



Appellant Forum – Update from OMHA

June 25, 2015

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Chief Administrative Law Judge
Office of Medicare Hearings and Appeals

<http://www.hhs.gov/omha>
Medicare.Appeals@hhs.gov

Background

- ❖ The Office of Medicare Hearings and Appeals (OMHA) operates within the Office of the Secretary of the U.S. Department of Health and Human Services and administers the nationwide ALJ hearings program for Medicare benefit and claim appeals (generally the third of four levels of administrative appeal).
- ❖ OMHA is organizationally and functionally separate from the Centers for Medicare and Medicaid Services (CMS).
- ❖ *Our Mission:* OMHA is a responsive forum for fair, credible, and timely decision-making through an accomplished, innovative, and resilient workforce. Each employee makes a difference by contributing to shaping American health care.

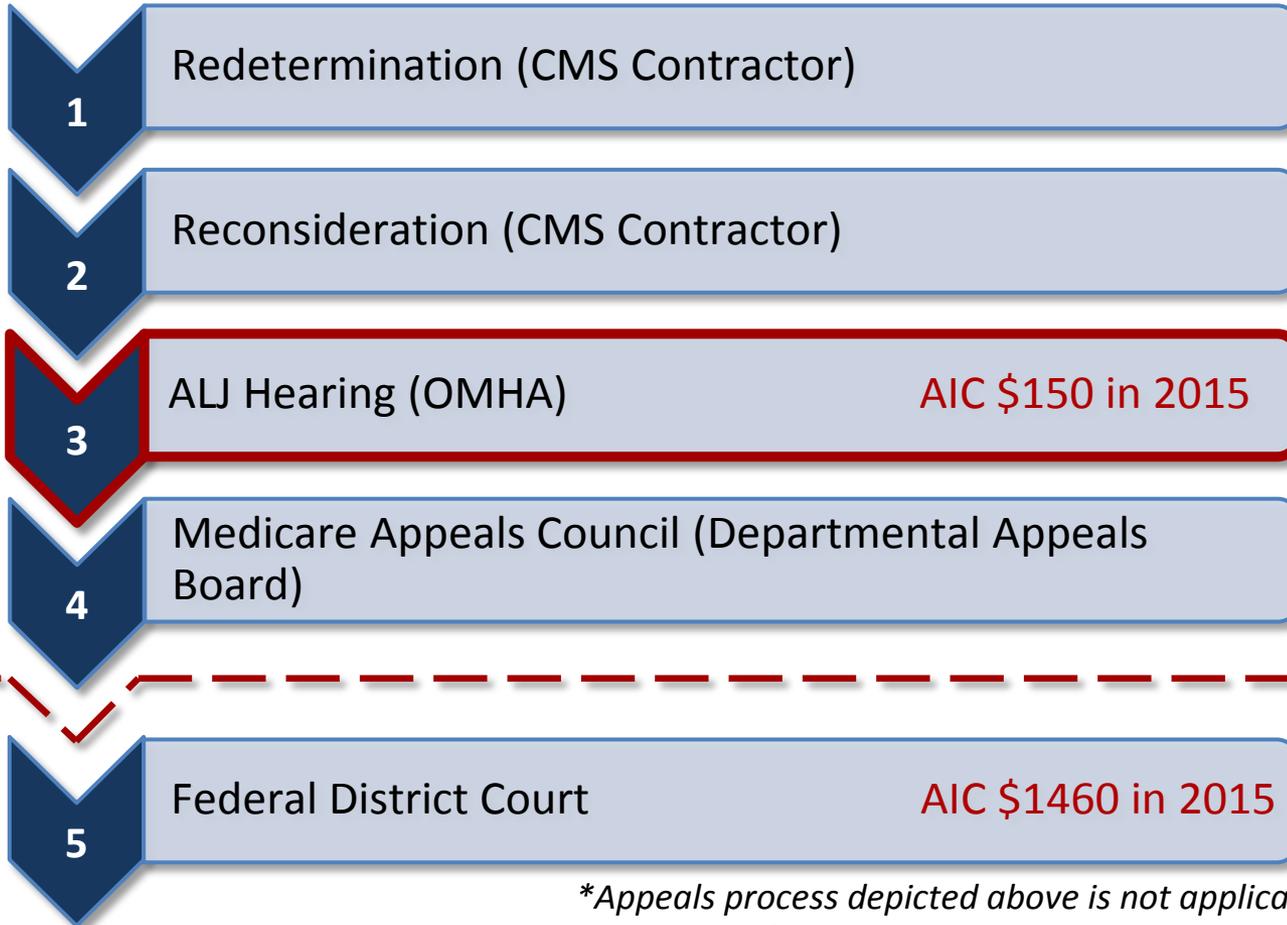


Jurisdiction

- ❖ Part A and B Claim Appeals
 - Pre- and post-payment denials
 - Medicare Secondary Payer (MSP) recoveries
- ❖ Part C Medicare Advantage Organization determinations
- ❖ Part D prescription drug coverage determinations
- ❖ Provider service termination and hospital discharge appeals (QIO)
- ❖ Medicare eligibility & entitlement determinations made by SSA
- ❖ Part B and D Income-Related Adjustment Amount (IRMAA) determinations made by SSA

Jurisdiction (Part A and B Claim Appeals*)

Administrative Appeals



**Appeals process depicted above is not applicable to appeals of initial determinations made by a QIO.*

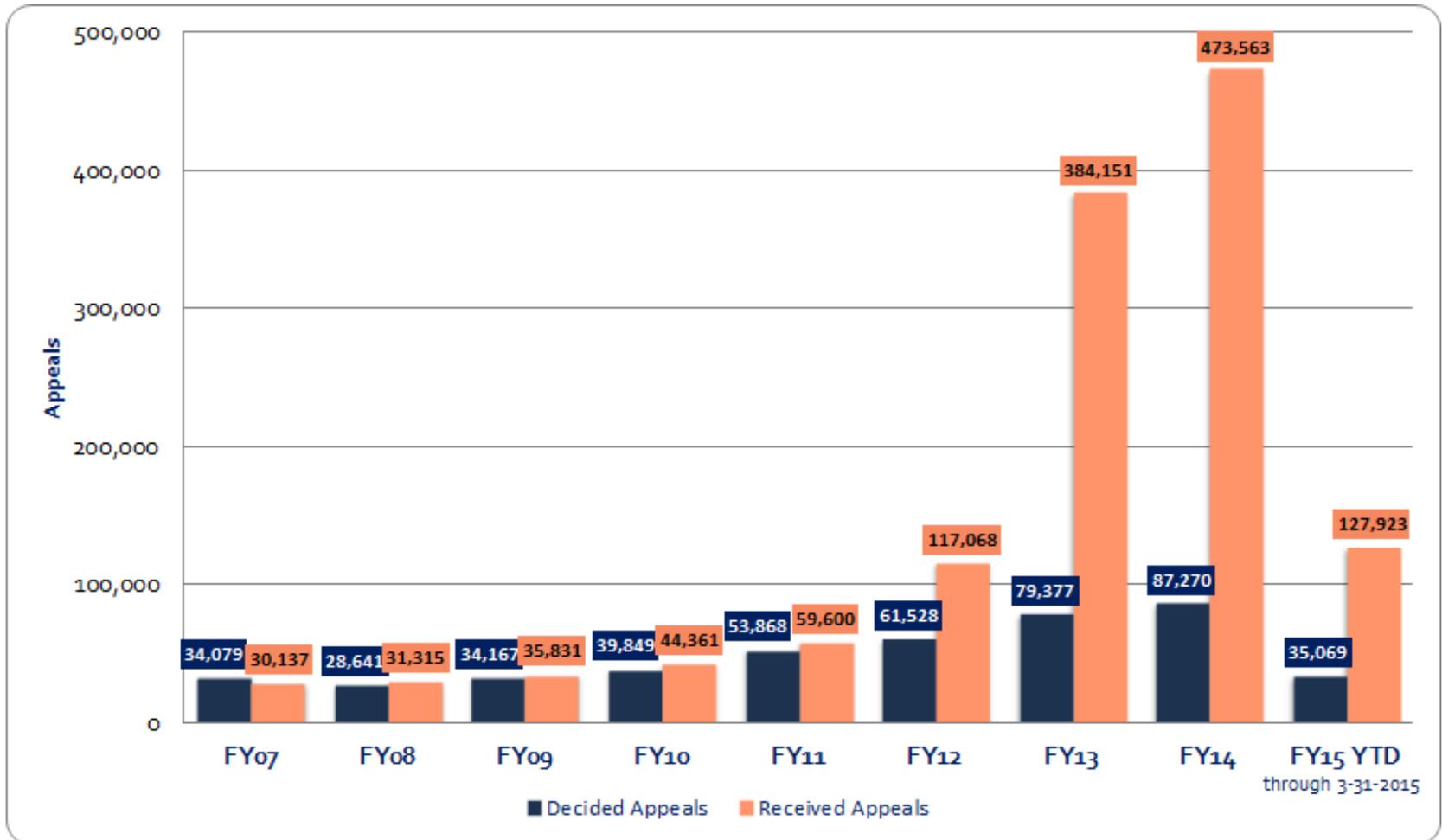
Workload Overview

- ❖ FY 2013 appeal receipts exceeded 384,000, over 3 times the FY 2012 receipts level (117,000).
- ❖ FY 2014 appeal receipts were approximately 473,000.
- ❖ FY 2015 through 3/31/15 appeal receipts are approximately 128,000.
- ❖ In FY 2014, ALJs decided or dismissed an average of 1,505 appeals.
- ❖ In FY 2015 through 3/31/15, ALJs decided or dismissed an average of 540 appeals per team.
- ❖ Despite higher-than-ever ALJ productivity, total *sustainable* annual adjudicatory capacity is still only approximately 75,000 appeals
- ❖ Average processing time for appeals decided in FY 2015 thus far is 588.9 days.
- ❖ Beneficiary appeals (approximately 1% of workload) receive priority

Reasons for Increase

- ❖ Significant, sustained growth in appeals workload compared to moderate budget increases
- ❖ Increased workload due to:
 - Cumulative effect of post-payment audit programs:
 - Medicare Administrative Contractors (MACs)
 - Recovery Auditors (RAs)
 - Zone Program Integrity Contractors (ZPICs)
 - Supplemental Medical Review Contractor (SMRC)
 - More active Medicaid State Agencies (MSAs)
 - Increase in traditional workload
 - Larger beneficiary population

Receipts vs. Decisions Issued



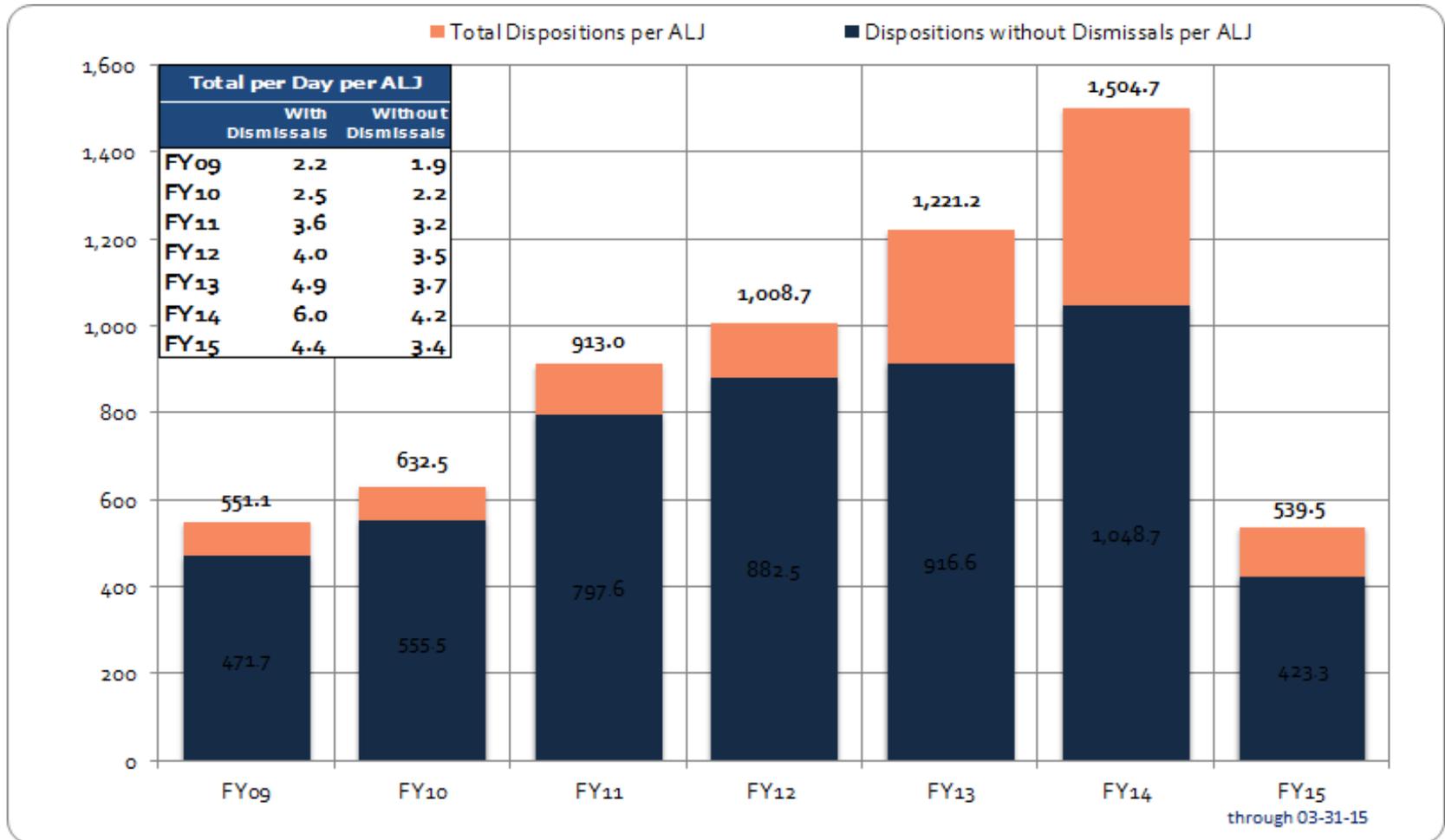
Received appeals represents cases with Request for Hearing Date in listed fiscal year and excludes reopened appeals.

Fiscal Years 2014 and 2015 reflect changes in methodology to include combined appeals.

Decided appeals represents cases decided in listed fiscal year and excludes remands.

Run Date: May 1, 2015

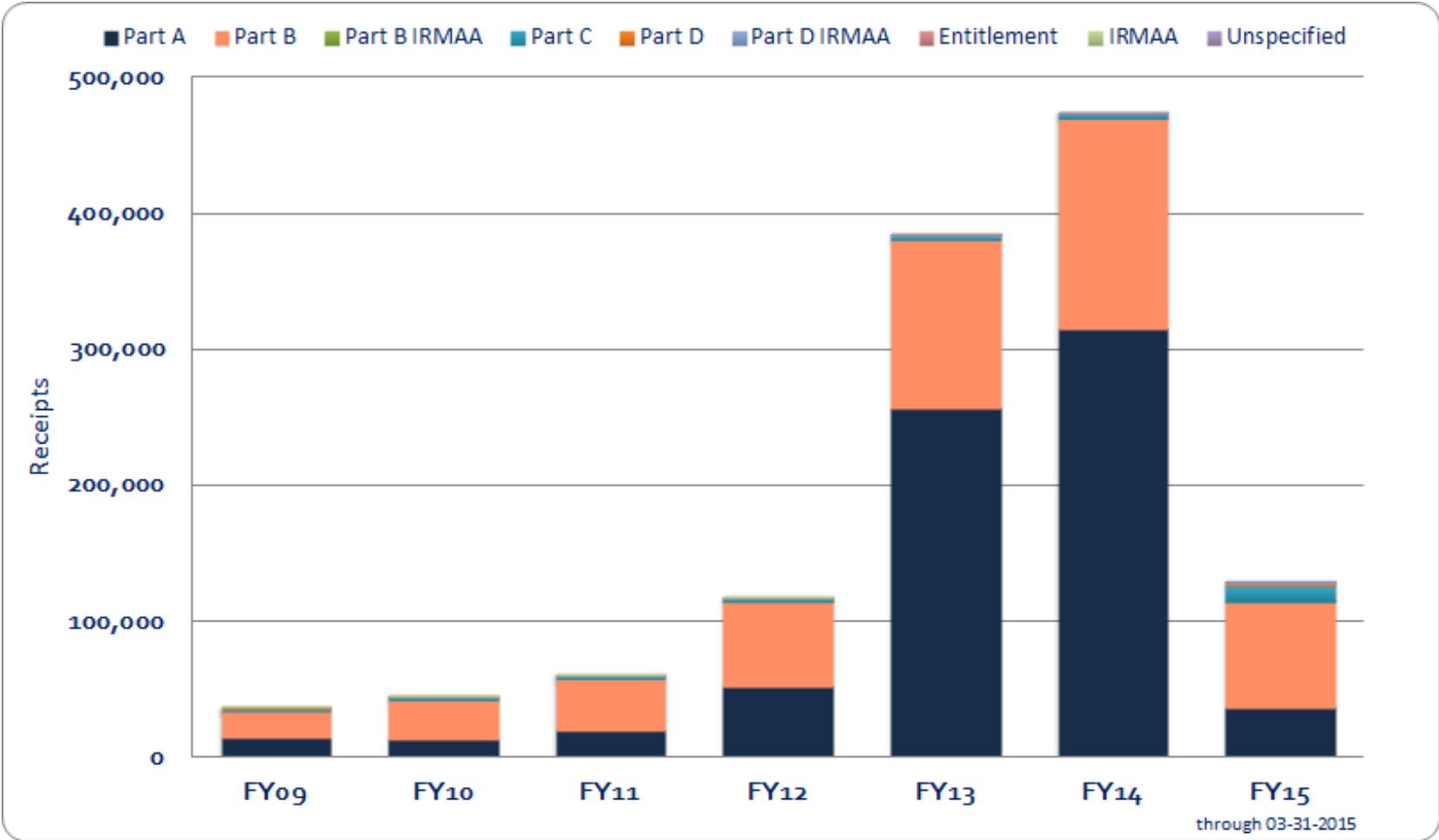
ALJ Productivity



Appeals decided in listed fiscal year and excludes remands.

Run Date: May 1, 2015

Receipts (by Medicare Type)



Received appeals represents cases with Request for Hearing Date in listed fiscal year and excludes reopened appeals.
 Fiscal Years 2014 and 2015 reflect changes in methodology to include combined appeals.

Run Date: May 1, 2015

Beneficiary Appeal Prioritization

- July 2013, OMHA established an appeal prioritization policy to ensure responsiveness to beneficiaries :
 - Part D expedited appeals
 - Other beneficiary appeals
 - All other appeals
- “Beneficiary Mail Stop” is for beneficiaries or their representatives to self-identify
- FY 2014 = 5,276 beneficiary appeals
 - Average wait time for disposition = 136.2 days
- FY 2015 = 3,722 beneficiary appeals (year to date)
 - Average wait time for disposition = 69.8 days

Budget vs. Claims Workload

FY	Budget
2006	\$59,359,000
2007	\$59,727,000
2008	\$63,864,000
2009	\$64,604,000
2010	\$71,147,000
2011	\$71,005,000
2012	\$72,011,000
2013	\$69,444,000
2014	\$82,381,000
2015	\$87,381,000

39% Increase from 2006 to 2014

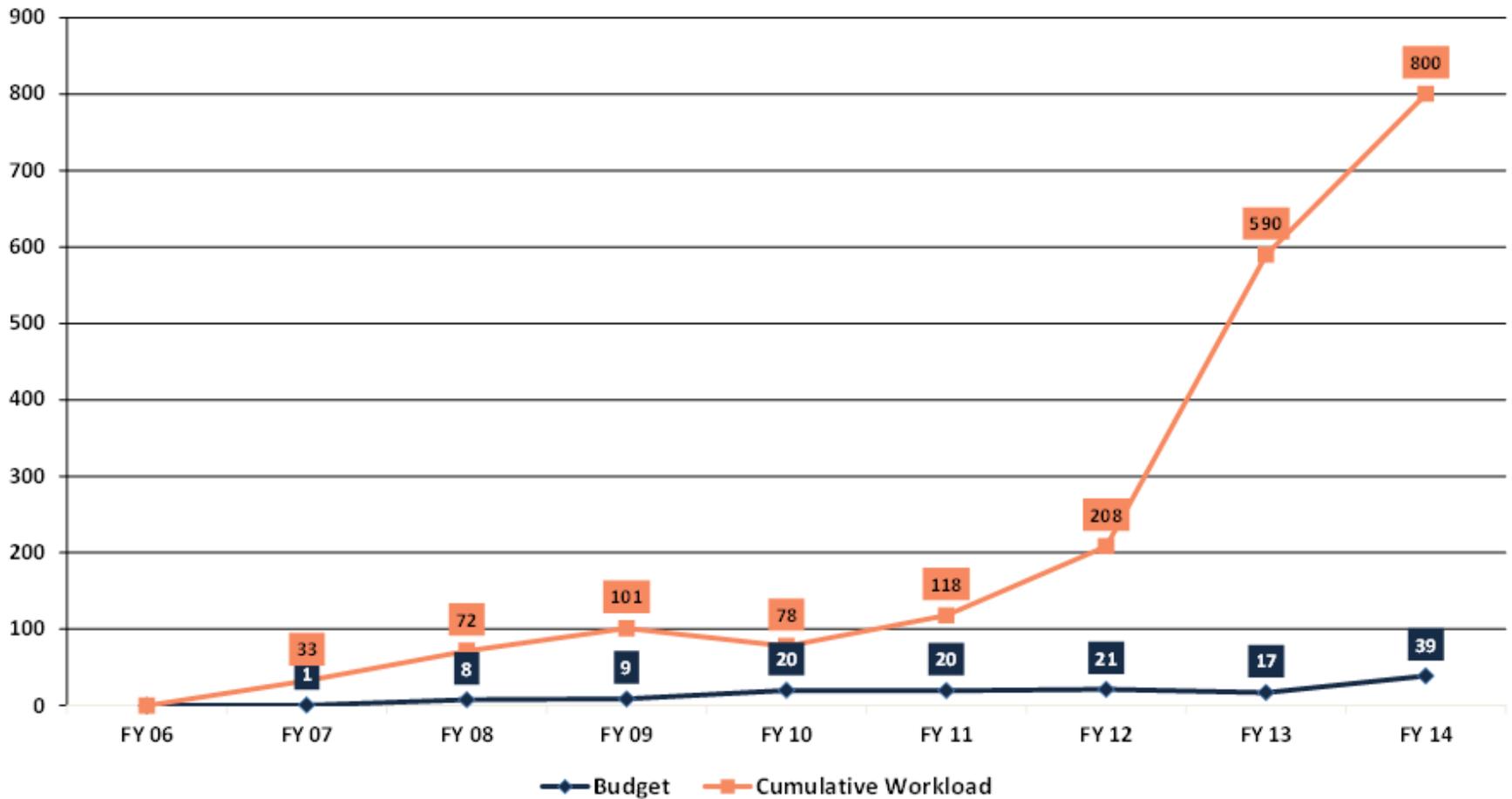
FY	Claims
2006	95,000
2007	126,000
2008	163,000
2009	191,000
2010	169,000
2011	207,000
2012	293,000
2013	655,000
2014	855,000
2015	650,000

} projected

800% Increase from 2006 to 2014

Budget vs. Claims Workload

Percent Increase Over FY 06



IT Initiatives



ALJ Appeal Status Information System (AASIS)

- ❖ AASIS went live December 2014 and is accessible through OMHA website: <http://www.hhs.gov/omha>
- ❖ Appellants can enter 1 to 10 appeal numbers at a time
- ❖ System returns information on docketed appeals, including:
 - Appeal status
 - Date request for hearing was received
 - Field office/ALJ assignment and ALJ team phone number (if assigned)
 - Date decision letter was mailed (if applicable)

Field marked with an asterisk (*) is required.

Enter Appeal Number(s) *

Enter up to 10 ALJ Appeal Numbers and/or Medicare Appeal Numbers (Reconsideration).

Please enter one per line pressing the enter key.

1-1000638791R1

Please validate the following expression:

Question: What is seven - four ?

3

Submit Inquiry

ALJ Appeal Status Information System Results Page

SEARCH RESULTS

Medicare Appeal Number (Reconsideration)	1-895134209
ALJ Appeal Status	Assigned
ALJ Appeal Number	1-1000638791R1
Request for ALJ Hearing Received Date	05/18/2013
ALJ Hearing Date	
ALJ Decision Mailed Date	
ALJ Hearing Office	Miami
Administrative Law Judge	Lauren Heard
ALJ Team Phone Number/Extension	305-415-7449
New ALJ Appeal Number	
Notes	This appeal has been assigned, and will be reviewed by the Administrative Law Judge indicated above.

HEARING OFFICE(S)

Miami

OMHA Miami Field Office
100 SE 2nd St., Suite 1660
Miami, FL 33131-2100
Phone: 866-622-0382

<http://www.hhs.gov/omha>

ECAPE

- ❖ Scan all unassigned Requests for Hearing and associated documents
 - Separate contract, already underway
- ❖ Release I
 - Case Intake
 - Appellant Public Portal (Phase I)
 - Electronic filing of Request for Hearing
 - Submission of electronic evidence
- ❖ Release II
 - Appeal adjudication from ALJ assignment through closure
- ❖ Release III
 - Enhanced Appellant Public Portal (Phase II)
 - Authenticated parties can view files electronically
 - Communication to and from OMHA



Listserv

- ❖ OMHA established a listserv in February 2015 to provide updates to our appellants regarding:
 - the appeals process,
 - special initiatives,
 - pilot processes,
 - appellant forums
 - OMHA website updates,
 - and other information pertinent to their appeals.

The instructions/links to subscribe to OMHA's listserv are available on <http://www.hhs.gov/omha/>

OMHA Website <http://www.hhs.gov/omha/>

❖ The place to go for..

- AASIS
- the Listserv
- tips/hints and FAQs
- information on the appeals process
- project status information
- workload data
- contact information
- OMHA initiatives
- forms

OMHA Website

The screenshot shows the OMHA website interface. A red circle highlights the left-hand navigation menu, which includes the following items: OMHA Home, About OMHA, Understanding the Appeal Process, Coverage and Claims Appeals, Part B Premium Appeals, Entitlement Appeals, OMHA Appellant Forum, Forms, Resources, FAQs, Data, Glossary, Appeal Status Lookup, Contact Us, and Subscribe or Unsubscribe to Email List. Another red circle highlights a list of three blue buttons at the bottom of the page: Tips for Filing a Request for ALJ Hearing, OMHA Statistical Sampling, and OMHA Settlement Conference Facilitation.

Office of Medicare H x

www.hhs.gov/omha/

Apps Family Tree DN... Rhythmyx about:blank New Tab

Text Size: A A A

Office of Medicare Hearings and Appeals (OMHA)

OMHA administers appeal hearings for the Medicare program. There are five levels in the Medicare claims appeal process. OMHA's Administrative Law Judges hold hearings and issue decisions related to Medicare coverage determinations that reach Level 3 of the Medicare claims appeal process. This Web site was created to help you learn more about Level 3 appeals. Basic descriptions of the other levels are also provided, to assist you in understanding the appeal process.

If you wish to file a new appeal at Level 1, please visit [Medicare.gov](#). If you wish to learn more about Level 2 appeals, please see our summary of the Level 2 appeals process. For Level 3 appeals, please choose among the following options:

- If you were denied coverage for part or all of a medical service that you believe should have been covered by Medicare, see [Coverage and Claims Appeals](#) for guidance;
- If you were told you are not eligible for Medicare, see [Entitlement Appeals](#) for guidance; or
- If you think your Part B Premium rate should be lowered, see [Part B Premium Appeals](#) for guidance.

NEW! The OMHA Medicare Appellant Forum will be held June 25, 2015. For more information about the conference and registration information select the following link:

[OMHA Medicare Appellant Forum](#)

[Tips for Filing a Request for ALJ Hearing](#)

[OMHA Statistical Sampling](#)

[OMHA Settlement Conference Facilitation](#)

Scanning Initiative

- ❖ Contract awarded in December 2014
- ❖ Scan all unassigned Requests for Hearing and associated documents received in Central Operations
 - ❖ Transition to ECAPE
 - ❖ Enhanced case management capabilities
- ❖ Production began in June 2015
 - ❖ Scanning of documents received during third quarter of FY14 (April 2014)

Non-IT Program Initiatives



Settlement Conference Facilitation



Statistical Sampling Initiative



Senior Attorney On the Record Pilot

Settlement Conference Facilitation

- ❖ Pilot: Unassigned Part B provider/supplier appeals filed in 2013.
- ❖ OMHA acts as the conference facilitator – CMS and the appellant discuss potential resolution through settlement.
 - If the parties reach agreement, a settlement agreement is signed and OMHA dismisses the appeals.
 - If no agreement is reached, appeals return to prior status and place in queue.
- ❖ Distinct from CMS Part A hospital administrative agreement option (requests were due to CMS 10/31/14).
- ❖ Expansion:
 - Include more pending appeals
 - Include option for Medicaid State Agencies

See OMHA website for more detailed requirements, instructions, and a description of the process. Email questions to OMHA.SCF@hhs.gov

Statistical Sampling Pilot

- ❖ Appellants may request or be invited to participate if they have a sufficient number of pending Part A/B claims that meet pilot criteria (currently 250 claims from quarter of appeals being assigned)
- ❖ OMHA independent statistician used.
 - Sample methodology in accordance with Medicare Program Integrity Manual (CMS Pub. 100-08, Ch. 8)
 - Statistician select sample
 - ALJ makes decision on sample units
 - Statistician extrapolates results to universe of claims
 - CMS contractors apply payment amounts and effectuates
- ❖ Expansion:
 - Include more pending appeals
 - Revise process to potentially include multiple adjudicators

See OMHA website for more detailed requirements, instructions, and a description of the process. Email questions to OMHA.stat.sampling@hhs.gov

Senior Attorney Emphasis Hearing Waivers

- ❖ Pilot concept: Use OMHA senior attorneys to assist in processing appeals in which oral hearing was waived by the appellant.
- ❖ Concept parameters:
 - Oral hearing waived by appellant.
 - No non-appellant parties are liable for the items or services.
 - Decision is based on evidence in the record.
 - Outcome can be favorable or unfavorable.
- ❖ Scope of pilot will begin with existing waivers of hearing, beginning with appeals currently being assigned.

Proposals in President's Budget

- 
- Use funds from RA recoveries to support OMHA and DAB programs
 - Refundable Filing Fee
 - Increase AIC for ALJ hearings and authorize Medicare Magistrates
 - Authority to Issue decisions without a hearing when no material facts in dispute
 - Statistical Sampling and Appeal Consolidation
 - Remand to redetermination level when new information is received

Decisional Statistics

Appeals	FY12	FY13	FY14	FY15 (Data through March 2015)
Fully Favorable	53.2%	44.3%	36.7%	38.4%
Partially Favorable	6.4%	5.2%	2.8%	3.7%
Unfavorable	27.9%	25.5%	30.1%	35.9%
Dismissed	12.5%	25.0%	30.4%	22.0%

Claims	FY12	FY13	FY14	FY15 (Data through March 2015)
Fully Favorable	33.8%	35.1%	28.4%	33.2%
Partially Favorable	16.4%	11.5%	11.5%	8.4%
Unfavorable	34.1%	28.6%	31.5%	33.6%
Dismissed	15.7%	24.7%	28.7%	24.8%

Includes appeals/claims decided in listed fiscal year, excluding remands.
Does not reflect any actions taken by the Medicare Appeals Council

Run Date: May 1, 2015

Practice Tips

- ❖ Evaluate strength of case before filing. Any legal bars to Medicare coverage?
- ❖ ALJs are bound by, and may not deviate from the terms of:
 - Statutes (Social Security Act)
 - Regulations (C.F.R.)
 - CMS Rulings
 - National Coverage Determinations (NCDs)
- ❖ ALJs are not bound by, but must give *substantial deference* to:
 - CMS manuals and interpretive guidance
 - CMS contractor Local Coverage Determinations (LCDs)
- ❖ Note: Prior decisions from the Medicare Appeals Council or another ALJ have no precedential value.

Practice Tips

- ❖ Be familiar with and cite to applicable Medicare law and policy
- ❖ Consider submitting a written pre-hearing brief that:
 - Outlines argument for coverage
 - Clearly applies relevant coverage criteria to the facts
 - Points to specific documentation
 - Provides a timeline
- ❖ Submit all required documentation early on
 - Documentation identified as missing in CMS contractor decision letters
 - Good cause required for evidence submitted for the first time by a provider or supplier at the ALJ level of hearing or above. 42 C.F.R. § 1018(c)

Practice Tips

- ❖ If a non-binding authority supports non-coverage, explain why you believe the ALJ should depart from the policy.
 - An ALJ may find that claim-specific facts warrant a limited, interpretive exception to an LCD or an interpretive manual
 - An OMHA ALJ may *not* find that an LCD or a provision of an LCD is invalid.
 - LCD review is conducted by ALJs of the Civil Remedies Division of the Departmental Appeals Board (42 C.F.R. Part 426, Subpart D)

Practice Tips

- ❖ If no genuine issue of material fact, consider waiving your right to a hearing.
- ❖ Medicare is a defined-benefit program, and does not cover all items and services. If a binding authority supports non-coverage, consider whether filing a request for ALJ hearing is in your best interest, and whether any other options (e.g., rebilling, adjustment claims) are still available.
- ❖ Examples of services that are non-covered by binding authority include:
 - Enteral and parenteral nutritional therapy for individuals with temporary impairments (does not meet the definition of a prosthetic)
 - Nutritional Supplementation
 - External infusion pumps for administration of vancomycin
 - Implantable infusion pumps for the treatment of thromboembolic disease or diabetes

NCDs 180.2, 280.14

Practice Tips

- ❖ CMS is increasing contractor participation requirements. Be prepared not only to argue your case before an ALJ, but also to respond to questions and testimony from CMS contractors.
- ❖ CMS contractors may participate as either a party or as a non-party participant:
 - CMS contractors who elects party status have the same rights as any other party to the hearing, including the right to call witnesses and cross-examine the witnesses of other parties.
 - Non-party status is limited to clarifying issues of fact or policy.
- ❖ CMS contractors must notify all parties of their intent to participate no later than 10 calendar days after receipt of the notice of hearing.

42 C.F.R. §§ 405.1010, .1012

THANK YOU