

## REPORT SUMMARY

This is the annual report for the Office of the Independent Administrator (OIA) for 2017. It discusses the arbitration system between Kaiser Foundation Health Plan and its affiliated groups of physicians and hospitals (collectively Kaiser) and its members.<sup>1</sup> Since 1999, the OIA has administered such arbitrations, and its Independent Administrator is Marcella A. Bell. From the data and analyses in this report, readers may gauge how well the OIA system meets its goals of providing arbitration that is fair, timely, lower in cost than litigation, and protects the privacy of the parties.

### Status of Arbitration Demands

The total number of demands for arbitration increased from the previous year. Most of the claims were for medical malpractice. The same percentage of claimants were without attorneys, proceeding in *pro per*, as did last year.

- 1. Number of Demands for Arbitration.** The OIA received 687 demands, 71 more than last year. The number of demands increased in all three regions: Northern California, Southern California, and San Diego. Fifteen lien cases were received, five less than last year. See pages 8, 32, and 43 – 44.
- 2. Types of Claims.** Ninety-three percent (93%) of the cases involved allegations of medical malpractice. Less than two percent (2%) presented benefit and coverage allegations. Lien cases made up two percent (2%). The remaining cases were based on allegations of premises liability and other torts. See page 9. Because lien cases differ significantly from cases brought by members, they are reported separately in Section IX.
- 3. Twenty-Eight Percent (28%) of Claimants were Without Attorneys.** Claimants in 185 cases, or 28%, were not represented by counsel, the same as last year. See pages 10 and 46.

### How Cases Closed

In the majority of cases, the parties themselves resolved their claims. Neutral arbitrators decided the remaining cases. All cases that went to hearing were decided by a single neutral arbitrator.

- 4. More Than Three-Quarters (77%) of Cases Closed by the Parties' Action.** The parties settled 47% of cases, 3% more than last year. Forty-two cases settled at the Mandatory Settlement Meeting. Of the cases that settled at the MSM, in

---

<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.

three claimants were in *pro per*. Claimants withdrew 25% and abandoned another 5% by failing to pay the filing fee or get the fee waived. See pages 24 – 25, and 49 – 50.

5. **Nearly One-Quarter (23%) Closed by Decision of Neutral Arbitrator.** Eight percent (8%) of cases closed after an arbitration hearing, 11% were closed through summary judgment, and 4% were dismissed by neutral arbitrators. In the cases that went to an arbitration hearing, claimants prevailed in 45%. See pages 25 – 26, and 50.
6. **More Than Half (51%) of Claimants Received Some Compensation.** Claimants receive compensation either when their cases settle (47%) or when they are successful after a hearing (4%). See pages 24 and 50.
7. **Eight Percent (8%) of Cases Went to Hearing.** Claimants prevailed in 45% of these cases. The average award was \$1,175,578, and the range was from \$29,999 to \$15,007,152. See pages 26, 50, and E-49 (Exhibit E, List of 2017 Awards to Claimants).
8. **All Cases Heard by a Single Neutral Arbitrator Instead of a Panel.** All of the hearings involved a single neutral arbitrator rather than a panel composed of one neutral and two party arbitrators. See pages 18 – 19.

## Meeting Deadlines

The OIA *Rules* allow the parties to delay the selection process and extend the completion date. Even with such delays, the process is expeditious.

9. **More Than Half (52%) of Neutral Arbitrator Selections Proceeded Without any Delay.** The *Rules* give parties the option to postpone the deadline to select a neutral arbitrator, but more than half (52%) of the neutrals were selected without the parties exercising this option. This year, the claimants made all but five of the requests for 90 day postponement. California law gives parties the opportunity to timely disqualify neutral arbitrators. In three percent (3%) of the cases, parties disqualified the neutral arbitrator. In four percent (4%) of the cases, parties exercised both the postponement and disqualification options. Claimants disqualified 40 neutral arbitrators and Kaiser disqualified 28. See pages 13 – 15.
10. **Average Length of Time to Select Neutral Arbitrator is 64 Days.** The time to select a neutral arbitrator in cases with no delay remained the same (24 days). The time to select a neutral with a 90 day postponement decreased by six days (104 days). It decreased by three days in cases with only a disqualification (61 days), but increased by seven days in cases with both a postponement and disqualification (165 days). The overall average length of time to select a neutral arbitrator for all cases decreased by 2 days (64 days). See pages 15 – 18, and 47 – 49.

11. **On Average, Cases Closed in Twelve Months.** Cases closed, on average, in 368 days, 5 days longer than last year. No case closed beyond the deadline required by the *Rules*. Eighty-three percent (83%) of the cases closed within 18 months (the deadline for “regular” cases) and 56% closed in a year or less. See pages 22 – 23, 50 – 51, and Table 10.
12. **On Average, Hearings Completed in Less than Twenty Months.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 598 days (less than 20 months). This average includes cases that were designated “complex” or “extraordinary” or that received a Rule 28 extension because they needed extra time. “Regular cases” closed in 435 days (less than 15 months). See page 26.

### **Pool of Neutral Arbitrators**

More than half of the OIA pool spend all of their time acting as neutral arbitrators. More than half of the neutral arbitrators served on a case. The two methods of selecting a neutral arbitrator – strike and rank or joint selection – allow parties to select anyone they collectively want. The majority of neutral arbitrators the parties jointly selected were from the OIA pool.

13. **The Neutral Arbitrator Pool.** The OIA has 228 neutral arbitrators in its pool, 21 fewer than last year. Forty-two percent (42%) of them, or 95, are retired judges. See page 4.
14. **Neutral Arbitrator Backgrounds.** The applications completed by the members of the OIA pool show that 134 arbitrators, or 59%, 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-three percent (93%) of the neutral arbitrators report having medical malpractice experience. See pages 5 – 6.
15. **More Than Half (59%) of Arbitrators Served on a Case.** Fifty-nine percent (59%) of the neutral arbitrators in the OIA pool served on a case. Arbitrators averaged two assignments each. Forty-four different neutrals, including arbitrators not in the OIA pool, decided the 57 awards made. Seventy-five (75%) of the neutral arbitrators wrote only a single award. See pages 7 and 45.
16. **Majority of Neutral Arbitrators (67%) Selected by Strike and Rank.** Sixty-seven percent (67%) of neutral arbitrators were selected through the strike and rank process, and 33% were jointly selected by the parties.<sup>2</sup> Seventy-three percent (73%) of the arbitrators jointly selected were members of the OIA pool. In the

---

<sup>2</sup>One neutral arbitrator was selected by court order.

other cases, the parties chose a neutral arbitrator who was not a member of the OIA pool. See page 12.

### **Neutral Arbitrator Fees**

While the OIA arbitration filing fee is less than the comparable court filing fee, claimants in arbitration can be faced with neutral arbitrator fees, which do not exist in court. These fees, however, can be shifted to Kaiser.

17. **Kaiser Paid the Neutral Arbitrators' Fees in 92% of Cases Closed.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. For the cases that closed, Kaiser paid the entire fee for the neutral arbitrators in 92% of those cases that had fees. See pages 30 – 31.
18. **Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from \$150/hour to \$975/hour, with an average of \$495. For the 509 cases that closed, and for which the OIA has information, the average fee charged by neutral arbitrators was \$8,236. In some cases, neutral arbitrators reported that they charged no fees. Excluding cases where no fees were charged, the average was \$8,771. The average fee in cases decided after a hearing was \$34,810. See page 31.

### **Evaluations**

When cases are concluded, the OIA sends questionnaires to the parties or their attorneys asking them about the OIA system, and if the cases closed by neutral arbitrator actions, an evaluation of the neutral arbitrators. Of those responding, the parties gave their neutral arbitrators and the OIA system positive evaluations. When cases close by neutral arbitrator actions, the OIA also sends the neutral arbitrators a questionnaire about the OIA system. Neutral arbitrators gave positive evaluations of the OIA system.

19. **Positive Evaluations of Neutral Arbitrators by Parties.** Most parties who responded to the OIA evaluation expressed satisfaction with the neutral arbitrators and would recommend them to others, with an average of 4.4 on a 5 point scale. *Pro pers* view neutral arbitrators less favorably. See pages 36 – 37.
20. **Positive Evaluations of the OIA by Neutral Arbitrators.** Fifty-six percent (56%) of the neutral arbitrators reported that the OIA experience was better than a court system, 42% said it was about the same, and 2% said it was worse. See pages 38 – 39.
21. **Positive Evaluations of the OIA by Parties.** Sixty-five percent (65%) of the responding parties and attorneys reported that the OIA system was better than the court system, 29% said it was the same, and 6% said it was worse. See page 39 – 41.

## Development and Changes in the System

The OIA and the Arbitration Oversight Board (AOB) continuously strive to improve the arbitration system.

22. **Change in Membership of the AOB.** Richard Spinello became the chair of the AOB, and Dr. Cornelius Hopper became the vice-chair. Two members resigned, Albert Ybarra and Rosemary Manchester. The selection of their replacements is in progress. See pages 4 and 41 – 42.
23. **Neutral Arbitrator Redacted Decisions.** Redacted decisions issued by OIA neutral arbitrators within the last five years are available on the OIA website. See page 4.
24. **Rules Sub-Committee Created.** The OIA and AOB explored changes to the OIA *Rules*. Some of the potential changes are in response to suggestions from parties and neutral arbitrators on evaluations submitted at the conclusion of cases. See pages 4 and 42. Some are based on suggestions from the OIA. The AOB convened a sub-committee to address possible modifications.

## Conclusion

The goal of the OIA is to provide an arbitration system that is fair, timely, lower in cost than litigation, and protects the privacy of the parties. To summarize:

- Neutral arbitrators are selected expeditiously, and the cases close faster than in court.
- Parties can, and do, disqualify neutral arbitrators they do not like.
- The filing fee is lower than in court, and parties can and do shift the costs of the neutral arbitrators to Kaiser.
- OIA arbitrations are confidential, and neither the OIA nor neutral arbitrators publish the names of individual claimants or respondents involved in them.
- Neutral arbitrators on the OIA panel have plaintiff, defendant, and judicial backgrounds. The cases are distributed among them.
- Neutral arbitrators and the OIA system receive positive evaluations.
- The OIA publishes the annual reports, information about its cases in compliance with California law, and neutral arbitrator redacted decisions. This information is available on the website for the parties and the public.