

## Status of Blue Ribbon Panel Recommendations

The Blue Ribbon Panel issued its report on Kaiser Permanente Arbitration in January 1998. It included the following recommendations. After quoting each recommendation, the Office of the Independent Administrator (OIA) provides its response. Further information may be found in the OIA's annual reports on the OIA website [www.oia-kaiserarb.com](http://www.oia-kaiserarb.com).

### 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.**

**OIA Response:** The OIA began administering the arbitration system on March 29, 1999. Since June 2002, the Arbitration Oversight Board (AOB) has had control of a trust established by Kaiser to meet contractual obligations to the OIA for administering the arbitrations. The OIA is funded by the AOB, and the \$150 filing fee members pay with their demand for arbitration. The Law Offices of Marcella A. Bell (Law Offices) has had a contract with the AOB to independently administer the arbitration system since March 29, 2015.

- 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.**

**OIA Response:** Rule 1 of the *Rules for Kaiser Permanente Member Arbitrations Administered by the Office of the Independent Administrator (Rules)* provides for a fair, timely, and low-cost arbitration process that respects the privacy of the parties. These goals are also set out in the contract between the AOB and the Law Offices.

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

**OIA Response:** The OIA does not receive or accept payment of any kind from neutral arbitrators on its panel.

### 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.**

**OIA Response:** Kaiser announced the creation of the Arbitration Advisory Committee (AAC) in April 1998. The AAC participated in the selection of the Independent Administrator, worked closely with Kaiser and the OIA in creating the new system, and provided ongoing 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 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.**

**OIA Response:** Under Rule 24.a., cases must close within 18 months. Rules 24.b. and c., 28 and 33-36 contain provisions for cases to be completed in more or less time.

- 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.**

**OIA Response:** The OIA monitors the progress of each case to ensure the case moves forward as expeditiously as possible. Rule 25.c.ii. requires arbitration hearings be scheduled for consecutive days.

- 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.**

**OIA Response:** 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.**

**OIA Response:** The OIA sends counsel or unrepresented claimants a detailed memo which includes a description of the arbitration system, the *Rules*, and applicable forms for each demand for arbitration it receives from Kaiser. These items are also available on the OIA's website.

## Establishing a List of Qualified Arbitrators

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

**OIA Response:** The OIA's panel of neutral arbitrators has 195 members. The OIA continues to accept applications from interested parties and admits qualified applicants 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.**

**OIA Response:** Sixty-five percent (65%) of the neutral arbitrators on the OIA panel belong to provider organizations. The qualifications for neutral arbitrators are available on the OIA's 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.**

**OIA Response:** The OIA reviews each arbitrator's application and admits those applicants who meet the qualifications. A rejected applicant receives a letter citing the specific qualification(s) 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.**

**OIA Response:** Rule 11 requires Kaiser forward demands for arbitration to the OIA within ten days of receipt. In the original discussions about the *Rules*, 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.**

**OIA Response:** Rules 16 and 17 require parties to return their neutral arbitrator selections within 20 days. Rule 21 gives claimants the option to request a one-time ninety-day postponement. Additionally, state law gives parties the right to timely disqualify neutral arbitrators after their selection. When these options 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.**

**OIA Response:** Rule 17 allows the parties to jointly select *any* neutral arbitrator upon whom they can agree, as long as the arbitrator agrees to follow the *Rules*. The parties have 20 days to jointly select a neutral arbitrator or return the 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.**

**OIA Response:** Rules 17 and 18 give the parties 20 days to jointly select a neutral arbitrator or return the LPA.

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

**OIA Response:** The LPA contains 12 randomly computer-generated names of neutral arbitrators from the appropriate geographical panel, including whether the arbitrator accepts *pro per* cases

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.**

**OIA Response:** Rule 21 provides for a 90-day postponement upon the written request of a claimant but does not require counsel 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.**

**OIA Response:** Rule 28 allows the OIA, in cases where the neutral arbitrator has not been selected, to extend deadlines for good cause.

### **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.**

**OIA Response:** Rule 25 requires the neutral arbitrator to hold an Arbitration Management Conference (AMC) within 60 days of the neutral arbitrator's selection. Items to be discussed at the AMC are provided in Rule 25.b. and c. Rule 25.f. allows for additional conferences as needed. The OIA monitors each case and ensures that the neutral arbitrator is complying with the deadlines established by 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.**

**OIA Response:** The OIA maintains a list of qualified neutral arbitrators and maintains a file on each arbitrator. The file contains the neutral arbitrator's application and fee schedule, and subsequent updates to the application, if any.

Also included are copies of any evaluations that have been submitted about the arbitrator by previous parties within the last five years, and any redacted awards or decisions the neutral arbitrator has written within the last five years. The parties in the system are provided with password-protected access to the information. The OIA also accommodates parties who request to receive the information by U.S. Mail.

Pursuant California Code of Civil Procedure §1281.96, the OIA posts on its website the information required about each applicable case in a sortable format. The OIA posts the information in sortable and searchable formats.

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.**

**OIA Response:** See Recommendation 20. The OIA provides 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.**

**OIA Response:** Under Rule 38, a neutral arbitrator is required to prepare an award, specifying the prevailing party, the amount, and terms of the relief, if any, and the reasons for the decision. In setting forth the reasons, the award, or any order deciding an arbitration, shall provide findings of fact and conclusions of law.

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.**

**OIA Response:** See 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.**

**OIA Response:** Rule 39.c. requires Kaiser to provide the OIA with copies of redacted awards which become part of the neutral arbitrator file.

### 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.**

**OIA Response:** Rule 26 requires parties to hold a Mandatory Settlement Meeting (MSM) within 6 months of the AMC. The OIA tracks the scheduling and the occurrence 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.**

**OIA Response:** Kaiser has reported to the AOB that it has established a program 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.**

**OIA Response:** Rules 14 and 15 contain provisions to shift the claimants' portion of the neutral arbitrators' fees and expenses to Kaiser.

## 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.**

**OIA Response:** The annual reports are available to the public and are posted on the OIA's website.

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.**

**OIA Response:** The OIA has been audited by a firm selected by the AOB in 2004, 2005, 2006, 2014, and 2020. The audit reviewed a random sample of files and confirmed the accuracy of the numbers in the prior years' annual reports.

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

**OIA Response:** The OIA supports this effort whenever applicable.

### **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.**

**OIA Response:** See 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.**

**OIA Response:** The OIA manages the arbitration system consistently across the state and supports Kaiser's effort to communicate the information about the arbitration system to its members.

### **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.**

**OIA Response:** Benefits and coverage cases are proceeding under the same rules as medical malpractice cases. Mass arbitrations proceed under the Supplemental Rules Governing Mass Arbitrations Administered by the Office of the Independent Administrator.

**F. Speed of Implementation**

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

**OIA Response:** The Arbitration Advisory Committee was appointed in April 1998.

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

**OIA Response:** The first Independent Administrator, Sharon Lybeck Hartmann, was selected on November 4, 1998.

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

**OIA Response:** The OIA is not aware of a published implementation schedule but at this point there is no need for such a schedule as the OIA exists and is operating.