



Use of Legally Authorized Representatives

Contents

1. [Backgrounds and Definitions](#)
2. [Criteria and Considerations for Use of a LAR Under the DFCI IRB](#)
 - a. [Determining Capacity to Consent](#)
 - b. [Criteria for Acting as a LAR for Research Conducted in Massachusetts](#)
 - c. [Identifying a LAR for Research Conducted Outside of Massachusetts](#)
3. [Process for Proposing and Obtaining IRB Approval for the Use of a LAR](#)

Background and Definitions

Federal regulations ([45 CFR 46.111](#); [21 CFR 56.111](#)) indicate that in order for the Institutional Review Board (IRB) to approve a research study, informed consent must be sought from each prospective participant or the participant's Legally Authorized Representative, in accordance with, and to the extent required by the regulations ([45 CFR 46.116](#); [21 CFR 50.20](#)). In addition, the regulations require that the IRB ensure additional safeguards have been included in the study to protect the rights and welfare of all participants that are likely to be vulnerable to coercion or undue influence ([45 CFR 46.111\(b\)](#); [21 CFR 56.111\(b\)](#)).

- **Legally Authorized Representative:** A Legally Authorized Representative (LAR) is defined as an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective participant to the participant's participation in the procedure(s) involved in research ([45 CFR 46.102\(c\)](#); [21 CFR 50.3\(l\)](#)).
- The DFCI IRB may permit the use of a LAR in the consent process in lieu of the participant's direct informed consent, under certain circumstances. This policy outlines DFCI IRB requirements and considerations for determining when it may be permissible to use a LAR with regard to the following groups:
 - Individuals whose medical condition, or treatment effects may render them decisionally impaired and temporarily unable to provide informed consent.
 - Individuals who have a cognitive impairment such as intellectual disabilities, dementia, or psychosis that are enduring or that may worsen over time. In some cases, individuals with this type of impairment may be excluded by the sponsor and/or investigator due to inability to complete participant responsibilities.
- There are separate informed consent guidelines for research involving children and minors.

Criteria and Considerations for the Use of a LAR Under the DFCI IRB**Determining Capacity to Consent**

- Whenever possible, investigators should attempt to obtain informed consent directly from the research participant.
 - The general position of the IRB is that individuals who lack decision-making capacity should not be included in research unless the research is targeting treatment that may affect capacity or a disease that has a known impact on decision making capacity; secondarily that the target population is also likely the beneficiary of the results of that research. In addition, research that offers direct treatment benefit that is not available outside of research is justification for the inclusion of populations that may lack decisional capacity.
- When including those without full decision-making capacity, an assessment of capacity must take place unless there is a previously appointed legal guardian.
- Investigators should assess participants on their ability to understand and to express a reasoned choice concerning the:
 - Nature of the research and the information relevant to the individual's participation.
 - Consequences of participation for their own situation, especially concerning their health condition (e.g., appreciate how the risks and benefits apply to themselves).
 - Consequences of the alternatives to participation.
- The protocol eligibility criteria should not conflict with the inclusion of individuals with decisional or cognitive impairment, and the protocol should also provide the IRB with sufficient background to determine whether the trial offers direct benefit to the participant not available outside of the research.
- The IRB will consider additional safeguards (e.g., involvement of participant advocates, independent monitoring, formal capacity assessment, waiting periods) as part of the research plan to protect vulnerable participants.
- The potential participant should be included in the process of consent to the extent possible and consistent with their expressed desires and abilities. Verbal assent should be sought and any signs of dissent should be respected. For further information, please refer to the [SACHRP recommendations](#) regarding research that involves individuals with limited decision-making capacity.

Criteria for Serving as a LAR for Research Conducted in Massachusetts

- If an investigator is not able to obtain informed consent from the participant, and the IRB has approved the use of a LAR, it is critical that the investigator confirm that the person providing informed consent on behalf of that person is qualified to serve as the participant's LAR under Massachusetts State Law. The U.S. Department of Health and Human Services' Office for Human

Research Protections has routinely cited institutions for obtaining informed consent from individuals who are not appropriately qualified to act as Legally Authorized Representatives under the applicable state law.

- The following is intended as guidance as to who may serve as a Legally Authorized Representative in the Commonwealth of Massachusetts:
 - (1) With respect to adult patients, priority among family members is as follows: i) spouse; ii) adult child; iii) parent; iv) sibling; v) other relative; vi) close friend. Such family decisions are not necessarily legally binding; the authority for such decisions is found in Massachusetts case law.
 - (2) An individual who is making decisions based upon court-appointment as a guardian.
 - (3) An individual who is making decisions based upon a signed health-care proxy.
 - (4) An individual who is making decisions based upon a durable power of attorney that includes health care directives

Identifying a LAR for Research Conducted Outside of Massachusetts

- When research is conducted outside the Commonwealth of Massachusetts, investigators should consult with their respective institutional Office of the General Counsel for guidance on who may serve as a Legally Authorized Representative.

Process for Obtaining DFCI IRB Approval for the use of a LAR

- The Principal Investigator should prospectively determine whether the use of a LAR may be appropriate and necessary for each specific research project. When the determination is made that a LAR may be used, this should be included in the submission to the DFCI IRB, either in the New Protocol Application (NPA) or via an amendment.
- The NPA or amendment must include the following for review by the DFCI IRB:
 - Indication that there is a desire to include participants that may lack decisional capacity by checking the box indicating the inclusion of vulnerable participants on the NPA.
 - A description of an anticipated circumstance in which participants with fluctuating capacity may be included or identify conditions involving more permanent disability.
 - In the latter case, there may be a record of a cognitive impairment in the medical record and a previously appointed legal representative that will be utilized for consent.
 - Methods by which the investigator will assess decision-making capacity, prior to invoking the participation of a LAR.
 - Investigator assessments should include the four competency dimensions of understanding, appreciation, reasoning, and expression of a choice.

- Additionally, the consent form document submitted to the DFCI IRB for approval must include a space for the LAR to sign (found in the DF/HCC Consent Form Template).
 - Prospective IRB approval should be obtained for any study seeking approval for the use of a LAR. If IRB approval was not previously obtained for any study that is or plans on including cognitively impaired participants, an amendment should be submitted to the DFCI IRB to obtain approval.

Applicable References:

- <https://www.hhs.gov/ohrp/regulations-and-policy/guidance/faq/informed-consent/index.html>
- <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/informed-consent>
- <https://grants.nih.gov/policy-and-compliance/policy-topics/human-subjects/policies-and-regulations/vulnerable-populations/questionable-capacity>
- <https://www.hhs.gov/ohrp/sachrp-committee/recommendations/2009-july-15-letter-attachment/index.html>
- DF/HCC Policy CON-100: Informed Consent Process
- DF/HCC Template: Informed Consent Form