

REPORT SUMMARY

This is the annual report the Office of the Independent Administrator (OIA) for 2014. It discusses the arbitration system between Kaiser Foundation Health Plan and its affiliated groups of physicians and hospitals (collectively Kaiser) and its members.¹ Since 1999, the OIA has administered such arbitrations. Sharon Oxborough is the Independent Administrator. 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 protective of the privacy of the parties. In brief:

- In 2014, the OIA received 630 demands, a decrease of 27 from the prior year. This resumed the pattern of more than a decade during which the number of demands for arbitration declined.
- In 25 percent of the cases, the claimants did not have attorneys.
- Cases closed, on average, in less than 12 months; hearings completed, on average, in less than 17 months.
- Three-quarters of the cases closed through action by the parties (settlement, withdrawal, or abandonment), while the other quarter were decided by the neutral arbitrator (after a hearing, summary judgment, or dismissal).
- With the consent of claimants, Kaiser paid the neutral arbitrators' fees in 90% of the cases.
- Parties who responded to OIA questionnaires expressed satisfaction with the neutral arbitrators and would recommend them to others, with an average rating of 3.9 on a 5 point scale.
- Almost 50% of the responding parties and attorneys reported that the OIA administered arbitration system was better than going to court, another 42% reported that it was the same, 10% reported it was worse.

These and other factors are discussed in greater detail below and in the report.

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.

Status of Arbitration Demands

The total number of demands for arbitration decreased by 27 from the previous year. Almost all of the claims were for medical malpractice. Twenty-five percent of claimants were not represented by counsel.

- 1. Number of Demands for Arbitration.** In 2014, the OIA received 630 demands. This 27 less than the OIA received in the prior year. See pages 11 and 45.
- 2. Types of Claims.** Ninety-three percent of the OIA administered cases in 2014 involved allegations of medical malpractice. Slightly more than one percent presented benefit and coverage allegations. Lien cases made up just over one percent. The remaining cases were based on allegations of premises liability and other torts. The percentage of cases involving medical malpractice allegations has been consistent since the OIA began operations. See pages 11 and 47. Because lien cases differ significantly from cases brought by members, the statistics in this summary, and most of the statistics in the report, exclude lien cases. They are reported separately in Section IX.
- 3. Proportion of Claimants Without Attorneys.** A quarter of the claimants in 2014 were not represented by counsel. See pages 13 and 47.

How Cases Closed

The purpose of an arbitration is to resolve a claim. The parties themselves resolved the 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 2014, the parties settled 46% of the closed cases. Claimants withdrew 24% and abandoned another 4% 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.** Nine percent of cases closed after an arbitration hearing, thirteen percent were closed through summary judgment, and three percent were dismissed by neutral arbitrators. In the cases that went to an arbitration hearing, claimants prevailed in 32%. See pages 29 – 30.
- 6. Almost Half of Claimants Received Some Compensation.** Claimants receive compensation either when their cases settle or when they are successful after a hearing. The most common way cases closed (46%) was by the parties settling the dispute. An additional three percent of all claimants won after a hearing. The

average award was \$597,342, the median was \$250,000, and the range was from \$7,000 to \$2,181,375. See page 30 and Exhibit G.

- 7. All Cases Heard by a Single Neutral Arbitrator Instead of a Panel.** All of the hearings in 2014 involved a single neutral arbitrator rather than a panel composed of one neutral and two party arbitrators. 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. Even with such delays, the process was expeditious.

- 8. Almost Half of Neutral Arbitrator Selections Proceeded Without any Delay; the Other Neutral Selections Had Delays Requested by Claimants.** Almost half (47%) 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 (3%), or both (4%). Claimants requested all but three of the postponements. They also made 68% of the disqualifications. See pages 20 – 21.
- 9. Average Length of Time to Select Neutral Arbitrator Increased Slightly.** The time to select a neutral with a 90 day postponement stayed the same as in 2013. It increased by a day in cases with no delay, seven days with only a disqualification, and 16 days with both a postponement and disqualification. In comparison with the time described in the *Engalla* case, the 71 days to select a neutral arbitrator is more than nine times faster. See pages 21 – 22.
- 10. Cases Closed, on Average, in Less than Twelve Months.** In 2014, cases closed, on average, in 323 days, or 11 months, slightly less than 2013's 325 days. No case closed late. Nearly 90% of the cases closed within 18 months (the deadline for most cases) and 67% closed in a year or less. Fifteen percent of the cases that closed in 2014 were designated complex or extraordinary or had their 18 month deadline extended by the neutral arbitrator. See pages 25 - 28 and Table 8.
- 11. Hearings Completed, on Average, Within Seventeen Months.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 510 days (17 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 422 days (14 months). See page 30 and Table 8.

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 minimizes the likelihood of a captive pool of neutral arbitrators, beholden to Kaiser for their livelihood. The two methods of selecting a neutral arbitrator – strike and rank or joint selection – allow parties the choice to select anyone they collectively want. The majority of neutral arbitrators the parties jointly selected were from the OIA pool.

12. **Size of the Neutral Arbitrator Pool.** The OIA has 281 neutral arbitrators in its pool. Thirty-nine percent of them, or 110, are retired judges. See page 6.
13. **Neutral Arbitrator Backgrounds.** The applications filled out by the members of the OIA pool show that 151 arbitrators, or 54%, 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. More than 90% of the neutral arbitrators report having medical malpractice experience. See pages 6 – 7.
14. **Fifty-Three Percent of Arbitrators Served on a Case.** Fifty-three percent of the neutral arbitrators in the OIA pool served on a case in 2014. Arbitrators averaged two assignments each in 2014. Fifty-four different neutrals, including arbitrators not in the OIA pool, decided the 56 awards (including lien awards) made in 2014. See pages 8 – 9.
15. **Sixty-Nine Percent of Neutral Arbitrators Selected by Strike and Rank.** The parties chose 69% of neutral arbitrators through the strike and rank process, and jointly selected the remaining 31%. Eighty-four percent of the arbitrators jointly selected were members of the OIA pool. In the other cases, the parties chose a neutral arbitrator who was not a member of the OIA pool. See pages 15 – 16.

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. These fees, however, can be shifted to Kaiser.

16. **Kaiser Paid the Neutral Arbitrators' Fees in 90% of Cases Closed in 2014.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. For the cases that closed in 2014, Kaiser paid the entire fee for the neutral arbitrators in 90% of those cases that had fees. See pages 34 – 35.
17. **Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from \$150/hour to \$800/hour, with an average of \$434. For the 485 cases that closed in

2014 and for which the OIA has information, the average fee charged by neutral arbitrators was \$6,604.43. In some cases, neutral arbitrators reported that they charged no fees. Excluding cases where no fees were charged, the average was \$7,024.45. The average fee in cases decided after a hearing was \$28,113.67. See page 35.

Evaluations

When cases are concluded, the OIA sends the parties or their attorneys questionnaires asking them about the OIA system and, if the cases closed by neutral arbitrator action, 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 action, the OIA sends the neutral arbitrators a questionnaire about the OIA system. The neutral arbitrators reported that the OIA system works well. Almost all of the neutral arbitrators returned theirs, while the response rate is 30% for the parties evaluating the OIA and 46% for the neutral arbitrator evaluation.

18. **Positive Evaluations of Neutral Arbitrators by Parties.** The neutral arbitrator evaluation asks if they would recommend their neutral arbitrator to another individual with a similar case. On a 5 point scale, the average for Kaiser's counsel is 4.6 and the average for claimants' counsel is 2.9. See pages 39 – 41.
19. **Positive Evaluations of the OIA by Neutral Arbitrators.** Fifty-three percent said that the OIA experience was better than a court system, and 43% said it was about the same. See pages 41 – 43.
20. **Positive Evaluations of the OIA by Parties.** Forty-eight percent of attorneys and unrepresented claimants said that the OIA system was better than the court system, and 42% said it was the same. See pages 43 – 45.

Developments in 2014

While the system has been relatively stable, the OIA and the Arbitration Oversight Board (AOB) continuously strive to improve it and to provide more information about it to the public.

21. **Change in Membership of AOB.** Sylvia Drew Ivie, Executive Liaison for the L.A. County Commission for Children and Families, and Beong-Soo Kim, Kaiser's Vice President and Assistant General Counsel, joined the AOB. See Section XII and Exhibit C.
22. **The AOB Selected a New Independent Administrator for March 29, 2015.** The present Independent Administrator, Sharon Oxborough, informed the AOB that she did not want to renew her contract when it ended in March 2015. The AOB then selected Marcella Bell, the current Director, as the next Independent Administrator and negotiated a three year contract with her. See page 4.

23. **Audit of OIA Found Its Information Accurate.** The audit firm of Perr & Knight examined the OIA's computer records of 40 open and closed cases for 66 different events. It found one discrepancy - one date was off by two days. See page 4 and Exhibit D.
24. **Independent Administrator Implemented Assembly Bill AB 802.** Pursuant to amended California Code of Civil Procedure § 1281.96, the OIA created another disclosure table about the cases it administers. This table is sortable and includes additional information. It was published January 2015. See page 4.
25. **The OIA Implemented Changes to Ethics Standards.** In response to amendments to the Judicial Council's Ethics Standards for Neutral Arbitrators, the OIA created forms, changed procedures, and met with other provider organizations. The changes took effect July 1, 2014 and the process has been smooth. See page 5.
26. **AOB Amends Arbitration Rules.** The AOB amended Rules 19, 38, and 39 to require neutral arbitrators to provide information required for the OIA new disclosure table and to facilitate the amended Ethics Standards. See Exhibit B, Rules 19, 38, and 39.
27. **The Independent Administrator and AOB Members and Kaiser Executives Were Invited to Assist in Article About the OIA.** A member of the National Academy of Sciences' Committee on Science, Technology and the Law drafted an article based largely on the OIA's annual reports. The Academy of Sciences convened a meeting in December 2014 with interested parties to discuss the article. See page 5.

CONCLUSION

These factors show that the OIA provides 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 close faster than in civil court. The fee is smaller than in court, there are no other filing fees, and parties can and do shift the cost of the neutral arbitrator to Kaiser. Neither the OIA nor neutral arbitrators publish the names of individuals involved in arbitrations. The pool of neutral arbitrators includes neutral arbitrators divided between a plaintiff, defendant, judicial background. The work is spread among them. Parties can and do disqualify neutral arbitrators they do not like. The OIA publicizes much information for the public and parties.

A Note About Numbers

There are a lot of numbers in this report. To make it somewhat easier to read, we offer the following information.

We often give average, median, mode, and range. Here are definitions of those terms:

- Average: The mean. The sum of the score of all items being totaled divided by the number of items included.
- Median: The midpoint. The middle value among items listed in ascending order.
- Mode: The single most commonly occurring number in a given group.
- Range: The smallest and largest number in a given group.

We have rounded percentages. Therefore, the total is not always exactly 100%.

If there are items which you do not understand and would like to, call us at 213-637-9847, and we will try to give you answers.