

## DEPARTMENTAL APPEALS BOARD

### FY 2001 PERFORMANCE OBJECTIVES

Performance Goals	FY Targets	Actual Performance	Reference
<p>Goal 1. Maintain Appellate Division case processing rates.</p> <p>Measure: Percentage of decisions with net case age of six months or less.</p>	<p>FY 01: 60%</p> <p>FY 00: 60%</p> <p>FY 99: 80%</p>	<p>FY 01:</p> <p>FY 00:</p> <p>FY 99: 53%</p>	
<p>Goal 2. Maintain Appellate Division reversal and remand rate of Board decisions appealed to Federal courts.</p> <p>Measure: number of decisions reversed or remanded on appeal to Federal court as a percentage of all Board decisions issued.</p>	<p>FY 01: 2%</p> <p>FY 00: 2%</p> <p>FY 99: 2%</p>	<p>FY 01:</p> <p>FY 00:</p> <p>FY 99: 2%</p>	
<p>Goal 3. Maintain annual output of Civil Remedies Division decisions per ALJ year.</p> <p>Measure: number of decisions annually per ALJ year (revised)</p>	<p>FY 01: 10</p> <p>FY 00: 10 per ALJ year. Measure changed. See explanation below.*</p> <p>FY 99: 55</p>	<p>FY 01:</p> <p>FY 00:</p> <p>FY 99: 69</p>	

Performance Goals	FY Targets	Actual Performance	Reference
<p>Goal 4. Reduce number of pre-hearing conferences in HCFA Civil Remedies cases.</p> <p>Measure: number of pre-hearing conferences in FY 99 compared to number of pre-hearing conferences in FY 98.</p> <p>Goal 4a. (new) Reduce average net case age for Civil Remedies Division decisions.</p> <p>Measure: average net days for cases from receipt to decision in target year compared to FY 99.</p>	<p>FY 01: N/A FY 00: N/A FY 99: 25% reduction</p> <p>FY 01: 15% FY 00: 10% reduction FY 99: N/A</p>	<p>FY 01: FY 00: FY 99: (data unavailable, see explanation below)</p> <p>FY: 01 FY: 00 FY: 99 332 days (baseline)</p>	
<p>Goal 5. Increase use of ADR (i.e., mediation) in appealed cases.</p> <p>Measure: number of cases mediated in FY 99 compared with number of cases mediated in FY 98.</p>	<p>FY 01: 10% increase over FY 2000 FY 00: 25% increase over FY 99 FY 99: 25% increase</p>	<p>FY 01: FY 00: FY 99: 62 (23 used for measurement purposes) FY 98: 18 cases (baseline)</p>	
<p>Goal 6. Expand ADR training opportunities.</p> <p>Measure 1: number of sessions offered.</p> <p>Measure 2: number of HHS staff trained.</p>	<p>FY 01: 12 FY 00: 9 sessions FY 99: 6 sessions</p> <p>FY 01: 400 FY 00: 400 FY 99: 200</p>	<p>FY 01: FY 00: FY 99: 12</p> <p>FY 01: FY 00: FY 99: 400 FY 98: 150 (baseline)</p>	

<b>Performance Goals</b>	<b>FY Targets</b>	<b>Actual Performance</b>	<b>Reference</b>
<p>Goal 7: Encourage use of ADR in all OPDIVs, including OS.</p> <p>Measure: number of meetings and/or presentations with management and others to foster application of ADR techniques.</p>	<p>FY 01: 15 FY 00: 15 FY 99: N/A</p>	<p>FY 01: FY 00: FY 99: 12 (baseline)</p>	
<p>Goal 8: Reduce average time to complete action on Medicare Appeals before the Medicare Appeals Council.</p> <p>Measure: average time to complete action on Medicare Appeals cases.</p>	<p>FY 01: 9 months FY 00: 12 months FY 99: 6 months</p>	<p>FY 01: FY 00: FY 99: 20 months</p>	
<p>Goal 9: Reduce percentage of Medicare Appeals cases that exceed the action target.</p> <p>Measure: percentage of cases in pending workload that exceed the target.</p>	<p>FY 01: 20% FY 00: 50% FY 99: N/A</p>	<p>FY 01: FY 00: FY 99: 72% (baseline)</p>	
<p>Goal 10: Develop program-specific regulations governing review of ALJ decisions concerning Medicare claims.</p>	<p>FY 01: N/A FY 00: N/A FY 99:</p>	<p>FY 99: propose dropping goal. See reasoning below.</p>	
<p>Goal 11: Increase Medicare Operations staff effectiveness through training.</p> <p>Measure: percentage of staff trained.</p>	<p>FY 01: 100% FY 00: 100% FY 99: N/A</p>	<p>FY 01: FY 00: FY 99: 80% (baseline)</p>	

Preliminary Performance Summary

The DAB is an independent office established to provide conflict resolution services. These services are basically of two types: adjudicatory hearings, appellate review of decisions of administrative law judges, and similarly structured formal and informal reviews of contested decisions; and alternative dispute resolution (ADR), including mediation and other consensual processes and training related to ADR.

The office has four divisions, three of which support judges:

- The Appellate Division supports the Board Members, issuing decisions on behalf of the Secretary of HHS in a wide variety of cases. In some cases, the Board provides a hearing if one is needed; in others, the Board provides an appellate-type review.
- The Civil Remedies Division supports Administrative Law Judges (ALJs) who conduct hearings and issue initial decisions in healthcare fraud and abuse cases, provider sanction cases, and other civil enforcement cases.
- The Medicare Operations Division supports Administrative Appeals Judges who act as the Medicare Appeals Council for review of decisions by SSA ALJs in Medicare entitlement and coverage cases (Medicare Appeals).
- The Alternative Dispute Resolution Division supports the Board Chair in her function as Dispute Resolution Specialist for the Department, providing direct ADR services such as mediation in Board cases and other Department disputes and providing ADR training.

The Board Members and other judges are part of the Immediate Office of the Chair of the Board (together with administrative support staff), but are considered part of the Divisions for purposes of GPRA, since their caseloads are identified to the Divisions.

The Board has no control over its caseload. Over the past five years, caseload sizes have grown very rapidly, particularly for the Civil Remedies and Medicare Operations Divisions. Caseload projections indicate continued growth. In addition, cases are increasing in complexity, requiring more time for analysis and decision-making. The Performance Goals support and respond to other efforts (e.g., work redesign, improved data collection, increased staffing) to effectively carry out DAB's responsibilities and functions.

*Goal 1. Maintain Appellate Division case processing rates*

Measure: percentage of decisions with a net case age of six months or less.

*Establishing Performance Targets:* the Appellate Division reviews 1) determinations appealed directly to the Board in a wide range of cases, including disallowances under discretionary and mandatory grant programs, disapprovals of cost allocation plans, unilateral determinations of indirect cost rates, terminations of Head Start and other discretionary grants, sanctions in research misconduct cases, and determinations of ineligibility for ANA grants; and 2) appeals by either party of Administrative Law Judge (ALJ) decisions in cases heard by the Civil Remedies Division, decisions by FDA ALJs, and decisions by ALJs in the Department of the Interior in cases involving IHS's declination of proposed Indian Self-Determination Act contracts.

This goal addresses the timeliness of case review and decisions issued. The Performance Target for FY 1999 was 80% of decisions with a net case age of six months or less.

*Performance Progress:* In FY 1999, actual performance fell below the target with 53% of the decided cases having a net case age of six months or less. During FY 1999, one Board Member position was vacant. Another Board Member spent much of her time facilitating statutorily-mandated negotiated rulemakings and mediating cost allocation cases. The Chair of the Board had to devote a great deal of time to administrative issues including the last-minute award of supplemental funds. Two of the Division staff attorneys were transferred to the Civil Remedies Division in order to address the backlog in that division. A third staff attorney was involved with the development of new case management systems for the DAB.

The performance target for FY 2000 has been adjusted downward to 60% to reflect the expected continued lack of a fully staffed division and Board.

Goal 2. Maintain the Appellate Division reversal and remand rate of Board decisions appealed to Federal courts.

Measure: number of decisions reversed or remanded on appeal to Federal court as a percentage of all Board decisions issued (over 1,700 decisions at the end of FY 1999).

*Establishing Performance Targets:* this goal addresses the quality of Board decisions. Historically 2% or less of all Board decisions have been reversed or remanded on appeal to Federal court.

*Performance Progress:* in FY 1999, the performance target was met. No more than 2% of all Board decisions were reversed or remanded upon appeal.

Goal 3. Maintain annual output of ALJ decisions.

Measure: FY 1999 total number of decisions

Revised Measure: number of decisions annually per ALJ year.

*Establishing Performance Targets:* the original target was based on an annual number of decisions over time in a fairly stable environment. The measure was changed to reflect the large increase in caseload, growing backlogs and the addition of ALJs. Cases that go to decision are generally complex, involve a large record, an in-person hearing that can last up to a week, and require considerable time to decide. In addition, although the majority of cases before the ALJs are settled, withdrawn or otherwise dismissed, they still require judicial time at the pre-decisional phase. With these factors in mind, the measure now identifies a target number of decisions per ALJ year rather than a total number. The target for FY 2000 is 10 decisions for each ALJ year.

*Performance Progress:* the Civil Remedies Division exceeded its target for FY 1999. The performance target was 55 decisions; there were 69 decisions in FY 1999.

Goal 4. Reduce the number of pre-hearing conferences in HCFA Civil Remedies cases.

Measure: number of pre-hearing conferences conducted in FY 1999 compared to number conducted in FY 1998.

*Establishing Performance Targets:* we propose to replace this goal with the revised goal below. The purpose of the original goal was to streamline the process; however, the actual number of pre-hearing conferences held in HCFA cases was so low that the goal did not have a significant impact. We believe the revised goal is more meaningful, particularly as caseload projections are substantially higher for FY 2000 and FY 2001.

*Performance Progress:* the case management process does not track for this information. We do know that the overall number of pre-hearing conferences has decreased.

Goal 4 (revised) Reduce average net case age of Civil Remedies Division decisions.

Measure: average net case age for cases to move from receipt to decision.

*Establishing Performance Targets:* this goal addresses timeliness. The target for FY 2000, the first year for the new goal, is a 10% reduction in the average net case age for cases requiring a written decision.

*Performance Progress:* FY 1999 represents the baseline for this goal. The average number of days was 332.

Goal 5. Increase the use of ADR in appealed cases.

*Establishing Performance Targets:* this goal is directed to expanding the use of ADR (i.e., mediation) in cases appealed to the DAB. Mediation, when successful, can resolve appeals faster and less expensively than the formal process. Greater use of mediation also has the potential for reducing case backlogs. The target for FY 1999 was a 25% increase in the number of appealed cases mediated compared to FY 1998. An additional increase of 25% is targeted for FY 2000. The target for FY 2001 is 10%; this could be raised if ADR resources are increased.

*Performance Progress:* Sixty-three cases were mediated; however 40 of these cases represent a one-time appeal of a block of cases involving a unique cost allocation issue. For performance measurement purposes over time, we propose to factor out this block leaving a total of 23 cases mediated. The performance target for FY 1999 was met.

Goal 6. Expand ADR training opportunities.

Measure 1: number of training sessions offered.

Measure 2: number of HHS staff trained.

*Establishing Performance Targets:* increased use of ADR is the result of several factors: 1) increasing awareness of alternatives to typical ways of dealing with conflict; 2) understanding the processes and their potential use; and 3) expanding the availability of trained neutrals. Identified measures address both the availability of training as well as the numbers of staff trained.

*Performance Progress:*

Measure 1: DAB staff conducted 12 training courses for HHS staff in FY 1999, thus exceeding the target of six by 100%.

Measure 2: 150 HHS staff were trained in FY 1998 (baseline). Over 400 were trained in FY 1999. The total includes both headquarters and field staff.

Goal 7. Encourage the use of ADR in all OPDIVs.

Measure: number of meetings and/or presentations with management and others to foster application of ADR techniques.

*Establishing Performance Targets:* this goal supports the functions of the Department's Dispute Resolution Specialist; the Chair of the Board is designated as such by the Secretary. FY 1999 serves as the baseline; the FY 2000 target reflects an increase over the baseline. We are considering revising or refining

the measure based on recent OPDIV and STAFFDIV responses to a Department of Justice survey we coordinated for HHS. We found, for example, that the use of mediation in workplace disputes has expanded rapidly. However, its use in other areas such as contracts and grants is more limited. We have some new ideas for encouraging ADR applications. A revised measure would reflect these learnings.

*Performance Progress:* Twelve meetings/presentations were held in FY 1999.

Goal 8. Reduce the time needed to complete action on Medicare Appeals before the Medicare Appeals Council.

Measure: average time to complete action on Medicare Appeals cases

*Establishing Performance Targets:* the target (6 months) was based on the assumption that the Medicare Operations Division would be fully staffed and that the number of incoming cases would remain relatively stable. For a number of reasons, discussed below, this became an unrealistic target. As a result, the target has been adjusted upwards for both FY 2000 and FY 2001. In order to meet these revised targets, resource needs must be met and redesign efforts implemented.

*Performance Progress:* the average number of months to complete action on Medicare Appeals increased to 20 months. This is due to: 1) an increase in the number of cases received from 2,262 in FY 1998 to 4,025 in FY 1999; 2) loss of three professional staff; and 3) increased complexity of cases.

Goal 9. Reduce the age of Medicare Appeals cases.

Measure: percentage of cases in pending workload exceeding target

*Establishing Performance Targets:* the target for FY 2000 is 50% ; this compares with 72% of cases exceeding the six month completion target in FY 1999. By reducing the percentage of pending cases exceeding the target, it is anticipated that the average case age will also decrease.

*Measuring Performance:* FY 1999 serves as the baseline

Goal 10. Develop program-specific regulations governing review of ALJ decisions concerning Medicare claims.\*

We propose to drop this goal for performance measurement purposes although we continue to believe that the hearings and appeals process needs improvement. However, because we can not address the goal unilaterally, establishing targets becomes highly problematic. (HCFA is convening a work group to address this and related issues. The DAB will be involved).

Goal 11. Increase Medicare Operations staff effectiveness through training.

Measure: percentage of staff trained in at least two substantive areas. This is a revised measure using percentages rather than numbers. Since the number of staff has fluctuated, we believe percentages will be a more effective measure.

*Establishing Performance Targets:* FY 1999 serves as the baseline. We determined the number of staff who attended training sessions (12) as a percentage of total staff (15), or 80%. Because of a revamped tracking system and other organizational changes, a target of 100% was set for both FY 2000 and FY

2001.

*Performance Progress:* 80% of the staff received training in FY 1999 (baseline).