

**NYCRR Section 300.2(d)(1)**

(1) Notice. The claimant shall receive notice [posted by United States mail] of the scheduled independent medical examination at least [7] seven business days prior to the date of such examination. The notice shall be printed on [Workers' Compensation Board form IME-5 or such other] the form prescribed by the [c]Chair for such purpose, [and] which shall include all information required thereon, as set forth under Workers' Compensation Law [s]Section 137. A copy of such notice shall be sent to the Board on the same day it is sent to the claimant. Where the claimant asserts that notice of the examination was not received at least [7] seven business days prior to the date of the examination and upon request by the [b]Board, the party scheduling such examination shall provide proof in the form of an affidavit, or a business record that meets requirements for admissibility under Civil Practice Law and Rules Rule 4518 [of the Civil Practice Law and Rules] that the notice was posted by United States mail at least [12] twelve business days prior to the date of the examination or deposited into the custody of an overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery at least [8] eight business days prior to the date of the examination. In the event that an independent medical examination is required for the purpose of determining authorization for special services for specialist consultations, [surgical operations] surgery, [physiotherapeutic or occupational therapy procedures]physical or occupational therapy, [x-ray examinations or special diagnostic laboratory tests]imaging studies or special diagnostic or laboratory tests in accordance with Workers' Compensation Law [s]Section 13-a (5)[ of the Workers' Compensation Law], and a delay in authorization for such special services would result in a worsening of the claimant's condition or irreparable harm, and the examination can be scheduled less than [12] twelve business days from the date of the request for the examination, the claimant may, by written consent waive the requirement of [7] seven business days' notice of the examination. However, in case of such a waiver by the claimant of [7] seven business days' notice of the examination, for purposes of scheduling an examination for authorization of such special services, a notice of the examination must be sent to the claimant as soon as possible after the scheduling of the examination in the same manner as otherwise required for notices of examinations under Workers' Compensation Law [s]Section 137 [of the Workers' Compensation Law] and this Part. In no event may the right to such notice be waived pursuant to an employment agreement or a collective bargaining agreement. If a claimant requests that an examination be rescheduled, and the examination is rescheduled less than [7] seven business days after the request, the notice required under [s]Section 137 need not be received [7] seven business days prior to the examination, but must be sent to the claimant as soon as possible in the same manner as required for the original notice under said section and this section. A copy of such notice shall be sent to the Board on the same day it is sent to the claimant. Upon request by the Board, the party scheduling such examination shall provide proof in the form of an affidavit, or a business record that meets the requirements for admissibility under Civil Practice Law and Rules Rule 4518 that the notice was mailed as soon as possible.

## Handout 2 - Examination & Reporting Requirements Materials

Paragraph (3) of subdivision (d) of Section 300.2 of Title 12 NYCRR is repealed, paragraphs (4), (5), (6), (7), (8), (9), (10), (11) and (12) of subdivision (d) are renumbered as (7), (8), (9), (10), (11), (12), (13), (14) and (15), and new paragraphs (3), (4), (5), and (6) are added to read as follows:

### (4) Reports.

(iii) The independent medical examiner shall provide copies of the report of an independent medical examination as required under Workers' Compensation Law Section 137 (1)(a) together with any questionnaires or intake sheets completed by the claimant at the request of the independent medical examiner by filing such report and questionnaire with the form prescribed by the Chair for such purpose with the Board and providing copies of such form to the insurance carrier, the claimant's attending physician(s) or other primary attending practitioner(s), the claimant's attorney or licensed representative, and the claimant. Only the form specifically prescribed by the Chair for the reports of independent medical examinations shall be filed. The form prescribed by the Chair pursuant to paragraph (5) of this subdivision to submit a request for information or a response to such a request shall not be used for the reports of independent medical examinations. When a claimant treats with more than one attending physician or practitioner, the independent medical examiner shall provide a copy of the report of the independent medical examination to any attending physician or practitioner who has treated the claimant in the past [6] six months for the condition that is the subject of the independent medical examination. If no provider has treated the claimant in the last [6] six months, the report should be sent to the provider who last treated the claimant. A provider who has examined the claimant solely for the purpose of consultation or diagnostic examination or test is not an attending physician or other attending practitioner within the meaning of this section and section 137 of the Workers' Compensation Law. All such reports shall be sent on the same day and in the same manner as required by Workers' Compensation Law section 137 (1)(a).

(iv) Copies of written reports of medical experts, made on behalf of any party without physical examination of the claimant (a review of records), to be used for reference at a hearing, must be filed with the Board and submitted to all other parties or their representatives, if any, three business days prior to the hearing.

Newly renumbered paragraphs (7), (8), (10), (12) and (14) of subdivision (d) of Title 12 NYCRR are amended to read as follows:

(14) A written report of an independent medical examination, duly sworn to, shall be filed with the [b]Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within [10] ten business days after the independent medical examination, or sooner if directed, except that in cases of persons examined outside the State, such reports shall be filed and furnished within [20] twenty business days after the independent medical examination. A written report is filed with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law.

**Section 137**

1(b) If a practitioner who has performed or will be performing an independent medical examination of a claimant receives a request for information regarding the claimant, including faxed or electronically transmitted requests, the practitioner shall submit a copy of the request for information to the board within ten days of receipt of the request. Nothing in this subdivision shall be construed to abrogate the attorney-client privilege.

## Handout 2 - Examination & Reporting Requirements Materials

Handout #5:

### IME ISSUE-BASED TIMING REQUIREMENTS

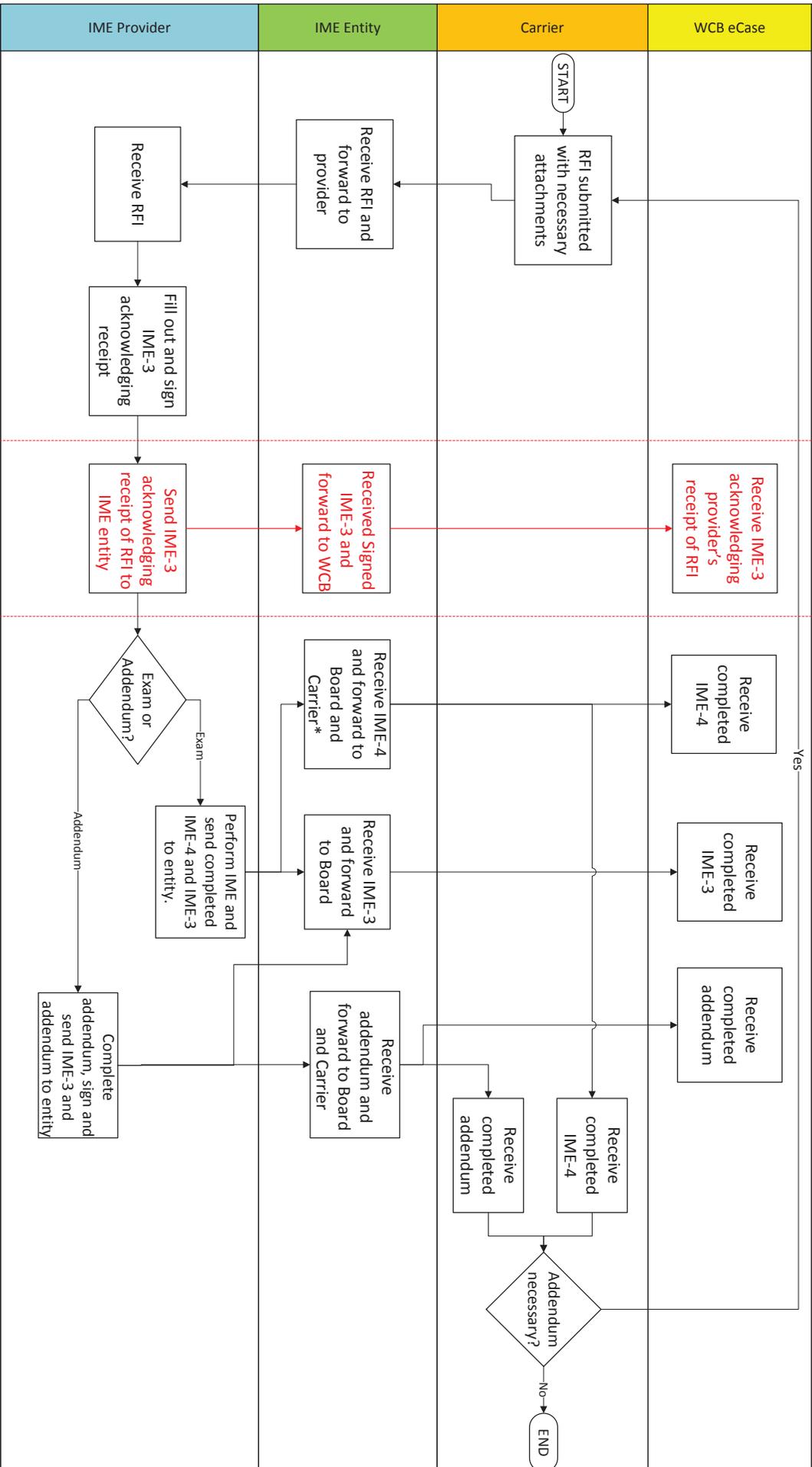
| TYPE  | POI                | INCEPTION   | TIME TO COMPLETE IME  | TIME TO FILE IME REPORT <sup>1</sup>  |
|---|--------------------|---|---|---|
| Controverted claim establishment  | Carrier            | <ul style="list-style-type: none"> <li>• Carrier incept</li> <li>• Or, may be directed at PHC</li> </ul>  | 3 days before hearing, which is 30 days after PHC                                     | 3 days before hearing, which is 30 days after PHC   |
| Medical only issues:  |                    |   |   |   |
| A. Variance   | Carrier            | Response to a variance request  | Within 30 days of variance  | <ul style="list-style-type: none"> <li>• 5-day Notice of intent</li> <li>• File within 30 days of variance</li> </ul> |
| B. Opioid weaning   | Carrier            | Carrier incept – and most are by records review   | Complete examination prior to submission to Board                                     | File and serve IME with the RFA-2   |
| C. Authorization for services costing more than \$1,000                 | Carrier            | Request for authorization per form C-4 AUTH   | Within 30 days of C4 AUTH   | Within 30 days of C4 AUTH   |
| Award determinations:   |                    |   |   |   |
| A. Causal relationship: additional, consequential                       | Carrier            | WCLJ decision   | 30 to 60 days of WCLJ decision  | If date set, due by next hearing  |
| B. Ongoing degree of temporary disability                               | Carrier            | IME incepted by carrier; motion may follow depending on results   | Prior to filing of RFA-2 seeking hearing to suspend or reduce                         | IME filed simultaneously with RFA-2   |
| C. Permanency classification (PPD or PTD)                               | Carrier / Claimant | <ul style="list-style-type: none"> <li>• Medical received; other side                             <ul style="list-style-type: none"> <li>○ obtain medical</li> <li>○ or, wait for medical direction hearing</li> </ul> </li> <li>• If initiated by WCB, inception at medical direction hearing</li> </ul> | If directed at medical direction hearing, within 60 days of medical direction hearing | Within 60 days of medical direction hearing   |
| D. SLU determination  | Carrier / Claimant | <ul style="list-style-type: none"> <li>• Medical received; other side may obtain medical</li> <li>• Or, WCB will notify parties</li> </ul>  | Within 75 days of WCB notification  | IME report to be filed within 75 days of WCB notification   |
| Apportionment   | Carrier / Claimant | Direction by WCLJ (may dovetail with depositions)   | IME completed prior to scheduling of the deposition (discretionary time frame)        | IME report must be filed in accordance with directive to depose in WCLJ decision                                      |
| Records review (such as for causality in death case, or opioid weaning) | Carrier            | Need for reference at a hearing   | 3 business days prior to hearing  | 3 business days prior to hearing  |

<sup>1</sup> General filing/service rule that applies to all IMEs herein is 300.2(d)(14):

- 10 business days after IME – in state
- 20 business days after IME - out of state

# Handout 2 - Examination & Reporting Requirements Materials

## IME Process – Request for Information



\*The IME-4 must also be sent to the claimant's treating physician or other attending physician, claimant's attorney, and claimant.

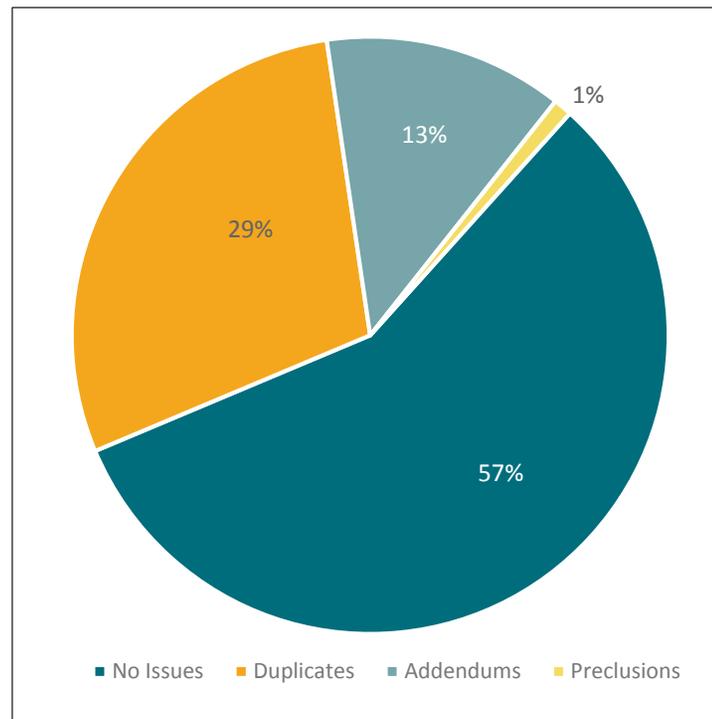
## Quality of Reports Summary

### Study Findings

Based on *IME-4* submissions after the initial notice of IME (*IME-5*), 57% of reports were accepted with no additional documentation needed, nor were they a duplicate.

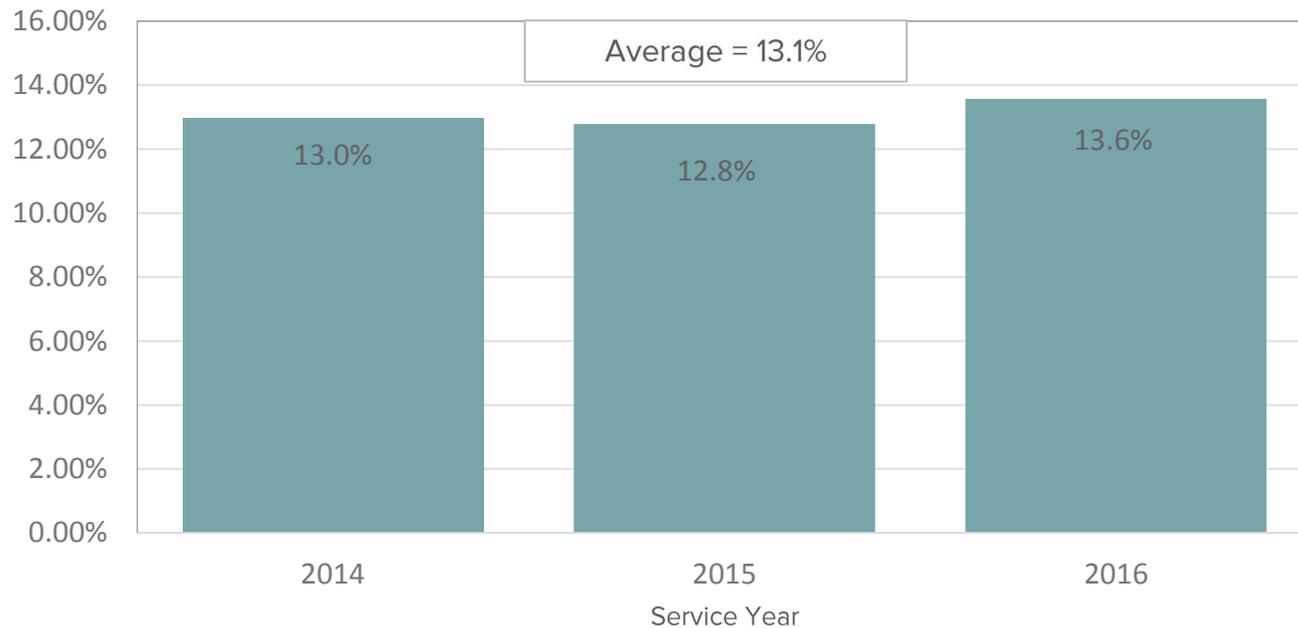
Approximately 71% of IMEs required additional information be communicated between the IME provider and the carrier, either prior to, or after the IME

# Summary of IME Report Submissions



SOURCE: IME ENTITY DATA & BOARD DATA

## Percentage of IMEs with Addendums (2014-2016)



Source: IME Entity Data

## Average Addendum Rates by High/Low Providers

| IME Range      | Total Providers   |        | Total IMEs Performed |        | Average Addendum Rate | Min Addendum Rate | Max Addendum Rate |
|----------------|-------------------|--------|----------------------|--------|-----------------------|-------------------|-------------------|
|                | (Total completed) | #      | %                    | #      | %                     | %                 | %                 |
| 1-5 IMEs       | 2,889             | 70.65% | 5,130                | 1.30%  | 74.94%                | 20.00%            | 100.00%           |
| 6-100 IMEs     | 860               | 21.03% | 20,152               | 5.09%  | 21.58%                | 1.11%             | 100.00%           |
| 101-500 IMEs   | 173               | 4.23%  | 39,688               | 10.03% | 12.53%                | 0.41%             | 55.30%            |
| 501-1000 IMEs  | 63                | 1.54%  | 44,087               | 11.14% | 11.76%                | 1.10%             | 33.76%            |
| 1001-5000 IMEs | 94                | 2.30%  | 221,551              | 55.99% | 10.21%                | 0.06%             | 21.97%            |
| 5001-9000 IMEs | 10                | 0.24%  | 65,105               | 16.45% | 8.50%                 | 4.49%             | 13.51%            |

Source: IME Entity Data

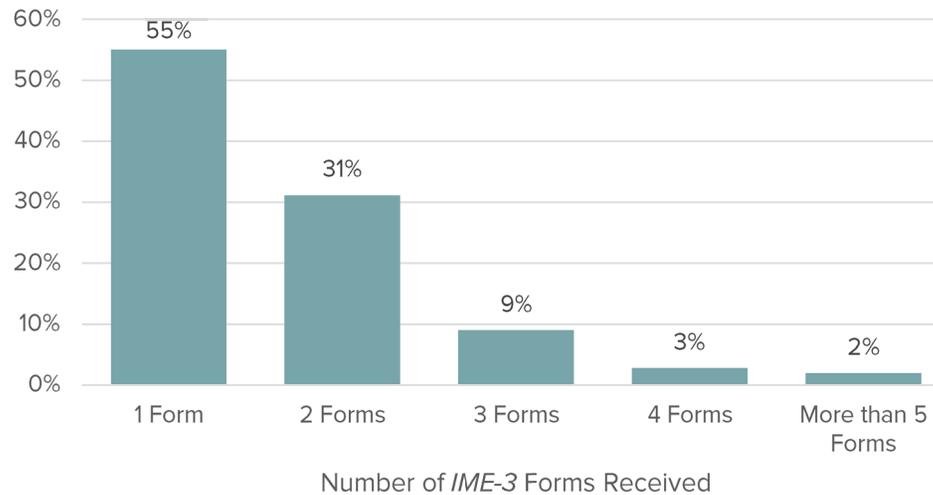
# Duplicate IME Report Submissions

| IME Service Year | IME Duplicate Submission Rate |
|------------------|-------------------------------|
| 2014             | 49%                           |
| 2015             | 47%                           |
| 2016             | 39%                           |
| 2017             | 31%                           |
| 2018             | 29%                           |

Source: Board Data

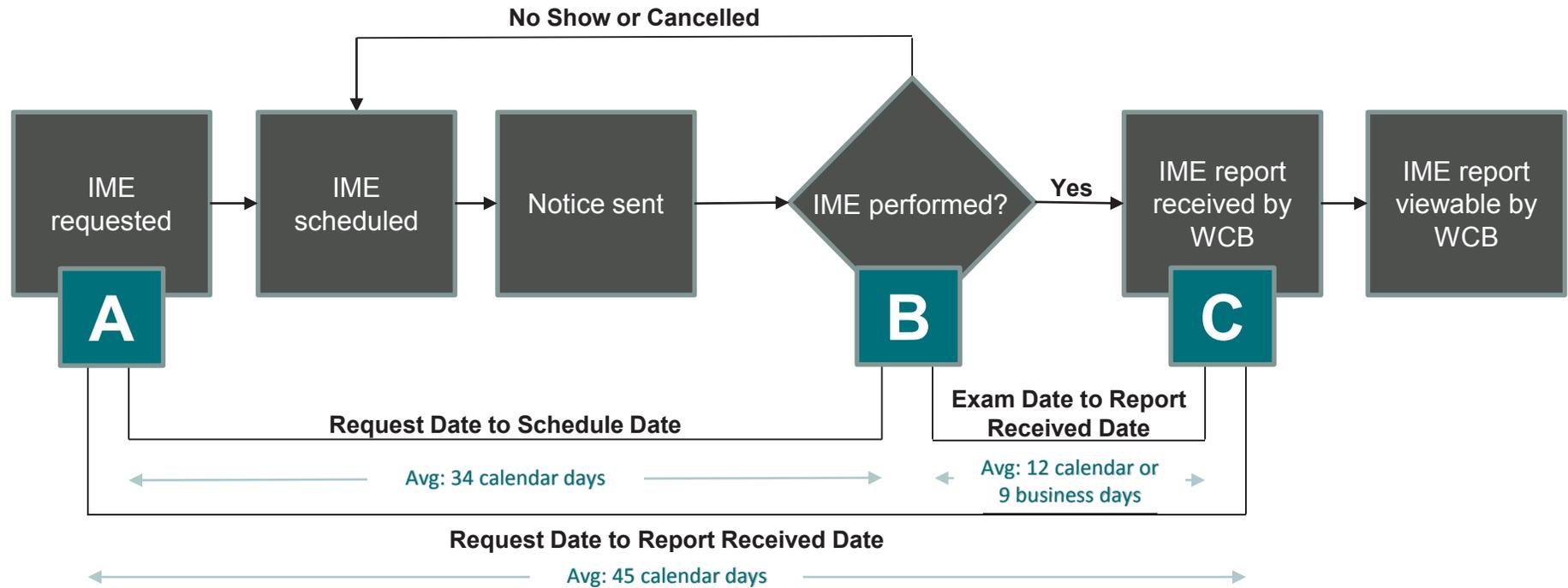
# Frequency of IME-3s (2014-2016)

(For IME reports that have one or more associated IME-3)



IME-3: Independent Examiners Report of Request for Information/Response to Request for Independent Examination

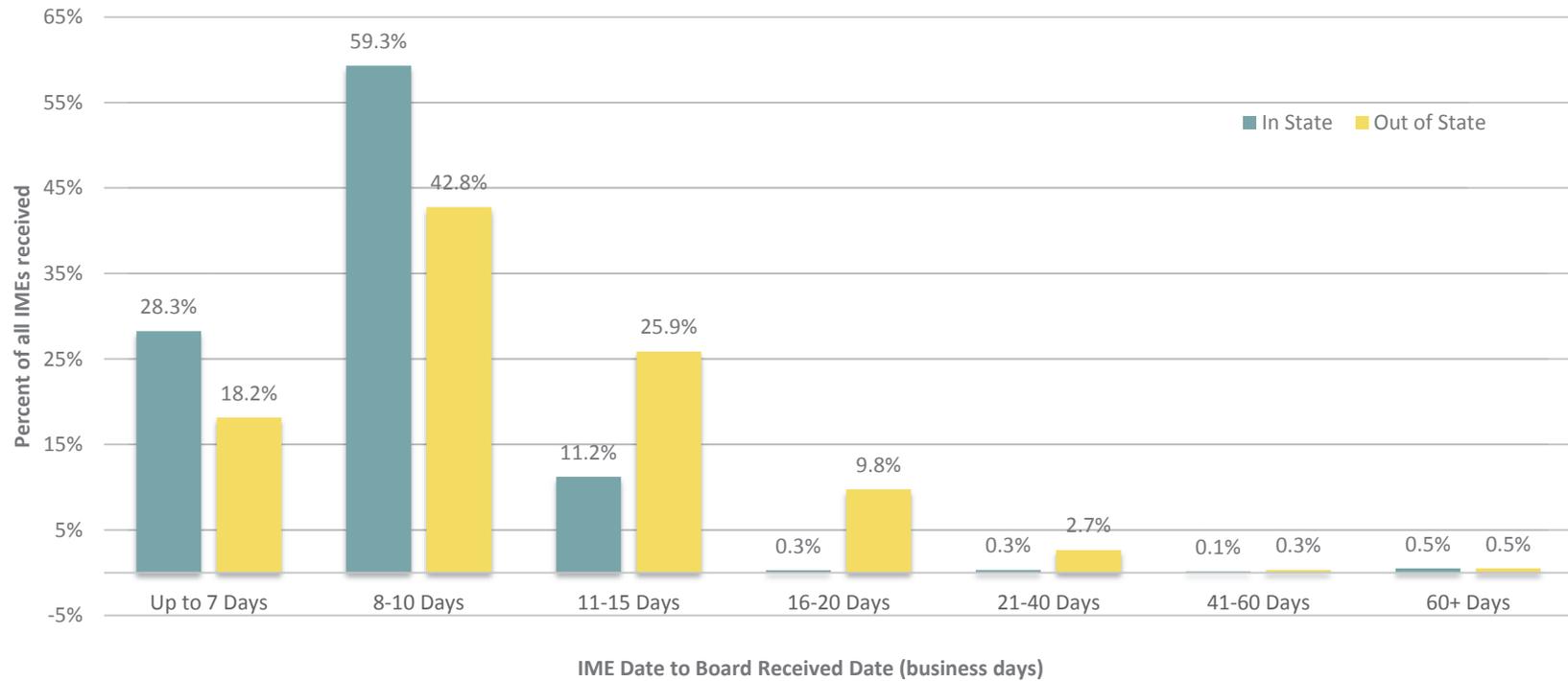
# Scheduling & Timing Issues



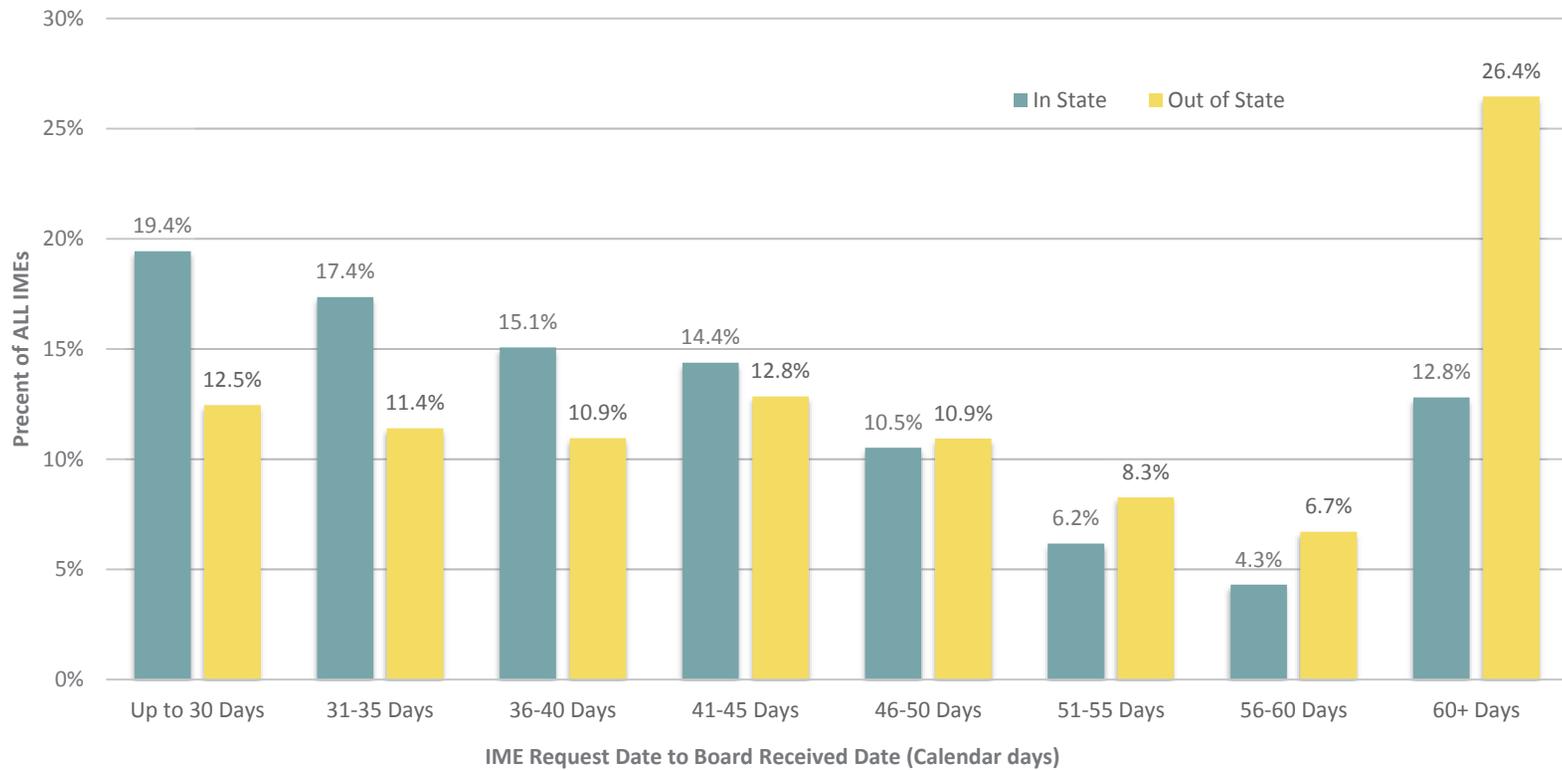
## IME Provider Specialty – Average Time to Schedule (A to B)

| Specialty                          | Average Days between Carrier Request and IME Date<br>(Calendar Days) |              |
|------------------------------------|--|--------------|
|                                    | In State   | Out of State |
| Anesthesiology / Pain Management   | 42.6   | 40.3         |
| Neurology and Psychiatry           | 36.9   | 41.5         |
| Neurological Surgery               | 36.2   | 41.2         |
| Physical Medicine / Rehabilitation | 34.0   | 39.6         |
| Orthopedic Surgery                 | 33.1   | 38.5         |
| Internal Medicine                  | 32.9   | 37.6         |
| Surgery                            | 31.2   | 41.1         |
| Occupational Medicine              | 30.5   | 47.9         |
| Psychology                         | 30.3   | 44.5         |
| Ophthalmology                      | 30.3   | 37.9         |
| Podiatry                           | 27.5   | 35.1         |
| Otolaryngology                     | 27.3   | 41.9         |
| Chiropractic                       | 27.3   | 29.4         |

## IME Date to Board Received Date (B to C) – In State and Out of State



## IME Request Date to Board Received Date (A to C) – In State and Out of State



## Distribution of Total IMEs (2014-2016)

| IME Range      | Total Providers (a) |        | Total IMEs Performed |        | Average Days between IME Request Date and IME Service Date | Average Days between IME Service Date and Received Date |
|----------------|---------------------|--------|----------------------|--------|--|---|
|                | (Total completed)   | #      | %                    | #      | %  | Calendar Days   |
| 1-5 IMEs       | 2,889               | 70.65% | 5,130                | 1.30%  | 38.7   | 12.4  |
| 6-100 IMEs     | 860                 | 21.03% | 20,152               | 5.09%  | 32.4   | 9.9   |
| 101-500 IMEs   | 173                 | 4.23%  | 39,688               | 10.03% | 32.9   | 9.1   |
| 501-1000 IMEs  | 63                  | 1.54%  | 44,087               | 11.14% | 33.9   | 9.3   |
| 1001-5000 IMEs | 94                  | 2.30%  | 221,551              | 55.99% | 33.3   | 9.3   |
| 5001-9000 IMEs | 10                  | 0.24%  | 65,105               | 16.45% | 34.2   | 9.1   |

a) Total provider counts include the 2,089 authorized providers contained in the Board's HPA system as well as 2,000 other providers who submitted IME-4 reports during 2014-2016. The 2,000 other providers performed less than 1% of total IMEs.