Emergency Use and Compassionate Use of Unapproved Devices

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Learning objectives

- Understand when an emergency need to use an unapproved device may occur
- Describe the role and responsibilities of the physician who wants to use the device on a patient for emergency or compassionate use
- Identify the IRB’s responsibilities in the compassionate use of an unapproved device

Emergency use of an unapproved device

- What is an emergency situation
- Physician's role and responsibilities before and after emergency use
- Informed consent

Compassionate use of an unapproved device

- Describe what is meant by compassionate use
- The physician responsibilities with compassionate use
- The sponsor and the IRB’s role in compassionate use
- Practice

Emergency use of an unapproved device

Emergency use of an unapproved test article is not research

What is an emergency situation?

- All conditions must exist
  - Life-threatening disease or serious condition requiring immediate use
  - No generally accepted alternative for treating the condition is available
  - There is no time to use existing procedures to obtain FDA approval of an IDE.

When can a device be used in an emergency situation?

- There is no Investigational Device Exemption (IDE)
- Physician wants to use the device in a way not approved under an existing IDE
- A physician is not part of the IDE study

Physician's role

- Determine whether the following conditions are met
  - Patient is in a life threatening situation
  - immediate use of the device is needed
  - no alternative
  - no time for FDA approval of an IDE

Physician's role

- Assess the potential for benefits from the unapproved use
- Have substantial reason to believe that benefits will exist

Physician's responsibilities

- Physician should follow patient protection measures
  - Institutional clearance per institution policy
  - IRB chairperson concurrence
  - Authorization from the sponsor - if an IDE exists

Physician's responsibilities

- Independent assessment by a physician who is not participating in the investigation
- Informed consent from patient or legally authorized representative
  - Does not have to follow the informed consent requirements at 21 CFR 50.25

Physician's responsibilities

- What if there is no time to find an uninvolved physician? (21 CFR 50.23)
- The physician makes the determinations
  - Life threatening disease or condition
  - Immediate need
  - No alternative
  - No time for FDA approval of an IDE
  - Assessment of potential benefit
  - Substantial reason to believe benefit will occur

Physician's responsibilities

- The physician has his/her evaluation reviewed and evaluated in writing by an uninvolved physician
- Submit that report to IRB within 5 working days after the use

Physician's responsibilities

- What if No informed consent can be obtained? (21 CFR 50.23)
- The physician and a physician who is not participating in the clinical investigation must certify in writing ALL of the following:
  - Life-threatening situation necessitating the use of the device
  - No alternative therapy

Physician's responsibilities after emergency use

- If an IDE exists, notify the sponsor
  - The sponsor must report to FDA
- If an IDE does not exist, notify FDA of the emergency use and provide FDA
  - a written summary of the emergency use,
  - patient protection measures, and
  - any scientific results

Physician's responsibilities after emergency use

- Report to the IRB within five days and otherwise comply with IRB provisions
- Evaluate the likelihood of a similar need for the device
- If similar need is likely, obtain an IDE from FDA for the subsequent use and IRB approval

Compassionate use of an unapproved test article

- Single patient or small group use of an unapproved device

Compassionate use of an unapproved device

- Compassionate use is not research
- Unapproved device for serious disease or condition
- No alternative
- Patient does not meet inclusion criteria

Physician's responsibilities

- A physician can use an unapproved device to treat, diagnose, or monitor a patient with a serious disease or condition
- The probable risk to the patient is not greater than the probable risk from the disease

Physician's responsibilities

- Physician requests authorization from sponsor
- Sponsor may agree or disagree
- The physician should not treat the patient until FDA concurs with the use

Physician's responsibilities

- Devise schedule for patient monitoring
- Address specific needs of the patient
- Detect possible problems

Physician's responsibilities

- Obtain independent assessment from uninvolved physician
- Obtain IRB chair's concurrence
- Clearance from institution, if appropriate
- Obtain consent from the patient
- Report any problems as a result of the device use to the IRB and sponsor
- Write a summary of the use and give to sponsor

Sponsor responsibilities

- If sponsor disagrees with the use
  - The physician cannot use the device
- If sponsor authorizes the use
  - An IDE supplement is submitted to FDA requesting approval for a protocol deviation [21 CFR 812.35(a)].

Sponsor responsibilities

- IDE Supplement
  - FDA's concurrence is based on:

    information submitted; evidence that safety and effectiveness justifies the use; the use would not interfere with the conduct of a clinical trial to support marketing approval
- Prior FDA concurrence is required before compassionate use occurs

IRB and compassionate use

- IRB chair concurrence (documented)
- Ensure FDA concurrence
- Review consent document
- Receive reports after the use
- Receive reports of problems

Let's put this into practice

- Interventional Cardiologist completed IDE study of a stent
- Continued to use the stent in his patients (>10) when he found coronary thrombosis. He declared this emergency use.

What would concern your IRB?

Let's put this into practice

- On an FDA inspection, we found that a physician used an IDE device for compassionate use. There was no FDA or IRB concurrence.

How can an IRB help prevent this from happening?

Let's put this into practice

- Approved biliary stent used in the carotid artery for carotid stenosis.
- Physician said he did this to treat his patient.

Is this emergency use or compassionate use or neither?

References for emergency use

- Regulation
  - 21 CFR 56.104(c)
  - 21 CFR 50.23
  - 21 CFR 812.35(a)(2)
  - 21 CFR 812.150(a)(4)
- Guidance
  - Federal Register/vol.50, No. 204/Tuesday, October 22, 1985
  - FDA Information Sheets

References for compassionate use

- Food, Drug, and Cosmetic Act
  - Section 561 Expanded Access to Unapproved Therapies and Diagnostics
- Regulation
  - 21 CFR 812.35(a)
- Guidance
  - www.fda.gov/cdrh/devadvice/

    type in “Expanded Access” and search

Key points

- Physicians can use unapproved devices in emergency situations
- IRBs must receive reports within five working days
- Subsequent emergency use-needs IDE
- Compassionate use requires prior FDA and IRB concurrence
- In compassionate use, IRB's should: document their concurrence, ensure FDA concurrence, receive and review reports