March 27, 2020

FDA and NIH Release Guidance on Ongoing Clinical Trials Affected by COVID-19

The COVID-19 pandemic has had a major impact on the conduct of clinical trials worldwide. Restrictions on travel, dislocation of clinical trial subjects, and the need of many health care facilities to handle an influx of patients with COVID-19 have combined to disrupt the conduct of clinical trials. This has led to sponsors, investigators, and institutional review boards (IRBs) needing to make quick decisions regarding whether to make modifications to, or even to suspend, many clinical trials. Recognizing the impact of COVID-19 on clinical trials, on March 16 and March 18, 2020 the National Institutes of Health (NIH) and the U.S. Food and Drug Administration (FDA), respectively, released guidance regarding the conduct of clinical trials during the COVID-19 pandemic. This alert summarizes both sets of guidance and notes certain considerations for clinical trial sponsors and sites.

NIH Guidance

On March 16, 2020, two days before the FDA issued its guidance, the National Institutes of Health (NIH) released guidance concerning the conduct of NIH-funded clinical trials and human subjects studies during the COVID-19 pandemic. The full NIH notice can be found here. NIH encouraged institutions to take all measures necessary to ensure the safety of human subject participants and research staff, including limiting study visits to those necessary for participant safety or coincident with clinical care, utilizing virtual study visits, and allowing flexibility for required laboratory tests or imaging to occur locally.

FDA Guidance

Two days after the NIH issued its guidance, the FDA issued guidance on clinical trials, which can be found here. In light of the ongoing public health emergency, the FDA noted several challenges affecting the conduct of clinical trials. Examples of such challenges include that protocol modifications may be required and that protocol deviations due to COVID-19 illness and/or control measures may become unavoidable. In providing guidance on the conduct of ongoing clinical trials, the FDA emphasized its focus on ensuring the safety of trial participants and preserving data integrity by documenting measures taken in response to disruptions to study conduct caused by COVID-19. Other key considerations the FDA outlined include the following:

- Participants should continue to be informed of any modifications to study conduct that may affect them.
- Sponsors may consult with investigators and IRBs to determine whether a participant is best served by continuation in the trial, by discontinuation of administration or use of the investigational product or by discontinuation of participation in the trial.
- Sponsors should consider feasible alternative methods to on-site safety assessments and whether any such methods are sufficient to assure the safety of participants, particularly in deciding to continue administration or use of the investigational product. Alternative methods may include the use of telephone contacts, telemedicine contacts, or alternative locations for assessments, such as using a local laboratory in place of the study site's laboratory.

- Health care system-mandated COVID-19 screening procedures do not need to be reported as an amendment to the clinical trial protocol unless the Sponsor is using the data collected from the screening as part of a new research objective.
- Protocol or informed consent changes to minimize or eliminate immediate hazards or to protect the life and well-being of participants, including to limit exposure to COVID-19, may be implemented without IRB approval or before filing an amendment to the IND or IDE; however, these changes must be reported to the IRB after being implemented.
- Regulatory requirements for maintaining investigational product accountability remain in effect. Certain investigational products may allow for alternative secure delivery methods if site visits are significantly affected. For investigational products normally administered in a health care setting, FDA review divisions should be consulted regarding any plans for alternative administration.
- Sponsors should consult with FDA review divisions regarding COVID-19 effects on efficacy assessments and protocol changes affecting data management and/or statistical analysis plans.
- Sponsors, investigators and IRBs should consider establishing policies and procedures describing measures taken to protect trial participants and to manage study conduct in response to COVID-19 disruptions.

Observations

Both the FDA and NIH guidance highlight the need for communication between sponsors, investigators and IRBs regarding changes that may be needed to the conduct of a study in light of COVID-19. The documents stress that each study should be evaluated on its own facts to strike a balance between preserving the integrity of the study while ensuring the safety of study participants.

In addition to the guidelines provided in the FDA and NIH guidance documents discussed above, study sponsors and sites should consider the interplay of their clinical trial activities with other health care regulatory modifications occurring as a result of the COVID-19 pandemic. For example, clinical trial sites considering the use of telehealth technologies to replace physical study visits should consider the waivers on certain telemedicine requirements at the federal and state levels, discussed in our earlier alerts [here and here] and clinical trial services billable to federal health care programs should consider changes in reimbursement announced by the Centers for Medicare and Medicaid Services, also discussed in earlier alerts [here].