

HCPCS codes K0856 and K0861, which we placed on the Required Prior Authorization List in a December 21, 2016 notice (81 FR 93636), will continue to be subject to the requirements of prior authorization as well.

Although the PMD demonstration's prior authorization process is similar to the process used for those items on the Required Prior Authorization List, some differences do exist. In particular, items on the Required Prior Authorization List require prior authorization as a condition of payment. As such, lack of a provisionally affirmed prior authorization request will result in a claim denial. Under the PMD demonstration, requesting prior authorization is optional, and claims submitted for payment without an associated prior authorization decision are subject to prepayment review and assessed a 25-percent reduction in Medicare payment if found payable. Additionally, under the PMD demonstration, physicians/treating practitioners may submit prior authorization requests and are eligible to bill HCPCS code G9156 for an incentive payment. This process is not available for items on the Required Prior Authorization List.

Prior to furnishing the item to the beneficiary and prior to submitting the claim for processing, a requester must submit a prior authorization request that includes evidence that the item complies with all applicable Medicare coverage, coding, and payment rules. Consistent with § 414.234(d), such evidence must include the order, relevant information from the beneficiary's medical record, and relevant supplier-produced documentation. After receipt of all applicable required Medicare documentation, CMS or one of its review contractors will conduct a medical review and communicate a decision that provisionally affirms or non-affirms the request.

We will issue specific prior authorization guidance in subregulatory communications, including final timelines, which are customized for the DMEPOS items subject to prior authorization, for communicating a provisionally affirmed or non-affirmed decision to the requester. In the December 30, 2015 final rule, to allow us to safeguard beneficiary access to care, we stated that this approach to final timelines provides the flexibility to develop a process that involves fewer days, as may be appropriate. If at any time we become aware that the prior authorization process is creating barriers to care, we can suspend the program.

The updated Required Prior Authorization list is available in the download section of the following CMS website: <https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/DMEPOS/Prior-Authorization-Process-for-Certain-Durable-Medical-Equipment-Prosthetic-Orthotics-Supplies-Items.html>. We will post additional educational resources to the website.

### III. Collection of Information Requirements

This notice announces the addition of DMEPOS items on the Required Prior Authorization List and does not impose any new information collection burden under the Paperwork Reduction Act of 1995. However, there is an information collection burden associated with this program that is currently approved under OMB control number 0938-1293 which expires February 28, 2019.

Dated: May 14, 2018.

**Seema Verma,**

*Administrator, Centers for Medicare & Medicaid Services.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MB Docket No. 13-249; FCC 18-64]

### Revitalization of the AM Radio Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Denial of petition for reconsideration; dismissal of petition for emergency partial stay and processing freeze pending review of petition for reconsideration and motion for extension of time.

**SUMMARY:** This document denies the Petition for Reconsideration of the Second Report and Order in this proceeding, filed by Prometheus Radio Project (Prometheus) on April 10, 2017. This document dismisses as moot the Petition for Emergency Partial Stay and Processing Freeze Pending Review of Petition for Reconsideration filed by Prometheus April 3, 2017, and the Motion for Extension of Time filed by Prometheus May 11, 2017.

**DATES:** June 5, 2018.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Albert Shuldiner, Chief, Media Bureau,

Audio Division, (202) 418-2700 or [Albert.Shuldiner@fcc.gov](mailto:Albert.Shuldiner@fcc.gov); Thomas Nessinger, Senior Counsel, Media Bureau, Audio Division, (202) 418-2700 or [Thomas.Nessinger@fcc.gov](mailto:Thomas.Nessinger@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order on Reconsideration, MB Docket No. 13-249, FCC 18-64, adopted on May 21, 2018, and released on May 22, 2018. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554. This document will also be available via ECFS at <https://www.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Copies of the materials can be obtained from the FCC's Reference Information Center at (202) 418-0270. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document is not subject to the Congressional Review Act. The Commission is, therefore, not required to submit a copy of this Order on Reconsideration to the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the Petition for Reconsideration was denied and the Petition for Emergency Stay and Motion for Extension of Time were dismissed as moot.

The Commission rejected Prometheus's contentions that the Commission's decision not to adopt a proposed distance limit for siting cross-service FM translator stations (translators re-broadcasting AM station signals) was not a logical outgrowth of the proposed rule and was arbitrary and capricious. It found that the decision not to adopt the proposed 40-mile limit was reasonably foreseeable, especially given that commenters had proposed omitting the 40-mile limit and that Prometheus had access to those comments. The Commission further found that its actions were not arbitrary and capricious, finding that Prometheus's contentions do not raise legitimate concerns and are at best speculative. Prometheus did not provide evidence that omission of a distance limit encourages translators to "box in" incumbent low-power FM (LPFM) stations, restricting their ability to change sites. Additionally, the

Commission rejected Prometheus's argument that its final rule violated the Local Community Radio Act of 2010 (LCRA), in part because the LCRA does not mandate that the Commission prefer LPFM stations over FM translators. To the extent the LCRA obliges the Commission to consider local community needs, the Commission has stated that FM translators and LPFM stations both serve community needs in

different ways, and that giving AM stations more flexibility in siting fill-in cross-service translators, without a set distance limit, was in the public interest, as it allows an AM station to improve its program service to listeners in the local communities within its primary service contour. The Commission finally rejected Prometheus's argument that the Commission falsely equated the LPFM

service with local commercial AM broadcasters, because the amended rule benefits both commercial and noncommercial AM stations.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

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