

ANNUAL REPORT

of the

OFFICE OF THE INDEPENDENT ADMINISTRATOR

of the

**KAISER FOUNDATION HEALTH PLAN, INC.
MANDATORY ARBITRATION SYSTEM**

for

DISPUTES WITH HEALTH PLAN MEMBERS

January 1, 2012 - December 31, 2012

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REPORT SUMMARY

This is the annual report the Office of the Independent Administrator (OIA) for 2012. 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:

- Since 2002, the number of demands for arbitration has declined. In 2012, the OIA received 649 demands, a decline of 4% from the prior year.
- In approximately 25 percent of the cases, the claimants do not have attorneys.
- Cases closed, on average, in less than 12 months; hearings complete, on average, in less than 19 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 expressed satisfaction with the neutral arbitrators and would recommend them to others, with an average of 4.4 on a 5 point scale.
- Over 50% of the responding parties and attorneys reported that the OIA administered arbitration system was better than going to court, another 38% reported that it was the same, 9% 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 declined by 28 (4%) from the previous year. Almost all of the claims were for medical malpractice. About 25% of claimants were not represented by counsel.

- 1. Number of Demands for Arbitration.** The number of demands continued to decline in 2012, when the OIA received 649 demands. This is 28 (4%) fewer than the OIA received in 2011. See pages 9 and 44.
- 2. Types of Claims.** Ninety-five percent of the OIA administered cases in 2012 involved allegations of medical malpractice. Slightly more than 1% presented benefit and coverage allegations. Lien cases made up less than 2%. 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 10 and 46. 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 2012 were not represented by counsel. See pages 11 and 46.

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 2012, the parties settled 44% of the closed cases. Claimants withdrew 26% and abandoned another 3% by failing to pay the filing fee or get the fee waived. See pages 26 – 27.
- 5. One-Quarter Closed by Decision of Neutral Arbitrator.** Thirteen percent of cases closed after an arbitration hearing, 11% were closed through summary judgment, and 3% were dismissed by neutral arbitrators. In the cases that went to an arbitration hearing, claimants prevailed in 33%. See page 28.
- 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 (44%) was by the parties settling the dispute. An additional 5% of all claimants won after a hearing. The average

award was \$362,161, the median was \$258,913, and the range was from \$8,550 to \$2,528,570. See page 28 and Exhibit G.

7. **Nearly All Cases Heard by a Single Neutral Arbitrator Instead of a Panel.** Most hearings involved a single neutral arbitrator rather than a panel composed of one neutral and two party arbitrators. A panel of three arbitrators signed only two awards made after a hearing in 2012. A single neutral decided the other 84. See pages 20 - 21.

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. **Half of Neutral Arbitrator Selections Proceeded Without any Delay; the Other Neutral Selections Had Delays Requested by Claimants.** Half (52%) of the neutral arbitrators were selected without the parties exercising options that delay the process. In the other cases, the selection deadline was postponed (42%), a neutral arbitrator was disqualified (2%), or both (4%). Claimants requested all but one of the postponements. They also made 79% of the disqualifications. See pages 18 - 19.
9. **Average Length of Time to Select Neutral Arbitrator Stayed the Same for Most Parties.** The time to select a neutral in cases with no delay stayed the same as in 2011. It declined by three days in cases with postponements and by nine days in cases with disqualifications. The time increased by 16 days in the 21 cases with both postponements and disqualifications. In comparison with the time described in the *Engalla* case, the 66 days to select a neutral arbitrator in 2012 is ten times faster. See pages 19 – 20.
10. **Cases Closed, on Average, in Less than Twelve Months.** In 2012, cases closed, on average, in 340 days, or 11 months, almost the same as 2011's 339 days. One case closed late. Nearly 90% of the cases closed within 18 months (the deadline for most cases) and 60% closed in a year or less. Fifteen percent of the cases that closed in 2012 were designated complex or extraordinary or had their 18 month deadline extended by the neutral arbitrator. See pages 24 – 26 and 49.
11. **Hearings Completed, on Average, Within Nineteen Months.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 558 days (less than 19 months). This average includes cases that were designated complex or extraordinary or that received a Rule 28 extension because

The average number of days to closure of a case by summary judgment in 2012 is 343 days. The median is 331 days. The mode is 238. The range is 157 – 628 days.⁵³

6. Cases Decided After Hearing – 13% of Closures

a. Who Won

Thirteen percent of all cases closed in 2012 (86 of 661) proceeded through a full arbitration hearing to an award. Judgment was for Kaiser in 58 of these cases, or 67%. In five of these cases, the claimant was in *pro per*. The claimant prevailed in 28 of them, or 33%. One was a *pro per* claimant.

b. How Much Claimants Won

Twenty-eight cases resulted in awards to claimants. One claimant was awarded \$2,528,570. The range of relief is \$8,550 – \$2,528,570. The average amount of an award is \$362,161. The median is \$258,913. The mode is \$130,000. A list of the awards made in 2012 is attached as Exhibit G.

c. How Long It Took

The 86 cases that proceeded to a hearing in 2012, on average, closed in 558 days. The median is 522 days. The mode is 398 days. The range is 87 – 1,221 days.⁵⁴ Cases that go to a hearing are the most likely to employ the special procedures discussed in Section VII.B to give the parties extra time. If only regular cases are considered the average is 433 days.

B. Cases Using Special Procedures

1. Expedited Procedures

The *Rules* include provisions for cases which need to be expedited, that is, resolved in less time than 18 months. Grounds for expediting a case include a claimant's illness or condition

⁵³In the case that took 628 days before summary judgment was granted, the claimant was unrepresented, though assisted by a friend, pursuant to Rule 54. The case was delayed because the claimant's condition, including surgeries, hospitalizations, infections and temporary paralysis, required continuances and because the first neutral arbitrator died.

⁵⁴The case that took 1,221 days to close after a hearing was originally designated complex because the parties waited for state court actions to be decided. When the claimant attorney became ill around the time the hearing was to be held, the case was designated extraordinary.

EXHIBIT G

List of 2012 Awards to Claimants and to Kaiser

List of 2012 Awards to Claimants

Case Number (not actual OIA case number)	Amount of Awards	Month/Year
1	\$615,000.00	01/12
2	\$694,000.00	02/12
3	\$605,689.00	02/12
4	\$256,218.61	02/12
5	\$195,000.00	03/12
6	\$37,500.00	04/12
7	\$146,100.00	04/12
8	\$388,000.00	04/12
9	\$874,965.00	04/12
10	\$290,000.00	04/12
11	\$350,000.00	05/12
12	\$175,550.00	05/12
13	\$8,550.00	06/12
14	\$151,219.98	06/12
15	\$261,607.00	07/12
16	\$275,000.00	07/12
17	\$279,496.96	07/12
18	\$306,715.00	08/12
19	\$206,411.79	08/12
20	\$252,555.00	09/12
21	\$350,000.00	10/12
22	\$39,750.00	10/12
23	\$300,000.00	11/12
24	\$2,528,570.00	12/12
25	\$130,000.00	12/12
26	\$202,615.00	12/12
27	\$130,000.00	12/12
28	\$90,000.00	12/12