Guidance for Humanitarian Use Devices (HUD)

OVERVIEW
A Humanitarian Use Device (HUD) is a medical device intended to benefit patients in the treatment or diagnosis of a disease or condition that affects or is manifested in fewer than 4,000 individuals in the United States per year. HUDs cannot be sold for profit except in narrow circumstances and they can only be used in a facility after an IRB has approved their use in that facility, except in emergencies where the physician determines that approval cannot be obtained in time to prevent serious harm or death to the patient. Although the use of a HUD within its approved labeling does not constitute research, the FDA requires IRB approval to be obtained before a HUD can be used in a facility.

PROCEDURES
Physician Responsibilities
IRB Submission: Obtain IRB approval and institutional clearances prior to first use of the HUD and maintain IRB approval (continuing review) as long as the HUD continues to be used at the institution.
- Complete the HUD initial application which includes a description of the device and a list of all physicians that will use the HUD
- Provide the FDA HDE Approval Order and product labeling
- Submit the HUD brochure and/or the Patient Information Packet, if available
- Submit all pertinent information applicable to the HUD (Directions for Use, informed consents)
- Sample consent form for the use of the HUD, if required by the IRB
- Summary of how the physician proposes to use the device, including any screening procedures, the HUD procedure, and any patient follow-up visits, tests or procedures

The following documents are NOT required for IRB review of an HUD (unless the HUD is to be used in a clinical investigation):
- HIPAA Authorization to access Protected Health Information
- Conflict of Interest Disclosure from Physician requesting permission to use the HUD
- Research Training and Education, Human Subjects Protection: Collaborative Institutional Training Initiative (CITI)

Informed Consent: HUD devices are not investigational and their indicated use is not considered Research, therefore, informed consent from individuals as research subjects is NOT applicable.

SJH requires the physician to obtain informed consent from each patient prior to use of the HUD utilizing the HUD Brochure, patient information packet (if available), standard procedural consent and/or a specific HUD informed consent, as required. The physician/investigator must provide information that the effectiveness for the labeled indication has not been demonstrated and a discussion for the potential risks and benefits of the HUD and for any procedures associated with use of the device. The physician must ensure that patients receive the labeling information prepared by the HDE holder.
The IRB may, however, choose to require specific consent that is consistent with the approved labeling when the IRB approves use of the HUD in a facility. The document must not use the term “research” to refer to the activities associated with this use of the device and the consent form will not need to conform to Human Subjects Research (HSR) consent regulations.

If the Physician/Investigator is collecting safety and effectiveness data for the HDE approved indications then informed consent must be followed as referenced below for “Clinical Investigation.”

**Clinical Investigation:** For all clinical investigations using an HUD, IRB approval is required and the investigators must adhere to all federal regulations and institutional policies governing human subjects research.

- **Investigations that require an IDE:** When an investigator seeks to collect data for an HUD that is NOT used in accordance with its approved indications (i.e. new use for the device or different indication), then the HUD will require an Investigational Device Exemption (IDE) from FDA and the study must follow regulations for IDEs at 21 CFR 812. This will require a significant risk/non-significant risk (SR/NSR) determination by the IRB. If the device is a significant risk device, an FDA approved IDE is required [21 CFR 812.1, 812.20].

- **Investigations that do NOT require an IDE:** When an Investigator seeks to collect safety and effectiveness data about the HUD, and the uses the device within the approved labeling, no IDE is required. FDA considers this type of research to be exempt from the requirement for an IDE as long as the HUD is used in accordance with its approved indications described in labeling. The IRB’s review does not need to include a SR/NSR determination as long as the research is within the HDE-approved indications.

**Continuing Review:** The Physician/Investigator must fulfill continuing review requirements at the designated IRB intervals. At each continuing review, the Physician/Investigator should provide the following:

- The clinical indications for the use of the HUD in each patient/participant
- Unanticipated Problems involving risk to patients/participants that are possibly related (more likely related than unrelated) to the use of the HUD; and
- Clinical outcomes of each patient/participant, if known.

*Note:* For continuing reviews of an HUD, the HUD Continuing Review form should be submitted; for continuing reviews of an HUD used in a clinical investigation, the Study Status Report should be submitted.

**Modifications:** All modifications to the HUD or proposed changes to the clinical use of the device must be promptly submitted to the IRB using the Amendment to Previously Approved Research form. As applicable, the form should be accompanied by 1) the FDA’s approval of the modification; 2) the HDE holder’s amendments to the HUD product labeling, HUD brochure and/or other pertinent materials corresponding to the requested modifications.
An amendment is required to be submitted when there are changes to designated physicians for use of the device.

**Prompt Reporting/Medical Device Reporting (MDR):** The physician must report any Unanticipated Problems associated with the use of the HUD in accordance with SJH Policy. The physician must also report to the HDE holder, FDA and to the IRB whenever an HUD may have caused or contributed to a death or serious injury, or has malfunctioned and would be likely to cause or contribute to a death or serious injury if the malfunction were to recur [21 CFR 814.126(a) and [21 CFR 803]. This HDE regulation requires that MDR reports submitted to FDA, in accordance with 21 CFR Part 803 shall also be submitted to the IRB.

**IRB Responsibilities**
IRB approval is required before an HUD is used at a SJH facility. The only exception to prior IRB approval is an emergency use when IRB approval cannot be obtained in time to prevent serious harm or death to the patient.

For initial review of an HUD, IRBs are required to conduct a full board review. For continuing review IRBs may use expedited review procedures if the IRB determines that full board review is not required. Expedited review procedures are appropriate when use of an HUD is within its approved labeling and does not constitute research.

The IRB may use its discretion to determine how to approve use of a HUD. An IRB may specify limitations on the use of the device based upon one or more measure of disease progression, prior use and failure of any alternative treatment modalities, and reporting requirements to the IRB.

Each Physician wishing to use an HUD “on-label” must be individually documented as having IRB approval to use such devices. IRB approval for one physician on the facility medical staff does not mean that another member of either the physician’s group or facility’s medical staff also has approval to use such devices.

**Off-Label Use of an HUD**
FDA does not regulate off-label use of an approved device. Off-label non-research use of a HUD is the same as off-label use of any marketed product, and there is no need for a research informed consent because the use is not research. However, if a physician wants to use a HUD outside its approved indications, the physician must obtain informed consent from the patient and ensure that reasonable patient protection measures are followed.

**Emergency Situations:** If a physician in an emergency situation determines that IRB approval for the use of a HUD cannot be obtained in time to prevent serious harm or death to a patient, a HUD may be used within the scope of its labeling or off-label without prior IRB approval. Emergency use situations are those in which:

- The patient has a life-threatening condition that needs immediate treatment;
- No generally acceptable alternative treatment for the condition exists; and
- Because of the immediate need to use the device, there is no time to obtain IRB approval.

Whenever possible, physicians should obtain informed consent from the patient or a legally authorized representative.
The physician must report the emergency use within five days providing written notification of the use to the IRB Chair and to the Institutional Official. The notification must include the following:

- identification of the patient involved,
- the date of the use, and
- the reason for the use

**Non-Emergent Situations:** The physician must contact the IRB Chair for review and obtain his/her concurrence prior to the off-label use. The notification must contain the following information:

- a description of the patient’s condition;
- circumstances necessitating use of the device;
- an explanation of why alternative therapies or diagnostics are unsatisfactory; and
- description of patient protection measures that will be taken.

The IRB Chair may concur with an Off-label use of a HUD if he or she agrees with the physician assessment that there is no alternative device for the patient’s condition, and that reasonable patient protection measures are taken.

If the IRB Chair’s provides concurrence for the off-label use, the physician should ensure the following will be done:

- obtain informed consent from the patient;
- inform the patient of the risks and benefits that have been observed with the device when used within its approved indication;
- explain upfront to the patient when the device is used off-label that the expectation of the potential benefits cannot be guaranteed;
- monitor the patient;
- take into consideration the patient’s specific needs (i.e. additional medications, subsequent procedures or surgeries, if needed)

For both emergent and non-emergent off-label use, the physician must submit a report to the HDE holder with information about the patient’s condition and its off-label use. The physician should also provide the HDE Holder and the IRB a follow up report of the patient’s condition following the use of the device. Medical Device Reports (MDRs) must be submitted to FDA and to the IRB if the device may have caused or contributed to death or serious injury and for certain malfunctions (21 CFR 803).

**REFERENCES**

*FDA’s Guidance in Humanitarian Device Exemptions (HDEs)*