Professional Societies and Associations - Preliminary Findings from a Review of Responses to the Common Rule NPRM

Overview

Eighty-six comments are classified as deriving from "Professional Societies and Associations." These consist of the official comments of organizations made up of professionals spanning disciplines from law to the biological sciences; groups of physicians, researchers, and technicians focused on particular disease or patient types; and university associations[1]. While some comments went into great detail, answering all 88 questions listed in the NPRM, others were focused on a single issue. Most comments fell between these two ends of this spectrum.

As with other commenter categories, the below analyses reflect only those comments related to biospecimens, mandated use of a single IRB for multi-site studies, extending the Common Rule to all clinical trials conducted by entities receiving federal funds, security safeguards, and the posting of clinical trial consent forms to a federal website.

At least 13 of the 86 comments in this section did not address any of the topics subject to our analyses. These comments tended to focus on particular exclusions and/or exemptions.

Of note, comments submitted by the American Society for Investigative Pathology (ASIP) – categorized in this section – were frequently cited and endorsed by other commenters. These comments express strong concern that provisions proposed in the NPRM will severely curtail research access to archived biospecimens – rich archives built up over decades which capture biospecimens associated with rare diseases to an extent that could not be replicated quickly, or at all, if the NPRM proposals regarding broad consent were implemented. Furthermore, new proposed restrictions to the waiver of informed consent would severely hamper research into rare diseases which typically relies on access to archived, deidentified specimens for which consent may not have been obtained.

Biospecimens (74% oppose, 26% support)

We reviewed three major proposals specific to biospecimens including the proposal to expand the definition of "human subject" to include non-identified biospecimens, to mandate broad consent for secondary research use of biospecimens and to restrict institutional review board (IRB) waiver of consent for secondary research use of biospecimens. Sixty-seven percent (58 of 86) of responses included comments on at least one of three major proposed changes. Among those responding, 74% (43 of 58) opposed one or more of the proposed changes and 26% (15 of 58) supported the changes.

Definition of "Human Subject" (66% oppose, 20% support, 14% support with qualifiers)

[1] This section includes comments submitted by the Council on Governmental Relations and the Association of Public and Land-grant Universities.

Approximately half of the comments in this section addressed the question of proposed changes to biospecimens. Of the 44 comments that addressed changes to the definition of "human subject," just 20% (9 of 44) supported the proposed changes, 14% (6 of 44) offered qualified support, and 66% (29 of 44) opposed the proposed changes. Comments largely expressed concern that the proposed change in definition unreasonably promotes the ethical principle of autonomy over those of justice and beneficence, and that implementing this change would slow scientific discovery, negatively impact human health, and significantly increase the cost and management burden on research institutions, hospitals, and clinics.

> "The treatment of biospecimens in the NPRM is concerning to the AAMC [the Association of American Medical Colleges] and its member institutions, and the many provisions that address treatment of research with biospecimens fail to achieve any reasonable balance between informing subjects, reducing potential for harm, increasing justice, and facilitating 'current and evolving types of research.'"

> "The administrative hurdles and barriers this would create outweigh the almost nonexistent risk to privacy when conducting secondary research on de-identified biospecimens." – Association for Molecular Pathology

Of those opposed to changing the definition of "human subject," four suggested that if a change were made they would prefer Alternative A – expanding the definition of "human subject" to include whole genome sequencing and two expressed support for Alternative B if a change were made, classifying certain biospecimens used in particular technologies as meeting the criteria for "human subject."

Of interest is a final comment from the American College of Physicians. It notes concern that most comments on the ANPRM were from investigators, and did not present the balanced perspective of "subjects, research ethicists and the research protections community…" It further states:

> "…as ethics is not a matter of majority opinion, we would hope that the many summaries of the "majority of comments" throughout the NPRM do not necessarily represent the direction of the final rule."

Broad Consent (60% oppose, 21% support, 19% support with qualifiers)

Just over half of the comments (48, or 56%) addressed the proposal to require broad consent for all biospecimens, regardless of identifiability. Of these comments, 21% (10 of 48) supported the proposed changes, 19% (9 of 48) supported the changes with qualifiers, and 60% (29 of 48) opposed the proposed changes. Eight (9%) supported notice and 11 (13%) opt-out as alternatives to broad consent.

> "While some members of AMIA [the American Medical Informatics Association] preferred the primary proposal, for many of the same reasons identified by the NPRM, others were concerned the primary proposal would increase burden on clinical staff to capture consent, rather than the research enterprise, where the burden more appropriately lies. Specifically, the primary proposal to get consent during the *obtainment* of a biospecimen for non-research purposes was identified as problematic, misplacing the onus of collecting consent on clinicians."

A society of clinicians and scientists focused on a particular disease area oppose the broad consent mandate for several related reasons:

> "While it may seem like a simple solution to obtain a broad or blanket informed consent from everyone entering into a health care facility, ASH [the American Society of Hematology] is concerned that this requirement will be burdensome for most institutions. Obtaining additional informed consent for storage and future use, and logging responses into a centralized tracking system for each patient may seem small, but such efforts would add up to a significant amount of time and resources spent complying with this regulation."

They further note that these administrative and cost implications can negatively impact justice: they postulate that already underserved populations may be left out of future research:

> "Academic institutions may face monumental costs to implement informed consent procedures and systems to track consent responses. Small community hospitals and/or clinics serving underserved populations will be unlikely to be able to assume this financial and administrative burden, and future studies will therefore likely leave these populations unrepresented. At a time when the diversity of patients included in large epidemiologic studies is a priority, this appears at odds with the research goals of Federal agencies."

<u>Waiver of Consent</u> (85% oppose, 10% support, 5% support with qualifiers)

Twenty (23%) of the 86 comments addressed the proposal to restrict waiver of informed consent in all but "very rare" cases. Of these comments, only 10% (2 of 20) supported the proposed restrictions, and 5% (1 of 20) supported with qualifiers. The vast majority of comments addressing this issue (17 comments, or 85%) strongly opposed the proposed restrictions to IRB waiver of consent.

For example:

> "If the research involves collection of patient identifiers, it is likely necessary to obtain informed consent - though the regulations should not preclude the ability for researchers to get a waiver of informed consent."

> "Above all, we are concerned that the NPRM's proposed provisions for waivers of consent unreasonably limit the flexibility of IRBs to appropriately and effectively exercise their mission to protect subject safety and autonomy and ensure ethical human subject research. We believe that IRBs should be entrusted to exercise judgement in granting waivers of consent for research involving biospecimens or private information."

Single IRB (19% oppose, 81% support)

Half (43 of 86) of the comments addressed the proposal to mandate use of a single IRB for multisite studies. Of these, 81% (35 of 43) supported this proposal, or supported it with qualifiers. Nineteen percent (8 of 43) opposed the proposed mandate.

In support of the mandate:

> "An integrated single IRB will lift the regulatory burden, ease the administrative burden, and increase the harmonization of multi-institutional trials, thus increasing access to promising treatments for patients with blood diseases."

> "The Federation of American Societies for Experimental Biology feels that the efficiencies achieved by eliminating protracted negotiations concerning consent forms and institutional responsibilities will far outweigh any up-front costs incurred through implementation of this policy (Question 74)."

And yet, against the mandate:

> "The proposed change to a single IRB is intended to remove administrative burdens and better facilitate research. It could be helpful to have uniform informed consent and reviews in collaborative research. However… [s]ince issues like conflicts of interest and budgeting will still go through an IRB review process at the local level, mandating a single IRB in regulation may not actually alleviate any administrative burdens. A single IRB may also not be appropriate for all studies. It may be more beneficial to encourage single IRBs through a guidance document which will give the research community time to assess what type of model will be most appropriate. Rushing that process will only create confusion."

Additional Areas Queried

Fifteen percent (13 of 86) of responses included comments on the proposal to extend the Common Rule to all clinical trials regardless of funding source at institutions that receive federal funding for non-exempt and non-excluded human subjects research. Of these, 62% (8 of 13) supported the proposal and 38% (5 of 13) opposed it. Twenty-three percent (20 of 86) commented on proposed security safeguards, with 70% in support (14 of 20) and 30% (6 of 20) opposed. Three comments supported the proposal to post clinical trial consent forms to a public federal website and three opposed the proposed change.

Other Topics

A specific concern was raised regarding the impact of requirements for broad consent on participation in newborn screening. In reflecting on how new requirements could have an adverse impact on important research, one commenter writes:

> "We urge you to examine the rule closely to ensure that the pregnant women and children are not excluded from research simply as a matter of bureaucratic convenience. The protections in the Common Rule should serve as a shield from unethical or inappropriate studies, but not a barrier to important research that will advance our understanding of maternal and child health."

Overarching Concerns

Beyond analyzing responses to the particular NPRM elements elaborated above, we also looked at more general assessments of the status of the NPRM. Fifteen percent (13 of 86) of comments indicated that the NPRM should not move to a final rule.

Professional Societies that submitted comments on the Common Rule NPRM

1. American Psychological Association
2. American Association for Public Opinion Research (AAPOR)
3. Human Factors and Ergonomics Society
4. Student Press Law Center
5. Academy of Nutrition and Dietetics
6. Association for Computing Machinery (ACM), ACM US Public Policy Council
7. Medical Library Association & Association of Academic Health Sciences Libraries
8. Academy Health
9. American Society of Hematology
10. American Nurses Association
11. The Society for Military History
12. American Historical Association
13. National Coalition for Cancer Research
14. Research Society on Alcoholism
15. American Society of Transplantation
16. American Society of Tropical Medicine and Hygiene
17. Joint
    a. American Educational Research Association
    b. **Interuniversity Consortium for Political and Social Research**
    c. Consortium of Social Science Associations
18. Association for Clinical and Translational Science
19. American Society for Histocompatibility and Immunogenetics
20. American Society of Cytopathology
21. The Society for Healthcare Epidemiology of America
22. International Society for Traumatic Stress Studies
23. American Society of Dermatopathology
24. Society of Genetics Counselors
25. American College of Medical Genetics and Genomics
26. Society of Hospital Medicine
27. American Academy of Dermatology
28. Society for Industrial and Organizational Psychology
29. Society for Inherited Metabolic Disorders
30. The Association of Clinical Research Professionals
31. Association for Professionals in Infection Control and Epidemiology
32. Population Association of America
33. Association of Academic Survey Research Organizations
34. American Medical Informatics Association
35. American Society of Nephrology
36. American Political Science Association
37. American Anthropological Association
38. National Association of Medical Examiners
39. American Osteopathic Association
40. American Urological Association

41. Society of Critical Care Medicine
42. American Congress of Obstetricians and Gynecologists
43. American College of Physicians
44. National Association of Medical Examiners
45. Endocrine Society
46. American College of Epidemiology
47. American College of Radiology
48. American Association for Dental Research
49. American Academy of Child and Adolescent Psychiatry
50. Arbor Research Collaborative for Health
51. American Medical Association
52. American Association for Clinical Chemistry
53. Association for Molecular Pathology
54. Association of Directors of Anatomic and Surgical Pathology
55. College of American Pathologists
56. American Academy of Pediatrics
57. Joint:
    a. Infectious Diseases Society of America
    b. HIV Medicine Association
    c. Pediatric Infectious Diseases Society
58. Joint:
    a. American Association for Cancer Research
    b. AACI
    c. ASTRO
59. Society of General Internal Medicine
60. American Academy of Pediatrics
61. American College of Cardiology
62. American Psychiatric Association
63. Coalition for Clinical and Translational Science
64. Joint:
    a. American Congress of Obstetricians and Gynecologists
    b. Association of Women's Health, Obstetric, and Neonatal Nurses
    c. Association of Maternal and Child Health Programs
    d. March of Dimes
    e. Nemours Children’s Health System
65. National Coalition for History
66. American Society for Microbiology
67. Surgical Infection Society
68. American Association for the Advancement of Science (AAAS)
69. Oral History Association
70. Federation of Associations in Behavioral and Brain Sciences (FABBS)
71. Federation of American Societies for Experimental Biology (FASEB)
72. Society for Academic Emergency Medicine
73. American Society for Investigative Pathology
74. Association for Psychological Science
75. United States & Canadian Academy of Pathology

76. Society for Pediatric Pathology
77. EGAP (Evidence in Governance and Politics)
78. American Thoracic Society