

## **The Clinical Use of non-FDA-Approved Drugs and Devices (Includes the terms "Emergency Use," "Compassionate Use," "Expanded Access," and "Right to Try")**

A provider has the ability, under his/her medical license, to use an FDA-approved and legally-marketed drug or device to treat a patient, even if that treatment is outside of the product's FDA labeling. There are times, however, when a provider may think that the best possible treatment for a patient is a drug or medical device that is **not** FDA-approved or legally marketed in the United States. Such unapproved drugs or devices are not available for routine clinical care; i.e., a provider cannot write a prescription or order the treatment through usual mechanisms. The FDA does provide options to facilitate the use of unapproved products, but it must take one of the following pathways; the pathways differ at some points, depending on whether it is an unapproved drug or unapproved medical device that is to be used. Colorado's new "Right to Try" law does not change the FDA defined process to access investigational drugs and devices as defined by FDA regulations.

### **I. Emergency use of an unapproved drug or device**

Emergency use is only possible when a subject is facing an immediate life-threatening or severely debilitating situation, in which no standard acceptable alternative treatment is available and there is not sufficient time to obtain prospective full IRB review. In these cases, the provider must:

- 1) Contact the manufacturer to see if provision, or emergency use, of the unapproved drug or device is possible. Contact with the FDA might also be required; if so, this is usually handled by the manufacturer.
- 2) Contact COMIRB to discuss the anticipated emergency use; note that only one emergency use can occur at each of the UCD-affiliated hospitals; after the first use, there must be an IRB-approved protocol in place. COMIRB will inform you of whether your particular drug or device has been used previously at your institution.
- 3) Follow the steps on COMIRB's Emergency Use form. This form must be completed and submitted to COMIRB, preferably before the emergency use of the unapproved drug/device, but in no case later than 5 days after use.

If the treatment with an unapproved drug or device is not an emergency situation, as described above, a process involving prospective IRB review must occur under FDA's "Expanded Access" program.

Compassionate use of an unapproved drug or medical device can generally be considered when there is an existing IND or IDE study for that drug or device being conducted by a manufacturer, but there is a patient that does not qualify for the study or the study is not offered in the patient's locale.

Compassionate use can also be sought for drugs and devices that are approved in other countries, but not within the United States.

### **Compassionate Use requests utilize the following processes:**

### **II. Compassionate use of an unapproved device**

- 1) The provider should first contact the manufacturer to see if it is willing to allow their device to be used for compassionate use treatment. If no, the device cannot be used.
- 2) If the manufacturer is willing, the FDA must be contacted to issue a treatment IDE; this IDE can be for a single patient or for small to intermediate groups of patients.
- 3) Complete COMIRB's 'Compassionate Use of an Investigational Device' form. This form details the additional supporting documents that are needed for submission, including a consent form (often available from the manufacturer). It is important to make clear that no safety or



effectiveness data are being collected about the device; it is only being used for treatment, with planned adverse event reporting to the IRB and Sponsor.

- 4) Contact the COMIRB Director by phone to discuss the case. You will be directed to E-mail the request form and supporting materials to the Director.
- 5) This submission does not require full committee review; rather, it is reviewed for IRB Chair concurrence that the criteria for compassionate use have been met. You may not use the device until you have received a letter of concurrence from the IRB Chair.
- 6) The provider must submit a COMIRB's Compassionate Use Follow-up form no later than one year after the device use. The Follow-up form must be submitted annually thereafter until the device is explanted, no longer being used, or the patient is deceased.

### III. Expanded Access use of an unapproved drug

An expanded access use request for an unapproved drug is much like any other full board submission to COMIRB. It requires an Application form, protocol, and consent form, at minimum.

- 1) The provider should first contact the manufacturer to see if it is willing to allow their drug to be used for compassionate use treatment. If no, the drug cannot be used.
- 2) If the manufacturer is willing, the FDA must be contacted to issue a treatment IND; this IND can be for a single patient or for small, intermediate, or large groups of patients. Sometimes, a manufacturer has already made such a submission to FDA, but often it must be made for your particular use case (often the clinical provider must make this submission, particularly when it is for single-patient use).
- 3) Complete an Application form; this can be difficult to fill out since the form is geared toward research. At every opportunity, indicate that this is not a research study, but compassionate clinical treatment with an unapproved drug. Do not mark 'yes' for any vulnerable populations; the research regulations governing these special populations are not applicable to this treatment protocol. Mark 'yes' for the use of drugs and complete Attachment C.
- 4) Note that no data should be collected for this treatment and sent to the manufacturer, and no procedures outside of what is needed to care for the patient should be included in the protocol. Reporting of any adverse events to the manufacturer still must occur.
- 5) Submit the documents through InfoEd, as you would a research study. Call the panel that receives the submission to put them on alert that the submission just made is a compassionate use treatment protocol.
- 6) The submission will be reviewed by a full IRB committee; you may not use the drug until you have received an approval letter from COMIRB.
- 7) Annual continuing reviews of the compassionate use protocol are required. Treatment may not be provided or continued on any protocol that expires.

### Available Campus Resources

As there is an administrative burden to the requirements for clinicians to use the current FDA pathways especially when requesting Compassionate Use of an Unapproved Device or Expanded Access use of an Unapproved drug, the University of Colorado Anschutz Medical Campus recommends that clinicians contact staff at the Clinical Research Support Center via e-mail at [ClinicalResearchSupportCenter@ucdenver.edu](mailto:ClinicalResearchSupportCenter@ucdenver.edu) or 303 724 1111. The staff at the support center can assist you to complete the required paperwork and facilitate the follow-up safety reporting.

Applicable forms are available at:

<http://www.ucdenver.edu/academics/research/AboutUs/comirb/forms/Pages/default.aspx>