Secretary's Advisory Committee on Human Research Protections Meeting
December 11-12, 2003
Washington, DC

Summary Minutes

THURSDAY, DECEMBER 11

Welcome and Opening Remarks

Ernest Prentice, Ph.D., Chairman, Secretary's Advisory Committee on Human Research Protections (SACHRP)

Dr. Prentice welcomed the official and *ex officio* members of SACHRP and thanked the public for attending. He reviewed SACHRP's mission, which is to advise the Secretary of the Department of Health and Human Services (DHHS) Tommy G. Thompson on all matters related to human subjects with a particular emphasis on special populations including children, neonates, decisionally impaired individuals, and prisoners. SACHRP also is mandated to address potential investigator conflicts of interest, international issues, research with individually identified samples, data, or information, and Office for Human Research Protections (OHRP) activities and plans.

Dr. Prentice highlighted one of SAHCRP's key goals, which is to restore public trust in clinical research. He underscored its importance with a quote from Secretary Thompson: "We must allow science and medical research to advance for the good of all Americans, but not at the expense of people who participate in clinical trials."

Report on the Issues

Bernard Schwetz, D.V.M., Ph.D., Acting Director, OHRP

Dr. Schwetz thanked all the participants and commended the Subcommittees for their work tackling SACHRP's substantial and critical tasks during the six months since the last meeting. He also thanked Susan Kornetsky for facilitating the inclusion of SACHRP issues in a prominent and positive manner in the recent meeting of the Public Responsibility in Medicine and Research (PRIM&R) group, which is a professional organization for Institutional Review Boards (IRBs)

Since the July meeting, Dr. Schwetz has held meetings with *ex officio* members to discuss SACHRP issues. Based on their positive feedback, regular monthly meetings are being arranged. The first session will be held in January 2004 under the leadership of the National Institutes of Health (NIH). Adverse events (AEs), a high priority across the agencies, will be addressed.

Dr. Schwetz also identified other shared concerns. These include:

- A possible Federal role in tracking and monitoring the impact of human research protection program (HRPP) accreditation

- Harmonizing Food and Drug Administration (FDA) and Common Rule regulatory requirements
- Applying regulatory requirements to social and behavioral research
- Clarifying policy for conducting classified research
- International research issues
- Challenges related to databanks and tissue banks

During his meetings, Dr. Schwetz also received input about the human subject research manual being developed by OHRP. *Ex officio* members suggested that the manual might include guidance on specific issues such as continuing and expedited reviews, exemptions, equivalent protections, when to refer issues to IRBs, and the selection of community representatives for IRBs.

Action
Dr. Schwetz will continue identifying common concerns and priorities among *ex officio* members. He will use this information to assist Dr. Prentice with developing topics for SACHRP discussion.

Overview of Charges to the Subcommittees
Ernest Prentice, Ph.D.
Before asking for the Subcommittee reports, Dr. Prentice described SACHRP's general structure. The Committee meets two or three times each year. A maximum of three Subcommittees are active at any time, and each provides SACHRP with reports and recommendations for discussion. Every Subcommittee has between eight and twelve members, depending on the workload. OHRP provides staff support for SACHRP, including a liaison officer for each Subcommittee. Overall OHRP support for SACHRP is provided by Irene Stith-Coleman and Keisha Johnson. Additional assistance is provided by Jodi Hume at the University of Nebraska Medical Center.

Currently, the following Subcommittees are active:

- *Subpart D: Protections for Children*
  Co-Chairs: Celia Fisher and Susan Kornetsky
  OHRP Liaison: Michael Carome (Former liaison: Leslie Ball)

- *Subpart C: Protections for Prisoners*
  Co-Chairs: Mark Barnes and Nancy Diller
  OHRP Liaison: Karena Cooper (Transitioning to Julian Goray)

- *HRPP Accreditation*
  Co-Chairs: Thomas Adams and Felix A. Khin-Maung-Gyi
  OHRP Liaison: Yvonne Higgins

Subpart D: Protections for Children Subcommittee
Celia Fisher thanked the Subcommittee members for their work and made a PowerPoint presentation describing the group's concerns and activities (See Binder Section H).

Dr. Fisher explained that the Subcommittee's primary focus was 45 CFR 46.407 (also referred to as 407). This regulation applies to "Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children." The Subcommittee: (1) developed new 407 research review models and (2) identified review process enhancements that would facilitate the functioning of the current review model or either new option. The Subcommittee also reviewed the 407 algorithm and devised a new name that better describes their purview.

Models for 407 Research Review

The Subcommittee identified four models for conducting 407 reviews and asked SACHRP for guidance regarding the two models that were most able to meet the standards for transparency, public and expert input, timeliness, clarity, consistency, consensus, and harmonization of HHS/FDA requirements. The two options are the:

- SACHRP subcommittee model (Federal Advisory Committee [FAC] rules apply and consensus reports can be issued)
- Open panel model (not subject to FAC and no consensus report can be issued)

In response to questions, Dr. Carome noted that either model is acceptable to OHRP. Dr. Schwetz added that a new FAC panel can be created only when an existing one is eliminated.

Process Enhancements

The Subcommittee identified procedures and activities to enhance the review process:

1. OHRP provides clear guidelines.
2. IRBs submit only appropriate protocols with minutes and rationales for: (a) failure to meet 404- 406, (b) scientific validity and social value, and (c) adequacy of human subject protection.
3. OHRP screens applications and sends them back to IRBs with feedback or forwards them to the panel/subcommittee.
4. *Federal Register* notice and materials are posted on the OHRP Website.
5. A standing pool of experts and individuals with protocol-specific expertise are selected and receive the pertinent materials including public comments.
6. Orientation is provided for new panel/subcommittee members, and this is followed by the face-to-face review meeting with public participation in part of the session.
7. All panel/subcommittee members express their opinions, review the materials, and listen to public comment.
8. OHRP develops recommendations based upon all materials and forwards its recommendations and support materials to the Secretary of DHHS.
9. The Secretary approves or disapproves the 407 request.
10. OHRP notifies the applying institution in writing about the Secretary's decision.
11. At the Secretary's discretion, the decision, with the supporting material and rationale, is posted on the OHRP Website.
12. If the proposed research was approved with stipulations, the investigator modifies the proposal for IRB review.
13. The IRB submits the approved revisions to OHRP for final concurrence.

407 Process Algorithm

The Subcommittee evaluated the 407 process algorithm and recommended its adoption with the caution that "a final resolution of clarity, consistency, and consensus will require OHRP guidelines on specific terminology such as 'minimal risk' and 'condition.'"

Subcommittee Name Change

The Subcommittee requested permission to change its name to the SACHRP Subcommittee for Research Involving Children (Short form: SACHRP Children's Subcommittee). Dr. Fisher explained that the new name more accurately reflects the Subcommittee's charge--to address human research protections for children as mandated by Federal regulations.

SACHRP Discussion of the Proposed Models

Dr. Prentice observed that timeliness and usefulness are the two issues that must be balanced in selecting a 407 review model. Consensus reports might be very useful, but they would take a great deal of time and effort to produce; this might limit their relevance in the time-sensitive review setting. Dr. Schwetz added that while consensus reports can be useful, OHRP's paramount need is to obtain well-articulated, expert opinion that can be presented to the Secretary and used to understand the issues and options.

Dr. Hauser questioned the value of consensus reports. He noted that the non-FAC panel could be structured to enable experts to share their opinions. Ms. Kornetsky agreed that both review models would provide expert reports, and asked the SACHRP provide guidance about whether 12 separate reports were more useful than one consensus report in developing timely 407 reviews.

Elements of the current and future 407 review process were explained by Dr. Schwetz. Should SACHRP be disbanded, the Government could revert to the original 407 review model or continue using the model recommended by the Committee. At present, about two 407 reviews are conducted annually. However, this number should slowly increase in response to the new Federal pediatric research initiative and enhanced education of IRBs on pediatric issues.

Dr. Fisher provided additional information on behalf of the Subcommittee, noting that:

- Once a model is approved, education and training will be recommended for Federal and non-government groups involved in the review process.
- Clear guidelines for screening reviewers with protocol-specific expertise and the pool of experts are needed.
- Monitoring is required for either process chosen by SACHRP.

Dr. Khin-Maung-Gyi observed that, regardless of the model chosen, SACHRP must provide advisory oversight without getting bogged down in detail and duplicating the panel/subcommittee's effort. In addition, 407 reviews should be triggered by explicit criteria, and not be a "catch-all" mechanism.

The FDA perspective was provided by *ex officio* member David Lepay. At present, the agency has limited experience with children's research review issues; however, FDA is committed to working with OHRP to protect children participating in research programs.

Dr. Prentice noted that the upcoming Institute of Medicine (IOM) report should provide some insight on pediatric research protections. Dr. Fisher commented that the IOM report will be a valuable resource, but that the Subcommittee should not postpone its work to wait for the report.

Dr. Prentice suggested that education be provided for funding agencies so that they could understand, on the study section level, the implications of human protections and related issues such as 407 review. Dr. Fisher cautioned that educational efforts, while needed, have to be balanced against the time and effort burdens already placed on study sections. Ms. Kornetsky added that ethical issues may not be within the study sections' purview.

The following additional key points were made during the discussion:

- Dr. Prentice announced that FDA may form a new pediatrics subcommittee. The FDA categories of pediatric research, 50.51--50.54, parallel the HHS categories 46.404--46.407. Harmonizing HHS 407 and FDA 54 reviews will be a significant issue for discussion. Dr. Lepay added that, in keeping with the FDA model, FAC rules would apply and the subcommittee would develop a consensus report.
- David Shore noted that, in his experience, the National Institutes of Health (NIH) study sections do consider Subpart D requirements.
- Dr. Prentice noted that a multi-site trial can be well underway when an IRB requests a 407 review. Dr. Shore agreed that NIH and OHRP should discuss this.

Actions on Subpart D Subcommittee Recommendations

- ***The 407 Algorithm and the Subcommittee's Name Change***
  Motion: Mr. Barnes moved that the Subcommittee's name change and recommendation to approve the algorithm be accepted.
  Action: The motion was seconded and approved unanimously.
- ***The Process Recommendations***
  Action: SACHRP approved the process recommendations.
- ***The 407 Research Review Models***
  Discussion: Dr. Fisher noted that the consensus/timeliness issue might be further explored for both models. Another issue that might be addressed in developing the final model is developing explicit criteria that trigger a 407 review.

  SACHRP members reopened the discussion of the Committee's role in overseeing the 407 review process. A two-stage review process was proposed for either model to ensure that SACHRP had adequate input in the advisory process. Three concerns were raised about this proposal. First, identifying protocols needing two stages of review would be difficult. Second, the persuasiveness of a review group report would be reduced if a higher level SACHRP issuance also was required.

Finally, SACHRP might not have the expertise to evaluate and resolve issues that could not be reconciled by experts with protocol-specific knowledge.

Dr. Prentice informally polled SACHRP members about their current views on the two models. Five or six members preferred the non-FAC panel; no one preferred the FAC subcommittee. Two members abstained.

Action: The Subcommittee will: (1) further consider the issues related to ranking the models, taking into consideration the SACHRP discussion, and (2) propose a preferred model with a supporting rationale.

Message of Support from DHHS

Rear Admiral Christine Beato, M.D.

Rear Admiral Christine Beato, M.D., Assistant Secretary for Health, Office of the Secretary, DHHS briefly joined the SACHRP meeting. She thanked the members and the Subcommittees for their dedication and hard work. Dr. Beato discussed her personal commitment to ensuring that human dignity and protection is considered first and foremost in biomedical research. She encouraged the Committee to continue its efforts, which will have a significant impact on research and advance the field of bioethics.

Subpart C: Protections for Prisoners Subcommittee

Chair Mark. Barnes summarized the Subcommittee's concerns and activities (see Binder Section I). He began his presentation by thanking OHRP, Subcommittee members, and Subcommittee Co-Chair Nancy Neveloff Dubler, LL.B., Director of the Bioethics Division at Montefiore Medical Center.

Early input from OHRP and the HHS Office of the General Counsel has helped the Subcommittee clarify some Subpart C jurisdictional issues. Subpart C requirements apply to studies funded by HHS, the Central Intelligence Agency (CIA) and the Social Security Administration (SSA). The focus of Subpart C, however, is research funded or sponsored by HHS. Further guidance is needed to define "funded or sponsored by HHS." In addition, clarification is needed regarding the sizeable number of institutions that have signed Federal Wide Assurances (FWAs) but opt not to follow Subpart C requirements.

"Jurisdictional issues" was one of the eight sets of problems identified by the Subcommittee as warranting immediate attention. The Subcommittee divided into eight teams to tackle the sets of issues and draft recommendations. The issue sets, organized by team, are:

Team 1: Identify any expanded or additional protections needed by prisoners participating in studies conducted by institutions not following Subsection C.

Team 2: Define "prisoner." This includes considering whether the definition includes: study participants who are incarcerated after entering the research project, the criminally insane, and individuals on probation/parole or residing in alternative criminal justice settings.

Team 3: Determine the role and responsibilities of the mandated IRB prisoner representative. Issues include identifying minimum qualifications required of

the representative and the implications of requiring one representative for a multi-site study.

Team 4: Assess requirements for terminating studies under criterion 7, especially the unique requirement for IRBs to receive assurances that prisoners understand the follow-up services available to them.

Team 5: Review the relevance and usefulness of the four research categories applied to this population. Particular concerns are: (1) whether the categories are too restrictive, (2) the definition of "minimum risk," and (3) the requirements regarding control groups.

Team 6: Review the role of OHRP in studies involving prisoners. Key questions include whether OHRP should provide additional levels of review and/or make other modifications in its policies and procedures.

Team 7: Examine the secondary and tertiary effects of research conducted under Subpart C, with particular attention to whether the requirements are inappropriately exclusionary.

Team 8: Determine whether the Subpart C requirements, modified or maintained in their original form, provide additional protections for people in correctional custody that are commensurate with the disadvantages that they face as noted in the *Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research*. The team also will identify monitoring activities to be undertaken by IRBs and review the prisoner protections provided by HRRP accreditation programs.

The Subcommittee believes recommendations are needed soon because the Subpart C requirements have not been revised since 1978 and were developed in response to ethical concerns of an earlier era. Team recommendations are due to the Subcommittee in January for discussion and finalization.

SACHRP Discussion of the Presentation

Mr. Barnes explained that the Subcommittee strives to incorporate a range of perspectives in their work. At present, input is being provided by representatives from correctional health and administrative agencies as well as SACHRP members. To further ensure that key opinions are represented, experts from other related fields will be asked to review the teams'draft reports.

Dr. Prentice asked whether the certification unique to Subpart C research (requiring institutions to certify to the Secretary that the IRB has fulfilled its duties) should be revised. Karena Cooper explained that OHRP would wait for recommendations from the Subpart C Subcommittee before taking further action.

In response to Dr. Prentice's questions about whether Subpart C requirements needed complete revision, Mr. Barnes explained that the Subcommittee is moving on two tracks. Clarifying and interpreting existing regulations is on the first and fast track. Recommending revisions is on the second track and will take at least two years.

Funding for prisoner participation in studies is a problem, Mr. Barnes observed. The corrections department must pay for all medical services needed by prisoners regardless of the type of insurance they had prior to incarceration. Ultimately, research sponsors are likely to have to absorb many of the costs associated with prisoner participation, probably through negotiated arrangements with correctional institutions. These institutions are particularly unlikely to pay for care required by the study that supercedes their own established standard of care.

SACHRP members noted that many investigators conduct preliminary research among prisoners with the ultimate goal of developing FDA studies. If the investigators do not have HHS funding for the preliminary studies, Subpart C protections are optional. SACHRP and IRBs need FDA guidance about human research protection in these situations. Dr. Lepay responded that:

- FDA would expect researchers to refer to existing literature and extant informal frameworks to establish appropriate protections.
- At present, FDA is reviewing its own approach to prisoner participation in clinical trials. However, the agency is not considering formal regulations or guidance.

Other key points made in the discussion included the following:

- Discussions of issues that cut across the Subcommittees, such as defining minimal risk, should be included on the agendas for full SACHRP meetings.
- Prisoner access to new medical devices under study will be discussed by Team 7.
- In response to questions from SACHRP members, Mr. Barnes will add two new items for future Subcommittee consideration:
  - The impact of correctional system privatization on research involving prisoners.
  - Clarifying the Subpart D language, with particular attention to ensuring that the term "certification" used in the prisoner protections context is not confused with "certification" related to accreditation.

Action

The Subcommittee will present a report incorporating the work of the eight teams at the March SACHRP meeting.

HRPP Accreditation Subcommittee

Co-Chair Felix Khin-Maung-Gyi thanked his Co-Chair, Thomas Adams, and the Subcommittee members for their efforts. Before beginning his PowerPoint presentation (see Binder Section J) , Dr. Khin-Maung-Gyi also complimented Keisha Johnson and other OHRP staff for their work in support of the Subcommittee.

The Subcommittee is charged with considering the following:

- Certification of HRPP accreditation organizations.
- Incentives that could/should be in place to motivate organizations to achieve HRPP accreditation.
- The potential impact of accreditation.

Thus far, the Subcommittee has heard testimony about the value of accreditation and the experience of becoming accredited. Based on this testimony, the Subcommittee supports the concept of HRPP accreditation to protect human research subjects. However, the ultimate value of accreditation is not known, and Subcommittee members, who represent key stakeholders in the accreditation debate, were not unanimous in fully accepting it.

The Subcommittee agreed that the primary value of accreditation is its potential usefulness in promoting internal assessments by organizations and in stimulating system improvements and enhanced outcomes. The Subcommittee will continue its investigation of accreditation issues by speaking with representatives from the two existing accreditation bodies.

SACHRP Discussion of the Presentation

Dr. Khin-Maung-Gyi noted that none of the Subcommittee members have identified themselves as affiliated with either accrediting body.

Dr. Prentice asked why the Subcommittee had concerns about the value of accreditation in enhancing protections. Dr. Khin-Maung-Gyi explained that there is no proof that process reviews actually translate into better protections. Dr. Prentice replied that the accreditation program developed by the Association for Assessment and Accreditation of Laboratory Animal Care (AAALAC) should be considered a model for HRPP accreditation. AAALAC accredited institutions have high standards for animal care and strong protections for animals used in research. The only possible downside to this accreditation model is cost. Mr. Adams explained that the Subcommittee will listen to representatives from the accrediting bodies and gather more information before making a recommendation.

Dr. Fisher noted that SACHRP can make recommendations, but should keep in mind that the Government position is that there will be no Federal accrediting body. She also asked about what the real outcome measures might be for an accreditation program, given that relatively few incidents of IRB misconduct have been reported over time. Mr. Adams said that the Subcommittee had begun discussing outcome measures and would address this issue with the representatives from the accrediting bodies.

SACHRP discussed accreditation costs. Dr. Fisher said that only wealthier institutions might be able to afford accreditation, and Nigel Harris noted that there also is a greater effort burden for smaller institutions. Dr. Prentice suggested that smaller institutions could address these issues by moving to central IRBs. Dr. Harris expressed concern about whether institutions would be willing to cede control to central IRBs. Dr. Khin-Maung-Gyi reported that, based on testimony thus far, the process is costly both in time and money. However, the accredited institutions were enthusiastic about the experience and believed it was important to undertake as a way to enhance their HRPPs and to possibly decrease the number of routine inspections.

Mr. Barnes asked the Subcommittee to focus on the impact of accreditation on research subjects. Dr. Khin-Maung-Gyi explained that the Subcommittee plans to answer that

question and further determine the time and financial burdens of accreditation by gathering testimony from institutions that have been accredited as well as accrediting bodies. At present, other types of data that might answer these questions are scarce.

Dr. Prentice asked how the pharmaceutical industry and clinical research organizations (CROs) were responding to the accreditation concept.

- Dr. Khin-Maung-Gyi explained that because accreditation is new and not Federally required, the industry probably will take a "wait and see" approach.
- Douglas Peddicord, Ph.D., Legislative Director of the Association of Clinical Research Organizations (ACRO), noted that accreditation is receiving mixed reactions. Most CROs think that it is a positive step, but they are not certain that it will improve research protections or that it is needed, given the low incidence of reported IRB problems. In addition, accreditation would be unnecessary if it only promoted the current requirements. He predicted that CROs, like the pharmaceutical companies, will wait and see what happens in the market. If Federal study sponsors push for accreditation, this message will be heard across the entire marketplace.

The issue of providing institutions with accreditation incentives, such as decreased routine inspections, was explored.

- Dr. Lepay explained that FDA would conduct a pilot study before making any changes in the inspection process. At present, the agency is look at performance measures available to demonstrate the impact of accreditation. If accreditation has a positive impact, FDA might make fewer inspections of accredited organizations.
- Dr. Shore said that NIH follows the OHRP model. The Office does not conduct regular inspections, and "for cause" inspections are made regardless of whether an institution is accredited.
- Dr. Polan noted that sponsors of animal research often have higher "comfort" levels when making grants to institutions that are AAALAC-accredited. It seems reasonable to assume that HRPP accreditation will have a similar effect on sponsors making grants for human research studies.

Action

The Subcommittee will:

- Gather and consider testimony from representatives from the accrediting body representatives.
- Use this testimony and other information to develop recommendations that pay particular attention to: (1) accreditation outcome measures, (2) the time and financial burdens linked to accreditation, (3) the impact of accreditation on the information and assurances given to research subjects, and (4) the appropriate role, if any, for the Federal Government in monitoring accreditation.
- Convene a general Subcommittee meeting in January 2004.

Public Comment

Charles McCarthy

The director of OHRP's predecessor, the Office for Protection from Research Risks (OPRR), Dr. McCarthy provided perspective based on his experience:

- Accredited institutions would have better standing with State legislatures than non-accredited institutions.
- Additional protections are needed for prisoners and the existing regulations should be simplified and clarified.
- Investigators are becoming more reluctant to enroll prisoners in research because:
  - It is difficult to ascertain whether prisons/jails are in compliance, and by the time this determination is made the prisoner often has been moved.
  - Study-related medical care and follow-up service often are not provided to prisoners systematically and consistently. Underlying reasons for this include frequent movement of prisoners to and from jails, prisons, and medical facilities without notification; differing corrections department and research study requirements for the provision of medical care; and issues related to payment for care.

Dr. McCarthy asked that OHRP reconsider its recent guidance on prisoners.

Gary Chadwick, Pharm.D., M.P.H.

Associate Provost and Executive Director of the Research Subjects Review Board at the University of Rochester, Dr. Chadwick agreed with Dr. McCarthy about the need to review prisoner protections. He asked that particular attention be paid to defining "prisoner" and reassessing the usefulness of the criteria under 46.305(a)(1)-(7) and the unique certification requirement. He added that the current regulations create additional delays and burdens that do not benefit the subjects and inhibit research.

Dr. Chadwick also commented on other SACHRP concerns. He recommended that the Committee consider the costs of accreditation, which are not insignificant, and the role of the Federal Government in what is otherwise a private, voluntary activity. He also suggested that the Committee develop a timely 407 review process that cuts across key populations, including children and prisoners.

SACHRP Discussion of Comments by Drs. McCarthy and Chadwick

The doctors responded to SACHRP's questions:

- Dr. McCarthy observed that in Virginia there appear to be some gaps in implementing requirements pertaining to providing medical care to prisoners. There also may be unintentional ethical lapses in obtaining informed consent and applying the principle of beneficence. Particular problems may occur when individuals are incarcerated while participating in a study; these could be resolved by changing or removing the Subpart C requirements for this prisoner subgroup.
- Dr. Chadwick noted that cost recovery provisions would reduce institutional concerns regarding accreditation.

John Mather, M.D.

The Director of the Office of Compliance Review at the University of Michigan, Dr. Mather offered some guidance concerning accreditation. He recommended that the Accreditation Subcommittee obtain the IOM reports from 2001 and 2002 and review

their framework for making accreditation part of a continuing quality assurance (QA) self-assessment process. He noted that the Richmond (Virginia) Medical Center is part of an accreditation evaluation process and suggested that the Subcommittee contact Dr. Frank Zeeb to learn about this experience. Another resource might be the Department of Education program for accrediting medical schools.

Dr. Mather recommended that the accreditation process be developed slowly and carefully evaluated over time with particular attention to outcomes and value added. He reminded SACHRP that the AAALAC program took 15 years to develop. In addition, he predicted that a side-by-side comparison of the existing HRPP accreditation programs would show few substantive differences, but would highlight process variations.

Susan Rose, Department of Energy
An *ex officio* member of SACHRP representing the Department of Energy (DOE), Ms. Rose summarized her experience developing the DOE HRPP program, which has proved its worth by lessening the need for routine reviews. She also encouraged SACHRP to continue its vitally important work.

SACHRP Discussion of All Public Comments
In response to Committee questions, the speakers made the following points:

- Dr. Mather said that it would be valuable to compare the existing accreditation programs to learn where their requirements exceed or surpass those of the Federal Government. He reminded SACHRP that accreditation should be an on-going process with follow-up to ensure continuing improvement. To accomplish this, accreditation should offer both "carrots and sticks."
- Dr. McCarthy reminded SACHRP that research protection programs compete with other programs for university funding. As demonstrated by AAALAC, accreditation would put the university HRPP in a more competitive position.

The comments sparked a discussion of accreditation among SACHRP members. Mr. Adams explained that the Accreditation Subcommittee's goals do not include conducting a side-by-side comparison of the accreditation programs. Mr. Barnes encouraged SACHRP to take on this project in the future. Dr. Harris observed that there might be more than two accrediting bodies in the future and that the key issue is determining a role for the Federal government vis-à-vis these organizations.

Summary of the Day's Activities
Ernest Prentice, Ph.D.
Dr. Prentice thanked the Subcommittees for their work and then reviewed and elaborated upon the actions to be taken by each group.

Subpart D

- ***Subcommittee Name Change.*** Approved.
  Action: Henceforth the Subcommittee will be called the SACHRP Subcommittee for Research Involving Children (Short form: SACHRP Children's Subcommittee).

- ***Algorithm.*** Approved.
  Action: OHRP and FDA will review the FDA data included in the algorithm and will modify or delete this information as appropriate.
- ***List of Recommendations to Enhance the Model.*** Approved.
  Action: OHRP is to implement the recommendations.
- ***407 Research Reviews: FAC vs. Non-FAC Models.***
  Action: The Subcommittee will: (1) incorporate the results of the informal SACHRP poll, which favored the non-FAC model, in their deliberations and (2) develop a recommended model and rationale.
- ***407 Review Priorities.***
  Action: The Subcommittee will:
  - Address harmonizing 407 and FDA 54 processes, multi-site 407 reviews, and conducting 407 reviews for non-Federally funded studies.
  - Invite Dr. Khin-Maung-Gyi to attend sessions about the third topic.
  - Develop a mechanism for OHRP to use when forwarding issues related to 407 applications for SACHRP discussion.
- ***Creation of a Workplan Related to the IOM Report***
  Action: The Subcommittee will tackle this task after completing work on the 407 review priorities.

Subpart C

Actions:

- The Subcommittee will report to SACHRP at the March meeting. As part of their preparation, the teams will consider the comments from Drs. McCarthy and Chadwick.
- The Subcommittee will work with OHRP to look at other interpretations of the language currently viewed as requiring the application of Subpart C if a study participant becomes incarcerated.
- The Subcommittee's longer-term focus will be to consider significant revisions to subpart C.

Accreditation Subcommittee

Actions:

- The representatives of the two existing organizations accrediting HRPPs will be asked to attend the next Subcommittee meeting and address key accreditation issues including incentives, impact on subjects, and cost/benefits.
- A final report will be presented at the March SACHRP meeting; at that time, retiring the Subcommittee will be discussed.

Future Issues

Dr. Prentice asked SACHRP members to reflect on possible future initiatives. He reminded SACHRP that no more than three Subcommittees can be functioning at any time and asked members to consider whether a new Subcommittee might be formed when the Accreditation Subcommittee's mandate expires. This will probably occur after the Co-Chairs present their report and recommendations at the next SACHRP meeting.

Possible Future Initiatives
SACHRP members identified possible future initiatives:

- Common Issues/Overlapping Populations
- Conflicts of Interest, either focusing on a broad range of potential conflicts or exclusively on financial conflicts
- Impact of Litigation on Clinical Research
- Health Insurance Portability Accountability Act (HIPAA), especially clarifying the regulations and serving as a liaison between researchers and the Office of Civil Rights
- AEs
- International Research
- Tissue and Data Banks
- Subpart B

SACHRP can address these issues by: (1) making them formal Subcommittee topics and developing reports and recommendations or (2) asking panels of experts to discuss the issues at SACHRP meetings. SACHRP can use the information provided by the expert panels to make recommendations or send the issues for further Subcommittee review.

The next SACHRP meeting is scheduled for March 29 and 30, 2004. The first day could be devoted to Subcommittee reports and recommendations. The second day could be made available for panel presentations.

Action: Members agreed to continue using the current meeting structure: Subcommittees will report on Day One and panels will present on Day Two.

Discussion of the List of Priorities. Members made the following points:

- Susan Kornetsky reported that the IRBs at the PRIM&R meeting identified AEs as their primary concern.
- Celia Fisher suggested that SACHRP ask an expert panel to address HIPAA issues; these are current and pressing problems, and amenable to rapid SACHRP response.
- Mary Polan suggested focusing on issues that can stop research. These would include HIPAA regulations and litigation/liability issues.
- Nancy Jones recommended looking at Subpart B issues with an idea of taking a proactive approach to addressing developing controversies.
- Dr. Schwetz observed that the higher items on the list are important to DHHS. He offered to obtain input about the importance of the other issues.
- Mr. Barnes suggested looking at liability issues. The Federal and State Governments are increasingly reducing or removing liability for professional peer review decisions made in good faith. SACHRP could make similar recommendations concerning IRB members.
- Dr. Weiner recommended two criteria to guide the prioritization of issues:
    - What do we need to do to ensure continued public trust in clinical research?
    - What is the "hottest fire" SACHRP can put out while meeting the first criteria?

Responding to the comments from Susan Weiner and Mark Barnes, Dr. Fisher recommended focusing on activities that have an impact on subjects, not institutions. Mr. Barnes explained that protecting IRB members conducting peer reviews will have a positive impact on study participants. He also suggested that by creating litigation recommendations, SACHRP can ensure that ethics are the first priority and that research is driven by the best interests of patients. Developing litigation recommendations could be put on a nine-month schedule, starting with panel discussions at the March meeting.

Dr. Prentice outlined one option for the second day of the March meeting. He suggested that three panel discussions be held and that the topics be:

- HIPAA and tissue bank data
- Central IRBs
- Research involving decisionally impaired individuals

Recommendations probably could be made about HIPAA and tissues banks after the panel discussion, but the other two topics would require additional discussion.

Spurred by this suggestion, members made the following comments:

- Ms. Kornetsky said that, based on past NHRPAC experience, topics must be pared and defined so that SACHRP can make decisions; research involving the decisionally impaired would be too broad a topic for a panel discussion.
- Several members suggested that the third Subcommittee focus on AEs and that an AE expert panel should be convened at the next SACHRP meeting.
- Dr. Fisher asked whether there would be time for SACHRP to discuss panel comments and craft recommendations if three panels were scheduled.
- Ms. Kornetsky suggested that a HIPAA panel be identified and invited to speak.
- Dr. Fisher suggested that panels be convened on HIPAA and central IRBs. The advantage of a HIPAA panel is that the issues are of immediate importance and can be acted upon fairly rapidly.

Actions: The following three actions were agreed upon by SACHRP:

- The highest priority is AEs. This will be the next Subcommittee topic, and a panel presentation should be made prior to the Subcommittee deliberations.
- Two panel topics will be HIPAA and central IRBs.
- At the March SACHRP meeting, Dr. Schwetz will present information about the priorities of other DHHS agencies.

The Process for Making Recommendations. Members proposed that recommendations be made immediately after the panel discussions, assuming that the panel provided sufficient information. However, Mr. Adams observed that this does not allow adequate time for reflection or enable members to consult with other interested parties. Dr. Fisher suggested that SACHRP make immediate recommendations when straightforward, discrete issues were under consideration, and she suggested piloting the idea with the HIPAA panel. Dr. Khin-Maung-Gyi added that this seemed reasonable because the HIPAA panel would be highly focused on concrete issues with which many SACHRP members had experience. Mr. Barnes suggested that the HIPAA panel include one person with expertise in the related public health research issues and one expert on

clinical research issues. Dr. Prentice added that if SACHRP does not feel that appropriate recommendations can be made after the HIIPAA panel presentation, a fourth, temporary Subcommittee could be created to draft them.

> ***Action:*** The HIPAA panel will be used to pilot the proposal that SACHRP make recommendations immediately after panel discussions of straightforward issues with which Committee members had experience. If recommendations cannot be made after the panel discussion, a temporary Subcommittee will be created to draft them.

Expediting Discussion. Dr. Weiner proposed that panelists be asked to provide SACHRP with information and recommendations before the meeting so that the best possible use can be made of the face-to-face time.

> ***Action:*** SACHRP agreed that this proposal should be implemented.

Panel Development. SACHRP agreed that members with experience related to the panel topics will ask two or three experts to serve as panel members and to send materials to SACHRP before the March meeting.

> ***Action:*** Mark Barnes and Susan Kornetsky will take responsibility for the HIPAA panel. Julie Sherill will be the OHRP liaison. Susan Weiner and Felix Khin-Maung-Gyi will be responsible for the central IRBs panel.

Secretary's Advisory Committee on Human Research Protections Meeting
December 11-12, 2003
Washington, DC

LIST OF ACTIONS TAKEN
Thursday, December 11

Subpart D

- ***Subcommittee Name Change.*** Henceforth the Subcommittee will be called the SACHRP Subcommittee for Research Involving Children (Short form: SACHRP Children's Subcommittee).
- ***Algorithm.*** OHRP and FDA will review the FDA data included in the algorithm and will modify or delete this information as appropriate.
- ***List of Recommendations to Enhance the Model.*** OHRP is to implement the recommendations.
- ***407 Research Reviews: FAC vs. Non-FAC Models.*** The Subcommittee will: (1) incorporate the results of the informal SACHRP poll, which favored the non-FAC model, in their deliberations and (2) develop a recommended model and rationale.
- ***407 Review Priorities.*** The Subcommittee will:
  - Address harmonizing 407 and FDA 54 processes, multi-site 407 reviews, and conducting 407 reviews for non-Federally funded studies.
  - Invite Dr. Khin-Maung-Gyi to attend sessions about the third topic.
  - Develop a mechanism for OHRP to use when forwarding issues related to 407 applications for SACHRP discussion.
- ***Creation of a Workplan Related to the IOM Report.*** The Subcommittee will tackle this task after completing work on the 407 review priorities.

Subpart C

- The Subcommittee will report to SACHRP at the March meeting. As part of their preparation, the teams will consider the comments from Drs. McCarthy and Chadwick.
- The Subcommittee will work with OHRP to look at other interpretations of the language currently viewed as requiring the application of Subpart C if a study participant becomes incarcerated.
- The Subcommittee's longer-term focus will be to consider significant revisions to subpart C.

HRPP Accreditation Subcommittee

- The representatives of the two existing organizations accrediting HRPPs will be asked to attend the next Subcommittee meeting and address key accreditation issues including incentives, impact on subjects, and cost/benefits.

- Use this testimony and other information, the Subcommittee will develop recommendations that pay particular attention to:
  - Accreditation outcome measures
  - The time and financial burdens linked to accreditation.
  - The impact of accreditation on the information and assurances given to research subjects.
  - The appropriate role, if any, for the Federal Government in monitoring accreditation.
- The Subcommittee will meet in January 2004.
- A final report will be presented at the March SACHRP meeting; at that time, retiring the Subcommittee will be discussed.

Future Issues

- ***Meeting Structure.*** Members agreed to continue using the current structure: Subcommittees will report on Day One and panels will present on Day Two.
- ***New Subcommittee and Panel Topics.***
  - The highest priority is AEs. This will be the next Subcommittee topic, and a panel presentation should be made prior to the Subcommittee deliberations.
  - Two panel topics will be HIPAA and central IRBs.
  - At the March SACHRP meeting, Dr. Schwetz will present information about the priorities of other DHHS agencies.
- ***The Process for Making Recommendations.*** The HIPAA panel will be used to pilot the proposal that SACHRP make recommendations immediately after panel discussions of straightforward issues with which Committee members had experience. If recommendations cannot be made after the panel discussion, a temporary Subcommittee will be created to draft them.
- ***Expediting Discussion.*** Panelists will be asked to provide SACHRP with information and recommendations before the meeting so that the best possible use can be made of the face-to-face time.
- ***Panel Development***.
  - HIPAA panel:Mark Barnes and Susan Kornetsky will identify 2-3 speakers and get information to SACHRP from the panelists prior to the March meeting. Julie Sherill will be the OHRP liaison.
  - Central IRB panel: Susan Weiner and Felix Khin-Maung-Gyi will identify 2-3 speakers and get information to SACHRP from the panelists prior to the March meeting.

OHRP

Dr. Schwetz will continue identifying common concerns and priorities among *ex officio* members. He will:

- Use this information to assist Dr. Prentice with developing topics for SACHRP discussion.
- Report to SACHRP at the March meeting about the priority items of other HHS agencies.