

BasicMed Considerations for Groups and Pilots



The New BasicMed Regulations and Volunteer Pilot Organizations

April 25, 2017

Attention: Officers, Board Members, Staffs, and Volunteer Pilots of All Public Benefit Flying Groups

VIA emailed PDF and website page- Please distribute to your leadership and members

Introduction:

As an organization formed to function as the umbrella group to support all forms of Public Benefit Flying (PBF) and Volunteer Pilot Organizations (VPOs), one of the tasks of the Air Care Alliance (ACA) is to provide assistance and guidance to VPOs in carrying out their various missions benefiting the public. In trying to help individual VPOs avoid “reinventing the wheel,” the ACA passes along information it has that may be of interest to all VPOs and their pilots to assist with best practices, routine operating issues, and regulatory compliance.

This letter addresses the new BasicMed regulations and attempts to address some of the relevant considerations to assist VPOs in making these decisions.

VPOs will have to decide whether to allow pilots with BasicMed to operate flights on their behalf and, if so, address any operational concerns created by incorporating these pilots.

Background:

Pursuant to §61.113(i) of the FARs, private pilots will be able to exercise the privileges of their pilot certificate without a medical certificate effective May 1, 2017. In order to do so, pilots will have to comply with the medical requirements contained in a new FAR Part 68, known as BasicMed.

BasicMed is an alternative to a 3rd Class Medical Certificate issued by the FAA. Pilots will have the option of complying with the BasicMed regulations or continuing to obtain their medical certificates as in the past. In addition to a physical examination and certification by any licensed physician every 4 years, pilots will have to complete a course on aero-medical issues every 24 months.

In general, pilots must have held a valid Medical Certificate at any point after July 15, 2016 which is not under revocation or suspension and their most recent application for a Medical Certificate must not have been denied, suspended or revoked.

There are also restrictions as to the aircraft and operations under which pilots can operate with BasicMed. In summary: Aircraft must be authorized by the FAA to carry not more than six occupants and its maximum certified takeoff weight cannot exceed 6,000 pounds. Flight operations are limited to the United States including Puerto Rico and US possessions. No flight may be conducted in excess of 250 knots or above 18,000 feet MSL.

The above is a summary and there are many other important details. Therefore, all VPOs should

become familiar with the BasicMed regulation at FAR 61.113(i) and through FAA Advisory Circular AC 68.1 which can be found at:

https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/1030196 [1]

and/or information provided by AOPA at:

<https://www.aopa.org/advocacy/pilots/medical/third-class-airman-medical-reform> [2]

FAQs:

Q: May volunteer pilots with BasicMed legally operate charitable flights on behalf VPOs?

A: Yes. Our interpretation of the new regulations and AC 68.1 is that the FAA intends that, subject to the specific operational limitations contained in the new regulations, all operations that a private pilot can currently conduct under FAR Part 91 with a 3rd class medical certificate can be conducted under BasicMed.

Q: What considerations are relevant to a VPO's decision?

A: Most VPOs already impose some requirements in addition to minimum FAA standards in the interest of increased safety. This reflects differences in missions, pilot base, region and other factors. Although, the FAA permits a pilot to act as a volunteer pilot the moment he or she obtains his or her license, VPOs often have additional requirements such as for minimum hours, orientation flights, or an instrument rating, according to regional or operational needs. Some VPOs have special requirements for older pilots or educational requirements for all pilots, such as the ACA/AOPA web-based safety program, "Public Benefit Flying: Balancing Safety and Compassion."

In the case of BasicMed, the question is whether to require volunteer pilots to continue to comply with the existing FAA medical standard or permit them to fly under BasicMed (for operations within its limitations).

The current system has proven to be workable for VPOs. Depending on how many pilots opt for BasicMed, it may or may not continue to be viable for a VPO to insist on a medical certificate. The current system has the advantage of requiring that examinations are done by a physician knowledgeable about aviation medicine and that pilots meet a minimum certification standard. One of its weaknesses that led to BasicMed is that it weeds out many pilots who could safely operate an aircraft. The current special issuance process puts a heavy burden on pilots many of whom are unwilling or unable to expend the time, effort and money to obtain or renew their certificate. Sadly, they stop flying.

Q: Is there cause for concern about a pilot's fitness under BasicMed?

A: Accidents due to medical incapacitation are very rare and the FAA obviously believes that BasicMed will not increase this risk.

We are aware of no data to contradict the FAA's assessment. In fact, pilots operating without medical certificates under the Sport Pilot license do not seem to exhibit an unusual number of medical incapacitation incidents. However, there is obviously no data that includes operations by pilots that the FAA would not previously permit to fly. While it is reasonable to be confident that there will be no reduction in safety, at this time one cannot know that for sure.

There are a couple of potential concerns that warrant mention. First, especially at the outset, BasicMed will be attractive to pilots who are unable to obtain a medical certificate or for whom it would be overly burdensome or expensive to do so. Keep in mind that this is an intended consequence of BasicMed and reflects a judgment on the part of Congress and the FAA that these pilots are safe to fly, even with their medical conditions.

Second, under BasicMed, there are no formal denials and therefore no record of a physician's refusal to certify a pilot. A pilot can "shop" until he or she finds a physician who is willing to sign the certification and the subsequent physician(s) will have no way of knowing about the prior physician's denial and reasons for the denial.

However, in the end, both systems depend upon the integrity of pilots. No pilot may ever legally operate an aircraft when he or she is aware of a medical condition that could interfere with his or her ability to safely operate an aircraft. This ongoing self-certification requirement exists regardless of whether the pilot maintains a medical certificate or switches to BasicMed.

Q: What are the legal concerns in making this decision?

A: Our assessment is that legal concerns do seriously impact on the decision to accept BasicMed.

In the event that the medical incapacitation of a volunteer pilot with BasicMed results in an accident, one can expect arguments that higher standards should have been employed. This is an unavoidable risk that we have to live with.

On the other hand, requiring a 3rd Class Medical Certificate would not open up the VPO to additional risk. It is simply requiring the existing FAA standard, not an arbitrary one created by the VPO. It would be hard to argue that an accident resulted from requiring, what is in most respects, the more rigorous of two FAA standards.

Q: Are there Insurance Concerns?

A: Yes. VPOs accepting BasicMed should establish procedures to ensure that the pilots' insurance coverage will be valid with the pilot operating without an actual medical certificate.

Most VPOs require pilots to be insured and supply evidence of coverage. Insurance policies differ widely and some have a requirement that, to be insured, the pilot must have a current and valid medical certificate.

While it is commonly reported that BasicMed will not cause aviation insurers to raise rates or limit coverage, that does not change the fact that pilots are bound by the specific terms of their existing policy. If those terms are not complied with, there may be no coverage in the event of an accident. VPOs that represent to the public that its Volunteer Pilots are required to have insurance will be exposed to liability if they accept BasicMed and, as a result, there is no coverage for an accident.

If there is any doubt, the pilot should request an endorsement from the insurance carrier. This concern can be addressed if the insurance carriers issue blanket endorsements to the effect that pilots will be covered with either medical qualification.

Q: What steps should VPO take to implement BasicMed?

A: VPOs will need to review and update their documents describing pilot requirements and self-certifications. Any public information in brochures and websites that mention pilot qualifications should be reviewed for accuracy and amended if necessary.

Some groups rely on self-certification by pilots regarding their certification. However if a VPO chooses to obtain proof of compliance from pilots, it currently needs only to examine one document, the medical certificate. Compliance with BasicMed will be more complicated to ascertain and the FAA has yet to determine exactly how compliance will be documented. To verify compliance under BasicMed, a VPO would at least need to verify that the pilot has held a valid medical certificate issued within 10 years, a valid drivers' license, proof of medical course completion (every 24 months), and proof or self-certification of the required physical examination (every 4 years).

Conclusion:

In conclusion, it is reasonable for a VPO to permit a pilot meeting either of the FAA approved medical standards to operate flights as a volunteer pilot.

On the other hand, there is little or no risk in taking a conservative approach and retaining current standards, at least until there is some experience under BasicMed.

This is intended as general advice to VPOs and not to replace consultation with, and the advice of, legal counsel taking into account all of the relevant circumstances specific to each VPO.

ACA is available to address the questions and concerns of VPOs and urges each organization to keep us up to date on what actions it is taking or intends to take. Please email us at mail@aircareall.org [3].

Visit us on the web at:

www.aircarealliance.org [4]

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Links:

- [1] https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/1030196
- [2] <https://www.aopa.org/advocacy/pilots/medical/third-class-airman-medical-reform>
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