Reviewing Research Involving Adult Participants with Diminished Decision Capacity[1]

Note: some information is verbatim from Tip Sheet 26 (AAHRPP) referenced below

Definitions

- Capacity to Consent: the ability to provide legally effective consent to enroll in a research study.
- Legal authorized representative (LAR): An individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research. If there is no applicable law addressing this issue, a legally authorized representative means an individual recognized by institutional policy as acceptable for providing consent in the non-research context on behalf of the prospective subject to the subject's participation in the procedure(s) involved in the research. [45 CFR Section 46.102(i), 21 CFR § 50.3(l)][2]
- Assent**:** A positive indication of willingness to participate in a study.
- Diminished functional abilities**:** *Substantial* impairment of cognitive functions (such as attention, comprehension, memory, and intellect), communication abilities, or other abilities that affect the capacity to make and express a decision regarding participation in a study.

Important Points

Research involving participants with diminished functional abilities should only be approved **when it cannot reasonably be conducted** without their participation.

Prospective adult participants with impairments to functional abilities **are presumed to be capable of providing consent to enroll and participate in a research** study unless there is substantial evidence that they are not capable of providing consent**.**

- Researchers and IRB members **should not** consider the mere presence of a condition that leads to diminished functional abilities as indicative of a lack of capacity to consent.

There should be tests or procedures to assess the participant's consent capacity. The assessment methodology to determine consent capacity **should increase in rigor as the degree of risk associated** with participation and extent of likely impairment to prospective participants' functional abilities increase.

- Cognitive tests and competence assessment **instruments alone cannot provide the basis** of the evaluator's determination regarding a participant's capacity to consent and should at most supplement or support the evaluator's expert judgment.

[1] AAHRPP Tip Sheet 26: Reviewing Research Involving Adult Participants with Diminished Functional Abilities Related to Capacity to Consent.
[2] IRB P&Ps, Glossary

Review of research involving participants with diminished decision capacity

At the initial review or via modification if the population is added later, IRB members might consider whether appropriate procedures for assessing prospective participants' capacity to consent to enroll in the study, if necessary, have been described in the protocol.

IRB members and researchers should be aware that some conditions might cause functional abilities to fluctuate over time, or to decrease gradually throughout the study.

IRB members might consider whether provisions should be included for the event that participants' capacity to consent changes throughout the study, including whether:

- Procedures have been described for reevaluating participants' capacity to consent throughout the study
- Such participants are asked to designate an individual to serve as a LAR, if necessary;
- Individuals identified as potential LARs are involved in the consent process;
- Such participants are asked to document their wishes regarding participation in the study

Fluctuating Consent Capacities

IRB members might consider whether:

- The consent process plans to avoid, if feasible, periods during which prospective participants are likely to experience greater than normal impairment to functional abilities (for example, due to changes in participants' medication schedules, acute intoxication, or episodic increases in the severity of the symptoms associated with their conditions);
- Procedures are described for obtaining the consent of any participant who is initially judged incapable of providing consent but regains the capacity to consent

Criteria for approving studies involving greater than minimal risk to participants who have the legal capacity to consent but who also have diminished functional abilities

- Any experimental intervention has **previously been tested on animals other than humans and humans with unimpaired functional abilities** (when either or both of these are appropriate);
- **Any knowledge** likely to be gained through the study **will improve the understanding of the condition or disease or behavior affecting the participant population**;
- IRB members have **considered whether any of the following should be included**, based on the extent and nature of likely risks to participants:
    - A written description of procedures for minimizing risk,
    - Documentation of the importance of knowledge to be obtained by answering the research question,
    - Appointment of one or more independent monitors to assist with various aspects of the study. This might include:
        - A participant advocate, such as a member of the target population or family member thereof, or an employee of an organization that advocates for the target population
        - An individual with expert knowledge of the relevant psychological or physical condition who will monitor the consent of participants;
        - A health care professional to serve as a consultant to participants; or

        - A safety and data monitoring committee.
    - A list of resources and referrals offered to participants to assist them in coping with any foreseeable harm;
    - A written rationale for the inclusion of participants with diminished functional abilities submitted for review by the convened IRB;
    - Procedures for obtaining the re-consent of participants when cognitive functional abilities fluctuate;
    - The continuing review conducted more frequently than annually; and
    - A description of procedures for withdrawing participants or terminating the study, if necessary.

Financial Compensation

Financial compensation could be appropriate to pay back participants for their time or costs incurred through participation.

If others will be compensated instead of the participant: the convened IRB should review and approve the amount offered and the mechanism by which it is to be distributed.

- For remuneration intended to displace costs associated with participation, researchers should be able to justify the amount and explain why recipients are likely to incur the costs for which they are compensated.
- For remuneration intended to compensate the participant for his or her time, researchers should only deliver monetary payments to the participant or to an individual who regularly manages the participant's finances, if he or she does not manage expenses on his or her behalf.

Re-reviewing research when an enrolled adult participant unexpectedly loses the capacity to consent

The study team will report this event to the IRB via an RNI. The IRB may assess whether it is necessary to re-evaluate the participant's capacity to consent to determine if the participant should continue in the study.

- If the IRB determined that it is reasonable for the participant to continue with study participant, assent should be obtained to continue enrollment (when possible), and LAR consent
- If researchers or IRB members determine that it is necessary to withdraw the participant from the study, or a component thereof, but the participant cannot be withdrawn for medical or safety reasons, he or she should be kept on the study intervention under compassionate use or off-label use, when possible.