

## REPORT SUMMARY

This is the ninth annual report the Office of the Independent Administrator (OIA) has issued on 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. Sharon Oxborough is the Independent Administrator. The data and analyses presented allow readers to gauge how well the OIA system is meeting its goals of providing arbitration that is fair, timely, lower in cost than litigation, and protects the privacy of the parties. The factors listed below help readers understand what happened in 2007 and relate directly to the system's fairness, speed, or cost.

### Developments in 2007

While the system has been relatively stable, the OIA and the AOB strive to improve it and to provide more information about it to the public. The items below are consistent with these goals.

- 1. Tracking Website Use.** The OIA began tracking how many users visit the website, how they visit, and which portions they visit. See page 4.
- 2. New Software Program.** The software program, described in the last report, was used successfully to generate most of the statistics for this report. See page 4.
- 3. Modification of the Arbitration Management Form.** This form was modified to encourage the neutral arbitrators and parties to consider if translators will be needed during the arbitration. See pages 4, 80.
- 4. Analysis of Neutral Arbitrators With Ten or More Cases.** The OIA compared how cases handled by neutral arbitrators who had ten or more cases in 2007 closed to the way cases with other neutral arbitrators closed. See page 9.

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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.

## Status of Arbitration Demands

The number and types of demands and the proportion where a claimant is not represented by an attorney is almost identical to last year.

1. **Demands for Arbitration.** After declining from 1,053 in 2002 to 861 in 2004, the number of demands has leveled off. In 2007, the OIA received 823 demands for arbitration. This is only two fewer than it received in 2006. See page 46.
2. **Medical Malpractice Claims.** More than 93% of the cases the OIA administered in 2007 involved allegations of medical malpractice. Only 1% presented benefit and coverage allegations. The remaining 5.5% are based on allegations of premises liability, other torts, or lien. See page 11. The allegations almost all involve the affiliated doctors and hospital groups. The percentage of cases involving medical malpractice allegations has been consistent since the OIA began operations.
3. **Proportion of Claimants Without Attorneys.** Slightly more than 20% of claimants were not represented in 2007. See pages 12, 46.

## How Cases Closed

The purpose of an arbitration is to resolve a claim. The parties themselves resolved the vast majority of cases in the system. Neutral arbitrators decided the remaining cases; almost always with a single neutral arbitrator.

4. **Three-Quarters of Cases Closed by the Parties' Action.** During 2007, the parties settled 42% of the closed cases. The claimants withdrew 26% and abandoned another 5% by failing to pay the filing fee or get the fee waived. See pages 28, 29.
5. **One-Quarter Closed by Decision of Neutral Arbitrator.** 10.5% were closed through summary judgment, 3% were dismissed by neutral arbitrators, and 13.5% of cases closed after an arbitration hearing. In the cases that went to arbitration hearing, claimants prevailed in 35%. The average award was \$571,735. The range was from \$15,800 to \$6,000,236. See pages 30 - 31.
6. **Nearly All Cases Heard by a Single Neutral Arbitrator Instead of a Panel.** Most hearings involved a single neutral arbitrator rather than a panel composed of one neutral and two party arbitrators. A panel of three arbitrators signed only one award made after a hearing in 2007. A single neutral decided the other 105. See page 22.

## Meeting Deadlines

The timely selection of the neutral arbitrator is crucial to the timely resolution of the case. Nevertheless, the desire for efficiency must be balanced by the needs of the parties in particular cases. The OIA Rules allow the parties to delay the selection process and extend the completion date. Requests for delays are all made by claimants. Even with such requests, the process is expeditious.

7. **Slightly More than Half of Neutral Selections Proceeded with No Delay; the Other Neutral Selections Had Delays Requested by Claimants.** Slightly more than half (51%) of the neutral arbitrators were selected without the parties exercising options that delay the process. In the other cases, the selection deadline was postponed (46%), a neutral arbitrator was disqualified (1%), or both (2%). Claimants requested all of the postponements. They also made 81% of the disqualifications. See pages 15 - 18. The percentage of cases in which the parties chose to postpone the deadline has increased over the years from 17% the first year of operation to 46% in 2007. See pages 15, 47.
8. **Overall Average Length of Time to Select Neutral Arbitrator Increased Two Days; Length of Time to Select Neutral Arbitrators Stayed the Same When There Was No Postponement, and Increased Two Days When There Was Only a Postponement.** The average time to select a neutral arbitrator was 68 days, two more days than last year. For the cases without a disqualification or postponement, the neutral arbitrators were selected in 25 days, the same as last year. The time to select a neutral arbitrator increased by two days in the cases where the claimant asked for a 90 day postponement to 113 days. The 68 days to select a neutral arbitrator in 2007 is more than ten times faster than that described by the *Engalla* case. See pages 19 - 21, 47.
9. **Cases Closed on Time, and Time to Close Decreased in All Categories Except Settlements.** In 2007, the cases closed, on average, in 336 days, or 11 months, down from 342 days in 2006. Only one case failed to close on time. Eighty-nine percent of the cases closed within 18 months (the deadline for most cases) and 63% closed in a year or less. See pages 26 - 28.
10. **Hearings Completed Within Eighteen Months.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 520 days (less than 18 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 403 days, or less than 14 months. See pages 27, 31.

## OIA's Pool of Neutral Arbitrators

A large and balanced pool of neutral arbitrators, among whom work is distributed, is a crucial ingredient to a fair system. It prevents the appearance of a captive pool of neutral arbitrators, beholden to Kaiser for their livelihood. Neutral arbitrators continue to serve after making large awards against Kaiser. The two methods of selecting a neutral arbitrator allow parties the freedom to select anyone they collectively want. The vast majority of neutral arbitrators the parties jointly select are in the OIA pool.

11. **Large Neutral Arbitrator Pool.** The OIA has 278 neutral arbitrators in its pool. More than 40% of them, or 113, are retired judges. See page 5.
12. **Applications Reveal Balanced Pool of Neutral Arbitrators.** The applications filled out by the members of the OIA pool show that 132 arbitrators, or more than 45%, spend all of their time acting in a neutral capacity. The remaining members divide their time almost equally between claimants' side and respondents' side work. See pages 6 - 7.
13. **Applications Reveal Medical Malpractice Experience by Neutral Arbitrators.** Neutral arbitrators' applications and updates also show that 255 of the arbitrators have medical malpractice experience. That is more than 90%. See page 7.
14. **Large Percentage of Arbitrators Served on Arbitrations and Heard Cases.** Sixty-two percent of the neutral arbitrators in the OIA pool served on a case in 2007. Arbitrators averaged two assignments each in 2007. Eighty different neutrals, including arbitrators not in the OIA pool, decided the 106 awards made in 2007. See pages 7 - 8.
15. **Seventy percent of Neutral Arbitrators Selected by Strike and Rank.** In 2007, the parties chose more than 70% of neutral arbitrators through the strike and rank process, and jointly selected the remaining 28%. Eighty percent of the arbitrators jointly selected were members of the OIA pool. In 20% (40 cases) the parties chose a neutral arbitrator who was not a member of the OIA pool. See page 14.

## Neutral Arbitrator Fees

While the OIA arbitration 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. Claimants in OIA cases, however, can and do shift the responsibility to pay the neutral arbitrator's fees to Kaiser.

- 16. Kaiser Paid the Neutral Arbitrator's Fees in 85% of Cases Closed in 2007.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. For the cases that closed in 2007, Kaiser paid the entire fee for the neutral arbitrators in 85% of those cases that had fees. See page 36.
- 17. Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from \$125/hour to \$660/hour, with an average of \$361. For the 595 cases that closed in 2007 and for which the OIA has information, the average total fee charged by neutral arbitrators was \$6,189.12. In some cases, neutral arbitrators reported that they charged no fees. Excluding cases where no fees were charged, the average was \$7,001.00. See page 37.

## Evaluations

The parties continue to give their neutral arbitrators positive evaluations. Similarly, the neutral arbitrators report that the system itself works well. More than half of the parties returned their evaluations, while almost all neutral arbitrators returned theirs.

- 18. Positive Evaluations of Neutral Arbitrators.** In 2007, the great majority of both claimants and counsel for both sides reported that they would recommend their neutral arbitrator to another individual with a similar case. See page 39.
- 19. Positive Evaluations of the OIA.** Neutral arbitrators continue to evaluate OIA procedures positively. More than 45% said that the OIA experience was better than a court system, and 52% said it was about the same. Less than 2% said the OIA experience was worse. See pages 40 - 42.