

**Centers for Medicare & Medicaid Services, HHS**

**§ 401.101**

Sections in 42 CFR that contain collections of information	Current OMB control Nos.
447.272, 447.299 .....	0938—0618
447.302, 447.331, 447.332, 447.333 .....	0938—0247
456.80 .....	0938—0247
456.654 .....	0938—0445
456.700, 456.705, 456.709, 456.711, 456.712 .....	0938—0659
462.102, 462.103 .....	0938—0526
466.70, 466.72, 466.74 .....	0938—0445
466.78 .....	0938—0445
466.80, 466.94 .....	0938—0665
473.18, 473.34, 473.36, 473.42 .....	0938—0445
476.104, 476.105, 476.116, 476.134 .....	0938—0426
481.61 .....	0938—0328
482.12, 482.21, 482.22, 482.27, 482.30, 482.41, 482.43, 482.53, 482.56, 482.57, 482.60, 482.62 .....	0938—0328
483.10 .....	0938—0610
483.410, 483.420, 483.440, 483.460, 483.470 .....	0938—0366
484.1, 484.2 .....	0938—0365
484.10 .....	0938—0365
484.12, 484.14, 484.16, 484.18, 484.30, 484.32, 484.34, 484.36, 484.48, 484.52 .....	0938—0610
485.56, 485.58, 485.60, 485.64, 485.66 .....	0938—0365
485.709, 485.711, 485.717, 485.719, 485.721, 485.723, 485.725, 485.727 .....	0938—0267
486.104, 486.106, 486.110 .....	and
486.155, 486.161, 486.163 .....	0938—0538
488.10 .....	0938—0336
488.18 .....	0938—0338
488.26 .....	0938—0336
489.20 .....	0938—0646
489.24 .....	0938—0667
489.102 .....	0938—0646
491.9, 491.10 .....	0938—0564
493.35, 493.37, 493.39, 493.43, 493.45, 493.47, 493.49, 493.51, 493.53, 493.55, 493.60, 493.61, 493.62, 493.63 .....	and
493.614, 493.633, 494.634 .....	0938—0667
493.801—493.1285, 493.1425, 493.1701, 493.1703, 493.1705, 493.1707, 493.1709, 493.1711, 493.1713, 493.1715, 493.1717, 493.1719, 493.1721, 493.1775, 493.1776, 493.1777, 493.1780, 493.2001 .....	0938—0610
494.52, 494.54, 494.56, 494.58, 494.64 .....	0938—0608
498.22, 498.40, 498.58, 498.82 .....	0938—0508
1004.40, 1004.50, 1004.60, 1004.70 .....	0938—0444

[60 FR 50445, Sept. 29, 1995, as amended at 60 FR 63188, Dec. 8, 1995]

**PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS**

**Subpart A [Reserved]**

**Subpart B—Confidentiality and Disclosure**

- Sec.
- 401.101 Purpose and scope.
- 401.102 Definitions.

- 401.105 Rules for disclosure.
- 401.106 Publication.
- 401.108 CMS rulings.
- 401.110 Publications for sale.
- 401.112 Availability of administrative staff manuals.
- 401.116 Availability of records upon request.
- 401.118 Deletion of identifying details.
- 401.120 Creation of records.
- 401.126 Information or records that are not available.
- 401.128 Where requests for records may be made.
- 401.130 Materials available at social security district offices and branch offices.
- 401.132 Materials in field offices of the Office of Hearings and Appeals, SSA.
- 401.133 Availability of official reports on providers and suppliers of services, State agencies, intermediaries, and carriers under Medicare.
- 401.134 Release of Medicare information to State and Federal agencies.
- 401.135 Release of Medicare information to the public.
- 401.136 Requests for information or records.
- 401.140 Fees and charges.
- 401.144 Denial of requests.
- 401.148 Administrative review.
- 401.152 Court review.

**Subparts C–E [Reserved]**

**Subpart F—Claims Collection and Compromise**

- 401.601 Basis and scope.
- 401.603 Definitions.
- 401.605 Omissions not a defense.
- 401.607 Claims collection.
- 401.613 Compromise of claims.
- 401.615 Payment of compromise amount.
- 401.617 Suspension of collection action.
- 401.621 Termination of collection action.
- 401.623 Joint and several liability.
- 401.625 Effect of CMS 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 Federal Claims Collection Act (31 U.S.C. 3711).

**Subpart A [Reserved]**

**Subpart B—Confidentiality and Disclosure**

SOURCE: 46 FR 55696, Nov. 12, 1981, unless otherwise noted.

**§ 401.101 Purpose and scope.**

- (a) The regulations in this subpart:

## § 401.102

(1) Implement section 1106(a) of the Social Security Act as it applies to the Centers for Medicare & Medicaid Services (CMS). The rules apply to information obtained by officers or employees of CMS 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 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 CMS 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).

### § 401.102 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. 552(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.

## 42 CFR Ch. IV (10-1-02 Edition)

*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).

### § 401.105 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