NPRM and the NBS Laboratory
Special issues to consider

Discussion points for the ACHDNC

Tuesday 3 November 2015

Presumed Non- Research Activities within NBS

- **Ongoing testing to assess or maintain quality within the Lab**
  - Function checks, sharing samples for PT testing, evaluation of staff competencies
  - Training and technical support
  - Troubleshooting technical issues, re-validating existing methods
  - Ongoing monitoring of analytical and clinical performance of method
- **Steps necessary to implement screening for a condition with known (previously described) analytical and clinical validity (ie the condition is being screened for in another state)**
  - Implementation of a condition like SCID at this point should not be considered research since most are copying and "tweeking" existing tests … and are not necessarily contributing to generalizable knowledge
- **Emergency preparedness, Continuity of operations, other clinical or forensic purposes**

Presumed Research Activities within NBS

- **Method Development studies that include evaluations designed to *establish* analytic performance of a method and demonstrate clinical validity**
  - Eg Proof of Concept studies
  - Eg Investigations to demonstrate the relative performance of different testing platforms
  - Early adopting states (for screening of any new condition) will often be contributing to the general understanding of analytical and clinical performance … their data will be of interest to all other states …
  - Point: Studies are designed to contribute to generalizable knowledge

- Studies that make significant changes to an existing method, that may go beyond the scope of the original method

- Studies that involve re-testing of stored material for studies designed to contribute to generalizable knowledge
  - Eg Studies that seek to characterize new markers for Disease X using a unique population

Two Options for Early Adopting States

- **Option #1: Don't accept Federal Funds for new test development. Use only State funds to perform these "research" activities.**
  - **ISSUE: There is inconsistency in practice**
  - **Should not need to choose whether or not to perform an activity based on the funding source**
  - **States could still be sued for this**

- **Option #2: Get consent from everyone**
  - **Need to comply with the HHS template**
  - **Consent rate is 60-70% in MI and higher in MA (although this is not broad consent)**
  - **ISSUE: Is Broad consent accomplishing the purposes stated by the privacy advocates? People are signing one of many documents before after birth of their child and may still deny knowing that they signed the Broad Consent document.**
  - **Feels like an expensive, administrative nightmare that may not help anyone in the long-run.**

Early Adopting States

NBS Laboratory & Program Concern:

States may choose not to be an early adopting State because of the challenges associated with developing the necessary administrative framework to comply with implementing Broad Consent

HHS Template for Broad Consent

- When will template be available?
- Will language fit on dimensions of the NBS Collection Device
- Will the template be available before the effective date of Common Rule?
- Concern: It will likely take years for proper implementation across the state
- Will Hospitals/Birthing Centers be engaging in research because they are seeking informed consent for NBS research

HHS Template for Broad Consent

- It will require redesign of existing NBS collection cards
  - Need to distribute and educate about use of new cards
  - Hospitals and Birthing Centers will likely still continue to use old NBS Collection Card designs
    - Old Cards will not have consenting language attached and should not be used for future research
- Concern about requiring consent for storage
  - Example:
    - Old card was used for collection of newborn sample *or* parent did not give consent for storage and future use.
    - Parent then requests retesting of newborn sample for other clinical purpose but the State no longer has the card since consent was not given for storage/future research

Consent Issues for Consideration by the ACHDNC

November 3, 2015

Consent Requirement

- Parental consent will be required for research uses of dried bloodspots
  - Waivers of consent will be rare and only acceptable when:
    - Compelling scientific justification
    - Other specimens not available for which consent was obtained

Transition Period

- Specimens collected prior to new regulations must have individually identifiable information removed

NBS Reauthorization Act of 2014

- These regulations will supersede the law in Section 12 of the Newborn Screening Reauthorization Act of 2014
  - NPRM has more extensive consent requirements
  - NPRM permits waiver of consent but only in rare circumstances

Implications for NBS

- May promote transparency and trust
- New consent forms and processes necessary
- Consent information and form is lengthy and complex
  - Significant additional work by clinical staff for an activity that is not relevant to clinical goals
- Difficult/impossible to include this information on a Guthrie Card
  - Links between DBS and consent form necessary
- Complex consent form and process unlikely to promote meaningful informed decision-making
  - Michigan BioTrust finding uptake about 65% in non-random fashion across the state

SACHRP

- SACHRP draft recommendations
  - Not supportive of proposed biospecimen changes to Common Rule
    - Strong support for more transparency and for choice
    - Excellent track record of safety
    - Enormous burden for institutions
    - Consent process is likely to be perfunctory
    - Likely to result in a loss of access to valuable specimens
    - Approach does not prevent controversial uses of biospecimens
  - Considering a recommendation for a process of notice and opportunities to opt-out of retention and use

ACHDNC

- Does the ACHDNC want to comment on the NPRM?
- If so, how to develop content prior to deadline on December 7?