

REPORT SUMMARY

This is the annual report for the Office of the Independent Administrator (OIA) for 2016. 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, and its Independent Administrator is Marcella A. Bell. 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 protects the privacy of the parties.

Status of Arbitration Demands

The total number of demands for arbitration increased from the previous year. Most of the claims were for medical malpractice. More claimants were without attorneys, proceeding in *pro per*, than last year.

- 1. Number of Demands for Arbitration.** The OIA received 616 demands, 6 more than last year. The number of demands increased in Northern California by 25, remained relatively the same in Southern California, and decreased by 21 in San Diego. Twenty (20) lien cases were received, 5 less than last year. See pages 9, 33, and 45.
- 2. Types of Claims.** Ninety-two percent (92%) of the cases involved allegations of medical malpractice. Less than one percent (1%) presented benefit and coverage allegations. Lien cases made up three percent (3%). The remaining cases were based on allegations of premises liability and other torts. See page 9. Because lien cases differ significantly from cases brought by members, they are reported separately in Section IX.
- 3. Twenty-Eight Percent (28%) of Claimants are Without Attorneys.** Claimants in 166 cases (28%) were not represented by counsel, 2% higher than last year. See pages 10 and 47.

How Cases Closed

The parties themselves resolved the majority of their claims. Neutral arbitrators decided the remaining cases, almost always with a single neutral arbitrator.

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.

4. **Three-Quarters (75%) of Cases Closed by the Parties' Action.** The parties settled 44% of the cases. Fifty (50) cases settled at the Mandatory Settlement Meeting, 2 more than last year, and in 5 cases claimants were in *pro per*. Claimants withdrew 25% and abandoned another 6% by failing to pay the filing fee or get the fee waived. See pages 25 - 26, and 50 - 51.
5. **Nearly One-Quarter (24%) Closed by Decision of Neutral Arbitrator.** Nine percent (9%) of cases closed after an arbitration hearing, twelve percent (12%) were closed through summary judgment, and three percent (3%) were dismissed by neutral arbitrators. In the cases that went to an arbitration hearing, claimants prevailed in 37%. See pages 26 - 27, and 51.
6. **Almost Half (48%) of Claimants Received Some Compensation.** Claimants receive compensation either when their cases settle (44%) or when they are successful after a hearing (3%). The average award was \$859,489, and the range was from \$100 to \$8,812,879. See pages 25, 27, and 51.
7. **Nearly All Cases (98%) Heard by a Single Neutral Arbitrator Instead of a Panel.** Most of the hearings involved a single neutral arbitrator rather than a panel composed of one neutral and two party arbitrators. A panel of three arbitrators decided only 1 of the 52 cases that went to hearing. See page 19.

Meeting Deadlines

The OIA *Rules* allow the parties to delay the selection process and extend the completion date. Even with such delays, the process is expeditious.

8. **More Than Half (52%) of Neutral Arbitrator Selections Proceeded Without any Delay.** The *Rules* give parties the option to postpone the deadline to select a neutral arbitrator, but more than half (52%) of the neutrals were selected without the parties exercising this option. Of the cases with requests received this year, the claimants made all of the requests for 90 day postponement. California law gives parties the opportunity to timely disqualify neutral arbitrators. A neutral arbitrator was disqualified in only 4% of cases. Claimants disqualified 39 neutral arbitrators and Kaiser disqualified 21. Parties exercised both the postponement and disqualification options in the remaining cases. See pages 13 - 15 and 17 - 18.
9. **Average Length of Time to Select Neutral Arbitrator is 66 Days.** The time to select a neutral arbitrator in cases with no delay decreased by one day (24 days). The time to select a neutral with a 90 day postponement increased by one day (110 days). It increased by two (2) days in cases with only a disqualification (64 days), but decreased by 15 days in cases with both a postponement and disqualification (158 days). The overall average length of time to select a neutral arbitrator for all cases decreased by 7 days (66 days). See pages 18 - 19, and 48 - 50.

10. **On Average, Cases Closed in Twelve Months.** Cases closed, on average, in 363 days, 21 days longer than last year. No case closed beyond the deadline required by the *Rules*. Eighty-five percent (85%) of the cases closed within 18 months (the deadline for “regular” cases) and 56% closed in a year or less. See pages 23 - 24, 51, and Table 10.
11. **On Average, Hearings Completed in Less than Twenty Months.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 589 days (less than 20 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 449 days (15 months). See page 27.

Pool of Neutral Arbitrators

More than half of the OIA pool spend all of their time acting as neutral arbitrators. More than half of the neutral arbitrators served on a case. The two methods of selecting a neutral arbitrator – strike and rank or joint selection – allow parties to select anyone they collectively want. The majority of neutral arbitrators the parties jointly selected were from the OIA pool.

12. **The Neutral Arbitrator Pool.** The OIA has 249 neutral arbitrators in its pool, 13 fewer than last year. Thirty-nine percent (39%) of them, or 98, are retired judges. See page 4.
13. **Neutral Arbitrator Backgrounds.** The applications filled out by the members of the OIA pool show that 137 arbitrators, or 55%, 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 5 - 6.
14. **More Than Half (59%) of Arbitrators Served on a Case.** Fifty-nine percent (59%) of the neutral arbitrators in the OIA pool served on a case. Arbitrators averaged two (2) assignments each. Forty-seven (47) different neutrals, including arbitrators not in the OIA pool, decided the 52 awards made. Eighty-seven (87%) of the neutral arbitrators only wrote a single award. See pages 7 and 46.
15. **Majority of Neutral Arbitrators (70%) Selected by Strike and Rank.** Seventy percent (70%) of neutral arbitrators were selected through the strike and rank process, and 29% were jointly selected by the parties.² Seventy-eight percent (78%) of the arbitrators jointly selected were members of the OIA pool. In the

²One (1) neutral arbitrator was selected by court order.

other cases, the parties chose a neutral arbitrator who was not a member of the OIA pool. See pages 12 - 13.

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 84% of Cases Closed.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. For the cases that closed, Kaiser paid the entire fee for the neutral arbitrators in 84% of those cases that had fees. See page 32.
17. **Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from \$150/hour to \$880/hour, with an average of \$471. For the 483 cases that closed and for which the OIA has information, the average fee charged by neutral arbitrators was \$6,990. In some cases, neutral arbitrators reported that they charged no fees. Excluding cases where no fees were charged, the average was \$7,469. The average fee in cases decided after a hearing was \$29,944. See pages 32 - 33.

Evaluations

When cases are concluded, the OIA sends questionnaires to the parties or their attorneys asking them about the OIA system, and if the cases closed by neutral arbitrator actions, 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 actions, the OIA also sends the neutral arbitrators a questionnaire about the OIA system. Neutral arbitrators gave positive evaluations of the OIA system.

18. **Positive Evaluations of Neutral Arbitrators by Parties.** Most parties who responded to the OIA evaluation expressed satisfaction with the neutral arbitrators and would recommend them to others, with an average of 4.2 on a 5 point scale. *Pro pers* view neutral arbitrators less favorably. See page 38.
19. **Positive Evaluations of the OIA by Neutral Arbitrators.** Sixty percent (60%) of the neutral arbitrators reported that the OIA experience was better than a court system, 40% said it was about the same, and none said it was worse. See page 40.
20. **Positive Evaluations of the OIA by Parties.** Sixty-three percent (63%) of the responding parties and attorneys reported that the OIA system was better than the court system, 30% said it was the same, and 7% said it was worse. See pages 41 - 42.

Development and Changes in the System

The OIA and the Arbitration Oversight Board (AOB) continuously strive to improve the arbitration system.

21. **Change in Membership of the AOB.** Dr. Cornelius Hopper became the chair of the AOB, and Richard Spinello became the vice-chair. See pages 4 and 42.
22. **Senate Bill Regarding Consumer Arbitration.** The OIA and AOB discussed at length how a senate bill could affect consumer arbitrations, particularly what OIA *Rules* and procedural changes would have been needed had the bill become law. The Governor vetoed the bill on September 25, 2016.³ See pages 4 and 44.
23. **OIA Rule Changes Explored.** The OIA and AOB explored changes to the OIA *Rules*. Some of the potential changes are in response to suggestions from parties and neutral arbitrators on evaluations submitted at the conclusion of cases. See pages 4 and 44. Some are based on suggestions from the OIA. The AOB decided to convene a sub-committee to address possible modifications in the coming year.

Conclusion

The goal of the OIA is to provide 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 the cases close faster than in court.
- 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 neither the OIA nor neutral arbitrators publish the names of individual claimants or respondents involved in them.
- Neutral arbitrators on the OIA panel have plaintiff, defendant, and judicial backgrounds. The cases are distributed among them.
- Neutral arbitrators and the OIA system receive positive evaluations.
- The OIA publishes the annual reports and information about its cases in compliance with California law. This information is available on the website for the parties and the public.

³Senate Bill-1078 Civil Procedure: Arbitration (2015-2016).

A Note About Numbers

We often give average, 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.

Mode: The single most commonly occurring number in a given group.

Range: The smallest and largest number in a given group.

Please note: In some cases, there is more than one mode. As percentages are rounded, the total is not always exactly 100%.