

THE NATIONAL MEDICARE RAC SUMMIT

Recovery Audit Contractor (RAC) Appeals and the ALJ Hearing Process

December 5, 2012

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 (Cont.)

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

Finance & Budget
Administrative Services
Information Technology
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

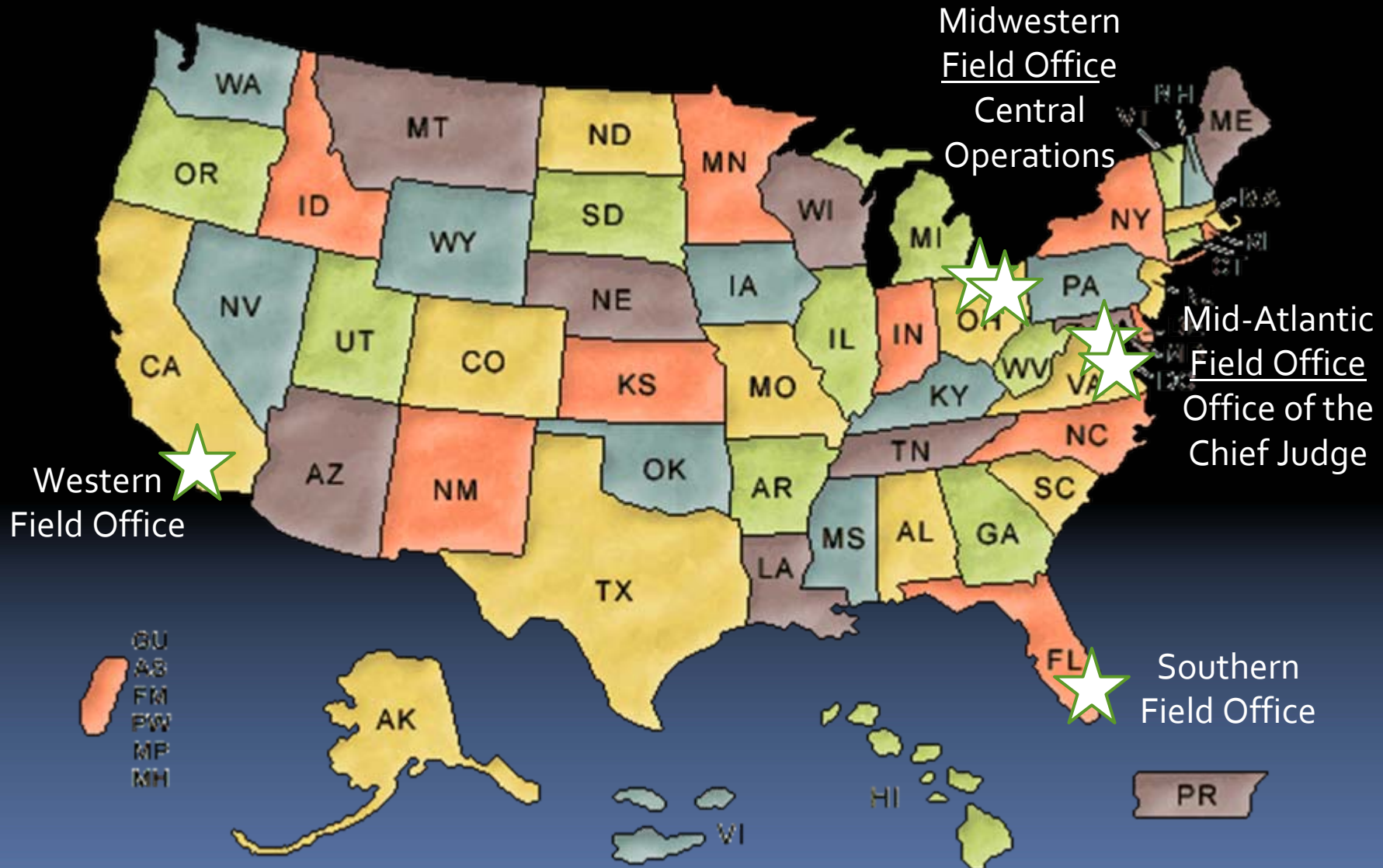
Hearing Office
Director

**Western
Field Office**
Irvine, CA

Associate Chief
Administrative
Law Judge

Hearing Office
Director

OMHA Organization (Cont.)



OMHA Roles & Responsibilities

Social Security Act § 1869(b)(1)(A)

The HHS Secretary must provide an opportunity for a hearing for an individual dissatisfied with respect to a determination

Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) § 931(b)(2)

The administrative office of the ALJs must be organizationally and functionally separate from CMS

OMHA Roles & Responsibilities

- Central Operations/Centralized Docketing
 - 200 Public Square, Suite 1260
Cleveland, OH 44114
 - Receives Request for Hearing
 - Requests case file
 - Assigns case to an ALJ
 - Random Rotation
 - National jurisdiction

OMHA Roles & Responsibilities

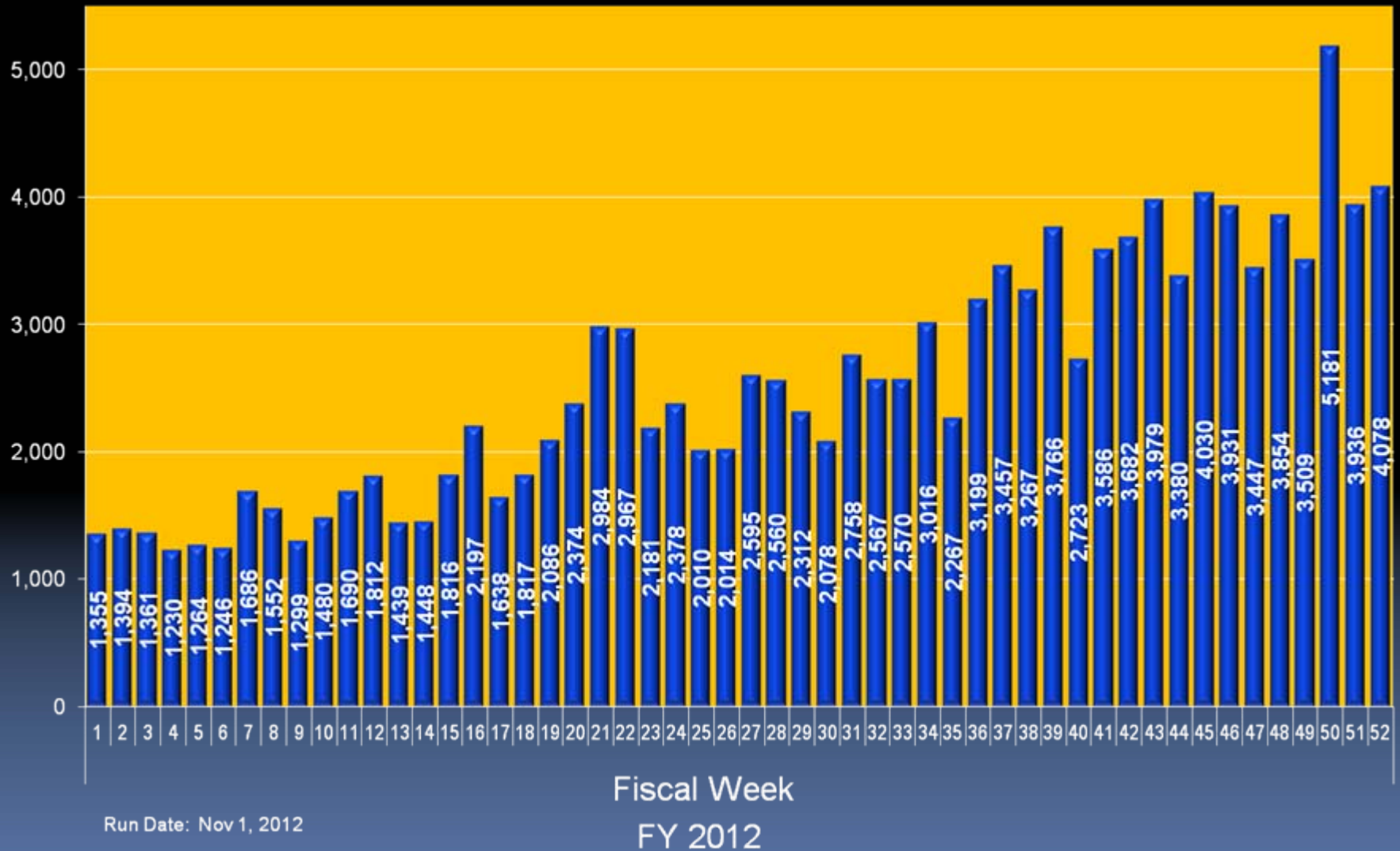
- Field Offices
 - Receives case files
 - ALJ team adjudicates the cases
 - 65 ALJs in OMHA
 - ALJ support staff
 - Attorneys
 - Paralegals
 - Legal Assistants

OMHA Workload

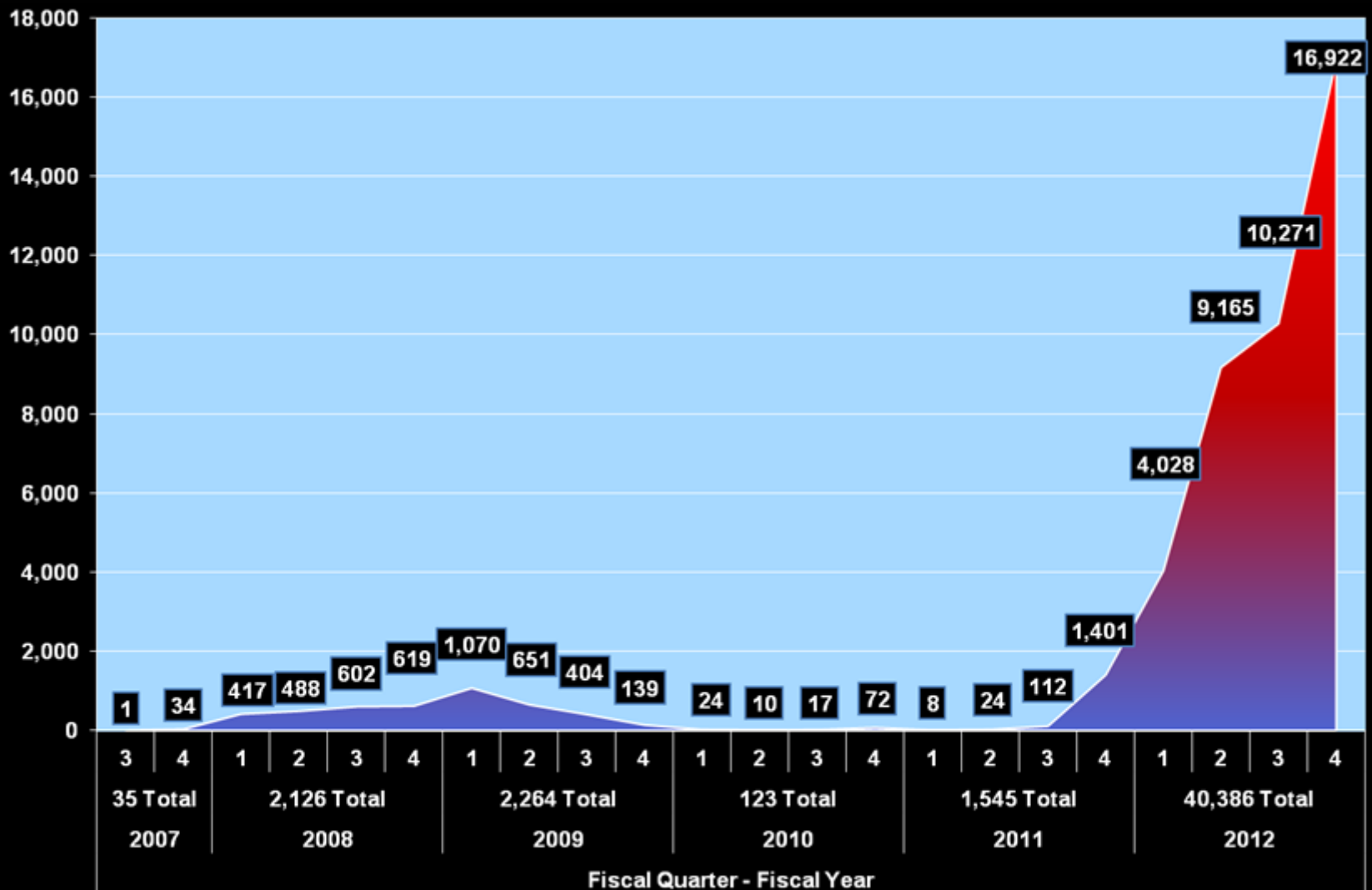
Types of Appeals

- 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)

Appeals Received by Week for the Fiscal Year



RAC Part A – Acute Hospital Appeals



Dramatic Increases in OMHA's Workload

- Fiscal Year 2012
 - Overall Appeals
 - **162%** increase from 1st quarter to 4th quarter
 - RAC Appeals
 - **320%** increase from 1st quarter to 4th quarter

Future Expectations

- Continuing increases in appeal receipts and workload
- OMHA requested additional funding in The President's Budget for Fiscal Year 2013 (www.whitehouse.gov), but actual funding is subject to congressional action

OMHA Decision Timeframes

- 90-Day Timeframe (180 days for escalated appeals), subject to events that may alter or extend the timeframes
 - Right to escalate after timeframe passes (Medicare Appeals Council will have 180 days to issue a decision)
- Current workloads are resulting in delays beyond the 90-day timeframe

How to Prepare for an ALJ Hearing

- Follow the instructions sent with the QIC reconsideration, as well as the regulations, for requesting a hearing before an ALJ
 - Include all required informational elements for a request for hearing
 - Copy all parties to the reconsideration
 - Submit the request within the 60-day timeframe, or request an extension in writing with your request for hearing
 - Provide an explanation with submission of any new evidence at the ALJ level

How to Prepare for an ALJ Hearing

- Know the law that applies in your appeal, as well the strength of the authority
- Review all the documentation and be prepared to do the following:
 - Briefly summarize the appeal
 - Highlight relevant documentation and critical elements
 - *Explain how the documentation supports coverage under the Medicare rules*

How to Prepare for an ALJ Hearing

- Clarify the resolution you are seeking
- Do not forget to address liability issues
 - §1879 of the Social Security Act (Act) - Limitation on Liability
 - §1870 of the Act - Overpayment Waiver
- Be aware that RACs and other contractors may act as a participant or party to an appeal, and prepare appropriately

What ALJs Look for When Reviewing an Appeal

- Does the evidence in the record support the criteria for coverage?
 - Documentation/medical records
 - Medicare coverage requirements
- Reference materials may be considered
 - Screening Tools and Literature
 - E.g., Milliman Care Guidelines, InterQual® Criteria, TIMI Risk Score
 - Must be credible

What ALJs Look for When Reviewing an Appeal

- Witness Testimony—most relevant if provided by an individual who treated the beneficiary
- Physician Opinion—HCFA* Ruling 93-1
 - Applicable to Part A inpatient and skilled nursing facility coverage
 - No presumptive weight given to opinion of treating physician
 - Evaluate in context of total administrative record Included in the record

*The Health Care Financing Administration was renamed the Centers for Medicare & Medicaid Services in 2001.

RAC Appeals – Inpatient Hospitalization

- ALJs have decisional independence
 - Must follow binding legal authority
 - Must give substantial deference to LCDs and Medicare program guidance, such as program memoranda and manual instructions
- Possible decision outcomes
 - Payment under Part A was reasonable and necessary
 - Payment under Part A was not reasonable and necessary
 - Payment under Part A was not reasonable and necessary, but possible partial rebilling under Part B

QUESTIONS?

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