Community-Campus Partnerships for Health

Promoting health through partnerships between communities and higher educational institutions

October 26, 2011

Jerry Menikoff, MD, JD
Office of Human Research Protections (OHRP)
US Department of Health and Human Services (HHS)
1101 Wooton Parkway, Suite 200
Rockville, MD 20852
RE: HHS-OPHS-2011-0005

Dear Dr. Menikoff:

Community-Campus Partnerships for Health (CCPH) appreciates the opportunity to submit comments regarding the advance notice of proposed rulemaking (ANPRM), "Human Subjects Research Protections: Enhancing Protections for Research Subjects and Reducing Burden, Delay, and Ambiguity for Investigators," published in the July 26, 2011 Federal Register.

A national non-profit organization founded in 1996, Community-Campus Partnerships for Health (CCPH) promotes health (broadly defined) through partnerships between communities and academic institutions. Our strategic goals are to (1) leverage the knowledge, wisdom and experience in communities and in academic institutions to solve pressing health, social, environmental and economic challenges; (2) build the capacity of communities and academic institutions to engage each other in partnerships that balance power, share resources, and work towards systems change; and (3) ensure that community-driven social change is central to the work of community-academic partnerships. Our members – a diverse group of over 2,000 individuals affiliated with community organizations, colleges and universities, health care delivery systems, student service organizations, foundations and government – are advancing these goals in their work on a daily basis.

Since our inception, CCPH has played a central leadership role in advancing a community-based participatory research (CBPR) paradigm in which community members and researchers collaborate to conduct research that builds capacity, leads to knowledge that directly benefits communities and influences policies that affect health. We have reviewed the proposed changes to what is known as the "Common Rule" regarding the protection of human research participants in light of their impact on the protection of individuals and communities that participate in research. Our comments not only respond to questions in the ANPRM but also suggest additional opportunities to improve the ethical oversight of research. In preparing our comments, we have significantly drawn upon or endorsed comments submitted by the Association for the Accreditation of Human Research Protection Programs (AAHRPP), Public Responsibility in Medicine & Research (PRIM&R) and Renée Llanusa-Cestero that reflect our views as well. We should note that our comments do not necessarily reflect the opinions of each of our members. We have encouraged them to review the ANPRM and submit comments as well.

Overarching observations
Before we address specific provisions, we would like to make several overarching observations on the ANPRM:

People are participants in research, not "subjects." We respectfully request that OHRP consistently use the term "research participants" when referring to people who are enrolled in research studies, not the term "subjects." This simple change in terminology has profound implications for how researchers view the people enrolled in their studies and for how those people view their roles, rights and responsibilities in research. We believe that OHRP seeks to discourage a research culture that views people as passive subjects of research and thus should eliminate the term "research subjects" from its lexicon.

Protection is paramount. The stated purpose of issuing the ANPRM is to make the process of protecting research participants more efficient. We agree that the regulations should be amended to reduce unnecessary and avoidable burdens on IRBs, researchers, organizations, sponsors, and others involved in the research enterprise. However, the first consideration must always be the protection of research participants. As a result, we encourage HHS to evaluate existing and proposed regulations based on whether they add value in protecting research participants and relates to one of the core ethical principles used to judge whether research is ethically sound.

Federal regulations provide a "floor" for protecting research participants, not a "ceiling." In several places in the ANPRM, it is suggested that whenever an IRB creates more stringent protections for research participants than those provided in the federal regulations, the IRB needs to register them with OHRP. Since the federal regulations set the minimum standard for the protection of human research participants, no barrier should exist for institutions wishing to adopt rules that they believe enhance such protections. Therefore, we recommend deleting any statement or implication that institutions must provide justifications for enhancing the protections of research participants.

IRBs are not solely responsible for protecting research participants. The ANPRM focuses on the IRB and largely ignores the other key stakeholders involved in protecting research participants and ensuring the ethical conduct of research. These stakeholders include but are not limited to research funding agencies, institutions and organizations that conduct research, researchers and research teams. The Common Rule as currently written applies to only to institutions, not to these other stakeholders. We recommend that OHRP amend the federal regulations to explicitly state that all stakeholders involved in research are responsible for protecting research participants.

Harm is not only physical harm. The term "harm" used throughout the ANPRM seems to refer mostly to physical harm. The goal of protecting research participants is not just to minimize the risk of physical or psychological harm, but to also protect the rights and autonomy of current and potential research participants, an imperative that is based on respect for human dignity. Indeed, the Belmont Report identified "Many kinds of possible harms and benefits need to be taken into account. There are, for example, risks of psychological harm, physical harm, legal harm, social harm and economic harm and the corresponding benefits."

Informed consent is a process, not a form. An effective informed consent process is central to the protection of research participants. The proposals in section IV of the ANPRM, however, focus almost exclusively on the written consent form and reinforce the mistaken belief that the forms are what primarily matter to OHRP. While the form is important for conveying essential information about study risks and benefits and documenting a person's participation in a given study, it is only one component of the informed consent process.

Below we make comments on the topics asked about in the ANPRM as well as provisions in the Common Rule that were not specifically mentioned in the ANRPM.

Scope of federal regulations

In principle, we agree with the proposal in the ANPRM to require all U.S. institutions that receive some federal funding from Common Rule agencies to apply the regulations to all research involving human participants, whether that research is federally funded or not. We would further recommend that OHRP engage research sponsors that are not signatories to the Common Rule (e.g., the National Endowment for the Humanities, voluntary health organizations, industries) in a dialogue aimed at encouraging them to become signatories. In order for this proposal to be effective, however, the federal regulations need to be amended to apply to the diverse forms of research that involve human participants and should reflect a broader understanding of the challenges and risks involved in conducting research involving different methodologies, approaches and disciplines. We disagree with the ANPRM suggestion that the Common Rule be revised to explicitly state that certain activities that have traditionally not been viewed as research (e.g., classics, history, languages, literature, journalism) are not covered. We believe that determinations regarding what is and is not subject to IRB review should be made on the basis of the specific research activity being proposed, and not on the basis of a researcher's scholarly discipline.

We are particularly concerned about the ethical oversight of community-engaged research, including community-based participatory research in which community members are members of research teams and community organizations are partners in the conduct of the research. Community-engaged research raises ethical considerations that go beyond individual-level protections to include those at the community level. This creates challenges for IRBs, which are designed to protect the rights and welfare of *individual* study participants and not the rights and welfare of *communities* involved in research. The Belmont principles and federal regulations that guide IRBs do not explicitly address the scope of ethical considerations that arise in community-engaged research and thus IRB application of these principles may not provide a thorough ethical analysis. In a review of 30 university-IRB application forms, for example, Flicker et al. found that community considerations were often missing.[1]

The Belmont Report does not preclude IRBs from reviewing community-level ethical issues, specifying, "risks and benefits of research may affect the individual subjects, the families of the individual subjects, and society at large (or special groups of subjects in society)." The federal regulations, however, state "The IRB should not consider possible long-range effects of applying

[1] Flicker, S., Travers, R., Guta, A., McDonald, S., & Meagher, A. (2007). Ethical dilemmas in community-based Participatory research: Recommendations for Institutional Review Boards. *Journal of Urban Health, 84*(4), 478-493

knowledge gained in the research (for example, the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility." IRBs do not routinely assess community-level risks and in order to effectively do so, they would need to increase their understanding of community-engaged research, strengthen their community composition and explicitly include community-level ethical considerations in their policies, processes and application forms. Even with these reforms, IRBs may not be the appropriate body to conduct a review of the community-level risks of a proposed study. Community groups and partnerships involved in research are establishing their own processes for research ethics review that routinely consider community-level ethical issues that institution-based IRBs do not.

We strongly urge OHRP to draft regulations for public comment that are designed to address the ethical considerations that arise in community-engaged research and that protect communities engaged in research. In preparation for doing so, we urge OHRP to broadly consult with community-engaged researchers, communities engaged in research, IRBs from institutions that review a significant number of community-engaged research proposals, and community groups and partnerships that have established their own research ethics review processes. We also urge OHRP to review the new Canadian research ethics policy (the Tri-Council Policy Statement 2), paying particular attention to the chapter devoted to research involving Aboriginal peoples (http://bit.ly/j9HTpk). It is our contention that many of the issues and expectations described in the chapter could apply to federal research regulations here in the U.S. as well. The chapter acknowledges the role of communities in shaping the conduct of research that affects them and gives guidance for balancing individual and collective interests. The chapter identifies three principles that express the core ethical value of respect for human dignity – respect for persons, concern for welfare (including the welfare of the community to which participants below) and justice (including justice for communities, such as considering whether study findings have the potential to misrepresent or stigmatize communities). The chapter also requires researchers who are proposing research that involves Aboriginal peoples to advise the research ethics board (REB, the Canadian term for IRB) how they have engaged, or intend to engage, the relevant community. Alternatively, researchers may seek REB approval for an exception to the requirement for community engagement, on the basis of an acceptable rationale.

Informed consent

We urge OHRP to focus on improving the process of seeking and obtaining informed consent, with particular emphasis on the ongoing and iterative nature of the consent process; the responsibilities that researchers bear for ensuring that truly informed consent is obtained and the importance of educating researchers about their role; and methods for determining whether and to what extent an authentic consent process actually takes place. OHRP should further clarify that while the researcher is responsible for assuring that informed consent is obtained and documented, it is acceptable for properly prepared representatives of the researcher such as patient educators, patient navigators and community health workers to carry out the informed consent procedures.

Documenting informed consent. The lengthy and jargon-laden forms approved by many IRBs to document a participant's informed consent must be vastly improved. There is already a provision in the federal regulations for use of the "short form" and we urge OHRP to reiterate and clarify its purpose and the conditions of its use. Written forms used to document consent

should summarize the information provided to prospective participants rather than include all of the elements of informed consent required in the federal regulations. Further, the documentation of informed consent should be permitted in ways other than signed, written forms such as audio recording over the phone or video recording in person.

Proposed consent templates. We recommend that OHRP not publish consent templates. IRBs often use the precise wording in the federal regulations' required elements of informed consent and we are concerned that templates would become the default form used. It would be helpful, however, to clarify in the regulations that IRBs and researchers can exercise flexibility in implementing an informed consent process and documentation of informed consent that are informational and comprehensible. Organizations such as PRIM&R and AAHRPP might be encouraged to develop a repository of peer-reviewed "exemplary" informed consent materials and processes for informational and educational purposes.

Aligning extent of research ethics review with the risk to participants

The extent of oversight of research should vary depending on the potential risk of the research. One reason the current system is overly burdensome is that studies often receive the same level of review, regardless of the potential risk to participants. In some cases, low-risk studies are over-scrutinized; in others, high-risk studies do not receive enough attention. IRBs do not fully take advantage of existing flexibility in regulations, such as making exempt determinations or using the expedited procedure for review of research. Institutional resources could be used more effectively and efficiently if the current regulations were revised to align regulatory requirements and protections with the level and nature of the risks involved in the research.

Expedited review. The ANPRM proposes revising the current list of research activities that qualify for expedited review, and putting in place a federal panel that would periodically revisit and refresh the list. We are concerned about the creation of an all-inclusive list of research activities that qualify for expedited review. We suggest that the regulations set out criteria for what constitutes minimal risk, which IRBs could apply to specific proposed research activities and determine if those activities would be appropriate for expedited review. As recommended by PRIM&R, it would be useful for OHRP to create an illustrative list of what it believes to be minimal risk research that would be eligible for expedited review along with its reasoning for placing these illustrative cases on the list. This would enable IRBs to better understand and incorporate the principles that lead to a legitimate categorization of minimal risk research and a subsequent expedited review determination.

We concur with PRIM&R in recommending that research subject to expedited review be required to meet all of the federal criteria for IRB approval of a study. Standards for approving research should not vary based on the process for approving research. Expedited review should in no way be seen as less stringent. All research participants should be entitled to the same substantive protections regardless of the method or timeframe of review. The regulations should specify that expedited review be conducted by an IRB staff person or designated IRB member.

Research not subject to IRB review. We have serious concerns about the ANPRM proposal authorizing researchers to independently determine whether their research is exempt from IRB review. This determination must be made by an IRB staff member or a designated IRB member. The regulations should also specify that exempt means "exempt from IRB review and approval"

and not exempt from ensuring protections for research participants, adhering to ethical standards, meeting requirements for an abridged consent process, or maintaining confidentiality of identifiable data. A section should be added to the regulations describing minimal protections that should be provided in exempt research.

Privacy

Protecting the privacy of research participants is an ethical imperative. Contrary to the suggestions made in the ANPRM, we believe that HIPAA is not the appropriate vehicle to address the information risks posed by behavioral and social science research. HIPAA was enacted for the purpose of protecting medical records, not research records.

We agree with PRIM&R's recommendation that it must be made a serious crime for any person or institution to intentionally release, induce the release of, re-identify, or attempt to re-identify, previously de- identified research data in whatever form they exist. While this would require legislative action, we urge HHS to initiate and advocate for such action. In the meantime, HHS can use its regulatory authority to remove violators from eligibility for current and future funding. We also agree with PRIM&R's contention that the only exception to a rule outlawing re-identification would be for the rare circumstance in which such re-identification is clearly necessary for the protection of the person from whom the data or specimen was taken, and where it could be concluded that a reasonable person would wish to receive such information. This determination could not be made solely by the researcher, but would be made in accordance with institutional policies that require the involvement of individuals knowledgeable about the relevant science and ethics of such a determination.

Harmonization of regulations and guidance

Harmonization of regulations and guidance is critical to preserving the integrity and transparency of the research oversight system. But harmonization of written regulations alone is not sufficient. Federal agencies must also interpret and implement regulations consistently. Since 1991, when the "Common Rule" was adopted, several Common Rule agencies have issued additional rules. All federal agencies should adopt and implement the same rules.

Single central IRB review

We do not support the proposal to mandate that there be one IRB of record for all multi-site studies. First, there is nothing currently prohibiting institutions to voluntarily enter into some sort of central review process. The regulations currently state "cooperative research projects are those projects covered by this policy which involve more than one institution. In the conduct of cooperative research projects, each institution is responsible for safeguarding the rights and welfare of human subjects and for complying with this policy. With the approval of the department or agency head, an institution participating in a cooperative project may enter into a joint review arrangement, rely upon the review of another qualified IRB, or make similar arrangements for avoiding duplication of effort." Second, in a worst-case scenario, this proposed change, without further clarification, could lead to "IRB shopping" in which a researcher selects an IRB he or she feels will be most lenient or favorable.

We are primarily concerned about this proposed requirement, however, because it may undermine the ability of communities involved in the research being reviewed to contribute to

the ethical analysis of the proposed research. For example: In situations in which the selected IRB of record is not local to the study population, the IRB may not have adequate knowledge of relevant local context that a local IRB possibly could. In situations in which an institution-based researcher is collaborating with community partners that either operate or have access to a community IRB, mandating a single IRB of record would likely privilege the institution-based IRB. In the case of a multi-site study involving a site operated by a tribal community, mandating a single central IRB might undermine the tribal government's right to self-determination by not permitting tribal IRB review.

IRB role in research participant protections once a study has started

Since the release of the Common Rule, increased attention has been focused on the need for appropriate data monitoring plans for research, including at times having formal Data Monitoring Committees (DMCs). However, there seems to be variability in the quality of these plans and committees, as well as significant confusion about their purpose and proper composition. Accordingly, the proposed rules in section VI of the ANPRM should consider requiring IRBs to review the data monitoring plan for proposed research as well as establishing criteria for determining when a formal DMC should be required. (Currently a DMC is required under the HHS implementation of the Common Rule when there is an exemption from the requirement to informed consent in the emergency setting, but otherwise this is not the case.) As of now, there are no requirements for the composition and functioning of DMCs. Developing minimum requirements for DMC composition and processes, based at least in part on current FDA guidance, would provide additional protections for research participants.

Assuring IRB members, researchers and research teams are prepared for their roles in protecting research participants

An important aspect of protecting research participants that was not addressed in the ANPRM is assuring that IRB members, chairs, researchers and research teams have an understanding of research ethics, the assessment of research risks and benefits, and strategies for minimizing research risks that is appropriate to their role. Although education does not necessarily translate into behavior change, we believe that supporting an institutional culture of ongoing professional development and continuous improvement will enhance the ability of IRBs, researchers and research teams to protect human research participants in an effective and efficient manner. Any educational requirement, however, must give flexibility as to how that education is to be delivered and by whom. A number of research institutions that conduct significant amounts of community-engaged research, for example, are developing innovative research ethics training programs for community partners aligns with their educational background, literacy level and research roles.

IRB composition

We recommend that the Common Rule definition of the elemental IRB be revisited with the goal of maintaining proportional balance among the stakeholders in research. The Common Rule currently states, "Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its

advice and counsel in safeguarding the rights and welfare of human subjects. … Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas…Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution."

IRBs (with the exception of community IRBs) commonly have 10, 15 or 20 plus members with only one member who serves as both the nonscientific and unaffiliated member. We endorse the recommendations of the National Bioethics Advisory Commission that non-scientists and unaffiliated members make up 25% of IRB membership. This recommendation is in keeping with the proportion of community members on research ethics boards in Denmark and the UK, one half and one third, respectively and is aligned with the Canadian *Tri-Council Policy Statement expectation that* "community representation should be commensurate with the size of the REB."

We further recommend that if an IRB regularly reviews research that involves a vulnerable category of participants (e.g., children, prisoners), or particular communities or populations (e.g., faith community, urban Native American population), they should be required to have members who have relevant knowledge and experience

IRB decision-making

The federal regulations currently state "Except when an expedited review procedure is used, [IRBs] review proposed research at convened meetings at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting." In other words, it is possible for IRBs to make decisions without the involvement of at least one unaffiliated member. We recommend that this requirement be revised to also require the participation of at least one unaffiliated member.

Community-based processes for research ethics review

A growing number of community groups are implementing their own ethics review processes to determine whether and how research is conducted in their communities. These community-based review processes operate independently, in parallel or in partnership with institution-based IRBs and in some cases are community-based IRBs. In 2009, we completed the first systematic study in the U.S. of community-based review processes through an online survey of community groups and community-institutional partnerships involved in conducting research involving human participants and/or advising on its conduct.[2] Our study identified 109 ethics review processes in 31 states, DC and Puerto Rico that mainly function through community-institutional partnerships, community-based organizations, community health centers and tribes, with 30 more in development. These processes primarily formed to ensure the involved communities are engaged in and directly benefit from research, and are protected from research harms.

---

[2] Shore N, Brazuaskas R, Drew E, Wong KA, Moy L, Baden AC, Cyr K, Ulevicus J, Seifer SD. Understanding Community-Based Processes for Research Ethics Review: A National Study. *Am J Public Health.* Published online ahead of print December 16, 2010: e1–e6. doi:10.2105/AJPH.2010.194340 & Shore N, Drew E, Brazauskas R, Seifer SD. Relationships Between Community-Based Processes for Research Ethics Review and Institution-Based IRBs: A National Study. *Journal of Empirical Research on Human Research Ethics*. 2011; 6(2): 13-21.

The protection of communities may be more appropriately situated in review processes developed and managed by the communities involved in research. A system involving community-based and institution-based research ethics review may be the ideal to strive for, despite the inevitable challenges and complexities involved. It is unclear how such a system might be established and supported, including whether all research conducted in communities or only research that meets certain conditions should undergo community-based review. As indicated above, we strongly urge OHRP to solicit public input on draft federal regulations that address the ethical considerations that arise in community-engaged research and that protect communities engaged in research.

We appreciate the opportunity to comment on the proposed changes and we are hopeful that they will be seriously considered and ultimately contribute to better protections for research participants. If we can be of further assistance, please do not hesitate to contact me at Sarena.seifer@gmail.com or 206-666-3406. For example, we would be pleased to facilitate opportunities for OHRP staff to consult with community-engaged researchers and other stakeholders on the ethical issues that arise in community-engaged research, including community-level risks and benefits. One such opportunity would be during our next national conference, April 18-21, 2012 in Houston, TX, attended by hundreds of community-academic research partnerships from across the country.

Sincerely,

Sarena D. Seifer, M.D.
Executive Director