

**Institutional Review Board (IRB)**

**GUIDELINES FOR RESEARCH INVOLVING ADULTS**

**UNABLE TO PROVIDE CONSENT**

**1. Introduction**

Research involving potentially vulnerable populations must include additional protections to minimize the possibility of coercion or undue influence. Federal regulations provide specific protections for pregnant women and fetuses, prisoners, and children; however, consideration may also be necessary for other groups, including adults with diminished decision-making capacity who may be unable to provide informed consent.

The purpose of these guidelines is to outline additional protections that investigators and IRBs should consider for research involving adults who are unable to provide consent.

1. **Definitions**

**Decision-making capacity** refers to a potential participant’s ability to make a meaningful decision about whether or not to participate. Decision-making capacity is protocol-specific and situation-specific. Thus, a subject may have capacity to consent to a low-risk research protocol in usual circumstances, but not have the capacity to consent to a high-risk protocol or when he or she is confused or under duress.

**Diminished decision-making capacity** as it applies to informed consent, lacking the ability to provide valid informed consent to participate in research, e.g., as a result of trauma, intellectual disability, certain mental illnesses, cognitive impairment, or dementia. Note: diminished decision-making capacity may be temporary, permanent, progressive, or fluctuating.

**Legally Authorized Representative** is an individual, judicial, or other body authorized under applicable law to consent on behalf of a prospective subject to the subject’s participation in the procedure(s) involved in the research.

The State of Missouri has enacted legislation that outlines how research participants unable to consent for themselves may be enrolled in research studies. For more information on the use of a Legally Authorized Representative, see “Guidelines for Use of Legally Authorized Representatives.”

**3. General Information**

Diminished decision-making capacity comprises a broad range of conditions. Examples include healthy individuals in shock (temporary decisional impairment), those born with severe intellectual disabilities (permanent decisional impairment), individuals with age-related dementia (progressive decisional impairment), individuals with mental illnesses such as schizophrenia (fluctuating capacity), and individuals under the influence of certain drugs (temporary and/or fluctuating capacity). Generally, all adults should be presumed capable of providing informed consent unless there is specific evidence that an individual’s condition/disability would impair reasoning or judgment, or other indication that the individual is unable to understand and choose whether or not to participate in research.

**4. Permissible Categories of Research**

Adults unable to provide informed consent may not be the subjects of research when the research can be performed with other appropriate subjects.

The IRB can approve studies involving adults unable to provide informed consent if the proposed research involves interventions or procedures that:

* Do not involve greater than minimal risk.
* Involve greater than minimal risk but presents the prospect of direct benefit to the individual participants.
* The risk is justified by the anticipated benefit to the participant.
* Comparison of the risk to the anticipated benefit is at least as favorable as that presented by available alternative approaches.
* Involves greater than minimal risk and no prospect of direct benefit to the individual participants, but is likely to yield generalizable knowledge about the participant's disorder or condition.
  + - * + The risk presents a reasonable increase (e.g., minor) over minimal risk.
        + The research involves experiences that are reasonably equivalent to those in the participant’s actual (or expected) medical, dental, psychological, social, or educational situations.
        + The research is likely to yield generalizable knowledge about the participant’s disorder or condition that is of critical importance for the understanding or improvement of the disorder/condition.

**5. Evaluating an Individual’s Capacity to Consent**

The level and permanency of the decisional impairment of the potential research participant is a critical factor when determining the capacity of the individual to consent to participate in research. The impairment may be partial/minor or full/severe, and the impairment may be permanent or transitory.

An individual should be presumed to have decision-making capacity unless one or more of the following apply:

* It has been documented by a qualified practitioner in the individual’s medical record that the individual lacks decision-making capacity. Note: The qualified practitioner may be a member of the research team.
* The individual has been ruled incompetent by a court of law.

If neither of the above has occurred, and there is any question regarding the decision-making capacity of a potential subject, an assessment of capacity must be made before proceeding with the informed consent process. Methods to provide assessment can include subjective assessments made by a qualified professional who may or not be independent of the research team, or use of a valid objective instrument designed to evaluate capacity.

The assessment of a person’s abilities to understand information about a study and to reason and make a choice based on that information is essential evidence for the judgment of whether the person is competent to provide informed consent. Protocols for studies that enroll individuals with decisional impairment should describe a procedure to assess these abilities, and outline the process for making that determination in the IRB Application.

Psychiatric consultation may be helpful in complex cases or when a mental illness is present and the IRB may recommend or require such consultation prior to enrollment. Given the possibility of fluctuations in the patient’s mental state (i.e. level of capacity) and the gravity of depriving a patient of their right to make decisions for themselves, when the possibility exists that the decision be made that a patient is not competent, clear procedures for making the determination should be outlined in the application to the IRB.

Investigators and IRBs should consider additional safeguards, balancing the need for protection with the individuals’ right to autonomy. Examples of additional safeguards include (but are not limited to) the following:

* Securing an independent assessment of the participant’s capacity to consent
* Identification of a legally authorized representative (LAR) who has the authority to consent to the adult’s participation in research
* Obtaining assent from the participant, in addition to LAR consent
* Regular assessment of the participant’s capacity and provisions for reconfirming the consent of a participant who regains capacity during the course of the research
* Involvement of family members familiar with the participant’s personal values
* Designation of an individual at the beginning of the study to serve as an LAR (only) if the participant’s decision-making capacity becomes compromised during the study
* Use of informational/educational techniques to enhance communication and understanding during the consent/assent processes
* Limiting the risks to which an adult unable to provide informed consent is exposed when direct benefits are not anticipated
* Use of an independent monitor
* Observation of the informed consent/assent processes by a third party as designated by the IRB

**6. Obtaining Informed Consent**

The requirements for obtaining the informed consent of research subjects or their LAR apply unless these requirements are waived by the IRB. Investigators must follow IRB policies and determinations for obtaining and documenting informed consent, including exclusively using the IRB-approved consent materials in the course of the research.

The research subject or subject’s LAR must be provided with a description of the research (e.g. the consent document), and HIPAA Authorization as appropriate. The information should be presented in language understandable to the subject or subject’s LAR in an environment free from coercion or undue influence. Sufficient time should be provided to the subject/subject’s LAR to make a decision whether or not to take part.

If the subject is deemed incapable of providing informed consent and an LAR is needed, investigators should refer to the SLU [Guidelines for Use of Legally Authorized Representatives](https://www.slu.edu/research/faculty-resources/research-integrity-safety/institutional-review-board-irb/irb_assets/guidelines_lar.docx) to assist in determining who can serve as LAR. The LAR should be informed of his/her role and obligation to protect the rights and welfare of the participant including that his/her obligation as a surrogate decision maker is to try to determine what the participant would decide if the participant were able to make such decisions or, if the participant’s wishes cannot be determined, what is in the participant’s best interests.

The informed consent decision must be documented unless a waiver was granted by the IRB. This includes writing a summary of the consent process and decision regarding determination of LAR as a process note-to-file in the research record.

**7. When Participants have Fluctuating Capacity to Provide Informed Consent**

Both the investigator and IRB members must be made aware that the decision-making capacity of some participants may fluctuate. For participants with fluctuating decision-making capacity or those with decreasing capacity to give consent, a re-consent or re-assent process, with or without an LAR, may be necessary. If such a process is necessary, clear procedures for obtaining re-consent or re-assent must be fully described in the IRB Application.

If the participant regains (or develops) the capacity to consent, then his/her informed consent must be obtained for any further research, as the consent of the LAR is no longer valid.

For participants in which there is a predicted loss of decision-making capacity (e.g. before the administration of anesthesia) advance informed consent is an option. When advance informed consent is obtained, investigators and the participant should be aware of the individual who will serve as his or her LAR if capacity to consent is lost during the course of the research.

**8. Assent of Adults**

An adult unable to provide informed consent to participate in research may be able to assent to participation. The IRB is responsible for determining when the assent of some or all such adults is required in proposed research and the appropriate method for documenting the adult’s assent (if any), as described below.

Assent to participate in research by an adult with diminished decision-making capacity (for whom a LAR will provide informed consent) is to be obtained when, in the judgment of the IRB, the adult is capable of providing assent. In determining whether proposed participants are capable of providing assent, the IRBs will take into account the condition and psychological/emotional states of the adults involved.

The assent of adults with diminished decision-making capacity to participate in research is to be obtained, except in any of the following circumstances:

* The adults are not capable of providing assent based on condition or psychological/emotional state
* The capability of some or all of the adults is so limited that they cannot reasonably be consulted
* The criteria for waiver (or alteration) of informed consent applies.

The IRBs may determine that the assent of some or all of the adults is not required. If assent is not a requirement of some adults, the IRB will indicate which adults (e.g., individuals with severe dementia) are not required to assent.

Assent processes are to include the key elements of informed consent and are to be provided in language appropriate for an adult with diminished decision-making capacity, based on the nature of the study and the expected ability of the prospective participant(s) to understand the purpose and the procedures involved in the research.

Assent form templates containing the basic elements of informed consent are available on the SLU IRB website. The IRB can also approve assent forms in other formats that satisfy requirements.

For some studies, investigators may add a signature line for assent. Alternatively, investigators and the IRB may decide that documentation of assent is not warranted. If verbal assent will be obtained, the IRB must review a written description of the information (i.e., a “script”) that will be provided to participants during the assent process.

**9. Participant Dissent**

Although some individuals may not have the capacity to provide consent or assent, these individuals may resist participating in a research study approved by their LARs. Under no circumstances may participants be forced or coerced to participate. The study must include clear and appropriate procedures for respecting dissent.

**10. References**

21 CFR 56.111

45 CFR 46.111

NIH Guidance “Research Involving Individuals with Questionable Capacity to Consent: Points to Consider”

AAHRPP, Inc. Elements II.4.A-B