

REPORT SUMMARY

This is the annual report for the Office of the Independent Administrator (OIA) for 2021. The OIA administers the arbitration system between Kaiser Foundation Health Plan, Inc., or its affiliates (Kaiser) and its members.¹ From the data and analyses in this report, readers may gauge how well the OIA system meets its goals of providing a fair, timely, and low cost arbitration process that protects the privacy of the parties.

Status of Arbitration Demands

The total number of demands for arbitration decreased for the second year in a row. Most of the claims were for medical malpractice. The percentage of claimants proceeding without attorneys, in *pro per*, decreased.

- 1. Number of Demands for Arbitration.** The OIA received 473 demands, 17 less than last year. No lien cases were received. See pages 11, 32, and 40 – 41.
- 2. Types of Claims.** Ninety-five percent (95%) of the cases involved allegations of medical malpractice. Less than one percent (<1%) presented benefit and coverage allegations. The remaining cases were based on allegations of premises liability and other torts. See page 11.
- 3. Twenty-six Percent (26%) of Claimants Did Not Have Attorneys.** Claimants in 124 cases, or 26%, were not represented by counsel, a 7% decrease from last year. See pages 12 and 43.

How Cases Closed

In the majority of cases, the parties resolved their claims. In cases that went to hearing, all were decided by a single neutral arbitrator. No case proceeded with party arbitrators.

- 4. Almost Three-Quarters (73%) of Cases Closed by the Parties' Action.** The parties settled 45% of cases. Thirty-seven cases settled at the Mandatory Settlement Meeting (MSM). Of the cases that settled at the MSM, two claimants were in *pro per*. Claimants withdrew 26% of cases and abandoned 2% by failing to pay the filing fee or get the fee waived. See pages 22 – 23 and 45 – 46.
- 5. More than One-Quarter (27%) Closed by Decision of the Neutral Arbitrator.** Nine percent (9%) of cases closed after an arbitration hearing, 13% were closed through summary judgment, and 5% were dismissed by neutral arbitrators. See pages 23 – 24 and 45 – 46.

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. The OIA has administered the system since 1999.

6. **Almost Half (48%) of Claimants Received Some Compensation.** Claimants receive compensation either when their cases settle (45%) or when they are successful after a hearing (3%). See pages 23, 24, and 45 – 46.
7. **Nine Percent (9%) of Cases Went to Hearing.** Claimants prevailed in 34% of these cases. The average award was \$556,144, and the range was from \$19,500 to \$1,741,016. See pages 24, 46, and Exhibit G.
8. **All Cases Were Heard by a Single Neutral Arbitrator.** All of the hearings involved a single neutral arbitrator. See page 19.

Meeting Deadlines

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

9. **Over Half (58%) of Neutral Arbitrator Selections Proceeded Without any Delay.** The *Rules* give parties the option to postpone the deadline to select a neutral arbitrator, but over half (58%) of the neutrals were selected without the parties exercising this option. This year, the claimants made all but twelve of the requests for a 90-day postponement. California law gives parties the opportunity to timely disqualify neutral arbitrators. In three percent (3%) of the cases, parties disqualified the neutral arbitrator. In two percent (2%) of the cases, parties exercised both the postponement and disqualification options. Claimants disqualified 22 neutral arbitrators and Kaiser disqualified 12. See pages 15 – 16 and 18.
10. **Average Length of Time to Select a Neutral Arbitrator is 58 Days.** The time to select a neutral arbitrator in cases with no delay was 23 days. The time to select a neutral with a 90 day postponement was 107 days. In cases with only a disqualification, it was 54 days. In cases with both a postponement and disqualification it was 149 days. The overall average length of time to select a neutral arbitrator for all cases was 58 days, 14 days less than last year. See pages 17 – 19 and 44 – 45.
11. **On Average, Cases Closed in Fourteen Months.** Cases closed, on average, in 418 days, 62 days more than last year.² No case closed beyond the deadline required by the *Rules*. Seventy-four percent (74%) of the cases closed within 18 months (the deadline for “regular” cases) and 54% closed in a year or less. See pages 22, 26, and 46 – 47.

²Many neutral arbitrators extended deadlines, some multiple times in a given case, because of the COVID-19 pandemic. See Section VII.B.5.

12. **On Average, Cases With Hearings Were Completed in a Little More than Two Years.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 784 days (26 months). This average includes cases that were designated complex, extraordinary, or that received a Rule 28 extension because they needed extra time. “Regular cases” closed in 431 days (a little over 14 months). See pages 24, 26, and 47.

Panel of Neutral Arbitrators

More than half (60%) of the OIA panel spend all of their time acting as neutral arbitrators. More than half (62%) 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 jointly selected by the parties were from the OIA panel.

13. **The Neutral Arbitrator Panel.** The OIA has 164 neutral arbitrators on its panel, 18 fewer than last year. Forty-five percent (45%) of them, or 73, are retired judges. See page 7.
14. **Neutral Arbitrator Backgrounds.** The applications completed by the members of the OIA panel show that 98 arbitrators, or 60%, 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. Ninety-three percent (93%) of the neutral arbitrators report having medical malpractice experience. See page 8.
15. **More Than Half (62%) of Arbitrators Served on a Case.** Sixty-two percent (62%) of the neutral arbitrators on the OIA panel served on a case. Arbitrators averaged two assignments each. Thirty-five neutrals, including arbitrators not on the OIA panel, decided the 50 awards made. Twenty-nine arbitrators (83%) wrote a single award. See pages 9 and 41 – 42.
16. **Majority of Neutral Arbitrators Selected by the Parties were Members of the OIA Panel (94%).** Eighty percent (80%) of neutral arbitrators were selected through the strike and rank process. Fourteen percent (14%) of the arbitrators jointly selected were members of the OIA panel. The other 6% of the jointly selected arbitrators were not members of the OIA panel. See page 14.

Neutral Arbitrator Fees

While the OIA arbitration filing 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.

17. **Kaiser Paid the Neutral Arbitrators' Fees in 91% of Closed Cases that had Fees.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. Kaiser paid the neutral arbitrators' fees in 91% of closed cases that had fees. See page 31.
18. **Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from \$150/hour to \$1,200/hour, with an average of \$585/hour. For the 483 cases that closed, and for which the OIA has information, the average fee charged by neutral arbitrators was \$8,950. In some cases, neutral arbitrators reported that they charged no fees. Excluding cases where no fees were charged, the average was \$9,418. The average fee in cases decided after a hearing was \$39,732. See pages 31 – 32.

Evaluations

When cases conclude, 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.

19. **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 pages 32 – 33.
20. **Positive Evaluations of the OIA by Neutral Arbitrators.** Ninety-nine percent (99%) of the neutral arbitrators reported that the OIA experience was the same as or better than the court system and 1% said it was worse. See pages 34 – 35.
21. **Positive Evaluations of the OIA by Parties.** Eighty-eight percent (88%) of the responding parties and attorneys reported that the OIA system was the same as or better than the court system and 12% said it was worse. See pages 36 – 38.

Development and Changes in the System

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

22. **AOB Extends Temporary Rules.** In response to COVID-19, Temporary Rules 4 and 9 were extended. All other temporary rules have been lifted. See pages 4, 39, and Exhibit C.
23. **Video Hearings.** In response to inquiries by the AOB, the OIA provided information about hearings held by video, in addition to hearings held by a combination of in-person and video. See pages 4 and 25.
24. **AOB and OIA Commitment to Diversity.** The AOB and the OIA continue discussions on OIA efforts to improve the diversity of the panel of neutral arbitrators. See pages 4 – 6 and 39 – 40.
25. **Mandatory Update for OIA Neutral Arbitrators.** Neutral arbitrators were required to update their applications. Those neutrals who did not provide the update were removed from the panel. See pages 6 and 7.
26. **Update on Neutral Arbitrator Information Packets.** The OIA website has been updated with photos of neutral arbitrators. In addition, the OIA added search by name and filter by regions functions on its website. See page 6.
27. **AOB Expresses Concern with *Pro Per* Dissatisfaction.** The AOB and OIA had several discussions regarding the dissatisfaction experienced by *pro pers* and have scheduled a presentation by a neutral arbitrator who accepts *pro per* cases to better understand the challenges facing *pro pers*. See pages 6 – 7 and 40.

Conclusion

The goal of the OIA is to provide a fair, timely, and low cost arbitration process that 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 the OIA does not 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 mostly positive evaluations.
- The OIA provides information on its website about its cases in compliance with California law. In addition, the OIA maintains a table that is no longer required about all its cases since January 1, 2003.
- The OIA publishes annual reports since 1999 which are all available on the OIA website.