Status **Active** PolicyStat ID **14883626**

Origination	12/2022	Owner	Trudy Wittenberg: 4388 Institutional Review Board Administrator
Last Approved	03/2024		
Effective	03/2024		
Next Review	03/2026	Department	HRPP/Research

Research: Emergency Use of Drugs/Biologics for Individual Patients- AD.0199

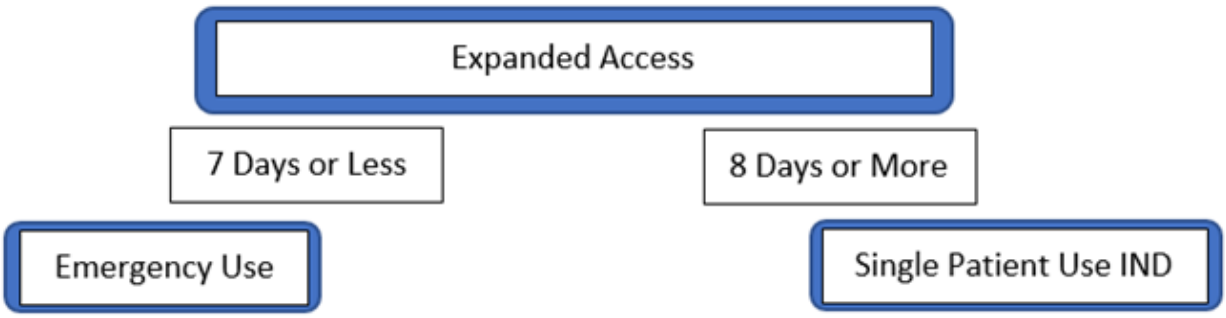
PURPOSE

The purpose of this policy is to outline the treating physician's responsibilities, IRB submission requirements and review process for **emergency use** of a drug/biologic for individual patients. Our policies guide our practices and ensure that we place people at the heart of all we do to deliver the best outcomes and safest care.

APPLICABILITY

This policy applies to Lakeland Regional Health's **Workforce** and Research Personnel engaged in research. This policy applies to use of investigational drugs, biologics, diagnostics, or other interventions that are regulated by the FDA. This policy does not regulate or interfere with the clinical practice of medicine.

POLICY



I. **Expanded Access: Emergency Use Exemption Requirements for the Use of Drugs/Biologics**

A. Emergency use is the use of an investigational drug/biological products (i.e., **test articles**) with a human subject in a life-threatening (or severely debilitating) situation in which no standard acceptable treatment is available and in which there is not sufficient

time to obtain prospective IRB approval. At Lakeland Regional Health, the IRB requires seven (7) calendar days to convene a quorum. If the drug/biologic must be used in less than seven (7) days from the time of the treating physician's determination, then the emergency exemption requirements are automatically invoked. This exemption from prior IRB review and approval is limited to a single use. FDA regulations require that any subsequent use of the investigational product at the institution have prospective IRB review and approval. The FDA acknowledges, however, that it would be inappropriate to deny emergency treatment to a second individual if the only obstacle is that the IRB has not had sufficient time to convene a meeting to review the issue.

B. To qualify for emergency use:
    1. The prospective patient must be suffering a life-threatening or **serious disease or condition** that requires immediate treatment (within seven (7) calendar days); and
    2. There must be no available, generally acceptable alternatives for treating the patient; and
    3. There must be no time to use existing procedures to obtain FDA approval. Under very limited circumstances, the requirements for informed consent may be waived in an emergency situation.

C. The IRB requires notification of the emergency use of a drug or biologic. In this situation, notification to the IRB is subject to the requirements outlined below. Notification does not substitute for approval and is used only to initiate tracking to ensure the treating physician files a report within five days of the emergency use. The five (5) day notification window is not to be confused with the seven (7) day window of indications for emergency use. Expedited approval is not permissible for emergency use; full board approval is required unless drug/biologic must be used on the patient within seven (7) calendar days.

II. IRB Requirements

A. For drugs and biologics, the FDA regulations do not provide for expedited IRB approval in emergency situations. The FDA therefore, does not accept any of the following, though commonly used terms - "interim," "compassionate," or "temporary". There are three (3) possible ways to proceed:
    1. The IRB can provide approval (called "concurrence" in FDA Guidance) by the Chair or another IRB member for the emergency use, provided the FDA has granted a waiver under 21 CFR § 56.105 of the requirements in 21 CFR § 56.108(c), which relate to IRB review by the convened board;
    2. The IRB must convene and give full board approval for the emergency use if the sponsor is a pharmaceutical company and not a physician sponsor-investigator, or the FDA has concluded that a waiver of the requirement for review and approval by a convened board is not appropriate; or
    3. If the conditions of 21 CFR § 56.102(d) are met and the drug/biologic must be given to the patient within seven (7) calendar days, the use may automatically proceed under an emergency exemption from prospective IRB review.

III. Subsequent Uses of an Investigational Drug/Biologic

The emergency use exemption is for a single patient use. If the treating physician anticipates the

need to use the same drug for a second individual, then they must prepare a protocol for IRB approval for the proposed use.

IV. **Emergency Exemption from Prospective IRB Review**

Immediate life-threatening situations typically occur with short notice, although occasionally the planned use can be foreseen three (3) or four (4) weeks in advance. When there is sufficient time (eight (8) or more calendar days), the IRB must review the proposed single patient use (see Expanded Access: Non-Emergency Individual Patient IND (Drugs/Biologics)). When there is insufficient time for IRB review (seven (7)) or less calendar days), the treating physician may exercise the emergency exemption from prior IRB review and administer the investigational drug/biologic.

V. **Limitations of Emergency Use without Prior IRB Approval**

A treating physician may exercise the emergency exemption from prior IRB approval to use an investigational drug/biologic once without prospective IRB review, provided that the use qualifies as emergency use. Any subsequent use of the investigational drug/biologic at LRH is subject to IRB review (21 CRF § 56.104), unless requiring prospective review would inappropriately deny emergency treatment to a second individual.

PROCEDURE

I. **Treating Physician Responsibilities When Exercising the Emergency Exemption for an Investigational Drug or Biologic**

A. Confirm that the disease or condition is either serious or immediately life-threatening;

B. Confirm that the investigational drug/biologic must be given to the patient in seven (7) calendar days or less;

C. Contact the Manufacturer:

The treating physician must obtain the manufacturer's agreement to ship the drug or to use part of the drug supply available at LRH as part of another clinical trial.

D. Contact the FDA:

1. An IND must be obtained from the FDA for emergency use. The FDA maintains 24-hour coverage for emergency INDs.

a. If the use of the unapproved investigational drug/biologic does not meet the criteria of an existing study protocol (does not have to be an LRH protocol) or if an approved study protocol does not exist, the treating physician must contact the manufacturer of the test article and determine if it can be made available for emergency use under the IND that the manufacturer holds.

b. If the manufacturer is unwilling to sponsor the emergency use through its IND, and there is no time for the treating physician to submit a full IND application to the FDA, the treating physician then must obtain the FDA's authorization to use, and the manufacturer's agreement to ship, the unapproved investigational drug/biologic; the FDA will give an emergency IND number at this time. See section J for more details.

E. Notify the Pharmacy:

1. The treating physician should provide the pharmacy with the following:
    a. A copy of the FDA's letter or email indicating its approval for the emergency IND or authorization for use of the unapproved investigational drug/biologic;
    b. The manufacturer's approval to ship the investigational drug/ biologic;
    c. Notice that the treating physician is exercising the emergency exemption;
    d. If the manufacturer or LRH pharmacy requires a letter from the IRB prior to release of the test article, the treating physician should contact the IRB Office as soon as possible to obtain an acknowledgement letter. Notification may be by email or via IRBNet.
2. The drug must be shipped to the pharmacy to maintain the appropriate chain of custody (see Research: Investigational Drugs- AD.0156).

F. Obtain and document informed consent from the subject or the subject's legal representative. When legally effective consent cannot be obtained, the treating physician must, if time permits, obtain an independent assessment by an uninvolved physician who must certify in writing with the treating physician that:

1. The subject is confronted by a serious or immediately life-threatening disease or condition (i.e., requiring intervention before IRB Chair/Vice Chair approval or review at a convened meeting is feasible) necessitating the use of the unapproved test article;
2. Informed consent cannot be obtained because of an inability to communicate with, or obtain legally effective consent from, the subject;
3. Time is not sufficient to obtain consent from the subject's legal representative; and
4. No alternative method of approved or generally recognized therapy is available that provides an equal or greater likelihood of saving the subject's life.

G. Report to the IRB, the FDA and Manufacturer:

If the emergency exemption is exercised, the IRB Office must be notified via email and all appropriate documents must be submitted in IRBNet. The IRB may also be notified prior to the use, but regardless of whether an initial notification is filed, the treating physician must complete a report to the IRB within five (5) days of the use of the investigational drug/biologic, so that the IRB can ascertain that the use was appropriate. The treating physician must report the use, including adverse events, to the FDA.

H. Document in the medical record that the above findings (e.g. exception criteria) were met;

I. After emergency use, the treating physician is required to:

1. Within five (5) days of the emergency use, submit a report describing the emergency use and initial outcome to the IRB. This report will be reviewed by the Chair or Vice Chair.

2. Evaluate the likelihood of a similar need for the unapproved test article occurring again, and if future use is likely, immediately initiate efforts to obtain IRB approval of a study protocol to permit clinical use of the investigational drug.
3. If an unanticipated problem involving risk to subjects or others (e.g., an SAE that was unexpected and related) occurred in connection with the emergency use, submit reports consistent with the reporting requirements of the IRB (see Research: Unanticipated Problems & Serious Adverse Events Reporting- AD.0193 and Research: Protocol Deviations & Non-compliance- AD.0194), the FDA, and the manufacturer of the test article.
4. If the manufacturer agreed to sponsor the emergency use through its IND, provide the manufacturer with a written summary of the conditions constituting the emergency, subject protection measures, and the results of the emergency use. In these cases, the manufacturer is responsible for corresponding with the FDA.
5. If the manufacturer did not agree to sponsor the emergency use through its IND, provide the FDA and the manufacturer with a written summary of the conditions constituting the emergency use of the unapproved investigational drug/biologic, subject protection measures, and the results of the emergency use within a formal IND application. There are two methods to communicate this:
    a. If the treating physician submits a formal IND application, they must submit annual reports per FDA regulations.
    b. If the treating physician does not plan to write a formal protocol for use of the test article, they must submit a final report requesting withdrawal of the emergency IND per FDA regulations.

J. The information contained above should be captured in a letter to the IRB by the treating physician. The IRB also requests a copy of the Investigator's Brochure, and either the consent template that will be used or a redacted copy of the signed informed consent form.

K. After the information is submitted in IRBNet, the IRB Chairperson, or Vice Chair will:
    1. Confirm that the emergency use of the test article meets all of the criteria outlined above;
    2. Concur with the use of the test article;
    3. Review reports of the emergency use (including the consent document used);
    4. Review exemptions from the requirement to obtain consent; and
    5. Determine if the use met FDA regulatory requirements. If the requirements were not met, the Chair or Vice Chair will work with the IRB Administrator to inform the treating physician of the appropriate processes for future uses.

L. A letter will be provided to the treating physician through IRBNet by the IRB Administrator acknowledging the review from the Chairperson/Vice Chair.

M. The emergency use of test articles will be relayed to the convened IRB at the next meeting as information.

DEFINITIONS

Emergency Use: The use of a test article on a human subject in a life-threatening situation in which no standard acceptable treatment is available, and in which there is not sufficient time to obtain IRB approval.

Immediately Life-Threatening Disease or Condition: A stage of disease in which there is reasonable likelihood that death will occur within a matter of months or in which premature death is likely without early treatment.

Investigational New Drug Application (IND): A request for authorization from the Food and Drug Administration (FDA) to administer an investigational drug or biological product to humans. Such authorization must be secured prior to interstate shipment and administration of any new drug or biological product that is not the subject of an approved New Drug Application or Biologics/Product License Application.

Serious Disease or Condition: A disease or condition associated with morbidity that has substantial impact on day-to-day functioning. Short-lived and self-limiting morbidity will usually not be sufficient, but the morbidity need not be irreversible, provided it is persistent or recurrent. Whether a disease or condition is serious is a matter of clinical judgment, based on its impact on such factors as survival, day-to-day functioning, or the likelihood that the disease, if left untreated, will progress from a less severe condition to a more serious one.

Test Article: A drug (including a biological product for human use), medical device for human use, human food additive, color additive, electronic product, or any other article subject to regulation under the jurisdiction of the Food and Drug Administration.

Workforce: All LRH employees, volunteers, trainees/students, contractors, and medical staff.

REFERENCES

I. eCFR :: 21 CFR 56.102 -- Definitions.
II. eCFR :: 21 CFR 312.310 -- Individual patients, including for emergency use.
III. eCFR :: 21 CFR 56.105 -- Waiver of IRB requirement.
IV. eCFR :: 21 CFR 56.108 -- IRB functions and operations.
V. Emergency Use | CHOP Institutional Review Board
VI. CHOP SOP - Emergency Use_2021-6-28

Approval Signatures

Step Description	Approver	Date
	Danielle Drummond: 0001 President & Chief Executive Officer - LRHS	03/2024

Jonn Hoppe: 1011 Executive VP, Chief Legal Officer-General Cou	03/2024
Timothy Regan: 0009 President - LRMC/Chief Medical Officer	03/2024
Renee Reed: 4064 Senior Attorney	03/2024
Rodriguez Dangerfield: 0028 Director - Pharmacy	03/2024
Deana Nelson: 4080 SVP - Administration and Corporate Initiative	03/2024
Georgia Ann Keriazes: 0729 QI/ Due Pharmacist	03/2024
Andrew Bugajski: 4387 AVP - Research and Sponsored Studies	12/2023