

# Informed Consent

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**Question 1**: What is informed consent and when, why, and how must it be obtained?

for the protection of human subjects in research require that an investigator obtain the [legally effective informed consent](#) of the subject or the subject’s legally authorized representative, unless (1) the research is exempt under [45 CFR 46.101\(b\)](#); (2) the IRB finds and documents that informed consent can be waived ([45 CFR 46.116\(c\) or \(d\)](#)); or (3) the IRB finds and documents that the research meets the requirements of the HHS Secretarial waiver under [45 CFR 46.101\(i\)](#) that permits a waiver of the general requirements for obtaining informed consent in a limited class of research in emergency settings. When informed consent is required, it must be sought prospectively, and documented to the extent required under HHS regulations at [45 CFR 46.117](#). [Food and Drug Administration (FDA) regulations at [21 CFR part 50](#) may also apply if the research involves a clinical investigation regulated by FDA.]

The requirement to obtain the legally effective informed consent of individuals before involving them in research is one of the central protections provided for under the HHS regulations at [45 CFR part 46](#). This requirement is founded on the principle of respect for persons, one of the three ethical principles governing human subjects research described in the Belmont Report. The principle of respect for persons requires that individuals be treated as autonomous agents and that the rights and welfare of persons with diminished autonomy be appropriately protected. The [Belmont Report](#) states that an autonomous agent is “an individual capable of deliberation about personal goals and of acting under the direction of such deliberation.” Respect for persons requires that prospective research subjects “be given the opportunity to choose what shall or shall not happen to them” and thus necessitates adequate standards for informed consent.

The informed consent process involves three key features: (1) disclosing to potential research subjects information needed to make an informed decision; (2) facilitating the understanding of what has been disclosed; and (3) promoting the voluntariness of the decision about whether or not to participate in the research. Informed consent must be legally effective and prospectively obtained. HHS regulations at [45 CFR 46.116](#) and [45 CFR 46.117](#) describe the informed consent requirements.

The informed consent process is the critical communication link between the prospective human subject and an investigator, beginning with the initial approach of an investigator to the potential subject (e.g., through a flyer, brochure, or any advertisement regarding the research study) and continuing until the completion of the research study. For the purposes of the HHS regulations at 45 CFR part 46, “investigators” are individuals who conduct human subjects research projects,

including individuals directly involved in seeking the voluntary informed consent of potential subjects. Investigators can include physicians, scientists, nurses, administrative staff, teachers, and students, among others.

The informed consent process should be an active process of sharing information between the investigator and the prospective subject. The exchange of information between the investigator and prospective subjects can occur via one or more of the following modes of communication, among others: face-to-face contact; mail; telephone; video; or fax. Prospective subjects should be provided with ample opportunity to ask questions and seek clarification from the investigator. The prospective subjects should be in a position to freely decide whether to initially enroll in the research, or later, to withdraw or continue participating in the research. The informed consent process should ensure that all critical information about a study is completely disclosed, and that prospective subjects or their legally authorized representatives adequately understand the research so that they can make informed choices.

The procedures used in seeking and obtaining informed consent should be designed to communicate with the subject population in terms that they can understand. Information about a research project must be presented in such a way that enables each person to voluntarily decide whether or not to participate as a research subject. Thus, the information must be conveyed in language understandable to those being asked to participate as subjects in the research ([45 CFR 46.116](#)).

For most research, informed consent is documented using a written document that provides key information regarding the research. The consent form is intended, in part, to provide information for the potential subject's current and future reference and to document the interaction between the subject and the investigator. However, even if a signed consent form is required, it alone does not constitute an adequate consent process. The informed consent process is an ongoing exchange of information between the investigator and the subject and could include, for example, use of question and answer sessions, community meetings, and videotape presentations. In all circumstances, however, individuals should be provided with an opportunity to have their questions and concerns addressed on an individual basis.

The consent process and its documentation should be revised when deficiencies in its accuracy or completeness are noted, when new information about reasonably foreseeable risks and potential benefits becomes available, or when other additional information becomes known that will improve the consent process. Such revisions must be reviewed and approved by an IRB prior to the revised consent being utilized except when necessary to eliminate apparent immediate hazards to subjects ([45 CFR 46.103\(b\)\(4\)](#)).

**Question 2:** Is it possible to obtain legally effective informed consent to research in an urgent or emergency care setting?

Yes, in certain circumstances it is possible to obtain [legally effective informed consent](#) in an urgent or emergency care setting. For a particular research study, the answer depends on (1) the expected medical condition of the prospective subject population; (2) the nature of the research; (3) whether there is sufficient time for the potential subjects or their legally authorized representatives to consider participation; and (4) whether the circumstances for obtaining informed consent appropriately minimize the possibility of coercion or undue influence. The Institutional Review Board (IRB) and investigator(s) would have to consider several variables.

For example, what is the likely health and emotional condition of the patient population being considered for the proposed research (e.g., conscious but receiving emergency care, undergoing preparation prior to surgery)? What is the likely ability of this population during the consent process to process information, ask questions, and consider the risk involved? What is the timing of the consent process and is it so close to the receipt of care that the patient might blur the distinction between treatment and research?

Because individuals receiving urgent or emergent medical care frequently may be vulnerable to coercion or undue influence, even if temporarily, additional protections may be required to ensure the subject's consent to participate in research is truly voluntary and sought under circumstances that minimize the possibility of coercion or undue influence ([45 CFR 46.111\(b\)](#), [\(45 CFR 46.116\)](#)). In addition, in some cases, it might be possible to obtain consent from a legally authorized representative (e.g., in the case of decisionally incapacitated individuals). In certain emergency circumstances, the Secretarial waiver of informed consent under [45 CFR 46.101\(i\)](#) may be applicable. It should be noted that if the research is regulated by FDA, the Secretarial waiver permits the research to be conducted under a comparable provision.

See the Office for Human Research Protections' (OHRP) guidance at <http://www.hhs.gov/ohrp/policy/hsdc97-01.html>; and HHS policy at <http://www.hhs.gov/ohrp/documents/100296.pdf>.

**Question 3:** What are the basic elements of informed consent?

The basic required elements of informed consent can be found in the HHS regulations at [45 CFR 46.116\(a\)](#). OHRP also has a tips sheet for informed consent available at <http://www.hhs.gov/ohrp/policy/ictips.html>.

The regulations require that the following information must be conveyed to each subject:

- a statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental;
  1. a description of any reasonably foreseeable risks or discomforts to the subject;
  2. a description of any benefits to the subject or to others which may reasonably be expected from the research;
  3. a disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;
  4. a statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;
  5. for research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;
  6. an explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject; and
  7. a statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the

subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

[Additional elements](#) are described at [45 CFR 46.116\(b\)](#)

**Question 4:** What additional information might be appropriate to provide during the consent process?

When determined to be appropriate by the Institutional Review Board (IRB), subjects must be provided with one or more of the following additional elements of information during the informed consent process (see [45 CFR 46.116\(b\)](#)):

1. a statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable;
2. anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent;
3. any additional costs to the subject that may result from participation in the research;
4. the consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;
5. a statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject; and
6. the approximate number of subjects involved in the study.

It is up to the IRB to determine in a particular instance whether some or all of the above additional elements must be included as part of the informed consent process for a particular study. The IRB should make this determination based on the nature of the research and its knowledge of the local research context. If the IRB determines that additional elements are appropriate to the research study, this additional information should be considered just as essential as the eight basic elements of informed consent described in the HHS regulations at [45 CFR 46.116\(a\)](#).

Furthermore, an IRB may require that additional information beyond the [basic](#) and additional elements be given to subjects during the informed consent process, when in the IRB's judgment the additional information would meaningfully add to the protection of the rights and welfare of the subjects [45 CFR 46.109\(b\)](#).

**Question 5:** Can consent or parental permission ever be "passive" or "implied"?

Terms such as "passive" or "implied" consent are not referenced in the HHS regulations. However, OHRP is aware that these terms are sometimes used by investigators or IRBs to describe a process in which consent or parental permission requirements have been altered or waived, or for which the requirement to document consent or parental permission has been waived.

HHS regulations at [45 CFR 46.116](#) state that no investigator may involve a human being as a subject unless the investigator has obtained the [legally effective informed consent](#) of the subject

or the subject's legally authorized representative. However, under conditions specified in the regulations at [45 CFR 46.116\(c\) or \(d\)](#) an IRB may approve a consent procedure that does not include, or that alters some or all of the elements of informed consent set forth in [45 CFR 46.116](#). In some cases, an IRB also can waive the requirement to obtain consent ([45 CFR 46.116\(c\) and \(d\)](#)). In addition, under conditions specified in the regulations at [45 CFR 46.117](#), an IRB may also waive the requirement for documentation of informed consent. (Note that the regulations at [45 CFR 46.408\(c\)](#) also permit an IRB to waive parental permission.)

For example, a researcher conducting a survey (that does not qualify for an exemption under [45 CFR 46.101\(b\)](#)) mails a survey questionnaire to a random sample of adults. The survey materials clearly state that by responding to the questions and mailing the survey back, the recipients have agreed to participate in the research. However, the materials accompanying the questionnaire do not include all of the elements of consent listed at [45 CFR 46.116\(a\)](#) and do not require that the subject sign a consent form. If the IRB has approved this alteration of the consent process and has waived the need for documentation of consent, then such procedures are permissible under the regulations. By sending back a completed survey the recipient has implied that he or she consents to participate but has not signed an informed consent document. Although some might call this "implied informed consent," OHRP would consider this to be a permissible informed consent process if the IRB has approved the informed consent alteration and waived the requirement for documentation of informed consent.

The term "passive consent" is sometimes used in research with children to describe situations in which the investigator can assume that a parent is permitting a child to participate. For example, researchers collecting survey and behavioral data from children at school provide parents with information regarding the study by mail and ask the parent(s) to return a form if they do not want their child to participate. Sometimes this practice is referred to as an opt out procedure, which is not consistent with the regulatory requirement for seeking and obtaining parental permission. If the IRB determines that the conditions for [waiver of parental permission](#) can be met, then the IRB could waive the requirement for parental permission under [45 CFR 46.408\(c\)](#) or [45 CFR 46.116\(c\) or \(d\)](#). Even though not required by the regulations, an IRB may require that parents be given the opportunity to refuse permission even when the IRB has waived the regulatory requirement to obtain parental permission.

**Question 6:** What does it mean to minimize the possibility of coercion or undue influence?

The HHS regulations state that "An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence" ([45 CFR 46.116](#)). This requirement applies to all nonexempt human subjects research not eligible for a waiver of the consent requirements.

**Coercion** occurs when an overt or implicit threat of harm is intentionally presented by one person to another in order to obtain compliance. For example, an investigator might tell a prospective subject that he or she will lose access to needed health services if he or she does not participate in the research.

**Undue influence**, by contrast, often occurs through an offer of an excessive or inappropriate reward or other overture in order to obtain compliance. For example, an investigator might promise psychology students extra credit if they participate in the research. If that is the only

way a student can earn extra credit, then the investigator is unduly influencing potential subjects. If, however, she offers comparable non-research alternatives for earning extra credit, the possibility of undue influence is minimized.

In addition to undue influence that can arise with the offering of rewards, undue influence also can be subtle. For example, patients might feel obligated to participate in research if their physician is also the investigator, or students might feel pressure to participate in research if everyone else in the class is doing so. Because influence is contextual, and undue influence is likely to depend on an individual's situation, it is often difficult for IRBs to draw a bright line delimiting undue influence. It is up to the IRB to use its discretion in determining which circumstances give rise to undue influence. For example, an IRB might consider whether the informed consent process will take place at an appropriate time and in an appropriate setting, and whether the prospective subject may feel pressured into acting quickly or be discouraged from seeking advice from others.

Because of their relative nature and lack of clear-cut standards on the boundaries of inappropriate and appropriate forms of influence, investigators and IRBs must be vigilant about minimizing the possibility for coercion and undue influence. Reasonable assessments can be made to minimize the likelihood of undue influence or coercion occurring. For example, IRBs may restrict levels of financial or nonfinancial incentives for participation and should carefully review the information to be disclosed to potential subjects to ensure that the incentives and how they will be provided are clearly described. Known benefits should be stated accurately but not exaggerated, and potential or uncertain benefits should be stated as such, with clear language indicating how much is known about the uncertainty or likelihood of these potential benefits.

The regulatory requirements for IRB review and approval also specify the need for the IRB -- in order to approve research covered by the HHS regulations -- to ensure that "When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as [children](#), [prisoners](#), [pregnant women](#), mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects" ([45 CFR 46.111\(b\)](#)). Thus, inducements that would ordinarily be acceptable in some populations may become undue influences for these vulnerable subject groups.

You may wish to view the following related questions and answers:

[Question 7](#): When does compensating subjects undermine informed consent or parental permission?

[Question 8](#): Can non-financial enrollment incentives constitute undue influence?

[Question 9](#): What constitutes coercion or undue influence when students are involved in research in a college or university setting?

[Question 10](#): What constitutes coercion or undue influence when employees are the subjects of research?

**[Question 7](#)**: When does compensating subjects undermine informed consent or parental permission?

The HHS regulations require that "An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of [coercion or undue influence](#)" ([45 CFR 46.116](#)).

Paying research subjects in exchange for their participation is a common and, in general, acceptable practice. However, difficult questions must be addressed by the IRB. For example, how much money should research subjects receive, and for what should subjects receive payment -- their time, inconvenience, discomfort, or some other consideration -- IRBs must be sensitive to whether any aspect of the proposed remuneration will be an undue influence, thus interfering with the potential subjects' ability to give voluntary informed consent.

Remuneration for participation in research should be just and fair. However, the specifics of each protocol will influence how those determinations are made. Both researchers and IRBs need to be familiar with the study population and the context of the research in order to make reasonable judgments about how compensation might affect participation. Wherever the remuneration is set, it will influence the decisions of some more than others. In particular, it will be more important to those for whom it will make a significant financial difference. Thus, IRBs should be cautious that payments are not so high that they create an "undue influence" or offer undue inducement that could compromise a prospective subject's examination and evaluation of the risks or affect the voluntariness of his or her choices.

Information submitted to IRBs should indicate and justify proposed levels and purposes of remuneration, which also should be clearly stated in the accompanying consent forms. Some institutions have adopted policies regarding the recruitment and payment of volunteers. IRBs and investigators should ensure that the consent process includes a detailed account of the terms of payment, including a description of the conditions under which a subject would receive partial or no payment (e.g., what will happen if he or she withdraws part way through the research or the investigator removes a subject from the study for medical or noncompliance reasons).

Finally, in studies of considerable duration or that involve multiple interactions or interventions, OHRP recommends that payment be prorated for the time of participation in the study rather than delayed until study completion, because the latter could unduly influence a subject's decision to exercise his or her right to withdraw at any time. For example, if the study is conducted over a period of 6 months, there might be a monthly or bi-monthly payment. Or, if the study involves 12 sessions, there might be payment after every two sessions.

The above principles would apply to remuneration offered to parents whose children are prospective subjects.

[Note: The previous version of the response to this FAQ included the following sentences. "*In no case should remuneration be viewed as a way of offsetting risks; that is, it should not be considered a benefit to be weighed against study risks. The level of remuneration should not be so high as to cause a prospective subject to accept risks that he or she would not accept in the absence of the remuneration.*" The first sentence has been struck because this FAQ focuses on potential undue influence in the consent process (45 CFR 46.116) rather than on IRB considerations under 45 CFR 46.111. However, OHRP continues to assert that IRBs should not consider remuneration as a way of offsetting risks. The second sentence has been deleted to clarify that remuneration to subjects may include compensation for risks associated with their participation in research and that compensation may be an acceptable motive for agreeing to participate in research. In addition, the previous version contained the following sentence, which has been struck because it is focused on IRB considerations under 45 CFR 46.111 rather than informed consent, and was misplaced in this FAQ: "*IRBs may need to request of the investigator some plan for monitoring subject recruitment to ensure that such inducements do not result in inequitable subject recruitment (e.g., recruiting only economically disadvantaged individuals).*" ]

**Question 8:** Can non-financial enrollment incentives constitute undue influence?

Yes, in certain circumstances. Non-monetary incentives (e.g., extra credit for students, access to services or programs) also can create [undue influence](#) on a potential subject's decision about research participation. Informed consent always must be voluntary ([45 CFR 46.116](#)).

IRBs should ensure that non-financial incentives are not so great as to diminish the voluntariness of consent or cloud someone's appreciation of risks or potential benefits that might be gained from participating in a study ([45 CFR 46.116](#)). Moreover, it must be clear that choosing to not participate will not adversely affect an individual's relationship with the institution or its staff or the provision of services in any way (e.g., loss of credits or access to programs) ([45 CFR 46.116\(a\)\(8\)](#)).

Overt coercion (e.g., threatening loss of services or access to programs to which the potential subjects are otherwise entitled) is never appropriate. However, it might be permissible to provide incentives to participate that do not constitute undue influence. Using enrollment incentives to recruit subjects may be ethically permissible as long as the IRB has determined that, although they may be a factor in a subject's decision to participate, they have not served to unduly influence the subject to participate. To make this determination, IRBs should know who the subject population will be, what incentives are being offered, and the conditions under which the offer will be made.

**Question 9:** What constitutes coercion or undue influence when students are involved in research in a college or university setting?

The regulations require that the investigator seek consent only under circumstances that minimize the possibility of [coercion or undue influence](#) ([45 CFR 46.116](#)). The Office for Human Research Protections (OHRP) recommends that institutions have policies in place that clarify for students and faculty that any participation of students in research must be voluntary. Reasonable levels of extra credit or rewards may be offered for participating in research. If extra credit or rewards are offered for participation, students must be provided with and informed of non-research alternatives involving comparable time and effort to obtain the extra credit in order for the possibility of undue influence to be minimized. However, if participation in research is a course requirement, students must be informed of non-research alternatives involving comparable time and effort to fulfill those requirements in order for the possibility of undue influence to be minimized. Moreover, students must not be penalized for refusing to participate in research ([45 CFR 46.116\(a\)\(8\)](#)).

In addition, some research institutions use a so-called "student subject pool" to identify students who might be willing to participate in research, even when the exact nature of the research to be conducted has not yet been determined. Extra credits or other rewards are often offered as an incentive to encourage participation. Students who sign up for such pools have not legally consented to participate in a research study since they have not been provided with sufficient information concerning the exact study in which they would participate. Thus, signing up to be in a subject pool is only a first and preliminary step by which individuals can indicate their willingness to be considered for research participation. The student must also provide informed consent, unless the consent requirement is [waived by an IRB](#) once he or she is being considered for a specific study ([45 CFR 46.116](#)). Furthermore, individuals in the pool must be free to decline participation in any available research projects without penalty ([45 CFR 46.116\(a\)\(8\)](#)).

**Question 10:** What constitutes coercion or undue influence when employees are the subjects of research?

The issues involving employees as research subjects are essentially identical to those involving students as research subjects: that is, investigators and IRBs must be cautious about the potential for [coercion or undue influence](#) and the need to protect confidentiality.

Employee participation raises questions about the ability of employees to exercise free choice, for example, because of the possibility that a decision to participate could affect performance evaluations or job advancement, even if it is only the employee's perception that this is the case. In the case of coercion, refusal to participate might result in a loss of benefits (e.g., salary increases, time off). In the case of undue influence, a decision to participate could result in a job promotion. Employees are likely to view their employers as authority figures to whom they must show deference, which could undermine the freedom of their choice.

**Question 11:** Should the initial consent or parental permission procedure ever be repeated or supplemented?

Yes, in some circumstances. The HHS regulations require that an investigator obtain legally effective informed consent from subjects or a legally authorized representative before the subjects may be involved in research ([45 CFR 46.116](#)), unless this requirement has been [waived by an IRB](#). Likewise, for research involving children, permission of the potential subjects' parents or guardians must be obtained ([45 CFR 46.408\(c\)](#)), unless an IRB has [waived this requirement](#). Ensuring an adequate consent or parental permission process may require repeating or supplementing the initial consent procedure. The regulations also stipulate that "An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimizes the possibility of coercion or undue influence" ([45 CFR 46.116](#)). This requirement also might necessitate repeating or supplementing the initial consent procedure.

Informed consent and parental permission should be viewed as an ongoing process. The regulations do not explicitly describe all of the circumstances that might require repeating or supplementing the informed consent process. However, they do require that potential subjects be provided, when appropriate, with a "statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject" ([45 CFR 46.116\(b\)\(5\)](#)). Thus, to ensure that consent remains legally effective -- for example, if the protocol design or risks have changed, or if a [substantial period of time](#) has elapsed between the time consent was obtained and the study begins -- it might be necessary to ensure that subjects still want to participate in the research. For example, the prospective subject may no longer be interested in participating, may no longer meet the eligibility criteria, may no longer find the risks acceptable, or may no longer have the time to complete all study-related activities.

The IRB must review and approve any changes in the approved consent procedure, including alterations of the content, as described in the elements listed at [45 CFR 46.116](#), or in its timing, and may consider whether there is a need to reiterate the process ([45 CFR 46.103\(b\)\(4\)](#)). The IRB should take into account whether the changes could potentially affect a subject's understanding of the nature of the study or potentially affect a subject's willingness to participate. If so, such changes need to be made in the informed consent document. Even without significant

changes to a protocol or informed consent document, periodic reiteration or affirmation of consent is often a good idea, especially if the study takes place over a long period of time or is particularly complex. Minor changes, such as correcting nonsubstantive typographical errors in the consent document, would not generally rise to a level requiring repeating the consent process.

You may wish to view the following related question and answer:

[Question 12](#): How far in advance of research participation can consent be obtained?

**Question 12**: How far in advance of research participation can consent be obtained?

The HHS regulations at 45 CFR part 46 do not specify how far in advance of study entry a subject can provide consent. The amount of time required by a subject to make a decision would presumably depend on the nature of the study, taking into account, among other factors, the degree of risk, potential benefits, alternatives, and desire to consult with family members or others. However, if a prolonged period of time elapses from the date of consent to the date of entry into the study even if there have been no changes in the study design or no new significant findings affecting the study it might be prudent to review the information contained in the consent form with the subject prior to initiating any research procedures with the subject.

**Question 13**: Can records or databases be reviewed to identify potential subjects without obtaining informed consent or parental permission?

Yes, under certain circumstances. Although the HHS regulations do not specifically reference this type of activity, sometimes referred to as “preparatory to research,” such an activity must be reviewed and approved by an IRB in accordance with HHS regulations at [45 CFR 46.109\(a\)](#) when:

1. The activity involves human subjects research, as defined by the regulations at [45 CFR 46.102\(f\)](#);
2. The research does not meet the criteria for exemption under HHS regulations at [45 CFR 46.101\(b\)](#).

In general, informed consent of the subjects, or parental permission for children involved in research, must be sought and documented in accordance with, and to the extent required by, HHS regulations at <http://www.hhs.gov/ohrp/humansubjects/guidance/45cfr46.html#46.116>>45 CFR 46.116 and [45 CFR 46.117](#) respectively.

However, an IRB may approve a consent or parental permission procedure that does not include, or that alters, some or all of the elements of informed consent, or may waive the requirements to obtain informed consent ([45 CFR 46.116\(c\)](#) or [\(d\)](#)). In order to permit investigators to obtain and record identifiable private information for the purposes of identifying potential subjects, OHRP expects that IRBs routinely will waive the requirement for informed consent for such activities. In assessing the level of risk to determine whether a waiver of informed consent or parental permission is permissible for the identification of potential subjects, the IRB need only consider the risk of investigators accessing the subjects’ identifiable private information, not the risks of the research in toto.

**Question 14:** How can the consent and parental permission processes be designed to facilitate understanding?

The procedures used in obtaining informed consent and parental permission should be designed to inform the subject population or the parents of the subject population about the research in terms that they can understand. Therefore, informed consent and parental permission language and its documentation in the accompanying forms (especially explanation of the study's purpose, duration, experimental procedures, alternatives, risks, and benefits) should be provided in language that is understandable and culturally sensitive to those being asked to participate or provide permission for their child's participation.

If the prospective subjects include, for example, persons whose primary language is not English, or populations with low literacy levels, the IRB should take special care to ensure that both oral presentations and consent or permission forms are comprehensible to all subjects or the parents of subjects who are children. Subjects who do not speak English should be presented with a consent or permission document written in a language understandable to them. OHRP strongly encourages the use of such a document whenever possible. (See OHRP guidance on this topic at <http://www.hhs.gov/ohrp/policy/ic-non-e.html>; for information about requirements for child assent, see FAQs regarding [research with children](#).)

In general, ordinary language should replace technical terms (e.g., upper extremities are better referred to as arms, venipuncture as taking blood from your arm with a needle, and so forth).

Some IRBs find that their lay members (e.g., community or non-scientist members) are particularly helpful in suggesting necessary modifications to language. Others ask members of the proposed subject population (e.g., clinic patients) to review consent or permission forms and indicate which parts they do not understand.

**Question 15:** Can an electronic signature be used to document consent or parental permission?

Yes, under certain circumstances. First, the investigator and the IRB need to be aware of relevant laws pertaining to electronic signatures in the jurisdiction where the research is going to be conducted.

Unless the IRB waives the requirement for the investigator to obtain a signed consent or permission form based on the HHS regulations at [45 CFR 46.117\(c\)](#), a written consent or permission form, which may be an electronic version, must be given to and signed by the subjects or the subjects' legally authorized representatives or the parents of subjects who are children. Some form of the consent document must be made available to the subjects or the parents of subjects who are children in a format they can retain. OHRP would allow electronic signature of the document if such signatures are legally valid within the jurisdiction where the research is to be conducted.

OHRP does not mandate a specific method of electronic signature. Rather, OHRP permits IRBs to adopt such technologies for use as long as the IRB has considered applicable issues such as how the electronic signature is being created, if the signature can be shown to be legitimate, and if the consent or permission document can be produced in hard copy for review by the potential subject. One method of allowable electronic signatures in some jurisdictions is the use of a

secure system for electronic or digital signature that provides an encrypted identifiable “signature.” If properly obtained, an electronic signature can be considered an “original” for the purposes of recordkeeping.

**Question 16:** Is a faxed copy of the signed consent or parental permission form acceptable to document informed consent?

Yes, if it is more convenient for the subjects or parents of children who are subjects to fax a signed copy of the consent or permission form to the investigator, the research subjects or parents may fax the signed form. The subjects or parents need not provide the investigator with the original signed consent or parental permission documents.

**Question 17:** Who must sign the informed consent or parental permission document?

When a written consent or parental permission form is used that embodies some or all of the elements of informed consent required by the regulations at [45 CFR 46.116](#), the regulations only require that the informed consent or parental permission document be signed by the subjects or the subjects' legally authorized representatives or by the parents of children who are subjects ([45 CFR 46.117\(a\)](#)) and [45 CFR 46.408\(d\)](#)). Only in situations where a short form is used, stating that the elements of informed consent required by [45 CFR 46.116](#) have been presented orally to the subject or the subject's legally authorized representative or to the parent(s) of a child who is a subject, are there additional requirements for signatures ([45 CFR 46.117\(b\)\(2\)](#)).

For the consent or parental permission process using the short form, the regulations state that there must be a witness to the oral presentation, who then signs both the short form and a copy of the IRB-approved written summary of what is to be said to the subject or the subject's legally authorized representative or to the parent(s) of a child who is a subject. The subject or the subject's legally authorized representative or the parent(s) must sign the short form, and the person actually obtaining the consent must sign the copy of the summary ([45 CFR 46.117\(b\)\(2\)](#)). Thus, three types of persons are involved in this specific consent process -- the subject or legally authorized representative or parent(s) of a child who is a subject, the person obtaining consent, and the witness.

You may wish to view the following related question and answer:

[Question 18:](#) Do signatures on consent forms have to be dated?

**Question 18:** Do signatures on consent forms have to be dated?

Although the HHS regulations at [45 CFR 46.117](#) do not require the consent form to be dated at the time it is signed, OHRP recommends that it be dated so that the IRB and others can document that informed consent was obtained prior to a subject's participation in the research.

**Question 19:** Who can be a legally authorized representative (LAR) for the purpose of providing consent on behalf of a prospective subject?

Legally authorized representative (LAR) means an individual or 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 ([45 CFR 46.102\(c\)](#)). The regulations state that "no investigator may involve a human being as a subject in research covered by this policy unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative" ([45 CFR 46.116](#)). The issue as to who can be an LAR is determined by the laws of the jurisdiction in which the research is conducted (e.g., local or state law). Some states have statutes, regulations, or common law that specifically address consent by someone other than the subject for participation in research. Most states have no law specifically addressing the issue of consent in the research context. In these states, law that addresses who is authorized to give consent on behalf of another person to specific medical procedures or generally to medical treatment may be relevant if the research involves those medical procedures or medical treatment.

When the laws of the jurisdiction in which the research is being conducted provide a reasonable basis for authorizing an individual to consent on behalf of a prospective subject to their participation in the research procedure(s), OHRP would consider such an individual to be an LAR as defined by HHS regulations at [45 CFR 46.102\(c\)](#). IRBs may wish to consult with legal counsel when deciding who can serve as an LAR for subjects of proposed research.

You may wish to view the following related questions and answers:

[Question 20](#): When may a legally authorized representative provide consent on behalf of an adult with diminished decision-making capacity?

[Question 21](#): What should be considered in seeking informed consent from individuals with diminished decision-making capacity?

Question 20: When may a legally authorized representative provide consent on behalf of an adult with diminished decision-making capacity?

In answering this question, the HHS regulations at 45 CFR part 46 should be consulted in addition to the laws of the jurisdiction in which the research is conducted. As a general matter, if an adult lacks capacity to consent, for example, as a result of trauma, mental retardation, some forms of mental illness, or dementia - whether temporary, progressive, or permanent - only a [legally authorized representative](#) for that adult can give consent for participation in the research, unless the requirement to obtain informed consent is waived by the IRB in accordance with the requirements at [45 CFR 46.116\(c\)\(d\)](#), or in accordance with the provisions for emergency waiver, which are permitted under the authority of the HHS Secretary at [45 CFR 46.101\(i\)](#).

(See the Federal Register notice of this waiver at:

<http://www.hhs.gov/ohrp/documents/100296.pdf>.) Should the subject regain or develop the capacity to consent, then his or her consent must be obtained for any further research, as the consent of the legally authorized representative is no longer valid.

**Question 21**: What should be considered in seeking informed consent from individuals with diminished decision-making capacity?

The HHS regulations are silent on the consent procedures specific to subjects with impaired decision-making capacity, for example, as a result of trauma, mental retardation, some forms of

mental illness, or dementia, whether temporary, progressive, or permanent. The regulations do require that the IRB ensure that “additional safeguards have been included in the study to protect the rights and welfare” of all subjects that are “likely to be vulnerable to coercion or undue influence.” The regulations include “mentally disabled persons” in this category ([45 CFR 46.111\(b\)](#)).

In research involving adult subjects with mental illnesses or cognitive impairments, the IRB and investigator(s) must be knowledgeable about the condition and any level of impairment that is likely to be present in the subject population. The regulations do speak to the fact that the IRB must possess “the professional competence necessary to review specific research activities” ([45 CFR 46.107\(a\)](#)). This is achieved either by having members with the appropriate experience and expertise or inviting consultants with competence in the special area to assist in the review of issues that require expertise beyond or in addition to that available on the IRB ([45 CFR 46.107\(a\) and \(f\)](#)). Ensuring such expertise on the IRB improves its ability to make determinations about subject recruitment, enrollment, and informed consent requirements that best match the needs of the subjects.

In some research, such as longitudinal studies involving progressive disorders or aging populations, enrolled subjects may be competent to consent on their own behalf at the outset, yet may experience effects of progressive or intermittent disorders that lead to decisional impairment during the course of the study. In these situations IRBs and investigators should consider the need to discuss with the prospective subjects whether they should designate someone to serve as a [legally authorized representative](#) at the outset of the study, consistent with all applicable laws. Even if a subject has consented on his or her own accord, a designated representative would be ready to step in as the legally authorized representative if the subject’s ability to assess his or her own needs and interests becomes compromised during the study.

**Question 22:** What are the requirements for assent and parental permission in research with children?

The IRB must determine, to the extent required by [45 CFR 46.116](#), that adequate provisions are made for soliciting the assent of the children -- when in the judgment of the IRB the children are capable of providing assent -- as well as the permission of the parents ([45 CFR 46.408](#)). Permission means the agreement of parent(s) or guardian to the participation of their child or ward in research ([45 CFR 46.402\(c\)](#)).

By regulatory definition, children are “persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted” ([45 CFR 46.402\(a\)](#)). In the United States the legal age of adulthood is a matter of state and local law. This means that who is legally considered a child may vary from state to state; in a large majority of states 18 years of age is the legal age of adulthood, but this is not true in every state, locality, or territory. State law also may address specific circumstances in which a person younger than the age of adulthood is legally authorized to consent to medical procedures: for example, some states allow children younger than the legal age of adulthood to consent to the provision of contraceptive services. Certain states provide a mechanism for the emancipation of minors, through which a child younger than the legal age of adulthood may gain certain civil rights, which might include the legal ability to consent to research participation.

The definition of children also takes into account the particular interventions or interactions involved in the proposed research (e.g., surveys, blood tests). For example, in some places individuals who are 16 years of age may legally consent to certain clinical interventions or interactions. If the involvement of human subjects in a proposed research activity consists of these interventions or interactions, then those individuals may be considered as adults for that purpose. If a proposed activity includes an intervention or interaction for which the subject has not yet reached the legal age of consent, however, that person must be considered a child.

Under [45 CFR 408\(b\)](#) the IRB may find that the permission of one parent is sufficient for research to be conducted under [45 CFR 46.404](#) or [45 CFR 46.405](#). Where research is conducted under [45 CFR 46.406](#) or [45 CFR 46.407](#), permission must be obtained from both parents unless one parent is deceased, unknown, incompetent, or not reasonably available, or when only one parent has legal responsibility for the care and custody of the child.

Although the regulations state that children are unable to provide legally effective informed consent to participate in research, some might be able to give their assent. Assent means a child's affirmative agreement to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent ([45 CFR 46.402\(b\)](#)).

If the IRB determines that the capability of some or all of the children is so limited that they cannot reasonably be consulted regarding assent, or that the intervention or procedure involved in the research holds out a prospect of direct benefit that is important to the health or well-being of the children, and is available only in the context of the research, the assent of the children is not a necessary condition for proceeding with the research. Even where the IRB determines that the subjects are capable of assenting, the IRB may still waive the assent requirement under [certain circumstances](#) in accord with [45 CFR 46.116](#) and [45 CFR 46.408\(a\)](#).

You may wish to view the following related questions and answers:

[Question 24](#): What is the definition of guardian in the context of obtaining consent for research involving children?

**[Question 23](#)**: May the requirement for obtaining informed consent or parental permission be altered or waived?

Waiver or alteration of the requirements for obtaining informed consent from adult subjects can occur under any of the following three provisions:

1. Public benefit or service programs: an IRB may approve a consent procedure that alters some or all of the elements of informed consent, or waive the requirement to obtain informed consent under HHS regulations at [45 CFR 46.116\(c\)](#), provided that the IRB finds and documents that both of the following conditions are met:
  - a. the research could not practicably be carried out without the waiver or alteration; and
  - b. the research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine:
    - i. public benefit or service programs;
    - ii. procedures for obtaining benefits or services under those programs;
    - iii. possible changes in or alternatives to those programs or procedures; or

- iv. possible changes in methods or levels of payment for benefits or services under those programs.
2. Research in general: an IRB may waive or alter the requirement of informed consent under [45 CFR 46.116\(d\)](#), provided that the IRB finds and documents that all of the following four conditions are met:
  - a. the research involves no more than minimal risk to the subjects;
  - b. the waiver or alteration will not adversely affect the rights and welfare of the subjects;
  - c. the research could not practicably be carried out without the waiver or alteration;  
**and**
  - d. whenever appropriate, the subjects will be provided with additional pertinent information after participation.
3. Research in emergency settings: an IRB may also waive the requirement for obtaining informed consent if it finds and documents that the research meets the requirements of the HHS Secretarial waiver under [45 CFR 46.101\(i\)](#) that permits a waiver of the general requirements for obtaining informed consent in a limited class of research in [emergency settings \(PDF\)](#) (23KB).

For research involving children, an IRB may waive the requirements for obtaining parental or guardian permission under any of the following four provisions:

1. The IRB makes and documents the required findings under [45 CFR 46.116\(c\)](#) as described above.
2. The IRB makes and documents the required findings under [45 CFR 46.116\(d\)](#) as described above.
3. The IRB determines that a research protocol is designed to study conditions in children or a subject population for which parental or guardian permission is not a reasonable requirement to protect the subjects (for example, neglected or abused children), and the following 2 additional criteria are also met:
  - a. an appropriate mechanism is in place to protect the children, **and**
  - b. the waiver is not inconsistent with federal, state, or local law ([45 CFR 46.408\(c\)](#)).  
The choice of an appropriate substitute mechanism (for example, appointing a child advocate or an assent monitor) for protecting children participating in research would depend on the nature and purpose of the activities described in the protocol, the risk and anticipated benefit to the research subjects, and the child's age, maturity, status, and condition ([45 CFR 46.408\(c\)](#)). Note that an IRB may waive the requirement for obtaining parental or guardian permission under [45 CFR 46.408\(c\)](#) even if the research involves more than minimal risk to the child subjects.
4. The IRB finds and documents that the research meets the requirements of the HHS Secretarial waiver under [45 CFR 46.101\(i\)](#) that permits a waiver of the general requirements for obtaining informed consent in a limited class of research in [emergency settings \(PDF\)](#) (23KB).

You may wish to view the following related questions and answers:

[Question 25](#): What happens if a child reaches the legal age of consent while enrolled in a study?

[Question 26](#): What is a waiver or alteration of informed consent or parental permission?

[Question 27](#): What are the regulatory bases for waiving or altering some or all of the required elements of informed consent or parental permission?

**Question 28:** What are the criteria under 45 CFR 46.116(c) for waiving or altering some or all of the required elements of informed consent or parental permission?

**Question 29:** What are the criteria under 45 CFR 46.116(d) for waiving or altering some or all of the required elements of informed consent or parental permission?

**Question 30:** Is it possible to waive the informed consent requirement when conducting research in an emergency setting?

**Question 24:** What is the definition of guardian in the context of obtaining consent for research involving children?

The term guardian means “an individual who is authorized under applicable State or local law to consent on behalf of a child to general medical care” ([45 CFR 46.402\(e\)](#)) The role of a guardian in the context of research involving a child who is a ward is to provide permission, in lieu of a child’s biological or adoptive parents, for the ward to participate in the research ([45 CFR 46.402\(c\)](#)). For a more extensive discussion see FAQs on [Research with Children](#).

**Question 25:** What happens if a child reaches the legal age of consent while enrolled in a study?

The Office of Human Research Protections notes that informed consent should be viewed as an ongoing process throughout the duration of a research project. When a child who was enrolled in research with parental or guardian permission subsequently reaches the legal age of consent to the procedures involved in ongoing research, the subject’s participation in the research is no longer regulated by the requirements of [45 CFR part 46.408](#) regarding parental or guardian permission and subject assent.

Unless the IRB determines that the requirements for obtaining informed consent can be waived, the investigators should seek and obtain the legally effective informed consent, as described in [45 CFR 46.116](#), for the now-adult subject for any ongoing interactions or interventions with the subjects. This is because the prior parental permission and child assent are not equivalent to legally effective informed consent for the now-adult subject. However, the IRB could approve a waiver of informed consent under [45 CFR 46.116\(d\)](#), if the IRB finds and documents that the required conditions are met.

Similarly, if the research does not involve any ongoing interactions or interventions with the subjects, but continues to meet the regulatory definition of “human subjects research” (e.g., it involves the continued analysis of specimens or data for which the subject’s identity is readily identifiable to the investigator(s)), then it would be necessary for the investigator(s) to seek and obtain the legally effective informed consent of the now-adult subjects. The IRB may consider, if appropriate, a waiver under [45 CFR 46.116\(d\)](#) of the requirements for obtaining informed consent in order for the subjects to continue their participation in the research.

**Question 26:** What is a waiver or alteration of informed consent or parental permission?

The HHS regulations allow the IRB to waive the requirement for obtaining informed consent or parental permission or to approve a consent procedure that leaves out or alters some or all of the elements of informed consent otherwise required under [45 CFR 46.116\(a\) and \(b\)](#).

Waiving the requirement for obtaining informed consent or parental permission means that the IRB has determined that investigators need not obtain the subjects' informed consent to participate in research. For example, some research about natural behavior may require that subjects be unaware that the research is taking place. Such research can only be approved by the IRB if the research meets the criteria for a waiver of informed consent under HHS regulations and for approving research according to [45 CFR 46.111](#).

An IRB may approve research for which some or all of the elements of informed consent at [45 CFR 46.116 \(a\) and \(b\)](#) have been altered, or for which some elements have been left out. For example, some research designs require that subjects be left unaware of the particular purpose of the research, because the subjects' responses might be biased if they know in advance what the investigators are seeking. Such research designs do not preclude offering potential subjects some information about the research and giving them the opportunity to decide whether to participate. The IRB may approve such research in which investigators will leave out or alter elements of informed consent, so long as the research meets the criteria for approving research in [45 CFR 46.111](#), and the research meets the criteria specified in the HHS regulations for leaving out or altering those elements.

**Question 27:** What are the regulatory bases for waiving or altering some or all of the required elements of informed consent or parental permission?

The conditions under which an IRB may waive the requirement for obtaining informed consent or parental permission or may approve a consent procedure that leaves out or alters some or all of the elements of informed consent derive from four sources in the HHS regulations.

1. At [45 CFR 46.116\(c\)](#), the regulations identify when IRBs may waive or approve an alteration of informed consent in some research examining [state or local public benefit or service programs](#), or certain features of those programs.
2. At [45 CFR 46.116\(d\)](#) the regulations identify when IRBs may waive or approve an alteration of informed consent in research that meets [four specified criteria](#).
3. At [45 CFR 46.408\(c\)](#), the regulations identify when IRBs may approve [waiver of parental permission](#) in certain research involving children.
4. Under the provisions of [45 CFR 46.101\(i\)](#), the Secretary, HHS, has waived the general requirements for obtaining informed consent in a limited class of [research in emergency settings](#).

**Question 28:** What are the criteria under 45 CFR 46.116(c) for waiving or altering some or all of the required elements of informed consent or parental permission?

Under [45 CFR 46.116\(c\)](#), an IRB may waive the requirement for obtaining informed consent or parental permission or approve a consent or parental permission procedure that leaves out or alters some or all of the elements of informed consent, provided that the IRB finds and documents that the following two criteria are satisfied:

1. the research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine:
  1. public benefit or service programs;

2. procedures for obtaining benefits or services under those programs;
3. possible changes in or alternatives to those programs or procedures; or
4. possible changes in methods or levels of payment for benefits or services under those programs; [45 CFR 46.116\(c\)\(1\)](#).

Note that this criterion means that only public benefit or service program research activities that are under state or local authority meet this criterion; similar research conducted under federal authority would not qualify here and is treated elsewhere in the regulations. Research conducted by or subject to the approval of only a private entity also would not qualify.

1. the research could not practicably be carried out without the waiver or alteration ([45 CFR 46.116\(c\)\(2\)](#)).

This criterion means that the practical circumstances of the research are such that the research is not feasible if the informed consent of the subjects must be obtained. For example, a study of identifiable private information about program benefit recipients using 20-year-old records might meet this criterion, if current contact information for those recipients is not available.

**Question 29:** What are the criteria under 45 CFR 46.116(d) for waiving or altering some or all of the required elements of informed consent or parental permission?

Under [45 CFR 46.116\(d\)](#) the IRB may waive the requirement for obtaining informed consent or approve a consent procedure that leaves out or alters some or all of the elements of informed consent, provided that the IRB finds and documents that all of the following four criteria are met:

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.

**Question 30:** Is it possible to waive the informed consent requirement when conducting research in an emergency setting?

In 1996, the HHS Secretary announced, under [45 CFR 46.101\(i\)](#), a waiver of the applicability of the regulatory requirement for obtaining and documenting informed consent for a strictly limited class of research, that is, research that may be carried out in human subjects who are in need of emergency therapy and for whom, because of the subjects' medical condition and the unavailability of legally authorized representatives of the subjects, no legally effective informed consent can be obtained. This waiver applies to research involving adults or children, but does not apply to research involving pregnant women, human fetuses, neonates of uncertain viability, and nonviable neonates, or prisoners.

For more detailed information on the Emergency Research Consent Waiver, see OHRP's guidance at: <http://www.hhs.gov/ohrp/policy/hsdc97-01.html>. It should be noted that FDA also has a comparable provision for a waiver of informed consent for emergency research at [21 CFR 50.24](#).

**Question 31:** When may the requirement for documentation of informed consent or parental permission be waived or altered?

When an Institutional Review Board (IRB) has not waived the requirement for seeking prospective informed consent of the subjects or the parental permission of children who are subjects, under the HHS regulations at [45 CFR 46.117\(c\)](#), it 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 (e.g., drawing a blood sample, or asking shoppers in a mall about the ambient lighting or temperature).

Some subjects might refuse a copy of the consent form once signed out of concern that their possession of the form could compromise their privacy. This is fully consistent with the idea behind one of the bases for a waiver of the requirements for documentation of informed consent - that harm would result to the subject if his/her identity were compromised by the documentation itself. The investigator may document that the subject refused a copy of the informed consent document and still include the subject in the study.

In cases in which the documentation requirement is waived, the IRB may require the investigator to provide subjects or the parents of children who are subjects with a written statement regarding the research.

**Question 32:** Can parental or guardian permission for research involving children be waived?

Yes, under certain circumstances. An IRB may waive the requirements for obtaining parental or guardian permission **if either** of the following two conditions is met:

1. The IRB makes and documents the required findings under either [45 CFR 46.116\(c\)](#) or [\(d\)](#); or
2. The IRB determines that a research protocol is designed to study conditions in children or a subject population for which parental or guardian permission is not a reasonable requirement to protect the subjects (for example, neglected or abused children), and the following 2 additional criteria are also met:
  - a. An appropriate mechanism is in place to protect the children, and
  - b. The waiver is not inconsistent with federal, state, or local law ([45 CFR 46.408\(c\)](#)).

The choice of an appropriate substitute mechanism (for example, appointing a child advocate or an assent monitor) for protecting children participating in research would depend on the nature and purpose of the activities described in the protocol, the risk and anticipated benefit to the research subjects, and the child's age, maturity, status, and condition ([45 CFR 46.408\(c\)](#)).

Note that an IRB may waive the requirement for obtaining parental or guardian permission under [45 CFR 46.408\(c\)](#) even if the research involves more than minimal risk to the child subjects.

**Question 33:** Is child assent always required when research involves children?

No, the IRB is responsible for deciding whether child assent is required in proposed research activities. Assent means a child's affirmative agreement to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent ([45 CFR 46.402\(b\)](#)). Child assent is required, except in the following three circumstances described at [45 CFR 46.408\(a\)](#):

1. the capability of some or all of the children is so limited that they cannot reasonably be consulted;
2. the intervention or procedure involved in the research holds out the prospect of direct benefit to the health or well-being of the children and is available only in the context of the research;
3. the research meets the same conditions as those for waiver or alteration of informed consent in research involving adults, as specified in the regulations at either [45 CFR 46.116\(c\)](#) or [45 CFR 46.116\(d\)](#).

**Question 34:** How should child assent be documented?

The HHS regulations do not require documentation of assent. The IRB has the discretion to determine the appropriate manner, if any, of documenting child assent. Based on such considerations as the child's age, maturity, and degree of literacy, the IRB should decide what form of documentation, if any, is most appropriate. If adolescents are involved in research where a consent form would have been used if the subjects were adults, it would generally be appropriate to use a similar form to document an adolescent's assent.

If young children are involved who are as yet unable to read, documentation should take a form that is appropriate for the purpose of recording that assent took place. The IRB may also decide that documentation of assent is not warranted.

**Question 35:** What is the meaning of "legally effective informed consent?"

Informed consent is legally effective if it is both obtained from the subject or the subject's legally authorized representative and documented in a manner that is consistent with the HHS protection of human subjects regulations and with applicable laws of the jurisdiction in which the research is conducted. In general terms, the regulations stipulate that an investigator should seek consent only under circumstances that provide the prospective subject or the legally authorized representative sufficient opportunity to consider whether to participate and that minimize the possibility of coercion or undue influence. The information provided should be in language that is understandable to the subject or the representative. No informed consent, whether oral or written, may include any [exculpatory language](#).

It is important to note that the informed consent requirements in the regulations are not intended to preempt any applicable federal, state, or local laws that require additional information to be disclosed for consent to be legally effective ([45 CFR 46.116\(e\)](#)).

You may wish to view the following related question and answer:

[Question 2](#): Is it possible to obtain legally effective informed consent to research in an urgent or emergency care setting?