

GAO

Briefing Report to the Chairman,  
Committee on Appropriations,  
U.S. Senate

February 1990

# MEDICARE PART A REIMBURSEMENTS

## Processing of Appeals Is Slow



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547693

**Human Resources Division**

B-233662

February 9, 1990

The Honorable Robert C. Byrd  
Chairman, Committee on Appropriations  
United States Senate

Dear Mr. Chairman:

This study of the adequacy of staffing levels at the Provider Reimbursement Review Board (PRRB) was prepared in response to a directive in Senate Report No. 100-399. That report, dated June 23, 1988, concerns the fiscal year 1989 appropriations bill for the Department of Health and Human Services (HHS).

A five-member, quasijudicial body, PRRB was established under the hospital insurance portion (Part A) of the Medicare program. PRRB conducts hearings and issues decisions on appeals by hospitals, skilled nursing facilities, and home health agencies on the amount of reimbursement Medicare allowed for beneficiaries' care.

As agreed with Committee staff, we addressed specific concerns about PRRB, including (1) whether the Health Care Financing Administration (HCFA), which administers Medicare, has impaired PRRB's ability to process cases by limiting staff allocations and (2) its timeliness in processing cases.

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**Methodology**

In conducting this study, we reviewed statutes, regulations, and legislative history pertaining to the relationship of PRRB to HHS and HCFA. In addition to reviewing data on PRRB's staffing levels, we met with HCFA officials to discuss the agency's rationale for PRRB's current staff allocations. We also interviewed PRRB board members, paralegal specialists, and legal technicians about staffing issues.

To determine case disposition, we analyzed data from PRRB's automated and manual data systems as of February 1989. The manual system included information on about 1,600 cases, most filed prior to the November 1987 implementation of the automated system. About 2,400 cases are tracked in the automated system.

## Results in Brief

In summary, we found that

- PRRB and HCFA are functioning in a manner consistent with their legislatively prescribed roles for administering Part A of the Medicare program. While PRRB's ability to process cases has been impaired by HCFA's allocation of resources, we found no evidence that HCFA set the Board's staffing levels or denied PRRB's requests for additional staff with the intent of deliberately impairing its effectiveness. HCFA has attempted to support the Board by providing contract funds for data processing support.
- PRRB's reported inventory, about 4,000 cases as of February 1989, was not an accurate indicator of its workload. Because of staffing shortages, PRRB had taken no action since November 1987 or earlier on most of the cases it was monitoring in its manual data system. Of the approximately 1,080 cases filed in the first 5 months of fiscal year 1989, PRRB had not tracked two-thirds because it had not entered them in the inventory. In addition, some sampled cases in the manual system were inactive, duplicated cases in the automated system, or could not be verified because files were missing.
- PRRB's processing of cases was slow. Of about 3,370 cases, most were concentrated in the first 2 steps of PRRB's 17-step appellate process. Further, cases in PRRB's automated data system<sup>1</sup> took longer to move through the early steps of the appellate process than the time allowed. (See app. I for a description of the 17-step process and app. II for supplemental information on the disposition of cases.) Although the number of cases resolved through decisions and dismissals and removed from inventory had increased steadily between fiscal years 1975 and 1987, it decreased between fiscal years 1987 and 1988. During this time, PRRB's staff decreased from 27 to its ceiling level of 24, and two employees who were processing cases were transferred to supervisory positions. Additionally, responsibility for making initial jurisdictional determinations was shifted from paralegal specialists (GS-14s) to legal technicians (GS-6s). Finally, the actual workload of PRRB legal technicians greatly exceeded that recommended by a HCFA management study.
- In its annual budget appropriation request, HHS combines PRRB's and HCFA's staff and monetary needs but does not identify PRRB separately.

## Conclusions

We found no evidence that HCFA, in setting the Board's staffing levels and denying PRRB's requests for additional staff, deliberately intended to

<sup>1</sup> Because of the difficulty in extracting information from the manual data system, we analyzed processing time only for 2,289 cases in the automated data system.

impede its effectiveness. PRRB is but one of several components that must compete for limited HCFA resources. Nevertheless, HCFA's allocation of resources did impair PRRB's ability to process cases.

For PRRB and HCFA to determine accurately the appropriate number of staff PRRB needs to process cases in a timely manner is difficult. PRRB has no accurate count of the cases in inventory and may not have realistic time frames for each step in the process. HHS's current format for budget submissions does not provide the information the Committee on Appropriations needs to directly monitor the resources requested for PRRB's operations.

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## Recommendations to the Secretary of HHS

We recommend that the Secretary of HHS direct HCFA and PRRB to work together to establish an accurate case inventory, determine the number of staff needed to process cases in a timely manner, and reevaluate time frames for each step in the process.

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## Matter for Consideration

If the Committee on Appropriations wishes to directly monitor the level of resources requested for PRRB's operations, it may want to consider directing that PRRB be identified separately in the HHS appropriation request.

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## Agency Comments

In a letter of November 29, 1989, commenting on our draft report, HHS indicated that it was encouraged and pleased by our findings that HCFA and PRRB are functioning in a manner consistent with their legislatively prescribed roles and that HCFA had not attempted to interfere with the functioning of the Board by restricting staff allocations. HHS also stated that our findings accurately assessed the status of PRRB's cases during the time of our review (October 1988 through February 1989).

But HHS concluded that changes PRRB has made, or is in the process of making, "have for the most part rendered these findings moot." While HHS's comments indicate that PRRB has already responded to the portion of our recommendation concerning the need to assess staff job skills, HHS provided very little information that allowed us to assess the nature or extent of PRRB's actions regarding the remaining portions of our recommendation. Appendix III contains the full text of HHS's comments.

While the operational improvements PRRB has made thus far are important, alone they have not corrected the problems we identified, thus rendering our recommendations "moot." We continue to recommend that PRRB establish an accurate case inventory, determine the number of staff needed to process cases, and reevaluate time frames for each step in its process.

As arranged with the Committee staff, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Secretary of HHS, the Administrator of HCFA, the Chairman of PRRB, and other interested parties.

Please contact me at 275-1655 if you or your staff have any questions concerning this briefing report. Other major contributors to the report are listed in appendix IV.

Sincerely yours,

A handwritten signature in black ink that reads "Linda G. Morra". The signature is written in a cursive style with a long, sweeping underline.

Linda G. Morra  
Director, Intergovernmental and  
Management Issues



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**Abbreviations**

GAO	General Accounting Office
HCFA	Health Care Financing Administration
HHS	Department of Health and Human Services
PRRB	Provider Reimbursement Review Board



# Introduction

Figure 1.1:

## GAO Objectives

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- Has HCFA's relationship with PRRB impaired PRRB's effectiveness in processing cases?
- How timely is PRRB in processing cases?

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## Objectives

Concerned about recent Provider Reimbursement Review Board staffing reductions, the Committee on Appropriations asked that we report on whether the Health Care Financing Administration was unwilling to provide PRRB with the staff it needs to function effectively. As a result of this request and subsequent discussions with Committee staff, we agreed to determine

- whether HCFA's relationship with PRRB impaired PRRB's effectiveness in processing cases by limiting staff allocations and
- how timely PRRB has been in processing cases.

Figure 1.2:

## GAO Methodology

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- Review relationship between HCFA and PRRB
- Analyze authorized and actual staffing levels
- Analyze cases as of February 1989
- Interview PRRB staff

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### Scope and Methodology

In its June 23, 1988, report directing our study, the Committee on Appropriations expressed concern over the potential appearance of a conflict of interest in HCFA's unwillingness to allow the Board adequate staff. We did not address the conflict of interest question because the term generally applies, not to agencies, but to individuals whose personal interests conflict with the responsibilities of their positions. To address the Committee's concerns, however, we sought to determine whether HCFA impaired PRRB's effectiveness in processing cases by limiting its staff allocations.

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In accomplishing this objective, we reviewed statutes, regulations, and legislative history pertaining to the relationship between PRRB, the Department of Health and Human Services, and HCFA. In addition to analyzing PRRB's actual and authorized staffing levels, we discussed the rationale for PRRB's current staff levels with HCFA officials.

We analyzed the distribution of about 3,370 cases in PRRB's 17-step appellate process. This number excluded the cases we determined were inactive, duplicative, missing supporting documentation, or in suspension. In addition, we excluded 111 cases that PRRB indicated were being considered for dismissal. PRRB uses both manual and, starting in November 1987, automated data processing systems to monitor this disposition of cases.

Our analysis included all cases in the automated system and a sample of 1,582 cases from the manual system as of February 1989. We sought to determine the distribution of the cases in the appellate process and the time taken to move through major steps of the process. This type of information was unavailable for about 1,600 cases in the manual system that were filed between fiscal years 1975 and 1988. Therefore, after reviewing a randomly drawn representative sample of 100 cases from the 1,582 that were filed between fiscal years 1980 and 1988, we projected the results to the cases from which the sample was drawn. In addition, we reviewed the records for all 19 cases filed between fiscal years 1975 and 1979 that were still in the manual data system in February 1989. We determined the number and type of staff responsible for processing cases at each major step in the appellate process. Using a structured interview guide, we interviewed PRRB board members, paralegal specialists, and legal technicians about staffing issues.

Our review was performed between October 1988 and June 1989 in accordance with generally accepted government auditing standards.

Figure 1.3:

## GAO Background--PRRB

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- Established to review payment disputes under part A
- Serves as an administrative appeals forum for providers
- PRRB's jurisdictional thresholds
  - \$10,000 for a single provider
  - \$50,000 for a group of providers

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### Background— Provider Reimbursement Review Board

In 1972, the Congress authorized the establishment of PRRB to review payment disputes under the hospital insurance portion (Part A) of the Medicare program. A federal health insurance program authorized by title XVIII of the Social Security Act, Medicare helps most Americans age 65 and over and certain disabled individuals under 65 pay for their health care. Medicare Part A pays for services provided by hospitals, skilled nursing facilities, and home health agencies. In fiscal year 1988, Part A covered about 32 million enrollees and paid benefits amounting to about \$52.7 billion.

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**Section 1**  
**Introduction**

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PRRB provides an administrative appeals forum for Part A providers dissatisfied with intermediaries' determinations of reimbursement amounts. Intermediaries are HCFA-contracted organizations that process Medicare claims and make payments to Part A providers. PRRB, which comprises five members, including a chairman, conducts hearings and issues decisions on providers' appeals. For a single provider, the amount in controversy must be \$10,000 or more for a year and, for a group of providers with a common question of fact or law, \$50,000 or more. For claims not meeting these jurisdictional threshold amounts, providers may request reconsideration by the Medicare intermediary that initially reviewed the claim.

Figure 1.4:

## GAO Hearing Process

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- PRRB can affirm, modify, or reverse intermediaries' initial cost decisions
- HCFA can review PRRB decisions
- Providers can appeal PRRB or HCFA decisions to the courts

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### Hearing Process an Adversarial Proceeding

The parties to a PRRB hearing are the provider and the intermediary that made the cost determination under appeal, or the provider and HCFA in situations where there is no contracted intermediary.<sup>1</sup> PRRB's hearing process is an adversarial proceeding during which the parties involved can be represented by counsel, introduce and cross-examine witnesses, and challenge all matters applicable to the issues in controversy.

At the conclusion of the hearing, PRRB affirms, modifies, or reverses the intermediary's decision. In turn, the Secretary of HHS has delegated to

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<sup>1</sup>HCFA has not acted as intermediary since 1982.

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**Section 1**  
**Introduction**

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the HCFA Administrator the authority to affirm, modify, or reverse PRRB's decision. The HCFA Administrator has redelegated this authority to the Deputy Administrator of HCFA. While the Administrator or Deputy Administrator may review a decision in response to a request from HCFA or a party to a Board's decision, the determination to review a case is made solely at the discretion of the Administrator or Deputy Administrator. A ruling by PRRB or HCFA that the intermediary's determination of the amount due the provider is too low results in an additional payment to the provider from the Federal Hospital Insurance Fund. Providers dissatisfied with the decision of PRRB or HCFA can appeal the decision to the federal courts.

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**Staffing: HCFA  
Provides Support Staff**

PRRB's board members are appointed by the Secretary of HHS to serve a term of 3 years. One member is required to be a certified public accountant, two must be representatives of providers, and all must be knowledgeable in the field of cost reimbursement. PRRB's enabling legislation also provides that the Secretary of HHS make available the technical, secretarial, and other support the Board may require to fulfill its responsibility. While retaining the authority to appoint board members, the Secretary of HHS has delegated responsibilities for supporting the Board to the HCFA Administrator. The annual HHS budget appropriation request does not identify PRRB's staff and monetary needs separately but incorporates them with HCFA's.

Figure 1.5:

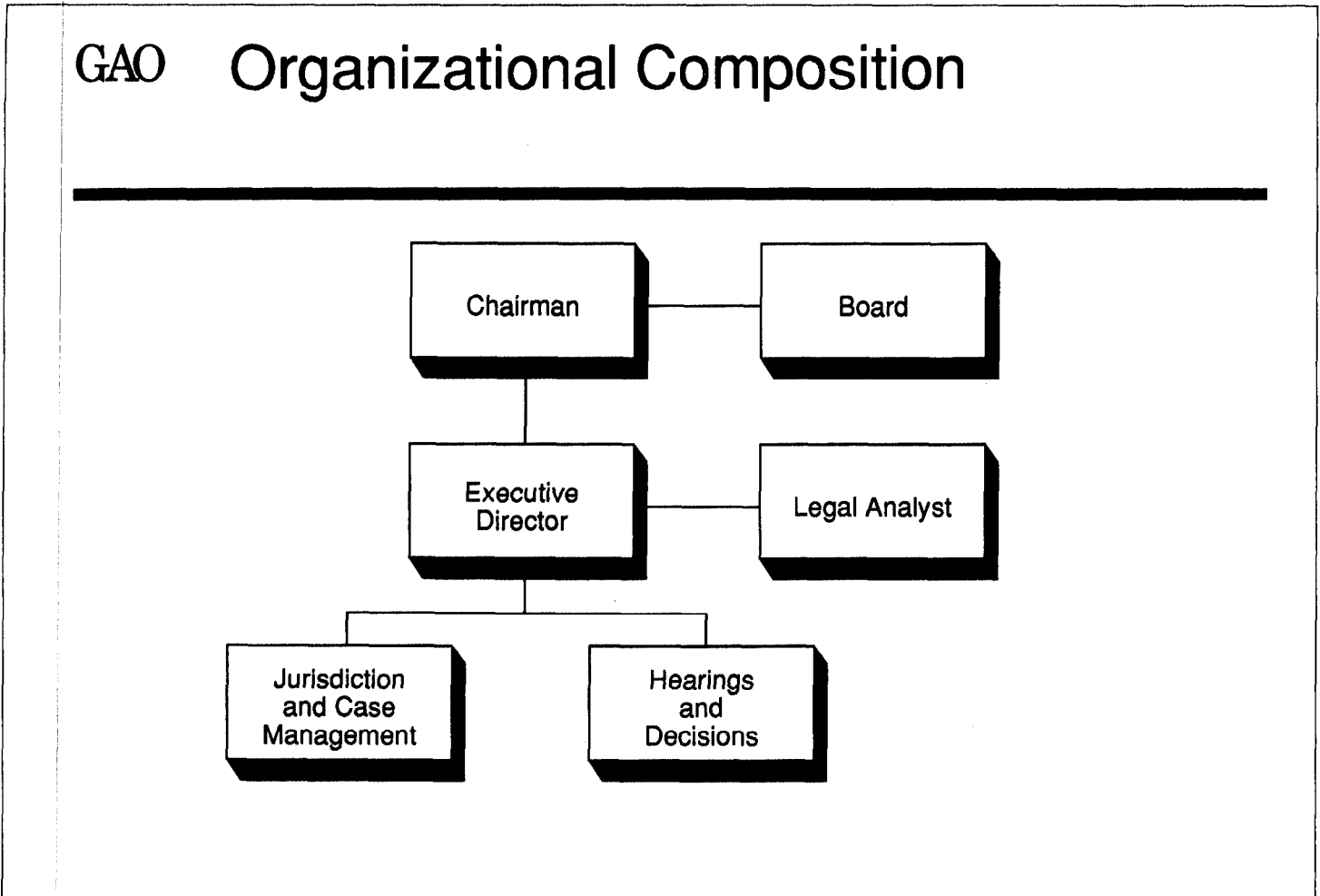
## GAO Staffing

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- Board members are appointed by the Secretary of HHS
- Support staff are allocated by HCFA



Figure 1.6:



## Organizational Composition

Organizationally, PRRB has two components, one for jurisdiction and case management, the other for hearings and decisions (see fig. 1.6).

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## Jurisdiction and Case Management

The jurisdiction and case management component consists primarily of legal technicians (GS-6 and -7 employees) and paralegal specialists (GS-14 employees). The staff determine which cases the Board has jurisdiction over and manage such cases until they are ready for a hearing, dismissed, or withdrawn. For example, the legal technicians in the jurisdiction and case management component

- receive incoming requests for hearings, identify the provider, and assign a case number and other required identification;
- review cases to determine whether they have been properly filed and assure that each case includes all required material;
- solicit omitted information and respond to routine inquiries from providers and intermediaries;
- analyze cases when it is clear that PRRB has jurisdiction and refer cases to a paralegal specialist when they cannot determine jurisdiction; and
- request position papers from the providers and intermediaries on the issues to be adjudicated.

The paralegal specialists

- provide advice to the Board and legal technicians on whether or not PRRB has jurisdiction and
- develop complex jurisdictional issues on whether the Board can rule on a case and present them to the Board with recommendations on whether PRRB should accept or reject it.

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## Hearings and Decisions

The hearings and decisions component is composed primarily of GS-14 paralegal specialists. This component manages cases from the time a hearing is scheduled until the decision has been issued. For example, hearings and decisions staff members

- obtain agreements and stipulations from the providers and intermediaries prior to the hearing on the issues in dispute and the pertinent facts;
- prepare for each case a comprehensive summary that sets forth the essential facts, significant contentions, evidence, relevant law, and precedent;
- attend and assist the Board at conferences and hearings;
- participate, advise, and assist the Board in its deliberations in light of their personal knowledge and research of legislation, regulations, and Medicare principles of reimbursement; and
- prepare, develop, and draft decisions for the Board's review.

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**Section 1**  
**Introduction**

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At the beginning of fiscal year 1989, PRRB had 23 staff members, including 4 board members, 9 jurisdiction and case management staff, and 6 hearings and decisions staff. The remaining four staff members included the Executive Director and administrative personnel.

# Nature of PRRB's Relationship to HCFA and HHS

Figure 2.1:

## GAO Nature of PRRB's Relationship to HCFA and HHS

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- Relationship is consistent with their legislatively prescribed roles
- HCFA can impair PRRB's operations by limiting staff
- No evidence HCFA set staffing levels with the intent of impairing PRRB's effectiveness

In its June 23, 1988, report directing this study, the Committee on Appropriations expressed concern that by exercising control over PRRB's resources, especially staffing levels, HCFA could impair PRRB's effectiveness in processing cases. While HCFA has impaired the functioning of the Board by limiting its staff allocations, we found no evidence that HCFA had acted deliberately to impair the Board's effectiveness.

For fiscal year 1988, HCFA, citing agency-wide reductions, denied PRRB's request for additional staff to handle a larger than anticipated workload. HCFA officials indicated that most components, including PRRB, had experienced decreases in their staffing levels. Since 1981, demands on

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**Section 2**  
**Nature of PRRB's Relationship to HCFA**  
**and HHS**

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the agency have increased substantially as a result of new legislative requirements and administrative initiatives. Because HCFA's staff complement decreased 21 percent over the same period, most components have been forced to do more with less. Faced with staffing constraints, HCFA has attempted to support the Board through other means. For example, in fiscal year 1989, HCFA approved \$230,000 in contract support for the Board. At the time of our review, PRRB had used \$80,000 of the funds for data processing support.

PRRB and HCFA are functioning in a manner consistent with their legislatively prescribed roles for administering Part A of the Medicare program, our review indicates. Although the Secretary has delegated certain responsibilities to HCFA, including providing support staff to the Board, ultimately the Secretary of HHS is responsible for insuring that HCFA performs its delegated responsibilities in accordance with applicable law and regulations.

HCFA has no direct monetary stake in the outcome of the Board's cases. If PRRB rules that a provider is due additional reimbursement, the money comes from the Federal Hospital Insurance Fund—not HCFA-appropriated funds. The Secretary also has delegated to the HCFA Administrator authority to review PRRB decisions. While PRRB reaches its decisions independently, it functions as part of the administrative process within HHS, as does HCFA, for resolving provider disputes.

# Timeliness of Case Processing

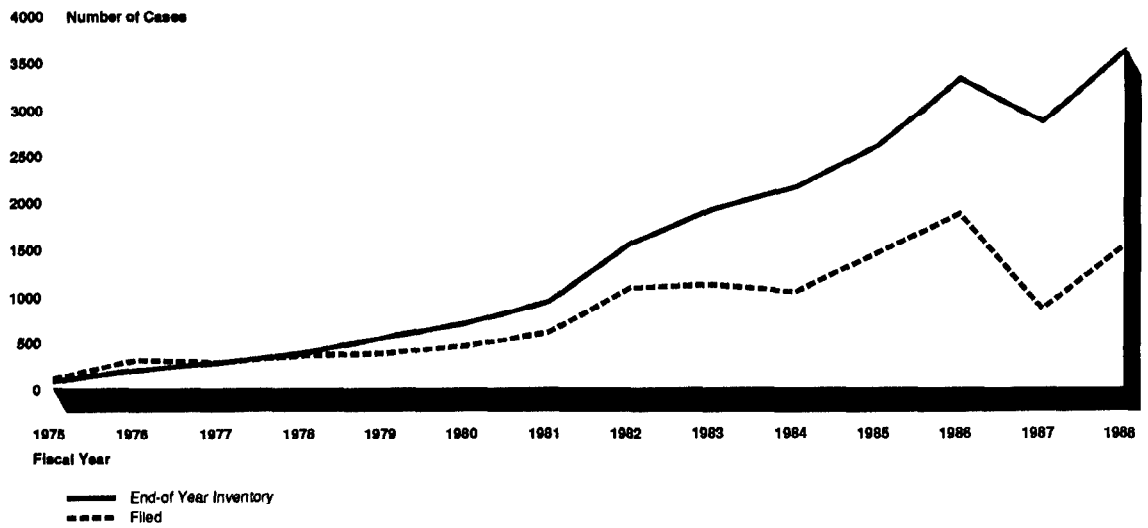
Although the number of cases that PRRB resolved and removed from inventory through the issuance of decisions and dismissals increased steadily between fiscal years 1975 and 1987, it decreased between fiscal years 1987 and 1988. As of February 1989, cases were concentrated in the early steps of the appellate process for periods of time that exceeded PRRB-established criteria. While no single factor explains these occurrences, several events occurring around the same time may have contributed.

## Reported Inventory Increasing

Between fiscal years 1975 (when PRRB began operations) and 1988, the number of cases filed with PRRB increased from 107 to about 1,500 (see fig. 3.1). The number of cases filed peaked in 1986, then decreased in 1987, due largely to HCFA policies for handling malpractice cases. The number of cases in inventory at the end of each fiscal year also grew at a rapid pace. At the end of fiscal year 1975, only 81 cases were in inventory; by the end of fiscal year 1988, about 3,600 were.

Figure 3.1:

# GAO Reported Inventory is Increasing



Note: Number of cases filed and end-of-year inventory levels for FY 1976 are based on a 15-month period.

Figure 3.2:

## GAO Reported Inventory is Not an Accurate Indicator of Workload

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- Some cases were not in inventory
- Large number of cases may be inactive

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### Reported Inventory Inaccurate

As of February 1989, PRRB's reported inventory of about 4,000 cases was inaccurate. Some cases received in fiscal year 1989 had not been added to inventory, and PRRB officials were unsure whether a number of the cases in its inventory were still active.

About 1,600 cases, filed between fiscal years 1975 and 1988, were being monitored in PRRB's manual data system. Most were filed before the November 1987 implementation of the automated system, which contained information on the disposition of the remaining 2,400 cases.



But PRRB's inventory was understated by about 690 cases. Although some 1,080 cases were filed in the first 5 months of fiscal year 1989, only 390 had been added to inventory. At the time of our review, PRRB was in the process of contracting for data entry support to enter the new cases. According to PRRB officials, they lacked the number of staff necessary to perform this task in a timely manner.

Of the approximately 1,600 cases in the manual system, 1,572 had had no activity since November 1987 or earlier. PRRB officials said they were unsure whether these cases were still active and lacked the staff necessary to follow up on their disposition. From our sample of the 1,582 cases in the manual system filed between fiscal years 1980 and 1988,<sup>1</sup> we estimate that 16 percent (252) were inactive and should have been deleted from inventory. (See tables II.2 and II.3 for the projected disposition of the fiscal years 1980-1988 cases.) For example, PRRB counted in inventory a case filed in 1980, even though the parties involved had resolved it in 1984. Another case, received in 1983, was counted in inventory even though a decision had been issued in 1986. In addition,

- An estimated 32 cases were duplicates of those in PRRB's automated system.
- An estimated 206 cases could not be traced because files were missing.
- An estimated 16 cases were in suspension pending the outcome of court decisions.

Of the 19 cases filed between fiscal years 1975 and 1979 that were still in the manual system in February 1989, 10 were inactive and should have been deleted from the inventory. Most were inactive because PRRB had issued a decision. For example, PRRB included in inventory a case filed in 1975, on which a decision had been issued in 1977. Of the remaining cases, five were missing all supporting documentation and four were active.

<sup>1</sup>The sampling error for these projections do not exceed  $\pm 10$  percent at the 95-percent confidence interval.

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## Case Inventory Concentrated Early in Appellate Process

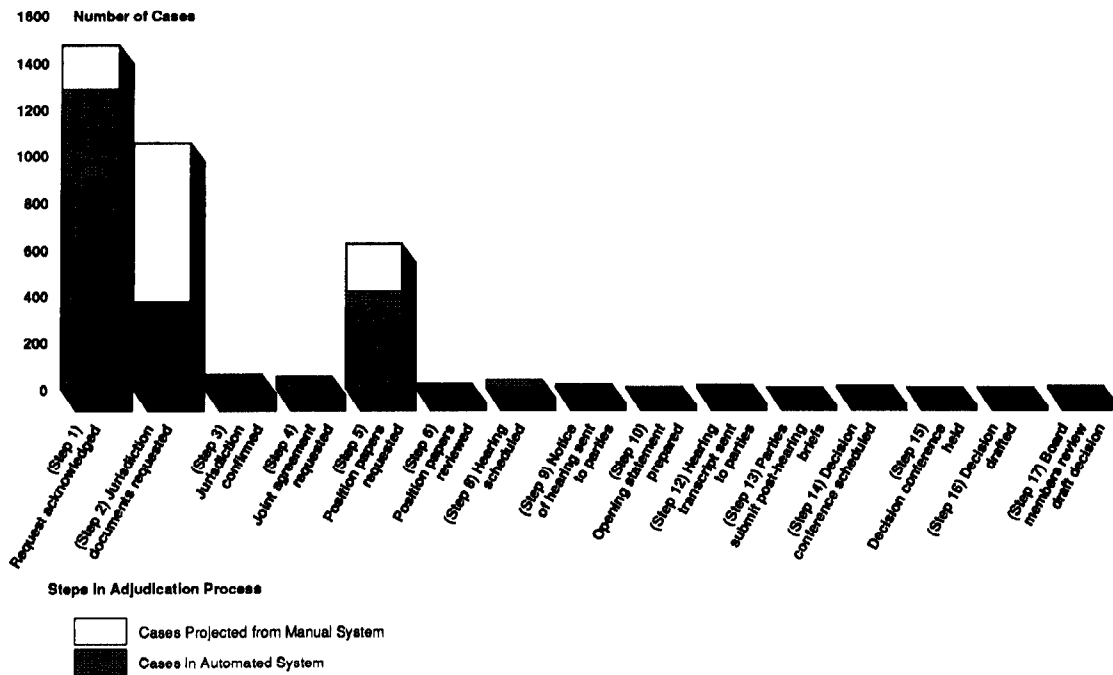
PRRB's inventory of cases was concentrated in the early (prehearing) stages of the 17-step appellate process, which begins with the receipt of a request for hearing and ends with the issuance of a decision (see app. I). The distribution of the approximately 3,370 cases we analyzed (depicted in fig. 3.3) was as follows:

- Three-quarters, or about 2,500 cases, were in steps 1 and 2, in which PRRB staff document the receipt of a case and review case documentation to determine if additional information is needed to determine jurisdiction.
- About 22 percent, or 730 cases, were in steps 3-5, in which PRRB determines its jurisdiction over a case and staff identify the issues underlying it.
- Only 3 percent (112 cases) were in later stages of the appellate process, i.e., steps 6-17, during which PRRB conducts the hearing and writes and finalizes its decision. Of these, 37 cases were scheduled for a hearing, 1 decision was being drafted, and 9 draft decisions were being reviewed by board members.

Section 3  
Timeliness of Case Processing

Figure 3.3:

# GAO Cases Concentrated in Early Steps of Appellate Process



Note: Analysis is based on 2,290 cases in the automated system and an estimated 1,076 cases projected from the manual system. PRRB's database does not include information on cases in steps 7 and 11 of the adjudication process. Step 4 was added to the adjudication process in Nov. 1988, and as of Feb. 1989, few appeals had reached this step. The sampling error for cases projected from the manual system does not exceed  $\pm 10$  percent at the 95-percent confidence interval.

At least half of all cases are resolved prior to a hearing, PRRB officials have estimated. (See tables II.1 and II.3 for supplemental information on PRRB's distribution of cases.)

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## Cases Stayed in Early Steps Long Periods of Time

Most PRRB cases were in the early steps of the appellate process for long periods of time, our analysis of the 2,289 cases<sup>2</sup> showed. (See fig. 3.4 and table II.1 for the average lengths of time cases remained in each step of the process.) For example, for steps 1, 2, 3, and 5,<sup>3</sup> cases had been in each step an average of at least 200 days. In the later parts of the process, cases remained in a step for significantly shorter periods. For example, cases in steps 6-17 were in a step for an average of 4 to 89 days. Although PRRB has established time frames for moving cases through the early steps of the process, these criteria may not be realistic, given staffing levels and the volume of cases in PRRB's inventory.

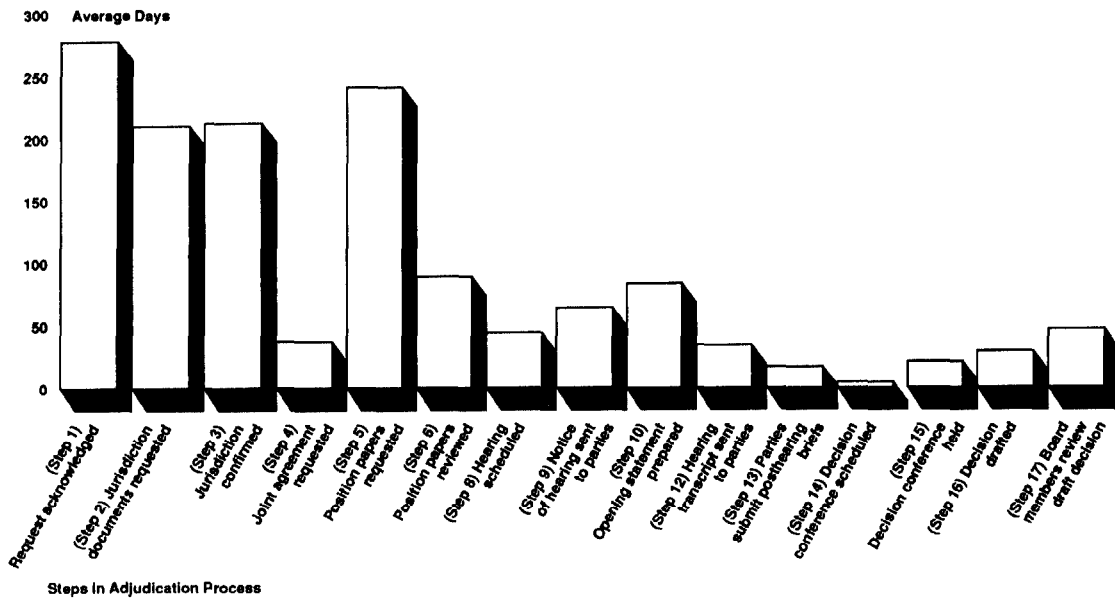
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<sup>2</sup>Because of the difficulty in extracting information from the manual data system, we analyzed processing times only for cases in the automated data system.

<sup>3</sup>Step 4 was added to the adjudication process in November 1988. As of February 1989, few cases had reached this step.

Figure 3.4:

# GAO Cases Were In Early Steps Long Periods of Time



Note: Analysis is based on 2,289 cases in the automated system. PRRB's database does not include information on cases in steps 7 and 11 of the adjudication process. Step 4 was added to the adjudication process in Nov. 1988, and as of Feb. 1989, few cases had reached this step. The sampling error for cases projected from the manual system does not exceed  $\pm 10$  percent at the 95-percent confidence level.

For example, PRRB allows 30 days from receipt of a case for identification of the documentation necessary to determine jurisdiction and request missing documentation (step 1). However, the 1,283 cases in this step had been there an average of 278 days.

For step 2, PRRB's criteria is 30 days for providers to submit the documentation requested in step 1 and 30 days from its receipt for PRRB staff to determine jurisdiction. For cases in this step, PRRB had not received

documentation within the 30-day time frame nor, for cases with complete documentation, had PRRB adhered to its 30-day limit for determining jurisdiction. While PRRB's criteria would suggest that cases should remain in step 2 no longer than 60 days total, the 370 cases in step 2 had been there an average of 210 days.

PRRB had determined jurisdiction for 38 of the 59 cases in step 3. For the remaining 21 cases, PRRB had scheduled hearings for 8 and held hearings for 13 to determine jurisdiction. On average, cases had been in step 3 for 212 days.

For cases in step 5, PRRB requires that within 60 days both parties submit documents showing their positions on the issues. For 225 of the 414 cases in this step, documentation had not been received from the provider within the established time, the intermediary, or both. On average, these cases awaiting documentation had been in step 5 for 237 days. For the remaining 189 cases, documentation was completed but they had not progressed to the next step. They had been in this step an average of 232 days from the receipt of position papers. When cases reach this step, time extensions often are granted if the parties indicate that they are negotiating a settlement, according to PRRB staff.

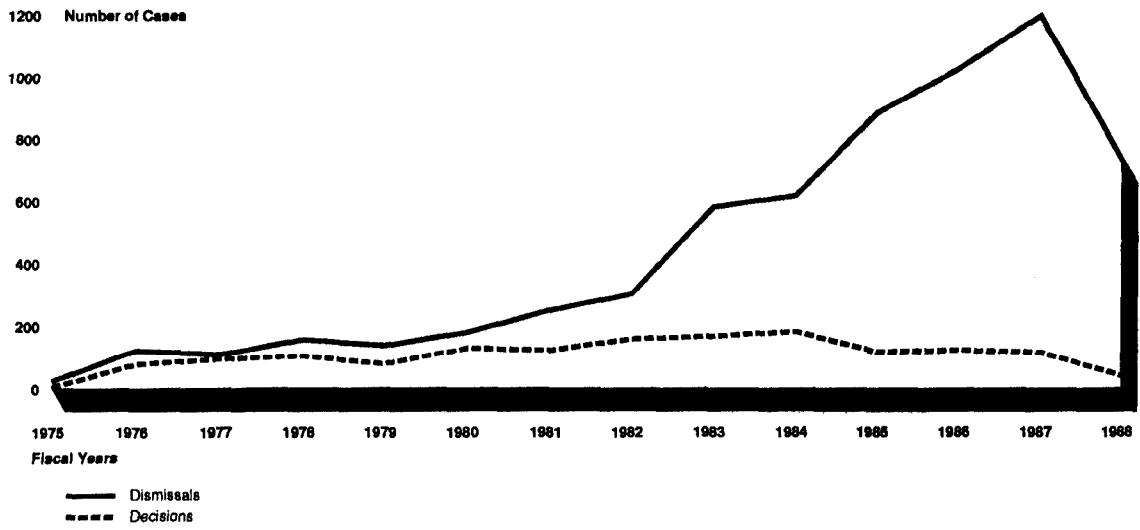
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## PRRB's Case Output Down Over 2-Year Period

In terms of the numbers of decisions issued and cases dismissed, PRRB's case output decreased between fiscal years 1987 and 1988. Previously, its case output had shown a steady increase, as figure 3.5 shows. For example, between fiscal years 1975 and 1987 the numbers of decisions issued increased from 3 to 115 and cases dismissed from 23 to 1,197. However, between 1987 and 1988 the number of decisions the Board issued dropped 65 percent to 40—the lowest since 1975—and the number of cases it dismissed by 39 percent, to 734.

Figure 3.5:

# GAO PRRB's Case Output Has Decreased



Note: The numbers of decisions and dismissals in FY 1976 are based on a 15-month period.

Figure 3.6:

## GAO Decline in Case Output Due to Several Factors

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- Staff attrition and reassignment
- Realignment of staff
- Heavy workload

### Several Factors Contribute to Drop in Case Output

While no single factor explains the decrease in case output, several factors may have contributed to it. For example, the large number of decisions (some 25 on one issue—labor delivery room costs) and the record number of dismissals issued in 1987 somewhat inflated that year's case output. A change in HCFA's reimbursement policy for malpractice insurance costs led PRRB to dismiss a record number of cases for lack of jurisdiction.

Recent staff attrition has made it difficult to perform their mission, PRRB officials said. Between fiscal years 1987 and 1988, the number of staff decreased from 27 to its ceiling level of 24. A staff reorganization



intended to improve the timeliness of case processing and provide additional staff supervision also affected output. In the reorganization, implemented in February 1988, two staff previously responsible for processing cases were transferred to supervisory positions. Lacking the 29 staff authorizations needed to fully implement their reorganization plan, the officials said, they have been unable to keep cases moving in the early steps of the process when PRRB action is required or to follow up on requested information.

Output of cases was further affected by the realignment of staff responsibilities, which occurred at the same time the complexity of the cases was increasing. For example, the number of times the full Board convened to settle jurisdictional matters increased between fiscal years 1987 and 1988 from 28 to 73—161 percent. PRRB's legal technicians (GS-6s), who prior to the reorganization had provided clerical support for the Board, were made responsible for initial jurisdictional determinations. Their clerical functions had consisted largely of typing, they said, but also included answering phones and duplicating materials. Before the reorganization, the paralegal specialists (GS-14s) made the jurisdictional determinations.

Case processing has been impaired because there are not enough staff to manage cases in the early steps. A HCFA management study indicates that the appropriate size of a technician's workload is about 220 cases. However, when we interviewed the three technicians, each was responsible for about 800 cases. Cases managed by the three technicians were in the initial steps of the appellate process significantly longer than the allowed time.

Although PRRB began fiscal year 1989 with five technicians, two—whose combined workload was about 1,230 cases—resigned. The supervisory legal technician, who normally is not directly involved in processing cases, stated that she handles all inquiries pertaining to these cases, as they have not been reassigned. The paralegal specialists in this component, who handle problem cases referred to them by the legal technicians, also said they had large case loads.

The five GS-14 paralegal specialists in the hearings and decisions component, who depend on the output of technicians and staff in the jurisdiction and case management component for cases, had a combined work load of 112 cases. Cases managed by these paralegal specialists were remaining in steps 6 through 17 for significantly shorter periods of time than those managed by staff in the jurisdiction and case management component. The latter are receiving fewer and fewer cases to process through to the hearing and decision steps.

# Conclusions, Recommendation, Matter for Consideration, and Agency Comments

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## Conclusions

No single factor explains the long time PRRB takes to process cases or the recent drop in case output, but a lack of staff is one cause. Although HCFA has denied PRRB's requests for additional staff, it did not do so with the intent of impairing PRRB's effectiveness. While HCFA's staff complement has decreased, demands on the agency have increased, forcing it to do more with less. Thus, HCFA's apparent unwillingness to provide the Board with staff is related to the allocation of scarce resources among competing demands.

PRRB and HCFA have not established an accurate case inventory or assessed the number of staff needed, and may not have realistic time frames for each step in the process. Thus, it is difficult for them to determine the proper number of staff necessary to effectively operate the Board.

The Committee on Appropriations does not receive routinely the information needed to monitor the resources provided PRRB because HHS' annual budget appropriations request does not identify PRRB's monetary needs separately from that of HCFA's.

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## Recommendation to the Secretary of HHS

We recommend that the Secretary of HHS direct that HCFA and PRRB work together to establish an accurate case inventory, determine the number of staff needed to process cases, and reevaluate time frames for each step in the process.

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## Matter for Consideration

If the Committee on Appropriations wants to directly monitor the level of resources requested for PRRB's operations, it may want to consider directing that PRRB be identified separately in the HHS appropriation request.

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## Agency Comments and Our Evaluation

In its November 29, 1989, letter commenting on our draft report, HHS indicated that it was encouraged and pleased by our findings that HCFA and PRRB are functioning in a manner consistent with their legislatively prescribed roles and that HCFA had not attempted to interfere with the functioning of the Board by restricting staff allocations. It also stated that our findings accurately assessed the status of PRRB's cases during the time of our review from October 1988 through February 1989.

**Section 4**  
**Conclusions, Recommendation, Matter for**  
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HHS concluded, however, that changes PRRB has made, or is in the process of making, "have for the most part rendered these findings moot." These changes include

- restructuring PRRB's appellate process to give providers and intermediaries more responsibility for determining jurisdiction and preparing cases for hearing, eliminating steps 2 and 3 of the process, and adjusting time frames;
- recruiting lawyers or legally trained analysts, and
- hiring a contractor to enter and update cases in its automated data system.

HHS indicated that PRRB has already responded to the portion of our recommendation concerning the need to assess staff job skills by working with HCFA to establish new staff positions, which have resulted in the recruitment of more highly trained and skilled employees. HHS reported that these changes already have increased the Board's overall efficiency. We have revised the recommendation contained in this report to reflect PRRB's progress in this area. However, HHS provided little information that allowed us to assess the nature or extent of PRRB's actions regarding the remaining portions of our recommendation.

For example, although HHS indicated that steps 2 and 3 of PRRB's process have been eliminated and previously established time frames no longer apply, it provided little information to show that time frames for other steps experiencing delays had been reevaluated. HHS's letter noted that significantly more decisions were issued during fiscal year 1989 than during fiscal year 1988 and that efforts are underway to determine the status of older cases. But HHS provided no information that would allow us to evaluate whether PRRB has established an accurate inventory as we recommended. Furthermore, HHS provided no response to our recommendation that HCFA and PRRB work together to define the number of staff needed to process cases in a timely manner.

The changes made thus far are important improvements to PRRB's process and could help to reduce case inventory levels and improve case management. We do not believe, however, that these changes alone can be presumed to have automatically corrected the problems we identified, thus rendering our recommendations "moot." As HHS acknowledges, PRRB will not be able to assess the effectiveness of its revised appellate procedures until it has operated under the new process for a period of time. Furthermore, the information contained in HHS's letter does not respond to major portions of our recommendation. Thus, we

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continue to recommend that PRRB establish an accurate case inventory, determine the number of staff needed to process cases, and reevaluate time frames for each step in its process.

# Description of the 17 Major Processing Steps in PRRB's Appellate Process

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## Step 1. Acknowledgement and Assignment of a Case

A mail technician reviews the hearing request to determine the case type (i.e., individual or group). The supervisory legal technician assigns the request to a legal technician, who sends a letter to the provider and intermediary acknowledging PRRB's receipt of the hearing request.

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## Step 2. Request for Jurisdiction Documents

Within 30 days of the receipt of the hearing request, the legal technician identifies the documentation to determine PRRB's jurisdiction over the case. If the documentation is insufficient to make this determination, the legal technician requests that the provider submit additional documentation within 30 days.

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## Step 3. Jurisdictional Determination

Within 30 days of the receipt of all documentation, the legal technician evaluates the information and determines whether the case meets PRRB's jurisdictional requirements. When there are complex issues or jurisdiction is questionable, the case is reviewed by a paralegal specialist or, if the paralegal specialist cannot determine jurisdiction, the Board.

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## Step 4. Request for Joint Agreement on Issues

After PRRB accepts jurisdiction, the legal technician requests that within 120 days both parties submit statements indicating their joint agreement on the issues to be adjudicated.

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## Step 5. Request for Position Papers

After receipt of the joint agreement statement, the legal technician requests that within 60 days both parties submit papers showing their positions on the issues to be adjudicated.

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## Step 6. Review of Position Papers

Upon receipt of position papers from both parties, a legal technician reviews them to determine whether the issues addressed are the same as those in the joint agreement statement. If so, the file is forwarded to the hearings and decisions staff for further processing.

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**Appendix I  
Description of the 17 Major Processing Steps  
in PRRB's Appellate Process**

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**Step 7. Review of Case  
by Hearings and  
Decisions Staff**

The hearings and decisions staff review all documentation to familiarize themselves with the case.

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**Step 8. Scheduling the  
Hearing**

If all documentation supporting the case is in order, a paralegal specialist arranges a date for the hearing.

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**Step 9. Notification of  
Hearing**

Both parties are notified of the date selected for the hearing.

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**Step 10. Opening  
Statement**

The paralegal specialist drafts the Chairman's opening statement and a list of all correspondence and documents submitted by both parties prior to the hearing.

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**Step 11. Hearing Is  
Held**

The hearing includes the board members, the paralegal specialist assigned to the case, and representatives of the provider and the intermediary.

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**Step 12. Confirmation  
of Receipt of  
Transcript**

The paralegal specialist confirms that each party has received a copy of the transcript.

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**Step 13. Posthearing  
Briefs Submitted**

The paralegal specialist ensures that both parties have submitted posthearing briefs.

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**Appendix I**  
**Description of the 17 Major Processing Steps**  
**in PRRB's Appellate Process**

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**Step 14. Decision  
Conference Scheduled**

Following the hearing, the Board schedules a conference to discuss the outcome of a case.

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**Step 15. Decision  
Conference Held**

During the conference, the paralegal specialist presents the facts, contentions, and HCFA rulings pertinent to the case and the Board makes its decision to either affirm, modify, or reverse the intermediary's decision.

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**Step 16. Decision  
Drafted**

The paralegal specialist drafts the decision.

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**Step 17. Draft Decision  
Reviewed; Final  
Decision Issued**

After the Board members review the draft decision, the Board issues a final decision.

# Supplemental Case Information

**Table II.1: Average Number of Days Cases Were in Each Step of the Appellate Process** (As of Feb. 2, 1989)

Step	No. of cases <sup>a</sup>	Average no. of days	Standard deviation
1	1,283	278	341
2	370	210	169
3	59	212	116
4	52	37	22
5	414	241	213
6	19	89	61
8	36 <sup>b</sup>	44	81
9	15	64	52
10	5	83	87
12	12	34	20
13	2	17	4
14	9	4	4
15	3	21	22
16	1	29	
17	9	46	44
<b>Total</b>	<b>2,289</b>		

<sup>a</sup>Analysis was limited to appeals in the automated data system.

<sup>b</sup>In total, there were 37 cases in this step. We excluded one case because the average number of days in step was not known.

**Table II.2: Projected Disposition of Cases in PRRB's Manual Data System** (As of Feb. 17, 1989)

Status	No.
Active	1,076
In suspension	16
Also counted in automated system	32
Inactive	252
Unknown	206
<b>Total</b>	<b>1,582</b>

**Table II.3: Projected Distribution of "Active" Cases From PRRB's Manual Data System by Step in the Appellate Process** (As of Feb. 17, 1989)

Step <sup>a</sup>	No.
1	190
2	680
5	206
<b>Total</b>	<b>1,076</b>

<sup>a</sup>All cases in the manual data system were in step 1, 2, or 5.



# Comments From the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

NOV 29 1989

Mr. Lawrence H. Thompson  
Assistant Comptroller General  
United States General  
Accounting Office  
Washington, D.C. 20548

Dear Mr. Thompson:

Enclosed are the Department's comments on your draft report, "Medicare Part A Provider Reimbursements: System for Processing Cases Needs Improvement." The comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

The Department appreciates the opportunity to comment on this draft report before its publication.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "R. Kusserow".

Richard P. Kusserow  
Inspector General

Enclosure

Comments of the Department of Health and Human Services  
on the General Accounting Office Draft Report,  
"Medicare Part A Provider Reimbursements:  
System for Processing Cases Needs Improvement"

We have reviewed GAO's draft report and are encouraged by GAO's overall conclusions that the Health Care Financing Administration (HCFA) and the Provider Reimbursement Review Board (PRRB, Board) are functioning in a manner consistent with their legislatively prescribed roles. We are also pleased that the report reflects the fact that HCFA has not attempted to interfere with the functioning of the Board by restricting staff allocations.

The GAO findings made during its on-site audit at the PRRB between October 1988 and February 1989 appear to be an accurate assessment of the PRRB during that period. However, changes in PRRB process, implemented in May 1989, and the restructuring of the Jurisdiction and Case Management Staff have for the most part rendered these findings moot.

In early 1987, the prior Chairman of the Board determined that a reorganization of the support staff was necessary to facilitate the processing of an increased workload (1,864 requests for hearing were received in FY 1986) and to address the new problems presented by the implementation of the hospital prospective payment system (PPS). The reorganization plan divided the Board support staff into two divisions. It added supervisors and subject matter experts and restructured staff duties with the intent of enabling the Board to continue to meet its responsibilities with lower graded employees. For example, in addition to having advisors at lower grade levels (a classification audit proposed a reduction in the journeyman advisor position from a GS-14 to a GS-13), the Board planned to train a part of the clerical staff to handle legal technician type duties in the jurisdiction and case management process, relieving the Board advisors of this responsibility. At the time this reorganization was planned, the on-board strength was 26 full time equivalents (FTEs), and the Board estimated that 29 FTEs were needed to effectuate the reorganization.

This reorganization was implemented in March 1988. The additional FTEs, however, were not forthcoming, and, in fact, the staff allocation of the Board was reduced along with the allocations of other HCFA components. At the same time the number of appeals to the Board, which had dropped in FY 1987 to 855 from an all-time high of 1,864 the previous year, began to increase once more and rose to 1,519 in FY 1988 and to 2,241 in FY 1989.

When GAO initiated its study in October 1988, the Board had just completed a year of low productivity. Factors that combined to severely impact the productivity of the Board in FY 1988 were: (1) the impact of the reorganization - new duties were added to some positions and there were changes in supervision; (2) staff losses in critical areas - Board advisors and legal technicians left for retirement or new jobs; (3) the implementation of an automated processing and management information system which necessitated diverting the efforts of many of the staff to

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reviewing and sorting cases, determining status of cases, etc., for correct entering of the requisite case data; (4) a growing workload; and, (5) the relative inexperience of staff that were assigned new duties in the jurisdiction and case management area - the jurisdictional questions that arose with the influx of new cases were of unprecedented complexity because of PPS. At the same time that GAO was beginning its study, the Board leadership was evaluating the Board's FY 1988 performance. Despite the unique, nonrepetitive nature of the elements affecting the low 1988 output, the Chairman and the Executive Director decided that the Board's operating process should and could be further improved to more effectively process the incoming cases and maximize the number of Board hearings. GAO's study and probing questions reinforced this idea.

In May 1989, the Board issued instructions to intermediaries and provider representatives that drastically changed the way the Board managed and processed appeals. More responsibility has been given to the intermediaries and the providers in preparing appeals for hearing. Under the new procedure, once the Board determines that a timely appeal has been filed, the parties are responsible for meeting to agree on the issues in question, and the intermediary is asked to advise the Board of any impediments that exist to Board jurisdiction. If there are no jurisdictional impediments, and a joint agreement on the issues statement has been submitted, the case is assigned a month for hearing. No further action is required of the parties until position papers are due 2 months before the first day of the month of hearing. (No action is required at the Board during this time period either.) Questions or problems that arise during this process are handled by Board analysts with legal backgrounds.

These modifications to the process have changed the job skills needed by the personnel of the Jurisdiction and Case Management Staff. Legal technicians are no longer required since the routine decision making is handled by the parties in the case. The non-routine problems or questions require more highly trained and skilled employees necessitating the recruitment of lawyers or legally trained analysts. The Board worked with HCFA in establishing new legal analyst positions to replace the legal technicians. This has resulted in an overall increase in job proficiency in the critical jurisdiction and case management area.

A contractor was hired to input data into the Board's automated system. This contractor entered all backlogged appeals and related information into the system. It now enters new appeals and dockets all correspondence upon receipt. Cases in the system are being automatically screened, and status requests, in the form of letters generated by the automatic screening process, are being sent to the providers where no current action has taken place. Cases are being closed where appropriate. Old cases that are still active are being consolidated into the new process in an orderly fashion. Consequently, the replies to status requests and the

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consolidation of old, active cases into the new process have enabled the Board to get a more accurate assessment of its workload. In addition, the modifications to the process have eliminated processing steps 2 and 3, which were specifically mentioned in the GAO report, and the time frames for those parts of the case management process that remain have been changed. In summary, the GAO study pointed up some problem areas in the Board's process which have been mitigated by subsequent procedural changes. More importantly, the Board was able to make significant gains in the numbers of hearings and conferences held and decisions issued in FY 1989. In that year, the first full year under the reorganization and under the direction of the new Chairman, overall productivity increased significantly over the previous year, i.e., 75 decisions were issued, an increase of 87 percent; 76 hearings were held, an increase of 41 percent; and, 132 conferences were held, an increase of 21 percent. These significant gains, in areas that the Board considers its most important endeavor, were not directly reflected in the segments of the operation that were reviewed by GAO. While it is certainly important for the Board to have a reliable method for controlling its backlog and to maintain realistic time frames for its processing steps, one can't lose sight of the Board's ultimate purpose which is to give those providers that want a timely hearing the opportunity to have one.

The Board has determined that as currently configured, it can hear a maximum of 123 cases (live or on the record) during a year, based on the number of available days and the average length of the hearings and conferences. In FY 1989, 85 live hearings were scheduled and 29 record hearings held. Thus, 114 hearings were scheduled out of a maximum of 123 which would be possible during a year. However, 38 live hearings (45 percent) were canceled after the schedule had been set because the parties settled the issue(s). The majority of these settlements occurred virtually on the eve of the scheduled hearing. These last minute drop-outs have a significant impact on the number of cases that the Board can hear and are the one factor over all others that ultimately affects the number of hearings and consequently the number of decisions that the Board can issue.

These last minute resolutions occur because providers and intermediaries rarely seriously attempt to settle a case until after it has been scheduled by the Board. The parties may have what they consider legitimate reasons for this approach (workload problems, etc.), but this phenomenon virtually destroys the Board's ability to maximize its scheduling potential. The new Board process is an attempt to establish an environment where the parties will meet and seriously attempt to resolve their dispute before position papers are developed and hearings scheduled. If the Board is successful in this endeavor, it will be able to provide timely hearings to those providers that truly want and need their case to be heard and will also be able to reduce the pending caseload. Response from the intermediary and provider communities has been extremely positive. However, the Board will not be able to assess the effectiveness of its plan until it has operated under this process for a period of time.

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Finally, with respect to the growing inventory of PRRB cases, we believe that there are steps that Congress might take to increase the Board's productivity and efficiency. Congress could add a sixth Board member which would allow the Board to hold concurrent hearings with 2 panels of 3 members each, thereby doubling the Board's output potential. Concurrent hearings are not workable with the Board's present configuration because of current requirements for decisions. We intend to explore this suggestion further in the near future.

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