Respecting Persons – From Basic Requirements to Embracing Participant-Centered Informed Consent

March 15, 2023

OASH | Office for Human Research Protections

Disclaimer

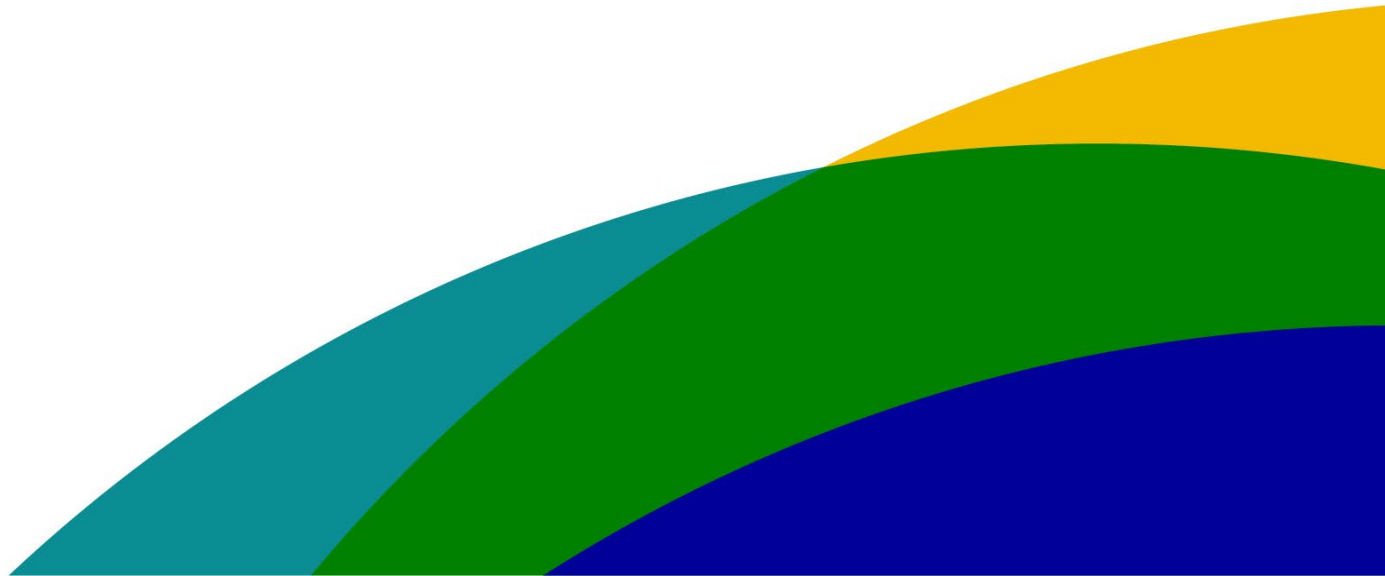
The opinions expressed are those of the presenter and do not necessarily reflect the policy of the U.S. Department of Health and Human Services.

For a complete and accurate description of the regulatory requirements, please refer to the text of the revised Common Rule available on OHRP's website.

Learning Objectives

- Review the ethical principle of respect for persons and fundamentals of personal autonomy as they relate to voluntary and informed participation in research
- Discuss the Common Rule regulatory requirements for informed consent for human subjects research
- Discuss strategies to ensure participant-centered informed consent documents and discussions

THE ETHICS



It All Starts With Personal Autonomy

Immanuel Kant, leading philosopher of *Deontology* and the *categorical imperative* of treating every rational being (person) as a free rational agent, and as ends in themselves

Key takeaway:

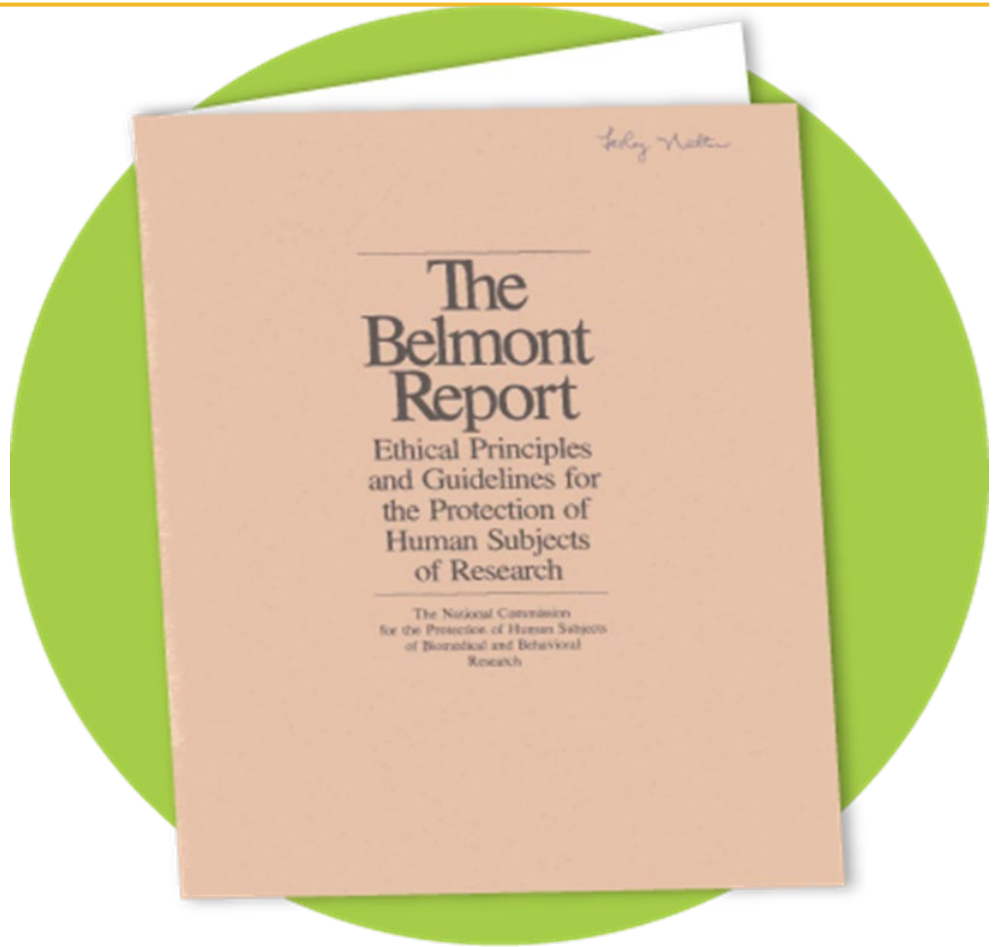
People ≠ means to an end. People are an end in themselves

Research Involving Humans:
Why Does Research with Humans Present An Inherent Ethical Tension?

- Research: *a systematic investigation… designed to develop or contribute to generalizable knowledge*
- Research is about promoting the common good
- Human subjects are **the means** to achieve this goal

A Solution to the Ethical Tension? Respect for Persons

- Those whose autonomy is compromised should be protected
  - ✓ Attention to undue influence and coercion
  - ✓ Additional protections
- Individuals decide for themselves according to their own values and opinions (autonomy)
  - ✓ Voluntariness
  - ✓ Informed decision making

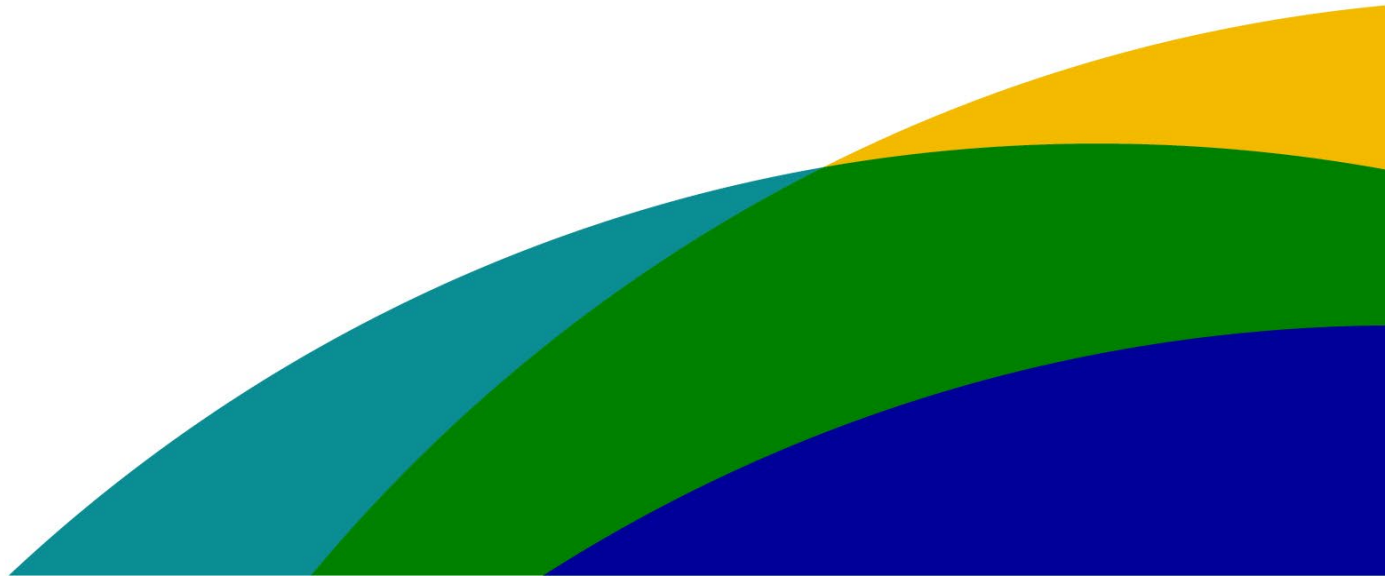


The Belmont Report

Applying 'Respect for Persons' Through 'Informed Consent'

- Disclosing to potential research participants **information** needed to make an informed decision = Empowering people to make decisions according to their own interests
- Facilitating the **comprehension** of what has been disclosed = Providing information that would relate to potential participants
- Promoting the **voluntary** nature of the decision about whether to participate in the research, or not participate = Recognizing that research participation is a personal choice

THE REGULATIONS



The Common Rule Regulatory Requirements for Informed Consent – §45 CFR 46 Subpart A

General Requirements for Informed Consent (§46.116(a))

- Basic standards for information, comprehensibility, and voluntariness

Basic Elements of Informed Consent (§46.116(b))

- Nine (9) elements that must appear, if applicable, in all consent forms

Additional Elements of Informed Consent (§46.116(c))

- Nine (9) elements that must appear in consent forms only if appropriate

UNLESS: Study meets criteria for one of the waivers or alterations of these requirements (§46.116(e)(f)(g))

General Requirements for Informed Consent (§46.116(a))

1. Investigator shall obtain the legally effective informed consent of the subject/legally authorized representative (LAR)

2. Seek consent under circumstances that:
   - Provide sufficient opportunity to discuss and consider whether or not to participate
   - Minimize the possibility of coercion or undue influence

3. Provide information in understandable language

General Requirements for Informed Consent *(cont.)* (§46.116(a))

4. Provide information that a **reasonable person** would want to have in order to make an informed decision about whether to participate

5. Begin with the **key information** that is most likely to assist a prospective subject in understanding why one might or might not want to participate

   Present information in sufficient detail and organized & presented in a way that does not merely provide lists of isolated facts, but rather facilitates understanding of the reasons why one might or might not want to participate

6. No exculpatory language

A Bit More On Key Information

Requirement for key information section: Provide concise & focused presentation about why one might or might not want to participate (§46.116(a)(5)(i))

"…the key information summary as an opportunity to orient, guide, and assist potential subjects in the decision-making process"

SACHRP Recommendation on Key Information (Oct.17, 2018)

Basic Elements of Informed Consent (§46.116(b))

1. A statement that the study involves research, the purposes of the research, expected duration of participation, procedures to be followed, and any experimental procedures
2. Any reasonably foreseeable risks or discomforts
3. Any benefits to the subject or to others
4. Any alternative procedures or courses of treatment, if any, that might be advantageous to the subject
5. Extent, if any, to which confidentiality of identifying records will be maintained
6. Any compensation and whether treatment will be available if injury occurs (for research involving more than minimal risk)
7. Whom to contact for questions about the research and the subjects' rights, and in the event of a research-related injury
8. A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits, and that the subject may discontinue participation at any time without penalty
9. A notification about whether information and biospecimens collected may be shared after de-identification (for research that collects identifiable private information or identifiable biospecimens)

Additional Elements of Informed Consent (when appropriate) (§46.116(c))

1. Whether any particular procedure may involve currently unforeseeable risks to the subject (or fetus if the subject becomes pregnant)
2. Anticipated circumstances under which the subject's participation may be terminated by the investigator
3. Any additional costs from participating in the research
4. The consequences of and procedures for a subject's withdrawal
5. Statement that significant new findings developed during the research will be provided to the subject
6. The approximate number of subjects involved in the study
7. A statement that the subject's biospecimens (even if identifiers are removed) may be used for commercial profit and whether the subject will or will not share in this commercial profit
8. Whether clinically relevant research results, including individual research results, will be disclosed to subjects, and if so, under what conditions
9. Whether the research will (if known) or might include whole genome sequencing (for research involving biospecimens)

Document and Process (§46.117)

- Participants must be provided with a copy (paper or electronic) of the consent document
- Participants must be given sufficient opportunity to discuss and consider whether or not to participate in the research
- Participants must sign the consent document before participating in any study activities (unless this requirement is waived)
  - **Electronic signatures** (e.g. digital signatures, user name and password combinations, biometrics) **are permissible if** they are legally valid within the jurisdiction where the research is conducted (§46.117(a)). Be sure to check state and local laws

Is Consent Always Required?

Investigators can request a waiver or alteration of the elements of informed consent

To approve the request, the IRB must find and document that:

i. Research presents no more than minimal risk to the subjects;
ii. Research could not practicable be carried out without the waiver;
iii. If research involves using identifiable private information or identifiable biospecimens, the IRB must determine that the research could not practicably be carried out without using the materials in an identifiable format;
iv. Research will not adversely affect the rights and welfare of subjects; **AND**
v. Whenever appropriate, the subjects will be debriefed

§46.116(f)(3)(iii)

Do Subjects Always Have to Sign the Consent Document?

Obtaining the subject's signature can be waived if:

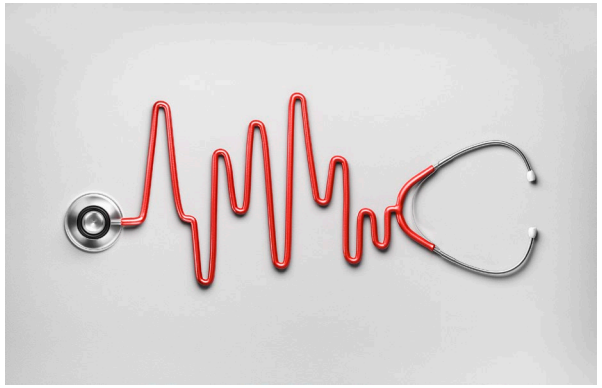
- Consent form is the only document linking the subject to the research, and the principal risk of harm results from a breach of confidentiality, **or**
- Minimal risk research that only involves procedures that do not normally require written consent, **or**
- Minimal risk research involving subjects who are members of a distinct community in which signing forms is not the norm, and an alternative mechanism for documentation is available

§46.117(c)(1)

Other Informed Consent Provisions

IRB may approve a research proposal in which an investigator will obtain information or biospecimens for the purpose of screening, recruiting, or determining the eligibility of prospective subjects without the informed consent if either:

- Information is obtained by oral or written communication with the subject, OR
- Information or biospecimens are obtained by accessing records or stored identifiable biospecimens



For clinical trials, must post one IRB-approved consent form that was used to enroll subjects to a designated publicly available Federal website after the trial is closed to recruitment-

Informed Consent Posting Instructions (46.116(g)&(h))

MOVING TOWARD PARTICIPANT-CENTERED INFORMED CONSENT

LET THE COMMON RULE GUIDE YOU

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What is the Purpose of Informed Consent?

Informed consent is about making sure that prospective participants have a fair chance of getting/understanding the information they need to decide about whether to be in a study

- Focus on empowering individuals, not shielding institutions from liabilities or merely satisfying regulators
- Pay attention to **who** needs the information, **what** information, and **how** they could best understand the information to make meaningful decisions
- Ask: If I were asked to participate in research, what would I want to know in order to make an informed decision about participating or not participating? How would I want this information to be presented?

Present Information in Context - Why? What?

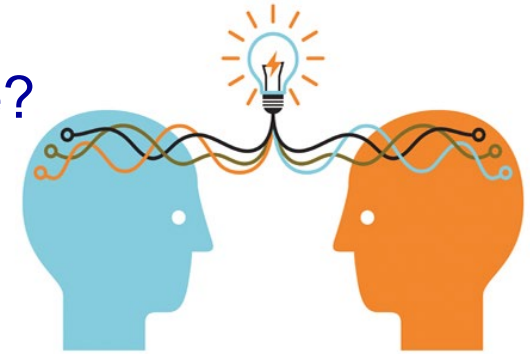
- People are generally unfamiliar with the concepts of research
- Context of where researchers are coming from, why they want to do the research, and what they hope to find
- Context that would help prospective participants process and understand the relevance of the information to them
  - Decisions to participate in health research, especially therapeutic ones, are complex, private, and usually have great significance to individuals

Context Shapes Content

- Frame information in questions a prospective participant would ask

  Examples:

  - Why is this study being done? Why do we ask you to participate? What would it mean for you to participate/or not?



- Highlight information uniquely of interest to prospective participants for that study

  Example:

  Phase 1 drug study examining safety:

  ✓ No health benefit to participant

  ✓ What (little) information is known about the drug

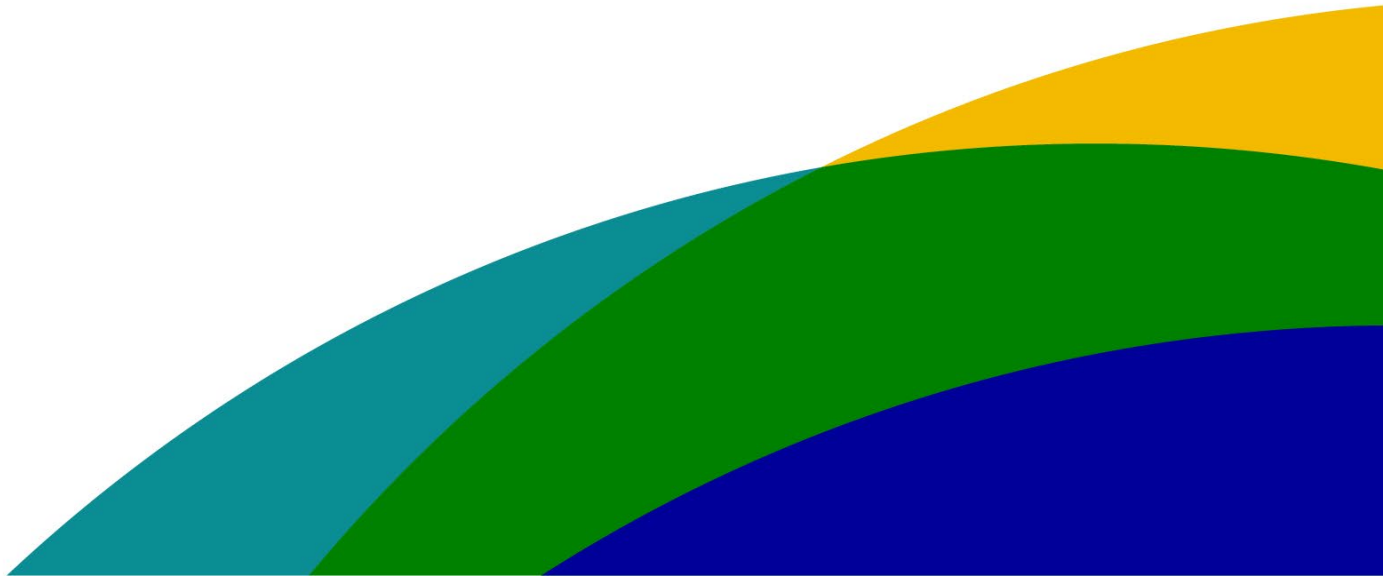
  ✓ What safety measures are in place to monitor and minimize risks to participants

Effective Informed Consent

Remember:

- Primary purpose is to facilitate individuals **making their own decision** about research participation
- Participants become **partners** in research and **not merely means** to another's end
- Effective consent **satisfies the ethical principles** and regulatory requirements

PARTICIPANT-CENTERED INFORMED CONSENT DOCUMENTS AND PROCESS



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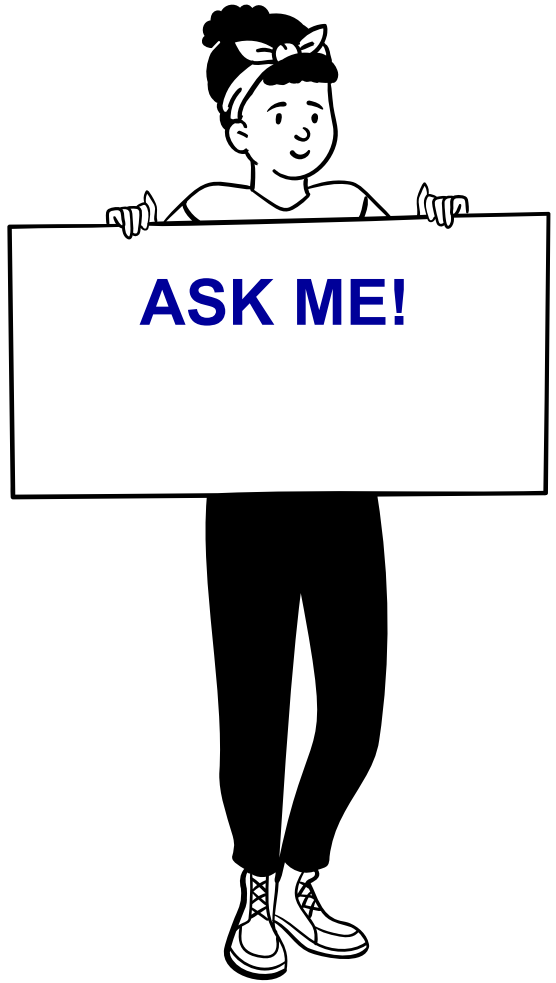
Tips for Key Information – What's Key?

- Will vary with the details and context of the study
- Will depend on the study population

So, how do you figure out what's key?



Research to Study a Type of Walking Training to Help Adults Over 65 Maintain Balance

Why are we doing this research study?

For people over 65, falls are common and can result in serious injuries. We know from past studies that seniors rely mostly on visual cues to control balance while walking. We think that we can use responses to visual cues as a training tool to improve their walking balance. This is the first study to test this idea.

What do study volunteers have to do?

Seniors who volunteer for the study will come into the study center two times. Each visit will last about 3 hours. During each visit, volunteers will walk normally on a treadmill for about 20 minutes while looking at an image on the wall. On one of the visits, the image on the wall will be still. On the other visit the image on the wall will move slightly from side to side while the volunteer walks. Researchers will record the volunteer's posture and stability using a 3D camera and sensors from the treadmill. (Read detailed descriptions of the study procedures on P.X of this form.)

Volunteers will wear a safety harness when they walk on the treadmill to protect them from falling. We will also monitor them for safety. There are minimal risks of harm to volunteers participating in this study. Volunteers can stop walking or participating at any time.

What does participation in the study mean to you?

If you choose to participate, you could help us learn more about how to help seniors improve their walking balance. There is a small chance that your walking balance may improve for a short time after a treadmill training. There is no cost to participate. We will pay you $20 after each study visit to help cover the costs of transportation.

Participation in this research is voluntary. You do not have to participate. There may be other types of walking balance training for seniors your health care providers can recommend.

What Could "Key Information" Look Like?

What About Organization?

- Keep it concise
- Keep it relevant
- Provide key information first
- Organize things chronologically
- Provide information in the order in which questions about the study might be asked
- Develop a logical narrative
- Use section headings that tell readers exactly what information is provided in the section
- Arrange sentences logically

But How Do You Actually Write the Consent Document?

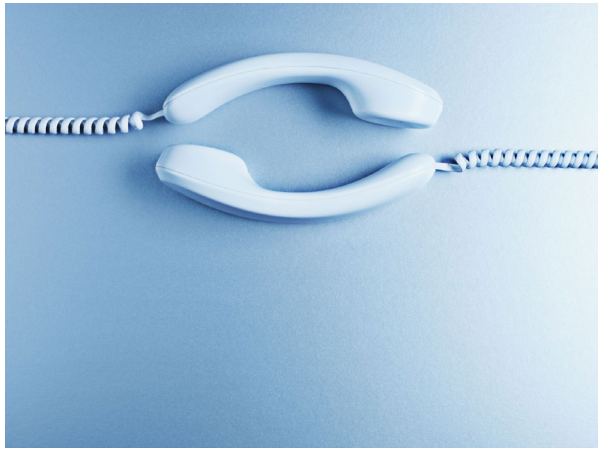
- Refine word choice
- Revise clunky sentences
- Avoid passive voice; use active voice
- Don’t hide verbs by turning them into nouns
- Stick to the same term for the same concept
- Use few abbreviations and acronyms

What About Formatting?

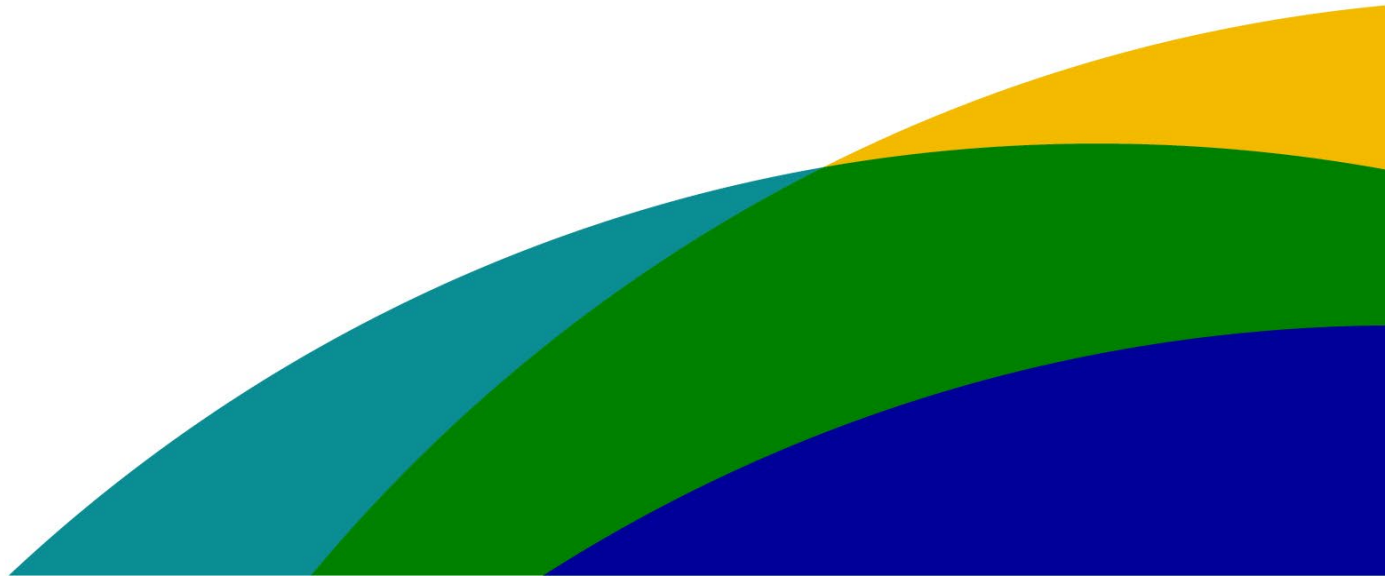
- Help your readers navigate the document visually
- Don’t cram stuff in – avoid narrow margins, minimal white space, text that is too small to read, lengthy and dense paragraphs
- Be careful with how you use lists and formatting for emphasis, such as italicizing and bolding
- Be aware of visual hierarchy – think about the F pattern
- Consider the way you use large text or bright colors
- Use white space
- Graphics are your friends, but use them to aid understanding
- Use color
- Use pictures
- Explain numerical concepts using visuals

What About the Informed Consent Process?

- Use the consent document to guide your interactions and support the consent process
- Ask questions to assess the prospective participant's knowledge, experience, frame of mind, health literacy, motives, values, etc.
- Actively listen to the prospective participant
- Use easy to understand speech. Speak slowly. Be specific and use examples
- Practice the consent process with colleagues and others in your life
- Ask for feedback after participation is complete – what do participants wish they had known, what were they glad you told them, what did they not need to know?



RESOURCES



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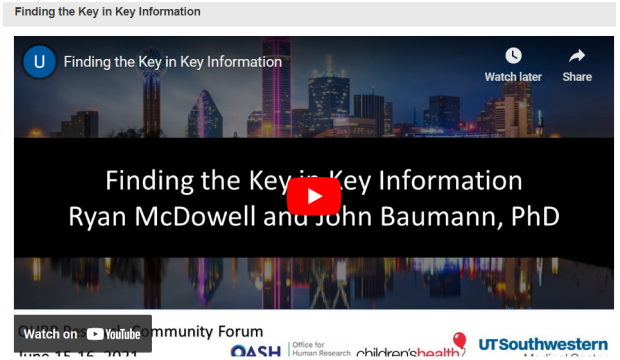
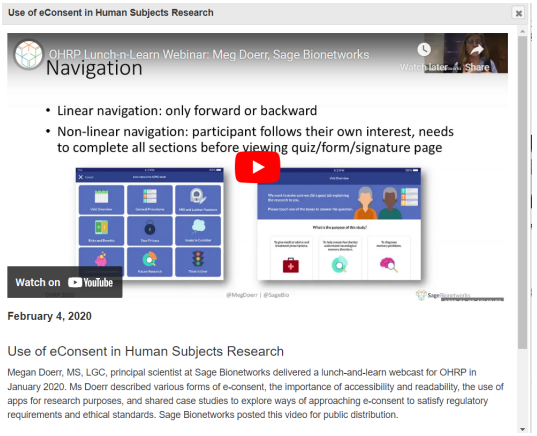
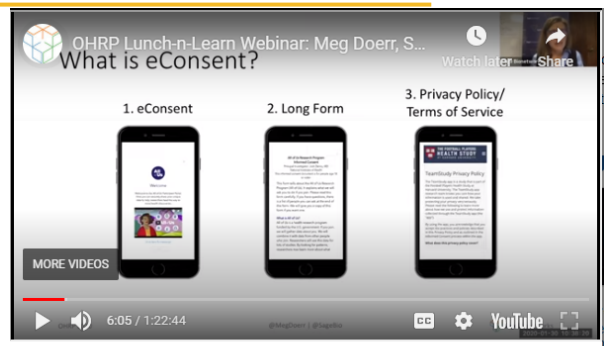
Informed Consent Educational Videos – Online Education and Luminaries Lecture Series

OHRP's Collection of Educational Videos and Webinars

Luminaries Lecture Series





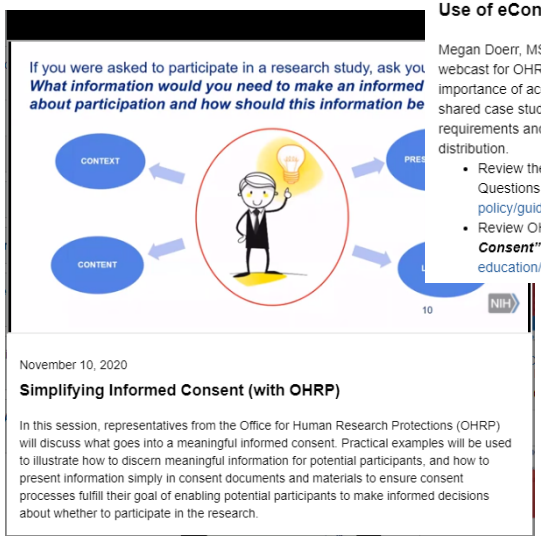


February 4, 2020

Use of eConsent in Human Subjects Research

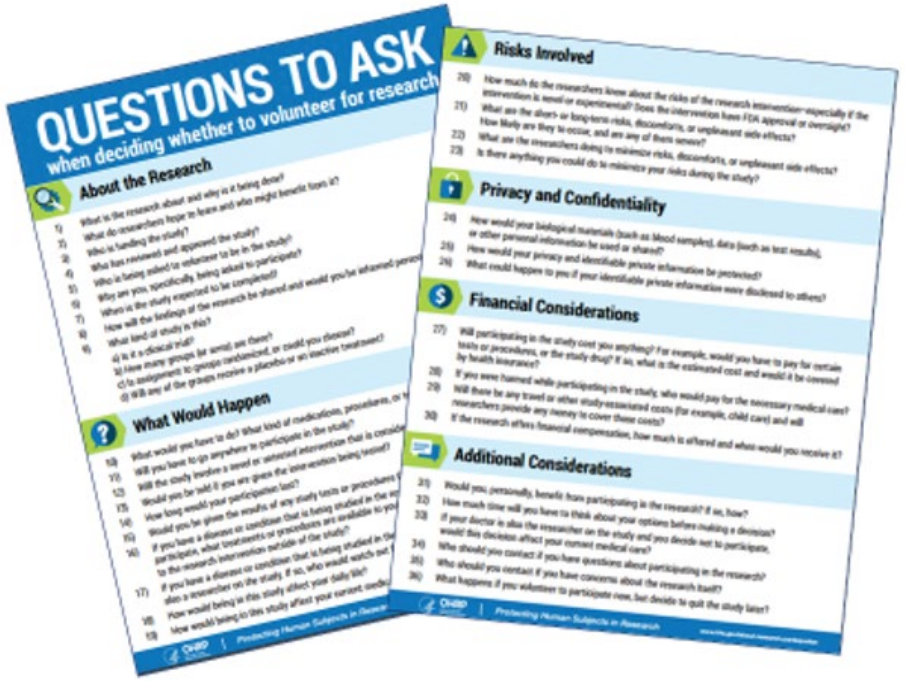
Megan Doerr, MS, LGC, principal scientist at Sage Bionetworks delivered a lunch-and-learn webcast for OHRP in January 2020. Ms Doerr described various forms of e-consent, the importance of accessibility and readability, the use of apps for research purposes, and shared case studies to explore ways of approaching e-consent to satisfy regulatory requirements and ethical standards. Sage Bionetworks posted this video for public distribution.

- Review the FDA/OHRP 2016 Guidance on Use of Electronic Informed Consent: Questions and Answers at https://www.hhs.gov/ohrp/regulations-and-policy/guidance/use-electronic-informed-consent-questions-and-answers/
- Review OHRP featured video ***"Simplifying Informed Consent"*** at https://www.hhs.gov/ohrp/education-and-outreach/online-education/videos/index.html



About Research Participation Materials (General Public)

Printable List: Questions to Ask



Video: What to Expect in Informed Consent

[Human Research Volunteer Informational Videos]

Guidance Documents on Informed Consent

Informed Consent

Exculpatory Language in Informed Consent Documents: Examples of Acceptable and Unacceptable Language (OPRR Letter, 1996)

Informed Consent Checklist (1998)

Informed Consent of Subjects Who Do Not Speak English (1995)

Informed Consent Requirements for In Vitro Medical Device Clinical Investigations Conducted Under FDA's Interim Final Rule at 21 CFR 50.23(e) (OHRP Guidance, 2006)

Informed Consent Requirements in Emergency Research (OPRR Letter, 1996)

Informed Consent Tips (1993)

Informed Consent, Legally Effective and Prospectively Obtained (OPRR Letter, 1993)

IRB Review of Protocol and Informed Consent Changes for NCI/CTEP-Sponsored Clinical Trials

IRB Review of Protocol and Informed Consent Changes in Cooperative Group Protocols (OHRP Memo to the National Cancer Institute, 2008)

Student Subject Pools and Use of Penalties for Students Who Fail to Show up for Scheduled Research Appointments (January 8, 2010)

Use of Electronic Informed Consent: Questions and Answers

Use of Penalties for Students Who Fail to Show up for Scheduled Research Appointments (January 8, 2010)

Informed Consent Guidance Docs:
https://www.hhs.gov/ohrp/regulations-and-policy/guidance/informed-consent/index.html

Informed Consent FAQs:
https://www.hhs.gov/ohrp/regulations-and-policy/guidance/faq/informed-consent/index.html

Announcements

Research Community Forum (RCF), March 29-30, Knoxville, TN

Research in the Age of Technology – The Impact of Innovative and Emerging Technologies on Human Subjects Research

*W*ith ORAU, East Tennessee State University, and the University of Tennessee

www.orau.org/event/research-forum/index.html

Access slides and recording for this webinar at

www.hhs.gov/ohrp/news/past-events/index.html

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Thank You!

Have questions? Email us at OHRP@hhs.gov