October 26, 2011

Jerry Menikoff, M.D., J.D.
Office of Human Research Protections
Department of Health and Human Services
1101 Wootton Parkway, Suite 200
Rockville, MD 20852

RE: HHS-OPHS-2011-0005

Dear Dr. Menikoff:

The American Cancer Society (the "Society") and the American Cancer Society Cancer Action Network ("ACS CAN") respectfully submit the following comments for your consideration regarding the Department of Health and Human Services (DHHS), Food and Drug Administration ("FDA") Advanced Notice of Proposed Rule Making ("ANPRM"), Human Subjects Research Protections: Enhancing Protections for Research Subjects and Reducing, Burden, Delay, and Ambiguity for Investigators (the "Common Rule") published in the Federal Register on July 26, 2011.

The Society is the leading nationwide community-based voluntary health organization dedicated to eliminating cancer as a major health problem. ACS CAN is the nonprofit, nonpartisan advocacy affiliate of the Society, supporting evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. Our organizations share a critical interest in medical research.

For more than 60 years, the Society has funded research and training of health professionals to investigate the causes, treatment, prevention, and early detection of cancer. Since 1946 our efforts in supporting investigators have resulted in contributing more than $3.5 billion to cancer research, making us the largest non-government, not-for-profit funding source of cancer research in the United States. The 46 Society-supported researchers who have won the Nobel Prize represent a track record unmatched in the non-profit arena. The work of these researchers and the over 900 currently funded investigators will continue to inform the area of cancer detection and diagnosis as well as treatment. The Society's investment in cancer research facilitates medical advances and is amplified by the training impact of future professionals who will contribute to more discoveries. As both a research institution and a supporter of other health professionals in pursuing cancer research, the Society welcomes the opportunity to comment on proposed changes to the Common Rule.

ACS CAN has nearly half a million advocates across the nation who urge the federal government to fund billions of dollars in cancer research through the National Institutes of Health ("NIH"). ACS CAN recognizes the importance of ensuring that government tax dollars are spent wisely to find cures for cancer more quickly and efficiently. To this end, ACS CAN has continually advocated not just for a well-funded national research program, but also for better ways to build on the insights gained through previous discoveries and develop new treatments for patients. ACS CAN is actively engaged in efforts to promote a strong national cancer clinical trials system that would make clinical research more efficient and more cost effective, while ensuring patient safety and privacy. As the leading national voice for cancer patients and their families, ACS CAN views the proposed changes to the Common Rule as an important step toward improving the way clinical research is conducted in the United States.

In addition, our organizations care deeply about individuals, and want to ensure that patients and research participants are informed and treated with respect. The Society offers direct and indirect assistance to cancer patients and their caregivers through a variety of support programs. For example, our Road to Recovery program provides transportation to and from treatment for people who have cancer and who cannot find their own ride. Volunteer drivers donate their time and the use of their cars so that patients can receive the life-saving treatments they need. Similarly, ACS CAN is comprised of passionate cancer advocates, each with a personal story that informs their work to eliminate the disease.

As organizations directly involved in patient and research advocacy, we offer a unique perspective on the Common Rule and its importance to our mission and goals.

Streamlining IRB's for Multi-Site Trials

We have consistently supported the Central Institutional Review Board ("CIRB") initiative first proposed by the National Cancer Institute ("NCI") in 2001, and thus strongly support the FDA's proposal that would require only one IRB of record for multi-site clinical trials. Many Society-sponsored research studies are conducted by cooperative groups that conduct trials on a national and oftentimes international scale.

Having one IRB of record for multi-site trials would increase efficiencies in these large-scale research endeavors by removing the responsibility of sponsors and other interested parties from having to review and respond to research protocol and related documentation changes made at any one study site. This change would result in a significant time savings for researchers and help achieve faster medical advances. It is the experience of Society-sponsored researchers that the minor changes local IRBs submit to protocols and consent forms do little more than delay the start of the trial and increase the administrative burden placed on investigators, as opposed to contribute to maximizing benefits and reducing risks to study participants.

At the same time, we feel it is critical to account for local perspectives. Currently, local IRBs may consider pertinent cultural and regional concerns and needs that are integral in ensuring human subjects protections during the clinical trial review process. However, we believe that such specific local considerations can be addressed through other mechanisms. In instances where local consideration may be particularly important (*e.g.*, Native American populations,

primarily Spanish speaking populations), local organizations can continue to have a role in the review process through non-IRB operational committees such as an ethics committee or research review committee.

Likewise, we agree with the FDA's proposal to require only one IRB of record for multi-site clinical trials as it does not prohibit local institutions or hospitals from conducting internal reviews for ethical considerations or taking other actions to ensure the needs of local patients are being adequately addressed. However, review by local operational committees should be limited to specific instances where local perspectives are essential to the protection of the research subjects. In adopting such a proposal, we urge you to clearly define instances where local review of multi-site clinical trials would be appropriate, the extent to which such review should be conducted, and how such a review would impact the entire multi-site trial. We believe that any such review should address local considerations only and not address considerations that would impact the multi-center trial as a whole. Such provisions would ensure that local input is conducted only when necessary, thereby accomplishing the proposed goal of streamlining the multi-site IRB review process.

Streamlining IRB's Generally

The Society and ACS CAN support the ANPRM's proposed methods for decreasing the time it takes a study to get through the IRB review process. Specifically, we support the proposal to calibrate the level of IRB review with the level of associated risk, eliminate continuing review when the research activities are limited to data analysis or follow-up only, as well as proposed changes to the expedited review process. We agree that such changes will increase the efficiency and effectiveness of IRB review by alleviating the burden placed on IRBs. As a result, IRBs will have more time to review the information most pertinent to ensuring human subjects research protections.

Privacy Changes

The Society is committed to protecting the privacy and confidentiality of any and all individual health information to which it is provided access, and utilizes security measures to protect any identifiable health information in its possession from improper use, disclosure or access. We recognize that improper disclosures of identifiable health information can occur in the research setting and agree that certain safeguards need to be implemented to protect the privacy of research subjects.

Question 54 of the ANPRM asks whether use of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule's standards for identifiable and de-identified information would facilitate the ANPRM's proposal to increase data security protections for human research subjects. We believe that it does, and we therefore support the Department's proposal to apply the HIPAA Privacy Rule standards to research studies as the application of these standards in the research context would further protect the privacy and confidentiality of cancer patients' identifiable health information.

Further, comments addressing whether there should be an absolute prohibition on re-identifying de-identified data were requested. We encourage the Common Rule to allow the re-identification of de-identified data as Society-funded researchers often obtain and perform research on de-identified specimens from cancer patients. In many cases, to facilitate the research, the investigators need to obtain personal health information of the individuals that donated such specimens to analyze the correlation between their findings and the donor's medical history.

Thus, we support the ANPRM's overarching initiative to increase the privacy protections of human subjects through the application of the HIPAA Privacy Rule to research, but do not believe this goal will be furthered by preventing researchers from re-identifying de-identified data or specimens.

Changes to the Rules Governing Collection of Biospecimens

As mentioned above, we are committed to protecting the privacy and confidentiality of human research subjects, and support the ANPRM's proposals to further enhance protections surrounding the use of patient biospecimens. We agree with the proposal that written consent should be required for use of biospecimens collected for clinical purposes and later used for research purposes. Requiring patients to give written consent for future research of their biospecimens is an important means of ensuring they understand and agree with such use. To this end, consent forms must be clear and understandable, including being available in the language spoken by the patient.

In addition to their use in medical research, biospecimens are critical to cancer detection, prevention, and treatment. Thus, we support the proposal that any consent for the future use of a research subject's biospecimens covers ***all*** biospecimens collected and related to a particular set of institution-specific encounters for the patient. Allowing a broad consent for the use of patient biospecimens prevents researchers from having to re-consent patients that are consistently providing samples at a hospital or institution.

We support the proposal that changes to biospecimen consent procedures be applied *prospectively* only. New consent procedures should apply as of the effective date of the final rule, as it would be extremely burdensome (and in some cases impossible) for researchers who have been collecting clinical biospecimens for many years to obtain after-the-fact consent.

This is especially important in the case of cancer-related research, as specimens that were collected decades ago are still being analyzed and used today. For example, a Society-sponsored study conducted in the 1980s collected biospecimens which were used 20 years later to develop a 21-gene diagnostic test to predict which cancer patients would respond to chemotherapy as a treatment course. This test ultimately resulted in a 50% decrease in the number of individuals receiving chemotherapy treatment, while increasing survival rates and decreasing the cost of treatment for this specific cancer by over $100,000,000. Therefore, we believe it is critical to have the ability to analyze previously donated biospecimens in ways that are not anticipated at the time of collection.

Harmonizing Common Rule Regulations Across all Federal Agencies

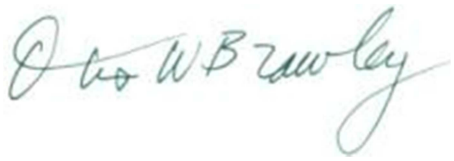
We also support the ANPRM's proposal to harmonize the Common Rule and FDA regulations governing human subject research across all federal agencies. As explained in the ANPRM, these regulations are inconsistent, leading to compliance and administrative challenges for providers participating in government and industry sponsored cancer clinical trials.

Conflicting regulatory requirements weaken research protections for human subjects. Having separate regulations governing adverse events, conflicts of interest, and the operation of data safety and monitoring boards creates confusion as it places a complex burden on investigators. Streamlining the Common Rule regulations would allow researchers to more effectively conduct and report their research findings, which in turn would better protect human subjects. Minimizing confusion would likely lead to better compliance.

Conclusion

Thank you for the opportunity to comment on the ANPRM addressing the Common Rule. The Society and ACS CAN remain committed to ensuring our constituents are adequately protected, while raising awareness on cancer prevention and making strides in finding the cure for cancer.

Respectfully,



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