INSPIRED INNOVATION

FLEXIBILITY IN HUMAN SUBJECTS PROTECTION

Susan Rose, Executive Director
Office for the Protection of Research Subjects (OPRS)
University of Southern California
Creating Rules
More Rules....
Creating Flexibility
Can We Work Together?
Flexibility Imperative

- Burdensome rules, no added protection
- Numbers/kinds of studies proliferated
- IRB mission creep
- Staff/$$$ cut backs
- Sites overwhelmed: Compliance/audits/amendments/chart review/funding concerns
- Faster IRB metrics demanded (though at what point have we compromised HSP)
The First Question: Uncheck the Box or Not?

- Highly recommend “unchecking the box” whenever possible, flexibility door opens.
- If you can’t, there is still relief, compatible flexibility initiatives unable to do so, there’s still relief...

“USC Creative Flexibility Packet” delineates what options sites have with and without “unchecked box”
“Mining” the Regs for Relief with Checked Box

- Consent regulations offer significant opportunities
- Link our big flex list IC available flexibility within the regs
- Empower IRB staff to:
  - verify minor contingencies are satisfied
  - be IRB members/alternates
  - be expedited/exempt reviewers
  - handle all regulatory issues that do not require an IRB
- Allow investigators to write protocols in more general terms to reduce minor modifications
Protections Must be Equivalent with Unchecked Box. Go Wild!

- Establish additional exempt categories for no greater than minimal risk activities
- Extend approval time for activities limited to data analysis
- Expand examples of noninvasive procedures (e.g., amount/frequency of blood draws)
- Exploit flexibility in Subparts B, C, D
Background to Flex

- University of Michigan/University of Minnesota saw opportunities for flexibility, utilized them...USC copied and expanded

- To implement “flex”, USC needed other CA institutions interpretation of California Health and Safety Code, and to add “strength in numbers”

- As you will see, we touched a nationwide nerve/need
USC’s Journey to Flexibility
Not Unanimous or Easy
USC Embracing Flexibility Policies
Not Unanimous or Easy

- Intentionally did not seek Office of Compliance ok, nor tell staff that Michigan only “flexed SBR”
- So USC Flexibility included biomedical as far as CA law allowed
- To this minute, we have never discussed Flexibility policy with our Compliance Office
- Vice President for Research was highly supportive from start, as many VPs are
- AAHRPP was too...significant item
BUT We Went From California to World Domination FAST

- CA colleagues quickly embraced “flex” ideas
- How flex coalition blossomed: was it AAHRPP session? Word of mouth? Articles? Sanity? Reg fatigue?
- Suddenly coalition includes 75 institutions, 125 individuals, has garnered national attention
Oh How it Grew
"If you'd broken a law, I could get you off — but you violated a Federal guideline!"
Flexibility Coalition
Success Ingredients

- Flex sessions at AAHRPP garnered interest from many
- AAHRPP support key for many sites
- Hard work on USC’s part – welcome packet, great website, meetings, materials, always searching for new and great communicators/ideas
- Highlighted at PRIM&R and AAHRPP annual meetings
- In-person meetings set collegial relationship, trust, fun, shared frustration
- Word of mouth
- Articles in IRB advisor, and in newsletters of HRPP, AAHRPP, and USC
120 Member Institutions & Still Growing...

- AAHRPP
- Appalachian State
- Aurora Health Care, Inc
- Baylor Research Institute
- Berkeley
- Brown University
- Cambridge Health Alliance
- Cedars-Sinai Medical Center
- Changhua Christian Hospital
- Children's Hospital of Philadelphia
- Cincinnati Children's Hospital
- Colorado College
- Creighton University
- Dartmouth College
- Department of Energy
- Florida Department of Health
- Fred Hutchison Cancer Center
- Harvard
- Huron Consulting Group
- HRP Consulting
- IRB share
- Loma Linda
- Mayo Clinic
- Mississippi State University
- National Jewish Health
- National Taiwan University Hospital
- NORC at University of Chicago
- Northwestern University
- Partners Healthcare
- The PEER Consulting Group
- Rush University Medical Center
- Samsung Medical Center
- Schulman Associates IRB
- Stanford University
- Texas A&M
- Tufts Medical Center
- University of California Berkeley
- University of California Irvine
- University of California Los Angeles
- University of California San Francisco
- University of California Riverside
- University of Alabama
- University of Iowa
- University of Kentucky
- University of Massachusetts at Lowell
- University of Michigan
- University of Minnesota
- University of Pittsburgh
- University of Southern California
- University of Texas Austin
- University of Utah
- University of Virginia
- University of Washington
- Vanderbilt University
- Yale University
Flexibility Coalition

About

The Flexibility Coalition consists of institutions from across the nation that have achieved a more flexible approach to increasingly burdensome federal requirements, by finding simpler ways of reviewing studies. The freedom to be compliant yet flexible, is permitted for institutions which have opted to “uncheck the box” on the Federalwide Assurance for the Protection of Human Subjects. Unchecking the box limits HHS oversight to projects funded and regulated by OHRP.

The coalition goals are to identify additional areas of flexibility that can be implemented without diminishing the protection of human subjects. It is important for affiliated institutions to have a strong policy statement providing equivalent protections for all human subjects participants. Examples of flex policies include extending IRB approval dates, and establishing additional exempt and expedited review categories. All studies eligible for flex must be non-federally funded and involve no more than minimal-risk research.

The coalition was founded in early 2011 by Susan Rose, the Executive Director of the Office for the Protection of Research Subjects at the USC.

For Questions contact oprs@usc.edu

New

-  Flex Coalition in IRB Advisor
-  AAHRPP Tip Sheet on Equivalent Protections for Flexed Studies
-  Checklist for Implementing Flexibility

In this section

- Research Coordinators
- IRB Community Members
- ContinuousQuality Improvement
- Community-Engaged Research
- Biobanks
- Clinical Translational Science Institute
- Flexibility Coalition

Quicklinks

- iStar
- CITI
- FDA
- OHRP
- Forms

Announcements

2013/08/13
AIDS Group Ends Legal Battle With FDA Over Confidential Data

2013/08/12
New NIH restrictions over HeLa cell line
AAHRPP On-Board
Highlights: AAHRPP Tip Sheet on Equivalent Protections

- AAHRPP metrics addressed trend toward unchecked box/increase flexibility
  - Equivalent protections policy statement requirement 45 Part 46
  - Approval criteria not relevant to certain types of research
  - Extended approval periods for certain research that will not result in increased risk to participants

- Applying flexibility to only minimal risk studies obviates several elements of AAHRPP tip sheet
- Several flex options in tip sheet are available even when all boxes are checked
Why Pursue a Flexibility Policy? 
*Seven Reasons Among Many More:*

1. It’s the best thing that ever happened to sites that have adopted it!!!
2. Metrics from USC, UMn/UMi are positive
3. No good-fit exists for easy approval of non-federally funded no/low-risk research
4. Shrinking resources everywhere
5. A continually increasing regulatory burden
6. Growing volume of research (if your site is lucky)
7. “Because we can” (uncheck the box)
by jove... I think I've found a cure for CANCER!

and cut off our funding?! the hell you have...
Feeding the Hungry Beast

“Flexie”
Care and Feeding of Coalition

- Identity/flex logo: Creating a brand
- Telecon 2x annually, in-person meetings annually with follow up notes for those unable to attend
- Periodic updates to all flex coalition members
- Website full of resources, policy examples
- New ideas, speakers, institutions requested by coalition
“These new regulations will fundamentally change the way we get around them.”
USC Flexibility Policy

- Implemented in April 2011
- Limited to unfunded minimal risk studies
- Assures equivalent protections regardless of funding
- “Flexing” a project is at the discretion of the USC IRBs
- Non-funded flex investigators **must** report funding if obtained
- Audit annually, educate constantly
- Researchers, admin and staff love it and love us!
- Compliance folks may love it less...(don’t tell them)
- **HIPAA MAY APPLY NONETHELESS**
“It’s a baby. Federal regulations prohibit our mentioning its race, age, or gender.”
HIPAA

“Can’t say. It’s private.”
USC Flexibility Policy

Inclusion Criteria

- Unfunded studies involving no greater than minimal risk, which are not otherwise excluded.
- The IRB may make exceptions to this policy for funded research that is not federally funded. (foundations/gifts etc.)
- Where activity is limited to study of existing identifiable data. (no further enrollment/interactions/interventions)
USC Flexibility Policy

Exclusion Criteria

- Funded studies are out
- FDA-regulated components
- Clinical interventions
- Prisoners as subjects
- Study requiring COC
- Student projects for which faculty sponsor received funding
- Contractual obligations or restrictions that preclude eligibility in this policy (haven’t found any yet)
USC 3 Year Approval

- Studies that qualify:
  - Retrospective or prospective data collection/abstraction only (*chart review, court records)* these may be Exempt 8
  - Collection of data through noninvasive procedures routinely employed in clinical practice—moderate exercise, body composition testing (SBR studies only)
  - Collection of biological specimens for research purposes
# USC Flex Exempt Category

<table>
<thead>
<tr>
<th></th>
<th>Flexibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exempt 7</td>
<td>Non-funded research, involving no greater than minimal risk, that does not conform to a specific exempt category (Examples: Online surveys, no greater than minimal risk behavioral games, Studies of leadership traits of non-public, non-elected officials)</td>
</tr>
<tr>
<td>Exempt 8</td>
<td>Research, involving no greater than minimal risk, where activity is limited to study of existing (or prospective at IRB discretion) identifiable data. (Examples: Medical record reviews where data was extracted from records, data analysis of information already collected from court records)</td>
</tr>
</tbody>
</table>
Auditing Flexed Studies

- Auditing is a commitment built into USC Flex Policy: (we don’t collect metrics/ but this is essential)
  - Auditing for: compliance with policy, adequacy of protections, to ensure “flexed” studies were eligible

- USC Audit Process:
  - Subsequent audits improve audit and increase studies monitored
  - Auditing process is on-line audit through E-submission system
USC Flex Audit Findings

- All flex studies met flex criteria
- First few studies were flexed under wrong category (e.g. exempt 7 instead of exempt 8)*
- Annual reminders to investigators regarding funding changes were not sent
- Glitches with electronic IRB application system now fixed (e.g., missing sections of IRB application for flex exempt studies, review category inaccuracies)

*Exempt 8: Research, involving no greater than minimal risk, where activity is limited to study of existing or prospective identifiable data.

<table>
<thead>
<tr>
<th>2013 Biomedical studies</th>
<th>2013 SBR studies</th>
</tr>
</thead>
<tbody>
<tr>
<td>flex studies audited 25/194 (12.8%)</td>
<td>Flex studies audited 25/134 (19%)</td>
</tr>
<tr>
<td>Most common flex category: 2 year approval</td>
<td>Most common flex category: Exempt 7 (less than minimal risk research that does not conform to any of the six exempt categories)</td>
</tr>
</tbody>
</table>
Flexibility that Makes Sense

- Set initial IRB approval date from the day all contingencies are satisfied
- Allow IRB staff who are IRB members (designated by the Chair) to conduct Expedited Review/Approval
- Allow IRB Staff Reviewers to conduct exempt reviews and to verify when minor contingencies have been satisfied
- Allow Exempt Approval for
  - Less than minimal risk research with minors of any age
  - Studies of leadership traits of non-public, non-elected officials
  - Behavioral games/performance tasks that incur no risk
  - Studies utilizing commercial technology (eye-tracking)
  - Ethnographies (un-funded)
- Add Exempt Categories beyond current regs
- Extend Approval Periods for Research Projects in Data Analysis
Flexibility with Consent

- Elements irrelevant to the type of research are allowed to be omitted (no waiver needed)
- OK to use short forms for any kind of research/not restricted to translations only
- Exempt research does not require informed consent (info/fact sheet recommended)
- Documenting of child assent is not required by regs
- Utilize waiver of written documentation in certain expedited research (procedures in categories (1)-(7))
- Witness signature only required by OHRP when short form is used
The Seven Habits of Highly Effective IRBs

1. Use flexibility for non-regulated/non-funded research
2. Review all research at the least restrictive level of review
3. Evaluate risk probability and use the minimal risk standard
4. Use full-time, professional IRB members
5. Rely on AAHRPP-accredited IRBs
6. Use the regulatory criteria for approval (don’t go beyond)
7. Use smaller IRBs with more frequent IRB meetings
Further Flexibility: Take Home Lessons

- Credential faculty to make exemption determinations.
- Allow continuing review intervals to exceed one year.
- Allow non-IRB members to conduct expedited review.
- Exempt #4:
  - Define "existing" to mean exist at the time the research is proposed or will exist in the future for non-research reasons
- Do not apply Subpart B to minimal risk research.
- Do not apply Subpart C to unexpected incarcerations.
- Do not apply Subpart C to exempt category #4.
- Do not apply Subpart D to exemptions.
Where We Go from Here

- Embolden others
- Solicit more ideas
- Think outside the box
- Communicate with federal agencies to lessen burden
- Keep sharing information and strengthen coalition
- Expand flexibility to embrace creative ideas anywhere in IRB world
- Agreements to cede entire IRB reviews
- Streamline IRB administrative process prior to review
- Templates for frequently submitted research protocols
- Redefine Flexible=creative solutions/ workflows/ ideas/ (new initiative)
10 Commandments of Flexibility

1. Get Institutional Buy-in
2. Uncheck the Box on Federalwide Assurance 4(b)
3. Add Equivalent Protections Statement in Policy
4. Warn Flexed Studies to Report when Funded
5. Be Aware of Differing Discipline/State Requirements re: Biomedical v Social-Behavioral, State/local laws, Institutional practices (eg. CA Health and Safety Code, California Bill of Rights)
6. Keep Records and Metrics of Flex Studies for Audits/Document of Success Coalition
7. Educate Everyone
8. Implement flex, stay in touch with Flexibility Coalition
9. Share and create further flexibility, adapt flex model to local needs. No “one way”.
10. Refine policy over time, based on experience
The End