



Departmental Appeals Board Update MEDICARE APPEALS COUNCIL

Constance B. Tobias

Chair

HHS Departmental Appeals Board



DEPARTMENTAL APPEALS BOARD (DAB)

The DAB is a 76-person umbrella organization, located within the Office of the Secretary and comprised of:

- Departmental Appeals Board Members
- Civil Remedies Division Administrative Law Judges
- Medicare Appeals Council
- Alternative Dispute Resolution Division



MEDICARE APPEALS COUNCIL

The Medicare Appeals Council (Council) is comprised of:

- Board Chair
- Administrative Appeals Judges
- Appeals Officers
- Members of the Departmental Appeals Board (if necessary)

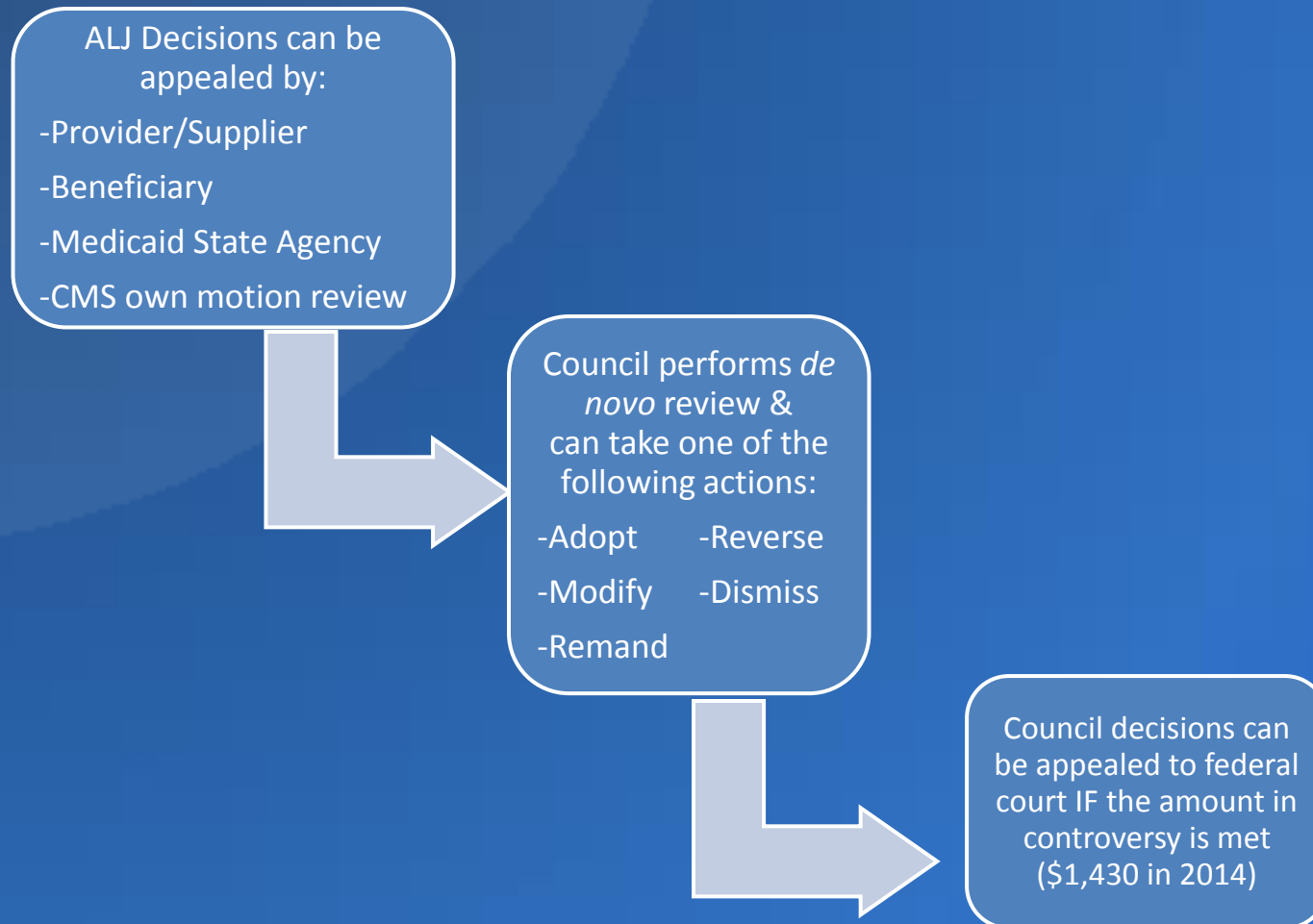
The Council provides the final administrative review for:

- Medicare entitlement
- Fee-for-service claims
- Managed care or prescription drug claims

The Council is supported by the Medicare Operations Division (MOD) attorneys and support staff.



MEDICARE APPEALS COUNCIL: Appeals Process





Status of Appeals at the DAB

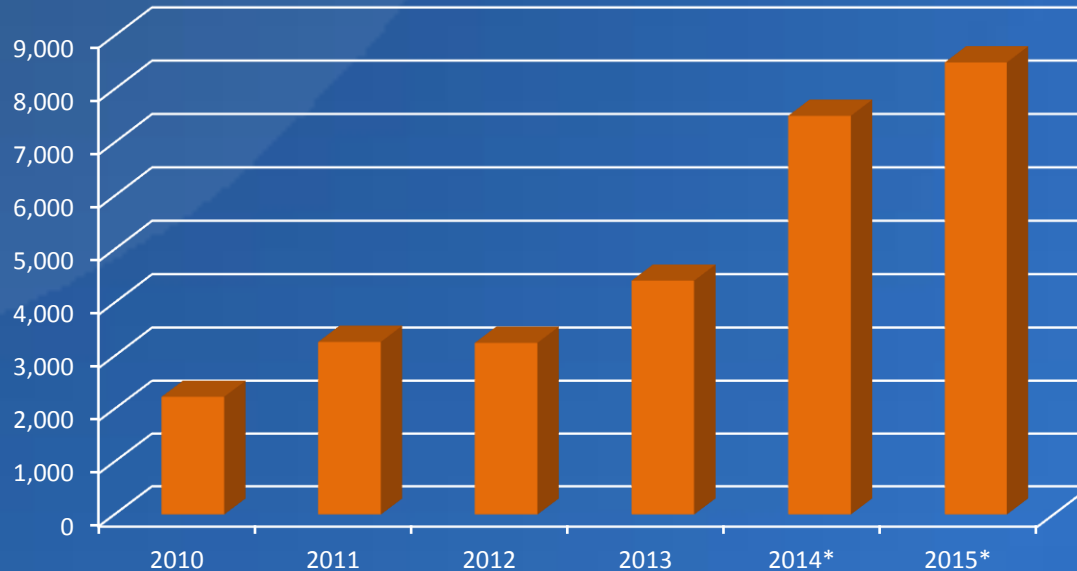
The number of requests for Council review is steadily increasing:

- In FY 2013, the Council closed 2,592 appeals (13,412 individual beneficiary claims) the largest number in the history of the organization.
- By the end of FY 2013, the number of pending appeals was 4,888. This is 112% more than at the end of FY 2012.



MOD WORKLOAD PROJECTIONS

**Number of Appeals Received by the Council
Per Fiscal Year**



**These numbers are based on OMHA workload predictions*

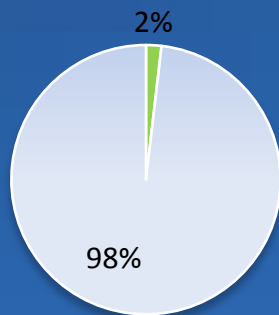


Increase in the MOD Caseload

- Increase in OMHA's case receipts and disposition rates
- Increase in overpayment (including Recovery Audit Contractor) and statistical sampling appeals

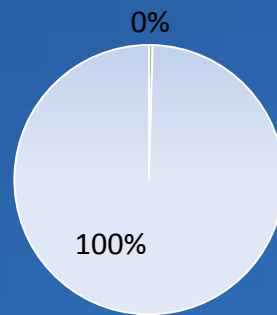
FY 2010

■ RAC ■ Other



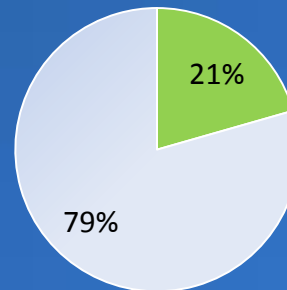
FY 2011

■ RAC ■ Other



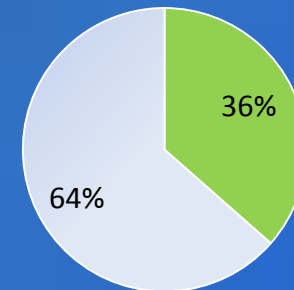
FY 2012

■ RAC ■ Other



FY 2013

■ RAC ■ Other





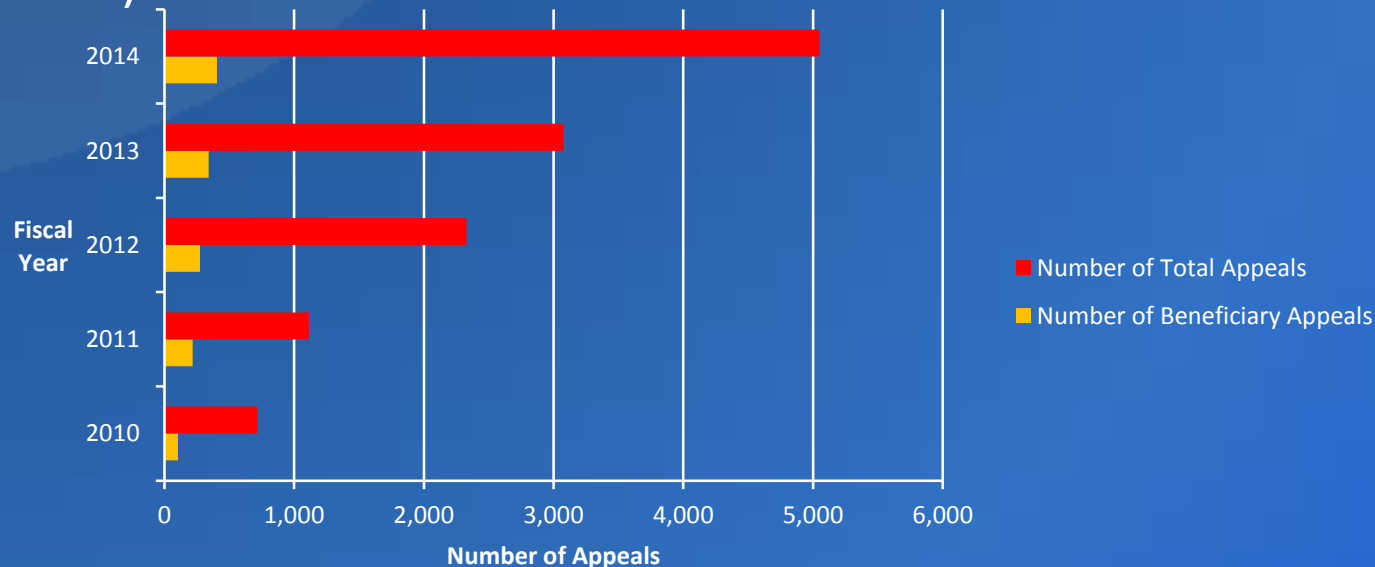
Managing the Increasing Caseload: Council's Actions

- Beneficiary-Focus
- Process Improvement
 - e-Records
 - Appeal consolidation



Beneficiary-Focus

- The Council is unlikely to meet the 90-day deadline for issuing decisions in most appeals
- The Council will give priority to beneficiary appeals (including Part C)





Process Improvements- e-Records

- Pilot program- working with contractors to receive claim files electronically in cases in which CMS seeks own motion review (Agency Referrals)
- Eliminates the work involved with moving/storing paper files, increases the efficiency of document transmittal
- Expanding the use of electronic records to other types of cases, eventually working towards receiving e-records in all cases



Process Improvement- Appeals Consolidation

- Appeals filed by a single appellant with identical issues of law and no significant factual dispute are being consolidated
- The Council will issue one decision in consolidated appeals
- Consolidation will allow the affected appeals to be processed more quickly



Managing the Increasing Caseload: **PRACTICE TIPS**

- Requests for Review
 - Acknowledgment Letter
- Escalations
 - Escalations from OMHA to the Council
 - Escalations from the Council to Federal Court



PRACTICE TIP:

Follow the instructions in the Council's Acknowledgement Letter

When filing a request for review:

- **CONTENTIONS:** Include an explanation of what part(s) of the ALJ action you disagree with and your reason(s)
- **COPY THE OTHER PARTIES:** Send a copy of the request for review to each party copied by the ALJ. It is not enough to simply send the other parties a letter stating that you have filed an appeal.
- **NEW EVIDENCE:** Notify the other parties of what, if any, supplemental material or new evidence was submitted with the request for review and make it available if requested. Unless instructed otherwise, the Council does not require that you send such documents to each party.



ESCALATIONS

- Escalation requests from OMHA to the Council:
 - In FY 2013, the Council received 7 escalation requests from OMHA to the Council
 - In FY 2014, the Council has already received a total of 19 escalations from OMHA



PRACTICE TIP:

Escalations from OMHA to Council

■ Two-Step Process:

- 1) The appellant must file a written request for escalation with OMHA. OMHA then issues a decision, dismissal, remand, or a Notice of Escalation Request.
- 2) If no action by OMHA within 10 days (including 5 days for mailing time), the appellant can then file a request for escalation with the Council. The appellant must ensure that the request:
 - contains the required content for a request for review of an escalated case as set forth in the regulations;
 - is sent to both the Council and to the ALJ's OMHA office; and
 - is sent to the other parties to the appeal.

42 C.F.R. §§ 405.1104, 405.1106



Review of Cases Escalated from OMHA

- The Council will:
 - NOT hold a hearing or conduct oral argument unless there is an extraordinary question of law/policy/fact
 - Only consider new evidence if the appellant has good cause for submitting it for the first time to the Council
 - Review the QIC's decision *de novo*
 - Take action within 180 calendar days beginning on the date the request for escalation is received by the Council
 - Issue a decision, dismissal, or remand to the ALJ for further proceedings



ESCALATIONS

- Escalation requests from the Council to Federal Court:
 - In FY 2013, there were a total of 2 escalation requests to federal court
 - In FY 2014, the Council has already received 6 escalation requests to federal court



Escalations from the Council to Federal Court

- If the Council has not issued a decision within 90 days from the date it received an appellant's request for review, the appellant may file a request for escalation to federal court in writing to the Council
- After receiving a request for escalation, within 5 calendar days, the Council must:
 - Issue a decision;
 - Issue a dismissal;
 - Remand the case to the ALJ; OR
 - Send notice to the appellant acknowledging receipt of the request to escalate and confirming that it is unable to issue a decision

42 C.F.R. § 405.1132



Escalations from the Council to Federal Court

- If the appellant receives a notice from the Council that no decision will be issued, the appellant may then file an action in federal district court within 60 calendar days



Thank you for your attention.