# UNIVERSITY OF TENNESSEE HEALTH SCIENCE CENTER
# INSTITUTIONAL REVIEW BOARD
# HUMANITARIAN USE DEVICES (HUD)

## I. PURPOSE

To document the review procedures for applications to utilize Humanitarian Use Devices.

## II. SCOPE

This SOP applies to the IRB administrative staff, IRB members, investigators and sponsors.

**Personnel Responsible:**

University of Tennessee Health Science Center Institutional Review Board administrative staff and Board members.

## III. BACKGROUND

A humanitarian use device (HUD) is one 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 in a calendar year. The FDA authorizes the marketing of HUDs through the issuance of a Humanitarian Device Exemption (HDE). HDEs are intended to encourage the discovery and use of devices intended for the treatment or diagnosis of diseases or conditions that afflict small numbers of individuals who would be left without satisfactory treatment options in the absence of the availability of such devices. HDEs accomplish this goal by allowing device manufacturers to market a HUD in the absence of scientifically valid clinical investigations demonstrating that the device is effective for its intended purpose. Rather, the manufacturer must only provide information indicating that the device will not expose patients to an unreasonable or significant risk, the probable benefit to health outweighs the risks associated with its use, and there is no comparable device available.

Although use of HUDs does not constitute research, FDA regulations governing their use require that the healthcare provider who will use a HUD obtain IRB approval before the HUD is used to treat or diagnose patients. The IRB is responsible for both initial and continuing review of the HUD use. In conducting its initial review, the IRB must determine that use of the HUD will be consistent with the approved labeling for the device. For continuing review, the IRB must follow the requirements at 21 CFR 56, but may use expedited review procedures

unless it determines that full board review should be performed. The IRB may also use its discretion in determining whether to approve the use of a HUD for a given period of time, for a specified number of patients, or on a case-by-case basis. However, the HUD regulations require that the use of the HUD be reviewed by the IRB no less frequently than once a year. After approval by the IRB, the regulations require that the healthcare provider transmit to the IRB any medical device reports related to the occurrence of adverse events that must be submitted to the FDA in compliance with the reporting requirements of 21 CFR 803.

The HUD regulations do not address informed consent requirements for the use of a HUD. However, local IRB policy and applicable law require the informed consent of patients who will receive a HUD. The informed consent disclosure must indicate that the device is a HUD and that its effectiveness for the labeled indication has not been demonstrated. It must also contain a discussion of the potential benefits and risks of receiving the device and the availability of alternative treatments for the disease or condition.

Any clinical investigation of a HUD requires a separate IRB application and approval.

**In Accordance With**:

21 CFR 50; 21 CFR 56; 21 CFR 803; 21 CFR 814, Subpart H

Section 3052 of the 21st Century Cures Act

FDA Guidance on Humanitarian Device Exemption (HDE) Regulation: Questions and Answers, located at
http://www.fda.gov/RegulatoryInformation/Guidances/ucm389154.htm

FDA Guidance for IRBs, Clinical Investigators, and Sponsors: Frequently Asked Questions About Medical Devices, located at
http://www.fda.gov/oc/ohrt/irbs/irbreview.pdf

**Compliance with this policy also requires compliance with state or local laws or regulations that provide additional protections for human subjects.**

## IV. PROCEDURES

1. Full Board review is required for any new application request to employ a humanitarian use device.

2. Investigators must provide the following documents when submitting an application to use a HUD:
   a. Form 1 study application;
   b. FDA HDE letter authorizing marketing of the Humanitarian Use Device;
   c. The HUD manufacturer's product label, clinical brochure and/or other pertinent information regarding operation of the device;
   d. Any patient information packet for the device;
   e. A summary of safety and probable benefits from the device manufacturer;
   f. A written statement from the applicant specifying that use of the HUD will be limited to the clinical indications listed in the FDA-approved product labeling;
   g. Information describing the applicant's clinical experience with the device, any training completed or required, and a list of physicians who will be using the device;
   h. An explanation of the costs that patients will incur with use of the device;
   i. Any advertisements or other descriptive materials that might be used in marketing the HUD; and
   j. A written statement from the applicant specifying that the patient information packet will be given to the patient before the device is used.

3. The informed consent of the patient or the patient's legally authorized representative is normally required prior to the use of the HUD. The UTHSC IRB provides a HUD consent form template on the IRB website that should be utilized. Only the IRB stamped-approved consent form should be used when obtaining consent from patients.

   The consent disclosure must contain the following items:
   a. A description of the HDE/HUD approval process:

   You are being asked to allow the use of a Humanitarian Use Device (HUD) [*name of device*]. A HUD is a device that is intended to benefit patients in the treatment and diagnosis of diseases or conditions that affect not more than 8,000 individuals per year in the United States. This consent form explains how the device will be used. Please read it carefully and take as much time as you need. Please ask questions at any time about any words or information you do not understand. We will explain what treatments you could receive other than the HUD.

   The U.S. Food and Drug Administration (FDA) has approved the use of [*name of HUD*] to provide treatment for patients who have problems with [*name of disease/injury*] and who have failed other treatments. You are eligible to use [*name of HUD*] because you have [*name of disease/injury*] and you have not improved with available treatments. However, you should note that the effectiveness of the HUD for this use has not been demonstrated.

This is not a research study.

[*Include specific location(s) and the corresponding addresses at which the procedures will be performed.*]
The procedures will take place at…

[*Describe how long the patient's treatment will be in hours, days, weeks, months, years; and how long he/she will be followed (ex: for life or provide a range, such as 2-5 years).*]
Your expected treatment time will last … and we will collect information on you for ….

b. A description of the HUD and how this device will be used in the clinical setting and why the patients are candidates for the use of this device;
c. A discussion of possible risks, side effects and/or adverse events associated with the HUD and its proposed clinical use;
d. A discussion of the possible benefits associated with the clinical use of the HUD;
e. A discussion of any alternative treatments or procedures that the patient may wish to consider in lieu of the clinical application of the HUD; and
f. A statement that consent to receive the device is voluntary and a description of the procedures to be followed if the patient decides to discontinue use of the device.

4. In the event that the applicant proposes to use the HUD according to its labeled indications in emergency situations that do not allow sufficient time to secure the consent of either the patient or legally authorized representative, the requirement to secure informed consent may be waived by the IRB. In such cases, the IRB requires that an information sheet, patient brochure, and/or the IRB-approved consent form (unsigned) containing the main elements of informed consent be provided to patients or LAR after the device is used, along with a debriefing interview on the HUD procedure and summary of the main elements of informed consent.

5. At the time of initial review, the IRB will determine whether any further limitations will be placed on the use of the device beyond those specified in the approved labeling, such as use according to a specific protocol. However, any use inconsistent with the FDA-approved labeling is not permitted.

6. Applicants will be required to submit a continuing review report according to a time frame determined by the IRB, but at least annually. This report will include information describing the applicant's clinical experience(s) with the

device. The continuing review will be conducted by the IRB using expedited review procedures unless it determines that full board review should be performed.

7. The healthcare provider must also submit the following items to the IRB on a timely basis:
   a. Any amendments or supplements to the HDE; and
   b. Any reports of adverse effects or device failures submitted to the FDA as required under 21 CFR 803.

8. If the HUD is used in an emergency situation off label to save the life or protect the physical wellbeing of a patient, the procedures outlined in FDA regulations and local IRB policy must be followed as specified in SOP: UTHSC IRB Emergency Use. Note that although the UTHSC Emergency Use policy states that the emergency use of a medical device will occur only if the patient is in a life-threatening situation, the FDA guidance defines "life-threatening" to include diseases or conditions where the likelihood of death is high unless the course of the disease is interrupted, as well as diseases or conditions with potentially fatal outcomes. The criteria for a life-threatening disease or condition does not require the condition to be immediately life threatening or to immediately result in death.

9. For off-label use of a HUD, the procedure outlined in this policy should be followed, with the following exceptions:

   a. In lieu of the information described in (2)(f), the applicant should specify in the HUD application:
      i. How the use of the HUD will differ from its use according to the clinical indications listed in the FDA-approved product labeling;
      ii. Why no alternative treatment exists for the group of patients;
      iii. Why there is no greater risk to the patient from the use of the device than that of his/her disease or condition; and
      iv. What patient protection measure will be taken.
   b. In lieu of the consent template language described in the second paragraph in (3)(a), the applicant should use the following language:

   The U.S. Food and Drug Administration (FDA) has approved the use of [*name of the HUD*] to provide treatment for patients who have problems with [*name of disease/injury*] and who have failed other treatments. In your case, the HUD will be used differently. The device will be used because you have [*name of disease/injury*] and you have not improved with available treatments, or this use of the HUD represents the best alternative treatment for your condition. However, you should note the safety and effectiveness of the HUD for this use has not been demonstrated.

10. All documentation regarding review and approval of the use of the HUD will be maintained in a separate file according to the same record-keeping requirements as for research studies (http://www.uthsc.edu/research/compliance/irb/researchers/documents/study-closure-and-record-retention.pdf ).