Guidance and Requirements for Penn Investigators

Recruitment and Compensation to Research Participants

This document contains multiple sections:

1. Requirements for Direct Recruitment of Patients

2. Research Recruitment Materials

3. Payment to Subjects Participating in Research

4. Payment for Referral / Recruitment of Subjects in Human Research (Finders Fees and Bonus Payments)
Contacting patients for recruitment purposes is permissible under the federal HIPAA regulations and is described in the Notice of Privacy Practices (NPP) that Penn Medicine patients acknowledge before clinical care is delivered. It is standard practice for clinical and research teams within Penn Medicine to communicate with patients in various ways including, but not limited to; via patient portal (MPM) messages mobile health devices, by phone, electronic surveys, in person at the time of in-clinic visits or hospital admissions, or indirectly via a clinician in another practice or specialty.

Regarding contact for research recruitment, IRBs are required to review and approve the appropriateness of the recruitment methods proposed in a research study. The IRB may seek advice and guidance from other PSOM central support offices, such as the Office of Clinical Research (OCR) and the Office of Audit Compliance and Privacy (OACP), when assessing feasibility, appropriateness and privacy considerations.

When investigators are writing their recruitment plan in their protocol, they must describe the eligibility characteristics of the study population, and where, when, and how the participants will be recruited. This ensures that an assessment by both the investigator and the IRB can be done that will ensure recruitment practices are ethical, equitable, and minimally intrusive.

Guiding principles for engagement with patients directly for research participation must be routinely practiced and include the following:

- Consider the optimal population to target those who are most likely interested in participation while minimizing the number of unsolicited contacts.
- Consider the sensitivity of the patient data being accessed to conduct the study and the patient population being recruited. For example, a research team should not contact a patient directly for studies involving mental health information, HIV status, infertility, genetic information, substance abuse.
- Consider using, whenever possible, more secure modes of contact or recruitment such as MPM messaging, best practice advisory alerts, and volunteer registries where consent to contact has already be obtained.
- Consider if it is important for the health and welfare of the patient that their care provider is involved.
- In some studies, the patient’s provider should be contacted in advance of outreach to the patient and /or should communicate clinically relevant information during study execution.
- Provider contact may not be necessary in minimal risk studies, for example studies in which phone calls or MPM messaging would not be unexpected (sleep study, smoking cessation study in otherwise healthy population).
- Provider contact may also be not be necessary or practical in certain studies, for example a study seeking patients with eczema where the patients might be under the care of several providers.
- Do not reach out to patients who have opted out of being contacted for research studies. The DAC will not provide patient information for those patients who have opted out. It is important for teams to not maintain their own lists of eligible patients since someone may opt out at any time.
- Inform patients of how they were identified and provide the ability to opt out of future research contact or create a volunteer profile.

These principles should be applied by both research staff recruiting Penn Medicine patients and the IRB when reviewing recruitment plans as part of overall research review.
The Institutional Review Board is responsible for reviewing study recruitment procedures and materials to ensure protection of the rights and welfare of human subjects and equitable subject selection into research [21 CFR 56.107(a), 56.111(a)(3)]. Any method of advertisement must be approved by the IRB before it is implemented. All advertisements must comply with informed consent and subject selection regulations pursuant to 21 CFR 50.20, 50.25, and 56.11(a)(3) as well as the institutional policy described in this document.

Investigators must submit recruitment materials, as they will be implemented, to the IRB for review along with the initial protocol submission, or as an amendment for review through an expedited mechanism.

The IRB requires approval of the following types of advertisements and recruitment materials:
- The final copy of printed materials (i.e., newspaper, posters, flyers, pamphlets)
- Direct recruitment scripts (i.e., telephone scripts)
- The final audio and video recruitment materials
- National ad campaigns
- Internet advertising (postings on federally maintained sites such as clinicaltrials.gov do not need prior IRB approval)

All advertisements must not be coercive, must not promise a possibility of benefit beyond what is outlined in the consent and the protocol, must portray accurate information, and must direct potential subjects to proper personnel for further information. This is particularly important when a study involves subjects who may be vulnerable to undue influence. [21 CFR 50.20, 50.25, 56.111(a)(3), 56.111(b) and 812.20(b)(11).]

**Recruitment materials should include the following information:**
- The name and location of the institution and center/department conducting the research
- The name of the PI or department if appropriate
- The word “research”
- Statement or condition under study and brief description of the purpose of the research
- A brief list of the procedures involved
- A brief summary of the eligibility criteria
- A statement of the approximate time commitment required, if appropriate
- A brief description of the compensation/reimbursement,
- Contact for further information, with telephone number

**Recruitment materials should NOT include:**
- Exculpatory language
- Any language that would contribute to therapeutic misconception (research subject’s belief that enrolling in study will contribute to direct therapeutic benefit) for example: the use of the words “new treatment,” “new medication,” or “new drug.”
- Claims about the efficacy, safety, or superiority of investigational agents, or the security of confidential information
- Enticing or inducing terms such as “free,” “new,” “exciting,” “opportunity,” “limited opportunity,” “you deserve to feel better.”
- A promise of free treatment when the intent is only to say participants will not be charged for taking part in the investigation.
- Inducing phrases such as “limited enrollment,” “call today” or “study ends soon”
- Overemphasis on compensation but should not emphasize the payment or the amount to be paid by such means as larger or bold type. If the payments will be prorated, the ad should make this clear. For example, instead of stating, $300 compensation,” the ad should state that subjects will receive $50 for each of six completed visits.
- Compensation for participation in a trial offered by the sponsor to involve a coupon good for a discount on the purchase price of the product once it has been approved for marketing.
- Links to sites/resources that are not IRB approved.
University of Pennsylvania  
Department of Neurology  
Is Conducting a Research Study on:  

**Diet and Exercise in Pre-diabetes and Painful Neuropathy**

At the University of Pennsylvania Hospital
- If you are between the ages of 35 and 75, and
- Have been diagnosed with pre-diabetes or impaired glucose tolerance, or are at risk, and
- Have pain or numbness in hands and/or feet

You may qualify for a research study examining the effects of diet and exercise on painful neuropathy.

Eligible subjects will undergo neurological evaluations and will receive diet and exercise counseling, 1 hour a week for 8 weeks. Subjects will be compensated for travel.

Principal Investigator: I. Arby Smart, MD
For more information call Ayaar Bee, RN 215-555-555
The UPenn
Department of Neurology
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- Conservative graphic/logo
- Name of institution
- Name of department
- “Research”
- Condition under study
- Location of research
- Inclusion criteria
- Purpose of research
- Procedures/ Time required
- Compensation
- PI
- Contact information
The Penn IRB is responsible for reviewing the rates, forms and schedules of remunerations to subjects participating in research at the university. It is the IRB’s charge to ensure that the amount of remuneration and the proposed method and timing of disbursement do not present undue influence to subjects.

Definitions:

**Compensation**: Payment or medical care provided to subjects injured in research; does not refer to payment (remuneration) for participation in research.

**Remuneration**: Payment for participation in research. (NOTE: It is wise to confine use of the term "compensation" to payment or provision of care for research-related injuries.)

This guidance refers to *remuneration* as defined above. Determinations of forms and rates of payment to subjects for participation in research present some of the more challenging ethical issues in human subjects research design. It is accepted that, under many circumstances, subjects should receive payment for research participation, as a way to reciprocate for time, effort and inconvenience and demonstrate gratitude to subjects as well as help researchers fulfill study objectives. While subject remuneration has its merits and benefits, paying subjects for their participation can also present negative ethical consequences, as payments have the potential to impinge upon the free choice and autonomy of subjects.

Current regulations do not provide guidance on appropriate methods or rates of subject payment. Department of Health and Human Services (DHHS) [45 CFR 46.116] regulations state that “an investigator shall seek consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence” (emphasis added).

Food and Drug Administration (FDA) regulations state that IRBs have the responsibility to “review both the amount of payment and the proposed method and timing of disbursement to assure that either are coercive or present undue influence [21 CFR 50.20].” As such, neither regulatory source endorses, prohibits or provides direction on acceptable practices regarding payment to subjects.

Given the lack of direct guidance on the matter, the charge within DHHS and FDA regulations for IRBs to review payment practices, and the challenging nature of establishing these practices in protocol design, the purpose of this document is to outline guidance and factors that the IRB will consider when reviewing payment to subjects participating in research.

**Guidance: Reasonable Remuneration and the Avoidance of Undue Influence:**

The main ethical concern with remunerating subjects for participation in clinical research is that payment has the potential to constitute undue inducement, distorting the judgment of subjects and affecting the voluntary nature of their informed consent.

Commonly the concern is stated that payment has the potential to represent “coercion.” Coercion, in its simplest definition, involves a threat that makes a certain choice irresistible. The concept of coercion identifies situations where the intentional threat of harm is used to compel someone to do something, i.e., the classic “your money or your life” scenario.
Considering this definition and today's regulatory systems, coercion is not the chief concern when considering remuneration to subjects. The potential for “undue inducement,” therefore, is the main concern when considering the effects of payment to subjects. In order to prevent the undue inducement of subject, the IRB offers the following guidance:

- The IRB considers remuneration as an undue inducement if the nature of the payment is such that it has the potential to alter a subject’s decision-making process such that she or he may not appropriately consider the risks of participating in the research.
- It is the IRB’s position that remuneration to subjects participating in research should be reasonable, equitable and comparable to other studies involving equivalent time, effort and inconvenience.
- Remuneration should not be contingent upon the subject completing the entire study. Payment of a small proportion as an incentive for completion of the study has been stated as acceptable to FDA, providing that such incentive is not so large as to unduly induce subjects to stay in the study when they would otherwise have withdrawn. For short studies involving one visit, depending on the nature of the study, it may be acceptable to provide payment contingent upon completion, provided that if subjects are disqualified through no fault of their own they receive appropriate payment for their time and effort prior to their exclusion.
- Payment to subjects who withdraw from the study may be made at the time they would have completed the study (or completed a phase of the study) had they not withdrawn, unless this may create undue inconvenience or a coercive practice. Payment to subjects who withdraw should be prorated to reflect the time, effort and inconvenience to the subjects participation to the point of withdrawal.
- Payment should be prompt.
- The amount, method, schedule, form and prorating of remuneration should be described clearly in the informed consent form.
- Non-monetary forms of remuneration such as gift cards/certificates are acceptable forms of payment. The monetary value of these forms should be considered as equal to cash payment. The form of payment should be clearly described in the consent form.
- All information regarding remuneration to subjects should be detailed in the appropriate field of the IRB application for each submitted protocol.
BACKGROUND:

Bonus payments for subject recruitment and finder’s fees for subject referral may compromise the integrity of a research study by giving an appearance of affecting the judgment of the investigator/research team and in some cases may violate federal law. Ethical conduct of research requires that the participation of all human volunteers be completely voluntary. Particularly in a health care setting where relationships are hierarchical, it is important that there be no suggestion of subtle encouragement for any person’s participation in a research study by someone who will receive a finder’s fee or bonus payment if that person is enrolled as a subject.

The American Medical Association, and RhPHARMA have issued guidelines suggesting that finder’s fees and bonus payments may represent real or perceived cases of fee-splitting a well recognized and unethical behavior. Individuals participating in the conduct of research should be reimbursed only for activities directly related to performance of the research and at a rate not exceeding the fair-market value for the level of activity performed. Federal Medicare anti-kickback laws may also prohibit finder’s fees and bonus payments if there is real or apparent billing of standard of care costs as part of the research activity.

In addition, the University of Pennsylvania IRB believes that finder’s fees and bonus payments to investigators and study staff create a potential conflict of interest. Specifically, the investigator may be motivated by financial interest to refer a patient when such referral might not be of any benefit to, or in the best interest of the subject. Finder’s fees to physicians or nurses may diminish the patient’s free choice in deciding whether to volunteer for a clinical study. Specifically, the patient may rely unduly on the physician’s or nurse’s recommendation to enroll, against his/her own better judgment.

Finally, the IRB believes that there does need to be guidance for investigators who wish to recruit subjects for research activity and where outside third parties need to be reimbursed for their activities in such manner as to avoid the appearance of fee splitting.

GUIDANCE:
Payment of Finder’s Fees and Bonus Payments to University of Pennsylvania Physicians, Investigators or Study Staff by External Sponsors

The Institutional Review Boards do not approve of finder’s fees being paid to University of Pennsylvania or UPHS investigators, physicians, nurses, and others who have a treating and/or counseling relationship to a subject being referred for enrollment in a clinical trial. The Institutional Review Boards do not approve of finder’s fees being paid to any, house staff or University of Pennsylvania Health System (UPHS), or University of Pennsylvania employee for referring or recruiting prospective subjects. The IRB may review and approve small, nominal value gifts to staff organizations as long as such gifts are not based on any indicator of trial enrollment.

All payments for the conduct of a research project must be negotiated at the beginning of the study and not provide for additional payments based on either number or rate of subject enrollment. Payments tied to the number or rate of subject enrollment are considered to be bonus payments and are not permissible. Supplemental payments, or additional compensation, payments, or other incentives beyond nominal (less than $100 in value) must be negotiated as
part of an addendum to the clinical agreement and reported to the IRB. The investigator, physicians and staff must be aware of the existing reporting requirements under the University Policy on Conflicts of Interest should there be any change in their financial relationship with any sponsor during the performance of a research study.

**Payment of Finder’s Fees to Referring Physicians or Others Outside the University of Pennsylvania or University of Pennsylvania Health System**

Finder’s fees include any payment or gift to an individual who identifies or assists in the recruitment of prospective subjects.

The use of finder’s fees to elicit recruitment of research subjects from outside the University of Pennsylvania or University of Pennsylvania Health System is discouraged. In some cases, it may be acceptable for investigators to offer a nominal incentive if the IRB can be assured that the person who receives that incentive will in no way encourage subjects to enroll in a study and that applicable laws are not violated. Each case must be considered individually. The use of any compensation (payment, gift, etc.) must be reviewed and approved by the IRB prior to being initiated. Payment to physicians outside of the University of Pennsylvania Health System (UPHS) should be structured as a contract with the referring physician(s) and provide reimbursement for actual services rendered by the physician or their staff for the recruitment purposes.

If an investigator wishes to consult the IRB regarding this issue, the following questions must be answered as part of the protocol submission:

- What compensation will be offered (for example, money, textbook, dinner, movie pass)?
- Who will obtain consent or HIPAA authorization (if applicable) from the subject?
- To whom is the compensation being offered and what is the person being asked to do?
- Could the compensation provided be coercive or appear to be linked to successful enrollment in the study?
- Will the subject or their insurance be charged for any study-related activity?
- If a person is enrolled in the study, will there be a change in the responsibility for patient care? For example, will the study investigators now provide primary treatment for a problem?

The IRB requires that the role of a person not directly involved in the study who is identifying potential subjects be limited to asking the potential subject if he/she would be willing to talk to a researcher about a relevant study. If the potential subject is not interested, no further encouragement should occur.

Compensation to the person assisting in identifying potential subjects should be made whether or not the potential subject enrolls in the study.