Procedure for Emergency Use of Investigational Drugs, Biologics, and Devices

I. Purpose

This document outlines the procedure for the emergency use of investigational drugs, biologics, and devices at sites under the purview of the Albert Einstein College of Medicine ("Einstein" or "College of Medicine") Institutional Review Board (IRB).

II. Scope

This Procedure applies to all emergency use of investigational drugs, biologics, or devices at sites under the purview of the Einstein IRB.

III. Definitions

Investigational Device: A medical device that is the subject of a clinical study designed to evaluate the effectiveness and/or safety of the device. As further stated, a device is any healthcare product that does not achieve its primary intended purpose by chemical action or by being metabolized. Medical devices also include diagnostic aids, such as reagents and test kits for in vitro diagnosis.

Investigational Drugs or Biologics: A drug or biologic that is used in clinical investigation. Such drugs or biologics might be either commercially available or not commercially available and used according to, or outside of, the FDA-approved indications.

Life threatening means diseases or conditions where the likelihood of death is high unless the course of the disease is interrupted and diseases or conditions with potentially fatal outcomes, where the end point of clinical trial analysis is survival. The criteria for life threatening do not require the condition to be immediately life-threatening or to immediately result in death. Rather, the subjects must be in a life-threatening situation requiring intervention before review at a convened meeting of the IRB is feasible.

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.

IV. Procedure

The FDA defines emergency use as the use of an investigational drug, biologic, or device with a human subject in a life-threatening situation in which no standard acceptable treatment is available, and in which there is not sufficient time to obtain IRB approval. The emergency use provision allows for one emergency use of a test article per institution without prospective IRB review.

If use is for a life-threatening or serious disease, but there is sufficient time to obtain IRB approval, refer to the procedure, "Treatment Use of Investigational Drugs, Biologics, and Devices."

Note, under Department of Health and Human Services (DHHS) requirements, patients receiving a test article in an emergency use as defined by FDA regulations may not be considered to be a research participant. DHHS regulations do not permit data obtained from patients to be classified as human participants research, no permit the outcome of such care to be included in any report of a research activity subject to DHHS regulations.

Under FDA regulations, the emergency use of a test article, other than a medical device, is a clinical investigation, the patient is a participant, and the FDA may require data from an emergency use to be reported in a marketing application.

Prior to Emergency Use

Emergency use of investigational drugs or biologics requires an IND. The physician should contact the IND holder to determine if the drug or biologic can be made available for emergency use under the existing IND. If the drug or biologic cannot be made available under an existing IND, the physician must obtain an emergency IND from the FDA. If the need for an investigational drug or biologic arises in an emergency situation that does not allow time for submission of an IND, the FDA may authorize the emergency use via telephone in advance of the IND submission.

If using an investigational **device** with a FDA-approved IDE, the physician must contact the IDE holder to obtain authorization.

Informed Consent

Even for emergency use, the investigator is required to obtain informed consent of the subject or the subject's legally authorized representative. The sponsor will more than likely supply the consent form, a copy of which should be submitted to the Einstein IRB. In instances where the sponsor's consent is not available, use the Emergency Use Consent Template found on the Einstein IRB website.

An exception under FDA regulations at [21 CFR 50.23] permits the emergency use of an investigational drug, device, or biologic without informed consent where the investigator and an independent physician who is not otherwise participating in the clinical investigation certify in writing all four of the following specific conditions:

1. The subject is confronted by a life-threatening situation necessitating the use of the test article.
2. Informed consent cannot be obtained because of an inability to communicate with, or obtain legally effective consent from, the subject.
3. Time is not sufficient to obtain consent form the subject's legally authorized representative.
4. No alternative method of approved or generally recognized therapy is available that provides an equal or greater likelihood of saving the subject's life.

If time is not sufficient to obtain the independent physician determination before use of the test article, the actions of the investigator must be reviewed and evaluated in writing by an independent physician within 5 business days.

Documentation of the above must be included in the Emergency Use report submitted to the IRB.

Post-Emergency Use

For investigational **drugs or biologics**, the physician must provide a report to the FDA at the conclusion of the treatment. If the emergency use occurred prior to the submission of a written emergency IND application, a written submission must be provided to the FDA within 15 days of the FDA's authorization of the emergency use.

For investigational **devices**, the IDE holder must provide a report to the FDA within 5 business days.

Emergency use of Humanitarian Use Devices

Humanitarian Use Devices ("HUDs") may also be administered without prior approval by the IRB in emergency situations. In such cases, the physician must follow the same procedure as for emergency use of investigational devices. For more information on Humanitarian Use Devices, refer to the procedure, "Humanitarian Use Devices."

IV.A. IRB Acknowledgement of Emergency Use

When possible, the IRB should be notified in advance of the proposed emergency use. For some emergency use situations, notification to the IRB may be necessary because the manufacture of the product may not agree to ship the product until a letter confirming the IRB is aware of the impending use of the investigational product is received.

If prior IRB acknowledgement is not obtained, the IRB must be informed within 5 business days when an emergency exemption is used.

FDA regulations require that any subsequent use of the investigational product at the institution (regardless of investigator) have prospective IRB review and approval. FDA acknowledges, however, that it would be inappropriate to deny emergency treatment to a second individual if the only obstacle is that the IRB has not had sufficient time to convene a meeting to review the issue.

IV.B. Submission of Emergency Use Application

1. Questions for possible emergency use should be forwarded to the OHRA Director.

2. Physicians must submit an Emergency Use Application to the IRB office. The application should be submitted in advance of the proposed emergency use, if possible, but no later than 5 business days after the emergency exemption is used.

3. The OHRA Director will search emergency use records to determine if the emergency use is the first or subsequent use of the test article.

4. OHRA staff will forward the Emergency Use Application to the IRB Chair.

5. The IRB Chair will determine if the submitted documents satisfy the requirements for emergency use.
6. OHRA staff will send the physician a notification letter to inform them of the IRB Chair's determination.
7. If the enrollment of additional subjects is anticipated in the future, a full protocol must be submitted to the IRB for review and approval at a convened meeting.

V. Effective Date

Effective as of: 22 August 2019

Implementation Period: Six months from the effective date.

VI. Procedure Management and Responsibilities

Einstein's Office of Human Research Affairs is the Responsible Office under this Procedure. The Executive Dean is the Responsible Executive for this Procedure. The OHRA Director is the Responsible Officer for the Management of this Procedure.