

## REPORT SUMMARY

This is the annual report for the Office of the Independent Administrator (OIA) for 2024. The OIA administers the arbitration system between Kaiser Foundation Health Plan, Inc., or its affiliates (Kaiser) and its members.<sup>1</sup> 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

1. **Number of Demands for Arbitration.** The OIA received 576 demands, 43 less than last year. See pages 10 and 42.
2. **Types of Claims.** Ninety-three percent (93%) of the cases involved allegations of medical malpractice. One percent (1%) presented benefit and coverage allegations. The remaining cases (6%) were based on allegations of premises liability and other torts. See page 10.
3. **Thirty-One Percent (31%) of Claimants Did Not Have Attorneys.** Claimants in 179 cases, or 31%, were not represented by counsel, 2% more than last year. On average, 26% of claimants are in *pro per*. See pages 11 – 12 and 44 – 45.

### How Cases Closed

4. **Fifty-One Percent (51%) of Cases Settled.** The parties settled 51% of cases. Thirty-five cases (12%) settled at the Mandatory Settlement Meeting (MSM). See pages 24 and 45 – 46.
5. **Five Percent (5%) of Cases Went to Hearing.** Claimants prevailed in 44% of these cases. The average award was \$338,460, and the range was from \$10,000 to \$925,000. See pages 25, 46 – 47.
6. **Nearly All Cases were Heard by a Single Neutral Arbitrator.** One case went forward with party arbitrators. The remaining hearings went forward with a single neutral arbitrator. See page 20.
7. **More than Half (53%) of Claimants Received Some Compensation.** Claimants received compensation either when their cases settled (51%) or when they were successful after a hearing (2%). See pages 24, 25 – 26, and 46 – 47.

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<sup>1</sup>Kaiser 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.

8. **Almost One-Quarter (23%) Closed by Decision of the Neutral Arbitrator.** Five percent (5%) of cases closed after an arbitration hearing, 13% were closed through summary judgment, and 5% were dismissed by neutral arbitrators. See pages 24 – 25 and 46 – 47.
9. **More Than One-Quarter (26%) of Cases were Withdrawn.** Claimants withdrew 26% of cases. Forty-four percent (44%) of these cases included claimants who were in *pro per*. See pages 24 and 46 – 47.

## Meeting Deadlines

10. **More than Half (59%) of the Neutral Arbitrators were Selected Without any Delay.** The *Rules* give parties the option to postpone the deadline to select a neutral arbitrator, but over half (59%) of the arbitrators were selected without the parties exercising this option. See pages 18 – 19.
11. **Forty-One Percent (41%) of the Neutral Arbitrators were Selected by Parties Exercising Options for Postponement and/or Disqualification.** In 34% of the cases, parties exercised the option to postpone the deadline to select a neutral arbitrator. Claimants made all but three of the requests for a 90-day postponement. In four percent (4%) of the cases, parties disqualified the neutral arbitrator. In the remaining three percent (3%) of the cases, parties exercised both the postponement and disqualification options. Claimants disqualified 56 neutral arbitrators and Kaiser disqualified 24. See pages 15, 16 – 17 and 19 – 20.
12. **Average Length of Time to Select a Neutral Arbitrator was 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 111 days. In cases with only a disqualification, it was 63 days. In cases with both a postponement and disqualification it was 152 days. The overall average length of time to select a neutral arbitrator for all cases was 58 days, 2 days less than last year. See pages 20 and 45 – 46.
13. **On Average, Cases Closed in Thirteen Months.** Cases closed, on average, in 396 days, 3 days less than last year. No case closed beyond the deadline required by the *Rules*. Eighty-three percent (83%) of the cases closed within 18 months (the deadline for “regular” cases) and 54% closed in a year or less. See pages 21, 23 – 24, 26 – 27, 46 – 47 and Rule 24.a.
14. **On Average, Cases with Hearings were Completed in just over Two Years.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 739 days (25 months). This average includes cases that were designated complex, extraordinary, or cases that received a Rule 28 extension because they needed extra time. “Regular cases” closed in 469 days (about 15 ½ months). See pages 23, 25 – 27, and 47 – 48.

## Panel of Neutral Arbitrators

15. **The Neutral Arbitrator Panel.** The OIA had 195 neutral arbitrators on its panel, 19 more than last year. Fifty-six percent (56%) of them, or 109, are retired judges. See pages 6 – 7.
16. **Neutral Arbitrator Backgrounds.** The applications completed by the members of the OIA panel show that 103 arbitrators, or 53%, 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. Eighty-nine percent (89%) of the neutral arbitrators reported having medical malpractice experience. See pages 7 – 8.
17. **Fifty-Eight Percent (58%) of Arbitrators Served on a Case.** Fifty-eight percent (58%) of the neutral arbitrators on the OIA panel served on a case. Arbitrators averaged two assignments each. Twenty-three neutral arbitrators, including those not on the OIA panel, decided the 27 awards that were made. Twenty-one (91%) wrote a single award. See pages 9 and 43.
18. **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. Of the joint selections, 14% were members of the OIA panel, and 6% were not members of the OIA panel. See page 14.
19. **Neutral Arbitrators Selected Again After Making Large Award.** Two neutral arbitrators made awards for more than \$750,000. One arbitrator awarded \$925,000 to the claimants and has been selected twice since making the award. The other arbitrator awarded \$754,134 in October 2024 and has not been selected again. See page 9.

## Neutral Arbitrator Fees

20. **Kaiser Paid the Neutral Arbitrators' Fees in 96% 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 96% of closed cases that had fees. See page 32.
21. **Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from \$200/hour to \$1,600/hour, with an average of \$764/hour. For the 538 cases that closed, and for which the OIA has information, the average fee charged by neutral arbitrators was \$10,756. In some cases, neutral arbitrators reported they charged no fees. Excluding cases where no fees were charged, the average fee was \$11,200. The average fee in cases decided after a hearing was \$72,110. See page 32.

## Evaluations

22. **Evaluations of Neutral Arbitrators by Parties.** When a case closes by neutral arbitrator action, the OIA sends the parties or their attorneys a form to evaluate the neutral arbitrator. Eleven identified themselves as *pro per* claimants, eight as claimants' counsel, and 31 as respondents' counsel. Most attorneys who returned completed evaluations expressed satisfaction with the neutral arbitrators and would recommend them to others, with an average of 4.7 on a 5 point scale. *Pro pers* view neutral arbitrators less favorably, with a 1.9 average. This year, the overall average by all parties was 4.1. See pages 32 – 34.
23. **Evaluations of the OIA by Neutral Arbitrators.** When a case closes by neutral arbitrator action, the OIA sends the neutral arbitrator a questionnaire about the OIA system. Ninety-eight percent (98%) of the neutral arbitrators reported that the OIA experience was the same as or better than the court system, and 2% said it was worse. See pages 34 – 37.
24. **Evaluations of the OIA by Parties.** When a case closes, the OIA sends an evaluation to the parties or their attorneys asking them about the OIA system. Ninety-two percent (92%) of the responding parties and attorneys reported that the OIA system was the same as or better than the court system, and 8% said it was worse. See pages 37 – 39.

## Development and Changes in the System

25. **Change in Membership of the AOB.** Richard Spinello and Sylvia Drew Ivie resigned and Dr. Mark Lane Welton joined. See pages 3 – 4 and 40.
26. **New AOB Officers.** Carlos Camacho was elected to serve as the new chair and Dr. John Swartzberg was elected to serve as the new vice-chair. See pages 4 and 40.
27. **OIA Contract Renewed for Three More Years.** The AOB renewed its contract with the OIA for three more years, through March 28, 2027. See pages 4 and 40.
28. **Reconvened Rules Sub-Committee.** The AOB reconvened the *Rules* sub-committee to explore changes to the OIA *Rules*. See pages 4 and 41.
29. **AOB Approved Rule Changes.** The AOB approved two Rule changes. See Exhibit B for a redlined copy. See pages 4 and 41.
30. **AOB Approved Interim Rules and Supplemental Rules Governing Mass Arbitrations.** The AOB approved Interim and Supplemental Rules governing mass arbitrations. See pages 4 – 5.

31. **AOB and OIA Continued Commitment to Improve Diversity of the OIA Panel of Neutral Arbitrators.** The AOB and the OIA continued discussions about the ways in which the OIA could improve the diversity of the panel of neutral arbitrators. See pages 5 and 41.
32. **AOB Convened a Bylaws Committee.** The bylaws committee proposed, and the AOB approved, changes to existing bylaws. See pages 5 and 41.
33. **AOB Convened a Nominating Committee.** The nominating committee is charged with selecting potential candidates for vacated board positions. See pages 5 and 41.
34. **OIA Audit.** The AOB initiated the process to audit the OIA. The audit will take place in 2025. See pages 6 and 41.
35. **Senate Bill Regarding Consumer Arbitration.** In response to legislation, the California State Bar is poised to create a voluntary certification program for alternative dispute resolution firms, providers, and practitioners. See page 6.

## 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 within the deadlines set by the *Rules*.
- Parties can, and do, disqualify neutral arbitrators they do not like.
- 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 OIA provides information on its website about its cases in compliance with California law. In addition, although no longer required by law, the OIA maintains a table about all its cases since January 1, 2003.
- The OIA has published annual reports since 1999 which are all available on the OIA website.