

REPORT SUMMARY

This is the annual report for the Office of the Independent Administrator (OIA) for 2022. The OIA administers the arbitration system between Kaiser Foundation Health Plan, Inc., or its affiliates (Kaiser) and its members.¹ 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 470 demands, 3 less than last year and the lowest number of all time. See pages 11 and 40.
2. **Types of Claims.** Ninety-six percent (96%) of the cases involved allegations of medical malpractice. Less than one percent (<1%) presented benefit and coverage allegations. The remaining cases (3%) were based on allegations of premises liability and other torts. See page 11.
3. **Thirty-three Percent (33%) of Claimants Did Not Have Attorneys.** Claimants in 155 cases, or 33%, were not represented by counsel, a 7% increase from last year. On average, 25% of claimants are in *pro per*. See pages 12 and 42.

How Cases Closed

4. **More than Half (53%) of Cases Settled.** The parties settled 53% of cases, 8% more than last year and the highest reported average. Twenty-nine cases settled at the Mandatory Settlement Meeting (MSM). See pages 23 and 44 – 45.
5. **Six Percent (6%) of Cases Went to Hearing.** Claimants prevailed in 46% of these cases, 12% more than last year and the highest reported average. The average award was \$4,901,115, and the range was from \$350,000 to \$25,638,059. See pages 24, 44 – 45, and Exhibit G.
6. **All but One Case were Heard by a Single Neutral Arbitrator.** Almost all of the hearings involved a single neutral arbitrator. One case was decided by a neutral arbitrator and two party arbitrators. See page 20.
7. **More than Half (56%) of Claimants Received Some Compensation.** Claimants received compensation either when their cases settled (53%) or when they were successful after a hearing (3%). See pages 23, 24, and 44 – 45.

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. The OIA has administered the system since 1999.

8. **Almost One-Quarter (22%) Closed by Decision of the Neutral Arbitrator.** Six percent (6%) of cases closed after an arbitration hearing, 11% were closed through summary judgment, and 5% were dismissed by neutral arbitrators. See pages 23 – 24 and 44 – 45.
9. **One Quarter (25%) of Cases were Withdrawn.** Claimants withdrew 25% of cases. Thirty-six percent (36%) of these claimants were in *pro per*. See pages 23 and 44 – 45.

Meeting Deadlines

10. **More than Half (55%) 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 (55%) of the arbitrators were selected without the parties exercising this option. This year, the claimants made all but three of the requests for a 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 36 neutral arbitrators and Kaiser disqualified 11. See pages 15, 16 – 17 and 18.
11. **Average Length of Time to Select a Neutral Arbitrator was 63 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 111 days. In cases with only a disqualification, it was 50 days. In cases with both a postponement and disqualification it was 188 days. The overall average length of time to select a neutral arbitrator for all cases was 63 days, 5 days more than last year. See pages 18 – 19 and 43 – 44.
12. **On Average, Cases Closed in Just over Fourteen Months.** Cases closed, on average, in 433 days, 15 days more than last year. No case closed beyond the deadline required by the *Rules*. Seventy-seven percent (77%) of the cases closed within 18 months (the deadline for “regular” cases) and 52% closed in a year or less. See pages 22 – 23, 26, and 45 – 46.
13. **On Average, Cases With Hearings were Completed in Less than Three Years.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 1,022 days (34 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 470 days (under 16 months). See pages 25, 26, and 46.

Panel of Neutral Arbitrators

14. **The Neutral Arbitrator Panel.** The OIA had 177 neutral arbitrators on its panel, 13 more than last year. Fifty-three percent (53%) of them, or 93, are retired judges. See page 7.
15. **Neutral Arbitrator Backgrounds.** The applications completed by the members of the OIA panel show that 111 arbitrators, or 63%, 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 page 8.
16. **More Than Half (58%) of Arbitrators Served on a Case.** Fifty-eight percent (58%) of the neutral arbitrators on the OIA panel served on a case. Arbitrators averaged two assignments each. Twenty neutral arbitrators, including those not on the OIA panel, decided the 26 awards made. Sixteen arbitrators (80%) wrote a single award. See pages 9 and 41.
17. **Majority of Neutral Arbitrators Selected by the Parties were Members of the OIA Panel (95%).** Seventy-seven percent (77%) of neutral arbitrators were selected through the strike and rank process. Twenty-three percent (23%) of the arbitrators were jointly selected. Of the joint selections, 18% were members of the OIA panel, and 5% were not members of the OIA panel. See page 14.
18. **Neutral Arbitrators Selected Again After Making Large Award.** Ten neutral arbitrators made awards for more than \$500,000. Six of the ten arbitrators have been selected to serve multiple times after making the award. See pages 9 - 10.

Neutral Arbitrator Fees

19. **Kaiser Paid the Neutral Arbitrators' Fees in 97% 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 97% of closed cases that had fees. See page 31.
20. **Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from \$200/hour to \$1,200/hour, with an average of \$638/hour. For the 381 cases that closed, and for which the OIA has information, the average fee charged by neutral arbitrators was \$8,705. In some cases, neutral arbitrators reported that they charged no fees. Excluding cases where no fees were charged, the average fee was \$9,343. The average fee in cases decided after a hearing was \$59,634. See page 31.

Evaluations

21. **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 4.4 on a 5 point scale. *Pro pers* view neutral arbitrators less favorably, with a 1.0 average. This year, the overall average by all parties was 3.7. See pages 32 – 33.
22. **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-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 33 – 35.
23. **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. Seventy-six percent (76%) of the responding parties and attorneys reported that the OIA system was the same as or better than the court system and 24% said it was worse. See pages 35 – 37.

Development and Changes in the System

24. **The Arbitration Oversight Board (AOB) Met with OIA Neutral Arbitrator who Accepts *Pro Per* Cases.** The AOB continued discussions regarding the dissatisfaction experienced by *pro pers*, and met with an OIA neutral arbitrator to discuss ways in which the *pro per* experience could be improved. See pages 3 and 39.
25. **AOB Convened *Pro Per* Sub-Committee.** The AOB convened a *pro per* sub-committee to review OIA procedures and the information provided to *pro pers*. See pages 3 – 4 and 39.
26. **AOB Convened *Rules* Sub-Committee.** The *Rules* sub-committee met and has revised Rule 54 to provide more clear information to *pro pers*. The *Rules* sub-committee will reconvene in 2023 to discuss further rule changes. See pages 4, 39, and Exhibit B.
27. **AOB Approved Rule Changes.** The AOB approved seven proposals for rule changes. All approved changes took effect January 1, 2023. See pages 4 – 5, 39, and Exhibit B.

28. **AOB Extended Temporary Rule in Response to COVID-19.** The AOB extended Temporary Rule 4 with a slight modification. All other temporary rules have been lifted. See pages 5, 39, and Exhibit C.
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 5 and 39.
30. **Impact of COVID-19 on Cases Older than 18 Months.** The AOB was interested in comparing open cases older than 18 months with those in prior years, both pre and post COVID-19. This information can be found in Chart 1 and will become part of the OIA statistics provided to the AOB quarterly as part of its oversight. See pages 5 – 6 and 39.

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.
- 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 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.