

THE NATIONAL RAC SUMMIT

# Status Update: ALJ Hearing Process

**December 6, 2013**

C.F. Moore

Deputy Chief Administrative Law Judge

Office of the Chief Judge

Office of Medicare Hearings and Appeals

Arlington, VA

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

# OMHA Organization

## Office of Medicare Hearings and Appeals

Chief Administrative Law Judge

Deputy Chief Administrative Law Judge

### Office of Operations

Central Operations

Field Operations

### Office of Programs

Budget & Financial Mgmt

Executive Support & Resources

Information Mgmt & Systems

Program Policy & Evaluation

### Mid-Atlantic Field Office

Arlington, VA

Associate Chief  
Administrative  
Law Judge

Hearing Office  
Director

### Midwestern Field Office

Cleveland, OH

Associate Chief  
Administrative  
Law Judge

Hearing Office  
Director

### Southern Field Office

Miami, FL

Associate Chief  
Administrative  
Law Judge

Hearing Office  
Director

### Western Field Office

Irvine, CA

Associate Chief  
Administrative  
Law Judge

Hearing Office  
Director

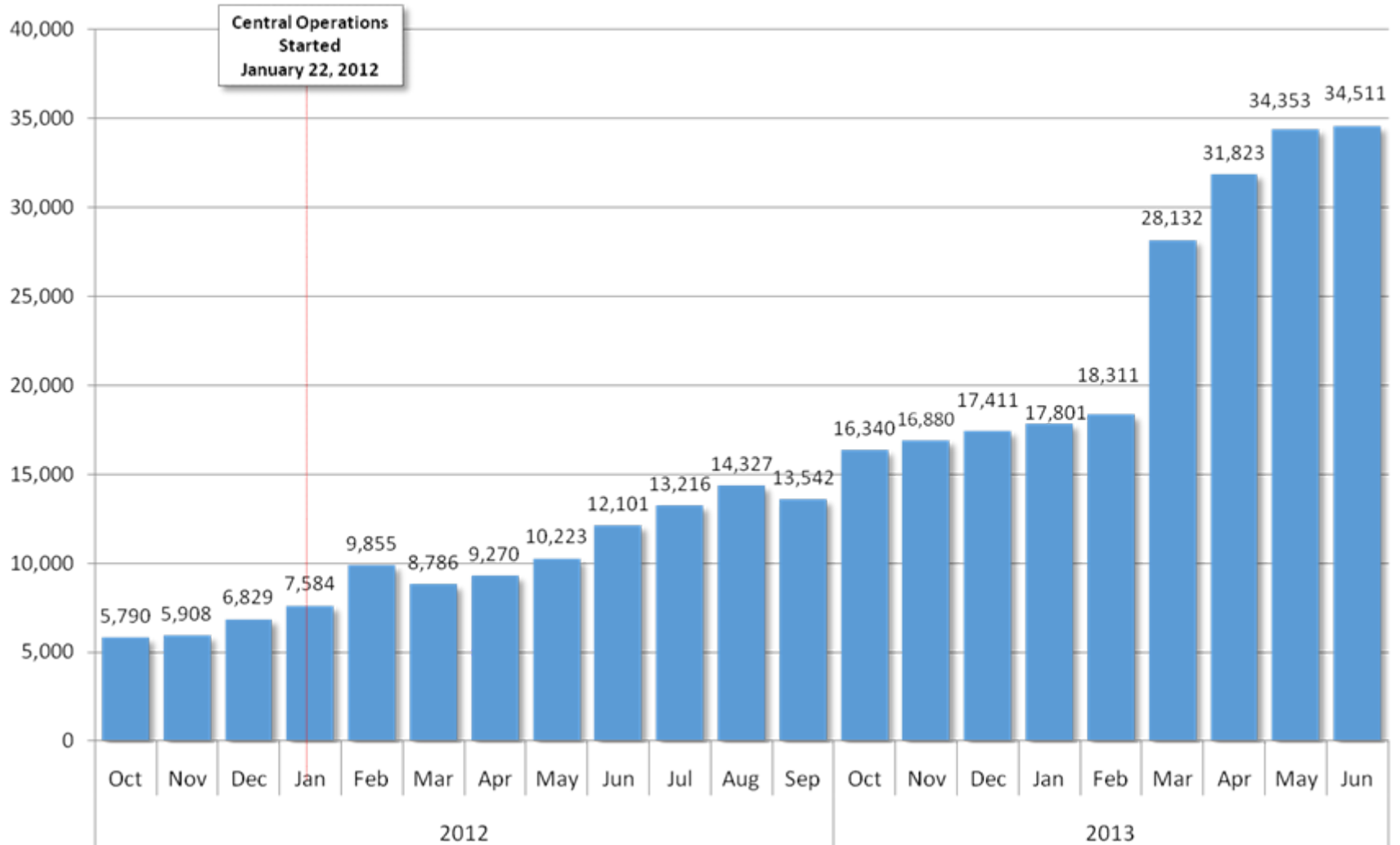
# OMHA Workload

## *Types of Appeals*

- ☐ Medicare eligibility and entitlement (SSA)
- ☐ Part B and D income-related premiums (SSA)
- ☐ Parts A and B pre- and post-payment claims (MACs, RACs, PSC/Z-PICs)
- ☐ Continuation of care (QIOs)
- ☐ Part C managed care coverage (Medicare Advantage Organizations)
- ☐ Part D prescription drug coverage (Prescription Drug Plans)

# OMHA Workload

## Total Appeal Receipts by Month

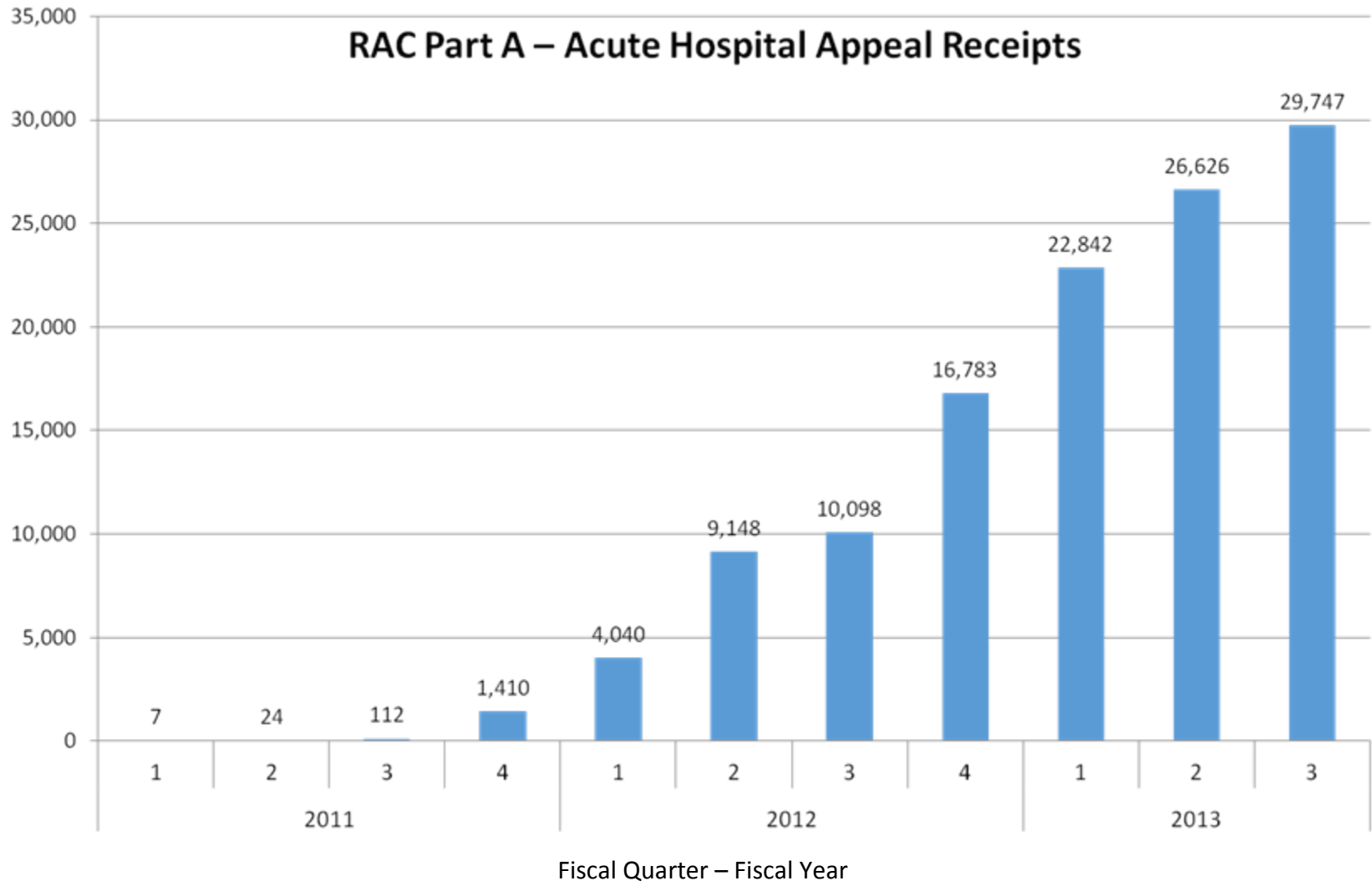


Run Date: Nov. 7, 2013

# OMHA Workload

- ❑ FY2013 appeal receipts
  - Receipts for Q1–Q3 exceed 215,000, with one quarter remaining
- ❑ Estimated appeal adjudication capacity per year
  - Approximately 75,000
- ❑ As appeal receipts increase, OMHA resources remain relatively constant
  - Recent reduction due to sequestration

# OMHA Workload



Run Date: Nov. 1, 2013

# OMHA Workload

- ❑ RAC Part A acute hospital appeals
  - A substantial portion of the increase in appeal receipts
    - FY2011
      - Nominal workload, OMHA began to see appeals from the permanent RAC program
    - FY2012
      - Exponential increase over FY2011
    - FY2013
      - Expected 200–300% increase over FY2012, based on the most recent data we have from Q1– Q3

# Effect of Workload –Centralized Docketing

- ❑ Part of OMHA Central Operations

- 200 Public Square

- Suite 1260

- Cleveland, OH 44114-2316

- ❑ Receives and processes all requests for hearing

- ❑ Due to the volume of receipts and substantial backlog, implemented deferred assignment process

- Affects requests filed in and after April of 2013



# Effect of Workload –Centralized Docketing

- ❑ For requests for hearing received prior to April of 2013
  - Upon receipt, appeal “docketed”
    - Entered into case management system and case status available
  - Appeal assigned to an ALJ
  - Paper case file requested from the lower level

# Effect of Workload –Centralized Docketing

## ❑ For requests for hearing received in and after April of 2013

- Upon receipt, appeal docketed
  - As of November 15, 2013, estimated 8 to 12 week delay from receipt of the request for hearing for an appeal to be docketed
  - Acknowledgement letter of receipt of the request for hearing sent to the appellant
- Deferred assignment
  - Requests for hearing held until an ALJ docket can accommodate

# Effect of Workload –Centralized Docketing

- Deferred assignment (Cont.)
  - As of November 15, 2013, estimated 24 to 28 months delay until assignment to an ALJ
  - Upon assignment to an ALJ, a second acknowledgement letter sent to the appellant
- Exceptions
  - Beneficiary-initiated appeals (small percentage of overall appeals)
    - Acknowledgement letter for receipt of request for hearing/ assignment to an ALJ sent to the appellant

# Effect of Workload – ALJ Teams

## □ ALJ Teams

- Adjudicate the appeals
- 65 ALJ teams nationwide
  - Consist of ALJs, supported by attorneys, paralegals, and legal assistants
- As of November 15, 2013, there is an **average** wait time of 7 months to obtain a hearing after assignment to an ALJ

# Effect of Workload – ALJ Teams

## □ ALJ Teams (Cont.)

- Average days to decision
  - Fiscal year 2013: 201 days
  - Fiscal year 2014: **significant** increase expected
    - As of November 15, 2013, for most cases
      - Delay in assignment to an ALJ estimated at 24 to 28 months
      - Post-assignment wait time to obtain a hearing is expected to continue to exceed 6 months
    - As appeal receipts continue to increase, average days to decision will increase

*\*To check OMHA estimated timelines in the future, please see the OMHA website at [www.hhs.gov/omha](http://www.hhs.gov/omha)*

# Reducing Processing Times

## ☐ Comply with the requirements for a request for hearing

- Ensure a complete request, 42 C.F.R. § 405.1014(a):
  - The name, address, and Medicare health insurance claim number (HICN) of the beneficiary whose claim is being appealed
  - The name and address of the appellant, when the appellant is not the beneficiary
  - The name and address of the designated representatives if any
  - The document control number assigned to the appeal by the QIC, if any
  - The dates of service
  - The reasons the appellant disagrees with the QIC's reconsideration or other determination being appealed
  - A statement of any additional evidence to be submitted and the date it will be submitted
- We encourage use of form CMS-20034 A/B
- Adjudication period begins once the request is complete

# Reducing Processing Times

- ❑ Comply with the requirements for a request for hearing (Cont.)
  - Send a copy of the request to the other parties, 42 C.F.R. § 405.1014(b)
    - In *most* acute hospital cases, the parties are the beneficiary and provider
      - If the QIC copies the beneficiary on the reconsideration, you must send a copy of the request to the beneficiary
  - At a minimum, failure to copy all parties will delay the adjudication period

# Reducing Processing Times

- ❑ Comply with the requirements for a request for hearing (Cont.)
  - If an there is an incomplete request or failure to copy all parties
    - An ALJ may allow the appellant to cure the defect within a specified period of time
    - If an appellant fails to cure, the ALJ may dismiss the appeal



# Reducing Processing Times

- ❑ Do not submit duplicate requests for hearing
  - We are seeing multiple requests on the same QIC reconsideration
    - It takes time to research the issue
    - Slows Centralized Docketing from processing your requests for hearing
  - If appealing a QIC's reconsideration, please do not submit a courtesy copy of your request for hearing to the QIC that issued your reconsideration
    - The QIC does not require a copy for purposes of 42 C.F.R. § 405.1014(b)
    - The copy may be inadvertently forwarded to OMHA as a misfiled request for hearing

# Reducing Processing Times

- ❑ If filing late, submit a request for an extension of time to request a hearing, 42 C.F.R. § 405.1014 (c)
  - Provide , in writing, the reason(s) why the request for hearing was late
    - If you do not provide an explanation, an ALJ may dismiss the appeal
  - If the ALJ determines good cause exists, the adjudication period begins on the date the ALJ grants the request to extend the filing deadline

# Reducing Processing Times

- ❑ Submit additional information after assignment to an ALJ, 42 C.F.R. §§ 405.1018 and 405.1028
  - OMHA requests you file only the request for hearing
    - Any additional documentation must be stored by Centralized Docketing until assignment to an ALJ and slows Centralized Docketing from processing requests for hearing
    - Note: when OMHA requests the case file from the lower level, the administrative record includes everything you already submitted

# Reducing Processing Times

- ❑ Submit additional information after assignment to an ALJ (Cont.)
  - State in the request for hearing the additional evidence to be submitted and the date it will be submitted (e.g., when you receive your notice of assignment to an ALJ)
    - See 42 C.F.R. § 405.1014(a)(7))
  - Once the appeal is assigned, you can submit the evidence directly to the ALJ
    - If you are submitting new evidence to the ALJ not previously submitted at any prior level of appeal, you must provide a written statement explaining why the evidence was not previously submitted to the QIC
      - See 42 C.F.R. § 405.1018

# Reducing Processing Times

- An ALJ will examine the new evidence to determine whether there was good cause for submitting the evidence for the first time at the ALJ level
  - See 42 C.F.R. § 405.1028

***For more information on filing a request for hearing, please see the instructions on OMHA's website at***

***[www.hhs.gov/omha](http://www.hhs.gov/omha)***

# Reducing Processing Times

- ❑ Submit requests to withdraw if appropriate, 42 C.F.R. § 405.1052
  - If the appeal is assigned to an ALJ, submit to the ALJ
  - If the appeal has not yet been assigned, submit to OMHA Central Operations

# Reducing Processing Times

- ❑ Waive the right to a hearing if appropriate, 42 C.F.R. § 405.1038
  - You have a right to a hearing and to present your arguments at hearing, but can consider waiving the hearing if:
    - You do not have testimony to present; and
    - Your arguments are reduced to a writing; and
    - You do not believe a hearing is necessary
  - May reduce the time to decision, as the assigned ALJ does not have to schedule and conduct a hearing
    - All parties must indicate in writing they do not wish to appear at hearing

# OMHA Initiatives

- ❑ Formation of workgroups
- ❑ Implementation of an Electronic Case Adjudication and Processing Environment (ECAPE)
- ❑ Working with appellants to leverage the use of statistical sampling
- ❑ Holding an appellant open-door forum
  - Expected in late winter
- ❑ Development of a website to allow parties to view the status of an appeal online
  - Expected within the next 6 months



# QUESTIONS?