Guidance
Individual Patient Expanded Access IDE Applications
for patients being treated at Children's Wisconsin

Checklist for "Compassionate Use"
(If this request is Emergency Use see this section)

The compassionate use provision provides a path to accessing investigational devices that have not received FDA approval or clearance for patients for whom the treating physician believes the device may provide a benefit in diagnosing, monitoring, or treating their disease or condition. Compassionate use can be for devices that are being studied in a clinical trial under an IDE for patients who do not meet the requirements for inclusion in the clinical investigation but for whom the treating physician believes the device may provide a benefit in treating or diagnosing their disease or condition. It can also be used for devices that are not being studied in a clinical investigation (such as an IDE for the device does not exist). This guidance is for individual patients. If you wish to seek approval to treat a small group, this pathway is not appropriate.

Criteria for Compassionate Use

- The patient has a life-threatening or serious disease or condition;
- There is no comparable or satisfactory alternative therapy to diagnose, monitor, or treat the disease or condition; and
- Potential patient benefit justifies the potential risks of the investigational device.

https://www.fda.gov/news-events/expanded-access/expanded-access-information-physicians

NOTE: A Funding Proposal is not needed for Expanded Access requests. If you are instructed to submit one in eBridge, please contact the CW HRPP for assistance.

☐	**Provider must be licensed physician with active CW privileges.**
☐	**Alert Children's HRPP Office as Soon as Possible** • Children's Human Research Protection Program (HRPP) Email: CWHRPP@childrenswi.org, Office: (414) 337-7133 The CW HRPP office will notify the MCW IRB Manager and pediatric IRB Chair of the pending/upcoming submission.

Ensure Investigational Device Can be Obtained
If a licensed physician would like to obtain an investigational device for an individual patient, the medical device company must first agree to provide the investigational device for compassionate use. The FDA cannot require a company to provide an investigational device for compassionate use to proceed. If the device manufacturer agrees to provide the device under compassionate use, there are two different

processes to follow to obtain FDA approval, depending on whether or not there is an IDE for a clinical trial for that device.

IF THERE IS AN IDE FOR THE DEVICE

☐

The IDE sponsor (who may be the device manufacturer or a physician who has submitted the IDE to conduct the clinical study for the device) should submit an IDE supplement requesting approval for a compassionate use under section §812.35(a) to treat the patient. The IDE supplement should include:

- A description of the patient's condition and the circumstances necessitating treatment;
- A discussion of why alternative therapies are unsatisfactory and why the probable risk of using the investigational device is no greater than the probable risk from the disease or condition;
- An identification of any deviations in the approved clinical protocol that may be needed to treat the patient;
- The patient protection measures that will be followed:
  - A draft of the informed consent document that will be used (use template found here under *EFIC/Treatment Use/HUD:*
  - Clearance from the institution as specified by their policies;
  - An independent assessment from an uninvolved physician; and
  - Authorization from the device manufacturer on the use of the device.

NOTE: MCW IRB will not approve the request until they have approval from the FDA. The request to FDA must indicate that IRB approval/IRB Chair Concurrence will be obtained prior to use of the device. *Proof of the approval by the IRB Chairperson ("concurrence") will need to be submitted with the follow-up report to FDA after the patient is treated.*

IF THERE IS NO IDE FOR THE DEVICE

☐

A compassionate use request for a single patient may be submitted by the physician or manufacturer *with the above highlighted information* to the FDA, along with a description of the device provided by the manufacturer, to the following address:

Food and Drug Administration
Center for Devices and Radiological Health
10903 New Hampshire Ave
Document Control Center
WO66 Rm G-609

Guidance
Individual Patient Expanded Access IDE Applications
for patients being treated at Children's Wisconsin

	Silver Spring, MD 20993 Physicians and manufacturers can contact CDRHExpandedAccess@fda.hhs.gov for assistance. NOTE: The MCW IRB will not approve the request until they have approval from the FDA. The request to FDA must indicate IRB approval/IRB Chair Concurrence will be obtained prior to use of the device. *Proof of the approval by the IRB Chairperson ("concurrence") will need to be submitted with the follow-up report to FDA after the patient is treated.*
What actions does the FDA take on Compassionate Use requests? After a compassionate use request is received, the FDA will either approve, approve with conditions, or disapprove the request. When there is an IDE for the device, compassionate use request IDE supplements have the same statutory 30-day review cycle as other IDE submissions. However, the patient need is considered when reviewing these requests. Compassionate use requests are reviewed, on average, within 15 days of receipt, and in as little as one day in some cases. **The physician should not treat the patient identified in the request until the FDA approves use of the device under the proposed circumstances. Documentation of FDA approval will be required to be included in the submission for IRB review.** In reviewing this type of request, the FDA will consider the above information as well as whether the preliminary evidence of safety and effectiveness justifies such use and whether such use would interfere with the conduct of a clinical trial to support marketing approval.	
☐	**Obtain Children's Institutional Clearance** Contact Children's Chief Medical Officer to discuss patient situation, product handling considerations, financial, and insurance coverage considerations. Request written institutional clearance. Chief Medical Officer Rainer Gedeit, MD Office: (414) 266-1861 / rgedeit@childrenswi.org Administrative Assistant: Veronica Stanossek Office (414) 266-3002 / vstanossek@childrenswi.org This letter must be uploaded in Section 52 of the eBridge PRO.

Guidance
Individual Patient Expanded Access IDE Applications
for patients being treated at Children's Wisconsin

☐

While you are waiting for FDA approval, begin a PRO for *Treatment Use* in eBridge and include the following in Section 52:

IMPORTANT: Do not include any PHI in any documentation submitted in eBridge

- ✓ Written request submitted to FDA
- ✓ Communication with device manufacturer indicating the device will be made available for the single patient use
- ✓ Any written material from the device manufacturer about the device (Instructions for Use, risk profile)
- ✓ Independent assessment from uninvolved physician
- ✓ Written approval from Children's Chief Medical Officer
- ✓ Consent Document specific to single patient expanded access (manufacturer may have a model consent available)
- ✓ FDA Approval (IRB chair will not review without documentation)
- ✓ Appropriate schedule for monitoring the patient, taking into consideration the investigational nature of the device and the specific needs of the patient; patient should be monitored to detect any possible problems arising from the use of the device

When completing the PRO in eBridge:

- It is acceptable to reference documents included in Section 52 when answering PRO questions, rather than cutting and pasting, such as the expanded access protocol if there is one or the submission to the FDA. Be sure to reference the specific section or question number to assist the reviewers.
- Section 4.1: ONLY select Resources at Children's Wisconsin (so it routes for CW local context review); do not select any other options or it will route to other ancillary reviews that are not needed for treatment use and can hold up review.
- Section 12.A.4: select "Risk Level 2" and indicate potential benefit from investigational article; no other viable alternative treatments.
- Section 41.1: select "Written permission from only one parent/legal guardian is being requested'
- Section 41.6: select "No assent will be obtained" rationale is that device and treatment plan cannot be obtained outside the expanded access context and there are no viable alternative treatment options available to the patient.

Guidance
Individual Patient Expanded Access IDE Applications
for patients being treated at Children's Wisconsin

☐	**BEFORE SUBMITTING the PRO, contact the Children's HRPP Office to review the submission to help ensure there are no delays in the review process. A Zoom meeting will be set up within 1 business day to review the submission.** • Email: CWHRPP@childrenswi.org, Office: (414) 337-7133
☐	**Wait for IRB Approval or IRB Chair Concurrence** Once approval is documented in eBridge, proceed with this checklist.
☐	**Obtain and document Parental Permission/Consent from Parent/Legal Guardian/Adult Patient** in accordance with 21 CFR Part 50 using a written consent form approved by the IRB or with IRB chair concurrence.
☐	**Follow-Up Reporting** (to FDA and IRB) • Following the compassionate use of the device, a follow-up report should be submitted by whomever submitted the original compassionate use request to the FDA **within 45 days** of using the investigational device. This report should present summary information regarding patient outcome. If any problems occurred as a result of device use, these should be discussed in the follow-up report and reported to the reviewing IRB as soon as possible. • The follow-up report should include the IRB Chair Concurrence or IRB approval letter. • Copies of all reports to FDA should be submitted to the IRB via an amendment in the eBridge platform.

Guidance
Individual Patient Expanded Access IDE Applications
for patients being treated at Children's Wisconsin

Emergency Use

Emergency use is when there is a need to use a device that has not received the FDA's approval or clearance in an emergency. Expanded access to an investigational device under the emergency use mechanism is intended to provide patients and physicians with access to investigational devices to address immediately life-threatening situations when there is no available alternative and no time to use existing procedures to obtain FDA approval. Emergency use may apply if the device is being studied in clinical trials under an investigational device exemption (IDE) such as when a physician who is not part of the IDE clinical study wishes to use the device to treat a patient in an immediately life-threatening situation. An IDE allows an investigational device to be used in a clinical study in order to collect safety and effectiveness data. Emergency use may also apply if there is no IDE or ongoing clinical studies for the device.

https://www.fda.gov/news-events/expanded-access/expanded-access-information-physicians

Criteria for Emergency Use

- The patient has a life-threatening condition that needs immediate treatment;
- No generally acceptable alternative treatment for the condition exists; and
- Because of the immediate need to use the device, there is no time to use existing procedures to obtain FDA approval for the use.

☐ **Provider must be licensed physician with active CW privileges**

☐ **Alert Children's HRPP Office as Soon as Possible (who will in turn notify MCW IRB and the MCW pediatric IRB Chair)**

- Children's Human Research Protection Program (HRPP)
  Email: CWHRPP@childrenswi.org, Office: (414) 337-7133

We will set up a meeting and provide detailed instructions regarding the eBridge submission depending on whether there is time before use to request review, or whether the device will be used emergently and reported within 5 days of treatment.

☐ **Is FDA approval required prior to Emergency Use?**
No. If all of the above criteria are met, an unapproved device may be used in an emergency situation without prior approval by the FDA.

The FDA expects the physician to make the determination that the patient's circumstances meet the above criteria for emergency use, to assess the potential for benefit from the use of the unapproved device, and to have substantial reason

Guidance
Individual Patient Expanded Access IDE Applications
for patients being treated at Children's Wisconsin

	to believe that benefits will exist. In the event that a device is used in circumstances meeting the criteria listed above, the physician should follow as many patient protection procedures as possible. Such patient protection procedures include obtaining: 1. Informed consent from the patient or a legal representative; 2. Clearance from the institution as specified by their policies; 3. Concurrence of the Institutional Review Board (IRB) chairperson; 4. An independent assessment from an uninvolved physician; and 5. Authorization from the device manufacturer.
☐	**Begin an Emergency Use PRO in eBridge as soon as possible** Do not submit until you have met with the HRPP office to review the submission. Provide documentation of all of the patient protections measures followed (see next steps).
PATIENT PROTECTION MEASURES (follow as many as possible)	
☐	**If possible, obtain Permission of Parent/Legal Guardian/Consent or Assent of Patient** • If there is time, obtain permission/informed consent from parent/legal guardian/adult patient in accordance with 21 CFR Part 50 before initiating treatment. • 21 CFR Part 50 applies to treatment under expanded access IDE, including emergency use (unless an exception applies) • Use consent document specific to single patient expanded access (manufacturer may have a model consent available and a local template is available here: • **If there is time, the CW HRPP will help with the consent language.**
	• If obtaining permission/informed consent/assent **is not possible** from the parent/legal guardian/patient: • Treating physician AND a physician not otherwise involved in the treatment with the investigational device must certify, in writing, that all of the following conditions were met.

Guidance
Individual Patient Expanded Access IDE Applications
for patients being treated at Children's Wisconsin

	• The patient was confronted by a life-threatening situation necessitating the use of the investigational product; and, • Informed consent could not be obtained because of an inability to communicate with, or obtain legally effective consent from the patient; and, • Time was not sufficient to obtain consent from the patient's legally authorized representative; and, • No alternative method of approved or generally recognized therapy was available that would be provided an equal or greater likelihood of saving the patient's life. • Reference 21 CFR 20.23(a) • If, in the physician's opinion, there is not sufficient time prior to treatment to obtain an independent physician's determination that the above four criteria are met, the physician holding the emergency IDE should make the determination and subsequently obtain (e.g., within five business days) a review of his/her determination by a physician not participating in the emergency treatment.
☐	**If Possible, Obtain Institutional Clearance Prior to Treatment** • Contact Children's Chief Medical Officer to discuss patient situation, product handling considerations, financial, and insurance coverage considerations. Request written institutional clearance. Chief Medical Officer Rainer Gedeit, MD Office: (414) 266-1861 / rgedeit@childrenswi.org Administrative Assistant: Veronica Stanossek Office (414) 266-3002 / vstanossek@childrenswi.org
☐	**If possible, obtain concurrence of the Institutional Review Board (IRB) chairperson*** • The CW HRPP office will work with the MCW IRB to help facilitate this process as efficiently as possible. Contact the CW HRRP office as soon as possible once it is known that this treatment use is needed. Email: CWHRPP@childrenswi.org, Office: (414) 337-7133
☐	**If possible, obtain authorization from the device manufacturer**
☐	**If possible, obtain an independent assessment from an uninvolved physician**

Guidance
Individual Patient Expanded Access IDE Applications
for patients being treated at Children's Wisconsin

☐	**Do I need to report Emergency Use to the FDA?** Yes. If there is an **IDE** for the device, the IDE sponsor must notify the FDA of the emergency use within 5 days through submission of an IDE Report (§812.35(a)(2)). This follow-up report should include a summary of the conditions constituting the emergency, the patient protection measures that were followed, and patient outcome information. If **no IDE** exists, the physician should submit to the FDA a follow-up report within 5 days on the use of the device including: a description of device used, details of the case, and the patient protection measures that were followed. The report should be submitted to: Food and Drug Administration Center for Devices and Radiological Health 10903 New Hampshire Ave Document Control Center WO66 Rm G-609 Silver Spring, MD 20993
☐	Any reports submitted to FDA should also be submitted to the IRB via eBridge (as an Amendment).
☐	*In an emergency, where there is not sufficient time to secure IRB review prior to beginning treatment, the emergency use of the investigational drug must be reported to the IRB within 5 business days, as required under 21 CFR 56.104(c). ☐ N/A if IRB chair concurrence was obtained