

# Equitable Selection of Subjects: A Case Study

Lisa Rooney, J.D.  
DCP Consortia Program Webinar  
March 26, 2019

This presentation has been funded in whole or in part with  
Federal Funds from NCI, NIH under Contract No.  
HHSN261200800001E

# Agenda

- \* Case study
- \* Equitable selection of subjects considerations
  - \* Limited English Proficiency Subjects (LEPS)
- \* Apply considerations to case study

# Case Study

# Case Study

- \* NIH funded randomized phase 3 study evaluating efficacy of Oral Nitric Oxide Supplementation for preventing hypertension in pre-hypertensive subjects
- \* 250 subjects randomized to receive
  - \* Nitric oxide dietary supplement or
  - \* FDA approved antihypertensive drug
- \* Free study procedures/medications
- \* Participants followed for 12 months during which time monthly BP readings, six minute walk tests and QOL questionnaires are completed
- \* Hypothesis – Nitric Oxide Supplementation will reduce BP in prehypertensive healthy adults as well as approved drug with fewer side effects
- \* Subjects must be able to read and understand English

# Case Study (cont'd)

- \* Recruiting participants from public inner city clinics and private university medical center offices in CA, NV, AZ, NM & TX
  - \* CA – 6,277,779 of 12,401,756 (51%) speak English less than very well
  - \* NV – 207,687 of 427,972 (48%) speak English less than very well
  - \* AZ – 539,937 of 1,229,237 (43%) speak English less than very well
  - \* NM – 201,055 of 616,964 (33%) speak English less than very well
  - \* TX – 2,669,603 of 6,010,753 (45%) speak English less than very well
- \* Recruiting participants from and conducting research at sites where LEPS receive medical care

# Equitable Selection of Subjects Considerations

# Ethical Consideration

- \* Principle of Justice
  - \* Subject selection fair and appropriate
  - \* Research burdens/benefits distributed equally
    - \* No group should be unduly burdened or unfairly benefit from research
  - \* Cannot deny a person a benefit to which s/he is entitled without good reason
  - \* Subject selection cannot be based solely on investigator convenience
  - \* Cannot target or exclude populations without justification

# IRB Approval Criteria Consideration

- \* 21 CFR 56.111(a)(3)/45 CFR 46.111(a)(3)
  - \* In order to approve research, the IRB shall determine that ... selection of subjects is equitable taking into account
    - \* **purpose** of the research and
    - \* **setting** in which the research will be conducted
  - \* IRBs should be cognizant of research that involves a category of subjects who are vulnerable to coercion or undue influence



# How Assess Selection of LEPs is Equitable

- \* Whether LEPs are appropriately being considered for participation taking into account scientific question, research design, I/E criteria, susceptibility of risk
- \* Whether potential research benefits/burdens distributed fairly
- \* Whether research offers prospect of direct benefit
- \* Whether treatment options are available outside of study
- \* Whether recruiting from locations that serve large % of LEPs
- \* Whether research is occurring at locations that serve large % of LEPs
- \* Whether LEPs will be subject to coercion or undue influence
- \* Whether appropriate scientific or ethical justification for excluding LEPs is provided

# Possible Justifications for Excluding LEPS

- \* Studying an issue not germane to LEPS
- \* LEPS rarely present to location where enrollment/research takes place
- \* Studies w/o prospect of direct benefit
- \* Insufficient resources to include LEPS **AND** proportion of LEPS very low
- \* Enrollment required in situations where translators not readily available, e.g., satellite clinics, emergencies, etc.
- \* Research targets a population that will include only English speakers (Veterans)
- \* Validated assessment tools, surveys, questionnaires, etc. only available in English

***Language barrier hassles, e.g., problems w/ translating documents and/or with using bilingual staff, added informed consent work/regulatory requirements is not sufficient justification for excluding LEPS***

# Non-IRB Consideration

- \* Title VI of the Civil Rights Act mandates that no person on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program receiving Federal financial assistance
- \* EO 13166/HHS regulations/NIH Grants Policy (4.1.2.5) all of which implement Title VI
  - \* Requires recipients receiving Federal financial assistance (e.g., universities, hospitals, etc.) to take steps to ensure that people with LEP can meaningfully access health and social services, including federally funded research protocols
  - \* Language assistance services can provide for effective communication between the researchers and the research participant with LEP to facilitate participation in, and meaningful access to, the research study

# Reasons Not To Exclude LEPS

- \* Limit generality of study results by excluding persons with particular ethnic or cultural characteristics
- \* Increase – rather than reduce – health disparities
- \* Violate Principle of Justice by denying benefits to a class of persons entitled w/o valid scientific or ethical justification
- \* Violate equitable selection of subjects by excluding LEPS from a study being conducted in a setting where LEPS routinely receive medical care for a disease/condition that is of interest to/afflicts LEPS
- \* Violate Title VI of the Civil Rights Act/EO 13166/HHS regulations & NIH Grants Policy implementing Title VI

Applying Applicable Considerations  
to Case Study  
OK to Exclude LEPS?

# Case Study

- \* NIH funded randomized **phase 3 study evaluating efficacy of Oral Nitric Oxide Supplementation for preventing hypertension in pre-hypertensive subjects**
- \* 250 subjects randomized to receive
  - \* Nitric oxide dietary supplement or
  - \* FDA approved antihypertensive drug
- \* **Free study procedures/medications**
- \* Participants followed for 12 months during which time monthly BP readings, six minute walk tests and **QOL questionnaires** are completed
- \* Hypothesis – Nitric Oxide Supplementation will reduce BP in prehypertensive healthy adults as well as approved drug with fewer side effects
- \* Subjects must be able to read and understand English

# Case Study (cont'd)

- \* Recruiting participants from public inner city clinics and private university medical center offices in CA, NV, AZ, NM & TX
  - \* CA – 6,277,779 of 12,401,756 (51%) speak English less than very well
  - \* NV – 207,687 of 427,972 (48%) speak English less than very well
  - \* AZ – 539,937 of 1,229,237 (43%) speak English less than very well
  - \* NM – 201,055 of 616,964 (33%) speak English less than very well
  - \* TX – 2,669,603 of 6,010,753 (45%) speak English less than very well
- \* **Recruiting participants from and conducting research at sites where LEPS receive medical care**

# Equitable Selection of LEPS

## Take Away

- \* If recruiting and conducting research in a setting where LEPS normally receive care **and**
- \* Studying a condition that affects LEPS **and**
- \* Studying a condition for which LEPS would want to participate **and**
- \* Study offers prospect of benefit **and**
- \* Few effective treatment options outside of study **then**
- \* Cannot exclude unless
  - \* There is a valid scientific or ethical justification and
  - \* Exclusion does not violate HHS LEPS Policy





Questions???

[Lisa.rooney@nih.gov](mailto:Lisa.rooney@nih.gov)