

Tissue and Data Repositories

Aurora Research Ethics Day
"Everyday Research Ethics"

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Course Objectives

- Participants will understand the relevant regulatory implications for data and tissue repositories, including mechanisms for reducing unnecessary regulatory burden for research.
- Participants will be familiar with the HIPAA implications for research repositories, and will understand several relevant mechanisms for the use of both identifiable data/tissues and de-identified data/tissues.

Topical Overview

- Research Ethics
- Regulatory Issues
- Tissue Issues
- Data Issues
- The need for written informed consent
- Waiver of documentation
- Waiver of Consent
- HIPAA and Research
- Conclusions

Research Ethics

- Respect for Persons
 - When are tissues “personal” vs. “impersonal?”
 - Use of clinical samples
 - Risks of “over-sampling” in clinical practice
 - Information and/or Consent for use of left-over tissue and data
- Beneficence
- Justice

Regulatory Issues

- When is it Human Subjects Research?
- HHS perspective:
 - “Research” + “Human Subjects” = Human Subjects Research
- FDA perspective
 - Several definitions
 - IRB Regulations
 - IDE Regulations

HHS Perspective: “Human Subjects Research”

- **Research** means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
[45 CFR 46.102(d)]

HHS Perspective: “Human Subjects Research”

- **Human subject** means a living individual about whom an investigator (whether professional or student) conducting research obtains:

- (1) Data through intervention or interaction with the individual, or
- (2) Identifiable private information..

[45 CFR 46.102(f)]

FDA Perspective: “Human Subjects”

- Several definitions (“research” is not among them)

- IRB Regulations

- *Human subject* means an individual who is or becomes a participant in research, either as a recipient of the test article or as a control. A subject may be either a healthy individual or a patient. [21 CFR 56.102(e)]

- IDE Regulations

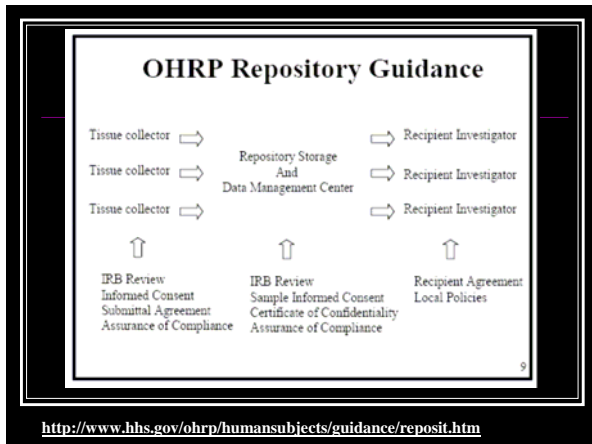
- *Subject* means a human who participates in an investigation, either as an individual on whom or on whose specimen an investigational device is used or as a control. A subject may be in normal health or may have a medical condition or disease. [21 CFR 812.3(p)]

Regulatory Issues

- When is a repository human subjects research?

- HHS perspective

- When created through intervention or interaction with living individuals
- When created by obtaining identifiable private information
- When identifiable private information is obtained from another repository/database for research purposes



- ### Tissue Issues
- Context under which they are obtained
 - State property laws?
 - Consent obtained for specific use?
 - Consent obtained for future unspecified use?
 - Leftover clinical samples
 - Identifiability
 - Identifiability
 - Identifiability

- ### Data Issues
- Identifiers
 - Confidentiality safeguards
 - Password protected
 - Coded
 - Encrypted
 - Policies and Procedures
 - Honest Broker

The need for written informed consent

- The gold standard for future use of biological specimens and individually identifiable private information
- May include “opt-out” provisions
 - Certain kinds of tests or procedures
 - Research on specific topic areas
- Note the importance of consenting minors (and getting their authorization) when they reach the age of majority—parental permission may not be durable

The need for written informed consent

- May allow the investigator to specify intentions of not sharing proceeds from any invention or commercial product resulting from the research
- May include provisions for contacting subjects in the future if there is relevant research in which they may be willing to participate

Waiver of documentation (FDA)

- The IRB may, for some or all subjects, waive the requirement that the subject, or the subject’s legally authorized representative, sign a written consent form if it finds that the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside the research context; [21CFR56.109(c)(1)]

Waiver of documentation (HHS)

- An IRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:
 - (1) That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; or
 - (2) That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context.

[45CFR46.117(c)]

Waiver of Consent (HHS)

- An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth in this section, or waive the requirements to obtain informed consent provided the IRB finds and documents that:
 - (1) The research involves no more than minimal risk to the subjects;
 - (2) The waiver or alteration will not adversely affect the rights and welfare of the subjects;
 - (3) The research could not practicably be carried out without the waiver or alteration; and
 - (4) Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

[45CFR46.116(d)]

HIPAA and Research

- HIPAA does not apply to tissues, only to individually identifiable health information
- Research on tissues usually requires access to health information linked to the tissues
 - Written Authorization
 - Waiver of Authorization
 - Limited Data Set
 - De-identified data
 - Business Use Agreement

HIPAA and Research

Under a Tissue and Data Repository:

- Research on tissues linked to de-identified data does not require any HIPAA mechanism
- Honest Broker may be outside of the covered entity—use a business associate agreement (elements of the BA are in the protocol for the repository)

Conclusions

- Data and Tissue Repositories are optimal mechanisms for protecting human subjects
 - Minimal or “No” Risk Research
 - Confidentiality safeguards
 - Ability to research tissues linked with relevant data without accessing PHI
 - Honest broker can re-identify coded specimens/data, or link codes “behind the firewall” for access to other de-identified data elements

Conclusions

- Data and Tissue Repositories reduce unnecessary regulatory burden
 - IRB Approval and Informed consent for the initial collection of tissues/data
 - IRB approval for the repository functions
 - Research Using de-identified tissues is NOT human subjects research: No IRB approval or HIPAA mechanism required

Questions?

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