

REPORT SUMMARY

This is the annual report for the Office of the Independent Administrator (OIA) for 2019. It discusses the arbitration system between Kaiser Foundation Health Plan, Inc., or its affiliates (Kaiser) and its members.¹ 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 slightly increased from the previous year. Most of the claims were for medical malpractice. This year, roughly the same percentage of claimants proceeded without attorneys, *in pro per*, as last year.

- 1. Number of Demands for Arbitration.** The OIA received 610 demands, 4 more than last year. The number of demands increased in Southern California and San Diego but decreased in Northern California. Two lien cases were received. See pages 10, 33, and 43.
- 2. Types of Claims.** Ninety-five percent (95%) of the cases involved allegations of medical malpractice. Less than two percent (<2%) presented benefit and coverage allegations. Lien cases made up less than one-half percent (<.5%). The remaining cases were based on allegations of premises liability and other torts. See page 10. Because lien cases differ significantly from cases brought by members, they are reported separately on page 33.
- 3. Thirty-one Percent (31%) of Claimants Did Not Have Attorneys.** Claimants in 187 cases, or 31%, were not represented by counsel, a slight decrease from last year. See pages 11 and 45.

How Cases Closed

In the majority of cases, the parties themselves resolved their claims. Neutral arbitrators decided the remaining cases, almost always with a single neutral arbitrator. Only two cases went forward with party arbitrators.

- 4. More Than Three-Quarters (76%) of Cases Closed by the Parties' Action.** The parties settled 45% of cases, slightly less than last year. Forty-seven cases settled at the Mandatory Settlement Meeting. Of the cases that settled at the MSM, in five, claimants were *in pro per*. Claimants withdrew 26% of cases and

¹Kaiser 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.

abandoned 6% by failing to pay the filing fee or get the fee waived. See pages 25 – 26, and 47 – 48.

5. **Nearly One-Quarter (24%) Closed by Decision of the Neutral Arbitrator.** Eight percent (8%) of cases closed after an arbitration hearing, 11% were closed through summary judgment, and 5% were dismissed by neutral arbitrators. See pages 26 – 27, and 47 – 48.
6. **Almost Half (47%) of Claimants Received Some Compensation.** Claimants receive compensation either when their cases settle (45%) or when they are successful after a hearing (2%). See pages 25, 27 and 47 – 48.
7. **Eight Percent (8%) of Cases Went to Hearing.** Claimants prevailed in 30% of these cases. The average award was \$846,223, and the range was from \$51,000 to \$5,258,636. See pages 27, 48, and Exhibit E.
8. **All But Two Cases Were Heard by a Single Neutral Arbitrator.** All but two of the hearings involved a single neutral arbitrator. A panel of three arbitrators decided only two of the 46 cases that went to hearing. See page 19.

Meeting Deadlines

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

9. **More Than Half (55%) 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 (55%) 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 two percent (2%) of the cases, parties disqualified the neutral arbitrator. In three percent (3%) of the cases, parties exercised both the postponement and disqualification options. Claimants disqualified 28 neutral arbitrators and Kaiser disqualified 11. See page 18.
10. **Average Length of Time to Select a Neutral Arbitrator is 62 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 55 days. In cases with both a postponement and disqualification it was 149 days. The overall average length of time to select a neutral arbitrator for all cases was 62 days, 1 day less than last year. See pages 14 – 19, and 46 – 47.
11. **On Average, Cases Closed in Twelve Months.** Cases closed, on average, in 366 days, 23 days more than last year. No case closed beyond the deadline required

by the *Rules*. Eighty-two percent (82%) of the cases closed within 18 months (the deadline for “regular” cases) and 59% closed in a year or less. See pages 24 – 25 and 48 – 49.

12. **On Average, Cases With Hearings Were Completed in Less than Two Years.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 676 days (a little over 22 months). This average includes cases that were designated complex, 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 27.

Panel of Neutral Arbitrators

More than half (59%) of the OIA panel spend all of their time acting as neutral arbitrators. More than half (60%) 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 panel.

13. **The Neutral Arbitrator Panel.** The OIA has 193 neutral arbitrators on its panel, 32 fewer than last year. Forty-three percent (43%) of them, or 83, are retired judges. See page 6.
14. **Neutral Arbitrator Backgrounds.** The applications completed by the members of the OIA panel show that 114 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-two percent (92%) of the neutral arbitrators report having medical malpractice experience. See page 7.
15. **More Than Half (60%) of Arbitrators Served on a Case.** Sixty percent (60%) of the neutral arbitrators on the OIA panel served on a case. Arbitrators averaged two assignments each. Thirty-five neutrals, including arbitrators not on the OIA panel, decided the 46 awards made. Seventy-four (74%) of the neutral arbitrators wrote only a single award. See pages 8 and 44.
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. Seventy-six percent (76%) of the arbitrators jointly selected were members of the OIA panel. In the other cases, the parties chose a neutral arbitrator who was not a member of the OIA panel. See page 13.

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 91% of Closed Cases.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. Kaiser paid the neutral arbitrators' fees in 91% of closed cases. See page 32.
18. **Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from \$150/hour to \$1,500/hour, with an average of \$540/hour. For the 494 cases that closed, and for which the OIA has information, the average fee charged by neutral arbitrators was \$7,774. In some cases, neutral arbitrators reported that they charged no fees. Excluding cases where no fees were charged, the average was \$8,295. The average fee in cases decided after a hearing was \$36,093. See page 32.

Evaluations

When cases conclude, 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 4.0 on a 5 point scale. *Pro pers* view neutral arbitrators less favorably. See pages 34 – 35.
20. **Positive Evaluations of the OIA by Neutral Arbitrators.** Ninety-eight percent (98%) of the neutral arbitrators reported that the OIA experience was the same as or better than the court system and 2% said it was worse. See pages 36 – 37.
21. **Positive Evaluations of the OIA by Parties.** Eighty-seven percent (87%) of the responding parties and attorneys reported that the OIA system was the same as or better than the court system and 13% said it was worse. See pages 38 – 39.

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.** Dr. Bruce R. Merl retired after 17 years of service on the AOB. His replacement is in process. See pages 4 and 40.
23. **AOB Finalizes Rule Change.** The AOB finalized approval of a Rule change which had been temporarily approved by the AOB chair in order to comply with a request from the Department of Managed Health Care. The mandated language was added to OIA Rule 14(a). See page 4 for a detailed description.
24. **AOB Approves Arbitration Rule Changes.** The AOB discussed and approved two Rule changes. See page 4 for a detailed explanation and Exhibit B for a redlined version.
25. **Collecting Diversity Data.** One of the AOB's strategic objectives is to improve data on diversity and inclusion. It therefore passed a resolution to recognize the value and importance of the State Bar of California's decision to collect diversity data. Pursuant to state law, the OIA will be collecting demographic data of all arbitrators as self-reported by the arbitrators and will post the information in the aggregate on the OIA website. See pages 4 – 5 and 42.

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 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 cases are distributed among them.
- Neutral arbitrators and the OIA system receive positive evaluations.
- The OIA publishes 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.