Humanitarian Use Device (HUD) Frequently Asked Questions

Spectrum Health IRB Guidance Document

Purpose

This document provides guidance on common questions the IRB receives related to Humanitarian Use Devices (HUD). The questions and answers provided in this guidance are from the FDA Guidance entitled "Humanitarian Device Exemption (HDE Program) Guidance for Industry and Food and Drug Administration Staff" dated 9/6/2019 and from the Humanitarian Use Device Regulations located at 21 CFR 814 Subpart H. Contact the IRB office at (616) 486-2031 or irbassist@spectrumhealth.org if you have additional questions or need assistance regarding HUDs.

FAQs

1. ***What is a Humanitarian Use Device (HUD)?***
   As defined in 21 CFR 814.3(n), HUDs are medical devices intended to benefit patients in the treatment or diagnosis of diseases or conditions that affect or are manifested in not more than 8,000 individuals in the United States per year.

2. ***Is a HUD approved by the FDA?***
   Yes. To obtain approval for a HUD, a humanitarian device exemption (HDE) application is submitted to the FDA. A HDE is similar in both form and content to a premarket approval (PMA) application, but is exempt from the effectiveness requirements of a PMA. A HDE application is not required to contain the results of scientifically valid clinical investigations demonstrating that the device is effective for its intended purpose. The application, however, must contain sufficient information for the FDA to determine that the device does not pose an unreasonable or significant risk of illness or injury, and that the probable benefit to health outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment. Additionally, the applicant must demonstrate that no comparable devices are available to treat or diagnose the disease or condition, and that they could not otherwise bring the device to market. An approved HDE authorizes marketing of the HUD.

3. ***Does using a HUD constitute human subject research?***
   No. Using a HUD per the FDA Approved Use/Label does not constitute human subject research. However, a confusing aspect for HUD use is that the FDA regulations require that a HUD may only be used in facilities that have established a local institutional review board (IRB) to supervise clinical testing of devices and after an IRB has approved the use of the device to treat or diagnose the specific disease, with the exception of emergency use. The labeling for a HUD must state that the device is a humanitarian use device and that, although the device is authorized by Federal Law, the effectiveness of the device for the specific indication has not been demonstrated.

4. ***Are there unique storage requirements for HUDs?***
   Yes. Steps should be taken by the healthcare provider overseeing the use of the HUD at the institution to ensure the HUD is properly labeled, tracked, and used in a manner approved by the FDA, IRB, and device manufacturer. The IRB must be provided information on the number of HUDs used during the

course of a year at the institution. This information will be reported to the IRB at the time of continuing review.

5. ***Does a HUD require initial and continuing review by the IRB?***
Yes. IRB approval is required before a HUD is used at a facility, with the exception of emergency use. The IRB will verify amongst other items, the qualifications of the healthcare provider planning to use the HUD, the plans to inform patients of the lack of effectiveness data, and plans for ensuring proper use of the device at the institution. The IRB will also verify the healthcare provider intends to use the device per the approved indication. Using a HUD off-label, or to collect safety and efficacy data, may constitute a clinical investigation subject to IDE and human subject research regulations. For continuing review, the IRB must review the HUD activities at least once a year, but may use the expedited review process unless concerns occurred over the year that warrants a review by the full board.

6. ***If there is an adverse event in a HUD patient, do I need to submit a RNI to the IRB?***
Yes, if it meets the IRB reporting requirements. The requirements to be reported are: the event must be unexpected, at least probably related and places patients at a greater risk of harm than was previously known or recognized. Device user facilities and manufacturers are required to submit medical device reports to FDA and to the "IRB of record" (i.e., the IRB approving the use of the HUD). Among these requirements, manufacturers must submit reports to the FDA and the IRB of record whenever a 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. User facilities must submit reports to the FDA, the IRB of record, and the manufacturer whenever a HUD may have caused or contributed to a death and must submit reports to the manufacturer (or to the FDA and the IRB of record if the manufacturer is unknown) whenever a HUD may have caused or contributed to a serious injury (21 CFR 803.30 and 814.126(a)). Serious injury means an injury or illness that (1) is life-threatening, (2) results in permanent impairment of a body function or permanent damage to a body structure, or (3) necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure (21 CFR 803.3).

7. ***Is an IRB approved informed consent form required for HUD patients?***
It is not required to utilize an IRB approved consent form for HUD patients.

However, the IRB may require informed consent that is consistent with the approved labeling when the IRB approves the use of the HUD. The SH IRB may require the use of a consent form based on risk, population, treatment monitoring, or other factors related to the administration of the HUD. The IRB has provided a treatment consent form template that can be utilized to obtain consent from HUD patients.

Most HDE holders develop patient information packets that generally contain a discussion of the potential risks and benefits of the HUD and any procedures associated with its use. If patient information packets are available, the IRB should ensure that physicians distribute them to patients prior to their receiving the HUD. Even when an institution requires patients to sign a written consent document that describes the use of the HUD (and which may provide similar information found in the HDE holder's packet), the patient should always receive the HDE holder's patient information packet.

If a HUD is studied in a clinical investigation, the informed consent of the subject must be obtained in accordance with FDA human subject research regulations at 21 CFR Part 50.

8. ***Can a HUD be used off-label in a compassionate or emergency use situation without prior IRB approval?***

Yes. However, physicians should be cognizant that the FDA has made a determination of safety and probable benefit for use of the HUD only within its approved indication(s). If a physician wants to use a HUD outside its approved indication(s), the FDA recommends that the physician obtain informed consent from the patient and ensure that reasonable patient protection measures are followed, such as devising schedules to monitor the patient, taking into consideration the patient's specific needs and the limited information available about the risks and benefits of the device. The FDA further recommends that the physician submit a follow-up report on the patient's condition to the HDE holder and first check with the IRB before such compassionate use to review any institutional policy.

In addition, if the physician is in an immediate emergency use situation and determines that IRB approval for the use of the HUD at the facility cannot be obtained in time to prevent serious harm or death to a patient, a HUD may be used without prior IRB approval. However, the physician must report the emergency use within five days in writing regarding the use to the IRB including identification of the patient involved, the date of the use, and the reason for the use. The physician should contact the IRB with any questions related to these uses.

9. ***Can a HUD be used in pediatric patients?***

Under section 520(m)(6)(A)(i)(I) of the FD&C Act, a HUD is eligible to be used and marketed in pediatric patient populations if it "is intended for the treatment or diagnosis of a disease or condition that occurs in pediatric patients or in a pediatric subpopulation, and such device is labeled for use in pediatric patients or in pediatric subpopulation in which the disease or condition occurs." HUDs can be indicated and labeled to be used for pediatric use only or for use in both pediatric and adult patients.

10. ***Can use of a HUD be a Clinical Investigation?***

There may be times when a sponsor or sponsor investigator wishes to collect safety and effectiveness data on the use of a HUD. When such a study occurs, and a clinical investigation is underway this use of a HUD requires submission of an IDE application to the FDA or approval under the abbreviated requirements for NSR devices at 21 CFR 812.2(b). Submission of these studies to the IRB for review and approval and full informed consent in accordance with 21 CFR Part 50 should be obtained.

References

Humanitarian Device Exemption (HDE) Program – Guidance for Industry and Food and Drug Administration Staff (https://www.fda.gov/media/74307/download)

HUD Regulations: 21 CFR 814 Subpart H