Vulnerable Populations & Beyond

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• Course Director and Course Planners: Kevin Tracey, MD, Cynthia Hahn, Emmelyn Kim, MPH, and Tina Chuck, MPH have nothing to disclose.

• Course Speakers: Dorean J. Flores and Selina Zydor have nothing to disclose.
Course Objectives

• Discuss vulnerable populations at outlined by the federal regulation (45 CFR 46).
• Provide an expanded view of vulnerability beyond that outlined in the federal regulation.
• Discuss examples of risks to subjects that may be different in nature or frequency for these subjects.
• Provide examples of additional safe guards that may be need when enrolling vulnerable populations.
What is the Clinical Definition of a Vulnerable Population?

- A vulnerable population is “the state of an individual or population being vulnerable to a particular disease or event. The factors determining risk may be environmental, psychosocial, psychological, or physiological (Mosby, 2012).
What is the Clinical Definition of a Vulnerable Population?

• In general, a vulnerable population is a group of people who are disadvantaged in some way. Typically, they have less power than the majority of their peers and fewer resources to dedicate to their health (Duquesne University, 2012).
What is the Ethical Definition of a Vulnerable Population?

• A vulnerable population is a group of people who are relatively (or absolutely) incapable of protecting their own interests and may be exposed to harm.

• Harm can be social, economical, legal, psychological, or physical.
What Forms the Foundation?

• The Belmont Report
• Common Rule (45 CFR 46, Subpart A)
• 45 CFR 46, Subparts B-D (Vulnerable Populations)
• FDA Regulation
• Privacy Rule (HIPAA)
  – 45 CFR 160; 45 CFR 164
• Institutional Policies and Procedures
Increased scrutiny for vulnerable individuals is based on the basic ethical principles of the Belmont Report.

- Respect for Persons
  - Individuals should be treated as autonomous agents
- Protection of individuals with reduced autonomy
- Beneficence
  - Maximize benefits; minimize risks
- Justice
  - Equitable distribution of risks and benefits
Common Rule (45 CFR 46, Subpart A)

- (1) Risks to subjects are minimized
- (2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result.
- (3) Selection of subjects is equitable.
– (4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative, in accordance with, and to the extent required by § 46.116.

– (5) Informed consent will be appropriately documented, in accordance with, and to the extent required by § 46.117.

– (6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.
Common Rule (45 CFR 46, Subpart A)

– (7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

• (b) 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.
Specific subparts define the studies that vulnerable populations can participate in provided that the additional protections outlined in the subparts are followed.

- Pregnant Women/Fetuses/Neonates
  - Subpart B
- Prisoners
  - Subpart C
- Children
  - Including Wards of State
  - Subpart D
Pregnant Women/Fetuses/Neonates
Pregnant Women/Fetuses/Neonates

- Must meet **one** of these two conditions:
  1. Prospect of direct benefit to the mother, fetus, or both.
  2. No greater than minimal risk **and** the purpose of the research is for the development of important knowledge that cannot be obtained by any other means.
Pregnant Women/Fetuses/Neonates

• If the prospect of direct benefit is to the fetus only, consent of the mother and father should be obtained *when possible*.

• Individuals conducting the research may not be involved in decisions regarding termination of the pregnancy or the viability of a neonate.
Prisoners
Prisoners

• Any individual involuntarily confined or detained in a penal institution. Includes:
  o individuals sentenced to such an institution under a criminal or civil statute,
  o individuals detained in other facilities by virtue of statutes or commitment procedures which provide alternatives to criminal prosecution or incarceration in a penal institution, and
  o individuals detained pending arraignment, trial, or sentencing.
Prisoners

• Only 4 categories of research involving prisoners are permitted on Subpart C

  o Categories i and ii – Research that is not greater than minimal risk may be allowable if it consists solely of the following:

    ➢ (i) Study of the possible causes, effects, and processes of incarceration, and of criminal behavior, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects; or

    ➢ (ii) Study of prisons as institutional structures or of prisoners as incarcerated persons, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects.
Prisoners

- Categories iii and iv – Research may be allowable under Subpart C if it consists solely of the following:

  - (iii) Research on conditions particularly affecting prisoners as a class (for example, vaccine trials and other research on hepatitis which is much more prevalent in prisons than elsewhere; and research on social and psychological problems such as alcoholism, drug addition, and sexual assaults) provided that the study may proceed only after the Secretary has consulted with appropriate experts including experts in penology, medicine, and ethics, and published notice, in the Federal Register, of his intent to approve such research; or
(iv) Research on practices, both innovative and accepted, which have the intent and reasonable probability of improving the health or well-being of the subject. In cases in which those studies require the assignment of prisoners in a manner consistent with protocols approved by the IRB to control groups which may not benefit from the research, the study may proceed only after the Secretary has consulted with the appropriate experts, including experts in penology, medicine, and ethics, and published notice, in the *Federal Register*, of his intent to approval such research.

The *Secretary* is the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom authority has been delegated.)
Prisoners

- Must be reviewed by a Full Board with a prisoner representative or advocate.
- Risks must commensurate with risks that a non-prisoner would accept.
- Parole boards cannot take participation in research into account when making parole decisions.
- Advantages that prisoners may accrue for participation in research must not be unduly coercive given conditions of incarceration.
Prisoners

• If you are conducting a research study and prisoners were not a target population, but a subject becomes incarcerated while on the study, research activities with that subject must stop until the IRB has re-reviewed the study with a prisoner representative or advocate present or the subject is no longer incarcerated.
Children
Children

• Research involving minors may include the following:
  o (I) Research not involving greater than minimal risk (§ 45CFR46.404, § 21CFR50.51).
  o (II) Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects (§ 45CFR46.405, § 21CFR50.52).
Children

- (III) Research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition (§ 45CFR46.406, § 21CFR50.53).

- (IV) Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children (§ 45CFR46.407, § 21CFR50.54)
Children

• When obtaining consent for minor participation in research, signatures of both parents/guardians are required, unless the IRB finds one parent’s signature is sufficient (for risk levels 1 & 2).
  – An exception can be made if both signatures are required when one parent is deceased, unknown, incompetent, not reasonably available, or if only one parent has custody.
Children

• Assent of the child 7 years old or older is required (as appropriate).

• If the child turns 18 while on a study, s/he must be re-consented as an adult. A plan outlining re-consent procedures should be stated in the protocol and consent form.
FDA & Privacy Rule (HIPAA) Regulations

• FDA Regulation & Privacy Rule (HIPAA) Regulation coincide and overlap with regulations provided by the Department of Health and Human Services (DHHS).

• Significant differences between FDA regulation include:
  – No subpart for prisoners or pregnant women/fetuses/neonates.
  – Waivers of parental permission is not allowed for FDA regulated research.
FDA & Privacy Rule (HIPAA) Regulations

- FDA does not permit waiver of documentation of informed consent, except in situations of a clinical emergency or emergency research.

• Differences in HIPAA regulation when compared to DHHS include detail of additional confidentiality protections regarding PHI and breaches of confidentiality.
Institutional Policies & Procedures

• The purpose of institutional policies & procedures are to provide additional protections to subjects not covered under the subparts of the federal regulation.

• Additional protections are not all-inclusive and may be further revised to include additional populations.

• A copy of the NSLIJHS HRPP Policies and Procedures Manual can be found at: www.feinsteininstitute.org/hrpp/policies
Vulnerable Populations Outside of Subparts B-D

Individuals who are:

- Physically Handicapped
- Mentally Disabled
- Economically Disadvantaged
- Educationally Disadvantaged
- Racial Minorities
- Terminally Ill
- Elderly/Aged
- Institutionalized
- Employees/Students/Normal Volunteers
- International Research Subjects
- Individuals of Domestic Violence/Sexual Assault
Physically Handicapped

- When subjects (or legally authorized representatives) are unable to read or sign a written consent form (such as blind, illiterate, or physically handicapped subjects), the IRB may approve an oral consent process, provided the subject:
  - Retains the ability to understand the concepts of the study and evaluate the risk and benefit of being in the study when it is explained verbally, and
  - Is able to indicate approval or disapproval to study entry.
Mentally Disabled

• Federal regulation allows for consent by a legally authorized representative (LAR) when a research subject is decisionally/cognitively impaired.

• The IRB requires investigators to conduct a competency assessment whenever there is a possibility of either impaired mental status or decision-making capacity in prospective subjects.
Consultation with a psychiatrist or licensed psychologist must be obtained when the determination that the prospective research subject lacks decision-making capacity is based on a diagnosis of mental illness.

The IRB may determine that the assent is required of a subject with decisional impairment.
Additional Vulnerable Populations

• In addition to the vulnerable populations discussed separately (pregnant women/fetus/neonates, prisoners, minors, physically handicapped or mentally disabled), the IRB shall provide additional protections to other potentially vulnerable populations.
Questions or Comments?
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