

of confidentiality and administrative necessity, 45 CFR part 5, subpart F, as supplemented by §§ 401.106 to 401.152 of this subpart.

[42 FR 14704, Mar. 16, 1977. Redesignated at 45 FR 74913, 74914, Nov. 13, 1980, and correctly redesignated at 46 FR 24551, May 1, 1981, as amended at 46 FR 55697, Nov. 12, 1981]

#### § 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 CMS 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.

[46 FR 55696, Nov. 12, 1981, as amended at 48 FR 22924, May 23, 1983]

#### § 401.108 CMS 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 CMS as having precedent, may be published in the FEDERAL REGISTER as a CMS Ruling and will be made available in the publication entitled *CMS Rulings*.

(b) Precedent final opinions and orders and statements of policy and interpretation that were adopted by CMS before October, 1981, and that have not been published in the FEDERAL REGISTER are available in *CMS Rulings*.

(c) CMS Rulings are published under the authority of the Administrator, CMS. They are binding on all CMS Components, and on the Social Security Administration to the extent that components of the Social Security Administration adjudicate matters under the jurisdiction of CMS.

[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 CMS 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) CMS 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 CMS 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 CMS 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,

## § 401.118

401.108, 401.110 and 401.112, CMS 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.

(b) *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 CMS 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 capita, 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 exempted from disclosure by statute, provided that

## 42 CFR Ch. IV (10–1–02 Edition)

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:

(1) 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);

(2)(i) Except as specified in paragraph (b)(2)(ii) of this section, CMS may not disclose any accreditation survey or any information directly related to the survey (including corrective action plans) made by and released to it by the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association or any other national accreditation organization that meets the requirements of § 488.6 or § 493.506 of this chapter. Materials that are confidential include accreditation letters and accompanying recommendations and comments prepared by an accreditation organization concerning the entities it surveys.

(ii) *Exceptions.*

(A) CMS may release the accreditation survey of any home health agency; and

(B) CMS may release the accreditation survey and other information directly related to the survey (including corrective action plans) to the extent the survey and information relate to an enforcement action (for example, denial of payment for new admissions,