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| DEPARTMENT: Clinical Operations Group – Research | POLICY DESCRIPTION: Special Cases Concerning Investigational Products and Humanitarian Use Devices |
| PAGE: 1 of 4 | REPLACES POLICY DATED: 3/1/12, 9/1/13 |
| EFFECTIVE DATE: February 22, 2019 | REFERENCE NUMBER: COG.RSH.007 (formerly CSG.RSH.007) |
| APPROVED BY: Ethics and Compliance Policy Committee | |

SCOPE: This policy applies to Company-affiliated facilities (i.e., hospitals, surgery centers, physician practices, administrative offices, etc.) that may experience one of the three scenarios. Specifically, they are 1) use of Investigational Products Outside of IRB Approved Protocols for Treatment in Emergency Situations; 2) use of Investigational Products as “Second Institution” and 3) Non-Research use of Humanitarian Use Devices (HUDs).

PURPOSE:

To provide guidance in the following:

1. In rare instances, a facility is faced with a clinical emergency where the treating physician desires to use test article (i.e., an investigational drug, device or biologic) outside of the protocol it is used in. Although these products are not available for commercial use outside of clinical trials, there are legal criteria that the treating physician can testify to in writing to allow the use in the emergency outside of Institutional Review Board (IRB) approved protocols.
2. When a facility accepts the admission of a clinical research subject for medical care not as a result of research participation (i.e., a “second institution”), it may need to continue the investigational drug or device (or provide other services such as protocol driven safety evaluations) during the patient/human research subject’s admission to the hospital (as a patient) if deemed appropriate by the Admitting Physician in consultation with the Principal Investigator.
3. Although HUDs and products available under the FDA’s Expanded Access Program (“EAP Products”) are approved for treatment use by the FDA, their use requires IRB approval and oversight by the facility according to FDA law, unless waived by FDA.

POLICY:

A. Special Policy for Inpatient Pharmacies

Any inpatient pharmacy must have written processes (either separately or integrated into other pharmacy policies) addressing the following:

1. Accommodating the use of investigational medications that includes review, approval, supervision and monitoring.
2. Documenting that the pharmacy controls of the storage, dispensing, labeling and distribution of medications to hospitalized patients/subjects includes investigational drugs.

B. Use of Investigational Products Outside of IRB Approved Protocols for Treatment in Emergency Situations

The facility may permit the emergency use of an investigational drug, device, or biologic outside of IRB approved protocols (with or without informed consent as described later in this policy) only in accordance with federal law. The current requirements are as follows:

1. Two physicians (i.e., the treating physician requesting use of the test article and another independent physician) must certify in writing to the IRB overseeing the study the following five criteria:

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- a. The patient is in either a potentially life-threatening or severely debilitating situation (severely debilitating means diseases or conditions that cause major irreversible morbidity such as blindness, loss of arm, leg, hand or foot, loss of hearing, paralysis or stroke; AND
 - b. Immediate intervention is required to prevent death or major irreversible morbidity; AND
 - c. No generally acceptable alternative for treating the patient is available; AND
 - d. There is substantial reason to believe that benefits will exist from the unapproved use; AND
 - e. There is not sufficient time to obtain IRB approval (and/or an Investigational Device Exemption (IDE) approval from the FDA).
2. To waive consent, the two physicians must also certify the following two criteria:
 - a. informed consent cannot be obtained because of an inability to communicate with, or obtain legally effective consent from, the subject; AND
 - b. time is not sufficient to obtain consent from the subject’s legally authorized representative.
 3. If time is not sufficient to obtain the independent physician determination before use of the test article, the actions of the treating physician must be reviewed and evaluated in writing by an independent physician within five (5) working days of the use.
 4. The emergency use must be reported to the IRB governing the study within five (5) working days of the use. Facilities that have Internal IRBs that have deferred review of the study to an External IRB may also require reporting to the Internal IRB in addition to reporting to the External IRB. This reporting is not construed as an approval for the emergency use by the IRB. The use without prospective IRB approval is not research. It is considered medical treatment and therefore information derived from the emergency use cannot be included in the research data.
 5. The exemption allows for only one (1) emergency use of a test article without prospective IRB review. Any subsequent use of the investigational product at the facility must have prospective IRB review and approval; however, it would be inappropriate to deny emergency treatment to subsequent individuals if the only obstacle is that the IRB has not had sufficient time to convene a meeting to review the issue.

C. Use Of Investigational Products as “Second Institution”

1. Procedures should be in place for rapidly identifying patients participating in a research study such as incorporating a question into the nursing Admission Assessment and/or in registration procedures.
2. Certification of IRB review is not necessary when the facility is limited to a “second institution” as defined in the Guiding Documents and Definitions Policy, COG.RSH.001.
3. A copy of the signed written informed consent document is obtained (i.e., from the Principal Investigator, the subject or other sources) and placed in the medical record for each case in which adherence to the protocol is contrary to the care the subject would have received

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absent a protocol (i.e., as needed to document deviation from an evidence-based clinical pathway).

4. The facility should have policy(ies) or guideline(s) in place that is sufficient to allow the administration of the investigational drug, biologic or device when no contraindication exists and as ordered.

D. Non-Research Use of Humanitarian Use Devices and Expanded Access Products

1. Outside of an emergency or otherwise waived by FDA, the facility cannot condone the use of HUDs (approved by the FDA under their Humanitarian Device Exemption (HDE) category) or Expanded Access products (i.e., “compassionate use”) without the prior certification of IRB approval.
2. In the presence of a life-threatening emergency, an HUD or an Expanded Access product may be used without IRB approval as long as the physician follows the IRB policy for reporting such emergency use (see above).
3. Copies of the IRB approval(s) shall be maintained in a folder similar to that used for research protocols. NOTE: In addition to the time limitation, IRBs may place additional restrictions on the HDE or EAP product approvals such as on a case by case basis or on a limited number of individuals. The Facility should read the IRB approval carefully to assure that they do not allow the use outside of these restrictions.
4. Although the HUD/HDE or EAP product is approved by the FDA for non-research use, the activity should be listed in the research protocol database due to the need to monitor continual IRB approval.
5. Once IRB approval is certified, the purchase of the HUD/HDE or Expanded Access product(s) may take place.
6. When the HUD/HDE or Expanded Access product(s) is received at the facility and ready for administration or implantation, all physicians and staff must be in compliance with IRB instructions related to its approval and use.
7. Humanitarian Use Devices and Expanded Access products should be promptly removed from inventory upon the expiration of IRB approval.

E. Access To Investigational Products Under A “Right To Try” Law

Federal law now allows for the “Right To Try” investigational products without the prior approval of the FDA (as would be required in a clinical trial or Expanded Access). Access under “Right To Try” is governed by the states. As the requirements vary from state to state (e.g., whether it takes one or two physicians to make the terminally ill diagnosis, requirements of the consent form etc.), it is imperative that the criteria be verified prior to administering a product under a Right To Try law. State by state resources are available at <https://connect.medicity.net/web/clinicalresearch/right-to-try>.

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REFERENCES:

1. IRB Related Definition and Common Acronyms Policy, [COG.IRB.001](#)
2. Clinical Operations Group Research Policies in the COG.RSH series (COG.RSH.001 through COG.RSH.010)
3. The Joint Commission Hospital Accreditation Standard MM.06.01005 (2011)
4. Use of Investigational Products When Subjects Enter a Second Institution - Information Sheet (1998)
5. FDA's Emergency Use of an Investigational Drug or Biologic - Information Sheet (1998)
6. FDA's "Frequently Asked Questions About Medical Devices" (2006)