From: OC GCP Questions
Sent: Monday, December 08, 2014 4:40 PM
To: [redacted]
Cc:
Subject: RE: Consent process documentation

Dear [Redacted],

Thank you for your inquiry regarding documentation of the informed consent process. FDA's regulations at 21 CFR parts 50 and 56 (concerning informed consent and IRBs) primarily discuss documentation of informed consent in terms of the subject, or the subject's legally authorized representative, signing the written consent form. FDA's regulations specific to drug and biologic studies (21 CFR part 312) and device studies (21 CFR part 812) require that information be maintained in subject's case histories, including requirements that "Case histories include the case report forms and supporting data including, for example, signed and dated consent forms" and "The case history for each individual shall document that informed consent was obtained prior to participation in the study." See 21 CFR 312.62(b) for drug and biologic studies and 21 CFR 812.140(a)(3) for device studies. If informed consent is obtained on the same day the subject begins participation in the study, it would be important to document that consent was obtained prior to participation.

There may be other cases where additional documentation about the informed consent process should be considered. For example, enrollment of a subject who is unable to read the consent form due to illiteracy or visual impairment; a subject who wishes to consent but is unable to sign the consent form due to a physical impairment; or a subject with impaired consent capacity for whom a legally authorized representative provides consent. In such situations, additional information may be helpful in documenting the informed consent process.

You may also find it helpful to review FDA's Compliance Program Guidance Manual for FDA Staff for Bioresearch Monitoring inspections of Clinical Investigators, available at http://www.fda.gov/ICECI/EnforcementActions/BioresearchMonitoring/ucm133562.htm. This document includes the following directions, pertaining to informed consent, to FDA investigators conducting clinical investigator bioresearch monitoring inspections:

PART III – INSPECTIONAL

F. HUMAN SUBJECTS' RECORDS

1. Informed Consent
   a. **Describe** the informed consent process. For the study being inspected, include the following information:
      i. Who (investigator, nurse, study coordinator, etc.) explained the investigational study and consent document to prospective study subjects, and was it provided in a language understandable to each subject?
      ii. How did the informed consent process take place? (e.g., was this explanation given orally, by video, through a translator, etc.)?
      iii. Was consent obtained prior to enrollment in the study (i.e., prior to performance of any study related tests and administration of the test article)?
      iv. After signing and dating the informed consent document, was each subject or the subject's legally authorized representative given a copy of the consent document?
      v. Was the appropriate IRB-approved version of the informed consent document used for all subjects?
      vi. If the short form was used (per 21 CFR 50.27(b)(2)), was the informed consent process appropriately documented?
         a. Did the subject or the subject's representative sign the short form?

b. Was a witness present, who signed the short form and the copy of the summary?
c. Did the person actually obtaining the consent sign a copy of the summary?
d. Is the case history documented to show whether a copy of the summary and the short form were given to the subject or the subject's representative?

vii. **Review** the IRB approval letter for the study. Did the IRB stipulate any conditions for the informed consent process and, if so, did the clinical investigator follow those instructions/stipulations?

b. **Review** the informed consent documents signed by the subjects. If the number of subjects at the site is relatively small (e.g., 25 or fewer subjects), review 100% of the informed consent documents. For larger studies, a representative number of informed consent documents should be reviewed (for example, may be specified in a sampling plan provided with the assignment).

c. **Determine** the following:

i. Did the subject or the subject's legally-authorized representative sign the informed consent document prior to entry into the study? If the subject did not sign the informed consent document, **determine** who signed it and that person's relationship to the subject. **Describe** how the clinical investigator determined that the person signing the informed consent document was the subject's legally-authorized representative.

ii. Whether subjects signed the version of the informed consent document that was current at their time of entry into the study.

iii. For pediatric studies, was assent obtained from the subjects in addition to the permission of the parents?

iv. Whether the written consent document(s) or oral consent complies with the eight (8) required elements in 21 CFR 50.25(a).

If any problems are found (e.g., investigator failed to obtain consent from one or more subjects, consent was not obtained prior to enrollment in the study, investigator failed to use the correct informed consent document, etc.), the sample should be expanded to **determine** the extent of the problem. Collect documentation to support each observation. **Report** the total number of informed consent documents that were reviewed and the number of documents exhibiting the problem.

I hope this information is useful to you. Please contact us at gcp.questions@fda.hhs.gov if you have further questions.

Sincerely,
Marsha Melvin
Office of Good Clinical Practice
U.S. Food and Drug Administration

This communication does not constitute a written advisory opinion under 21 CFR 10.85, but rather is an informal communication under 21 CFR 10.85(k) which represents the best judgment of the employee providing it. This information does not necessarily represent the formal position of FDA, and does not bind or otherwise obligate or commit the agency to the views expressed.

From: [Redacted]
Sent: Thursday, December 04, 2014 7:51 PM
To: OC GCP Questions
Cc: [Redacted]
Subject: Consent process documentation

Good evening,

Our institution utilizes a template to document how the informed consent process was carried out,. Specifically, our consent process notes detail the elements that were discussed with the

subject, as well as their comprehension. We also require documentation that the subject was informed of voluntary nature of study participation and that they are given a copy of the signed informed consent document.

I can see no FDA Guidance/requirement that the actual consent PROCESS be documented, but do recall, a few years back, discovering an FDA field audit manual which called for, on its checklist, documentation that subject was given a copy of the consent form and that the voluntary nature of participation was discussed with them. We are aware that such documentation covers the site from liability if a subject were to claim they were never informed of study risks, etc, but we would like to know the requirements for this documentation from an FDA standpoint.

Could you please tell me if there is any directive/guidance on what MUST be documented in an informed consent process note? To my knowledge, I can see no requirement for this. We do not line item each and every item discussed with the subject, but do note the highlights. We are wondering, if we do not document each and every section that was discussed with the subject, if this could be a cause for FDA concern.

Please advise,
[Redacted]