

Expanded Access Program for Drugs and Biologics

1.0 Purpose

The purpose of this policy is to describe the local procedures investigators must follow to obtain approval to use investigational drugs and biologics via the Food and Drug Administration (FDA) Expanded Access Program (EAP).

As the FDA frequently updates its guidance regarding this program, investigators should also review [FDA Expanded Access Guidance for Investigators](#) and [Expanded Access – How to Submit a Request to FDA \(Forms\)](#) in addition to this policy to understand FDA submission requirements.

It is important to note that Emergency Use is a special category of the EAP and the requirements for Emergency Use can be found in the IRB's *Emergency Use Policy*.

2.0 Scope

This policy applies to all utilization of the EAP by Wright State University (Wright State) faculty, staff, and students and for Premier Health (Premier) and Dayton Veterans Affairs Medical Center (Dayton VAMC) treating physicians when the Wright State University IRB (hereafter referred to as IRB) acts as the IRB of record for this purpose.

3.0 Definitions

- 3.1 **Expanded Access** means a mechanism to facilitate availability of investigational drugs (as early in the drug development process as possible) for patients with serious or immediately life-threatening diseases or conditions for which there are no satisfactory alternative treatments.
- 3.2 **Immediately Life-Threatening Disease** means a stage of a disease in which there is a reasonable likelihood that death will occur within a matter of months or in which premature death is likely without early treatment.
- 3.3 **Investigator** means the Project Director/Principal Investigator (PD/PI) and any other person, regardless of title or position, who is responsible for the design, conduct, or reporting of research, or proposing of research, including persons who are subcontractors, collaborators or consultants. At Wright State this definition includes, but is not limited to, the following roles: Principal investigator, co-investigators, research coordinators, research associates,

collaborators and consultants, and may include research assistants and students as identified by the PD/PI depending on their specific roles and responsibilities.

- 3.4 **Serious Disease** means a disease or condition associated with morbidity that has substantial impact on day-to-day functioning. Short-lived and self-limiting morbidity will usually not be sufficient, but the morbidity need not be irreversible, provided it is persistent or recurrent.
- 3.5 **Sponsor** means a person who takes responsibility for and initiates a clinical investigation. The sponsor may be an individual or pharmaceutical company, governmental agency, academic institution, private organization, or other organization. The sponsor does not actually conduct the investigation unless the sponsor is a sponsor-investigator. A person other than an individual that uses one or more of its own employees to conduct an investigation that it has initiated is a sponsor, not a sponsor-investigator, and the employees are investigators.
- 3.6 **Sponsor-Investigator** means an individual who both initiates and actually conducts, alone or with others, a clinical investigation, i.e., under whose immediate direction the test article is administered or dispensed to, or used involving, a subject. The term does not include any person other than an individual, e.g., it does not include a corporation or agency. The obligations of a sponsor-investigator under this part include both those of a sponsor and those of an investigator.
- 3.7 **Treatment IND** means a large scale expanded access program typically following resolution of Phase III or during Phase II where sufficient safety data are available.

4.0 Policy

The Food and Drug Administration (FDA) will permit an investigational drug to be used under the Expanded Access Program (EAP) after sufficient data have been collected to show that the drug “may be effective” or does not have unreasonable risks relative to the risk of the condition to be treated.

It is important to understand that FDA policy specifies that “the provision for emergency use would rarely apply to a treatment protocol or treatment IND (under EAP) because these are planned uses of the test article and sufficient time is available to obtain IRB review and approval.” Therefore, a treating physician in an emergent situation should consult and follow the *Emergency Use Policy* for treatment of a single patient instead of

individual patient use as defined under this policy.

4.1 EAP Categories

The FDA describes three distinct categories of the EAP based on the number of people who need access and the level of risk. An expanded access IND submission is required for each type of access described below:

- 4.1.1 An **individual patient IND** is commonly held by the treating physician for treatment of an individual patient. Before submitting an individual patient IND to the FDA, the treating physician must confirm that the manufacturer will provide the drug/biologic. If a manufacturer has an existing EAP IND available, the treating physician may coordinate access to the drug through the manufacturer's approved Treatment IND rather than filing a separate individual patient IND.
- 4.1.2 An **intermediate population treatment IND** is commonly held by the drug/biologic sponsor/manufacturer for use in a population smaller than a typical treatment IND or treatment protocol. The investigational drug for an intermediate treatment IND may be in active development or may be an FDA approved drug that is unavailable or in limited supply.
- 4.1.3 A **large population treatment IND** or treatment protocol is commonly held by the sponsor/manufacturer for widespread treatment use. For a large population treatment IND, the sponsor must be pursuing marketing approval.

According to FDA requirements, the licensed physician under whose immediate direction an investigational drug/biologic is administered for expanded access use is considered an "investigator" assuming all applicable regulatory responsibilities. A physician who submits an IND for expanded access used is considered a sponsor-investigator and assumes applicable responsibilities for sponsors and investigators.

4.2 Special Considerations

In considering EAP use, individual patient needs must be balanced against societal needs. The FDA stipulates that expanded access use should not compromise enrollment or interfere with active clinical investigations that could support FDA approval of the drug/biologic.

Informed consent is also especially important in expanded access use situations as patients are desperately ill and particularly vulnerable. Patients will receive medications which have not been proven either safe or effective. Therefore, the

treating physician must take sufficient steps to ensure that potential patients or their legally authorized representatives are fully aware of the risks involved in their participation via a thorough informed consent process.

It is important to note that the FDA considers use under a treatment IND

“research” that requires prospective review by a convened IRB and that FDA also permits charging for drugs/biologics used under the EAP.

5.0 Procedure

For the FDA to approve the request for expanded use it must determine that all the following are true based on the content of the sponsor/sponsor-investigator’s expanded access submission (IND/protocol):

- The patient or patients to be treated have a serious or immediately life-threatening disease or condition, and there is no comparable or satisfactory alternative therapy to diagnose, monitor, or treat the disease or condition;
- The potential patient benefit justifies the potential risks of the treatment use and those potential risks are not unreasonable in the context of the disease or condition to be treated; and
- Providing the investigational drug for the requested use will not interfere with the initiation, conduct, or completion of clinical investigations that could support marketing approval of the expanded access use or otherwise compromise the potential development of the expanded access use.

Based on local patient needs, the treating physician/investigator must identify and follow one of the following pathways (Sections 5.1-5.3) to obtain IRB approval for expanded access use:

5.1 Expanded Access Approval Via External IRB of Record

In cases where an expanded access protocol has or will receive external IRB review and approval, Wright State may defer responsibility for IRB review of the expanded access to an external IRB given that appropriate reliance agreements and approvals are obtained.

Before submitting an expanded access request to an external IRB of record for approval, a Wright State investigator must complete and submit an External Reliance request form via the electronic IRB submission system. Once he/she

receives written approval from the Office of the Vice President for Research to utilize the external IRB of Record for expanded access, the physician/PI must follow that IRB of Record's standard operating procedures for applying for, conducting and reporting related to the expanded access use.

Note that Premier/Dayton VAMC institutional approval for EAP review by an IRB of Record other than the Wright State University IRB must follow Premier/Dayton VAMC policies and procedures and cannot be approved by this Wright State process.

5.2 Individual Patient IND Approval

To request approval for individual patient expanded access, a physician/investigator must submit the following to the IRB via the electronic submission system:

- 5.2.1 A completed Initial Review Form with the phrase "INDIVIDUAL PATIENT IND" in the title
- 5.2.2 An individual patient IND approval letter from the FDA
- 5.2.3 An Investigator's Brochure, if applicable
- 5.2.4 A brief description of patient situation and treatment plan, and
- 5.2.5 A copy of Informed consent document(s).

IRB staff will review the submission and verify the IND number. The IRB will review the submission via a convened meeting in accordance with applicable policies. At the conclusion of the expanded access treatment, the physician/investigator will be required to provide a written summary of the results of the expanded access (including any safety related information) to the IND sponsor or the FDA. A copy of this report must also be submitted to the IRB as an attachment to the Study Closure submission.

5.3 Intermediate or Large Population Treatment IND Approval

To request approval for intermediate or large population expanded access, the physician/investigator must submit the following to the IRB via the electronic submission system:

- 5.3.1 A completed Initial Review Form with the phrase "TREATMENT IND" in the title
- 5.3.2 Documentation of FDA treatment IND approval (i.e., FDA or sponsor correspondence, IND number printed on sponsor protocol)

- 5.3.3 Related documents including treatment protocol, investigator's brochure, and potential drug costs, and
- 5.3.4 A copy of Informed consent document(s).

IRB staff will review the submission and assign it to the next scheduled full board meeting. The IRB will review the submission at the convened meeting in accordance with applicable policies. At the conclusion of the treatment under the IRB-approved submission, the physician/investigator will be required to provide a written summary of the results of the expanded access (including any safety related information) to the IND sponsor or the FDA. A copy of this report must also be submitted to the IRB as an attachment to the Study Closure submission.

6.0 Responsibilities and Authorities

The physician/investigator, Wright State IRB, IRB Chair, IRB staff and Vice President for Research are responsible for implementing this policy.

7.0 Records

All records related to this process will be stored and maintained in accordance with any Wright State policy, federal regulations and sponsor requirements associated with the expanded use.

8.0 References

- 8.1 21 CFR 56.104
- 8.2 21 CFR 312.300-320
- 8.3 21 CFR 312.8
- 8.4 [FDA Expanded Access Guidance for Investigators](#)
- 8.5 [Expanded Access – How to Submit a Request to FDA \(Forms\)](#)