Academics

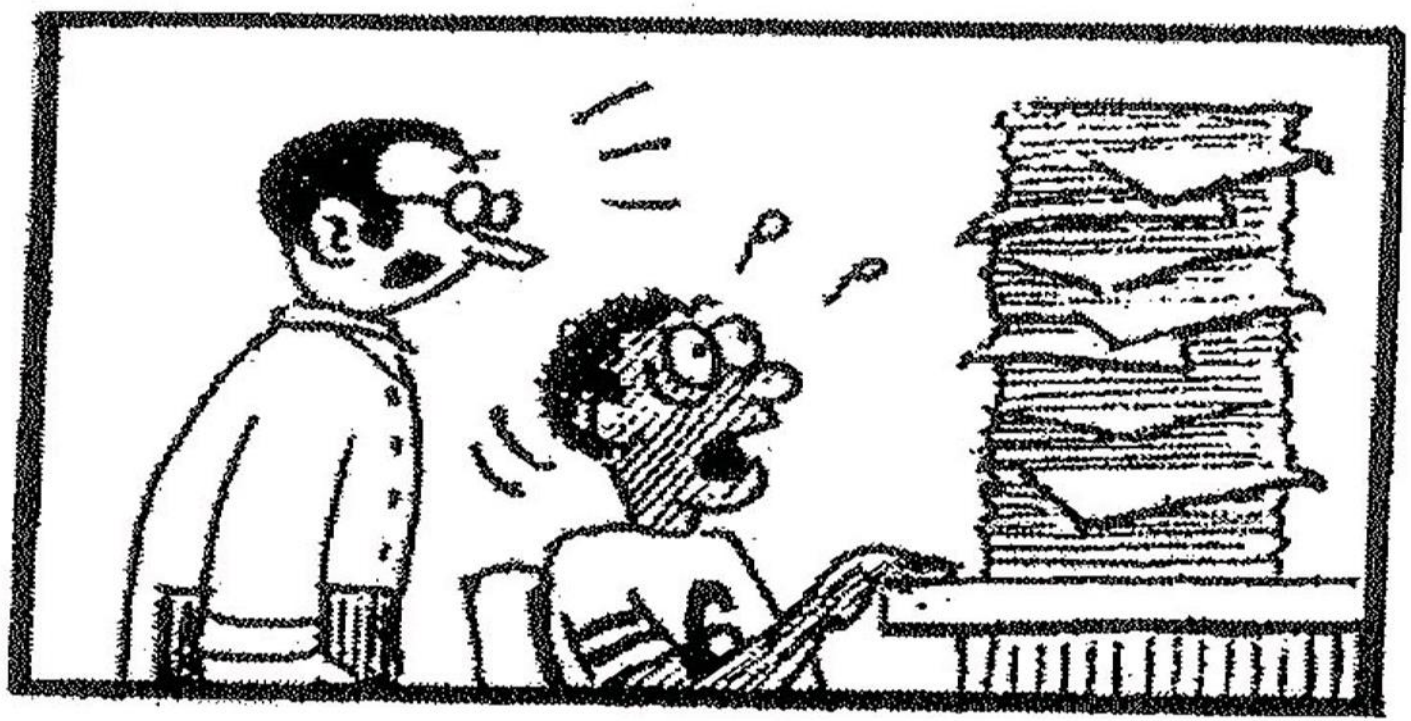
Ochsner Health

Informed Consent Documentation: How to do it Right!

STEPHANIE HENDERSON, CIP, OCHSNER HRPP MANAGER & IRB ADMINISTRATOR

Objectives

- Provide an overview of the consent process and consent documentation
- Discuss roles of individuals involved in the consent process
- Provide tips on informed consent documentation & common audit findings



"The biggest risk in this study is just reading the consent form!"

The Belmont Report

- Respect for Persons
  - Information
  - Comprehension
  - Voluntariness
- Beneficence
- Justice

Basics of Informed Consent

- Researcher discloses relevant information
- Subject has opportunity to ask ?’s
- Subject volunteers
- Must meet all requirements to be legally effective

Basics of Informed Consent

- ✓ Consent form is a record of:
  - ✓ Information conveyed
- ✓ Subject's willingness to participate
- ✓ Proof that consent was sought/obtained

Not intended to limit the authority of a physician to provide emergency care

Basics of Informed Consent

Information must be in language understandable to the subject

Basics of Informed Consent

- An important human subject protection mechanism. It is both a written document ***and a process.***

- There are currently nine required elements of an informed consent document, defined by Federal regulation, and other additional elements (only required when applicable).

- The informed consent process is ongoing from recruitment through the life of the subjects' participation in the research, and sometimes after completion of their participation (new information was discovered).

Required Elements of Consent

1. A statement that the study involves research, including study description:

- ✓ Research acknowledgement
- ✓ Purpose of the study
- ✓ Expected duration of subject's participation
- ✓ Procedures (description)
- ✓ Specify which procedures are experimental

Required Elements of Consent

2. Reasonably foreseeable risks and discomforts:

- ✓ What are the risks (physical, psychological, social)?
- ✓ Are the estimates of the harm or benefits reasonable?
- ✓ Is the nature and magnitude of risk distinguished with as much clarity as possible?

Foreseeable = risks that reasonably can or should be anticipated

Required Elements of Consent

3. Benefits

- ✓ What are the reasonably expected benefits?
- ✓ Most consent forms contain language: YOU MAY NOT RECEIVE DIRECT PERSONAL OR HEALTH BENEFIT FROM TAKING PART IN THIS STUDY.
- ✓ Benefits to “others”as well (e.g., society): THE INFORMATION GAINED FROM YOUR PARTICIPATION IN THIS STUDY MAY BE USED TO HELP OTHERS IN THE FUTURE

Required Elements of Consent

4. Disclosure of alternative procedures/treatments

- ✓ …that might be advantageous to the subject
- ✓ Could include “there are no known alternatives” or “an alternative would be not to participate”

Required Elements of Consent

5. Confidentiality of records

- ✓ The extent that confidentiality of the data will be maintained (if at all)
- ✓ Who knows/needs to know
- ✓ Who has access to info

Required Elements of Consent

6. Compensation and treatment for injury

- ✓ For research involving more than minimal risk/research related injuries
- ✓ Explanation of compensation or medical treatment provided, if any
- ✓ If some of the treatment may not be covered by insurance
- ✓ Payment responsibilities
- ✓ Where further info may be obtained

Required Elements of Consent

7. Contact Information

Whom to Contact For:

- ✓ Questions about the research
- ✓ Subject's rights
- ✓ Research-related injury, complaints, or other issues

Required Elements of Consent

8. Voluntary Participation

- ✓ Refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled
- ✓ Informed consent is an ongoing process; subject can withdraw at any time

Required Elements of Consent

9. One of the following statements about any research that involves the collection of identifiable private information or identifiable biospecimens **

- ✓ (i) A statement that identifiers might be removed from the identifiable private information or identifiable biospecimens and that, after such removal, the information or biospecimens could be used for future research studies or distributed to another investigator for future research studies without additional informed consent from the subject or the legally authorized representative, if this might be a possibility; or

- ✓ (ii) A statement that the subject's information or biospecimens collected as part of the research, even if identifiers are removed, will not be used or distributed for future research studies

***New Element*

Required Elements of Consent

If a study meets the definition of a applicable clinical trial, Clinical trials.gov statement is included:

A description of this clinical trial will be available on http://www.ClinicalTrials.gov , as required by U.S. Law. This Web site will not include information that can identify you. At most, the Web site will include a summary of the results. You can search this Web site at any time.

The results of this research may also be published in scientific journals or presented at medical meetings, but your identity will not be disclosed.

ClinicalTrials.gov

Additional Elements

1a	a statement that the particular treatment or procedure may involve risks to the participant whi are currently unforeseeable; and
1b	if the participant is or may become pregnant, a statement that the particular treatment or procedure may involve risks to the embryo or fetus which are currently unforeseeable;
2	anticipated circumstances under which the participants participation may be terminated by th investigator without regard to the participant's consent;
3	any additional costs to the participant that may result from participation in the research;
4a	the consequences of a participants decision to withdraw from the research; and
4b	procedures for orderly termination of participation by the participant;
5	a statement that significant new findings developed during the course of the research which may relate to the participants willingness to continue participation will be provided to the participant
6	the approximate number of participants involved in the study.

The Informed Consent Process

Informed consent is not just a document….it is also a PROCESS

"The informed consent process is more than just a signature…**it is a process of information exchange…IRBs, clinical investigators, and research sponsors all share responsibility for ensuring that the informed consent process is adequate**…the consent document should be the basis for a meaningful exchange between the investigator and the subject."

FDA Information Sheet, A Guide to Informed Consent , available at: http://www.fda.gov/RegulatoryInformation/Guidances/ucm126431.htm

FDA IRB Information Sheets –"A Guide to Informed Consent"

The Informed Consent Process

"An investigator shall seek….and consent only under circumstances that provide the prospective subject or the representative **sufficient opportunity to consider whether or not to participate…**"

45 CFR 46.116

21 CFR 50.20

45 CFR 46.116

21 CFR 50.20

Informed Consent Process

"No informed consent, whether oral or written, may include any **exculpatory language** through which the subject or the representative is made to **waive or appear to waive any of the subject's legal rights, or release or appears to release** the investigator, the sponsor, the institution, or its agents from liability for negligence."

45 CFR 46.116

21 CFR 50.20

45 CFR 46.116

21 CFR 50.20

ICF= Process + Documentation

- More than just a signature on a form.

- Process of information exchange that may include,
  - Reading and signing the ICF
  - Subject recruitment materials
  - Verbal instructions
  - Q/A sessions and measures of subject understanding.

Documentation that the consent process has been handled correctly is crucial!

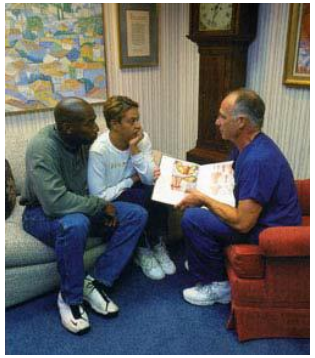
Complying with the Consent Process Requirements

- Who will be obtaining consent?
- What is the involvement of the PI?
- Where will the consenting take place?
- How will copies be provided?
  - Electronic (email)
  - Paper

Who is responsible?

We all are!

"Institutional Review Boards (IRBs), clinical investigators, and research sponsors all share responsibility for ensuring that the informed consent process is adequate."



FDA IRB Information Sheets –"A Guide to Informed Consent"

Participants in Consent Process

- Check study requirements to determine who needs to be involved in the informed consent process.

- Person should be trained regarding informed consent process and be knowledgeable about the study.

- FDA Requirements: IRB must know who will conduct consent process.
  - *FDA does not require the that the PI personally conduct the consent process, but the PI is always responsible for ensuring process is completed correctly.*

Participants in Consent Process

Translators:

- Informed Consent must be presented in a language understandable to the subject. [45 CFR 46.116 & .117]
- If a non-English speaking population is expected to enroll in a study, then consent documents should be in their language.
- Translated form must be approved by IRB.
- Short forms can be used

Participants in Consent Process

When should I use a short form?

When a study has not anticipated the enrollment of non-English speaking subjects and a translated full consent form, often referred to as the long form, is not available then a short form can be used provided it is available in the subjects preferred language

The regulations permit oral presentation of informed consent information in conjunction with a short form written consent document (stating that the elements of consent have been presented orally) and a written summary of what is presented orally. A witness to the oral presentation is required, and the subject must be given copies of the short form document and the summary.

Participants in Consent Process

What steps do I need to follow to acquire legally effective informed consent using a short form?

- An interpreter must orally present a summary of the study, the IRB-approved English language informed consent document (the long form) may serve as the summary;
- The person obtaining consent must be available for questions about the study;
- The short form written document should be presented to the subject in a language understandable to the subject.
- The appropriate blanks are filled in using the same information that is in the IRB-approved English consent form by the interpreter (name of study, IRB#, sponsor name, PI name, who to call for questions/injuries and their phone number).; and
- the witness should be fluent in both English and the language of the subject.

Participants in Consent Process

Who signs which documents?

At the time of consent:

- the short form document should be signed by the subject (or the subject's legally authorized representative);
- the summary (i.e., the English language informed consent document or long form) should be signed by the person obtaining consent as authorized under the protocol; and
- the short form document and the summary should be signed by the witness.

When the person obtaining consent is assisted by an interpreter, the translator may serve as the witness.

The witness cannot be an investigator or member of the study team.

Participants in Consent Process

Can a family member of the subject serve as the interpreter and/or witness?

A family member cannot be asked to serve as the interpreter and minors can never serve as the interpreter or witness. The witness must fluent in both English and the subjects preferred language.

Where can I find translated short forms?

All translated short forms are available in the eIRB library under Templates. The following short form languages are available: French, Spanish, Arabic, Chinese, Turkish, and Vietnamese.

How do I document the use of a short form in the subject's chart?

Consent documentation must state the use of a short form, the type of interpreter service provided and who served as the witness.

Participants in Consent Process

- Participant must be given sufficient time to consider participation in the study.

- Federal Regulations: “An investigator shall seek such consent only under circumstances that provide the prospective subject or then representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence.” *45 CFR 46.116;21 CFR 50.20.*

When things go wrong…

FDA's regulations at 21 CFR 50.20 state that except as provided in 21 CFR 50.23 and 21 CFR 50.24, no investigator may involve a human being as a subject in research covered by the regulations unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. The regulation specifies that an investigator shall seek such consent only under circumstances that provide the prospective subject or the subject's representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. Section 50.27 of FDA's regulations further provides that informed consent shall be documented by the use of a written consent document, which is to be signed by the subject or subject's representative only after the subject or the subject's representative is given adequate opportunity to read the document.

When things go wrong…

For Protocol [(b)(4)], we were unable to determine from your site records if subjects gave informed consent prior to participation in the study and/or if subjects were given sufficient opportunity to consider whether or not to participate in the study. Specifically, we note that your site routinely used sign-in sheets to document the date and time of arrival of subjects.

Based on the times recorded for appointment time, sign-in, and the commencement of protocol procedures, it does not appear possible that you obtained legally effective informed consent from the subjects in the chart below, in compliance with 21 CFR 50.20 and 50.27. This is because either 1) study-related procedures are listed as having taken place prior to the scheduled appointment time and/or prior to the time the subject signed in, or 2) based on the study records, the time between the appointment time, the time the subject signed in and/or the commencement of the procedure(s) did not provide adequate opportunity for the subjects to read the informed consent document, and to consider whether or not to participate in the study, before signing the informed consent form. For example, Subject [(b)(6)]was enrolled into the study on March 25, 2006. The sign in sheet notes that Subject [(b)(6)]arrived at your site at 9:00 a.m. However, source documents showed that study related procedures were performed prior to the subject's arrival (i.e., a blood sample was drawn at 8:50 a.m. In addition, as detailed below…

FDA WARNING LETTER 2/2/2009 (Dr. H. Neurological Assoc. of Albany)

Logistics of Informed Consent

- ICF should correctly document how and when informed consent process took place.
- ICF should correctly document who was involved in the process.

Logistics: Subject Signature

Informed Consent Document must be signed by:

- Subject; or
- Subject's Legally Authorized Representative; or
- In the case of a child, the parent(s) or legal guardian of the child.

Per 45 CFR 46.117(a) & 45 46.408(d); 21 CFR 50.27 & 50.55.

When things go wrong

You failed to obtain legally effective informed consent [21 CFR part 50 and 21 CFR 312.60]

"Fabricated signatures of the subject's legally authorized representative were found on the consent forms for subjects114403 and 114601, who were enrolled in protocol [(b)(4)], and subject 124402, who was enrolled in protocol [(b)(4)]. We note that you discovered the fabricated signatures through your own internal audit, and that you sent letters dated September 10, 2007 to the parents of subjects 114403 and 114601, and a letter dated December 11, 2007 to the representatives of subject 124402, requesting that the informed consent documents be signed again. In addition, you promptly reported the findings to the IRB. In your May 22, 2008 response to the Form FDA 483, you stated that you asked the study coordinator to ensure that copies of the original, signed consent forms were placed in the subjects' medical records, according to institutional policy, but you did not confirm this action. You stated that had this occurred, you would have been able to retrieve a copy of the original consent forms. You stated that it is presumed that your former research nurse (study coordinator) apparently falsified the signatures after she lost the original, signed consent forms. You also stated that you reported these findings to the Board of Registration in Nursing. As the clinical investigator, you are responsible for oversight of study activities delegated to study staff. "

FDA Warning Letter 3/2/2009 (Dr. C., Mass. General Hosp.)

Legally Authorized Representatives (LAR)

LAR = An individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research

Per 45 CFR 46.102(c)

Legally Authorized Representatives (LAR)

Who is the LAR?

- This is determined by State Law. Although there is no specific Louisiana (LA) State Law on research informed consent, we take it as reasonable to use the LA State Law standard for LAR for medical consent. The law being referenced is LA R.S. 40:1159.4 “Persons who may consent to surgical or medical treatment.”
- According to LA State Law the following can be considered to be the legally authorized representative. This is in order of priority. The study team must take these each in turn and determine that a person in that class does not exist before considering a person from the next class.
- For example, if the adult patient does not have capacity to consent then it must be determined if there is a non-separated spouse. If there is not a spouse, then the adult children must be considered and so on and so forth.

Legally Authorized Representatives (LAR)

This is the LA state law order that must be followed:

1) Any adult, for himself.
2) The judicially appointed tutor or curator of the patient if one has been appointed.
3) An agent acting pursuant to a valid mandate, specifically authorizing the agent to make health care decisions.
4) The patient's spouse not judicially separated.
5) An adult child of the patient.
6) Any parent, whether adult or minor, for his/her child.
7) The patient's sibling
8) The patient's other ascendants or descendants.

Legally Authorized Representatives (LAR)

This is the LA state law order that must be followed (continued):

9) Upon the inability of any adult to consent for himself and in the absence of any person listed in Paragraphs (2) through (8) of this Subsection, an adult friend of the patient. For purposes of this Subsection to consent, "adult friend" means an adult who has exhibited special care and concern for the patient, who is generally familiar with the patient's health care views and desires, and who is willing and able to become involved in the patient's health care decisions and to act in the patient's best interest. The adult friend shall sign and date an acknowledgment form provided by the hospital or other health care facility in which the patient is located for placement in the patient's records certifying that he or she meets such criteria.

10) Any person temporarily standing in loco parentis, whether formally serving or not, for the minor under his care and any guardian for his ward.

Legally Authorized Representatives (LAR)

This is the LA state law order that must be followed (continued):

11) A person chosen by the interdisciplinary team, as defined in R.S. 28:451.2, to make recommendations on behalf of an individual with a developmental disability, as defined in R.S. 28:451.2. The interdisciplinary team shall exercise discretion in choosing, by majority vote, the family member, friend, or other person most familiar with the individual or most capable of making the decision at issue.

12) A person chosen by an ad hoc team assembled by any interested person for the purpose of addressing the medical decision at issue for an individual with a developmental disability. a. This team shall consist of at least three persons familiar with the circumstances and needs of the individual, and shall contain representatives from at least two different services, educational or advocacy agencies serving individuals with developmental disabilities. b. The team shall make decisions by majority vote, and no one agency shall provide a majority of the members. c. The team shall exercise discretion in choosing the family member, friend, or other person most familiar with the individual or most capable of making the decision at issue

Legally Authorized Representatives (LAR)

In order to move down the list what documentation must be provided?

If the name of a potentially authorized person is listed in the medical record of the patient, then it is the duty of the PI and the research team to make all reasonable efforts to contact that person. **These attempts must be documented in the medical record.**

What if there is more than 1 adult child? Siblings? Other family? How can decisions be made?

The decision must be made by the majority in that class. For example, if there are 3 adult children then 2 of the 3 must agree to the decision in order to move forward.

Legally Authorized Representatives (LAR)

When should a witness be used if a LAR is used in the consent process?

Not for consent or assent. The subject or the LAR is the only one who can consent. The subject is the only one who can assent when the LAR consents. An impartial witness is someone who is not part of the study team and it is preferred that they are not a family member.

A witness is not the person who determines the competency of the subject, nor if the subject should sign an informed consent. A witness may not have the ability or knowledge to determine if the informed consent process was properly carried out. Having a witness should not be a factor in deciding if someone is competent to sign a consent form.

Generally, the use of witness is in cases where a subject/LAR is blind, cannot physically sign the consent, illiterate, or a short form is used. The Obtaining Consent Guidance gives further information about the use of a witness in the consent process

Special Considerations

Subjects Who Cannot Read

- Person obtaining consent should read aloud entire consent document to subject.
- Document that subject cannot read.
- Provide adequate time to discuss and answer questions.
- Impartial person (person not on study team) should witness consent process and document that process took place; subject understands research and consent process; and subject consented to participant.

For persons who can't write, "making their mark" is sufficient.

See Guidance – Obtaining Consent in Research

Dating the Consent Form

OHRP

- Signatures not required to be dated BUT required at Ochsner
- Advisable to get date to show consent was signed prior to participation.

FDA

- In addition to signing the consent, **the subject** should enter the date of signature on the consent document, to permit verification that consent was actually obtained before the subject began participation in the study.
- If consent is obtained the same day that the subject's involvement in the study begins, the subject's medical records/case report form should document that consent was obtained prior to participation in the research.

Per FDA IRB Information Sheets –"A Guide to Informed Consent"

Dating the Consent Form

Neither the PI nor the Research Coordinator should enter a “date” for the subject’s signature. Only the subject or the subject’s legal representative should enter a date for the subject’s or representative’s signature.

Issues with Dating

- You failed to maintain adequate and accurate case histories that record all observations and other data pertinent to the investigation on each individual [21 CFR 312.62(b)].

- "For subjects 8202, 8203, and 8205, the dates next to the subjects' signatures on the consent forms were initially dated 6/8/06 and then changed to 6/15/06. For subject 8202, the date was then revised back to 6/8/06 and multiple date changes were made to most of the pages in the Screening Visit Source Documents for these subjects. No documentation was provided to explain these changes."

- You failed to obtain informed consent in accordance with the provisions of 21 CFR Part 50 [21 CFR 312.60 and 21 CFR 50].

- "Subject 8210 was randomized to protocol [(b)(4)]on June 12, 2006. You did not obtain informed consent from this subject until June 26, 2006."

FDA Warning Letter 4/9/2009 (Dr. B., Snellville, GA)

Issues with Dating

- You failed to obtain legally effective informed consent [21 CFR part 50 and 21 CFR 312.60].

- "Informed consent documents were dated by study personnel rather than the legally authorized representative for subjects 114302, 114401, and 114504 enrolled in protocol [(b)(4)], and subject 124601 enrolled in protocol [(b)(4)]. In your May 22, 2008 response to the Form FDA 483, you acknowledged that it was your routine practice to insert the date yourself, prior to the parents' signatures, in order to simplify the process. You stated that you now know that subjects and parents must date the consent forms themselves. We acknowledge your assurance that corrective actions have been taken to ensure that this finding is not repeated in any future studies."

FDA Warning Letter 3/2/2009 (Dr. C., Mass. General Hosp.)

Copy of Consent

It is a federal requirement that the patient be given a copy of the consent form.

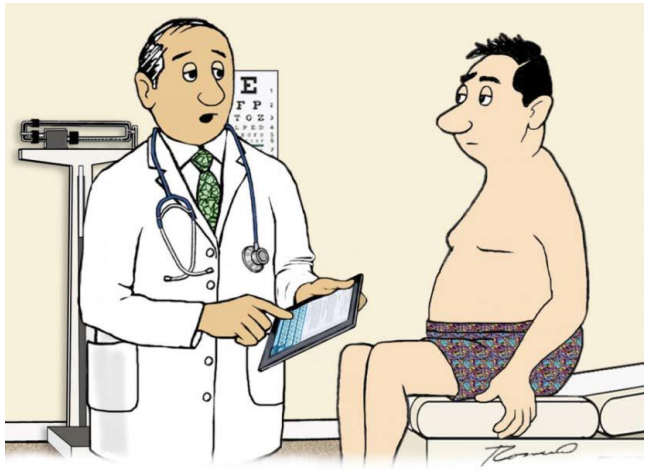
- “A copy of the consent document must be provided to the subject and the original signed consent document should be retained in the study records.”

- “Note that the FDA regulations do not require the subject's copy to be a signed copy, although a photocopy with signature(s) is preferred.”

FDA IRB Information Sheets –“A Guide to Informed Consent”

Don’t Forget about HIPAA

- Informed consent document may or may not have all elements necessary for HIPAA Authorization. A separate form may be required.
- Authorization must be in writing unless otherwise approved by IRB.
- Must be signed by the patient or patient’s personal representative and dated.
- Must state what PHI will be used or disclosed and purposes of use/disclosure.



Common Audit Findings

- Issues with Informed consent process & documentation
- Inaccurate or incomplete study records
- Lack of determination and documentation that eligibility criteria are satisfied
- Lack of documentation of adverse event review and reporting
- Missing Drug/Device accountability
- Failure to follow protocol
- Poor regulatory site documentation
- Failure to address monitor findings

Audit Findings for Consent Process

- No source documentation of consent process and fact that subject was provided a copy of consent
- Performing procedures before consent occurs
- Signature errors (incorrect date, signatures on wrong lines)
- Check boxes left blank
- Not re-consented when required
- Using the incorrect (old) version of the consent form

How do I document informed consent?

Once the consent form has been signed, dated and checked for completeness, the PI or designee must ensure a note is captured in the Ochsner electronic medical record (OHS.RES.006). This note should be entered the same day that the consent was obtained. Remember the consent form must be scanned into EPIC!

The note should include:

- IRB number
- That a signed copy was given to the subject
- That no study related procedures were conducted prior to obtaining the consent
- That the subject/LAR was given adequate time to review the consent, to ask questions, and that those questions were answered to their satisfaction

How do I document informed consent?

The note should include (continued):

- Who was present for the discussion (e.g., PI, SubI, other study team members, family or friends
- of subject)
- That the subject agreed to participate voluntarily
- Discussion of:
  - Procedures – subject should verbalize understanding of all procedures and related timelines
  - Discussion of risks, benefits and alternative therapies
  - HIPAA

*Other circumstances as appropriate – LAR, short form ICF used, subject unable to read/write, etc

How do I document informed consent?

Example of consent process note in EPIC

IRB #

Date

The subject and his wife were seen in the DEPARTMENT clinic treatment room. The experimental nature of the research was fully explained to the potential subject. The purpose of the study, length of the study, study visits and procedures, risks, benefits, responsibilities, alternative treatments, costs, compensation for injury, contact information, voluntary participation, withdrawal notices, ClinicalTrials.gov and HIPAA authorization were fully discussed. The subject was given ample time review the consent for consideration. All questions were answered to the subject's satisfaction. The subject was able to verbalize study information back and states he/she has an understanding of the study and agrees to participate. The consent was signed, and a copy was given to the subject. No study related activity was initiated prior to obtaining consent.

What happens when research is conducted without fully informed consent?

Non compliance

Longer drug approval times

The trust based physician-patient relationship may be damaged

Word of mouth about experience

Complaints to the IRB, the institution, the OHRP and/or the FDA

Subjects no longer willing to participate in research

Subjects placed in vulnerable situation

Study yield unusable data due to non adherence

FDA & Consenting – COVID-19

FDA Guidance on Conduct of Clinical Trials of Medical Products during COVID-19 Public Health Emergency

Guidance for Industry, Investigators, and Institutional Review Boards

- How do I obtain signed informed consent from a hospitalized patient who is in isolation when a COVID-19 infection control policy prevents us from entering the patient's room to collect a signed informed consent form?
- How do I obtain informed consent from a patient unable to travel to a clinical trial site where electronic informed consent is not an option?
- How can informed consent be obtained and documented from a prospective trial participant (or legally authorized representative) when they cannot print and sign a paper copy of the consent form provided electronically by the investigator/designee, they cannot electronically sign the informed consent form, and providing a paper copy of the consent form via mail/courier is not feasible within the time frame for enrollment into the clinical trial?

Informed Consent Documentation

If it's not documented – it didn't happen!

References

- OHRP/DHHS -45 CFR 46.116 –General Requirements
- OHRP/DHHS -45 CFR 46.117 –Documentation of informed consent
- FDA –21 CFR 50.25 –Elements of informed consent
- FDA –21 CFR 50.27 –Documentation of informed consent
- Obtaining Consent in Research
- Legally Authorized Representatives
- Use of Short Form Consent Forms
- Federal Policy for the Protection of Human Subjects ('Common Rule')

Stephanie Henderson

Manager, Human Research Protection Program, IRB Administrator

stephanie.henderson@ochsner.org