

Status of Blue Ribbon Panel Recommendations

The Blue Ribbon Panel on Kaiser Permanente Arbitration issued its report in January 1998. It included the following recommendations. After quoting each recommendation, this document explains its status. Further information may be found in the OIA's annual reports.

A. Independent Administration

- 1. An Independent Administrator should manage the Kaiser Permanente Arbitration System and the individual cases within it. The Kaiser Foundation Health Plan, Inc. should fund the Independent Administrator.**

Status: Ongoing, accomplished. The OIA began accepting claims from Kaiser on March 29, 1999. Since June 2002, the OIA is paid by the Arbitration Oversight Board (AOB). The AOB has control of a trust established by Kaiser to meet contractual obligations to the OIA for administering the arbitrations. The \$150 filing fee members pay when they make a demand for arbitration also funds the OIA. The contract between Sharon Oxborough, the Independent Administrator, and the AOB continues at least through March 28, 2011.

- 2. The mission of the Independent Administrator should be to ensure that the Kaiser Permanente process is fair, speedy, cost-effective, and protects the privacy interests of the parties. These goals should be reflected in the contract with the Independent Administrator and made available to all members and employer-purchasers.**

Status: Completed. See Rules 2 and 3 of the *Rules for Kaiser Permanente Member Arbitrations Administered by the Office of the Independent Administrator (Rules)*. The goals are also set out in the contract between the AOB and Sharon Oxborough, the Independent Administrator. The contract contains specific provisions related to confidentiality.

- 3. The Independent Administrator selected should not be a provider of neutral arbitrators or mediators.**

Status: Completed. Neither the Law Offices of Sharon Oxborough nor the OIA accepts payment of any kind from the arbitrators in its panel, including application fees.

B. Advisory Committee

- 4. Kaiser Permanente should establish, an on-going, volunteer Advisory Committee, comprised of representatives from Kaiser membership, Permanente Group physicians, Kaiser health care personnel, employer-purchasers of Kaiser Permanente services, an appropriate consumer advocacy organization and the plaintiffs' and defense bar involved in medical malpractice in the Kaiser Permanente arbitration system. Kaiser Permanente should consult with the Advisory Committee prior to the selection of the Independent Administrator and at other critical points described later in this report.**

Status: Completed. In April 1998, Kaiser announced the creation of the Arbitration Advisory Committee (AAC). The AAC participated in the selection of the Independent Administrator, worked closely with Kaiser and the OIA in creating the new system, and its members provided ongoing comment on, and oversight of the system. It also reviewed the first two annual reports.

In April 2001, Kaiser announced the formation of a new oversight board, the AOB, which replaced the earlier AAC.

C. Goals of a Revised Kaiser Permanente Arbitration System

Time Frame for Resolution

- 5. The Independent Administrator, after consultation with Kaiser Permanente and the Advisory Committee, should establish arbitration process deadlines, which will serve as publicly stated benchmarks for the program.**

Status: Completed. Under the *Rules*, ordinary cases must be resolved within eighteen months of the OIA receiving the claim and the filing fee, or waiving that fee. The *Rules* also contain provisions for cases that need to be completed in more or less time than eighteen months. See Rules 24, 28 and 33-36.

6. **The Independent Administrator should supervise the progress of each case and should communicate regularly with the neutral arbitrator (and the parties, when appropriate) to assure that each case moves as expeditiously as possible. To this end, the Independent Administrator should encourage continuous hearings.**

Status: Ongoing, accomplished. The OIA tracks the progress of each case and communicates with the neutral arbitrator and the parties as necessary to ensure that each case moves forward as expeditiously as possible. Rule 25(c)(ii) requires that arbitration hearings be scheduled for consecutive days if more than one day is necessary.

7. **Although all cases should move as swiftly as possible, special expedited procedures, including those for appointing the neutral arbitrator and setting arbitration hearing dates, should be established for cases in which the member is terminally ill or in other catastrophic circumstances.**

Status: Completed. Rules 33 through 36 set out procedures for expedited cases.

Documentation and Availability of Procedures

8. **The Independent Administrator should formalize and make available Kaiser Permanente's new arbitration goals and procedures in writing and take actions, where necessary, to assure all participants are properly informed.**

Status: Completed. The OIA sends a written System Description, the *Rules*, applicable forms, and a detailed letter to all claimants or their counsel each time Kaiser forwards a demand for arbitration to the OIA. These items are also available to anyone who requests them from the OIA, and to the public through the OIA's website at www.oia-kaiserarb.com. Additional information, including redacted information about individual arbitrations, is also available on the OIA website.

Establishing a List of Qualified Arbitrators

9. **The Independent Administrator should develop the largest possible list of qualified neutral arbitrators.**

Status: Completed. The OIA's pool of neutral arbitrators has more than 275 members. The OIA continues to recruit arbitrators, to accept applications from interested parties, and to admit those qualified to the panel.

- 10. The Independent Administrator should solicit applications from firms and individuals in California who provide neutral arbitration services and who are interested in serving in Kaiser Permanente cases. The qualifications for applicants should be established by the Independent Administrator after discussions with the Advisory Committee and Kaiser Permanente.**

Status: Completed. Over forty percent of the pool belongs to provider organizations. The qualifications are available from the OIA or its website.

- 11. The Independent Administrator should select those applicants who meet standards of qualification and experience and who demonstrate that they will implement the program's goals of fairness, timeliness, low cost and protection of the parties' privacy interests.**

Status: Completed. The OIA reviews each arbitrator's application and makes sure that the applicant meets the published qualifications. When an applicant is rejected, she or he receives a letter citing the specific requirement which has not been met and is given the opportunity to respond and supplement the application.

Prompt Selection of the Neutral Arbitrator

- 12. Kaiser Permanente should be required to send the demand for arbitration, or other notice of arbitration, to the Independent Administrator within five (5) business days of receipt.**

Status: Completed as modified. Rule 11 requires that Kaiser Permanente forward Demands for Arbitration to the OIA within ten days of receipt. In the original discussions which created the *Rules*, both Kaiser and the AAC believed that the recommended number of days should be increased.

- 13. The neutral arbitrator should be selected within thirty (30) days of the Independent Administrator's receipt of the arbitration demand.**

Status: Completed. Claimants have the option to postpone the deadline to select a neutral arbitrator for up to 90 days, and many exercise this option. Additionally, state law gives parties the right to disqualify neutral arbitrators after their selection, within specified time limits. When these rights are not exercised, neutral arbitrators are chosen in less than 30 days.

- 14. The parties should have a short period within which they may agree upon any neutral arbitrator of their choosing.**

Status: Completed. Under Rule 17, the parties may select any neutral arbitrator they choose, as long as that person agrees to follow the *Rules*. The parties may make their joint selection during the same period of time they have for selecting a neutral arbitrator using a randomly generated list of possible arbitrators (“LPA”) provided by the OIA.

- 15. If no arbitrator is selected within that period, the Independent Administrator should select the neutral arbitrator by providing a list of names to the parties and giving them ten (10) days to strike some number of those names. The procedure for this striking process should be established by the Independent Administrator.**

Status: Completed as modified. Rules 17 and 18 give the parties 20 days to either jointly select a neutral arbitrator or return the LPA provided by the OIA.

- 16. In creating lists of potential neutral arbitrators, the Independent Administrator should rotate among the qualified neutral arbitrators.**

Status: Completed as modified. The OIA creates the LPA by randomly selecting names from its panel of neutral arbitrators. The OIA uses an internet-based lottery program to make random selections among the neutral arbitrators.

- 17. A one-time delay in appointment of up to ninety (90) days may be allowed by the Independent Administrator upon written request of the plaintiff. Counsel requesting a delay should be required to provide a copy of the written request to his or her client.**

Status: Completed as modified. Rule 21 provides for this postponement upon the request of a claimant. Rule 21 does not require counsel requesting a delay to provide a copy of the request to his or her client.

- 18. The Independent Administrator should be able to grant further continuances in unusual circumstances.**

Status: Completed. See Rule 28.

Arbitration Management

- 19. The neutral arbitrator should promptly convene an arbitration management conference, in person or by phone, to set deadlines for key events, establish the date of the arbitration hearing and assist in resolving any issues that might impede the progress of the case. The neutral arbitrator should hold additional conferences as necessary to assure that the case continues to move expeditiously. The Independent Administrator should monitor the cases and supervise the neutral arbitrators to assure efficient progress.**

Status: Completed. Rule 25 requires that the neutral arbitrator hold an arbitration management conference within 60 days of selection. Items to be discussed at the conference cited in Rule 25(b) and (c) track this Blue Ribbon Panel recommendation. Rule 25(f) provides for additional conferences as the parties and the arbitrator need them. The OIA monitors each case and ensures that the neutral arbitrator is complying with the deadlines set out in the *Rules*.

Disclosures by Potential Arbitrators

- 20. The Independent Administrator should maintain a list of all qualified neutral arbitrators and arbitration organizations and maintain a file on each. An individual neutral arbitrator's file should contain the history of the arbitrator's rulings in Kaiser arbitrations, written decisions (if any) in those cases, a biography and any additional information necessary to enable parties to screen for bias and possible conflicts of interest.**

Status: Completed. A list of arbitrators on the OIA's pool is available from the OIA and is posted on the OIA's website at www.oia-kaiserarb.com. The OIA maintains a file for each arbitrator. The files contain copies of the arbitrators' lengthy applications, redacted awards that the OIA has received under Rule 39(c), and other documents such as biographies and resumes. The files also contain evaluation forms completed by parties to prior OIA arbitrations. When the OIA sends an LPA to parties, each side receives a copy of the file for each of the 12 randomly selected arbitrators on the list. Any neutral arbitrator selected by the parties must also make disclosures as required by law. See Rule 20.

Since January 1, 2003, pursuant to Ethics Standard 8 and California Code of Civil Procedure §1281.96, the OIA has posted on its website the information required about each applicable case in computer searchable format. This includes who the neutral was, who prevailed, the amount of damages awarded if any, who the attorneys were, and much more. It does not disclose the names of people who are claimants or respondents, only institutional entities.

- 21. These files should be made available to parties and counsel in pending Kaiser Permanente arbitrations. When a list of potential neutral arbitrators is sent to parties and counsel, a summary of the file information on the proposed neutral arbitrators should be included in that mailing.**

Status: Completed. As discussed above, a copy of each arbitrator's file is sent to the parties when an arbitrator's name appears on an LPA. To avoid the appearance of altering or shaping information about an arbitrator, the OIA sends copies of the actual documents in the file rather than a summary of documents.

Written Decisions

- 22. Neutral arbitrators should be required to issue brief written decisions to the parties in Kaiser Permanente arbitrations and the Independent Administrator. These decisions should include the name of the prevailing party; the amount and other relevant terms of the award, if any; and reasons for the judgment rendered.**

Status: Completed. See Rule 38. Neutral arbitrators have issued written awards to the parties in all cases decided after a hearing since the OIA began operation.

- 23. The Independent Administrator should maintain a complete set of the written decisions in Kaiser Permanente arbitration cases. In addition, a copy of a neutral arbitrator's decision should be kept in that arbitrator's file. These documents should be made available, as described above, to parties and counsel in pending Kaiser Permanente arbitrations.**

Status: See discussion for Recommendations 20 and 21.

Protection of Privacy

- 24. In developing principles to govern the Independent Administrator and the neutral arbitrators who will serve in Kaiser Permanente cases, Kaiser Permanente and the Advisory Committee should give substantial care to ensure the privacy of members, physicians and Kaiser personnel. Prior to making past awards and written decisions available, as recommended above, the Independent Administrator should remove the names of parties, members, physicians and Kaiser Permanente personnel, as well as the name and location of the Kaiser facility.**

Status: Completed. Rule 39(c) requires Kaiser to provide the OIA with copies of redacted awards. Redacted awards become part of the OIA file for the neutral arbitrator who issued the award. The redacted awards are identical to those Kaiser is required by statute to prepare for California's Department of Managed Health Care.

Enhancement of Settlement Opportunities

- 25. The Independent Administrator should ensure that the neutral arbitrator schedules, but does not attend, an early meeting between the parties to consider settlement, either through direct negotiations or with the assistance of a mediator.**

Status: Completed. Under Rule 26, the parties must hold a mandatory settlement meeting (MSM) within 6 months of the Arbitration Management Conference. The OIA tracks the scheduling and the holding of the MSM.

- 26. Within twelve (12) months of this report, Kaiser Permanente should consult with the Independent Administrator and the Advisory Committee and begin implementation of a mediation program.**

Status: Kaiser has reported to the AOB about a program it has instituted in California called the Healthcare Ombudsman/Mediator Program which it feels meets the objectives of this recommendation.

Encouraging Use of the Sole Arbitrator

27. **If the member requests a single, neutral arbitrator, Kaiser Permanente should consent and pay the full fee of the neutral arbitrator. If Kaiser Permanente insists upon a tripartite panel in these circumstances, it should pay for all fees of the neutral arbitrator as well as its own party arbitrator.**

Status: Completed. Rules 14 and 15 provide these features.

Oversight and Monitoring

28. **The Independent Administrator should report annually to Kaiser Permanente and the Advisory Committee. The report should discuss the actions taken to achieve the program's goals and whether those goals are being met. The annual report shall be made available to the Advisory Committee and, upon request, to Kaiser Permanente members, employer/purchasers and the general public.**

Status: Completed. Hard copies of the annual report are available to the public without cost from Kaiser and from the OIA. The reports can also be read or downloaded from the OIA's website at www.oia-kaiserarb.com.

29. **No less than every five years, an independent audit of the Independent Administrator should be undertaken. This audit shall also be made available to the Advisory Committee and, upon request, to Kaiser Permanente members, employer/purchasers and the general public.**

Status: Completed. In 2004, 2005 and 2006, the OIA was audited by a firm selected by the AOB. The audit reviewed a random sample of files and checked the numbers in the prior years' annual reports. The audits found no mistakes.

30. **Kaiser Permanente should conduct on-going, internal research to assess the extent to which the arbitration system is meeting its stated goals.**

Status: Unknown. This recommendation does not call for the OIA's participation.

D. Improvement of the Pre-arbitration System

31. **Kaiser Permanente should establish and fund a formal Ombudsperson program to assist members in the complaint and grievance processes.**

Status: See discussion for Recommendation 26.

32. **The Kaiser Permanente dispute resolution system should be standard across all facilities in California and should be communicated more clearly and directly, in writing, to its members.**

Status: To the extent that this recommendation involves systems other than arbitration, the OIA has no information because it is not involved. With regard to the OIA, it is completed. The system is completely standard across the state. All OIA cases are administered in the same manner.

E. Cases Not Involving Medical Malpractice

33. **Kaiser Permanente should consult with the Advisory Committee and the Independent Administrator to determine whether different arbitration procedures are needed for benefits and coverage cases and matters other than medical malpractice.**

Status: Ongoing, completed. At this point, almost all of the cases in the OIA system are medical malpractice. Benefits and coverage cases have constituted 1% of the system. Kaiser has forwarded claims of the following types to the OIA: medical malpractice, premises liability, other tort, benefits, lien, and unknown (because the demand does not contain this information). So far, all types of cases are proceeding under a single set of rules.

F. Speed of Implementation

34. **The Advisory Committee should be appointed no later than February 1, 1998.**

Status: Completed late. The Arbitration Advisory Committee was appointed in April of 1998.

35. **The Independent Administrator should be selected no later than April 1, 1998.**

Status: Completed late. Kaiser and the Law Offices of Sharon Lybeck Hartmann executed their contract on November 4, 1998.

36. **Kaiser Permanente should develop and publish an implementation schedule for these recommendations as rapidly as possible.**

Status: The OIA is not aware of a published implementation schedule for the Blue Ribbon Panel's recommendations, but at this point there is no need for such a schedule as the OIA exists and is operating.