Advocacy and Related Groups – Preliminary Findings from a Review of Responses to the Common Rule NPRM

Overview

There were 60 responses in this category which included disease specific advocacy groups as well as non-specific citizen and patient advocacy groups and privacy advocates. Eleven of the groups responding did not comment on any of the areas we reviewed. These areas include major proposed changes specific to biospecimens, the proposal to mandate a single institutional review board (IRB) for multisite studies, extending the Common Rule to all clinical trials, security safeguards and posting clinical trial consent forms to a federal website.

Biospecimens (48% oppose, 39% support, 14% support with qualifiers)

We reviewed three major proposals specific to biospecimens including the proposal to expand the definition of "human subject" to include non-identified biospecimens, to mandate broad consent for secondary research use of biospecimens and to restrict IRB waiver of consent for secondary research use of biospecimens. Seventy-three percent (44 of 60) of responses included comments on at least one of three major proposed changes. Among those responding, 48% (21 of 44) opposed the proposed changes, 39% (17 of 44) supported them and 14% (6 of 44) offered qualified support.

Definition of "Human Subject" (46% oppose, 54% support)

Forty percent (24 of 60) of responses included comments on the proposal to change the definition of "human subject" to include non-identified biospecimens, of which 46% (11 of 24) opposed the proposed change and 54% (13 of 24) supported it. Of those opposed, one indicated a preference for Alternative Proposal A – expanding the definition of "human subject" to include whole genome sequencing and one for Alternative Proposal B – classifying certain biospecimens used in particular technologies as meeting the criteria for "human subject."

> "We believe the proposal contained in the NPRM could have a negative impact on the use of non-identified tissue samples, especially tissue samples obtained prior to the implementation of the Common Rule, as well as samples collected during routine clinical and surgical care. Requiring broad consent from every surgical patient from whom a biospecimen is collected is unduly burdensome and would add to the already significant administrative costs for storage and future research utilizing such tissue samples. These additional costs could have a disproportionate impact on hospitals and providers in underserved communities, which are already struggling to meet their current financial obligations. Equally important, this requirement could have the unintended impact of delaying the development of innovative and life-saving therapies and thereby potentially delaying their availability to patients." – National Coalition for Cancer Research

> "While it is clear that privacy is critically important for all people, we found that people with chronic diseases and disabilities view the trade-off between privacy and the need for research differently than healthy individuals. Patients understand the privacy risk that is

posed when their health information is shared, but typically consider the benefits of research to outweigh this risk." – National Health Council

"This future is here or, in the alternative, the future is so close that the Common Rule should assume that all biospecimens are identifiable. Why? The time between amendments to the Common Rule is measured in decades. By the time the federal government next amends the Common Rule, the identifiability of biospecimens will no longer be at issue but a fully developed reality. Consider the issue of informational risks. These risks have been present for a very long time, but the Common Rule is just now being changed to address those risks realistically." – World Privacy Forum

Broad Consent (43% oppose, 27% support, 30% support with qualifiers)

Fifty percent (30 of 60) of those identified as advocacy groups commented on the proposed mandate for broad consent for future unspecified research use of biospecimens. Of those, 43% (13 of 30) opposed the proposed change, 27% (8 of 30) supported it and 30% (9 of 30) supported it with qualifiers. Those offering qualified support suggested that broad consent should be prospective only, that balance was needed, or that consent should be specific. Of those opposed to broad consent, three suggested notice and opt-out.

"MDA is concerned that the NPRM's broad consent proposal could result in negative unintended consequences to the NBS (newborn screening) program and to secondary research efforts that would outweigh the benefits." – Muscular Dystrophy Association

"The Cancer Leadership Council members who support a policy of broad consent for biospecimens agree with the position articulated by HHS that technology will soon – if it does not already -- permit the identification of virtually any individual based on a biospecimen. In light of the likely ability to identify individuals from de-identified biospecimens, consent is warranted. Moreover, those supporting this position fundamentally agree with the regulators that individuals deserve to know if their biospecimens – whether identified or not – will be stored and used for future research purposes. In contrast, other Cancer Leadership Council members oppose mandating consent for storage and use of de-identified biospecimens. They also believe – contrary to the position articulated in the preamble to the proposed rule – that there is minimal risk of identification from deidentified biospecimens and that this minimal risk does not justify the burden associated with obtaining consent for these specimens. They argue that some will refuse to grant consent for biospecimen use, which will undermine the usefulness of biospecimen banks if this results in less comprehensive databases."

"Broad written consent is an important institutional change that should be undertaken with all due care to balance the interests of participants and the impact on research. We also seek additional clarification on how new regulations would apply to historical collections." – Parkinson's Action Network

> "[The proposal] balances the facilitation of research while sufficiently informing participants of the possible use of their biospecimens and providing an opportunity to refuse consent." – Alzheimer's Association

Waiver of Consent (80% oppose, 20% support)

Seventeen percent of responses (10 of 60) included comments on proposed restrictions to IRB waiver of consent. Of those, 80% (8 of 10) opposed the proposed changes and 20% (2 of 10) supported them.

> "Especially with a rare disease, biospecimens are often rare and precious, and the associated data that may contain identifiable private information may be necessary to the research. A specific example relevant to tuberous sclerosis complex is the need to understand why the various manifestations of this disorder are expressed to different extents among various individuals, even between identical twins; without biospecimens linked to identifiable private information, such research is hampered if not impossible." - Tuberous Sclerosis Alliance

> "Because the proposed Common Rule constructs a barrier to scientific breakthrough and loss of future treatment options, the Common Rule proposal is likely to result in many needless loss of lives. At LMS [Leiomyosarcoma] Direct Research, our support lies in the continuation of the existing waiver to archival collections, opposing the proposed changes, as it is the most logical decision to further research and extend people's lives."

> "IRBs have no authority to waive a subject's legal rights." - Citizens for Responsible Care and Research

Single IRB (19% oppose, 57% support, 24% support with qualifiers)

Thirty-five percent (21 of 60) of those responding commented on the proposed mandate for use of a single IRB for multi-site studies. Of those, 57% (12 of 21) supported the proposed mandate, 24% offered qualified support (5 of 21) and 19% (4 of 21) opposed it.

> "This is very important to streamlining the research process, and particularly for rare diseases, as clinical trials may rely on multiple research sites to gain larger research populations. A revision of a consent form by just one IRB may set into action review of that form by all other IRBs and lead to significant delays in the research. Ensuring a central IRB will streamline this process while ensuring protection of research subjects." - Alpha-1 and COPD Foundations

> "We are heartened by OHRP's proposal to streamline the IRB process. However, we would also urge caution in its structuring and implementation due to the complexity of the current system. We echo SACHRP's requests for additional data on the U.S IRB environment, and ask that OHRP also include exception allowances for state, local, or tribal laws. We also echo SACHRP's request for a public forum on the use of single

> IRBs, and the investigation of cost structures for single IRBs instead of multiple local IRB reviews." – National Organization for Rare Disorders
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> "SWHR is supportive of a single IRB review, yet is concerned this is not a realistic option at this time." – Society for Women's Health Research

Extending the Common Rule to All Clinical Trials (25% oppose, 75% support)

Twenty percent (12 of 60) of advocacy group responses included comments on the proposal to extend the Common Rule to all clinical trials regardless of funding source at institutions that receive federal funding for non-exempt and non-excluded human subjects research. Of those, Seventy-five percent (9 of 12) supported the proposal and 25% (3 of 12) opposed it.

> "Common Rule agencies should include a policy that extends Common Rule oversight to all institutions currently receiving federal support, at any monetary threshold value, at the time of the clinical trial application." – Society for Women's Health Research

Security Safeguards (37.5% oppose, 62.5% support)

Thirteen percent (8 of 60) commented on the proposed Secretary's security safeguards with 62.5% (5 of 8) in support and 37.5% (3 of 8) opposed.

> "We strongly support a policy that requires all researchers covered by the Common Rule or exempt from the Common rule to maintain reasonable and appropriate safeguards. We are comfortable allowing the Secretary of HHS to develop the safeguards. Safeguards must address both privacy and security. Every research project that maintains personal information should have a privacy policy and should be required to follow specific security practices most appropriate for the nature of the project." – World Privacy Forum
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> "The Rule would set uniform specific standards for privacy and confidentiality protections for biospecimens. We are uncertain whether it is possible to generate such uniform specific standards since different studies may have different risks to privacy and confidentiality." – American Heart Association

Posting Consent Forms (33% oppose, 67% support)

Regarding posting clinical trial consent forms to a federal website, 5% (3 of 60) commented, with 67% (2 of 3) in support and 33% (1 of 3) opposed.

Overarching Concerns

Beyond analyzing responses to the particular NPRM elements elaborated above, we also looked at more general assessments of the status of the NPRM. Fifteen percent of those responding (9 of 60) suggested that the NPRM does not meet the standard of a proposed rule and should be revised and republished for public comment.

> "It is AFTD's opinion that this NPRM should not be finalized as written. We respectfully submit that the protection of research participants is a complex issue and the language in the current NPRM document does not always achieve clarity, therefore we request that more time for consideration of the document and its implications be provided. And if practical, let a working group representing persons diagnosed, families, advocacy organizations, researchers and health professionals along with experts in ethics, law and data privacy draft a consensus document that can serve as the new template for NPRM." - Association for Frontotemporal Degeneration

> "The NPRM would transform the Common Rule — which is currently written in clear, concise, and, in most respects, easily understood language — into a document that is exceedingly confusing, overly complex, and written in very opaque language in multiple sections. This confusion is most apparent in the newly created categories of activities that would be excluded from the policy, the revised categories of exempt human subjects research and the numerous provisions related to research with biospecimens that are scattered throughout multiple sections of the proposed revision to the Common Rule. Particularly frustrating is the intricate relationships and numerous cross-references between multiple elements of the proposed rule." – Public Citizen

> "Where an agency engages in a proposed rulemaking, the Administrative Procedure Act requires notice that includes "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. § 553(b)(3). The agency has requested numerous comments on provisions without providing the "terms or substance" of the specific proposals. Specifically, the NPRM requests comments on a "decision tool" for exemption determinations that has not been developed yet; a broad consent form that is not provided or described; and data security standards that have yet to be formulated. It is unreasonable for HHS to frustrate substantive public comment on this central proposal. Accordingly, the agencies must reissue the NPRM to solicit public comments on the decision tool, consent form, and data security standards. Otherwise, it is unlawful for the agency to issue a final rule without this information. To allow for reasonable public participation in the rulemaking process, agencies "must provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully." – Electronic Privacy Information Center

Advocacy Subcategories

Following our main analysis, we divided advocacy groups into three subcategories, Citizen and Non-specific Patient and Health Advocacy and Privacy advocates; Cancer and Rare Diseases; and Other Disease and Disorder Advocacy Groups. General citizen, health advocacy and privacy groups were more likely to support proposed changes specific to biospecimens. Among the 31 responses in this subcategory, 70% (14 of 20) commenting on biospecimens supported or provided qualified support for at least one of the three proposed changes specific to biospecimens and 30% (6 of 20) opposed them. Cancer and rare disease advocacy groups (17 responses) were more likely to oppose changes specific to biospecimens, 80% (12 of 15) opposed at least one of the three proposed changes and 20% (3 of 15) supported them. Other disease and disorder advocacy groups offered mixed support. Within this subcategory (12 responses), 44% (4 of 9) supported the proposed changes, 22% (2 of 9) offered qualified support

and 33% (3 of 9) opposed the proposed changes. These findings are similar to what we observed among responses from the general public and patients. Individuals or groups that are not concerned about a particular disease or disorder focused more on information and privacy issues and were more likely to support the proposed changes. Those with rare diseases and forms of cancer, where biospecimens are already sorely lacking, were most likely to be negatively impacted by the proposed changes and therefore were strongly opposed to them.

Advocacy Groups by Subcategory

Citizen and Non-specific Patient and Health Advocacy; Privacy Advocates

World Privacy Forum
Public Citizen
Electronic Frontier Foundation
Citizen's Council for Health Freedom
Electronic Privacy Information Center
Patient Advocates In Research
Genetic Alliance
National Health Council
Patient Privacy Rights
Advocates for Informed Choice
Citizens' Council for Health Freedom
FasterCures
Citizens for Responsible Care and Research
Multiple Organizations committed to the health and wellbeing of pregnant women, infants, children and families.
Save Babies Through Screening Foundation
Society for Women's Health Research
Health IT Now
National Catholic Bioethics Center
Privacy Tools for Sharing Research Data project
Panel Study of Income Dynamics
PersonalGenomes.org
Council for Big Data, Ethics and Society
Community-Campus Partnerships for Health
Open Genomes Foundation, Inc.
Disability Rights Vermont
Population Services International
The City Project, Latino Coalition for a Healthy California, Henry Dahl

Cancer and Rare Diseases

Leiomyosarcoma Direct Research Foundation
Cancer Leadership Council
Children's Cause Cancer Advocacy
The Life Raft Group

FORCE: Facing Our Risk of Cancer Empowered
National Coalition for Cancer Research
National Organization for Rare Disorders
Tuberous Sclerosis Alliance
Desmoid Tumor Research Foundation
AIM at Melanoma
CURE FORWARD
American Cancer Society Cancer Action Network
National Marrow Donor Program
Silent Spring Institute
Patient advocate for BRCA carriers

Other Disease and Disorder Advocacy Groups

Association for Frontotemporal Degeneration
Alzheimer's Association
American Heart Association
Alpha-1 Foundation; and COPD Foundation
Cystic Fibrosis Foundation
The Preeclampsia Foundation
Parent Project Muscular Dystrophy
Muscular Dystrophy Association
Parkinson's Action Network
Asthma and Allergy Foundation of America
The College on Problems of Drug Dependence
National Psoriasis Foundation