Elements of the Informed Consent Form and HIPAA Authorization

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Please note: Guidance and regulations are subject to change

The HHS Common Rule (2018 Requirements) at 45 CFR 46.116, FDA at 21 CFR 50.25, ICH at ICH GCP E6 guidelines (Section 4.8) have requirements for elements that must be included in the Informed Consent Form (ICF). Although these requirements are similar, there are some differences as outlined below.

The Privacy Rule at 45 CFR 164.508 HIPAA also describes core elements that must be included to ensure that the authorization is valid.

The UNC-Chapel Hill IRB consent and HIPAA authorization templates include these required elements. IRB review of the IRB application and attached consent forms will include confirmation that all required elements are included in the ICF and the HIPAA Authorization.

Informed Consent Form

Basic Common Rule Elements:

Legally effective informed consent must include the following basic elements: 45 CFR 46.116(b)

1. A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures that are experimental.
2. A description of any reasonably foreseeable risks or discomforts to the subject.
3. A description of any benefits to the subject or to others that may reasonably be expected from the research.
4. A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.
5. A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained.
6. For research involving more than minimal risk, an explanation as to whether any compensation 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.
7. An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject.
8. 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.
9. One of the following statements about any research that involves the collection of identifiable private information or identifiable biospecimens:
    a. 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.

b. 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.

Additional Common Rule Elements:

If relevant to the research, legally effective informed consent will also include the following additional elements:

1. A statement that the particular treatment or procedures may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) that are currently unforeseeable.
2. Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's or the legally authorized representative's consent.
3. Any additional costs to the subject that may result from participation in the research.
4. The consequences of the subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject.
5. A statement that significant new findings developed during the course of the research that may relate to the subject's willingness to continue participation will be provided to the subject.
6. The approximate number of subjects involved in the study.
7. 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.
8. A statement regarding whether clinically relevant research results, including individual research results, will be disclosed to subjects, and if so, under what conditions.
9. For research involving biospecimens, whether the research will (if known) or might include whole genome sequencing (in other words, sequencing of a human germline or somatic specimen with the intent to generate the genome or exome sequence of that specimen).

Additional Elements for FDA-Regulated Research:

The FDA does not require basic element 46.116(b)(9) or additional elements 46.116(c)(7), (8), or (9), but requires that the ICF include the following additional disclosures:

1. A statement that the subject's records may possibly be inspected by the FDA.[21 CFR 50.25(b)(5)]
2. For applicable clinical trials, a statement that the clinical trial will be listed in a registry using the following language: "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." [(21 CFR 50.25(c)).]

Additional Elements for Research Following ICH E6 GCP:

ICH GCP E6 requires the following additional disclosures in the ICF that goes beyond the HHS and FDA requirements:

1. The probability of assignment to each study arm.[ICH GCP 4.8.10(c)]
2. A description of the responsibilities of the research participant.[ICH GCP 4.8.10(e)]
3. A description of the "important potential benefits and risks" associated with the available alternatives.[ICH GCP 4.8.10(i)]
4. Information about anticipated prorated payment as applicable.[ICH GCP 4.8.10(k)]

5. When there is no intended clinical benefit to the participant, a statement of no benefit. ICH GCP 4.8.10(h)
6. A statement advising participants that monitors, auditors, regulatory authorities, and the IRB "will be granted direct access to the subject's original medical records for verification of clinical trial procedures and/or data, without violating the confidentiality of the subject, to the extent permitted by the applicable laws and regulations and that, by signing a written informed consent form, the subject (or subject's LAR) is authorizing such access." ICH GCP 4.8.10(n)
7. A statement indicating that the individual identity of the participant will remain confidential if the results of the trial are published.ICH GCP 4.8.10(o)

Additional Requirements for Studies with a National Institute of Health (NIH) Certificate of Confidentiality (CoC):

A description of additional protections provided by the COC and exceptions for those protections.

HIPAA Authorization

Elements for the HIPAA Authorization:

A valid authorization must contain the following core elements: 45 CFR 164.508(c)(1)

1. A description of the PHI to be used or disclosed, identifying the information in a specific and meaningful manner.
2. The names or other specific identification of the person or persons (or class of persons) authorized to make the requested use or disclosure.
3. The names or other specific identification of the person or persons (or class of persons) to whom the covered entity may make the requested use or disclosure.
4. A description of each purpose of the requested use or disclosure.
5. Authorization expiration date or expiration event that relates to the individual or to the purpose of the use or disclosure ("end of the research study" or "none" are permissible for research, including for the creation and maintenance of a research database or repository).
6. Signature of the individual and date. If the individual's legally authorized representative signs the Authorization, a description of the representative's authority to act for the individual must also be provided.

In addition to the core elements, the authorization must contain statements adequate to place the individual on notice of all the following: 45 CFR 164.508(c)(2)

1. A statement of the individual's right to revoke his/her Authorization and how to do so, and, if applicable, the exceptions to the right to revoke his/her Authorization or reference to the corresponding section of the covered entity's notice of privacy practices.
2. Whether treatment, payment, enrollment, or eligibility of benefits can be conditioned on Authorization, including research-related treatment and consequences of refusing to sign the Authorization, if applicable.
3. A statement of the potential risk that PHI will be re-disclosed by the recipient. This may be a general statement that the Privacy Rule may no longer protect health information disclosed to the recipient.

Resources

UNC OHRE SOP 1101: Obtaining informed consent from research subjects

UNC OHRE SOP 1801: Health Insurance Portability and Accountability Act (HIPAA)
21 CFR 50, Subpart B: Informed consent of human subjects
45 CFR 46.116 (2018 Common Rule), General requirements for informed consent
45 CFR 164.508 Uses and disclosures for which an authorization is required
ICH GCP E6 Guidelines, Section 4.8