**COMIRB Guidance on Humanitarian Use Devices**

Humanitarian Use Devices (HUDs) are a special class of device that is marketed under the Humanitarian Device Exemption (HDE) approval process by the FDA. HUDs are intended to benefit patients in the treatment or diagnosis of a disease or condition that affects fewer than 8,000 individuals in the United States per year. HUDs are given a special class of FDA approval because they have not been clearly demonstrated to be effective; rather, they have been shown to be safe and probably effective for their intended condition. With this limited approval, the FDA requires IRB review and approval at full board before these devices can be used to treat patients.

**Important:** When submitting your application to COMIRB for an HUD protocol, you must be clear whether you are *using* the HUD (strictly using the device clinically to treat patients), or *investigating* the device (collecting safety and/or effectiveness data on the device's use). If you are *using* the device clinically, it is considered a treatment protocol; the guidelines outlined below apply.

**NOTE:** If you are *investigating* the device, it is considered research. You must follow the usual format for submitting a research protocol (e.g., submit the Application for Protocol Review form, protocol, and research consent form); also note that *investigation* of an HUD will almost always require an IDE approved by the FDA before COMIRB can approve the research protocol.

**Guidelines for clinical use of HUDs**

1. Consult the hospital where the device will be used before submitting to the IRB.
    a. There may be financial reasons why the hospital may not allow the use of the device in their facility.
    b. There must be a separate plan for procurement and storage of devices at each site.

2. Submit the COMIRB Application for Protocol Review form. Answer every question in the Application as it relates to "the use of the device," even if it asks about "research." You will need to include Attachment D with the Application for the use of device(s).

3. Develop a mini-protocol that details the local specific use of the device.

    **The mini-protocol should:**

    a) State the device will be used to treat patients clinically only. The protocol should refer to "treatment," "physician/clinician," and "patients," rather than "research," "study," "investigators," and "subjects."
    b) Describe the circumstances under which the device will be used (e.g., elective care, emergency care), and whether there will be times when prospective consent is not possible.
    c) Describe normal clinical care, and outline the planned follow-up for patients who are treated with the HUD. The follow-up plan should be the usual standard care follow-up; if

there are required follow-up visits outside of standard care, you may be collecting safety data.

d) Describe the clinical conditions or characteristics which make a patient suitable for the treatment.
e) Describe **any** potential off-label uses of the device (indications or populations). Note that you can only clinically use the device as described in your protocol. All potential uses of the device must be prospectively approved by COMIRB. You should provide literature or other resources/statements to support off-label use. The IRB will need to determine whether the off-label use must be reviewed as research.
f) Describe the consenting process. Detail any proxy consent or circumstances when consent may not be obtained before use of the device. Discuss how patients will be informed of the device use after treatment in the event that they cannot provide consent before device use. If the device will be used in emergency situations when consent cannot be obtained, describe how the patient will be notified about the use of the HUD.
g) Include a statement that FDA Medical Device Reporting requirements in 21 CFR 803 will be followed.

4. Include with submission:
   a) A copy of HDE approval
   b) A description of the device, the product labeling, the patient information packet that may accompany the HUD, and/or device manual
   c) Manufacturer protocol for use of the device (if any)
   d) FDA Summary of Safety and Probable Benefit document for the device
   e) Patient Advisory Form (see below)
   f) Any ***clinical*** consent, if any, that will be used with the device

5. Patient Advisory Form/Consent Form - the COMIRB research consent form is not required, but COMIRB usually requires that the patient be informed of the procedures, risks, limited effectiveness of the device, alternative treatment (if available), and whether any uses outside of the approved HUD labeling and indications.
   a) If the manufacturer provides a consent form, submit that for review. If not, the clinician should develop a Patient Advisory Form that includes a signature line with date.
   b) NOTE: the short form may not be used when obtaining clinical consent from non-English speakers, as the short form is for research use only. A hospital translator can be used for clinical consent and care involving the device. Please follow individual hospital policy when enrolling non-English-speaking patients.

6. COMIRB must review and approve the initial submission to use an HUD at a convened meeting (full board). Continuing review may take place under expedited procedures, as allowed by FDA guidance.

7. The common rule (45 CFR 46, Subpart A) and Subparts B, C, and D do not apply when reviewing an HUD protocol. However, COMIRB must decide:
   a) Whether the HUD is used in accordance with the FDA-approved labeling and indications (indications or populations). If the HUD is used off label, the committee must ensure the off-label use is appropriate and does not pose undue risk to patients prior to approval.
   b) Whether any safety and/or effectiveness data will be collected (collecting adverse events (AEs) for reporting purposes is not considered collecting safety data). If the HUD protocol proposes to collect safety or effectiveness data on the HUD, it is considered research. A separate research protocol should then be submitted.
   c) Whether the AE reporting plan is appropriate.
   d) Whether the study should remain at full board, and if so, why.

8. Adverse events – FDA requires that all device adverse events (AEs) be recorded by the user. All AEs should be reported to the Manufacturer, the FDA and to COMIRB. If a MedWatch form is used, attach a copy of that to your UAP submission to COMIRB.

9. An FDA Guidance document is available online (Guidance for HDE Holders, Institutional Review boards, Clinical Investigators, and Food and Drug Administration Staff - Humanitarian Device Exemption Regulation: Questions and Answers, March 18, 2014): https://www.fda.gov/RegulatoryInformation/Guidances/ucm389154.htm#aft