Informed Consent

1.0 Purpose

The purpose of this policy is to define the informed consent requirements for both investigators and the Wright State University Institutional Review Board (hereafter referred to as IRB) for research involving human subjects.

2.0 Scope

This policy applies to all human subject research that is conducted by Wright State University (Wright State) faculty, staff and students and human subject research for which the IRB acts as the IRB of record for an external entity (e.g., Premier Hospitals, Dayton VAMC).

3.0 Definitions

3.1 **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.

3.2 **Human subject** means a living individual about whom an investigator (whether professional or student) conducting research:

- Obtains information or biospecimens through intervention or interaction with the individual and uses, studies, or analyzes the information or biospecimens; or
- Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable specimens.

3.3 **Informed Consent** means an individual's voluntary agreement, based upon adequate knowledge and understanding of the relevant information, to participate in research.

3.4 **Undue Influence** means excessive or inappropriate reward, threat, action or other incentive in which a person is induced to act otherwise than by his/her own free will or without adequate consideration of the consequences.

3.5 **Adult** means a person who is 18 years or older that has attained the legal age for consent to treatments or procedures involved in the research in accordance with Ohio

Revised Code (ORC 3109.01).

3.6 **Child** means a person who is under 18 years old who cannot consent to treatments or procedures involved in the research in accordance with Ohio Revised Code (ORC 3109.01).

3.7 **Assent** means a child's affirmative agreement to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent.

3.8 **Parent** means a child's biological or legal adoptive parent.

3.9 **Guardian** means an individual who is authorized under applicable State or local law to consent on behalf of a child to general medical care.

3.10 **Permission** means the agreement of parent(s) or guardian to the participation of their child or ward in research.

3.11 **Decisional impairment** refers to a limitation or lack of capacity to understand information and/or to reason.

3.12 **Identifiable private information** means private information for which the identity of the subject is or may readily be ascertained by the investigator or associated with the information.

3.13 **Identifiable biospecimen** means a biospecimen for which the identity of the subject is or may readily be ascertained by the investigator or associated with the biospecimen.

3.14 **Test Article** refers to drugs (including botanicals, biologicals, and gene therapy, and genetically derived products that meet the definition of a “drug”), and medical devices for human use (21 CFR 50.3, Definitions (j)).

3.15 **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 examinations or tests.

3.16 **Legally Authorized Representative (LAR)** means an individual, 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. For the purpose of research conducted under the oversight of Wright State University, the following are recognized in Ohio as legally authorized representatives:

- Persons appointed as health care agents under an Ohio Durable Power of Attorney for Health Care
- Court-appointed guardian(s)
- Next of kin in the following order:
    - Spouse
    - Adult Children
    - Parents
    - Adult Brother(s) or sister(s)

3.17 **Research** means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities. For purposes of this part, the following activities are deemed not to be research:

3.17.1 Scholarly and journalistic activities (e.g., oral history, journalism, biography, literary criticism, legal research, and historical scholarship), including the collection and use of information, that focus directly on the specific individuals about whom the information is collected.

3.17.2 Public health surveillance activities, including the collection and testing of information or biospecimens, conducted, supported, requested, ordered, required, or authorized by a public health authority. Such activities are limited to those necessary to allow a public health authority to identify, monitor, assess, or investigate potential public health signals, onsets of disease outbreaks, or conditions of public health importance (including trends, signals, risk factors, patterns in diseases, or increases in injuries from using consumer products). Such activities include those associated with providing timely situational awareness and priority setting during the course of an event or crisis that threatens public health (including natural or man-made disasters).

3.17.3 Collection and analysis of information, biospecimens, or records by or for a criminal justice agency for activities authorized by law or court order solely for criminal justice or criminal investigative purposes.

3.17.4 Authorized operational activities (as determined by each agency) in support of intelligence, homeland security, defense, or other national security missions.

4.0 Policy

The IRB requires investigators to obtain the informed consent of each potential research subject or their legally authorized representative before they are included in research, except where a waiver of informed consent is granted by the IRB.

This policy is based upon the essential principles established in the Belmont Report: respect for persons, beneficence, and justice, and is in accordance with both the Department of Health and Human Services (DHHS) and the Food and Drug Administration (FDA) guidance and regulation. In addition to this policy, investigators conducting certain types of studies must also understand and comply with the following additional requirements related to informed consent:

- Family Educational Rights and Privacy Act – see FERPA Guidance and Checklist
- General Data Protection Regulation – See GDPR Checklist
- Health Insurance Portability and Accountability Act – see *Human Subject Research Use and Disclosure of Protected Health Information Policy*

5.0 Procedures

Informed consent should be the basis for a meaningful exchange between an investigator and a potential research subject (hereafter referred to as "subject"). The consent process involves more than a form. Subjects must be presented with all relevant information about the research study in order to decide whether or not they wish to participate. This information must be understandable to a subject or the subject's legally authorized representative. It should also be free of exculpatory language through which the subject or legally authorized representative is made to waive or appear to waive any of the subject's legal rights or release (or appear to release) the investigator, sponsor, or Wright State from liability for negligence.

Each subject must be given reasonable and adequate time to review the information provided about the research study under circumstances that minimize the possibility of coercion or undue influence. The informed consent process must also include opportunities for the subject to ask questions and seek clarification from investigators involved in the research study.

The following sections are to provide detailed guidance to facilitate investigator compliance with regulatory requirements and ethical guidelines pertaining to the informed consent process.

5.1 Informed Consent for Exempt Studies

Formal written informed consent is not required for research determined to be exempt from IRB review. However, the IRB encourages investigators to provide potential subjects with information about the study (e.g., informational letter) whenever feasible prior to engaging any subject in that research as a way to support their voluntary

participation. This ethical obligation exists for all research – exempt and non-exempt. Because formal written consent is not required for studies confirmed as meeting the criteria for exempt review, it allows PI's greater flexibility in the informed consent process.

While federal regulations do not require signed informed consent for participation in research under exempt review, investigators must be aware of other regulations or policies that may require documented/signed informed consent. For example, research involving educational records, or the use of student coursework/grades is likely subject to the Family Educational Rights and Privacy Act (FERPA). FERPA regulations typically do require that students (or parent/guardian) provide written consent for use of records or coursework for research regardless of the level of IRB review.

Other regulations such as the Health Insurance Portability and Accountability Act (HIPAA) and the General Data Protection Regulation (GDPR) may have additional consent, documentation, and/or notification requirements beyond those required by the IRB.

5.2 Key Information Summary

Informed consent documents for federally funded studies approved on or after January 21, 2019, must include a summary of key information that would likely assist a potential subject or legally authorized representative in understanding the nature of the research and in determining whether or not to participate.

The level of detail to include in this no-more-than 1-page summary will depend on the complexity of the research project. The summary should be placed at the beginning of the consent form and include the following:

- A statement that the project is research, and that participation is voluntary.
- A summary of the research, including:
  - Purpose
  - Duration
- List of procedures
- Common risks or discomforts and a statement explaining where the full list of potential risks/discomforts can be found
- Reasonable, expected benefits
- Alternative procedures or course of treatment, if any.

5.3 Required Elements

The information provided during the consent process must be consistent with the

federal requirements. Unless informed consent is waived or altered by the IRB (see Section 5.9), the consent form/process must include the following basic elements:

- A statement that the study involves research
- Explanation of the purposes of the research
- The expected duration of the subject's participation, including length of each study visit, if applicable
- A description of the procedures to be carried out, and identification any which are experimental
- A description of any reasonably foreseeable risks or discomforts to the subject
- A description of any benefits to the subject or to others which may reasonably be expected from the research
- Disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject
- A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained
- Explanation of who to contact for answers to pertinent questions about the research and subjects' rights, and whom to contact in the event of a research related injury to the subject
- A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled
- For research involving greater than minimal risk, an explanation about whether medical treatments are available if injury occurs and, if so, what they consist of or where further information can be obtained and whether compensation is available if injury occurs and, if so, an explanation as to what it consists of or where further information can be obtained
- For research that involves the collection of identifiable private information or identifiable biospecimens, include one of the following statements:
    - 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
    - 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.
- For research regulated by the FDA:

- A statement that informs the subject of the possibility that the FDA may inspect their records
- The following statement notifying the subject that clinical trial information has been or will be submitted for inclusion in the clinical trial registry for certain types of clinical trials: "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."

5.4 Additional Elements

One or more of the following elements should also be provided to potential subjects during the consent process, when applicable:

- If women are enrolled who are capable of becoming pregnant a statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable
- Anticipated circumstances under which the subject's participation may be terminated by the Principal Investigator without regard to the subject's consent
- Any additional cost to the subject that may be a result from participation in the research
- The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject
- A statement that significant new findings developed during the course of the research, which may relate to the subject's willingness to continue participation, will be provided to the subject
- The approximate number of subjects involved in the study. If the research involves a multi-site study, the total number of subjects at all sites should also be provided.
- A statement that the subject's biospecimens (even if identifiers are removed) may be used for commercial profit and whether the subject will or will not share in this commercial profit
- A statement regarding whether clinically relevant research results, including individual research results, will be disclosed to subjects, and if so, under what conditions
- For research involving biospecimens whether the research will (if known) or might include whole genome sequencing (i.e., sequencing of a human germline or somatic specimen with the intent to generate the genome or exome sequence of that specimen)

- For all research involving a Test Article regulated by the FDA, informed consent documents must include, as applicable:
    - A statement that the purpose of the study includes an evaluation of the safety of the Test Article.
    - The regulatory status of the agent using terms that can be easily understood by the targeted subject population. For example, "the use of drug [insert name] in this study is considered investigational, meaning it has not been approved by the FDA for marketing in the US for the use being tested in this research."
    - For related clinical testing, the amount of blood or other fluids to be obtained
- If funded, the name of the sponsor or funding agency and a statement that the sponsor is providing funds for the conduct of the research. If the study is sponsored by an internal department, this should also be listed in the consent document
- Any conflict-of-interest disclosure language required by Wright State or its affiliated hospitals
- Wright State-approved authorization template language (or equivalent) if the study involves Protected Health Information (PHI) in accordance with the *Human Subject Research Use and Disclosure of Protected Health Information* policy.

All informed consent documents must be written in the second person (i.e., "You have been invited to participate..." or "Your participation in the research is voluntary"). Template consent language can be found on the IRB's website. Investigators must ensure that only the current stamped IRB-approved version of a consent form is utilized to obtain written consent for any given study.

5.5 Dayton Veterans Affairs Medical Center Requirements

For VA studies, it is recommended that investigators utilize the new Department of Veterans Affairs (VA) informed consent template that contains the embedded HIPAA authorization section. The sponsor or the IRB may require a witness to the subject's signature or to the consenting process in certain situations. The witness cannot be the same person who obtained informed consent from the subject but may be another member of the study team or may be a family member.

There also must be an explanation as to whether any compensation is available and an explanation as to whether any medical treatments are available if injury occurs and if so, what they consist of, or where further information may be obtained (see 38 CFR 17.85). The VA must provide necessary medical treatment to a research subject injured by participation in any research project approved by a VA R&D Committee and conducted

under the supervision of one or more VA employees. Except in limited circumstances, the necessary care must be provided in VA medical facilities.

38 CFR 17.85 does not apply to research conducted for the VA under a contract with an individual or a non-VA institution (although veterans injured as a result of participation in such research may nevertheless be eligible for care from the VA under other statutory and regulatory provisions).

VA consent documents should contain a statement that a veteran-subject will not be required to pay for care received as a subject in a VA research project except in accordance with Title 38 Unites States Code (USC) 1710 (f) and 1710 (g) certain veterans are required to pay co-payments for medical care and services provided by VA. Veterans receiving medical care and services from VA that are not rendered as part of the VA-approved research study, must pay any applicable co-payment for such care and services.

VA investigators are encouraged to use the following template language to convey this requirement:

"Some veterans are required to pay co-payments for medical care and services provided by VA. These copayment requirements will continue to apply to medical care and services provided by the VA that are not part of this study."

5.6 Documentation

5.6.1 Signatures

Each subject must sign and date the written informed consent document to indicate their willingness to participate unless this requirement is waived by the IRB (see Section 5.9.4). The investigator obtaining the consent must also sign and date the form to indicate that consent was properly obtained.

Investigators must ensure that the subject either receives a copy of his/her fully executed consent form or is asked to sign two copies and keep one for his/her records.

5.6.2 Use of Fax, Mail or Electronic Communication to Document Informed Consent

For minimal risk studies the IRB may approve a process that allows the informed consent document to be given to the potential participant by facsimile, mail, or email. Original, signed consent forms should be returned by mail. Use of fax, mail or electronic communication in the informed consent process must be reviewed

and approved by the IRB prior to implementation.

5.6.3 Electronic Signatures

Federal regulations allow electronic signatures to document informed consent, so long as electronic signatures are legally valid within the jurisdiction (e.g., Ohio state law) where the research is being conducted. However, investigators must still comply with all other informed consent requirements and subjects must still be provided with a written version of the consent form that they can retain for their records.

When the IRB reviews a study that involves a request to use electronic signatures, it will consider how the electronic signature is being created, whether the signature can be shown to be legitimate, and how the investigator plans to provide a version of the consent form to the potential subject for their review and retention.

A waiver of documentation of informed consent is not required to utilize electronic signatures. When properly obtained, an electronic signature is considered an 'original' for the purposes of recordkeeping. In other words, it would satisfy signature requirements in case of an audit.

Investigators should review any related guidance and procedures posted on the IRB website and within IRB submission forms prior to requesting use of electronic signatures via the electronic submission system.

5.6.4 Use of Remote or E-Consent Process

Electronic informed consent or E-Consent refers to the use of electronic systems and process that employ multiple types of electronic media (e.g., text, graphics, audio, video, podcasts, passive and interactive websites, biological recognition devices, and card readers) to convey information related to a study to obtain and document informed consent. E-Consent may involve electronic signatures, as well.

Remote consent refers to a consent process that utilizes methods other than in person consent discussion. Investigators who want to utilize E-consent and/or remote consent should consult the latest guidance posted on the IRB website prior to submitting a request to do so via the electronic submission system as requirements vary depending on applicable federal regulations and methods to be utilized.

For example, E-Consent for research subject to FDA regulations may require use of electronic systems that are compliant with 21 CFR Part 11 (i.e., restricted access, administrative controls, training, identity verification, etc.) or current community health issues may require that investigators follow specific remote consent procedures set by a health care facility or government agency.

5.7 Use of Legally Authorized Representative (LAR)

In cases when a LAR (see Section 3.16) will be utilized to provide written consent, the study team must properly document in the research record the validity of the individual's authority to make decisions regarding procedures involved in research on behalf of the subject. In some cases, due to the urgent nature of a study, verification of authority is unable to be obtained prior to consent. For these urgent studies, the investigator must document in the initial, or subsequent, study application the consent process to be followed and IRB approval of the process must be granted. Verification of authority will need to be obtained as soon as reasonably possible.

For example, the study team should obtain and include a copy of the subject's Ohio Durable Power of Attorney for Health Care or court- appointed guardianship prior to consent and maintain this documentation with the signed consent form.

For next of kin persons who can act as LAR (see list at 3.16), the type of relationship (parent, spouse, child, sibling etc.…) must be documented along with the LAR's signature as part of the consent process.

For cases in which the authority of a LAR to grant permission for an adult subject's participation in research is unclear, investigators and the IRB should consult with the Wright State General Counsel's Office.

Investigators who plan to actively recruit subjects who require consent through the use of a LAR must provide a detailed plan for IRB review and approval that provides:

- Justification as to why the research could not be performed with other appropriate subject populations.
- Information as to whether subject will be asked to provide written consent to continue in the study if he/she regains capacity to consent.
- Plan to train all investigators on how to identify and document an appropriate LAR (see Section 5.8.5) to ensure compliance with the IRB-approved consent plan prior to initiating the study.

Prior to initiating a consent process utilizing a LAR, study investigators must ensure that the current IRB approval letter states that there is formal approval in place to do so.

5.8 Documentation of Informed Consent in Subject Record

The investigator obtaining consent should document the consent process in the subject's medical or research records. The requirement for documenting the consent process applies to all more than minimal risk interventional protocols and any protocol for which additional documentation is warranted by the IRB. You may have to request user access to the electronic medical record system to complete this requirement.

The documentation may include:

- How and where consent was obtained
- The subject's level of comprehension
- The subject's decision-making capacity at the time of consent
- List of individuals who were present during the consenting process
- The name of the LAR and documentation that he/she met the definition as described in Section 3.16 of this policy, if applicable
- Confirmation that a copy of the subject's informed consent document was provided to participant, and
- The subject's signed and dated informed consent form (or a copy when applicable).

For VA studies, a progress note containing the following information must be placed in the subject's medical record at the time of consent:

- The name of the study
- The name of the person obtaining consent
- A statement that the subject or the subject's LAR was capable of understanding the consent process
- A statement that the subject was given the opportunity to ask questions, and
- A statement that the study was explained to the subject.

5.9 Waivers or Alteration of Consent

5.9.1 Screening, Recruiting or Determining Eligibility

The IRB may approve a study in which an investigator will obtain information or biospecimens for the purpose of screening, recruiting, or determining the eligibility of prospective subjects without obtaining prospective consent from the subject or the subject's legally authorized representative if either of the following conditions are met:

- The investigator will obtain information through oral or written communication with the prospective subject or legally authorized representative, or

- The investigator will obtain identifiable private information or identifiable biospecimens by accessing records or stored identifiable biospecimens.

This means that a waiver of informed consent will no longer be required for these screening activities. However, HIPAA requirements will still apply, and investigators will still be required to obtain a waiver of authorization in accordance with the *Human Subject Research Use and Disclosure of Protected Health Information Policy*.

5.9.2 Broad Consent

Broad consent is an alternative consent process for the storage, maintenance, and secondary use of identifiable private information or identifiable biospecimens for future, yet-to-be-specified research as defined by the 2018 Common Rule.

The use of broad consent is permissible only with prior consultation with the HRPP Director for research that does not involve data protected by the HIPAA Privacy Rule. Investigators can also obtain IRB approval to conduct these secondary activities through other regulatory pathways including waiver of consent, study-specific consent, or removal of identifiers.

5.9.3 Full Waiver or Alteration of Required Elements

The IRB may approve a consent process that eliminates or alters the required elements of informed consent. It may also waive the requirement to obtain informed consent altogether. In order to approve such a waiver or alteration, the investigator must provide substantive information in the initial study application so that the IRB is able to find and document the following:

- The research involves no more than minimal risk to the subjects
- The waiver or alteration will not adversely affect the rights and welfare of the subjects
- If the research involves using identifiable private information or identifiable biospecimens, the research could not be practicably carried out without such information or biospecimens in an identifiable format
- The research could not practicably be carried out without the waiver or alteration, and
- Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

If the research is also FDA regulated, a waiver or alteration may be granted if the research meets the following requirements:

- The clinical investigation involves no more than minimal risk (as defined in 21 CFR 50.3(k) or 56.102(i)) to the subjects;
- The waiver or alteration will not adversely affect the rights and welfare of the subjects;
- The clinical investigation could not practicably be carried out without the waiver or alteration; and
- Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

Waivers must be documented in the study approval letter and the full board IRB meeting minutes, when applicable.

5.9.4 Waiver of Signed Informed Consent

If the IRB waives documentation of informed consent, the investigator still needs to obtain informed consent from the study subject (i.e., verbal consent) but does not need to document the circumstance of that consent on paper. The IRB may waive the requirement for the investigator to obtain a signed consent form for some or all participants if it finds either:

- That the only record linking the subject and the research would be the consent document, the principal risk would be potential harm resulting from a breach of confidentiality. Each subject must be asked whether the subject wants documentation linking the participant with the research, the participant's wishes will govern (45 CFR 46 117(c)(1)); or
- That the research presents no more than minimal risk or harm to the participants and involves no procedures for which written consent is normally required outside of the research context (45 CFR 46 117(c)(2) and 21 CFR 56.109(c)(1)).

When the IRB waives the requirement to obtain written documentation of the consent process, it will review a written script of the information to be provided to participants. The script must include all the required and appropriate elements of consent, as described in Sections 5.3 and 5.4. The investigator will provide the participants with a copy of the script unless the IRB determines that this is not possible, feasible or that a copy of the script will not add to the protections of the participants.

Waiver of documentation must be documented in the study approval letter and

the full board IRB meeting minutes, when applicable.

5.10 Exception from Informed Consent for Planned Emergency Research

Planned emergency research involves patients (prospective human subjects) "who have a life-threatening medical condition that necessitates urgent intervention (for which available treatments are unproven or unsatisfactory), and who, because of their condition cannot provide informed consent. The research must have the prospect of direct benefit to the subject and must involve a test article that, to be effective, must be administered before informed consent from the subject or the subject's legally authorized representative can be obtained and in which there is no reasonable way to identify prospectively individuals likely to become eligible for participation."

Because informed consent cannot be obtained prior to initiating research procedures, there are many additional FDA requirements that must be in place before the IRB can approve planned emergency research, such as community consultation.

FDA requirements to conduct planned emergency research are described in the 2013 Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors Exception from Informed Consent Requirements for Emergency Research. Investigators who are interested in pursuing such research should consult with the Wright State Vice Provost for Research and appropriate hospital officials prior to submitting an IRB application.

If planned emergency research is permitted by local institutional officials in the future, the IRB will review it in accordance with FDA regulations (e.g., 20 CFR 50.24) and FDA guidance current at the time of the submission.

Planned emergency research is different than the emergency use of an investigational drug or device in a single patient. Planned emergency research involves the prospective identification and enrollment of subjects into a research study. Emergency use of an investigational drug or device involves the treatment of a patient using an investigational drug or device outside of the research setting. For more information about local requirements for emergency use of an investigational drug or device, visit the IRB's Emergency Use webpage.

5.11 Posting Requirements for Federally Funded Clinical Trials

For federally funded clinical trials, a copy of the consent form must be posted to a "publicly available, federal website" post-recruitment and no later than 60 days after the last study visit by any subject. Wright State investigators will be required to describe how this will be accomplished in their study submission to the IRB.

5.12 Research Involving Children

Any investigator who plans to involve children in research should consult with the IRB Office prior to initiating an application in the electronic submission system to help avoid review delays by facilitating the investigator's compliance with the following regulatory requirements:

5.12.1 Assent

Investigators are required to propose an assent plan as part of a research protocol that includes children as subjects. If an investigator believes that assent is not appropriate for the child population being studied, appropriate justification must be provided in the Initial Review submission. Requests for waivers of assent need to be requested and subsequently approved by the IRB. The assent plan must also describe the additional safeguards that will be in place to protect the rights and welfare of the children.

Before children can be involved in a research study, the IRB must determine that the proposed research meets all the requirements of 45 CFR 46, subpart A including the provisions for obtaining and documenting assent are adequate (45 CFR 46.408(a)(e)).

As part of the assent process, a child should be given an explanation of the proposed research procedures using vocabulary and language that is appropriate to the child's age, experience, maturity, and medical condition. This explanation should include a discussion of any discomforts and inconveniences the child may experience if he or she agrees to participate in the study.

If assent is solicited, the investigator must respect the child's decision. If the child is asked for assent and refuses, the child's parent(s) or guardian may not override the child's decision.

To obtain valid written assent for a research study, an investigator must use the current IRB approved and stamped assent form unless oral assent has been approved for the study.

5.12.2 Parental (Guardian) Permission

The IRB must determine that adequate provisions are made for soliciting the permission of each child's parent or guardian. When parental permission is to be obtained the regulations require that both parents provide permission, unless one parent is deceased, unknown, incompetent, or not reasonably available, or

when only one parent has legal responsibility for the care and custody of the child.

However, for certain categories of research (research involving minimal risk or greater than minimal risk with the prospect of direct benefit (45 CFR 46.404) or (45 CFR 46.405, Subpart D), the IRB may, when appropriate, determine that the permission of one parent is sufficient, even when the other parent is alive, known, competent, reasonably available, and shares legal responsibility for the care and custody of the child.

When approving research involving children, the IRB meeting minutes must document the determinations required by the regulations to approve the research along with protocol specific findings to justify each of the regulatory determinations in accordance with 45 CFR 46.404, 405 or 406 and 407 and 21 CFR 50, 51, 52, and 54 as applicable.

The minutes must also document the assent process, including whether assent is required, or a waiver of assent has been approved, in accordance with, as applicable, 45 CFR 46.408 and 21 CFR 50.55 and 45 CFR 46.116 Subpart A.

5.12.3 Waiver of Assent

There are circumstances in which the IRB may determine that assent is not a requirement for children to be enrolled in a research protocol. This judgment may be made for all children to be involved in research under a particular protocol, or for each child, as the IRB deems appropriate. The investigator must specifically justify why obtaining assent is not appropriate, in the protocol and Initial Review Request.

For example, the IRB may determine that assent is not a requirement if it determines that the capability of some or all the children is so limited that they cannot reasonably be consulted or that the intervention or procedure involved in the research holds out a prospect of direct benefit that is important to the health or well-being of the children and is available only in the context of the research, and the assent of the children is not a necessary condition for proceeding with the research.

Even where the IRB determines that the subjects are capable of assenting, the IRB may still waive the assent requirement in accordance with 45 CFR 46.116, Subpart A.

A determination that assent is not a requirement for protocols involving greater than minimal risk must be approved at a convened IRB meeting. The IRB's determinations and protocol-specific findings must be documented in the meeting minutes and in the study approval letter.

5.12.4 Alteration and Waiver of Parental Permission

When parental permission is to be obtained, the regulations require that both parents provide permission, unless one parent is deceased, unknown, incompetent, or not reasonably available, or when only one parent has legal responsibility for the care and custody of the child. However, for certain categories of research (research involving minimal risk or greater than minimal risk with the prospect of direct benefit (45 CFR 46.404 or 405), the IRB may, when appropriate, determine that the permission of one parent is sufficient, even when the other parent is alive, known, competent, reasonably available, and shares legal responsibility for the care and custody of the child.

Under the federal regulation 45 CFR 46.408(c) for DHHS- funded research, if the IRB determines that a research protocol is designed for conditions or for a child subject population in which parental or guardian permission is not a reasonable requirement to protect the child subjects (i.e.; neglected or abused children) and the waiver is not inconsistent with applicable federal, state or local laws, then the IRB may waive the permission requirements. However, the investigator must provide an appropriate mechanism for protecting the children who will participate as subjects in the research as a substitute.

5.13 Research Involving Illiterate and Seeing-Impaired Subjects

The IRB allows for illiterate persons who understand spoken English and individuals who are seeing-impaired to participate in research studies. In these situations, the consent document must be read to the subject and the process documented in the research record. The consent should be subsequently signed by the subject "making their mark" on the signature section of the consent document, in order to document their understanding.

A witness who is not a member of the research team is required to be present to confirm the consent process has taken place. Both the witness and the investigator obtaining informed consent must sign and date the consent document.

5.14 Research Involving Physically Impaired Subjects

The IRB allows subjects who are mentally capable of consenting to research studies but

are physically unable to sign the informed consent document to participate in research as long as a witness who is not part of the research team is present. The witness must sign and date the informed consent document to verify that the informed consent process has taken place.

If subjects are capable of doing so, they must also place a mark or "X" on the signature line of the consent document, to confirm their participation in the research study. This process must be documented properly (see Section 5.8). If the reason (e.g., broken arm) that prevented signing the consent form resolves, the subject should be asked to sign and date the form at a later date. This additional step in the informed consent process should also be properly documented.

Investigators who plan to actively enroll subjects who cannot physically sign the consent document should include a detailed consent plan in their Initial Review Request, as well as, a witness signature and date line on the consent form(s).

Investigators who do not plan to actively enroll physically impaired subjects must report any subsequent recruitment to the IRB and amend their IRB study application accordingly to include this population prior to recruiting any additional physically impaired subjects.

5.15 Research Involving Decisionally Impaired Subjects

Decisionally impaired adults or other adults who are unable to provide informed consent for themselves may participate in research if a LAR for that adult can provide signed informed consent, unless that requirement has been waived by the IRB. If a subject regains or develops the capacity to consent, then his/her informed consent must be obtained for any further research as the consent of the LAR is no longer valid.

An adult subject unable to provide informed consent may be able to assent to participation. The IRB may determine whether the assent of some or all of the adult subjects is required for a study. Assent processes must include the key elements of informed consent (see Section 5.3) and be provided in language that is understandable for such adult subjects.

Generally, documentation of assent requires that the assent form be signed by the adult subject. Alternatively, the IRB may determine that for some studies that it is appropriate to add a signature line for assent to the informed consent form.

Any investigator who plans to involve adult subjects unable to consent in research at Wright State must consult with the IRB Office prior to initiating an application in the IRB

electronic submission system for additional guidance.

5.16 Research Involving Non-English Speaking Subjects

An investigator who intends to include non-English speaking subjects must provide sufficient detail in the research protocol regarding the plan for inclusion, including the plan for obtaining informed consent and HIPAA Authorization and additional provisions made during the conduct of the study.

Subjects who do not speak English must be given an informed consent document written in a language understandable to them.

5.16.4 Using Translated Consent Forms

Translated consent documents (i.e., consent and authorization language) for populations that are non-English speaking must be submitted for review and approval by the IRB. The investigator must be consistent with applicable translation policies (e.g., Dayton VAMC or Premier Hospitals) and provide the qualifications of the individual or the service that was used to translate the informed consent documents.

When informed consent is obtained from non-English speaking subjects using a translated consent form all the following must be done:

- The translated consent and HIPAA Authorization document must be approved by the IRB, stamped and be provided in a language understandable to them
- A translator who is fluent in both English and the language of the participant must be available if the person obtaining consent does not speak the language of the participant
- The consent document must be signed and dated by the subject or the subject's LAR (unless the IRB has waived written consent)
- The consent document must be signed and dated by the person obtaining consent and, if the person obtaining consent does not speak the subject's language, by the translator. If the translator is not physically present, a copy of the consent may be mailed, faxed or emailed to the translator for signature, and mailed back to the investigator. A copy of the fully signed informed consent must be provided to the subject upon receipt.

The entire process must be appropriately documented (see Section 5.6).

5.16.5 Using Translated Short Forms

When informed consent is obtained from non-English speaking subjects using an IRB-approved stamped translated short consent form, all of the following must be done:

- A written summary of the oral informed consent process (information to be provided to the subject or subject's LAR) must be submitted by investigator and approved by the IRB
- A translator who is fluent in both English and the language of the subject must be available if the person obtaining consent does not speak the language of the subject
- When the person obtaining consent is assisted by a translator, the translator may serve as the witness and the witness should be fluent in both English and the language of the subject
- The translated short form must be signed and dated by the subject or the subject's LAR (unless the IRB has waived written consent)
- The consent document must be signed and dated by the person obtaining consent and, if the person obtaining consent does not speak the subject's language, by the translator. If the translator is not physically present, a copy of the consent may be mailed, faxed or emailed to the translator for signature, and mailed back to the investigator. A copy of the fully signed informed consent must be provided to the subject upon receipt.
- A copy of the translated short form must be given to the subject or the subject's LAR

The entire process must be appropriately documented (see Section 5.6). The "short form" can only be used once per language per study. After the first use, steps should be taken to comply with Section 5.16.4. Investigators may contact the IRB Office for assistance in locating copies of short forms that have already been translated into various languages.

5.17 Genetic Information Nondiscrimination Act (GINA)

The Genetic Information Nondiscrimination Act (GINA) is a federal law that, together with already existing nondiscrimination provisions of the Health Insurance Portability and Accountability Act (HIPAA), prohibits discrimination in health coverage and employment based on genetic information. In general, GINA prohibits health insurers or health plan administrators from requesting or requiring genetic information of an individual or an individual's family members, or using such information for decisions regarding coverage, rates, or preexisting conditions. GINA also prohibits employers from using genetic information for hiring, firing, or promotion decisions, and for any decisions

regarding terms of employment.

The following statement must be included in the consent form for all federally funded research that involves the collection and use of genetic material (this language can also be found in the informed consent template(s)):

"A Federal law, called the Genetic Information Nondiscrimination Act (GINA), generally makes it illegal for health insurance companies, group health plans, and most employers to discriminate against you based on your genetic information.

This law generally will protect you in the following ways:

- *Health insurance companies and group health plans may not request your genetic information that we get from this research.*
- *Health insurance companies and group health plans may not use your genetic information when making decisions regarding your eligibility or premiums.*
- *Employers with 15 or more employees may not use your genetic information that we get from this research when making a decision to hire, promote, or fire you or when setting the terms of your employment.*

You should also know that this new Federal law does not protect you against genetic discrimination by companies that sell life insurance, disability insurance, or long-term care insurance."

6.0 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 human subject research protocol under review.

7.0 References

- 45 CFR 46, Subpart B "Additional Protections for Pregnant Women, Human Fetuses and Neonates Involved in Research"
- 45 CFR 46, Subpart D "Additional Protections for Children Involved as Subjects in Research"
- 45 CFR 46.116
- 45 CFR 46.117
- 21 CFR 50.20
- 21 CFR 50.55
- VHA Handbooks 1200.1 and 1200.5
- 38 CFR 16
- 38 CFR 17.25