TITLE: Institutional Review Board Special Considerations
SC 513 Humanitarian Use Devices

POLICY STATEMENT: As defined in 21 CFR 814.3(n), a Humanitarian Use Device (HUD) is a "medical device intended to benefit patients in the treatment or diagnosis of a disease or condition that affects or is manifested in fewer than 4,000 individuals in the United States per year." HUDs cannot be sold for profit except in narrow circumstances and they can only be used in a facility after an IRB has approved their use in that facility, except in emergencies where the physician determines that approval cannot be obtained in time to prevent serious harm or death to the patient (see Emergency Use Situations). Although the use of a HUD within its approved labeling does not constitute research, the FDA requires IRB approval be obtained before a HUD can be used in a facility.

GENERAL PROVISIONS:
The Food and Drug Administration’s (FDA) final rule concerning humanitarian use devices became effective October 24, 1996. By definition, a humanitarian use device (HUD) is one that is intended to benefit patients by treating or diagnosing a disease or condition that affects fewer than 4,000 individuals in the United States in a calendar year. The purpose of a Humanitarian Device Exemption (HDE) is to protect the public health and safety and to encourage the discovery and use of devices intended to benefit patients in the treatment or diagnosis of diseases or conditions that affect fewer than 4,000 individuals in the United States.

Section 520(m) of the Medical Device Amendments of 1976 authorizes FDA to exempt a Humanitarian Use Device from the effectiveness requirements of sections 514 and 515 of the Act provided that (1) the device will be used to treat or diagnose a disease or condition affecting fewer than 4,000 individuals in the United States; (2) the device would not be available unless the exemption were granted; (3) there is no comparable device available; and (4) the device will not expose patients to an unreasonable or significant risk and the probable benefit to health outweighs the risks from use.

A Humanitarian Device Exemption (HDE) designation is valid for 18-month intervals as long as certain criteria are met. A HUD cannot be sold for an amount that exceeds the costs of research and development, fabrication and distribution. Such devices may only be used in institutions where a local IRB has approved the use of the device to treat or diagnose the specific rare disease. Without IRB approval, the device cannot be used in humans.

IRB approval is needed to insure that provisions are in place to insure the subject understands that the safety and efficacy of the device is unknown at present.

Full Board review is required for all humanitarian use devices to be used within a Mercy Health facility.

Investigators must submit to the IRB the following documents for review when submitting paperwork for a humanitarian use device:
- Mercy Health IRB Application through the IRB Manager electronic portal
- FDA IDE Letter approving the Humanitarian Use Device
- Summary of Safety and Probable Benefits (from Sponsor)
- Labeling for the device
- Post approval record keeping requirements of the site
Institutional Policy & Procedure

- Post approval reporting requirements under 21 CFR 56 814.84 and 814.126.
- Adverse event reporting requirements and device defect reporting requirements.
- Annual reports
  - Number of devices shipped or sold. If the number exceeds 4,000, an explanation and estimate of the number of devices used on multiple patients with a basis for the estimate
  - Information describing the applicant’s clinical experience with the device, any training completed or required, and a list of physicians who will be using the device
  - Any cost information relevant to patient concerns (is the device billable, will it be provided by the Sponsor for free, etc.)
  - Any advertisements or other descriptive materials used by the HDE holder or private label distributor

A HUD specific informed consent document in Mercy Health informed consent document format may be required. Investigators are encouraged to speak with the IRB Chairperson for guidance regarding the need for a device specific informed consent document when planning to submit a request for approval of a HUD.

At the time of initial review, the IRB will determine if approval of the use has any further restrictions, such as use of the device under a protocol or on a case-by-case basis. In no case may approval of the use exceed the scope of the FDA-approved indication.

At the time of initial review, the IRB will determine if continuing review may be expedited (per 21 CFR 56.110) or if full board review is to be required.

Investigators / applicants will be required to submit a continuing review report to the IRB according to a time frame determined by the IRB, but at least annually. This report will include information describing the applicant’s clinical experience(s) with the device.

Investigators / applicants will submit the following to Mercy Health IRB:

- Any amendments or supplements to the HDE
- Annual reports from the Sponsor
- Unanticipated adverse effects
- Increases in the incidence of anticipated adverse effects
- Reports of device failures necessitating a labeling, manufacturing or device modification
- Any further results of animal / laboratory or clinical testing
- Any withdrawal of approval by a reviewing IRB
- Final report from Sponsor
- Final report from applicant.

Emergency Use Situations

If the HUD is used in an emergency situation (off label) to save the life or protect the physical well-being of a patient, conditions defined in the CFR must be met for emergency use. In addition, Mercy Health IRB requires the following patient protection procedures be followed:

Before the device is used, the physician will:

- Obtain the IRB chairperson’s concurrence
- Obtain informed consent from the patient or his/her legal representative
- Obtain an independent assessment by an uninvolved physician
- Authorization from the HDE holder (Sponsor).
- Submit a follow-up report on the patient’s condition and information regarding the patient protection measures to the HDE holder
- Submit all above correspondence and documentation to the IRB

If the HUD is employed for compassionate use, the following procedures will be followed:

- Full board review
  - Submit to Mercy Health IRB the following information:
    - A copy of the compassionate use request sent to the HDE holder including:
      1. A description of the patient’s condition and circumstances necessitating treatment under compassionate use.
      2. A discussion of why there are no alternative therapies available and why the probable risk of the investigational device is no greater than the probable risk from the disease or condition.
      3. Identification of any deviations anticipated in order to treat the patient.
      4. Letter from the HDE holder approving the compassionate use.
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- Copy of any FDA correspondence or telephone logs concerning/approving the compassionate use.
- Copy of the independent assessment obtained from an uninvolved physician
- Copy of the informed consent to be used with this patient
- The monitoring schedules to be followed during follow-up including any tests, procedures, and exams to be performed.
- Written plan to obtain informed consent from the patient or his/her legal representative
- Written plan for submission of a follow-up report on the patient’s condition and information regarding the patient protection measures to the HDE holder.

IRB, sponsor and applicant correspondence for humanitarian use devices is subject to the same record-keeping requirements of research studies at Mercy Health.

DEFINITIONS:

**Humanitarian Use Device:** a device that is intended to benefit patients in the treatment and diagnosis of diseases or conditions that affect or are manifested in fewer than 4,000 individuals in the United States per year.

**Device:** An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is—(1) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them, (2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or (3) intended to affect the structure or any function of the body of man or other animals, and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes.

**Humanitarian Device Exemption (HDE):** Medical devices approved for marketing typically must have demonstrated safety and efficacy before marketing to the public-at-large. The exemption allows marketing even though the HUD does not have proven efficacy for its labeled indication.

REFERENCES:

Humanitarian Use Device regulations located at [http://www.fda.gov/orphan/humuse.htm](http://www.fda.gov/orphan/humuse.htm)

21 CFR 814 Subpart H, Humanitarian Use Devices

21 CFR 814.3(n)

FDA Information Sheets, Guidance for IRBs and Clinical investigators, 1998 Update


HDE Information located at [http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfHDE/HDEInformation.cfm](http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfHDE/HDEInformation.cfm)

Emergency Use of Unapproved Medical Devices at [http://www.fda.gov/cdrh/devadvice/ide/early.shtml#emergencyuse](http://www.fda.gov/cdrh/devadvice/ide/early.shtml#emergencyuse). For emergency use of an HUD, the HDE holder would assume the responsibilities of the IDE Sponsor in this guidance.

Compassionate Use at [http://www.fda.gov/cdrh/devadvice/ide/early.shtml#compassionateuse](http://www.fda.gov/cdrh/devadvice/ide/early.shtml#compassionateuse)

For compassionate use of a HUD, the HDE holder would assume the responsibilities of the IDE Sponsor in this guidance.

ATTACHMENTS:

SC 513-A Worksheet for Review of Humanitarian Use Device

PROCEDURE:

<table>
<thead>
<tr>
<th>Responsibility</th>
<th>Action</th>
</tr>
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<tbody>
<tr>
<td>IRB Specialist/IRB Coordinator</td>
<td>1. Review incoming submission and ensure the submission package contains all elements necessary to perform a review of the proposed use of the humanitarian use device.</td>
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<td></td>
<td>2. Issue correspondence as advised by the IRB Chairperson.</td>
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Version Date 05/06/2015
**IRB AssignedReviewer**

1. Responsible for conducting appropriate review of HUD submissions planned for this category in consultation with any appropriate experts and resources.

**IRB Committee**

1. Conduct a thorough discussion of this type of protocol to verify that all regulations have been followed.
2. Conduct initial (full board) as well as continuing review (full board or expedited) of the HUD
3. Ensure that health care providers are qualified through training and expertise to use the device as required in the HDE Approval Order
4. Ensure that patients receive the labeling information prepared by the HDE holder or, when safety and effectiveness data is being collected for a Pre-marketing application (PMA), informed consent is obtained (21 CFR 50)
5. Ensure that physicians submit reports to the HDE holder and to the IRB whenever a HUD may have caused or contributed to a death or serious injury, or has malfunctioned and would be likely to cause or contribute to a death or serious injury if the malfunction were to recur (21 CFR 814.126(a))

**Investigator**

1. Assign primary reviewer to review all of the submission materials and complete the HUD reviewer worksheet.
2. Facilitate discussion during IRB Committee meeting to ensure all materials have been discussed and committee members concerns are addressed.
3. Guide committee members through discussion and voting.

**IRB Chairperson**

1. Ensure all HDE/HUD submissions include all of the required elements to ensure a timely and thorough review occurs.
2. Obtain IRB approval and institutional clearances prior to first use of the HUD and maintain IRB approval (continuing review) as long as the HUD continues to be used in the institution (see exceptions in emergency situations)
3. Ensure that patients receive the labeling information prepared by the HDE holder or, when safety and effectiveness data is being collected for a PMA, informed consent is obtained (21 CFR 50)
4. Ensure that the device is used only by designated individuals in designated facilities approved for HUD use (i.e., individuals and facilities listed in the IRB approved protocol for HUD use)
5. Ensure that the HUD is used within the scope of its labeling (i.e., indication listed in the Directions for Use)
6. Report to the HDE holder/FDA and to the IRB whenever a HUD may have caused or contributed to a death or serious injury, or has malfunctioned and would be likely to cause or contribute to a death or serious injury if the malfunction were to recur (21 CFR 814.126(a))