



# Federal Aviation Administration

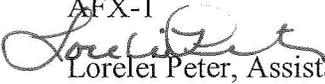
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## Memorandum

Date: OCT 12 2018

To: Ricardo Domingo, Executive Director, Flight Standards Service,  
AFX-1

From:   
Lorelei Peter, Assistant Chief Counsel for Regulations, AGC-200

Prepared by: Gahan Christenson, Staff Attorney, AGC-240

Subject: Legal Interpretation of 14 C.F.R. § 67.401 – Airman's Obligation to Provide Medical Records Pursuant to § 67.401 When the Underlying Special Issuance Medical Certificate is expired and the related Authorization for a Special Issuance Medical Certificate has not expired.

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This memorandum responds to your request for a legal interpretation and addresses whether an airman must comply with a request for medical information pursuant to 14 CFR § 67.401(f)(4) when an airman holds an unexpired Authorization for Special Issuance of a Medical Certificate (Authorization) but the underlying special issuance medical certificate has expired.<sup>1</sup> This question is of particular importance to airmen operating under 14 CFR part 68, Alternative Pilot Physical Examination and Education Requirements (BasicMed).

To be eligible for BasicMed, an airman must have held a valid medical certificate at any point after July 14, 2006, and, while that medical certificate may be expired, it cannot

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<sup>1</sup> This memorandum is discussing situations in which a special issuance medical certificate has expired. The FAA is not addressing situations in which an airman attempts to surrender his special issuance medical certificate or the underlying Authorization.

have been revoked, suspended, or, in the case of a special issuance medical certificate, the underlying Authorization cannot have been withdrawn. 14 CFR § 61.23(c)(3); 82 FR 3153 (January 11, 2017). Section 67.401(f)(4) provides, in relevant part, that the Federal Air Surgeon may withdraw an Authorization at any time if the holder of the Authorization “fails to provide medical information reasonably needed by the Federal Air Surgeon for certification under this section.” Pilots and aviation organizations have reached out to the FAA to determine whether the Federal Air Surgeon could withdraw an unexpired Authorization for failure to provide information under § 67.401(f)(4) after the airman’s special issuance medical certificate has already expired, thereby preventing an airman from operating under BasicMed.

As explained further in this memorandum, when an airman’s special issuance medical certificate has expired and the airman is not in the process of seeking a new special issuance medical certificate, additional medical information is not reasonably needed for certification under § 67.401. Consequently, the Federal Air Surgeon may not withdraw the Authorization based on the airman’s failure to provide information “not reasonably needed by the Federal Air Surgeon for certification under this section [§ 67.401(f)(4)].” If an airman does not hold a special issuance medical certificate and has no application pending, there is no need for the Federal Air Surgeon to request information necessary to determine whether the airman meets the standards for special issuance medical certificate.<sup>2</sup>

Authorizations often have a longer duration than the associated special issuance medical certificate. These longer durations are for internal FAA administrative purposes and

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<sup>2</sup> The FAA notes that under FAA Extension, Safety, and Security Act of 2016 (P.L. 114-190) and part 68, an airman with any of the conditions identified in § 68.9 must have an Authorization and, therefore, is within the medical certification process.

aid the Office Aerospace Medicine with the processing of special issuance medical certificates under § 67.401. The Authorization's longer duration period conveys no independent medical privilege as evidenced by the requirement for an airman to demonstrate that he remains qualified for a new special issuance medical certificate when the current special issuance medical certificate expires. As such, an airman's responsibility to comply with the terms of an unexpired Authorization – including a term that requires regular submission of medical information – terminates when the associated special issuance medical certificate expires. Because there is no reasonable basis for requiring an airman in those circumstances to provide medical information that is not needed for determining medical certification under § 67.401,<sup>3</sup> the FAA would not have a basis to withdraw the Authorization.

The above interpretation is consistent with the purpose of BasicMed, to allow an airman who can meet alternate requirements to fly without holding a medical certificate. Both the enacting legislation, FAA Extension, Safety, and Security Act of 2016 (P.L. 114-190), which directed the FAA to establish BasicMed, and the implementing regulations under 14 CFR part 68, however, provide specific situations in which an airman with an ongoing or new medical condition must apply for an Authorization before operating or continuing to operate under BasicMed. Additionally, an airman operating under BasicMed may be asked to provide medical information to the FAA under 14 CFR part 68. Part 68 allows the Administrator under certain circumstances to require an individual to provide additional information or history so that the Administrator may determine whether the individual is safe to continue operating under BasicMed. Moreover, an airman is still under

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<sup>3</sup> This legal interpretation does not address situations in which an airman is reapplying for a new special issuance medical certificate under an unexpired Authorization.

a duty to ensure he is not operating an aircraft when he has conditions making him medically unfit.<sup>4</sup> Because alternate avenues are provided to collect information, it does not appear that Congress, who mandated BasicMed, wanted an airman to be beholden to continued requests for information related to a prior Authorization after the most recent special issuance medical certificate has expired and the airman is not in the process of seeking a renewed special issuance medical certification.

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<sup>4</sup> Under § 61.53(c)(2), a person shall not act as pilot in command, or in any other capacity as a required pilot flight crewmember, while that person knows or has reason to know of any medical condition that would make the person unable to operate the aircraft in a safe manner.



# Federal Aviation Administration

## Memorandum

Date: MAR 01 2018  
 To: Lorelei Peter, Assistant Chief Counsel for Regulations, AGC-200  
 From: John S. Duncan, Executive Director, Flight Standards Service, AFX-1  
 Prepared by: Brad C. Zeigler, Aviation Safety Analyst, AFS-810, (202) 267-9601  
 Subject: Request for Legal Interpretation of 14 CFR §67.401(f)(4)

The Federal Aviation Administration (FAA), General Aviation and Commercial Division, Airmen Training and Certification Branch (AFS-810) is the office of primary responsibility for BasicMed, an alternative means for airmen to establish medical eligibility. BasicMed was established by law in section 2307 of the FAA Extension, Safety, and Security Act of 2016 (FESSA) on July 15, 2016, and became effective on May 1, 2017.

BasicMed allows an airman to operate certain general aviation aircraft without a current FAA medical certificate, provided they meet certain requirements. Among the requirements is that the airman must have held a valid medical certificate at some point after July 14, 2006, and that the most recent medical certificate held may not have been suspended or revoked. Further, the most recent medical certificate may include an authorization for special issuance, provided that the authorization has not been withdrawn.

AFS-800 has received several inquiries from airmen intending to transition from holding a medical certificate to operating under BasicMed. Many of these airmen have expressed concern that the authorization letters associated with the special issuance are often issued for time periods significantly longer than the duration of the medical certificate they are associated with. As such the authorizations often require periodic action by the airman for the duration of the authorization, such as providing follow up reports from a treating physician.

Section 67.401(f)(4) of Title 14, Code of Federal Regulations states that *"An Authorization or SODA granted under the provisions of this section to a person who does not meet the applicable provisions of subparts B, C, or D of this part may be withdrawn, at the discretion of the Federal Air Surgeon, at any time if [...] [t]he holder fails to provide medical information reasonably needed by the Federal Air Surgeon for certification under this section."* Airmen who opt to allow their medical certificate to expire and operate under BasicMed have expressed concern they may become ineligible because the FAA could later withdraw their authorization for failure to provide medical information requested in the authorization letter.

In light of BasicMed, Flight Standards Service seeks a legal interpretation of under what circumstances, if any, would an airman who previously held a medical certificate with an

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INITIALS/SIG JVF
DATE 2/1/2018
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INITIALS/SIG BradZ
DATE 1/30/2018
ROUTING SYMBOL AFS-810 Peer Rev
INITIALS/SIG NKR
DATE 1/30/18

authorization for special issuance be considered to have “fail[ed] to provide medical information reasonably needed by the Federal Air Surgeon for certification under this section”.