

Campus Administrative Policy

Policy Title: Clinical Trials

Policy Number: 2009 Functional Area: Finance

Effective: October 31, 2012
 Date Last Amended/Reviewed: October 31, 2012
 Date Scheduled for Review: July 1, 2019
 Supersedes: Fiscal Policy for Clinical Trials (September 1, 2011)

Approved by: Vice Chancellor of Research

Prepared by: Director of the Office of Grants and Contracts
 Reviewing Office: Executive Vice Chancellor for Administration and Finance

Responsible Officer: Director of the Office of Grants and Contracts

Applies to: CU Anschutz Medical Campus
 CU Denver Campus

A. INTRODUCTION

The purpose of this policy is to establish guidelines and procedures for the management of clinical trials.

It is the responsibility of the various administrators throughout the University to comply with this policy. It is the responsibility of the CU Denver | CU Anschutz (“university”) Director of Grants and Contracts and the university Controller to ensure compliance with this policy.

B. TABLE OF CONTENTS

A. Introduction..... 1
 B. Table of Contents..... 1
 C. Policy Statement 2
 D. Procedures..... 2
 1. Clinical Trial Agreements 2
 2. Facilities and Administrative Costs..... 3
 3. Intellectual Property 3

4. Study Data Access, Use and Notices.....	3
5. Termination Dates and Extensions.....	4
6. Invoicing and Financial Reporting.....	4
7. Hospital/Patient Care Charges.....	4
8. Time and Effort.....	6
9. Positive Cash Balance Requirement.....	7
10. Residual Balances.....	8
11. Principal Investigator Records Retention Responsibilities Specific to Clinical Trials.....	8
12. Indemnification.....	8
13. HIPAA.....	9
14. Informed Consent.....	10
Notes	10

C. POLICY STATEMENT

A clinical trial is the prospective evaluation of a technology or product (pharmaceutical, surgical procedure, medical device, vaccine, diagnostic test, or technique) beginning with pre-clinical animal pharmacological and/or toxicological studies and extending through phase I, II, III, and IV human studies. Inherent in this definition is the exclusion of discovery or early research and development endeavors relating to technology or product. Clinical trial agreements must be processed for review and approval in the same manner required for sponsored program grants and contracts. Clinical trial agreements must provide reimbursement for Facilities and Administrative costs incurred by the university. All clinical trials shall be performed in conformance with generally accepted standards of good clinical practice with the Protocol, and with all applicable local, state and federal laws and regulations governing the performance of clinical investigations including but not limited to the Federal Food, Drug, and Cosmetic Act and regulations of the Food and Drug Administration.

The university requires a written clinical trial agreement with sponsors of proposed clinical trials as set forth by the requirements of this policy.

D. PROCEDURES

1. Clinical Trial Agreements

Clinical trial agreements are processed for review and approval in the same manner as required for other sponsored program grants and contracts. Routing and documentation requirements, along with human subjects, animal research, and biohazard approvals, are required for clinical trials consistent with university Campus Policy 2015, *Application and Proposal Approval Process for Sponsored Projects*.

2. Facilities and Administrative Costs

All clinical trial agreements must provide reimbursement for Facilities and Administrative Costs (F&A) incurred by the university. The off-campus research F&A rate will be charged to sponsored clinical trials when a majority of the activity is conducted off-campus, i.e., at one of the hospitals affiliated with the university. The Total Direct Costs-Industry F&A rate will be applied to on-campus clinical trials as an approximation or alternative calculation of the full F&A rate. Waivers or reductions of the F&A rate must be formally requested and processed through the University waiver approval process. F&A will not be assessed against IRB fees associated with protocol review for both on- and off-campus projects.

3. Intellectual Property

To commercialize intellectual property, the University retains ownership of patents and copyrights arising from contracts, materials transfer agreements and other research agreements, and offers sponsors a nonexclusive license for internal uses or a first right to negotiate an exclusive license for commercial uses. Clinical trial agreements should include language regarding ownership of intellectual property rights in accordance with the CU System Administrative Policy Statement, 1013, Intellectual Property Policy on Discoveries and Patents for Their Protection and Commercialization.

If University representative(s) have been unable to negotiate intellectual property terms that conform to the policies of the University, the Principal Investigator (PI) may request that the University accept the Sponsor's terms by submitting a completed Request for Intellectual Property Variance form. See, Exhibit A. This form should be completed by the PI, executed by the PI and department chair, and routed to the University of Colorado Technology Transfer Office for final signature.

4. Study Data Access, Use and Notices

Where a sponsor has the regulatory requirements for monitoring a study, the parties will use their best efforts to include provisions in the clinical trial agreement which outline the sponsor's monitoring obligations and require the sponsor to promptly notify the PI and/or the university. During a clinical trial, the university will expect the sponsor (including its employees or agents) to use reasonable efforts to provide notice when it identifies information that can affect safety, medical care, or continued participation (including willingness to participate) of research participants, or discovers information that may influence the conduct of the study or alter the IRB's approval to continue the study. For post study results or interim findings that could affect human subjects protections, the sponsor will use best efforts to provide the university with any information that can affect safety, medical care, or continued participation of research participants, including willingness to participate, of current or former research participants. The amount of time that Sponsor will be requested to provide post-study results will be based on the nature

of the study (by way of example and not limitation, the time period could range from six (6) months to perpetuity).

For dissemination of the study results, the sponsor will be required to report post-study results in accordance with FDA regulations. The parties to the clinical trial agreement will use their best efforts to include language addressing the PI's access to final study data and analysis and should provide for maintenance of a copy of the data generated at the university by the PI for record retention purposes. The clinical trial agreement can provide that data generated by the study is confidential except for academic publications in accordance with the CU System Administrative Policy Statement, Restricted, Proprietary and Classified Research. If the IRB or the PI suspends, terminates or places an administrative hold on a protocol, the IRB will notify Grants and Contracts so that they may notify sponsor in accordance with terms negotiated in the clinical trial agreement and in accordance with federal regulations.

5. Termination Dates and Extensions

Clinical trial projects will be set up in the university financial system for three years unless a different end date is specified in the contract. If the trial is not completed within three years, the department must send an update to Grants and Contracts documenting the status of the trial and request an extension for the appropriate period of time. Depending on the agreement and sponsor, documentation may be in the form of an e-mail, may include information from the sponsor that identifies estimated completion date, or may be a formal modification to the agreement that has been prepared by the sponsor or, if appropriate, Grants and Contracts.

6. Invoicing and Financial Reporting

It is the responsibility of the department conducting the research to complete invoices and/or financial reports that are sent to the sponsor for non-federal clinical trials. (For federal clinical trials, please contact Grants and Contracts.) Sponsors will be notified in contracts that payments are to be sent to the Grants and Contracts lock box address. Via the invoice and/or contract, the sponsor will also be directed to include the university Grants and Contracts project number with the remittance address as well as the PI's name and sponsor's award number to ensure that payment is reconciled with the correct clinical trial project. Invoicing will be in accordance with the agreement terms and conditions, and Campus Administrative Policy 2008, *Accounts Receivable*.

7. Hospital/Patient Care Charges

a. Budgets for Patient Care Charges

Projects that include plans to utilize institutional facilities that are external to the university for patient care (i.e., University of Colorado Hospital,

Children’s Hospital Colorado, health care clinic, etc.) are required to include the costs for such activities in the proposed budget. The department conducting the research study is responsible for contacting the external institution directly to ascertain the anticipated costs for carrying out proposed patient care activities. Please note that certain patient care activities are exempt from F&A. See Exhibit B for more information. In accordance with applicable law and regulation and institutional policies, all non-routine patient care costs must be supported by the study budget and not charged to the patient subjects and/or their medical insurers. Routine care is that which is medically reasonable, necessary, and ordinarily furnished (absent any research study), appropriate to the medical condition of the patient. The study budget must also identify the party which will be responsible for the cost of routine patient care services that may not be covered by third party health insurance payors due to the patient’s study participation, limits on insurance coverage and/or eligibility exclusions.

b. Billing for Patient Care Charges

Patient care items/services in clinical trials should be charged appropriately to the clinical trial or medical insurance carriers according to federal and state regulations and medical insurance carrier’s requirements. Refer to UPI, University Hospital, and/or the billing policies of other affiliates as appropriate for specific requirements.

Principal Investigators should include anticipated standard of care, data collection and analysis expenditures in their clinical trial budgets. Items/services performed only for data collection and analysis should only be charged to the clinical trial project.

Patient subjects should only be billed for patient care expenditures in a manner that is consistent with the informed consent document. The unit completing the research is responsible for ensuring appropriate patient bills are paid.

c. Medicare Billing

In September 2000, the Centers for Medicare and Medicaid Services (formerly known as HCFA) issued a National Coverage Decision (NCD) which contains requirements for qualifying clinical trials for coverage and provides that routine patient care items/services can be billed to Medicare as long as the items/services are:

- 1) covered by a Medicare benefit category, not statutorily excluded and not governed by any national noncoverage decision on the specific items/services;
- 2) typically provided without a clinical trial (e.g., medically necessary conventional care);

- 3) required solely for the provision of the investigational item or service (e.g., administration of a non-covered chemotherapeutic agent);
- 4) required for the clinically appropriate monitoring of the effects of the investigational item or service, or the prevention of complications;
- 5) required for reasonable and necessary care arising from the provision of an investigational item or service -- in particular, for the diagnosis or treatment of complications arising from the provision of an investigational item or service.

AND the items/services are not:

- 6) provided by the sponsor in the budget and award amounts. If the items/services have been budgeted and awarded by the clinical trial sponsor, these items/services cannot be billed to Medicare. This includes items/services that are designated as standard of care;
- 7) performed solely for data collection and analysis and not used in the direct clinical management of the patient;
- 8) the investigational item or service itself; performed to determine the patient's eligibility in the clinical trial.

d. Study Subject Payments

All clinical trials, protocols or surveys involving Study Subjects require prior approval from COMIRB on CU Anschutz Campus and the Human Research Committee on CU Denver Campus. If a study subject payment is to be made via petty cash, gift certificates / cards, money orders and or non-cash items, approval must also be obtained from the Finance Office prior to making any payments to Study Subjects. See Campus Administrative Policy 2010, *Study Subject Payments*.

8. Time and Effort

Faculty members and staff who dedicate time and effort to the conduct of clinical trials should have a proportionate amount of their compensation charged to the clinical trial through the University of Colorado Payroll and Benefit system. In addition to or in lieu of effort being reflected on the program/project, patient care expenses incurred at the University of Colorado Hospital or any other facility are to be billed by UPI to the project or to the appropriate payer (please refer to UPI billing procedures). Exhibit C, Clinical Trials Required Form, Effort Commitment and Certification must be completed for all clinical trials and submitted along with the application/proposal at the time of university routing/approval.

Physician time spent on clinical trials at the University of Colorado Hospital or other facility and/or billed through UPI will be reflected as effort in under the section entitled "Other Institutional Activities" on the electronic Personnel Effort Reporting form. Patient care provided at hospitals other than the University of

Colorado Hospital or other facility that is associated with a clinical trial will also need to be reported in the “Other Institutional Activities” section of the electronic Personnel Effort Reporting form.

Faculty effort should be allocated to clinical trials for which they are performing services. The effort can be allocated by either one of the following or a combination of both:

- a. allocating a percentage of the faculty member’s compensation to the clinical trial project in proportion to the faculty member’s time and effort on the project; or
- b. billing through UPI to the clinical trial project for the professional services provided by the faculty member to patients who are participating in the clinical trial.

As a general rule, supervisory or on-going activity on a clinical trial should be handled by allocating a portion of the faculty member’s salary against the clinical trial; short term clinical trial support may be handled by billing services through UPI.

University faculty and staff conducting a study may not receive direct personal payments from the sponsor, other than institutional salary support in the study budget, for their performance of the study.

9. Positive Cash Balance Requirement

Departments are required to maintain a positive cash balance in their clinical trial accounts at all times. Sponsors will be expected to provide “up-front” funding at the start of the program/project so the department can initiate appropriate expenditures to undertake the program/project. The amount of up-front funding should be at least the minimum amount necessary to cover start-up costs through receipt of initial sponsor payment(s) for university invoices for services or deliverables provided to the sponsor. Departments may incur expenditures against the clinical trial program/project provided the program/project maintains a positive cash balance.

Expenditures will not be allowed on programs/projects that are in a negative cash balance status and departments will be required to resolve negative cash balance projects as soon as possible. Resolution may include obtaining additional up-front money, invoicing for services/deliverables already provided that have not yet been invoiced, contacting the sponsor for payment of unpaid invoices, and/or transferring expenditures to other suitable funding when no additional funds will be forthcoming from the sponsor.

Departments are generally permitted to create program/project encumbrances that are in excess of the cash balance. Departments must ensure that cash will be available to pay the encumbrance when it becomes payable.

10. Residual Balances

There may be circumstances in which the amount of sponsor support for a clinical trial exceeds the full, actual costs of conducting the research. If residual balances exist, the PI must make certain that all direct costs of conducting the clinical trial have been charged to the clinical trial program/project. If adjustments are necessary, they must be made before residual balances are used for other purposes. Once the clinical trial is concluded and research deliverables are complete, full appropriate F&A charges will be assessed and then the residual balance in the clinical trial can be transferred to the auxiliary fund if allowed by the clinical trial sponsor.

For clinical trials which are conducted in contract segments, the procedure outlined above shall be followed after the end of each contract segment. Residual balances which remain following the end of the contract segment may be transferred to the auxiliary fund if allowed by the clinical trial sponsor.

11. Principal Investigator Records Retention Responsibilities Specific to Clinical Trials

In addition to the record retention requirements outlined in the CU System Administrative Policy Statement, 2006, *Retention of University Records*, clinical trials produce important non-financial, non-accounting records that are maintained by the PI for future reference and review. At a minimum, the investigator's file must include the original signed consent form and a list of participating patient names with the patient's hospital number.

Other suggested items for maintenance in the investigator's file include the following: case history records, case reports, study protocol and amendments, patient care data, objectives and purpose of the study, selection criteria, clinical procedures, FDA forms, serious adverse events reports, study design and other documentation relating to study protocols. The investigator's file does not need to include medical information/materials which are also maintained in official patient medical record.

See the Records Retention matrix at <https://www.cu.edu/policies/aps/administrative/2006.pdf> for CU Denver to determine the appropriate period of retention.

12. Indemnification

Clinical trial agreements should include language that describes the party responsible for providing and paying for medical care for research related injury. Grants and Contracts will use best efforts to include the following terms when negotiating contracts with sponsors research involving an investigational drug, biologic or device, or where the clinical or preclinical study data and/or IP may be

utilized for such products in the future:

- a. Studies in which a commercial sponsor holds the investigational new drug (IND) or investigational device exemption (IDE) and also controls the protocol must provide indemnification coverage and defense of the university for performing the study, including its trustees, officers, agents, faculty, employees and students, for all claims arising from the institution's conduct of the study that are not due to an institution's negligence or willful misconduct. If the indemnification terms specify types of claims to be covered, the contract must, at a minimum, cover claims arising from (1) study subject injury or illness caused by the product or protocol, (2) institutions' proper conduct of the protocol, and (3) sponsor's use of study data and intellectual property assigned to the sponsor.
- b. Commercial sponsors holding INDs or IDEs are encouraged to fund medical care costs for any study related injury. Clinical trial agreements may exclude medical care costs for illnesses primarily due to a participant's underlying medical condition, or known risks of routine patient care portions of the protocol
- c. Commercial entities providing product for investigational studies that are initiated by a non-commercial investigator (e.g., faculty at the university or a collaborating noncommercial entity holding the IND or IDE and controlling the protocol) are required to provide indemnification or to be responsible for their actions in the study (i.e., design, manufacture, and shipment of the product) and for the sponsor's use of the data and any intellectual property assigned to sponsor
- d. Investigator-initiated investigational studies do not require provision of medical care costs by the commercial entity providing the investigational product. Non- commercial entities sponsoring and/or providing investigational products are not required to provide indemnification or medical care costs.
- e. Commercial sponsors of non-investigational clinical trials and preclinical studies will be required to provide indemnification for their use of data and any assignment of intellectual property to them.

13. HIPAA

Clinical trial agreements for research projects that involve disclosing protected health information (PHI) to the sponsor must comply with Health Insurance Portability and Accountability Act of 1996, 45 CFR 160, 164, (HIPAA) and CU Denver Privacy and Security Policies and Procedures.

14. Informed Consent

The terms of the clinical trial agreement are expected to be consistent with the informed consent document that the IRB has approved. The parties will use best efforts to ensure that clinical trial agreement includes language outlining which party will be responsible for providing care and payment for a research-related injury. The informed consent document approved by the IRB will be the document of record governing patient issues.

NOTES

1. Dates of official enactment and amendments:
September 1, 2011: Adopted by CU Denver Chancellor
October 31, 2012: Updated and Approved by CU Denver Chancellor
January 18, 2019: Formatting, article links, and University branding updated
2. History:
January 18, 2019: Modified to reflect a Campus-wide effort to recast and revitalize Campus policy sites into a standardized and more coherent set of chaptered policy statements organized around the several operational divisions of the university.
3. Initial Policy Effective Date: October 31, 2012
4. Cross References/Appendix:
 - [University of Colorado Administrative Policy Statement 1013, Intellectual Property Policy on Discoveries and Patents for Their Protection and Commercialization](#)
 - [University of Colorado Administrative Policy Statement, 2006, Retention of University Records](#)
 - [Campus Administrative Policy 2008, Accounts Receivable](#)
 - [Campus Administrative Policy 2010, Study Subject Payments](#)
 - [Campus Administrative Policy 2015, Application and Proposal Approval Process for Sponsored Projects](#)
 - [Campus Administrative Policy 2027, Facilities and Administrative Costs](#)
 - Centers for Medicare and Medicaid Services, National Coverage Decision (NCD), September 19, 2000, Medicare Reimbursement for Medical Services Related to Clinical Trials

**University of Colorado Denver
Principal Investigator's
Request for Intellectual Property Variance**

Background:

From time to time, the University of Colorado is asked to enter into research contracts or other agreements that contain concessions regarding patents, copyrights or other intellectual properties. Faculty inventors and authors have a financial interest in patents and some copyrights, as does the University itself, so the University is reluctant to accept such concessions. The financial stakeholders are those who share revenues from commercialization of intellectual property as follows:

25% to the inventors personally	25% to inventor's laboratory
25% to inventor's department or unit	25% to the University

To commercialize intellectual property, the University retains ownership of patents and copyrights arising from contracts, materials transfer agreements and other research agreements, and offers sponsors a non-exclusive license for *internal* uses or a first right to negotiate an exclusive license for commercial uses. The Executive Vice Chancellor has the authority to accept lesser rights for the University but, before considering that option, reviews input from other stakeholders such as the Principal Investigator, the Department Chair or Unit Head, and the Bio/Medical Technology Transfer Office.

Request for Variance:

Sponsor Name _____ Agreement # _____
 Principal Investigator: _____
 OGC Proposal #: _____
 Intellectual Property Rights Requested by Sponsor: _____

1. Does the scope of work for this project overlap with the scope of work of any of your other funded research such that there could be overlapping inventions? No __ Yes __ If yes, explain and identify source of funding: _____

2. Does the P.I. or others involved in the performance of the agreement have a financial interest in the sponsor company? No __ Yes __ If yes, explain: _____

3. Does the P.I. or others involved in the performance of the agreement receive payments, in addition to the grant award, from the sponsor company? No __ Yes __ If yes, explain: _____

4. Are there other conflicts of interest or commitment related to the agreement? No __ Yes __ If yes, explain: _____

Certification:

As Principal Investigator, I understand that the intellectual property rights specified in this agreement are less than those usually reserved for the University on my behalf and on behalf of my research group and primary unit. I also acknowledge that I assume full responsibility for informing all investigators involved or become involved with this project that the intellectual property rights have been waived. By my signature below, I request the University accept these concessions. I am making this request because I believe that (check all that apply):

- _____ The probability of an invention arising under this contract is very low
- _____ Funding from this agreement is immediate and almost certain; funding is more important to me than future revenue from unforeseen inventions
- _____ Negotiating more favorable terms would jeopardize my relationship with the sponsor
- _____ Other (please specify): _____

Approval Signatures:

Principal Investigator Name _____

Signature _____ Date _____

Department Chair/Unit Head Name _____

Signature _____ Date _____

Technology Transfer Office: _____ Date _____

University of Colorado Denver
Hospital/Patient Care Charges/Codes

The Facilities and Administration (F&A) cost agreement CU Denver has negotiated with the federal government exempts “hospitalization and other fees associated with patient care” from F&A costs. In our accounting system those charges are assigned account codes as follows:

Hospitalization Cost	520100
Inpatient Charges	520101
Outpatient Charges	520102
Ancillary Charges	520103
External Patient Service	520104

These are the only "patient care" charges exempt from facilities and administration cost assessment. Thus, charges such as biological specimens (535109), pharmaceuticals (535111), MRI exams (535115), School of Dentistry dental supplies (535116), etc., are not considered hospitalization and are assessed for facilities and administration costs.

This pattern of assessment may appear to be an illogical and incorrect definition of what constitutes true patient care. Yet that would be a misinterpretation of the F&A cost charging system. We are not trying to redefine patient care. Rather, we are trying to charge facilities and administration cost to grants and contracts in the same way we are required to account for costs in determining the facilities and administration rate. Medical supplies, for example, may be purchased as ward supplies and appear on a patient bill as inpatient charges that are exempt from facilities and administrative cost. Those same medical supplies bought directly are not hospitalization and are assessed facilities and administration charge. That distinction must be made when our accountants establish the facilities and administration cost pools and the base to which those pools are related. The system of charging the individual grants and contracts then mirrors that cost accounting.

University of Colorado Denver
CLINICAL TRIALS REQUIRED FORM
EFFORT COMMITMENT AND CERTIFICATION

Grants and Contracts
No. _____
Date _____

To be submitted to Grants and Contracts with all clinical trial contract agreements along with the Approval of Application for Grant or Contract (Routing Form).

- 1. CU Denver employees working on this project and their estimated effort that will not be billed and accounted for through patient care expenses (non-UPI effort) include:

Table with 2 columns: Employee Name, Estimated Effort Per Patient. Includes four horizontal lines for data entry.

- 2. In addition to or in lieu of the effort listed above being reflected on this program/project, will patient care expenses be billed to this project, including employee(s) time accounted through clinical effort (UPI effort)? Yes [] No [] Please explain:

Comments:

PRINCIPAL INVESTIGATOR: My signature certifies that:

- 1. I understand that faculty and staff who dedicate time and effort to the conduct of the clinical trial should have a proportionate amount of their compensation charged to the clinical trial...
2. I understand that clinical trial data collection and analysis expenditures are billed appropriately to the clinical trial and not any medical insurance carriers.
3. I understand that patient care billed to a third party commercial or governmental insurance plan is in accordance with their requirements.
4. I understand that any income associated with this clinical trial must be deposited into the UCD financial system through Grants and Contracts.
5. I understand that I am required to complete a Conflict of Interest Disclosure on an annual basis and in accordance with University Policy. See Conflict of Interest homepage for more information: http://www.ucdenver.edu/academics/research/AboutUs/regcomp/conflictinterest/Pages/default.aspx
6. I understand that as Principal Investigator it is my responsibility to apply the accounting practices of allowability, allocability, and reasonableness for costs associated with the agreement, and that any cost allocable to a particular agreement may not be shifted to other sponsored agreements, to other government or commercial health insurance payers or to the patient.

Principal Investigator

Date