on each page of the VA consent form that indicates the date of the most recent IRB approval of the document.

Any time the consent document is amended, the amendment approval date is used on the consent document as the new approval date.

7.3 Content Requirements for Consent Forms

Consent forms must be understandable by potential subjects. Understanding is facilitated by translating technical language into lay language at about a fifth grade level. There are programs available that will assist in translating technical consent form information into lay language. In addition, glossaries are available from a number of web sites and publications. Please contact the HRRC Support Office for more information.

The regulatory requirements are discussed below, but are set forth in a simple to follow and [Sample Consent Form](#) . Following this sample will ensure that all consent forms

(including those generated by sponsors) address the required elements for informed consent.

1. **Purpose of Study** - 45 C.F.R. 46.116(a)(1); 21 C.F.R. 50.25(a)(1) - This section requires a clear and accurate statement that the study is research, and an explanation regarding the purposes of the research. To allow subjects to make an informed decision whether to participate, this section should clearly explain if a study is a pilot study or a phase I drug study, informing the subject that he or she will be the first to participate in the treatment, intervention, or process. This section also explains the approximate number of subjects for drug and device studies. This section also identifies any drugs/devices/or procedures that are experimental. If the research involves a drug or device being studied under an IND or IDE, the consent document should identify the item as being investigational.
2. **Procedures** - 45 C.F.R. 46.116(a)(1); 21 C.F.R. 50.25(a)(1) - This section fully describes procedures that will be used, preferably in order of their occurrence, identifying all experimental procedures, and the approximate duration for each procedure or activity. For instance, a survey study may explain that the subject will be asked to answer x number of questions about topic, which should take about x minutes to complete. Each type of study's procedures are described, e.g., a genetic testing study would describe whether samples will be linked, who will have access to information and codes, whether samples may be used for a secondary research use and/or commercial development, and if so, whether subjects will be re-contacted, among other things. This section also addresses the expected duration of the subject's participation.
3. **Potential Risks or Discomforts** Potential Risks or Discomforts - 45 C.F.R. 46.116(a)(2); 21 C.F.R. 50.25(a)(2) - In this section, the investigator must clearly explain any risks or discomforts which are reasonably foreseeable. The investigator should explain, in lay language, the statistical probability of risk occurrence, risk prevention measures, reversibility, and treatment, as known. In behavioral research, investigators should consider such risks as stress, embarrassment, breach of confidentiality, etc. Thus, a study that may elicit sensitive information, or information that may stigmatize a subject or a group, could present significant risks. In fact, genetic research, particularly where disease information that may be elicited is not already known, would generally not be considered to be minimal risk, even if the only physical procedure involved was a blood draw. If the research involves investigational drugs or devices, or if the research involves procedures where the risk profile is not well known, then the consent document should disclose that the particular treatment or procedure may involve risks to the subject that are currently unforeseeable. If the research involves procedures where the effects on the embryo or fetus are not well known and the research includes women of child bearing potential, then the consent document should disclose that if the subject became pregnant, that the particular treatment or procedure may involve risks to the embryo or fetus that are currently unforeseeable, and any required pregnancy prevention measures should be discussed. There may also be known risks to a fetus or embryo should pregnancy occur; if this is the case, state the potential risks. (The consent document should also disclose any unknown or possible risk if a male study participant were to impregnate a female partner, and any required pregnancy prevention measures. For details on contacting a partner who becomes pregnant by a research subject to follow the outcome of the pregnancy and delivery of the infant, see section 11.5 Research Involving Partners or Family Members of Study Participants.
4. **Anticipated Benefits** Anticipated Benefits - 45 C.F.R. 46.116(a)(3); 21 C.F.R. 50.25(a)(3) - A subject or society, or both, may benefit from research. If there are any direct benefits to the subject reasonably expected from the research, the consent form

must state them. Direct benefit may be possible treatment of an illness or knowledge of value to the subjects (e.g., the results of a physical examination, an educational test, etc.). The potential benefits should not be overstated or guaranteed.

For example:

"Based on the experience with this drug in [patients with a similar disorder, animals, etc.] Researchers believe the drug may be of benefit to subjects with your condition [or as good as current standard therapy with less side effects]. But, people respond differently to therapy, so no one can know in advance whether this will be helpful to you in your case"

If there are no benefits to the participant that are expected, this section must state so. This section should also explain the potential benefits to society, for example, the advancement of knowledge, improved safety, or the potential health benefits to others.

All research should have some potential benefit for society; if it is not intended to provide any useful information, it should not be conducted. An example of a statement regarding expected benefits where no benefit to the subject is expected is as follows:

"You should not expect to benefit directly from this research. However, your participation in this research may lead to information that could help individuals who are suffering from x disease if it identifies a new and better way to treat such people."

Note: Payment for participation is not a benefit of the research and must not be listed as a benefit.

5. **Alternatives to Participation** Alternatives to Participation - 45 C.F.R. 46.116(a)(4); 21 C.F.R. 50.25(a)(4) - In this section, the investigator must state any available alternative procedures or course of treatment that might be advantageous to the subject. Alternatives might be no treatment at all, or watchful waiting. When appropriate, the relative risks and benefits of the therapeutic intervention compared to the research should be stated. Where a medical protocol is not therapeutic, the form should explain that because the research is not therapeutic, the only alternative is not to participate in the research.
6. **Confidentiality of Records** - 45 C.F.R. 46.116(a)(5); 21 C.F.R. 50.25(a)(5) - This section must explain the extent to which information obtained in connection with the research and that could identify the subject will remain confidential and will not be disclosed without the subject's permission. Consent forms should generally refrain from broadly stating that records will be kept confidential, because a number of agencies or people may have access to the records. For example, the sponsor will have access to the information. In the case of FDA regulated research (research that involves any food, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additive, drug for human use, medical device for human use, biological product for human use, or electronic products, or research whose data may be submitted to the FDA or held for inspection by the FDA), the consent document should disclose specifically that the FDA might inspect the records. In addition, the HRRCs, OHRP, or even other physicians and nurses, where emergency care must be given to a subject, may have access to the information. Also, the investigator or others may use the records to publish articles. While the subject will not be identified, the information in the records will be used, so the information is not kept strictly confidential. Further, research records may be subpoenaed in a court of law (where a research study involves sensitive topics, researchers should consider applying for a Certificate of Confidentiality (Section 6.1.3)). Thus, these and other limits on confidentiality, including the State of New Mexico requirement for reporting of suspected child abuse or neglect (Section 32A-4-3 NMSA 1978), adult abuse or neglect (Section 27-7-1 et seq. NMSA 1978), resident abuse and neglect (Section 30-27-1 et seq. NMSA 1978), reportable communicable and infectious diseases including HIV/AIDS, sexually transmitted diseases and tuberculosis and nontuberculous mycobacterial infections must be clearly explained in the consent form, as applicable. Likewise, the

consent form must include (when applicable) such reportable events as certain wounds, health conditions related to environmental exposures and certain occupational injuries, adverse vaccine reactions, cancer, and birth defects. For example:

"Participation in research will involve a loss of privacy, but information about you will be handled as confidentially as possible. Representatives of ABC Company [funding agency], the University of New Mexico Health Sciences Human Research Review Committee that oversees human research and the Food and Drug Administration [where applicable] will be permitted access to your records. Further, because this study involves questions regarding child abuse, you should be aware that New Mexico law requires anyone learning of suspected abuse or neglect to report it to authorities. Also, your participation in the study and information in your study records may be disclosed to your doctors and nurses, and may be disclosed as otherwise provided by law. Your name will not be used in any published reports about this study."

Note: Where a research study involves sensitive topics, researchers should consider applying for a **Certificate of Confidentiality** (Section 6.1.3). (These certificates should not be used to attempt to avoid reporting of suspected abuse or neglect, however.)

7. **Payment for Participation** - This section should describe (how much and when) any payments to be made to subjects. It is appropriate for reimbursement to cover the costs of parking fees, travel, lost time from work, child care, etc. However, the nature, amount and method of payment or other compensation must not constitute undue inducement to subjects participating in the research. For this reason, payments should not be unnecessarily large and should be prorated, in accordance with FDA guidelines, so as not to coerce a subject into completing a study from which he or she wishes to withdraw.
8. **Financial Obligation** Financial Obligation - This section should state all financial obligations the subject may incur as a result of participation in the research study, including any hospital charges, laboratory or pharmacy fees, etc. It should indicate whether the study drug or device is being provided free of charge. Subjects should be told whether they and/or their insurance company will be billed for any of their treatment. They should also be told that most health plans, insurance companies, and HMOs do not do not cover experimental treatments, and whether they will be responsible for those costs. For VAMC research, disclose that a veteran-participant will not be required to pay for care, except for applicable copayments for medical care and services not rendered as part of the VA-approved study.
9. **Emergency Care and Compensation for Injury** - 45 C.F.R. 46.116(a)(6); 21 C.F.R. 50.25(a)(6) - For studies that are greater than minimal risk, subjects must be told whether any compensation and/or medical treatment is available if injury should occur as a result of the research; the extent and nature of the compensation should be explained. Please do not include this if your research is only minimal risk (e.g. non-sensitive survey research).

The following language **is required** for studies conducted at the UNMHSC:

"If you are injured as a result of this study, the University of New Mexico Health Sciences Center will provide you with emergency treatment at usual charge. No commitment is made by the UNMHSC to provide free medical care or money for injuries to participants in this study. [**Use with drug/device sponsor:** The Sponsor of the study may cover the costs of required medical care due to use of the study drug in some cases.] If you have any questions about these issues, or believe that you have been treated carelessly in the study, please contact the Human Research Review Committee at the University of New Mexico Health Sciences Center, Albuquerque, New Mexico 87131, (505) 272-1129 for more information."

Sponsors will frequently agree to pay for injuries or adverse events arising out of research studies. Investigators should be familiar with the terms of the agreement so

that they can discuss this with the prospective subject, and include the proper information in the consent form as appropriate. For VA research, disclosure that in the event of research-related injury the VA has to provide necessary medical treatment to a participant injury by participation and that all regulations pertaining to the participation of veterans as participants, including requirements for indemnification in case of research-related injury, apply to non-veteran participants enrolled in VA-approved research.

10. **Contact Information** - 45 C.F.R. 46.116(a)(7); 21 C.F.R. 50.25(a)(7) - Investigators are required to provide names and numbers of persons to contact if the subject has questions regarding the research during working hours, and the name of the principal investigator and number to call for after hours emergencies or research-related injuries. In addition, questions regarding a subject's legal rights, and research related injuries, should be directed to UNMHSC Human Research Review Committee at (505) 272-1129.
11. **Participation and Withdrawal** - 45 C.F.R. 46.116(a)(8); 21 C.F.R. 50.25(a)(7) - This section must indicate that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and that the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled. Whenever there are potential medical or health consequences of a subject's decision to withdraw this should be disclosed in the consent document (Example: If a subject chose to stop taking an experimental antihypertensive drug, he/she might be at an increased risk for a "cardiovascular event" if another medication isn't taken in its place). In addition, where applicable, the consent form should also state any anticipated circumstances under which the subject's participation may be terminated without regard to the subject's wishes, for example, for adverse reactions, if the investigator feels that it is in the best interest of the subject, if the sponsor decides to stop the study, or for the subject's non-adherence to protocol instructions. Further, if a subject will need to continue in some form of treatment due to entry into the study that should be explained to the subject as well. Lastly, this section should describe the procedures for subjects' orderly termination if they decide to withdraw or are withdrawn by the sponsor/investigator.

An example of a statement follows:

"Your participation in this research is strictly voluntary. You have the right to choose not to participate or to withdraw your participation at any point in this study without prejudice to your future health care or other services to which you are otherwise entitled. [where appropriate: "Although you are free to decide to stop participating in the research at any time, because you are entering into a study of x, you will need follow-up treatment consisting of x.] [where appropriate: "The investigator may decide to withdraw you from this research activity without your consent if he feels that your continued participation places you at too much risk (describe)."] "The sponsor may also withdraw your participation or stop the study at anytime."

Withdrawal and Data Retention for FDA regulated research: As per FDA Guidance for Sponsors, Clinical Investigators, and IRBs "Data Retention when subjects withdraw from FDA-Regulated Clinical Trials"

The IRB determines the following regarding data retention when subjects withdraw from a clinical trial:

When a subject withdraws from a study, the data collected on the subject to the point of withdrawal remains part of the study database and may not be removed in order to maintain study validity, and maintain important safety information. The consent document cannot give the subject the option of having data removed.

An investigator may ask a subject who is withdrawing whether the subject wishes to provide continued follow-up and further data collection subsequent to their withdrawal from the interventional portion of the study. Under this circumstance, the discussion with the subject would distinguish between study-related interventions and continued follow-up of associated clinical outcome information, such as medical course or laboratory results obtained through noninvasive chart review, and address the maintenance of privacy **of the subject** and confidentiality of the subject's information.

If a subject withdraws from the interventional portion of the study, but agrees to continued follow-up of associated clinical outcome information, the investigator must obtain the subject's informed consent for this limited participation in the study (assuming such a situation was not described in the original informed consent form). IRB approval of informed consent documents would be required.

If a subject withdraws from the interventional portion of a study and does not consent to continued follow-up of associated clinical outcome information, the investigator must not access the subject's medical record or other confidential records for purposes related to the study that requiring the subject's consent. However, an investigator may review study data related to the subject collected prior to the subject's withdrawal from the study, and may consult public records, such as those establishing survival status.

12. **New Findings** - 45 C.F.R. 46.116(b)(5); 21 C.F.R. 50.25(b)(4) - Federal regulations require that if new information--such as a change in the risk/benefit ratio, new alternatives to participating to the research, or new and significant adverse events--develops during the course of the study, the subject will be informed so that he or she may consider whether to continue to participate in the study. In this section, the investigator should inform the subject of this.
"You will be informed of any significant new findings that become available during the course of the study, such as changes in the risks or benefits resulting from participation in the research or new alternatives to participation that might change your mind about participating."
Should new information develop, the investigator should bring it, and the revised consent form, to the HRRC for review and approval.

13. **Disclosure of Possible Benefits to Investigator**- Any possible financial benefits that might accrue to the investigator should be disclosed in the consent form. For instance, the California Supreme Court held that where an investigator was involved in commercialization activities regarding a subject's tissue, it was a breach of fiduciary duty and lack of informed consent to fail to inform the subject of this prior to entering him into the research. See *Moore v. Regents of University of California*, 271 Cal. Rptr. 146 (Cal. 1990)

14. **Closing Paragraph** -
SIGNATURE OF RESEARCH SUBJECT OR LEGAL REPRESENTATIVE
Required Statement:

"You will be given a copy of this consent form to keep. By signing this consent form, you are not waiving any of your legal rights, claims, or remedies. If you have questions

about your legal rights as a research subject, you may call the UNMHSC Human Research Review Committee at 272-1129."

"You have read (or someone has read to you) the information in this consent form. You have had an opportunity to ask questions and all questions have been answered to your satisfaction. By signing this consent form, you willingly agree to participate in this study."

1. Name of Subject
2. Name of Legal Representative (this line should be omitted unless the IRB has approved the inclusion of adults unable to consent as subjects)
3. Name of Parent or Guardian (this line should be omitted unless the IRB has approved the inclusion of children as subjects)
4. Signature and date of Subject (or Legal Representative *The Legal Representative should be omitted unless the IRB has approved the inclusion of adults unable to consent as subjects)
5. Signature and date of Parent or Guardian Date (same as subject's assent)
6. Signature and date of Investigator or Team Member
7. For VA research, name, signature and date of witness whose role is to witness the subject's (or legal representative's) signature.

Note: If the HRRC or sponsor requires a witness to the consenting process in addition to the witness to the participants signature, a note to that effect must be placed under the witness's signature line.

"I have explained the research to the subject or his/her legal representative [and to his or her parent or guardian, where applicable], and answered all of his/her questions. I believe that he/she understands the information described in this document and freely consents to participate."

Name of Investigator [or member of team]

Signature of Investigator and Date (same as subject's)

A copy of the signed and dated consent document should be given to the person signing the consent document.

15. Upon approval of the research study and consent, the HRPO will date stamp the consent document. Investigators should only use the current, approved consent documents.

7.4 Who May Provide Informed Consent?

7.4.1 Adults and Emancipated Minors

In New Mexico, adults and emancipated minors are considered legally competent to make healthcare decisions, including to provide informed consent for participation in human research.

1. In New Mexico, an "emancipated minor" means a person under the age of 18
 - a. who is or ever has been married even if the marriage was annulled;
 - b. is currently on active duty in military service of the United States of America; or

- c. is age 16 or 17 and has been emancipated by Court Order and the Order does not exclude the emancipated minor's authority to make health care decisions for himself or herself.
2. A minor emancipated pursuant to New Mexico law does not meet the definition of "Children" as defined in federal regulations governing human research at 45 C.F.R. 46.402(a), unless a court-ordered emancipation prohibits the emancipated minor from making health care decisions for himself or herself. In every case, once an emancipated minor attains the age of 18, the individual is an adult.
3. An emancipated minor is authorized to consent to his or her own medical treatment, and by parallel application, to research.
4. A minor is not emancipated by pregnancy, living apart from their parent or legal guardian even if living with another adult or living with another person in a marriage-like relationship. Thus, such a minor cannot consent to health care treatment or associated research unless the treatment falls within one of the limited exceptions under New Mexico law.

7.4.2 Assessing a Subject's Capacity to Consent and use of a Legally Authorized Representative (LAR)

The *OHRP Guidebook* provides guidance on the issue of consent for cognitively impaired individuals or people with psychiatric disorders. Such individuals may or may not be able to provide legal informed consent. "The general rule is that all adults, regardless of diagnosis, should be presumed competent to consent unless there is evidence of serious mental disability that would impair reasoning or judgment.... There should be specific evidence of an individual's incapacity to understand and to make a choice before they are deemed unable to consent."

Adults and emancipated minors who lack competence or decisional capacity:

1. Adults or emancipated minors, who are determined by a court to lack competence, or by two health care providers to lack decisional capacity for health care decisions, are entitled to have health care decisions made for them by a legally authorized representative ("LAR"). However, research involving persons who lack competence or decisional capacity should be limited to research involving minimal risk or the research-associated treatment should be expected to provide some benefit to the impaired person.
2. In New Mexico, a LAR is a person's agent for health care decisions appointed when they were competent or had decisional capacity in a document such as a durable power of attorney or orally stated to the person's health care provider who makes notation of such a direction in the person's records, by a court-ordered guardian with powers to make health care decisions, or by a health care decision-maker, referred to as a "surrogate" in the law, according to the priority classes in descending order of priority as set forth in the New Mexico Uniform Healthcare Decisions Act, Section 24-7A-5, NMSA 1978 (2000). The agent, guardian or surrogate decision-maker as defined in the Uniform Healthcare Decisions Act meets federal regulations for a legally authorized representative. The statutory classes for surrogate decision-makers, in descending order of priority, are :
 - a. the spouse, unless legally separated or unless there is a pending petition for annulment, divorce, dissolution of marriage or legal separation;
 - b. an individual in a long-term relationship of indefinite duration with the patient in which the individual has demonstrated an actual commitment to the subject

- similar to the commitment of a spouse and in which the individual and the subject consider themselves to be responsible for each other's well-being;
- c. an adult child;
 - d. a parent;
 - e. an adult brother or sister; or
 - f. a grandparent; or if none of the above are available, then
 - g. an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values and who is reasonably available so long as this person is not an owner, operator or employee of a health-care institution at which the subject is receiving medical care unless the subject is related to this adult by blood, marriage or adoption.
3. When treatment with psychotropic medications is required for an adult or emancipated minor who lacks decisional capacity or competence, informed consent must be obtained from the individual's court-appointed mental health treatment guardian, Mental Health Code, NMSA 1978 Sections 43-1-1, et seq. (1977, as amended through 1999), or the court-appointed a legal guardian authorized with such powers.
 4. An adult's lack of "competence" is almost always a permanent, progressive condition. On the other hand, lack of decisional capacity is often a temporary condition due to reversible medical conditions. However, if it appears that a person's lack of decisional capacity is permanent and or progressive, it is advisable for a plenary guardian to be appointed under the New Mexico's Uniform Probate Code, NMSA 1978 § 45-5-301 through 45-5-315 (as amended through 2003), in order to make decisions on behalf of the person in all areas of life or as may be limited by the court-issued letters of guardianship. If the person's family lacks resources to file a petition for guardianship or the provider believes there is no family member available or appropriate to serve as a guardian for the person, then the Adult Protective Services Division of the Children, Youth & Families Department should be contacted.
 5. When human research is conducted at a VAMC facility, a patient who lacks decisional capacity or competence may be enrolled as a subject in research when informed consent is provided by the subjects legally authorized representative. "Legally authorized representative" means an individual or body authorized under applicable law to provide permission on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research. For the purposes of this Handbook, a legally authorized representative includes not only a person appointed as a health care agent under a Durable Power of Attorney for Health Care (DPAHC), a court appointed guardian of the person, but also a next-of-kin in the following order of priority unless otherwise specified by applicable state law: spouse, adult child (18 years of age or older), parent, adult sibling (18 years of age or older), grandparent, or adult grandchild (18 years of age or older.)
 6. When human research is conducted outside of New Mexico, consultation with the UNM Office of University Counsel will be required in order to determine who under applicable law is authorized to consent on behalf of another person to enroll in a research study. Documentation of this consultation should be provided to the HRRC for review.

7.4.3 Differences and similarities between the LAR as defined by VA human research subject regulations and New Mexico law.

1. An LAR as defined under the VHA Handbook 12000.5, HA Handbook 12000.5, Requirements for the Protection of Human Subjects in Research, and an LAR pursuant to the New Mexico Uniform Healthcare Decisions Act are consistent with each other, with one significant and several insignificant differences. The most significant differences between the New Mexico law and the regulations governing research at a VA

facility is that the VA regulations do not include "an individual in a long-term relationship" with the subject among the priority classes and that there is not a provision for an emancipated minor to be treated as an adult for health care decisions. Thus, the VA requirements do not allow decisions to be made on behalf of a vulnerable adult by another co-habiting adult who is not legally married to the patient. (Individuals who are married at common law according to the laws of a particular state in which they resided at the time they declared themselves married are considered legally married in New Mexico.) With regard to an "emancipated minor," however, the VA regulations would recognize a spouse of any age to make decisions for a patient lacking decisional capacity or competence. Also, although the VA regulations include an adult grandchild among the priority classes and New Mexico law does not, this difference is insignificant in effect. An adult grandchild would be included as a LAR if no other member of a higher priority class is reasonably available, an adult grandchild would have priority over a non-related member of class (g).

2. The New Mexico Uniform Healthcare Decisions Act also provides that health care decisions may be made by an agent appointed by the adult or emancipated minor when the patient had capacity or competence or by a court-appointed guardian whose powers include health care decision-making. The document is ordinarily referred to as a durable power of attorney. Agency through a durable power of attorney for health care decisions is also recognized by the VA regulations.
3. In all cases except where the individual has a court-appointed guardian with health care decision-making powers, the individual must have been determined to lack decisional capacity. Under New Mexico law, the subject may object to the determination that he or she lacks decisional capacity and to the proposed surrogate decision-maker. If the subject objects, the law provides that the district court has jurisdiction to make health care decisions or to appoint a health care decision-maker over the objections of the individual.

7.4.4 Children

"Children" are defined 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." 45 C.F.R. 46.202(a). See section 6.2.1 regarding review of research involving "minors" and "children."

Children may not be enrolled in research without the "**permission**" (agreement under standard consent provisions, Section 7.3) of a parent or guardian (and of both parents for research of greater than minimal risk, with no prospect of direct benefit to individual subjects, see Section 6.2.1). The HRRCs are often asked who qualifies to provide consent for a child. As noted, the federal regulations require that the person be either the parent or the guardian. A "**guardian**" is a person "who is authorized under applicable State or local law to consent on behalf of a child to general medical care." 45 C.F.R. 46.402(e). Under New Mexico law, a person appointed through the court system as a child's legal guardian may consent to inclusion of the child in research. To enroll the child, guardianship papers should be presented. There may be other legal mechanisms of granting permission to a person other than the parent to consent to health care that may suffice as well (such as a health care power of attorney). When research is conducted outside of New Mexico or where there is any question whether a particular person is permitted under applicable law to consent to the inclusion of the child, the Human Research Protections office will obtain consultation from the UNM Office of the University Counsel.

In addition to parental/guardian permission, investigators are required to obtain the "assent" of the child. Assent is "a child's affirmative agreement to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent." 45 C.F.R. Section 46.402(b). The HRRCs generally require assent to be obtained from all children age 7 and older, unless the nature of the research dictates otherwise (for example, research on brain injured children). The investigator should use a separate simple assent form (in language appropriate for a child).

7.5 Modification (including Waivers) of Informed Consent

7.5.1 No Deviation from Written Informed Consent in Research without HRRC Approval

The general rule is that to involve a subject in research, the investigator must obtain documentation of informed consent, as provided in Section 7.3. In some cases, however, the HRRC's are permitted to waive the requirement that a consent form be signed. In those instances, the consent is obtained orally. In other situations, the HRRCs may waive particular elements of informed consent or waive the requirement for informed consent entirely. Unless these modifications are approved by the HRRC in writing, they may not be used.

7.5.2 Short Form Informed Consent

Federal regulations recognize a "short form" of the documentation of informed consent. 45 C.F.R. 46.117(b)(2); 21 C.F.R. 50.27(b)(2). The short form process does not alter any of the elements of informed consent required to be given to a subject. Rather, it merely allows the elements to be provided to the subject orally, along with a written summary. The "consent form" states only that consent information has been provided (rather than detailing in writing all of the information).

Specifically, the short form process consists of 1) a written summary of what will be presented to the subject; 2) a written "short form" which states that the elements of Section 7.3 have been presented; and 3) an oral explanation of the summary information in front of a witness, who must be conversant in both English and the language of the subject. Both the summary and the short form must be approved by the HRRC and signed by the witness. The person obtaining consent (i.e. the investigator) must sign and date the summary only. The subject (or legally authorized representative) signs and dates only the short form consent.

Copies of the written summary of the information, and of the short form documenting the consent are given to the subject or the subject's legally authorized representative. Note that the Albuquerque VA Medical Center does not allow use of the short form consent. If non-English speakers are being enrolled in VA research, informed consent documents must be translated into the language of the participant and be approved by the HRRC prior to use.

7.5.3 Waiver of Documentation of Informed Consent:

There are two (2) situations either of which may lead the HRRCs to agree that a consent form need not be signed, although informed consent must still be obtained orally: 1) where the only record linking the subject and the research would be the consent form and the

principal risk of harm from the research is a potential breach of confidentiality (such as with sensitive survey or interview research). In this case, the subject is asked whether he/she wants the documentation linking the subject with the research and his/her wishes govern; or 2) where the research presents no more than minimal risk* and involves no procedures for which written consent is normally required outside of the research context. 45 C.F.R. 46.117(c); 21 C.F.R. 56.109(c).

*Minimal risk means that 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 examination or tests. Investigators should be aware that genetic research would not generally be considered to be "minimal risk" research in that social, psychological, and economic risks are also considered.

Under this consent modification, even though a consent form isn't signed and retained, informed consent still must be obtained orally (all the elements of Section 7.3). The HRRC may also require that the investigator provide a written explanation of the study (which the HRRC approves) to the subject.

7.5.4 Waiver or Alteration of Elements of Informed Consent for Minimal Risk Studies

The HRRCs may waive the requirement for informed consent entirely (writing and oral presentation), or waive some of the required elements of informed consent (Section 7.3), if it finds the following criteria are met:

1. The research involves no more than minimal risk to subjects; the waiver will not adversely affect the rights or welfare of the subjects; the research could not practicably be carried out without the waiver or alteration; and whenever appropriate, subjects will be provided with additional pertinent information after participation (45 C.F.R. 46.116(d)); or
2. The research or demonstration project is conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine a) programs under the Social Security Act, or other public benefit or service programs; b) procedures for obtaining benefits or services under those programs; c) possible changes in or alternative to those programs or procedures; or d) possible changes in methods or levels of payment for benefits or services under those programs; and e) the research could not practicably be carried out without the waiver or alteration (45 C.F.R. 46.116(c)).

NOTE: Investigators occasionally suggest that research on biological samples, or using medical record information, automatically qualifies for a waiver of informed consent, citing the lack of physically risky procedures. However, such research does not qualify for an automatic waiver for a number of reasons. First, where any samples or data to be used will be collected prospectively (i.e., after the proposal to the HRRC, even if it will be collected for non-research reasons), it is not likely that the third requirement of paragraph 1, above--which requires that the research not be able to be practicably carried out without the waiver--will be met. The principle of respect for persons requires consent to be obtained where at all feasible. Second, even in retrospective research (where the samples/data already exist), the research may not be "minimal risk" for social, psychological, or other reasons. Risks related to disclosure of information (such as from genetic research) must be considered. Some such research may have significant effects on the subject's psychological

well-being, insurability, etc. In addition, even in retrospective research, the waiver may not be necessary to permit the research to be practicably carried out. That it may be inconvenient for investigators to obtain consent, alone, does not meet this requirement.

NOTE: Studies involving FDA regulated products are not eligible for waiver of informed consent under these provisions. Thus, the use of biological samples for research involving in vitro diagnostic products, for example, are not eligible for consideration of a waiver of informed consent.

7.5.5 FDA/OHRP Waiver of Informed Consent for Research on Emergency Therapies

Both FDA and OHRP permit the HRRCs to approve a research project designed to test new emergency therapies which--due to the critical condition of the patient and the need to administer the therapies within a short amount of time--may necessitate enrolling the subject in the research before a legally authorized representative is available to provide informed consent. 21 C.F.R. 50.24 (FDA); 61 Fed. Reg. 51531 (Oct. 2, 1996) (HHS). These federal waivers, however, require that this type of research be conducted in accordance with state law, as well as meet strict requirements.

New Mexico law does not specifically address the propriety of enrolling subjects into research studies without informed consent. Typically, treating patients without obtaining consent may result in a claim of battery or lack of informed consent. However, because there is no New Mexico law that prohibits the conduct of this research, and the research is only permitted where there is no acceptable alternative treatment and the research holds out the prospect of direct benefit to the subject, we believe that these studies may be conducted at the UNMHSC, provided that all of the protections of the federal regulations are strictly followed. An HRRC approval of a project under this waiver will permit investigators to enroll subjects who are unable to provide consent into their studies.

Among other protections, this regulation/waiver uses a "community consultation" process to obtain the views of the community from which the likely subjects will be drawn, as well as the community in which the research will be conducted, prior to the initiation of research (discussed below). There are strict criteria that must be met for the HRRCs to approve such projects. These criteria are summarized below. If an investigator is interested in pursuing this type of research project, it is recommended that he or she contact the HRRC Support Office for more information before submitting an application.

To approve an acute care informed consent waiver project, an HRRC must find and document (specifically noting the concurrence of a physician unrelated to the study) the following:

1. The administration involves a life-threatening situation; the available treatment is unproven or unsatisfactory; and collecting of valid scientific evidence (which may include randomized placebo-controlled investigations) is necessary to determine safety and effectiveness;
2. Obtaining consent from the subject or his or her legally authorized representative is not feasible because:
 - o Subject's medical condition is such that he or she cannot consent;
 - o Intervention must be administered before it is feasible to obtain consent from the legally authorized representative; and

- There is no reasonable way to identify prospectively subjects likely to become eligible for participation in the research;
3. Participation in the research holds out prospect of direct benefit to subject:
 - Life threatening situation necessitates the intervention;
 - Animal and preclinical studies support the potential direct benefit of intervention for individuals;
 - Risks of the investigation are reasonable in relationship to:
 - What is known about the medical condition;
 - Risks and benefits of standard therapy; and
 - Risks and benefits of proposed intervention
 4. The investigation could not practicably be carried out without the waiver (research would be "practicable" without the waiver of recruitment if consenting subjects only would not bias the science and the research would not be unduly delayed by restricting it to consenting subjects);
 5. The investigator:
 - Has defined the length of the therapeutic window based on scientific evidence;
 - Is committed to attempting to contact and obtain consent from the legally authorized representative within the window rather than proceeding without consent;
 - Will summarize efforts to contact the authorized representative at the time of continuing review;
 - Is committed to contacting within the window the subject's family member and asking if he or she objects (if obtaining consent from the subject or legally authorized representative is not possible); and
 - Will summarize efforts to contact the family member at the time of IRB continuing review;
 6. The HRRC has:
 - Approved the informed consent procedures and documents to be used with the subject or the legally authorized representative; and
 - Approved procedures and information to be used when providing family members the opportunity to object;
 7. There has been acceptable community consultation. Community consultation (including consultation by the HRRC, as appropriate) must occur with the communities from which the subjects will be drawn and in which the research will be conducted before HRRC approval. The purpose of this consultation is to give these communities the opportunity to understand the proposed clinical investigation and its risks and benefits, and to discuss and raise objections to the investigation. The HRRCs must consider this community discussion when reviewing the investigation, and may decide, among other things, that it is appropriate to exclude certain groups from participation, or that wider community consultation is necessary. The HRRCs may consider:
 - Having public meetings in the community to discuss the protocol (some institutions have used church meetings, club meetings, and special meetings, among other things);
 - Establishing a separate panel of members of the community from which the subjects will be drawn;
 - Including consultants to the HRRC from the community from which the subjects will be drawn (this alone would not be sufficient however); and
 - Developing other mechanisms to ensure community involvement and input in the HRRC's decision making process (such as using the media, professional surveyors, etc.).

The HRRCs are responsible for listening to and considering the community's support, concerns, etc., and then ultimately deciding whether the investigation should be modified,

approved, or disapproved. Thus, the community consultation will take place before the HRRC can approve the project. While a sponsor may provide the HRRCs information on community consultation, the HRRCs bear the responsibility for ensuring the adequacy of the community consultation requirements. In addition, the HRRCs have the responsibility for deciding what information should be disclosed to the community (information on risks/benefits, relevant information from the investigational brochure, information on informed consent and on the protocol);

8. There has been public disclosure to the communities prior to initiation of the study including plans for the study, and risks and benefits (may be a multimedia approach, e.g., advertisements, news programs, etc., as well as meetings). FDA states that the type of disclosure will depend upon the size and diversity of the community, and the cohesiveness of those in the community from which the study subjects are likely to be drawn. However, simply placing an advertisement in the paper is not sufficient. Public disclosure need not take place before the HRRC approves the project but must take place before the study begins;
9. There are adequate plans for public disclosure to the community (as well as other researchers) at the completion of the study, including demographics of the study and results of the study;
10. An independent data monitoring committee has been established (generally by the sponsor, comprised of individuals not otherwise connected with the study);
11. Procedures are in place to inform at the earliest opportunity each subject (if competent), legally authorized representative, and/or family member of:
 - o The subject's inclusion in the study;
 - o Details of the study and other information in the informed consent document;
 - o The opportunity to discontinue subject's participation;
12. That FDA (for drugs and devices, including marketed products) has reviewed and approved the proposed waiver project under a separate IND or IDE; and
13. If the research is not subject to FDA regulation, that the HRRC has documented this and notified OHRP that it has approved a waiver of informed consent.

If the HRRC approves a requested waiver, it must provide the sponsor with a copy of the information that has been publicly disclosed prior to initiation and at completion of the study. Sponsors must provide this information to FDA.

The IRB, investigator, and the sponsor must retain records for three (3) years after the clinical investigation is completed and make the records accessible to FDA.

If the HRRC does not approve a requested waiver, it must document its findings, including its reasons for disapproval and provide this promptly to the clinical investigator and the sponsor. Sponsors are required to report a disapproval to FDA and to other clinical investigators involved in and IRBs reviewing a substantially equivalent (or the same) investigation.

NOTE: The waiver is not applicable for VA research and research involving prisoners, fetuses, pregnant women, and human in vitro fertilization, pursuant to HHS requirements.

7.5.6 Waiver of Parental Permission Requirement for Studies Involving Children

In addition to the general provisions permitting waiver in Section 7.5.4, investigators may apply for (and the HRRCs may grant) a waiver of the requirement for parental permission if the research protocol is designed for conditions or for a subject population for which parental or guardian permission is not a reasonable requirement to protect the subjects (for example, neglected or abused children), provided that an appropriate mechanism for protecting the children who will participate as subjects is substituted, and that the waiver is not otherwise inconsistent with federal or state law. 45 C.F.R. 46.408(c). The choice of an appropriate mechanism would depend upon the nature and purpose of the activities described in the protocol, the risk and anticipated benefit to the research subjects, and their age, maturity, status, and condition. In its recommendations that resulted in the regulations, the National Commission for the Protection of Human Subjects Biomedical and Behavioral Research provided two examples of what it thought would be appropriate mechanisms, noting in some instances the consent of a mature minor should be sufficient and in others court approval may be necessary.

NOTE: This waiver does not apply to FDA regulated research.

Section 8: HRRC Monitoring and Investigator Requirements Regarding Research in Progress (Revised 11/19/10)

The HRRC monitors ongoing research through numerous mechanisms including prospective review of changes to the research, review of unanticipated problems, adverse events and safety reports, review of protocol violations/deviations and investigator non-compliance. The HRRC may also choose to observe the consent process and/or audit the research records.

8.1 Amendments in Protocol or Informed Consent, and Application Procedure

The HRRCs review requests for amendments to previously approved projects during their meetings. Investigators are not permitted to implement any amendments without approval by an HRRC except to eliminate apparent immediate hazard to the subjects. 45 C.F.R. 46.103(b) (4); 21 C.F.R. 56.108(a)(4). Such actions must be reported so the HRRC may review them to determine whether the changes were consistent with ensuring participants' continued welfare as well as approve the amendment for the future. These actions must be reported by submitting an amendment/change form and memo (if necessary), proposed consent form, any supporting documents that will assist the HRRC in understanding the revision as well as an event/unanticipated problem reporting form describing the protocol deviation. Investigators should be aware that a change in risks and benefits may require a change in the consent form and re-consenting of subjects. If any revisions or addenda require changes to a consent form, investigators are required to update the version date on the revised consent form, under the HRRC number.

Because only minor changes that do not affect the degree of risk, and that do not raise any other concerns, may be approved by the HRRC through the expedited review procedure, investigators should submit the number of copies required for initial review.

The date of approval of an amendment does not change the date by which the regularly scheduled continuing review of the project is to be completed.

8.1.1 Exploring New Research Questions/Objectives with Existing Research Data

Data already collected for research may be useful in answering new questions that are generated during the course of data analysis. If new/different objectives (use of data) are identified from that which was originally approved, it is required that the newly defined research question(s) be submitted to the HRRC. This can be done by completing an Amendment/Change form and a revised protocol, if appropriate. HRRC review of new research questions is required for several reasons, including assuring 1) that proper informed consent was obtained, 2) that publications will not result in stigmatization of a subject population, and 3) that the research is consistent with the ethical principles of human subject research.

8.2 Required Reporting of Unanticipated Events or Problems

The DHHS and FDA regulations require prompt reporting of unanticipated problems involving risks to subjects or others. However the regulations do not specifically define unanticipated problems involving risks to participants or others.

8.2.1 Events That Require Reporting

The following are examples of unanticipated problems involving risks to subjects or others and therefore require reporting to the HRRC and may require reporting to [Sponsor](#), FDA or OHRP/DHHS.

The investigator should report in writing:

1. Allegations or findings of non-compliance.
2. **Adverse Event** (any increase in risk harm or actual harm experienced by a participant regardless of whether the event was internal or external and regardless of whether the event meets the FDA definition of "serious adverse event"), which in the opinion of the principal investigator are both **unexpected and related to the research**. Adverse events not meeting these criteria do not need to be reported. An Adverse Event is "**unexpected**" when its specificity and severity are not accurately reflected in the informed consent document. An Adverse Event is "**related to the research**" if in the opinion of the principal investigator, it was more likely than not to be caused by the research (or if it is more likely than not that the event affects the rights and welfare of current participants).
3. Information that indicates a change to the risks or potential benefits of the research. For Example:
 - An interim analysis or safety monitoring report indicates that frequency or magnitude of harms or benefits may be different than initially presented to the HRRC.

- A paper is published from another study that shows that the risks or potential benefits of your research may be different than initially presented to the HRRC.
4. A breach of confidentiality (including HIPAA violations and omissions).
 5. Change in FDA labeling or withdrawal from marketing of a drug, device, or biologic used in a research protocol.
 6. Change to the protocol taken without prior HRRC review to eliminate apparent immediate hazard to a research participant.
 7. Incarceration of a participant in a protocol not approved to enroll prisoners (see [HRRC manual section 6.2.2](#) for definition of "Prisoner")
 8. All serious adverse events (SAEs) that require reporting to the sponsor except for those SAEs that the protocol or other document (e.g., investigator's brochure) identifies as not needing immediate reporting.
 9. Unexpected serious adverse drug reactions
 10. Adverse events or laboratory abnormalities identified in the protocol as critical to safety evaluations to the sponsor according to the reporting requirements and within the time periods specified by the sponsor in the protocol.
 11. Sponsor imposed suspension for risk.
 12. Complaint of a participant that indicates unexpected risks, or that cannot be resolved by the research team.
 13. Protocol violation (meaning an accidental or unintentional change to the HRRC approved protocol) that harmed participants or others or that indicates participants or others may be at increased risk of harm.
 14. Unanticipated adverse device effect (any serious adverse effect on health or safety or any life-threatening problem or death caused by, or associated with, a device, if that effect, problem, or death was not previously identified in nature, severity, or degree of incidence, or any other unanticipated serious problem associated with a device that relates to the rights, safety, or welfare of subjects.)
 15. For reported deaths, the investigator supplies the HRPO, sponsor and any other appropriate regulatory entity with any additional requested information (e.g., autopsy reports and terminal medical reports).

Definitions

Harm: The infliction of anything detrimental to one's privacy, rights, comfort, health, property or success resulting in pain, suffering, or loss. Harms may include death and injury or damage to one's psychological, social, economic or legal status. Harms may affect individuals as well as specific population subgroups.

Unanticipated: An event is "unanticipated" when it was unforeseeable at the time of its occurrence. The word unanticipated, is not a synonym for unexpected. A research protocol can monitor for an unexpected event, but cannot monitor for an unanticipated event. All unanticipated events are unexpected, but not vice versa.

Unanticipated Problem Involving Risks to Participants or Others: Any event that (1) is unanticipated, (2) caused harm or placed a person at increased risk of harm, and (3) is related to the research procedures.

8.2.2 Other Reporting Requirements:

- If an event is determined by HRRC to meet the criteria of an unanticipated problem involving risks to subjects or others it will be reported to the appropriate UNMHSC institutional officials, the VAMC research office (when applicable and who will in turn notify the appropriate VA officials), and all appropriate government regulatory agencies.
- When a study is funded by an outside source, investigators must also follow sponsor requirements for the reporting of serious adverse events.
- If the investigator terminates or suspends a clinical trial without prior agreement of the sponsor, the investigator informs the University of New Mexico Health Sciences Center, sponsor, and the HRRC.
- If the IRB terminates or suspends approval of the clinical trial, the investigator promptly notifies the sponsor.
- Upon completion of the research, including a clinical trial, the investigator informs the University of New Mexico Health Sciences Center by completing the Closure form and submitting to the HRPO with a summary of the research outcome.
- If the research involves a drug, biological product or device, any unanticipated problem involving risks to human subjects or others must be reported to the FDA.
- When a UNMHSC/VA principal investigator is the lead medical investigator at the coordinating site for a multi-site trial, then events from all participating sites are to be forwarded to the UNMHSC/VA investigator who is responsible for submission of all "reportable" events to the HRRC.
- For Gene Transfer Research, adverse event reporting requirements must also be in accordance with Appendix M-I-C-4 of the NIH Guidelines for Research Involving Recombinant DNA; Copies of the event must be forwarded to the HRRC and to the local [Institutional Biosafety Committee](#)

8.2.3 Event Report Forms

Reporting a Reportable Event - Events that require reporting to the HRRC (as per section 8.2.1) should be reported using the [Event Form](#). This form must be completely filled out and signed/dated by the principal investigator. A co-investigator may sign in the PI's absence so as not to delay reporting. Supporting documentation should be attached to the event form. A copy of the applicable pages(s) of the current informed consent document should also accompany the event packet.

Reporting a Non-Reportable Event - Investigators must assess all events that occur during the course of the research to determine if they meet reporting criteria (1. Unanticipated, 2. Caused harm or placed a person at increased risk of harm, AND 3. Was more likely than not related to the research). If the three criteria are not met, Investigators should keep a copy of the completed [Tracking Log for Non Reportable Events](#) (attached to supporting documentation in their regulatory binder as part of Good Clinical Practice (GCP). This will provide documentation that all events were assessed and did not meet reporting criteria. If the three criteria are met, then an [Event Form](#) should be completed and submitted to the HRRC.

The HRRC no longer accepts IND safety reports that do not meet all three reporting criteria.

8.2.4 Timeliness of Event Reporting

Investigators must report events to the HRRC **as soon as possible but no later than 5 days from the event date or “site awareness date”**

8.2.5 HRRC Review of Events

All events received by HRRC are reviewed by a Human Protections Specialist (HPS). Those events that meet the criteria of an unanticipated problem involving risks to subjects or others will then be reviewed by an HRRC Chair who will determine whether it must be presented to a fully convened committee. HRRC review of events focuses on whether risks to human subjects may have changed. HRRC also determines if changes to the protocol are required, how research participants' will be informed of a newly identified risk, if the consent document requires revisions, if there is a need to increase safety monitoring of the project, or if the study should be terminated.

8.2.6 Investigator Reporting to Subjects

The HRRC may require that the investigator notify subjects of unanticipated findings or risks. If this is a directive, the PI will be notified in writing. Subject notification may be required to be in the form of a letter sent to all subjects and/or as part of a revised informed consent document to be signed by all current and new subjects.

8.3 Additional Measures to Monitor Active Research Projects

In its discretion, and dependent upon the perceived risk of the research, an HRRC may require more active monitoring of a research project (e.g. by requiring a data monitoring committee to review the research project). Human research conducted in the GCRC requires a Data Safety Monitoring Plan (DSMP). Final DSMPs are submitted by the GCRC to the HRRC for review.

In addition, any research being conducted under an FDA/OHRP waiver of informed consent for acute care research requires the establishment of an independent data monitoring committee. 21 C.F.R. Section 50.24.

8.4 Continuing Review

8.4.1 Required Reapproval of Study no less than Annually, but may be More Frequent

To remain active, all protocols must be reviewed no less than annually. The HRRC may require more frequent reviews if it considers that more oversight is necessary due to the nature of the study, vulnerability of the population, or degree of risk. The investigator will be informed upon approval of when the next review must be obtained, and will be reminded prior to expiration of the approval period. However, it is the investigator's responsibility for ensuring his/her project is reviewed on time.

8.4.2 Investigator Submission of Continuing Review Progress Report

The principal investigator should submit a completed [Progress Report](#) or a [Closure Report](#) no later than **30 days prior** to the expiration date. The purpose of continuing review is to determine the appropriateness of permitting the project to continue, not solely to review any new developments, and therefore the same general criteria set forth in Section 6 are applicable.

To make this determination, the HRRC requires information on, among other things, summaries of adverse events or unanticipated problems involving risks to subjects or others or withdrawals, a current risk-benefit assessment based on study results, and a summary of any changes that may affect the study. To allow for substantive and meaningful continuing review by the HRRC, the PI is required to submit an electronic copy of the current protocol to the HRRC. The protocol should reflect any amendments and changes previously approved by the HRRC. The current protocol and [Progress Report](#) or a [Closure Report](#) from the investigator provides the HRRC with relevant information to determine whether the proposed research continues to fulfill approval criteria. The current protocol should be sent to HRRC@salud.unm.edu. Enter HRRC# in e-mail "subject" line as follows: i.e. "04-001 Smith Expiration Date".

8.4.3 Type of Review

Projects that required full board review generally require full board continuing review unless the projects have changed such they now fall within the categories permitted to be reviewed by expedited review, Section 5.2. Further, if a study is closed to accrual and intervention is completed but for the collection of follow-up data, the study may be reviewed through the expedited review process.

8.4.4 Expiration of Approval Period

When continuing review of research does not occur prior to the end of the approval period specified by the HRRC, HRRC approval expires automatically. Failure to submit progress reports in a timely manner is considered non-compliance (See Section 2.6.) If an investigator has failed to provide a [Progress Report](#) or a [Closure Report](#) to the HRRC or the HRRC has not reviewed and approved a research study by the expiration date specified by the HRRC, the research must stop, unless the HRRC finds that it is in the best interests of subjects to continue participating in the research interventions or interactions. Enrollment of new subjects cannot occur after the expiration of HRRC approval.

If HRRC approval expires the HRRC office will send a "Notice of Study Expiration" to the PI informing the investigator that all research activity must cease as of the date of expiration. The PI must immediately submit to the HRRC Chair, a list of research subjects (using subjects initials only) for whom discontinuation of the research would cause harm and state the specific reason the subject should remain of the study. The HRRC Chair (with appropriate consultation of the VAMC Chief of Staff, if applicable) will determine if the subject(s) may continue in the research.

The PI must request reactivation or closure of an expired study within 10 working days of the "Notice of Expiration". The HRRC must review and approve the reactivation request before the research may resume.

No new study will be accepted for a PI if there is documentation deemed outstanding/pending for any expired study.

8.5 Study Closure and Reporting

To allow for substantive and meaningful review at the closure of a study, investigators are required to submit a [Closure Report](#). This report provides HRRC with updates on the conduct and outcomes of the study, including enrollment numbers, withdrawals, complaints, and any risks that arose which may need to be disclosed to the subjects who had participated.

HRRC approval must be maintained and closure of a study may not occur unless:

- 1) Local enrollment to the study is closed
- 2) All local research related interventions are complete
- 3) All local participant follow-up is complete (including medical record review),
- 4) All data analysis (with identifiable information) is complete.

If study activities are limited to data analysis or manuscript preparation, and the data contains no individually identifiable information, it is no longer considered human subject research, and the study may be closed.

For sponsored studies:

If study activities are limited to data analysis or manuscript preparation and a link to individual identifiers exists, the study may be closed once HRRC approves the investigator's method for protection of confidentiality of the individual identifiers. It may be appropriate to maintain a link to individually identifiable data as well as study participant contact information for safety reasons (i.e. clinical trial using a new drug). If the sponsor feels that it is necessary to maintain this link, justification must be provided and this must be approved by HRRC prior to study closure.

For investigator initiated studies:

If study activities are limited to data analysis or manuscript preparation and a link to individual identifiers exists, the study must maintain HRRC approval until the link to identifiers is destroyed. Documentation of the destruction of identifiers must be clearly explained in the HRRC closure report in order for the closure to be approved.

8.6 Clinical Research Quality Improvement Monitoring Program

The HRRC or Division of Research Protections may select a study for Quality Improvement review based on the risk of study as assessed during initial or continuing review, adverse events/unanticipated problems or other concerns reported to or learned by the HRRC or SOM Office of Research, Division of Research Protections, or as a result of a not for cause selection for review. Such review is conducted in accordance with the *Human Research Quality Improvement Review Procedures*.

Section 9: Use of Drugs and Devices Beyond the Context of "Research"

FDA has recognized circumstances where a drug, device, or biologic may be made available for use in patients with life-threatening or other serious diseases, for which no satisfactory alternative treatments exist.

9.1 Emergency Use

The following requirements apply to the use of an investigational or unapproved drug, biologic, or device in situations in which these products are needed to save the life of a patient or to prevent irreversible morbidity. This does not permit the research use of unapproved products for "emergency research" purposes (e.g., in a trauma-type study), which is governed by the requirements in Section 7.5.5, or the treatment use in serious, but not truly life-threatening situations, which is governed by Section 9.4.

1. **Legal criteria for use.** On occasion, physicians may seek to administer an investigational drug or device to an individual patient on an emergency basis, before formal review and approval of an HRRC can be granted. Typically, the drug or device will be subject to an IND or IDE, but the proposed use falls outside of the FDA approved application (or is to be used by a physician who is not part of the approved study). This use is permitted only in strict accordance with the following legal requirements:
 1. The patient is facing a life-threatening condition (life-threatening includes serious diseases or conditions such as sight-threatening or limb-threatening conditions or other situations involving risk of irreversible morbidity) and no generally acceptable treatment is available;
 2. Because of the immediate need to use the product, there is insufficient time to obtain IRB approval [such use requires FULL, not expedited review];
 3. The use is reported in writing to the IRB within **5 working days**; and
 4. The use is one time only. Any subsequent use is subject to IRB review (requires HRRC approval of a protocol and consent), except under exceptional circumstances. 21C.F.R. 56.102, 56.104.
2. **Obtain prior permission for use.** Prior to administering the investigational product, the physician must contact the HRRC Chair or Executive Chair to inform him or her of the nature of the intended use and to ensure that such individual agrees that the use is appropriate. This review is not considered to be an HRRC "approval", however, since approval would require full HRRC review.
3. **Follow legal requirements for obtaining product.** Follow legal requirements for obtaining product. Emergency use of an investigational drug/biologic requires an IND from FDA. The usual procedure to obtain the drug is to contact the manufacturer to determine if the product can be made available under its IND. If there is no time to submit an IND, FDA may authorize the drug to be shipped to the investigator over the telephone or by FAX (see 21 C.F.R. 312.36). Emergency use of an investigational device does not require prior FDA approval but requires the sponsor to report the use to FDA within 5 working days. The investigator should obtain authorization from the IDE sponsor, if an IDE exists. Investigators should contact the HRRC Support Office for current information on how to legally obtain shipment of the investigational product.
4. **Obtain informed consent.** Obtain informed consent. Informed consent (Section 7.3) from the patient or legal representative must be obtained (but see section 9.2, for emergency waiver of informed consent).

5. **Concurrence of uninvolved physician.** Concurrence of uninvolved physician. For device use, FDA expects that the physician will obtain an independent assessment of the use.
6. **Written notification to HRRC after administration.** After giving the drug/device, the physician must submit a written report to the HRRC including: a description of the emergency, the rationale for the product's use, the source of the drug/device and IND/IDE number, exactly what was given or done (dosage, route, date given, etc.), the outcome, the patient's name and hospital number. The written consent should be attached to the HRRC notification. After giving the drug/device, the physician must submit a written report to the HRRC including: a description of the emergency, the rationale for the product's use, the source of the drug/device and IND/IDE number, exactly what was given or done (dosage, route, date given, etc.), the outcome, the patient's name and hospital number. The written consent should be attached to the HRRC notification.
7. **Written notification to IDE sponsor or FDA.** Written notification to IDE sponsor or FDA. For emergency device use, the physician is also required to notify the IDE sponsor, if one exists, or FDA IDE Staff if there is no IDE, in writing of the summary of the conditions constituting the emergency, patient protection measures that were followed, and patient outcome information.

9.2 Emergency Use Without Informed Consent

Even with emergency use (9.1), the investigator is required to obtain informed consent. However, FDA allows the investigational product to be administered without consent under the following circumstances:

1. The investigator and a physician who is not otherwise participating in the clinical investigation certify in writing all of the following:

- The human subject is confronted by a life-threatening situation necessitating the use of the test article;
- Informed consent cannot be obtained from the subject because of an inability to communicate with, or obtain legally effective consent from, the subject;
- Time is not sufficient to obtain consent from the subject's legal representative;
- There is available no alternative method of approved or generally recognized therapy that provides an equal or greater likelihood of saving the life of the subject; and
- The documentation required will be submitted to the IRB within five working days of using the test article.

If there is not time prior to giving the article to obtain an independent physicians concurrence, the investigator must obtain a review of what he or she did by an independent physician within 5 days of giving or using the article and submit that with the required documentation to the HRRC.

21 C.F.R. 50.23.

2. Obtain prior HRRC permission.

The HRRCs require prior review by the HRRC Chair or Executive Chair of this intended use. The Chair or Executive Chair's review does not constitute HRRC approval however. The

HRRCs require prior review by the HRRC Chair or Executive Chair of this intended use. The Chair or Executive Chair's review does not constitute HRRC approval however.

3. Provide written documentation after use.

The physician must document the information in paragraph 1 above information in writing, and provide it to the HRRC within 5 days of its use.

NOTE: This use should not be confused with the FDA/OHRP informed consent waiver for research designed to evaluate interventions in emergency settings (Section 7.5.5).

9.3 Individual Patient Access to Investigational Products for Serious Conditions

Under the FDA Modernization Act of 1997, a patient--acting through a licensed physician-- may request that a manufacturer or distributor provide the physician with an investigational drug/device for the diagnosis, monitoring, or treatment of a serious disease or condition, but not life-threatening condition, if certain requirements are met: the physician must determine that there is no comparable or satisfactory therapy and the risk from the product is not greater than the probable risk from the disease or condition; FDA must have determined there exists enough evidence of safety and effectiveness for use of the device and that its use will not interfere with clinical investigations in support of marketing approval; and the sponsor or clinical investigator must have submitted a clinical protocol to FDA describing use of the product in a single patient or small group of patients.

FDA has issued guidance on this use with regard to investigational devices. The guidance sets forth the specific criteria that must be submitted to FDA in the IDE supplement to obtain the device for this use. The guidance also requires the using physician to devise an appropriate schedule for monitoring the patient, taking into account the investigational nature of the device and needs of the patient. A follow-up "Compassionate use" report is required to be sent to FDA.

This use (drug and device) requires the investigator to obtain prior FDA approval

The HRRCs will review applications for individual use prior to the initiation of the protocol in accordance with standard review procedures (Section 6). The investigator should ensure that the informed consent document is explicit regarding the use of an investigational drug in a health care setting, and the assessment of the risk/benefit relationships.

9.4 Treatment Use of Investigational Drug/Device

Treatment use allows physicians to treat patients outside of the clinical study, but for the same use that is being studied in the approved IND/IDE. This use is only permitted under a "Treatment IND/IDE@ submitted by the sponsor. See 21 C.F.R. 312.24-25; 21 C.F.R. 812.36. Treatment IND/IDEs facilitate the availability of promising test articles to seriously ill patients (they are only available for serious or immediately life-threatening situations where no comparable/satisfactory treatment exists) as early in the development process as possible, and allow the collection of additional data on the test article's safety and effectiveness. Section 402 of the FDA Modernization Act of 1997 codified expanded access under treatment INDs/IDEs into law.

The HRRC reviews treatment INDs/IDEs in the same manner as any initial research study. Although FDA may waive the requirement for review, under the UNMHSC FWA, these protocols still require HRRC review. As part of the submission, the HRRC will review documentation submitted by the principal investigator showing the sponsor's permission to initiate the treatment use. The investigator should be specific in the consent form about the use of a test article in a health care setting, and the assessment of the risk/benefit relationships. These issues will be taken into account in reviewing the application.

9.5 Humanitarian Use Devices

To encourage the discovery and use of devices to treat rare conditions or diseases--where manufacturers are unlikely to expend resources due to lack of demand--FDA may grant marketing approval for certain devices in the absence of a reasonable assurance of effectiveness that would otherwise be required. Under this rule, FDA will designate a device to be a humanitarian use device ("HUD") if the manufacturer establishes that it is intended to treat or diagnose a disease or condition that affects or is manifested in fewer than 4,000 individuals in the United States. FDA may grant the humanitarian device exemption ("HDE") if, among other things, the applicant submits information to show that there is a reasonable basis from which to conclude that the probable benefit of use of the device outweighs the risk or illness or injury, taking into account the probable risks and benefits of currently available devices and alternative treatments. The HUD device may only be used in a facility having an IRB and under IRB oversight (although the law now allows emergency use of an approved HDE when IRB review cannot be obtained in time, with subsequent reporting to the IRB see Section 9.1).

For a HUD to be considered for use at the UNMHSC or the NMVAHCS, an investigator must submit a completed HUD application. The HRRC is required to approve the use of the HUD in a facility and must grant continuing approval in accordance with the requirements set forth in Section 6.1. The HRRC may approve use of the HUD under a protocol or on a case-by-case basis. In their review, the HRRCs will focus on those criteria that are applicable to the use of a product in a treatment context. The investigator should submit information to the HRRC that will allow it to consider the patient's need for the HUD and the likelihood that the device is appropriate for the patient's condition or disease state. Informed consent as set forth in Section 7.3 is not strictly required, as HUD devices are not considered investigational and their use is not considered to be research. The HRRC will work with the investigator to devise a consent form if needed. Many sponsors provide an information or 'patient labeling' booklet that contains information about the potential risks and benefits of the HUD and any procedures associated with its use. If used, the consent form or information booklet should state that the device is a humanitarian use device and effectiveness for the labeled indication has not been demonstrated.

Section 10: Research Records

10.1 Investigator Records

Record (e.g., consent forms, study-related correspondence, treatment records, records of distribution and use of investigative products, copies of Case Report Forms) retention requirements vary depending upon the nature of a research study, but the general rules are as follows:

1. In no case should treatment-related records be destroyed before ten years.
2. Signed HIPAA Authorizations and documentation of HRRC granted waivers of HIPAA authorization must be retained for 6 years from the date of creation or the date it was last in effect, whichever is later.
3. For drug studies, records must be kept for at least two years following the date of approval of a marketing application for the drug studied, or for two years after the investigation is terminated and FDA is notified of termination. 21 C.F.R. 312.62.
4. For device studies, records must be kept for two years after the latter of 1) the date on which the investigation is terminated or completed, or 2) the date that the records are no longer required for purposes of supporting a premarket application or a notice of completion of a product development protocol. 21 C.F.R. 812.140.
5. For non-FDA studies, records must be kept for at least three years.
6. For VA studies, records must be kept for at least five years after the study closes.
7. Maintain records in a secured place with limited access for the research team, to maintain the confidentiality that has been promised to the subjects, as well as to the sponsors.
8. Before transferring custody of the records or destroying study records, contact the sponsor of the study.
9. Where a subject's participation may affect his or her medical care, a copy of the consent form should also be placed in the subject's medical chart.

10.2 HRRC Records

The HRRC Support Office maintains a study file for each study, containing the following information:

1. application forms,
2. consent documents,
3. research protocol(s) (all versions of the protocol are retained in some format and location),
4. investigator's brochure for test articles,
5. any other approval documents from other committees or agencies,
6. texts of advertisements for subject recruitment,
7. notifications of HRRC decisions,
8. records of continuing review activities,
9. reports on amendments and adverse events,
10. statements on significant new findings,
11. correspondence between HRRC and investigators of the project,
12. closure reports.

The files on a research project will be retained for at least three years after completion of the research and any record related to granting of a waiver of HIPAA authorization will be retained for at least six years from the date of creation or the date it was last in effect, whichever is later.

10.3 HRRC Meeting Records

Agendas and minutes of the HRRC meetings are stored either on the computer or by hard copy and are kept for three years.

10.4 HRRC Member Records

Curricula vitae of active members of the HRRC will be maintained in the files of the HRRC Support Office, and will be updated in content as necessary. Each member's membership term status will be monitored and updated, as necessary (Section 3).

Section 11: Miscellaneous Policies (Updated 08/05/09)

11.1 Tissue or Data Repositories (Databases) for Research

Under current regulations, the creation of a repository or database and the research use or disclosure of identifiable information from a database is considered "research". In most cases, such research will be subject to either individual informed consent (and HIPAA Authorization when appropriate) or waiver of informed consent (and waiver of HIPAA authorization) by the HRRC. An individual may sign a consent form (and HIPAA authorization) allowing his or her information/tissue to be kept in a database for future research, however, any future use of information/tissue from that database for research purposes will require a new application to be submitted and approved by the HRRC and a new protocol-specific informed consent (and HIPAA authorization) or waiver of informed consent (and waiver of HIPAA authorization) by the HRRC. When subsequent research use of data/tissue from a repository is de-identified (absent the 18 specified identifiers according to the HIPAA Privacy Rule), such use is likely to be determined to be exempt by the HRRC. [45 CFR Parts 46, 160 and 164]

If a repository is created or has been created with the intent for future research use, including for recruitment purposes, HRRC approval and continued **oversight of the database** is required. For each repository, a Principal Investigator will be named "Repository Manager." In most cases, the repository will be required to prepare a "repository informed consent document" and accompanying HIPAA Authorization Addendum, which will clarify: the purpose of the repository (i.e. recruitment), who is responsible for it (repository manager), who will oversee it (HRRC), who will have access to the information (study recruiters, if the HRRC approves specific applications requesting access to the repository for recruitment), and the fact that any investigator who wants access to the repository will first have to submit an HRRC proposal for review and approval.

Repository Managers are expected to maintain a consent form and authorization corresponding to every new subject enrolled (unless waivers are granted by the HRRC).

The Repository Manager must collect a copy of the HRRC approval for every investigator who wants access to the repository.

Tissue and Data Repositories

With regard to tissue and data repositories for research use, there are three components that need to be considered:

1. Tissue or Data Collectors
2. Repository Storage and Data Management Center
3. Recipient Investigators

Activity within each of these components must be under an HRRC approved protocol.

Tissue or Data Collectors

This process includes clinicians or researchers collecting and providing tissue and/or data to a repository. Such activities may be an ancillary part of an HRRC approved study conducted by the clinical investigator (i.e. clinical trial with an optional tissue banking component) or may involve a clinician, during the course of clinical care, helping to supply tissue/data to an HRRC approved repository managed by someone else. Likewise a researcher may be collecting tissue and/or data specifically for his or her own repository. All such activities must be conducted under an HRRC approved collection protocol (and an informed consent document when applicable).

Repository Storage and Data Management Center

The maintenance of a repository for current or future research purposes must have HRRC approval and ongoing oversight unless the HRRC has granted an exemption or determined the activity to not meet the definition of "human subject research". The repository must have a protocol specifying the conditions under which data/specimens will be accepted, stored and shared, ensuring adequate provisions are in place to protect the privacy of subjects and maintain the confidentiality of data.

Recipient Investigators

Recipient investigators are those who receive tissue or data from an approved repository for intended research purposes. The recipient investigator must obtain HRRC approval unless the repository from which the tissue/data is being obtained has an approved HRRC protocol for releasing de-identified data/tissue or data/tissue including only a code or otherwise considered a limited data set under HIPAA. The recipient investigator may in such cases be required to sign a usage or data use agreement with the institution.

When individually identifiable information is to be released to a recipient investigator, HRRC approval is required. Such approval is project specific and is not covered by the approval of the repository.

The HRRC oversight process for each of the categories is as follows:

Activity	HRRC Application Required	HRRC Oversight Requirements
<i>Collectors</i>		
Clinicians helping to supply an HRRC approved human tissue repository (collection only with no research intent)	none	Working under an approved collection protocol of an approved Human Tissue Repository (HTR) obtaining informed consent with an approved consent document.
<p>1.) Investigators obtaining tissue for banking as an optional part of a clinical trial and:</p> <p>Are not planning to use the tissue for further research; and</p> <p>2.) Will not be managing the repository in which tissue will be stored</p>	HRRC Expedited Application or Full Committee Application	The HRRC will review the collection protocol and informed consent as part of the review of the clinical trial protocol. No separate Repository Application is needed.
Investigators obtaining tissue/data for an identified research project, who will also maintain individually identifiable information for future unknown research purposes	HRRC Expedited/Full Application for current project & Repository Application if requesting to maintain for future use	At such time that individually identifiable information is being maintained for research purposes, a repository has been created. Maintaining individually identifiable information for any future research purposes must receive approval as a research repository.
<i>Repository Managers</i>		
Investigator maintaining a tissue and/or data repository for research use	Repository Application	HRRC approval and ongoing oversight is required for all repositories containing individually identifiable information. Protocols for specimen/data collection and sharing must be specifically approved by the HRRC.
<i>Recipient Investigators</i>		
Investigator receives only de-identified information from an HRRC approved	none	The repository must have an approved HRRC protocol for releasing de-identified data/tissue. The Human Tissue Scientific

repository		Review Committee (SRC) must review and approve the removal of tissue from the repository.
Investigator receives only a limited data set from an HRRC approved repository	none	The repository must have an approved HRRC protocol for releasing coded data/tissue which is considered a limited data set under HIPAA. A data use agreement between the recipient and repository manager/institution is required. The Human Tissue Scientific Review Committee (SRC) must review and approve the removal of tissue from the repository.

11.2 HRRC Subject Recruitment Guidelines

The HRRC will give consideration to the following basic principles and ethical considerations when determining whether or not recruitment strategies for a given research project are acceptable.

Ethical Considerations

- **Respect for Privacy:** Does the recruitment strategy respect an individual’s reasonable expectations for privacy? Will patients be upset when they learn researchers not involved in their care have read their medical records without permission?
- **Lack of Pressure:** Is the study introduced in a way that allows subjects ample time to consider participation, with no undue pressure because of timing of the request, who makes the request, or how the request is made? Will patients be put in a situation where they may hesitate to say “no” to their own physician? How will pressure be minimized?
- **Unbiased Presentation:** Is all information accurate, balanced and free of misleading emphases that make the study excessively attractive? Is the information as complete as is appropriate for each stage of recruitment?
- **Conflicting Concerns:**
 - Subjects may prefer that someone involved in their care contact them about research, but they may find it hard to say “no” to a care provider.
 - Clinicians may find their clinical judgment in conflict with a desire to enroll patients in their research.

Basic Principles

- **Use of Medical Records:** Access to medical records and identifiable health information by people not directly involved in a patient’s care should be avoided.
- **Use of Protected Health Information:** The amount of identifiable information gathered and the number of people who have access to it must be minimized.
- **First Contact:** Prospective research subjects should be contacted by people directly involved with their care, not by unknown researchers.
- **Exceptions:** Exceptions to these principles may be granted where necessary. The HRRC application must clearly explain why exceptions (waivers) are necessary and investigators must understand that approval is not automatic.

Acceptable Methods of Recruitment

The following methods of recruiting subjects are considered acceptable by the HIRC. Depending on the circumstances, any of these methods may be in compliance with both the federal Common Rule (45 CFR 46) and the federal HIPAA Privacy Rule (45 CFR 164), but there may be ethical and/or practical problems with any of the methods. All methods of recruitment should be clearly explained within the HIRC application.

1. ***Clinics maintain a separate HIRC-approved recruitment protocol/database*** that asks patients if they will agree ahead of time to be contacted for research. This requires a separate submission to the HIRC. See "Future Research Consent Form" on HIRC website used to obtain patient permission to contact them for future research. This allows investigators to contact patients about particular studies in accordance with their signed consent.
2. ***Advertisements, notices, emails, and/or media are used to recruit subjects.*** The HIRC must approve the text of recruitment materials prior to use. Subjects who respond to these methods of recruitment will contact the study investigators. Note: No HIPAA-regulated Protected Health Information is used in this recruitment strategy.
3. ***Study investigators provide their colleagues with a "Dear Patient" letter*** describing the study (see "Sample Physician Recruitment Letter" on HIRC website). This letter should be signed by the treating physicians and informs the patients how to contact the study investigators. The study investigators are prohibited from having access to patient names, addresses, or phone numbers; patients must initiate contact. See 7.b. below for additional options.
4. ***Study investigators send a HIRC-approved letter to colleagues*** asking for referrals of eligible patients interested in the study. The study investigators may provide the referring physicians a HIRC-approved information sheet about the study to give to the patients. If interested, the patient will contact the PI. Or, with documented permission from the patient (e.g., note in medical record indicates primary care provider spoke with patient who agreed to be contacted), the PI may be allowed to contact patients about enrollment.
5. ***Study investigators who are also clinicians providing direct care recruit their own patients directly.*** Nurses or staff working with the investigators may also approach the patients. This respects privacy but also raises ethical concerns because of the subject's potential difficulty of saying no).
6. Study investigators recruit potential subjects who are unknown to them. Examples include "snowball sampling," use of social networks, direct approach to unknown people in public situations, and random dialing.
7. ***Study investigators request a Waiver of Consent/HIPAA Authorization for recruitment purposes.*** Because patient medical information is private, any access by persons other than the patient's caregiver raises confidentiality and privacy concerns. Therefore, where at all possible, other means of recruitment should be considered and used. If access to patient medical information for recruitment is being sought, in all cases the waiver must be justified in the HIRC application and "Attachment 8 Request for Waiver of Informed Consent/HIPAA Authorization" must be completed. Waivers are granted in two primary situations:
 1. In minimal risk studies in which subjects will not be contacted (e.g., many chart review studies) researchers request a complete waiver of consent/HIPAA authorization. The application must explain why the study cannot be done without the waiver.
 2. If the study requires researchers to review charts to identify prospective subjects who will then be contacted and asked to be in the study, the justification for the waiver to review charts must show why the study cannot be done without the waiver. Among the factors the HIRC may consider in determining whether this review may be permitted are the sensitivity of the

information, who will be accessing the records, importance of the research and whether other recruitment mechanisms may be reasonable alternatives. The waiver covers collecting only the minimum amount of information needed to make contact; consent/HIPAA Authorization is obtained before additional information is gathered.

Acceptable Methods of Approach

The HRRC's usual policy is that patients identified through chart review should be approached by someone already involved in their care. "Already involved in their care" includes healthcare professionals directly involved in their clinical care. The research opportunity is presented to the healthcare professional and he/she is asked to notify the prospective participant of the opportunity. In such cases where the investigator is already involved in an individual's care or where participants have explicitly agreed to be contacted about future research studies, a third party is not necessary. The patient's health care provider is often in the best position to assess whether the research project might be in the best interests of the patient. Further, contact from others not directly involved in the patient's care may in some cases be upsetting to the patient. Thus, contact with the potential research participant is usually not allowed by the researcher and generally must be made by a person or on the behalf of a group (i.e. clinic) that is directly involved in the patient's care. The initial contact is generally by a letter that notifies the patient of the availability of the study and allows the patient to indicate whether he/she is interested in having the researcher or research staff contact him/her to provide further information (see #3 above). The precise method of contact must be pre-approved by the HRRC. Primary caregivers, due to their position as authority figures and medical caregivers, must take care when contacting patients about research participation to avoid being coercive when discussing the opportunity. All recruitment strategies are reviewed and approved by the HRRC on a case-by-case basis.

Recruitment Documents that Require HRRC Review

The following types of recruitment documents must be submitted as part of the initial application for HRRC review. Any additions or changes to these documents must be submitted as formal modifications of the study:

- **Letters to Subjects:** All letters to subjects or their representatives, regardless of who signs the letters, including the PI, a primary care provider, or an organization the subject has joined.
- **Advertisements:** All advertisements in all media, including flyers, posters, newspaper ads, emails*, brochures, radio or television announcements, and informational videos. TV or video materials should be submitted as tapes or DVDs. An advertisement will most likely be approved which states: "Participants will be compensated up to \$___ for their time and inconvenience" if the amount is not felt to be coercive and the statement is not in bold or larger letters so as to attract someone's attention. Also, if overnight stays, multiple procedures or visits or extensive time commitments are going to be needed, such information should be included in the advertisement to justify larger compensation amounts.
- **Scripts:** All scripts or guides that will be used for in-person or telephone recruitment interviews.

- **Web Postings or Pages:** With one exception, all advertisements for human research studies must have specific HRRC approval. This exception is for internet advertising. For internet listings of human research studies, limited basic information may be posted without specific HRRC approval. This information is limited to: title; purpose of the study; protocol summary; basic eligibility criteria; study site location(s); and how to contact the site for further information

* NOTE: If using the UNMHSC public affairs email system as a method of recruitment, this must be approved by HRRC first. UNMHSC Public Affairs will refer the investigator to HRRC if documentation of prior approval has not been provided.

Guidelines for developing recruitment materials

When developing recruitment materials, keep the following considerations/guidelines in mind:

1. For FDA regulated research, advertisements may not:
 - a) Make claims, either explicitly or implicitly that are inconsistent with FDA labeling
 - b) Use terms such as "new treatment" or "new medication" without explaining that the test article is investigational
2. Advertisements may not be misleading by making promises of safety or efficacy
3. Benefits or financial compensation must not "stand out" in outsized or bolded fonts
4. "Payments" must not appear to be an incentive for participation. However, you may use the phrase "You will be compensated for your time and inconvenience"
5. Advertisement should clearly state that this is research or an investigation.
6. Advertisement should include the name of a primary contact and a method of making contact
7. Advertisement may give some brief eligibility criteria such as disease, condition, age limits, etc.
8. May also provide some brief procedural information such as the location of the research, duration of participation, type of intervention, or mode of administration.
9. Include the time or other commitments required of the subjects to participate in the study.
10. Include the location of the research and the person or office to contact for further information.

Do not:

1. State or imply a certainty of favorable outcome or other benefits beyond what is outlined in the consent document and the protocol.
2. Include exculpatory language.
3. Promise "free treatment" when the intent is only to say subjects will not be charged for taking part in the investigation.

11.3 Finder's Fees and Bonus Payments for Recruitment

Faculty, staff, residents, medical students, nurses, and all others conducting human research under the purview of the HRRC are strictly prohibited from offering or receiving any "finder's fee" or other inducement, in cash or in kind, for the purpose of referring patients as candidates for participation in clinical research. Paying or receiving such fees is forbidden under New Mexico law and, depending upon the circumstances, may be in violation of the federal anti-kickback statute. Likewise, no individual or organization conducting human research under the purview of the HRRC may receive "bonus payments" from sponsors that are tied to the rate or timing of subject enrollment.

11.4 State Laws and Human Research

In addition to the federal laws, human research conducted in New Mexico must adhere to applicable state law. Investigators and subjects should be informed with regard to how state laws affect a particular research study.

UNM researchers may conduct research in states other than New Mexico. As each state has different laws, UNM researchers are expected to adhere to the laws of the state in which research is being conducted as well as those of New Mexico. For example, states often differ in laws pertaining to "legally authorized representatives" (LARs) as discussed in Section 7.4. When research is conducted outside of New Mexico and involves use of LARs and/or enrollment of children, consultation with the UNM Office of University Counsel will be sought for guidance on other state's laws regarding legally authorized representatives, guardianship and legal age of consent to participate in research.

State law requires reporting to the Public Health Division of the Department of Health certain communicable and infectious diseases including HIV/AIDS, sexually transmitted diseases and tuberculosis and nontuberculous mycobacterial infections. Reportable events also include certain wounds (i.e. firearms and gunshot injuries; stab wounds; projectile wounds), health conditions related to environmental exposures, certain occupational injuries, adverse vaccine reactions, cancer, and birth defects. For a complete list of Notifiable Conditions in New Mexico, visit the [State Health Department website](#). If research involves the potential detection of these diseases, investigators should be aware that the discovery of a reportable event does not affect the legal requirement to report these events. In addition, during the discussion of steps to maintain confidentiality the informed consent should disclose that should the research staff uncover a reportable disease, the participant's personal information will be reported to the Public Health Division of the Department of Health in accordance with state law.

Any competent adult including a researcher, who knows or has a reasonable suspicion that a child is an abused or neglected child, is required by state law to report the matter immediately to:

1. a local law enforcement agency;
2. the department office in the county where the child resides; or
3. tribal law enforcement or social services agency for any Indian child residing in Indian country.

Resident abuse (i.e., abuse of an inpatient of a UNMHSC or VA facility) is also a reportable event. If the research involves the potential detection of child abuse or neglect or resident abuse and neglect by mandatory reporters, investigators should be aware that the discovery of a reportable event does not affect the legal requirement to report these events. In addition, during the discussion of steps to maintain confidentiality the informed consent should disclose that should the research staff detect child abuse or neglect or resident abuse and neglect suspect, the participant's personal information will be reported to Child Protective Services in accordance with state law. Refer to [UNM Hospital](#) or VA Medical Center policies and procedures on mandatory reporting for more information.

When HIV testing is done as part of a research study, the standard HIV testing consent must be signed in addition to the research consent form. Investigators should use this form, and IRB members should ensure this form will be used in research studies that involve HIV testing.

11.5 Research Involving Partners of Family Members of Study Participants

If your research involves partners or family members of study participants then the following guidelines apply to you:

- **Identifiable information on the partner/family members may not be collected until** they have signed an HRRC approved consent document and HIPAA form that allows health information to be collected (i.e. You cannot collect - Name, address, phone number, etc.)
- Investigators/staff **cannot directly contact** the partner/family member. One acceptable method of contact is to **provide the study participant** with a letter that can be **given to the partner/family member**. The letter should contain information about the reason for the contact and how to get in touch with investigator or staff should the partner/family member choose to participate in the data collection or wish to obtain further information. The investigator should not initiate further contact with the partner/family member if there is no response to the letter.
- Investigators must supply the HRRC with information relating to the inclusion of partner/family member data:
 1. Specific information to be collected
 2. Proposed method of consent
 3. HIPAA documents
 4. Proposed letters to the partner/family member (requires final review and approval by the HRRC)
- Federal regulations require that IRBs address specific protections for protected populations including pregnant women, children, and newborns.

11.6 Federal Genetic Information Nondiscrimination Act (GINA)

If your research involves genetic information, you should be aware that in 2009 the Federal Government passed an Act that affords some protections for individuals who volunteer for genetic research. This act does not completely protect individuals from

discrimination and it cannot protect individuals from societal/group pressures or embarrassment.

After reviewing the Act and information from the Federal Office of Human Research Protections, our office has developed an information sheet that details the important points and limitations of GINA. You can find this sheet on our website at:

http://hsc.unm.edu/som/research/hrrc/docs/GINA_Information_Sheet.pdf

This information sheet should be used in conjunction with a consent form when genetic research is being conducted. Wording has been included on the consent template.

Manual Definitions

Human Subject Research:

a research activity that involves one or more human subjects as defined below:

Human Subject:

1. A living individual about whom a professional or student investigator conducting research obtains data through intervention or interaction with the individual or collects identifiable private information. (from Title 45, Code of federal Regulations CFR, Section 46.102f)
2. An individual who is or becomes a participant in research, either as a recipient of a test article or as a control. A "subject" may be a healthy human or a patient. (from US FDA 21 CFR 56.102e)

Research:

1. a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalized knowledge (45 CFR 46.102d)
2. Includes, for example, clinical trials, surveys and interviews, behavioral investigations, retrospective reviews of medical information, experiments with blood and tissue, and demonstration and services programs
3. Creation of a data or tissue repository for research purposes
4. Any use of a FDA regulated product except for use of a marketed product in the practice of medicine (FDA)
5. Collecting individually identifiable information on any person deceased or living (HIPAA)

Clinical Investigation:

Any experiment that involves a test article and one or more human subjects, and that either must meet the requirements for prior submission to the FDA under 505(i) or 520 (g) of the act, or the results of which are intended to be submitted to, or held for inspection by the FDA as part of an application for research or marketing permit (21 CFR 56.102c).