Department: **UAMS Institutional Review Board**
Policy Number: **17.1**
Section: **Special Populations**
Effective Date: **July 31, 2002**
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SUBJECT: Children in Research

Policy: To safeguard their interests and to protect them from harm, special ethical and regulatory considerations apply for reviewing research involving children. The IRB may approve research involving children only if special provisions are met in addition to the other criteria required for approval. The IRB must classify research involving children into one of four categories and document its discussions of the risks and benefits of the research study.

Definitions:

Assent. A child's affirmative agreement to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent. Assent is generally sought beginning at age 7. Assent is a process, not a form. However, assent can be documented either on a separate assent form specifically tailored to children (especially adolescents) or on the same document used to obtain parental permission. Only the child's signature (or hand-printed name) is required to fulfill the assent document requirement.

Children. In Arkansas, "children" includes all those who have not yet reached their 18th birthday and have not been legally emancipated. Emancipation may be obtained through judicial decree or based upon certain events such as marriage or military service. Marriage or military service does not automatically emancipate an individual and Investigator's should seek guidance per Policy 1.6 if the issue arises.

Guardian. An individual who is authorized under applicable State or local law to consent on behalf of a child to general medical care. (See Policy 17.13 for Legally Authorized Representative (LAR) for definitions.) Court-appointed guardians must petition and receive express permission from the court in order to provide consent authorizing experimental medical procedures.

Parent. Federal Regulations define this as a child's biological or adoptive parent. Arkansas law allows a parent to grant permission for his/her biological, adopted or stepchild to undergo surgical or medical treatments or procedures. Note however that there are restrictions on who can consent on behalf of *foster* children (a.k.a. "wards") for the purpose of research. See the detailed information and Special Instructions Section below for more information.

Permission. The agreement of parent(s) or guardian to the participation of their child in research.

Wards: Children who are considered to be in the custody of the state. Foster children are in the custody of the Arkansas Department of Human Services (DHS) and therefore are wards of the state. As such, only DHS may provide consent for their participation in research. Specifically, since foster care is under the Division of Children and Family Services (DCFS), the Director of that division will review all requests for research projects. Foster parents *cannot* provide consent.

Categories:

Pediatric Risk Category I: Research Not Involving More Than Minimal Risk. When the IRB finds that no greater than minimal risk to children is present, the IRB may approve the proposed research only if the IRB finds that adequate provisions are made for soliciting the assent of the children and the permission of their parents or guardians, as set forth below.

Pediatric Risk Category II: Research Involving Greater than Minimal Risk but Presenting the Prospect of Direct Benefit to the Individual Subjects. If the IRB finds that more than minimal risk to children is present by an intervention or procedure but that the intervention or procedure holds out the prospect of direct benefit for the individual subject, or by a monitoring procedure that is likely to contribute to the subject's well-being, the IRB may approve the research only if the IRB finds that:

1. The risk is justified by the anticipated benefit to the subjects;
2. The relation of the anticipated benefit to the risk is at least as favorable to the subjects as that presented by available alternative approaches; and
3. Adequate provisions are made for soliciting the assent of the children and permission of their parents or guardians, as set forth below

Pediatric Risk Category III: Research Involving Greater than Minimal Risk and No Prospect of Direct Benefit to Individual Subjects, but Likely to Yield Generalizable Knowledge about the Subject's Disorder or Condition. If the IRB finds that more than minimal risk to children is presented by an intervention or procedure that does not hold out the prospect of direct benefit for the individual subject, or by a monitoring procedure which is not likely to contribute to the well being of the subject, the IRB may approve the research only if the IRB finds that:

1. The risk represents a minor increase over minimal risk;
2. The intervention or procedure presents experiences to subjects that are reasonably commensurate with those inherent in their actual or expected medical, dental, psychological, social, or educational situations;
3. The intervention or procedure is likely to yield generalizable knowledge about the subjects' disorder or condition which is of vital importance for the understanding or amelioration of the subjects' disorder or condition; and
4. Adequate provisions are made for soliciting assent of the children and permission of their parents or guardians, as set forth below.

Pediatric Risk Category IV: Research Not Otherwise Approvable Which Presents an Opportunity to Understand, Prevent, or Alleviate a Serious Problem Affecting the Health

or Welfare of Children. If the IRB does not believe the research proposal meets any of the requirements set forth above, it may still approve the protocol but only if:

1. The IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; and
2. The Secretary of the Department of Health and Human Services or The Commissioner of Food and Drugs, as applicable, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, education, ethics, law) and following opportunity for public review and comment, has determined either that the research in fact meets one of the categories set forth above, or all of the following:
    a. The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children;
    b. The research will be conducted in accordance with sound ethical principles; and
    c. Adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians, as set forth below.

1. Investigators should:

1.1 Design research projects involving children in accordance with this policy, making provisions to obtain the assent of all children over the age of 7. If the study population is such that the children will not be able to provide assent at the age of 7 or at all, the Investigator should specify this in the assent provisions of the application.

1.2 Identify in ARIA the pediatric category of research that the Investigator feels the project best meets and upload permission and/or assent documents.

1.3 Special Instructions:

A. Wards (foster children):

1.3 (A)(1): Investigators considering a research project specifically targeting these children must contact the DCFS Director before finalizing the protocol. The study must address special considerations. DCFS staff will assist you in efforts to protect this special population.

1.3 (A)(2): If a child in foster care is found to qualify as a participant in research targeting a general population, a copy of the consent form and a cover letter describing the following must be faxed to the DCFS's Director's office prior to enrolling the child:

(1) The nature of the project,
(2) The Principal Investigator and Research Coordinator's contact information (telephone numbers email addresses) and
(3) The timeframe you need for the consent process to be completed;

DCFS contact information is as follows:
Phone: (501) 682-8770
Fax: (501) 682-6968
700 Main Street
P.O. Box 1437, Slot S560
Little Rock, AR 72203-1437

B. Minor participants who reach the age of majority while involved in on-going research: When a child who is enrolled in research with parental or guardian permission subsequently reaches the legal age of consent to the procedures involved in ongoing research, the subject's participation in the research is no longer regulated by the requirements of 45 CFR part 46.408 regarding parental or guardian permission and subject assent.

1.3 (B)(1): The IRB may approve a waiver of informed consent under 45 CFR 46.116(d), if the IRB finds and documents that the required conditions are met. Unless the Institutional Review Board (IRB) determines that the requirements for obtaining informed consent can be waived, the investigator should seek and obtain the legally effective informed consent, as described in 45 CFR 46.116, for the now-adult subject for any ongoing interactions or interventions with the subjects.

2. **The IRB** must determine:

2.1 Whether Assent is required.

2.1.1 If the IRB determines one of the following conditions to be true, then the assent of the children is not a necessary condition for proceeding with the research:

2.1.1.1 The capability of some or all of the children is so limited that they cannot reasonably be consulted; or

2.1.1.2 The intervention or procedure involved in the research holds out a prospect of direct benefit that is important to the health or well-being of the children and is available only in the context of the research.

2.1.1.3 The research meets the same conditions as those for waiver or alteration of informed consent in research involving adults, as specified in the regulations at either 45 CFR 46.116(c) or 45 CFR 46.116(d).

2.1.2 If the IRB determines that assent is required, it must find that adequate provisions are made for soliciting that Assent when in the judgment of the IRB the children are capable of providing assent. In determining whether children are capable of assenting, the IRB shall take into account the ages, maturity, and psychological state of the children involved. This judgment may be made for all children to be involved in research under a particular protocol, or for each child, as the IRB deems appropriate. . The child should be given an explanation of

the proposed research procedures in a language that is appropriate to the child's age, experience, maturity, and condition.

2.2. Whether Parental Permission is required.

2.2.1 If the IRB determines that a research protocol is designed for conditions or for a subject population for which parental or legally authorized representative permission is not a reasonable requirement to protect the subjects (for example, neglected or abused children), it may waive the consent requirements described above, provided both (i) an appropriate mechanism for protecting the children who will participate as subjects in the research is substituted, and (ii) the waiver is not inconsistent with Federal, State, or local law. The choice of an appropriate mechanism would depend upon the nature and purpose of the activities described in the protocol, the risk and anticipated benefit to the research subjects, and their age, maturity, status, and condition.

2.2.2 If the IRB determines that parental permission is to be obtained, then there must be adequate provisions for soliciting parent or guardian permission(s) as follows:

2.2.2.1 The IRB must consider if the permission of one parent is sufficient for research not involving greater than minimal risk when the provisions of Pediatric Risk Category I above are met. The IRB may require both parents' permission even in Category I research.

2.2.2.2 The IRB must consider if the permission of one parent is sufficient for research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects when the provisions of Pediatric Risk Category II above are met. The IRB may require both parents' permission.

2.2.2.3 When the research is approved under Pediatric Risk Category III above, both parents must give their permission unless one parent is deceased, unknown, incompetent, or not reasonably available, or when only one parent has legal responsibility for the care and custody of the child.

2.2.2.4 When the research is approved under Pediatric Risk Category IV above, both parents must give their permission unless one parent is deceased, unknown, incompetent, or not reasonably available, or when only one parent has legal responsibility for the care and custody of the child.

2.3 If Wards of the State or Other Agency are to be involved, the IRB can only approve the research if it finds and documents that such research is: (1) related to their status as wards; or (2) conducted in schools, camps, hospitals, institutions, or similar settings in which the majority of children involved as subjects are not wards.

If the research is approved, the IRB must require appointment of an advocate for each child who is a ward, in addition to any other individual acting on behalf of the child as guardian. One individual may serve as advocate for more than one child. The advocate shall be an individual who has the background and experience to act in, and agrees to act in, the best interests of the child for the

duration of the child's participation in the research and who is not associated in any way (except in the role as advocate or member of the IRB) with the research, the investigator(s), or the guardian organization.