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# IRB Requirements for Expanded Access to Investigational Drugs (#1)

FDA has released a draft guidance titled "Expanded Access to Investigational Drugs for Treatment Use: Questions and Answers." Although the term "IRB" is not in the title, IRBs will be affected by these recommendations.

> "This revised draft guidance includes responses to stakeholder questions received since publication of the updated final guidance in 2017 and includes the Agency's recommendations related to new requirements of the Cures Act and FDARA [FDA Reauthorization Act of 2017] that are related to expanded access ….
>
> Significant changes to the 2017 version of the guidance include additional recommendations related to institutional review board review, informed consent, and new requirements established by the Cures Act and FDARA" (87 Fed. Reg. 66192, November 2).

## Using Investigational Drugs for Treatment

> "Under the expanded access regulation provided in 21 CFR part 312, subpart I, FDA allows use of investigational drugs for treatment of patients with serious or immediately life-threatening diseases or conditions who lack therapeutic alternatives" (ibid).

Before proceeding, note that FDA is accepting comments on this draft guidance until January 3, 2023. For more information about this process, contact: Dat Doan of FDA's Center for Drug Evaluation and Research at 240-402-8926.

We begin our coverage with one of the most useful Q&As; i.e., "Q#9 - Is IRB Review and Approval Required for All Expanded Access Categories?" In its answer, FDA states that:

> "Except for emergency expanded access use when there is not sufficient time to secure prospective IRB review (see Q6), an investigator treating a patient with an investigational drug under expanded access is responsible for obtaining IRB review[20] and approval consistent with 21 CFR part 56 before treatment with the investigational drug may begin, regardless of whether the protocol is submitted in a new IND [Investigational New Drug application] or to an existing IND (§ 312.305(c)(4)).

**NOTE #1:** Quoted materials in this newsletter appear exactly as originally published in source documents, including any misspellings, grammatical errors, or missing words. However, we will on occasion insert words or edit text and/or formating in brackets [ ] to make the material easier to read.

**NOTE #2:** Emphases are added to articles by HRR by underlining or adding ***bold/italics*** to selected text, unless stated otherwise.

**NOTE #3:** Articles **T**o **B**e **C**ontinued in subsequent issues are marked at the end of the article with **{TBC}**.

## Also In This Issue





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[FN #20: …. If the patient's physician does not have access to a local IRB, an independent IRB may be used. The Department of Health and Human Services' Office for Human Research Protections maintains a database of registered IRBs.

Go to https://ohrp.cit.nih.gov/search/irbsearch.aspx?styp=bsc and click on 'Advanced Search.' Enter your state to find registered IRBs in your area. For more information, see https://www.fda.gov/news-events/public-health-focus/expanded-access.]" (guidance, p. 11; on the Web at https://www.fda.gov/media/162793/download).

## What Does IRB Do If There Is No Emergency?

"Part 56 requires, among other things, that the IRB review the expanded access use at a convened IRB meeting at which a majority of the members are present (full IRB review) (§ 56.108(c)).

**Non-emergency individual patient expanded access IND:** Upon request, FDA intends to allow for waivers of the requirement for review and approval at a convened IRB meeting for individual patient expanded access INDs where the IRB chairperson or another designated IRB member provides concurrence before treatment use begins" (ibid).

## A "Different Review Pathway" for IRBs

"In this case, the review of individual patient expanded access use by an IRB chairperson (or designated IRB member) would follow a different review pathway that is neither full board nor expedited, but rather one in which the IRB chair or designee reviews the relevant documents (as determined by the IRB), and then the decision to concur or not (and/or any questions and responses) is documented by the IRB chair or designee.

FDA concludes that such a waiver is appropriate for individual patient expanded access INDs for the initial submission, any amendments (e.g., for change in the use or duration of treatment) to the IND, and, if applicable, continuing review.

FDA intends to consider a completed Form FDA 3926 with the box in Field 10.b selected and the form signed by the physician to be a request for a waiver under § 56.105 of the requirements in § 56.108(c), which relates to full IRB review.

When a waiver is requested in this manner, the physician does not receive notice from FDA indicating that the waiver is granted. Alternatively, the physician may request a waiver separately in an amendment to the IND. When the request for waiver is accomplished by submission of a separate waiver request, FDA issues a response to the waiver request" (supra at p. 12).

## When a Physician Can Alter an IND

"If a physician submits an individual patient expanded access IND using Form FDA 1571 and wishes to request a waiver from full IRB review, a separate waiver request under § 56.105 of the requirements in § 56.108(c) should be submitted with the application. FDA issues a response to the waiver request in this situation.

If the initial protocol under an individual patient expanded access IND was reviewed and approved by the full IRB but the physician would like any amendments or the continuing review to be conducted by the IRB chairperson or the chairperson's designee instead, the physician may amend the IND with correspondence that clearly indicates the intent of the amendment (to change the approach for continuing IRB review of the expanded access protocol) and that includes a request for waiver under § 56.105 of the requirements in § 56.108(c).

As described previously, FDA intends to consider a completed Form FDA 3926 with the box in Field 10.b selected and the form signed by the physician to be a request for such a waiver.

Alternatively, the physician may amend the IND with a separate request for waiver of continuing IRB review by the full IRB if Form 3926 is not used or if Field 10.b was not checked" (ibid). © {TBC}