

## REPORT SUMMARY

This is the annual report for the Office of the Independent Administrator (OIA) for 2023. The OIA administers the arbitration system between Kaiser Foundation Health Plan, Inc., or its affiliates (Kaiser) and its members.<sup>1</sup> From the data and analyses in this report, readers may gauge how well the OIA system meets its goals of providing a fair, timely, and low cost arbitration process that protects the privacy of the parties.

### Status of Arbitration Demands

1. **Number of Demands for Arbitration.** The OIA received 619 demands, 149 more than last year. See pages 10 and 41.
2. **Types of Claims.** Ninety-five percent (95%) of the cases involved allegations of medical malpractice. Less than one-half percent (<1/2%) presented benefit and coverage allegations. The remaining cases (5%) were based on allegations of premises liability and other torts. See page 11.
3. **Twenty-Nine Percent (29%) of Claimants Did Not Have Attorneys.** Claimants in 177 cases, or 29%, were not represented by counsel, 4% less than last year. On average, 26% of claimants are in *pro per*. See pages 12 and 43 – 44.

### How Cases Closed

4. **Fifty-Percent (50%) of Cases Settled.** The parties settled 50% of cases, 3% less than last year. Twenty-four cases (10%) settled at the Mandatory Settlement Meeting (MSM). See pages 24 and 45 – 46.
5. **Five Percent (5%) of Cases Went to Hearing.** Claimants prevailed in 13% of these cases. The average award was \$771,158, and the range was from \$65,000 to \$1,731,647. See pages 25, 45 – 46, and Exhibit I.
6. **All Cases were Heard by a Single Neutral Arbitrator.** All of the hearings involved a single neutral arbitrator. See page 20.
7. **More than Half (51%) of Claimants Received Some Compensation.** Claimants received compensation either when their cases settled (50%) or when they were successful after a hearing (1%). See pages 24, 25, and 45 – 46.

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<sup>1</sup>Kaiser has arbitrated disputes with its California members since 1971. In the 1997 *Engalla* case, the California courts criticized Kaiser's arbitration system, saying that it fostered too much delay in the handling of members' demands and should not be self-administered. The OIA has administered the system since 1999.

8. **Almost One-Quarter (24%) Closed by Decision of the Neutral Arbitrator.** Five percent (5%) of cases closed after an arbitration hearing, 15% were closed through summary judgment, and 4% were dismissed by neutral arbitrators. See pages 24 – 25 and 45 – 46.
9. **More Than One-Quarter (26%) of Cases were Withdrawn.** Claimants withdrew 26% of cases. Thirty-nine percent (39%) of these cases included claimants who were in *pro per*. See pages 24 and 45 – 46.

## Meeting Deadlines

10. **More than Half (59%) of the Neutral Arbitrators were Selected Without any Delay.** The *Rules* give parties the option to postpone the deadline to select a neutral arbitrator, but over half (59%) of the arbitrators were selected without the parties exercising this option. See page 19.
11. **Forty-One Percent (41%) of the Neutral Arbitrators were Selected by Parties Exercising Options for Postponement and/or Disqualification.** In 35% of the cases, parties exercised the option to postpone the deadline to select a neutral arbitrator. Claimants made all but six of the requests for a 90-day postponement. In three percent (3%) of the cases, parties disqualified the neutral arbitrator. In the remaining three percent (3%) of the cases, parties exercised both the postponement and disqualification options. Claimants disqualified 54 neutral arbitrators and Kaiser disqualified 24. See pages 15, 16 – 17 and 19 – 20.
12. **Average Length of Time to Select a Neutral Arbitrator was 60 Days.** The time to select a neutral arbitrator in cases with no delay was 23 days. The time to select a neutral with a 90 day postponement was 109 days. In cases with only a disqualification, it was 62 days. In cases with both a postponement and disqualification it was 202 days. The overall average length of time to select a neutral arbitrator for all cases was 60 days, 3 days less than last year. See pages 20 and 44 – 45.
13. **On Average, Cases Closed in Just over Thirteen Months.** Cases closed, on average, in 399 days, 34 days less than last year. One case closed beyond the deadline required by the *Rules*. Eighty percent (80%) of the cases closed within 18 months (the deadline for “regular” cases)<sup>2</sup> and 52% closed in a year or less. See pages 21, 23 – 24, 26, and 46 – 47.
14. **On Average, Cases With Hearings were Completed in Just over Two Years.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 760 days (25 months). This average includes cases that were

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<sup>2</sup>“Regular” cases must close within 18 months. See Rule 24.a.

designated complex, extraordinary, or that received a Rule 28 extension because they needed extra time. “Regular cases” closed in 494 days (about 16 ½ months). See pages 23, 25, 27, and 47.

### **Panel of Neutral Arbitrators**

- 15. The Neutral Arbitrator Panel.** The OIA had 176 neutral arbitrators on its panel, 1 less than last year. Fifty-five percent (55%) of them, or 96, are retired judges. See pages 6 – 7.
- 16. Neutral Arbitrator Backgrounds.** The applications completed by the members of the OIA panel show that 84 arbitrators, or 48%, spend all of their time acting as neutral arbitrators. The remaining members divide their time by representing plaintiffs and defendants, though not necessarily in medical malpractice litigation. Ninety-one percent (91%) of the neutral arbitrators reported having medical malpractice experience. See pages 7 – 8.
- 17. Sixty-Three Percent (63%) of Arbitrators Served on a Case.** Sixty-three percent (63%) of the neutral arbitrators on the OIA panel served on a case. Arbitrators averaged three assignments each. Nineteen neutral arbitrators, including those not on the OIA panel, decided the 23 awards made. Sixteen arbitrators (84%) wrote a single award. See pages 9 and 42.
- 18. Majority of Neutral Arbitrators Selected by the Parties were Members of the OIA Panel (97%).** Seventy-nine percent (79%) of neutral arbitrators were selected through the strike and rank process. Of the joint selections, 18% were members of the OIA panel, and 2% were not members of the OIA panel.<sup>3</sup> See pages 14 – 15.
- 19. Neutral Arbitrators Selected Again After Making Large Award.** One neutral arbitrator made an award for more than \$750,000. This arbitrator has made two previous large awards and has been selected twice after making the first award. See page 9.

### **Neutral Arbitrator Fees**

- 20. Kaiser Paid the Neutral Arbitrators’ Fees in 94% of Closed Cases that had Fees.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. Kaiser paid the neutral arbitrators’ fees in 94% of closed cases that had fees. See page 32.

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<sup>3</sup>This year, two cases selected the arbitrator by other methods. See Section V.B.

21. **Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from \$200/hour to \$1,600/hour, with an average of \$700/hour. For the 448 cases that closed, and for which the OIA has information, the average fee charged by neutral arbitrators was \$8,962. In some cases, neutral arbitrators reported that they charged no fees. Excluding cases where no fees were charged, the average fee was \$9,230. The average fee in cases decided after a hearing was \$49,451. See page 32.

## Evaluations

22. **Evaluations of Neutral Arbitrators by Parties.** When a case closes by neutral arbitrator action, the OIA sends the parties or their attorneys a form to evaluate the neutral arbitrator. Most attorneys who returned completed evaluations expressed satisfaction with the neutral arbitrators and would recommend them to others, with an average of 4.6 on a 5 point scale. *Pro pers* view neutral arbitrators less favorably, with a 2.3 average. This year, the overall average by all parties was 4.3. See pages 33 – 34.
23. **Evaluations of the OIA by Neutral Arbitrators.** When a case closes by neutral arbitrator action, the OIA sends the neutral arbitrator a questionnaire about the OIA system. Ninety-nine percent (99%) of the neutral arbitrators reported that the OIA experience was the same as or better than the court system, and 1% said it was worse. See pages 34 – 36.
24. **Evaluations of the OIA by Parties.** When a case closes, the OIA sends an evaluation to the parties or their attorneys asking them about the OIA system. Eighty-eight percent (88%) of the responding parties and attorneys reported that the OIA system was the same as or better than the court system, and 12% said it was worse. See pages 36 – 39.

## Development and Changes in the System

25. **Changes in Membership of the AOB.** Kennedy Richardson resigned and Matt Weber joined. See pages 3 and 39, and Exhibit D.
26. **AOB Reconvened Rules Sub-Committee.** The AOB reconvened the *Rules* sub-committee to review proposals for changes to Rules 9 and 39. See pages 3-4 and 40.
27. **AOB Approved Rule Changes.** Both proposals to amend Rule 9 and Rule 39 were approved by the AOB. The approved changes took effect January 1, 2024. Both rules have added “email” to the list of options for service of documents, with the caveat that, email service upon a *pro per* party shall comply with the express consent requirement of California Code of Civil Procedure Section 1010.6(c). See pages 3 – 4, 40, and Exhibit B.

28. **Temporary Rule 4 in Response to COVID-19 has Expired.** All 11 temporary rules to address COVID-19 concerns have been lifted. See pages 4, 40, and Exhibit E.
29. **AOB and OIA Continued Commitment to Improve Diversity of the OIA Panel of Neutral Arbitrators.** The AOB and the OIA continued discussions about the ways in which the OIA could improve the diversity of the panel of neutral arbitrators. See pages 4 and 41.
30. **Impact of COVID-19 on Cases Older than 18 Months.** The OIA continues to provide quarterly reports to the AOB comparing open cases older than 18 months with those in prior years, both pre- and post-pandemic. See pages 4 – 5, 40 and Chart 1.
31. **The Number of Arbitrators Who Have Served After Making a \$750,000 Award.** The AOB requested that the OIA begin reporting on arbitrators who have served after making an award of \$750,000, an increase from \$500,000. See pages 6 and 9, and Exhibit I.
32. **AOB to Review its Bylaws.** AOB began discussions about its bylaws and whether modifications are needed with consultation and review of the Blue Ribbon Advisory Panel’s (BRP) recommendations. See page 6 and Exhibit C.

## Conclusion

The goal of the OIA is to provide a fair, timely, and low-cost arbitration process that protects the privacy of the parties. To summarize:

- Neutral arbitrators are selected expeditiously, and the cases close within the deadlines set by the *Rules*.
- Parties can, and do, disqualify neutral arbitrators they do not like.
- Parties can, and do, shift the costs of the neutral arbitrators to Kaiser.
- OIA arbitrations are confidential, and the OIA does not publish the names of individual claimants or respondents involved in them.
- Neutral arbitrators on the OIA panel have plaintiff, defendant, and judicial backgrounds.
- The OIA provides information on its website about its cases in compliance with California law. In addition, although no longer required by law, the OIA maintains a table about all its cases since January 1, 2003.

- The OIA has published annual reports since 1999 which are all available on the OIA website.