

Kaiser Arbitration Oversight Board

Comments on the Annual Report for 2010

Introduction

The Arbitration Oversight Board has the responsibility of reviewing and commenting on the Annual Report of the Independent Administrator. Members of the Board received a draft of the report in advance of its March 24th meeting, which was devoted to reviewing the document and offering suggestions to assure its clarity and completeness. The following comments reflect the Board's consideration of the report and its description of the performance of the Kaiser arbitration system during the year 2010.

Overall, the Board considers the Annual Report to be an accurate and thorough presentation of the performance of the arbitration system during the year. The Board is familiar with the principal metrics and performance measures contained in the Report as they are regularly monitored, on a quarterly basis, at Board meetings. It gives fresh insights, however, to see the aggregated data for the full year, with the detailed analyses and the comparisons with previous years.

As we have observed in earlier annual reviews, the quantitative data of the Report do not always reveal the continuous improvements and refinements in administrative procedures of the Office designed to make its services as effective as possible, responsive, and user-friendly for all the participants.

Noteworthy Items in the Report

Lien Cases

For the first time, the Annual Report provides a separate section detailing the operation and performance of lien cases that come to arbitration. This is important because lien case arbitrations are entirely different than the arbitrations of alleged medical malpractice cases,

which are the main focus of the Office's work. In lien cases, Kaiser is the claimant, presenting claims to recover its costs of providing medical care, as in auto accident injuries, when they are covered by insurance. In the past these cases were "lumped together" with the malpractice cases in the statistical analyses of the Annual Report. Because the lien cases were relatively few in number, as compared to the malpractice cases, the measures of performance in the lien cases did not significantly affect the results reported – as shown in an analysis requested by the Board. Nevertheless, it was the sense of the Board that integrity of the data and accuracy of reporting required separate accounting for the two different types of arbitration. Moreover, the separate accounting allows one a clear view of the dynamics of the lien arbitrations, which have their own characteristics.

Declining Number of Claims

Once again, as noted in the Report, there was a marked decline in the number of claims submitted to the Office as compared to the last year and a rather steady annual decline for the past several years. There was much speculation in Board discussions about factors that might be responsible for the falling number of claims. Were they the results of improvements in patient care? Did they reflect the widespread availability of ombudsman services? The main reason for the decline, it was concluded, was that Kaiser has enhanced its capacity to resolve disputes internally, with earlier interventions, closer to the settings of care, so that the disputes do not have to develop into demands for arbitration. Pre-arbitration resolution of disputes, when possible, is preferable to arbitration. The decline in demands for arbitration is, therefore, viewed favorably.

Handout for *Pro Pers*

The Office makes available a handout for pro per claimants (included in Rule 54) that provides useful information about the arbitration process, and answers some of the most commonly asked questions. The Board has reviewed and modified the handout several times, each time seeking to make it as readable and helpful as possible, and underscoring the

responsibilities entailed. During the past year, a new version was developed with much care and may be found in the Appendix of the Annual Report.

Evaluations

Evaluations provided by neutral arbitrators and by parties are considered by the Board essential for continuous improvement of the arbitration system. The neutral arbitrators evaluate how well the system is working, in their view, and how well the Office is handling its responsibilities in administering the system.

Parties are asked to evaluate the neutral arbitrators in their cases. These evaluations are filed and made available subsequently to other parties, to help them in their arbitrator selections. The Board has encouraged the Office to continue its all best efforts to assure a high response rate for these anonymous evaluations.

More recently, the Board has asked the Administrator to have parties to fill out a questionnaire in which they evaluate how well the system is working. One of the questions concerns ease of obtaining pertinent medical records. These evaluations will be of interest as Kaiser moves into the new era of electronic medical records.

In general, the evaluations indicate a high degree of satisfaction with neutral arbitrators in the system, and a high degree of satisfaction with how well the independently administered system is working, as viewed by the parties as well as by the neutrals.

Comparison to Previous Years

Year-to-year comparisons of the main performance metrics and evaluations attest to a stable and smoothly functioning arbitration system. Except for the declining number of cases, there are no marked changes in the performance measures.

The Oversight Board

The Oversight Board meets quarterly to fulfill its governance and oversight responsibilities. It receives a regular quarterly report from the Independent Administrator, and monitors key performance measures about the timeliness of the process, characteristics of the arbitrator pool, selection of arbitrators and other indices. Many of these same metrics are aggregated and analyzed in greater detail in the Annual Report.

During the course of the year, the Board reviewed and considered revisions, when appropriate, in the Rules, application forms, qualifications to be an arbitrator, evaluation forms, and information about the arbitrators. It has asked the Office to obtain voluntary information, maintained with strict confidence, on the racial and ethnic composition of the arbitrator pool, so as to monitor efforts to increase its diversity.

On visits to the Office of the Independent Administrator Board members have gained that impression that the office is well-organized, the staff very conscientious and the atmosphere is business-like but congenial. That the frequent phone calls are answered with courtesy and a helping attitude.

It is the Oversight Board's view that Kaiser arbitration program is working well and continuously striving to meet the intended goals of "fair, speedy and cost-effective" arbitrations with high standards of excellence. The Board acknowledges the excellent services of the Office of the Independent Administrator and the uniquely detailed and thorough accounting of the Kaiser arbitration system provided in its Annual Report.

Essential Elements of a Model Arbitration System

Several years ago the Oversight Board sought to identify the hallmarks of an exemplary arbitration system. What were the essential elements or attributes of a model system? The idea was to develop some general criteria for judging how the Kaiser system measured up.

These were thought to be essential elements:

INDEPENDENT ADMINISTRATION: The system is administered by a neutral entity, independent of the parties involved, and empowered to achieve desired goals for fair, timely, and cost-effective arbitration.

RULES: An explicit, written set of rules governs the system, to assure that it is fair. All parties must abide by the rules. The rules are periodically reviewed and modified, as necessary, based on experience, to improve the system.

OVERSIGHT: The administration of the system has oversight by a body reflecting the diverse perspectives of interested parties, and the public interest.

ACCESSIBILITY: The system is readily accessed by claimants and their claims are entered into the system promptly

QUALIFIED ARBITRATORS, FAIRLY SELECTED: The system provides well-qualified, experienced and fair-minded arbitrators selected through a process consciously designed to avoid bias.

TIMELINESS: Deadlines are established to move the arbitration process along as expeditiously as possible, with appropriate safeguards for extenuating circumstances. They must be respected. The meeting of deadlines is monitored and enforced.

PERFORMANCE MEASURES: Accurate and verifiable data are collected systematically to permit objective review of the processes and outcomes of the arbitration system.

EVALUATION: The performance of the system is routinely evaluated by surveys of its participants.

COST EFFECTIVENESS: The costs of arbitrations are tracked wherever possible. Costs to claimants are kept reasonably low.

CONVENIENCE: Arbitration meetings and hearings are scheduled at times, and in locations, that are convenient for the parties.

UNDERSTANDABILITY: Basic information about the arbitration system and its procedures is provided in easily understood, non-technical language.

AUDIT: The data recorded and reported by administrator of the system are periodically checked by an independent auditor.

TRANSPARENCY: Detailed information about the operation and performance of the arbitration system is published, and readily available to interested parties and the public-at-large.

It is still useful to have these features of a model arbitration system in mind when reading the report of the Independent Administrator and reviewing the Kaiser system. One might even include as an additional element:

CONTINUOUS IMPROVEMENT: Administration of the arbitration system should seek continuous improvement, guided by the evaluations conducted, the performance measures collected, and constructive oversight.