EFFECTIVE DATE: ***December 19, 2025***

PROCEDURE TITLE:

Devices

To be reviewed every three years by:
Institutional Review Board

REVIEW BY: ***December 18, 2028***

PROCEDURE

This Procedure implements the requirements of Institutional Review Board Policy No. 1 *Authority of the Institutional Review Board,* which requires the Trinity Health Mid-Atlantic (THMA) Institutional Review Board (IRB) establish policies and procedures to ensure that the THMA's IRB operations fully comply with applicable laws, regulations, professional standards, and the *Ethical and Religious Directives for Catholic Health Care Services*, including promoting the conduct of ethical and compliant research.

All research that involves the use of a device must receive THMA IRB review and approval prior to the commencement of the research.

Definitions

Medical Device:
A medical device is an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is:

1. Recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them;
2. Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment or prevention of disease in man;
3. Intended to affect the structure or any function of the body of man or other animals.

Significant Risk Device (SR device):
An investigational medical device that:

1. is intended as an implant and presents a potential for serious risk to the health, safety, or welfare of a participant;
2. is for use in supporting or sustaining human life and represents a potential for serious risk to the health, safety, or welfare of a participant;
3. is for a use of substantial importance in diagnosing, curing, mitigating, or treating disease or otherwise preventing impairment of human health and presents a potential for serious risk to the health, safety, or welfare of a participant; or
4. otherwise presents a potential for serious risk to a participant.

Non-significant Risk Device (NSR device):
A medical device that does not meet the definition for an SR device.

Investigational Device Exemption (IDE):
An investigational device exemption (IDE) allows the investigational device to be used in a clinical study in order to collect safety and effectiveness data required to support a Premarket Approval (PMA) application or a Premarket Notification 510(k) submission to FDA (21 CFR 812). Clinical studies with devices of significant risk must be approved by FDA and by an Institutional Review Board (IRB) before the study can begin. Studies with devices of non-significant risk must be approved by the IRB only, before the study can begin.

Humanitarian Device Exemptions (HDE):
A Humanitarian Device Exemption application is similar to a premarketing application (PMA), but is exempt from the effectiveness requirements of a PMA. A HDE is not required to contain results of scientifically valid clinical investigations demonstrating that the device is effective for the intended purpose. The HDE must contain sufficient information for the FDA to determine that the probability of benefit to health outweighs the risk of injury or illnesses, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

Humanitarian Use Device (HUD):
A Humanitarian Use Device (HUD) is a device that is intended to benefit patients by treating or diagnosing a disease or condition that affects not more than 8,000 individuals in the United States on an annual basis. A device manufacturer`s research and development costs could exceed its market returns for diseases or conditions affecting small patient populations. The HUD provision of the regulation provides an incentive for the development of devices for use in the treatment or diagnosis of diseases affecting these populations.

To obtain approval for a HUD, a humanitarian device exemption (HDE) application is submitted to FDA. An approved HDE authorizes marketing of a Humanitarian Use Device.

Device Classes
Medical devices are classified into Class I, II, and III. Regulatory control increases from Class I to Class III. The device classification regulation defines the regulatory requirements for a general device type.

- Most Class I devices are exempt from Premarket Notification 510(k);
- Most Class II devices require Premarket Notification 510(k); and
- Most Class III devices require Premarket Approval.

Premarket Approval (PMA):
Devices requiring premarketing applications are Class III devices and are high risk devices that pose a significant risk of illness or injury, or devices found not substantially equivalent to Class I and II predicate through the 510(k) process (21 CFR 814). The PMA process is more involved and includes the submission of clinical data to support claims made for the device.

I. Investigational Device Exemption (IDE)

A. Significant and non-significant risk determination

The Institutional Review Board will determine independent of the sponsor, as to whether the device presents significant (SR) or non-significant risk (NSR) at a convened meeting. The sponsor initially makes the determination of non-significant or significant risk. The FDA may also make a determination. The principal investigator will submit documentation from the sponsor regarding the risk determination. Documentation of the significant risk determination by the sponsor and/or the FDA will need to be submitted as part of the Application for Initial Review.

In deciding if a device presents significant or non-significant risks, the full board IRB will consider the device's total risks. If the device is used in conjunction with a procedure involving risk, the IRB will consider the risks of the procedure in conjunction with the risks of the device. The IRB must review the sponsor's SR or NSR determination for each investigational medical device/study.

If a sponsor determines a device study as NSR, the sponsor and/or investigator must provide the IRB with an explanation of its determination and provide information that may help the IRB evaluate the risk of the study/device.

If the IRB disagrees with the NSR determination made by the sponsor, then the IRB must notify the sponsor/investigator in writing that the study involves a significant risk device.

If the IRB determines the study is SR, but the sponsor found it to be NSR, an IRB may approve the study as an SR device study, ***but*** the study may not begin until FDA approves the sponsor's IDE application.

If the IRB determines the study is NSR, the IRB may approve the study using the criteria at 21 CFR 56.111. The study may begin without submission of an IDE application to FDA.

If the IRB needs help in making the SR/NSR determination, it may ask for a written determination from the FDA. Once a decision on the degree of risk is reached, the IRB will consider whether the study should be approved or not.

Some studies involving non-significant risk devices may also be considered minimal risk studies and, thus, may be reviewed through the expedited review procedure established by the IRB, unless the risk is considered to potentially be deemed significant by the IRB.

FDA considers studies of all significant risk devices to present more than minimal risk; thus, review for all studies involving significant risk devices will occur at a full-convened IRB meeting. In considering whether a study should be approved, the IRB will use the same criteria it would use in considering approval of any research involving an FDA regulated product. Risk determination and study approval decisions will be documented in IRB meeting minutes.

B. **Premarket Notification 510(k)**
If the device manufacturer has filed a Premarket Notification 510(k) submission (21 CFR Part 807 Subpart E), then a letter of substantial equivalence from FDA will be required to be submitted to the IRB and included in the Application for Initial Review submission.

C. **Prior FDA approval**
The sponsor of the clinical trial is responsible for submitting the IDE application to the FDA (§812.40) and obtaining Institutional Review Board (IRB) approval before the study can begin. The approval of an IDE application will be in the form of a letter from the FDA, which will also indicate the stipulations of the approval. This letter will be submitted to the IRB for review as part of the Application for Initial Review.

D. IDE exempt investigations
All clinical investigations of devices must have an approved IDE or be exempt from the IDE regulations. Investigations that are exempted from 21 CFR 812, the IDE regulations, include:

1. a legally marketed device when used in accordance with its labeling
2. a diagnostic device if it complies with the labeling requirements in §809.10(c) and if the testing:
    a. is noninvasive;
    b. does not require an invasive sampling procedure that presents significant risk;
    c. does not by design or intention introduce energy into a subject; ***and***
    d. is not used as a diagnostic procedure without confirmation by another medically established diagnostic product or procedure.
3. consumer preference testing, testing of a modification, or testing of a combination of devices if the device(s) are legally marketed device(s) [that is, the devices have an approved PMA, cleared Premarket Notification 510(k), or are exempt from 510(k)] ***AND*** if the testing is not for the purpose of determining safety or effectiveness and does not put subjects at risk;
4. a device intended solely for veterinary use;
5. a device shipped solely for research with laboratory animals and contains the labeling: "CAUTION – Device for investigational use in laboratory animals or other tests that do not involve human subjects."

Depending upon the nature of the investigation, those studies which are exempt from the requirements of the IDE regulations may or may not be exempt from the requirements for IRB review and approval under Part 56 and the requirements for obtaining informed consent under Part 50.

For studies that are exempt from the IDE regulations, the IRB does not need to decide whether the study poses a significant risk or nonsignificant risk. However, the IRB must still review the study in accordance with the IRB regulations before the investigation may begin.

II. Humanitarian Device Exemption

A. HUD use

HUDs may only be administered at institutions where an IRB has prospectively approved the use of the device. The HDE holder is responsible for ensuring that a HUD is administered only in facilities having Institutional Review Board approval, including continuing review of use of the device. In addition, a HUD may be administered only if such use has been approved by the IRB located at the facility or by a similarly constituted IRB that has agreed to oversee such use and to which the local IRB has deferred in a letter to the HDE holder, signed by the IRB chair or an authorized designee.

SEC. 3056. INSTITUTIONAL REVIEW BOARD FLEXIBILITY. Section 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j) is amended— (1) in subsection (g)(3)— (A) in subparagraph (A)(i)— (i) by striking ''local''; and (ii) by striking ''which has been''; and (B) in subparagraph (B), by striking ''a local institutional'' and inserting ''an institutional''; and (2) in subsection (m)(4)— (A) by striking subparagraph (A) and inserting the following: ''(A) in facilities in which clinical testing of devices is supervised by an institutional review committee established in accordance with the regulations of the Secretary; and''; (B) in subparagraph (B), by striking ''a local institutional'' and inserting ''an institutional''; and (C) in the matter following subparagraph (B), by

HUDs are generally used in one of three ways:

1. Used on label for clinical care
2. Studied on label for safety and efficacy
3. Studied off label for safety and efficacy

1. HUD used on label for clinical care

When a HUD is used on label for clinical care, an investigator is not necessarily a requirement—just a HUD holder. The IRB may approve the device for any qualified physician at the hospital, or limit the use to only certain physicians. An informed consent document is not required by the regulations. A protocol is also not required for the use of a HUD in this manner, although a summary of how the physician will use the device, screening measures, the HUD procedures, any follow-up or tests or procedures planned is required.

On-label use for clinical care: Emergency use

If, however, a physician in an emergency situation determines that approval from an IRB cannot be obtained in time to prevent serious harm or death to a patient, a HUD may be administered without prior approval by the THMA IRB. In such an emergency situation, the physician shall, within 5 days after the use of the device, provide written notification to the chairman of the IRB of such use. Such written notification shall include the identification of the patient involved, the date on which the device was used, and the reason for the use.

Off- label use for clinical care: Emergency use
Off-label use is common, however this type of use is not under the purview of the THMA IRB.

2. **HUD studied *on-label* for safety and efficacy**
When the manufacturer is collecting safety and effectiveness data to support a PMA for the HDE approved indications, the project is submitted to and reviewed by the IRB in the traditional processes. The FDA considers HUDs studied on label for safety and efficacy to be exempt from the requirement for an IDE, as long as the HUD is used in accordance with its approved indications.

3. **Studied *off-label* for safety and efficacy**
HUDs that are studied for a new indication are submitted to and reviewed by the IRB in the traditional processes.

B. IRB review of Humanitarian Device Exemptions and Humanitarian Use Devices

The IRB must ensure that the FDA has granted HDE approval before approving the device for use at THMA. Documentation of the HDE approval will be provided to the THMA IRB. The IRB will render a decision of approval at a full-convened meeting detailing the requirements of prospective consent.

When the HUD is used on label for clinical care, the IRB review's the use and applies as many of the criteria for approval as possible. Typically, the use of a humanitarian device is for a certain prescribed population and limited in use/scope and does not meet the regulatory definition of human subject research, however the use and review is delegated to (and mandatory for) the IRB. *However,* sometimes an investigator or HDE holder may develop a research protocol designed to collect safety and effectiveness data to support a PMA for the device. As a result, if the research is for a new use, the IDE regulation must be followed.

When a HUD studied on label for safety and efficacy, the IRB does not need to make a SR or NSR determination; provided that the HUD is considered to be exempt from the requirement for an IDE (HUD is used in accordance with its approved indications).

When a HUD is studied off-label for safety and efficacy, the IRB will apply the criteria for approval and make a SR or NSR determination.

Continuing reviews for an HDE on-label may be conducted utilizing the expedited review process, as the use of the HUD *within its approved labeling* does not constitute research and this is permissible by the FDA. The type of review will be documented as well as the approval status.

Continuing review of a HUD off-label will be reviewed by the full-board IRB, unless eligible for expedited review. The type of review will be documented as well as the approval status.

A holder of an approved HDE shall notify FDA of any withdrawal of approval for the use of a HUD by the reviewing IRB within 5 working days after being notified of the withdrawal of approval.

III. Expedited Access Pathway

The Expedited Access Pathway (EAP) program is a voluntary program for certain medical devices that demonstrate the potential to address unmet medical needs for life threatening or irreversibly debilitating diseases or conditions that are subject to premarket approval applications (PMA), premarket notification (510[k]) or requests for De Novo designation.

Under EAP, the FDA works with device sponsors to try to reduce the time and cost from development to marketing decision without changing the FDA's PMA approval standard of reasonable assurance of safety and effectiveness, the standards for granting De Novo requests, or any other standards of valid scientific evidence. Participation in the EAP program is only at the request of the sponsor and with the FDA's agreement.

A. Devices eligible for EAP Designation

Devices subject to premarket approval applications (PMAs), premarket notification (510[k]) or requests for De Novo designation are eligible for EAP designation if the following criteria are met:

1. Provide for more effective treatment or diagnosis of life-threatening or irreversibly debilitating human disease or conditions.
   AND
2. The device meets at least one of the following criteria:
   a. Represent breakthrough technologies;
   b. No approved or cleared alternatives exist;
   c. Offer clinically meaningful advantages over existing approved or cleared alternatives including the potential, when compared to existing approved alternatives, to reduce or eliminate the need for hospitalization, improve patient quality of life, facilitate patients' ability to manage their own care (such as through self-directed personal assistance), or establish long-term clinical efficiencies; or
   d. The availability of which is in the best interest of patients.

B. IRB review

IRB review and approval of EAP program devices will be conducted as indicated above for IDEs.

RESPONSIBLE DEPARTMENT

Further guidance concerning this Procedure may be obtained from the Trinity Health Mid-Atlantic Institutional Review Board.

RELATED PROCEDURES AND OTHER MATERIALS

Also see the THMA IRB policy: *Expanded Access to Investigational Devices*

APPROVALS

Initial Approval: April 22, 2021
Subsequent Review/Revision(s): December 19, 2025