§ 401.101 Purpose and scope.

(a) The regulations in this subpart:

(1) Implement section 1106(a) of the Social Security Act as it applies to the Health Care Financing Administration (HCFA). The rules apply to information obtained by officers or employees of HCFA in the course of administering title XVIII of the Social Security Act (Medicare), information obtained by Medicare intermediaries or carriers in the course of carrying out agreements

Subpart B—Confidentiality and Disclosure

§ 401.102 Definitions.

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§ 401.105 Compromise of claims.

Subpart F—Claims Collection and Compromise

§ 401.106 Suspension of collection action.

§ 401.107 Termination of collection action.

§ 401.108 Joint and several liability.

§ 401.109 Effect of HCFA claims collection decisions on appeals.

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh). Subpart F is also issued under the authority of the Medicare Claims Payment Improvement Act of 1998 (Pub. L. 105-33).
under sections 1816 and 1842 of the Social Security Act, and any other information subject to section 1106(a) of the Social Security Act;

(2) Relate to the availability to the public, under 5 U.S.C. 552, of records of HCFA and its components. They set out what records are available and how they may be obtained; and

(3) Supplement the regulations of the Department of Health and Human Services relating to availability of information under 5 U.S.C. 552, codified in 45 CFR part 5, and do not replace or restrict them.

(b) Except as authorized by the rules in this subpart, no information described in paragraph (a)(1) of this section shall be disclosed. The procedural rules in this subpart (§§ 401.106 through 401.152) shall be applied to requests for information which is subject to the rules for disclosure in this subpart.

(c) Requests for information which may not be disclosed according to the provisions of this subpart shall be denied under authority of section 1106(a) of the Social Security Act and this subpart, and furthermore, such requests which have been made pursuant to the Freedom of Information Act shall be denied under authority of an appropriate Freedom of Information Act exemption, 5 U.S.C. 552(b).

§ 401.105 Rules for disclosure.

(a) General rule. The Freedom of Information Act rules shall be applied to every proposed disclosure of information. If, considering the circumstances of the disclosure, the information would be made available in accordance with the Freedom of Information Act rules, then the information may be disclosed regardless of whether the requester or recipient of the information has a statutory right to request the information under the Freedom of Information Act, 5 U.S.C. 552, or whether a request has been made.

(b) Application of the general rule. Pursuant to the general rule in paragraph (a) of this section,

(1) Information shall be disclosed—

(i) To a subject individual when required by the access provision of the Privacy Act, 5 U.S.C. 552a(d), as implemented by the Department Privacy Act regulation, 45 CFR part 5b; and

(ii) To a person upon request when required by the Freedom of Information Act, 5 U.S.C. 552;

(2) Unless prohibited by any other statute (e.g., the Privacy Act of 1974, 5 U.S.C. 552a(b), the Tax Reform Act of 1976, 26 U.S.C. 6103, or section 1106(d) and (e) of the Social Security Act), information may be disclosed to any requester or recipient of the information, including another Federal agency or a State or Federal court, when the information would not be exempt from mandatory disclosure under Freedom of Information Act rules or when the information nevertheless would be made available under the Department’s public information regulation’s criteria for disclosures which are in the public interest and consistent with obligations of confidentiality and administrative necessity, 45 CFR part 5, subpart F, as supplemented by §§ 401.106 to 401.152 of this subpart.

§ 401.102 Definitions.

For purposes of this subpart:

Act means the Social Security Act.

Freedom of Information Act rules means the substantive mandatory disclosure provisions of the Freedom of Information Act, 5 U.S.C. 552 (including the exemptions from mandatory disclosure, 5 U.S.C. 552a(b), as implemented by the Department’s public information regulation, 45 CFR part 5, subpart F and by §§ 401.106 to 401.152 of this subpart.

Person means a person as defined in the Administrative Procedure Act, 5 U.S.C. 551(2). This includes State or local agencies, but does not include Federal agencies or State or Federal courts.

Record has the same meaning as that provided in 45 CFR 5.5.

Subject individual means an individual whose record is maintained by the Department in a system of records, as the terms “individual,” “record,” and “system of records” are defined in the Privacy Act of 1974, 5 U.S.C. 552a(a).
§ 401.106 Publication.
(a) Methods of publication. Materials required to be published under the provisions of The Freedom of Information Act, 5 U.S.C. 552(a)(1) and (2) are published in one of the following ways:
(1) By publication in the Federal Register of HCFA regulations, and by their subsequent inclusion in the Code of Federal Regulations;
(2) By publication in the Federal Register of appropriate general notices;
(3) By other forms of publication, when incorporated by reference in the Federal Register with the approval of the Director of the Federal Register; and
(4) By publication of indexes of precedential orders and opinions issued in the adjudication of claims, statements of policy and interpretations which have been adopted but have not been published in the Federal Register, and of administrative staff manuals and instructions to staff that affect a member of the public.
(b) Availability for inspection. Those materials which are published in the Federal Register pursuant to 5 U.S.C. 552(a)(1) shall, to the extent practicable and to further assist the public, be made available for inspection at the places specified in § 401.128.

§ 401.108 HCFA rulings.
(a) After September 1981, a precedent final opinion or order or a statement of policy or interpretation that has not been published in the Federal Register as a part of a regulation or of a notice implementing regulations, but which has been adopted by HCFA as having precedent, may be published in the Federal Register as a HCFA Ruling and will be made available in the publication entitled HCFA Rulings.
(b) Precedent final opinions and orders and statements of policy and interpretation that were adopted by HCFA before October, 1981, and that have not been published in the Federal Register are available in HCFA Rulings.
(c) HCFA Rulings are published under the authority of the Administrator, HCFA. They are binding on all HCFA Components, and on the Social Security Administration to the extent that components of the Social Security Administration adjudicate matters under the jurisdiction of HCFA.
[48 FR 22924, May 23, 1983]

§ 401.110 Publications for sale.
The following publications containing information pertaining to the program, organization, functions, and procedures of HCFA may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.
(a) Titles 20, 42, and 45 of the Code of Federal Regulations.
(b) Federal Register issues.
(c) Compilation of the Social Security Laws.
(d) HCFA Rulings.
(e) Social Security Handbook. The information in the Handbook is not of precedent or interpretative force.
(f) Medicare/Medicaid Directory of Medical Facilities.

§ 401.112 Availability of administrative staff manuals.
All HCFA administrative staff manuals and instructions to staff personnel which contain policies, procedures, or interpretations that affect the public are available for inspection and copying. A complete listing of such materials is published in HCFA Rulings. These manuals are generally not printed in a sufficient quantity to permit sale or other general distribution to the public. Selected material is maintained at Social Security Administration district offices and field offices and may be inspected there. See §§ 401.130 and 401.132 for a listing of this material.

§ 401.116 Availability of records upon request.
(a) General. In addition to the records made available pursuant to §§ 401.106, 401.108, 401.110 and 401.112, HCFA will, upon request made in accordance with this subpart, make identified records available to any person, unless they are exempt from disclosure under the provisions of section 552(b) of title 5, United States Code (see § 401.126), or any other provision of law.
§ 401.118  Misappropriation, alteration, or destruction of records. No person may remove any record made available to him for inspection or copying under this part, from the place where it is made available. In addition, no person may steal, alter, mutilate, obliterate, or destroy in whole or in part, such a record. See sections 641 and 2071 of title 18 of the United States Code.

§ 401.118  Deletion of identifying details.

When HCFA publishes or otherwise makes available an opinion or order, statement of policy, or other record which relates to a private party or parties, the name or names or other identifying details will be deleted.

§ 401.120  Creation of records.

Records will not be created by compiling selected items from the files, and records will not be created to provide the requester with such data as ratios, proportions, percentages, per capitas, frequency distributions, trends, correlations, and comparisons. If such data have been compiled and are available in the form of a record, the record shall be made available as provided in this subpart.

§ 401.126  Information or records that are not available.

(a) Specific exemptions from disclosure. Pursuant to paragraph (b) of 5 U.S.C. 552, certain classes of records are exempt from disclosure. For some examples of the kinds of materials which are exempt, see subpart F of the public information regulation of the Department of Health and Human Services (45 CFR part 5) and the appendix to that regulation.

(b) Materials exempt from disclosure by statute. Pursuant to paragraph (b)(3) of 5 U.S.C. 552, as amended, which exempts from the requirement for disclosure matters that are exempt from disclosure by statute, provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matter to be withheld:

(i) Reports described in sections 1106 (d) and (e) of the Social Security Act shall not be disclosed, except in accordance with the provisions of sections 1106 (d) and (e). Sections 1106 (d) and (e) provide for public inspection of certain official reports dealing with the operation of the health programs established by titles XVIII and XIX of the Social Security Act (Medicare and Medicaid), but require that program validation survey reports and other formal evaluations of providers of services shall not identify individual patients, individual health care practitioners, or other individuals. Section 1106(e) further requires that none of the reports shall be made public until the contractor or provider whose performance is being evaluated has had a reasonable opportunity to review that report and to offer comments. See § 401.133 (b) and (c);

(ii) Tax returns and return information defined in section 6103 of the Internal Revenue Code, as amended by the Tax Reform Act of 1976, shall not be disclosed except as authorized by the Internal Revenue Code.
(c) Effect of exemption. Neither 5 U.S.C. 552 nor this regulation directs the withholding of any record or information, except to the extent of the prohibitions in paragraph (b) of this section. Except for material required to be withheld under the statutory provisions incorporated in paragraph (b) of this section or under another statute which meets the standards in 5 U.S.C. 552(b)(3), materials exempt from mandatory disclosure will nevertheless be made available when this can be done consistently with obligations of confidentiality and administrative necessity. The disclosure of materials or records under these circumstances in response to a specific request, however, is of no precedent force with respect to any other request.

§ 401.128 Where requests for records may be made.

(a) General. Any request for any record may be made to—
(1) Any HCFA component;
(2) Director, Office of Public Affairs, HCFA 313–H, Hubert H. Humphrey Building, 200 Independence Avenue, Washington, DC 20201; or
(3) Director of Public Affairs in any Regional Office of the Department of Health and Human Services.

The locations and service areas of these offices are as follows:
Region IV—103 Marietta Street, Atlanta, GA 30323. Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
Region V—300 South Wacker Drive, Chicago, IL 60606. Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
Region VI—1200 Main Tower Building, Dallas, TX 75202. Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
Region VII—601 East 12th Street, Kansas City, MO 64106. Iowa, Kansas, Missouri, Nebraska.

(b) Records pertaining to individuals. HCFA maintains some records pertaining to individuals. Disclosure of such records is generally prohibited by section 1106 of the Social Security Act (42 U.S.C. 1306), except as prescribed in § 401.105 (See also § 401.126(b)). Requests for records pertaining to individuals may be addressed to:
Director, Office of Research, Demonstrations and Statistics, HCFA, Baltimore, Maryland 21235, when information is sought from the record of a person who has participated in a research survey conducted by or for HCFA, Office of Research, Demonstrations and Statistics; or whose records have been included by statistical sampling techniques in research and statistical studies authorized by the Social Security Act in the field of health care financing.

(c) Requests for materials listed in § 401.130 or § 401.132 or indexed in the HCFA Rulings. A request to inspect and copy materials listed in § 401.130 or § 401.132 or indexed in HCFA Rulings may be made to any district or branch office of the Social Security Administration. If the specific material requested is not available in the office receiving the request, the material will be obtained and made available promptly.

§ 401.130 Materials available at social security district offices and branch offices.

(a) Materials available for inspection. The following are available or will be made available for inspection at the social security district offices and branch offices:
(1) Compilation of the Social Security Laws.
(2) The Public Information Regulation of the Department of Health and Human Services (45 CFR part 5).
§ 401.132 Materials in field offices of the Office of Hearings and Appeals, SSA.

(a) Materials available for inspection. The following materials are available for inspection in the field offices of the Office of Hearings and Appeals, SSA.

(1) Title 45 of the Code of Federal Regulations (including the public information regulation of the Department of Health and Human Services).

(2) Regulations of the Social Security Administration and HCFA.

(3) Title 5, United States Code.

(4) Compilation of the Social Security Laws.

(5) HCFA Rulings.


(b) Handbook available for inspection and copying. The Office of Hearings and Appeals Handbook is available for inspection and copying in the field offices of the Office of Hearings and Appeals.

§ 401.133 Availability of official reports on providers and suppliers of services, State agencies, intermediaries, and carriers under Medicare.

Except as otherwise provided for in § 488.325 of this chapter for SNFs, the following must be made available to the public under the conditions specified:

(a) Statements of deficiencies and survey reports on providers of services prepared by State agencies. (1) Statements
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of deficiencies based upon official sur-
vvey reports prepared after January 31,
1973, by a State agency pursuant to its
agreement entered into under section
1864 of the Social Security Act and fur-
nished to HCFA, which relate to a
State agency’s findings on the compli-
cance of a health care institution or fa-
cility with the applicable provisions in
section 1861 of the Act and with the
regulations, promulgated pursuant to
those provisions, dealing with health
and safety of patients in those institu-
tions and facilities; and (2) State agen-
cy survey reports. The statement of de-
ficiencies or report and any pertinent
written statements furnished by the in-
stitution or facility on the statement
of deficiencies shall be disclosed within
90 days following the completion of the
survey by the State agency, but not to
exceed 30 days following the receipt of
the report by HCFA. (See § 401.130(b)(17)) for places where state-
ments of deficiencies, reports, and per-
tinent written statements will be
available.)

(b) HCFA reports on providers of serv-
ices. Upon request in writing, official
reports and other formal evaluations
(including followup reviews), excluding
references to internal tolerance rules
and practices contained therein, inter-

nal working papers or other informal
memoranda, prepared and completed
after January 31, 1973, which relate to
the performance of providers of serv-
ices under Medicare: Provided, That no
information identifying individual pa-
tients, physicians, or other practi-
tioners, or other individuals shall be
disclosed under this paragraph. Those
reports and evaluations shall be
disclosed within 30 days following their
final preparation by HCFA (or 30 days
following the request therefor, in the
case of the contract performance re-
view report prepared prior to February
1, 1973), during which time those inter-
mediaries, carriers, and State agencies,
as the case may be, shall be afforded a
reasonable opportunity to offer com-
ments, and there shall be disclosed
with those reports and evaluations any
pertinent written statements furnished
HCFA by those intermediaries, car-
rriers, or State agencies or those re-
ports and evaluations.

(d) Accreditation surveys. Upon writ-
ten request, HCFA will release the ac-
creditation survey and related informa-
tion from an accreditation organiza-
tion meeting the requirements of
§ 488.5, § 488.6 or § 493.506 of this chapter
to the extent the survey and informa-
tion relate to an enforcement action
taken (for example, denial of payment
for new admission, civil money penal-
ties, temporary management and ter-
mination) by HCFA;

(e) Upon written request, HCFA will
release the accreditation survey of any
home health agency.

§ 401.134 Release of Medicare informa-
tion to State and Federal agencies.

(a) Except as provided in paragraph
(b) of this section, the following informa-
tion may be released to an officer or
§ 401.135 Release of Medicare information to the public.

The following shall be made available to the public under the conditions specified:

(a) Information as to amounts paid to providers and other organizations and facilities for services to beneficiaries under title XVIII of the Act: Provided, That no information identifying any particular beneficiaries shall be disclosed under this paragraph.

(b) The name of any provider of services or other person furnishing services to Medicare beneficiaries who—

(1) Has been found guilty of submitting false claims in connection with Medicare; or

(2) Has been found by a carrier or intermediary, after consultation with a professional medical association functioning external to program administration or, if appropriate, the State
medical authority, to have been engaged in a pattern of furnishing services to beneficiaries which are substantially in excess of their medical needs; except that the name of any provider or other person shall not be disclosed pursuant to a finding under this paragraph (b)(2) of this section, unless that provider or other person has first been afforded a reasonable opportunity to offer evidence on his behalf.

(c) Upon request in writing, cost reports submitted by providers of services pursuant to section 1815 of the Act to enable the Secretary to determine amounts due the providers.

§ 401.136 Requests for information or records.

(a) A request should reasonably identify the requested record by brief description. Requesters who have detailed information which would assist in identifying the records requested are urged to provide such information in order to expedite the handling of the request. Envelopes in which written requests are submitted should be clearly identified as Freedom of Information requests. The request should include the fee or request determination of the fee. When necessary, a written request will be promptly forwarded to the proper office, and the requester will be advised of the date of the receipt and identification and address of the proper office.

(b) Determinations of whether records will be released or withheld will be made within 10 working days from date of receipt of the request in the office listed in § 401.128 except where HCFA extends this time and sends notice of such extension to the requester. Such extension may not exceed 10 additional working days and shall apply only where the following unusual circumstances exist:

1. The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the requests;

2. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are requested in a single request; or

3. The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the request or among two or more components of HCFA having a substantial interest in the subject matter of the request.

(c) If an extension is made, the requester will be notified in writing before the expiration of 10 working days from receipt of the request and will be given an explanation of why the extension was necessary and the date on which a determination will be made.

(d) Authority to extend the time limit with respect to any request for information or records is granted to the Director, Office of Public Affairs, HCFA and to the Director of Public Affairs in any HHS Regional Office. Those officers and employees of HCFA who are listed in §401.144(a) as having authority to deny requests for information from records maintained on individuals are granted authority to extend the time limit for responding to requests for information from such records.

§ 401.140 Fees and charges.

(a) Statement of policy. It is HCFA's policy to comply with certain requests for information services without charge. Except as otherwise determined pursuant to paragraph (c) of this section, fees will be charged for the following services with respect to all other requests for information from records which are reasonably identified by the requesters:

1. Reproduction, duplication, or copying of records;

2. Searches for records; and

3. Certification or authentication of records.

(b) Fee schedules. The fee schedule is as follows:

1. Search for records. Three dollars per hour: Provided, however, That no charge will be made for the first half hour.

2. Reproduction, duplication, or copying of records. Ten cents per page where such reproduction can be made by commonly available photocopying machines. The cost of reproducing records which cannot be so photocopied will be determined on an individual basis at actual cost.
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(3) Certification or authentication of records. Three dollars per certification or authentication.

(4) Forwarding materials to destination. Any special arrangements for forwarding which are requested shall be charged at actual cost; however, no charge will be made for postage.

(5) No charge will be made when the total amount does not exceed five dollars.

(c) Waiver or reduction of fees. Waiver or reduction of the fees in paragraph (b) of this section may be made upon a determination that such waiver or reduction is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Such determination may be made by the appropriate officer or employee identified in § 401.144.

(d) Sale of documents. On occasion, a previously printed document may be available for sale to the public; the cost of supplying the document is one cent per page unless the document is available for sale from the Superintendent of Documents, in which case the price shall be that determined by the Superintendent.

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(a) Review by the Administrator. A person whose request has been denied may initiate a review by filing a request for review with the Administrator of HCFA, 700 East High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, within 30 days of receipt of the determination to deny or within 30 days of receipt of records which are in partial response to his request if a portion of a request is granted and a portion denied, whichever is later. Upon receipt of a timely request for review, the Administrator will review the decision in question and the findings upon which it was based. Upon the basis of the data considered in connection with the decision and whatever other evidence and written argument is submitted by the person requesting the review or which is otherwise obtained, the Administrator or his designee will affirm or revise in whole or in part the findings and decision in question. A decision to affirm the denial will be made only upon concurrence of the Assistant Secretary for Public Affairs, or his designee, after consultation with the General Counsel or his or her designee, and the appropriate program policy official. Written notice of the decision of the Administrator will be mailed to the person who requested the review. A written decision will be made within 20 working days from receipt of the request for review. Extension of the time limit may be granted under the circumstances listed in § 401.136(b) to the extent that the maximum 10 days limit on extensions has not been exhausted on the initial determination. The decision will include the basis for it and will advise the requester of his right to judicial review.

(b) Failure of the Administrator to comply with the time limits. Failure of the Administrator to comply with the time limits set forth in § 401.136 and this section constitutes an exhaustion of the requester's administrative remedies.

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Court review.

Where the Administrator upon review affirms the denial of a request for records, in whole or in part, the requester may seek court review in the district court of the United States pursuant to 5 U.S.C. 552(a)(4)(B).