

# **Workers' Compensation Working Group**

**August 16, 2016**

## **Dispute Resolutions:**

- 1. Settlements**
- 2. Pre-Screening**
- 3. Discovery**

Both Claimant and Adjuster sign a “Simple Stipulation” since they agree to the disputed issues of:

- 1) Permanent Partial Disability
- 2) Temporary Disability Period
- 3) Disfigurement Award



Hearings Officer reviews Simple Stipulation for compliance with Workers' Compensation law



The Simple Stipulation becomes the “decision” and a hearing is not needed

SETTLING THREE PRIMARY ISSUES VIA A “SIMPLE STIPULATION”

# Simple Stipulations

HRS 386-78:

-The Director approves all compromises

Both parties agree as to all disputed issues so no hearing is needed

- All formatting and language is proper
- Temporary disability amounts are correct
- Temporary disability period is correct
- Permanent Partial Disability amount is correct
- Permanent Partial Disability award is consistent with Independent Medical Examination report
- Disfigurement Award is proper
- Claimant retains medical benefits
- Claimant retains reopening rights
- Claimant is typically not represented by an attorney
- The approval process remains impartial like a hearing

SIMPLE STIPULATION CONSIDERATIONS

Both Claimant and Adjuster sign a Compromise/ Wash since they agree to the disputed issues which may include:

- 1) Ending Claimant's medical benefits
- 2) Ending Claimant's vocational rehabilitation benefits
- 3) Ending Claimant's right to reopen case

SUBMIT

REVISE

Hearings Officer reviews Compromise/ Wash for compliance with Workers' Compensation law

Approve

The Compromise/ Wash becomes the "decision" and a hearing is not needed

## SETTLING ISSUES VIA A COMPROMISE/WASH

# Compromises and “Washes”

HRS 386-78:

-The Director approves all compromises

Both parties agree as to all disputed issues so no hearing is needed

- All formatting and language is proper
- Temporary disability amounts are correct
- Temporary disability period is correct
- Permanent Partial Disability amount is correct
- Permanent Partial Disability award is consistent with Independent Medical Examination report
- Disfigurement Award is proper
- **Claimant typically does not retain medical benefits, vocational rehabilitation benefits, or reopening of claim rights. Hence, additional scrutiny is applied to protect claimants without an attorney**
- The approval process remains impartial like a hearing

COMPROMISES AND “WASH” CONSIDERATIONS

## PAST

- ISSUE #1: limited means of resolving hearing requests without scheduling a hearing
- ISSUE #2: first hearing scheduled often postponed to address due process concerns
- RESULT: complaints of hearings cancellations

## PRESENT

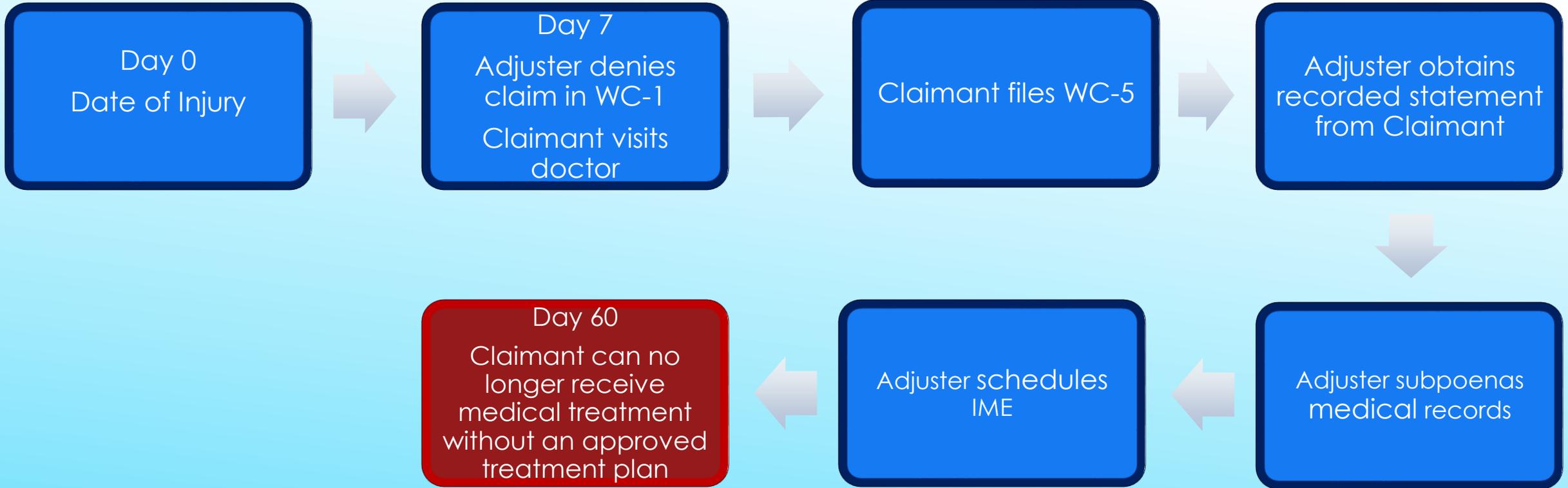
- SOLUTION to ISSUES #1 and #2: Facilitators and Reviewers trained and given discretion to prepare/screen hearing requests to avoid hearings cancellations
- RESULT: reduction of hearings cancellations that were caused by adjuster needing more time for discovery

## FUTURE

CONSEQUENCE: allowing adjusters more time for discovery to avoid hearings cancellations caused some claimants to wait longer for a **first** hearing

PROPOSED SOLUTION: educating adjusters to conduct their discovery faster through statutory and/or procedural change

PRE-SCREENING BY FACILITATORS & HEARINGS REVIEW:  
PAST, PRESENT, FUTURE



## 60 DAY DISCOVERY PROCESS

# LOW STANDARD FOR IME ORDERED BY DIRECTOR

HAR§ 12-10-75: Upon employer's request, the Director shall issue a medical examination order upon finding that the examination will assist in the expedient disposition of the case or in determining the need for or sufficiency of medical care or rehabilitation

## FAILURE TO ATTEND ORDERED IME

HRS§ 386-79:  
If the Claimant refuses to submit to the exam, then the claimant's right to compensation is suspended

## FAILURE TO ATTEND VOLUNTARY IME

No penalty under HRS§ 386-79 for failure to attend voluntary IME because penalty only applies to IME ordered by the Director

THE BURDEN IS SMALL FOR AN ADJUSTER TO OBTAIN THE RIGHT TO AN ORDERED INDEPENDENT MEDICAL EXAMINATION (IME)

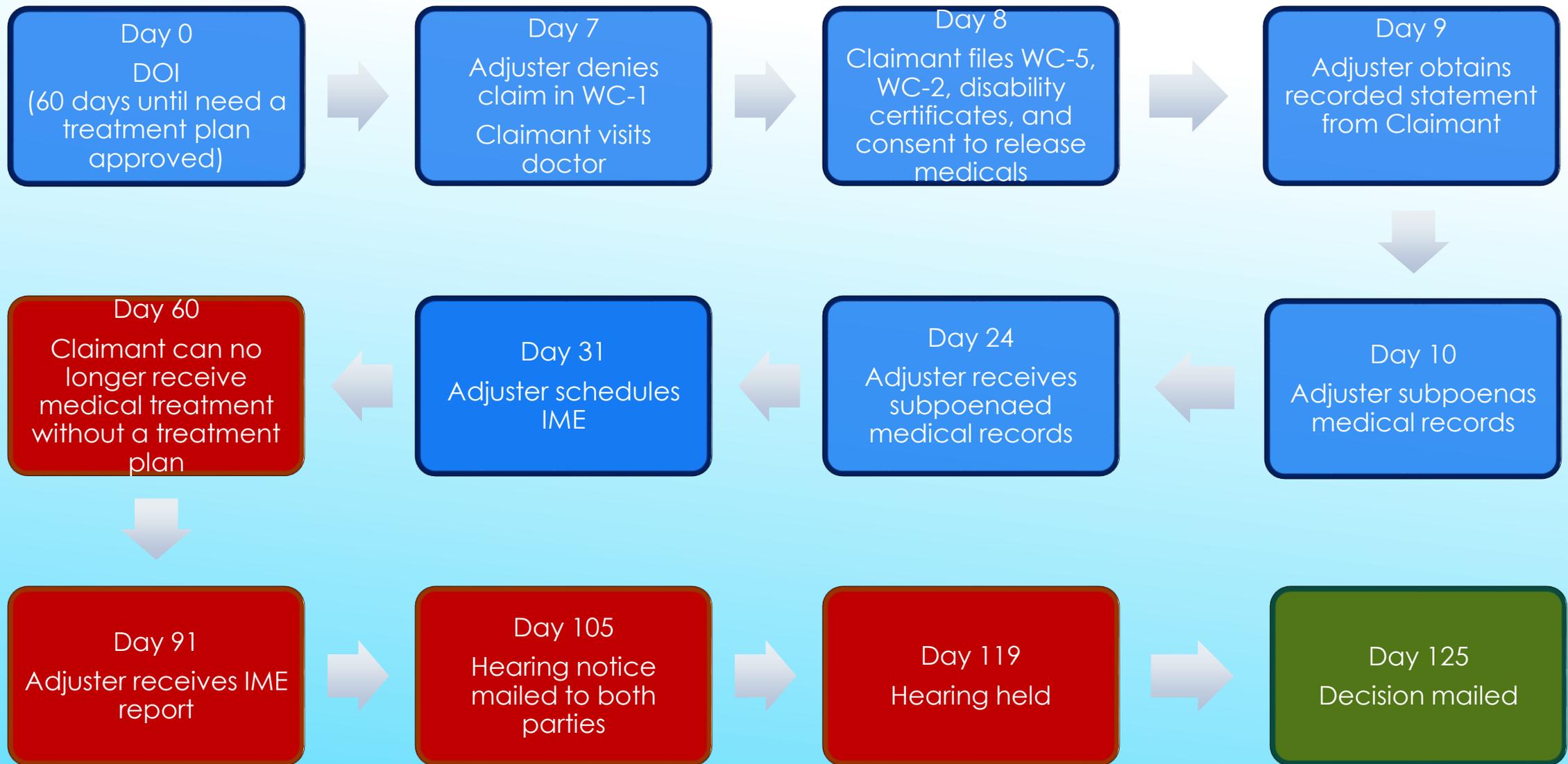
Adjusters exhaust their options before requesting an IME from Claimant because IMEs are expensive

Scheduling an IME may take up to 45 days due to Adjuster choosing an IME doctor with a backlog

The IME report may not be completed until 60 days after the IME due to Adjuster choosing an IME doctor with a backlog

It is not atypical for a compensability hearing to be held over 180 days after the date of injury due to an outstanding IME

OBTAINING THE IME REPORT MAY BE A LENGTHY PROCESS



THE RIGHT TO AN IME REPORT DELAYS THE COMPENSABILITY DECISION BECAUSE THE HEARING THEN CANNOT BE HELD WITHOUT THE IME REPORT

- **Decision will be stayed and have no effect** if Employer/ Adjuster appeals and successfully argues it was denied due process because it was not allowed to obtain an IME report before the compensability hearing
- HAR 12-47-34: LIRAB motion to stay Director's decision and order

**HEARING WITHOUT IME REPORT**

**MEDICAL COVERAGE GAP**

- **From 60 days after date of injury until decision on compensability**
- HAR § 12-15-32: Approved treatment plan needed for medical coverage more than 60 days after date of injury
- Treatment plan will not be approved if compensability not determined

- Due process concerns addressed, but **claimant denied access to medical coverage** through Workers' Compensation law until decision issued

**HEARING WITH IME REPORT**

BECAUSE THE COMPENSABILITY HEARING CANNOT BE HELD WITHOUT THE IME REPORT, CLAIMANTS SUFFER A MEDICAL COVERAGE GAP

HRS § 386-79  
HAR § 12-10-75  
Ordered IME Reports

- No deadlines imposed on IME Reports

HRS § 386-92  
Default in Payments  
of Compensation

- Decision required first

HRS § 386-93  
Costs

- Unrepresented Claimants have no attorney's fees which may be assessed against the Adjuster

"Bad Faith"  
Claim

- Unrepresented claimants would not be aware they can sue Adjusters in Court for improper claims handling

THE CURRENT RULES DO NOT EFFECTIVELY DETER DILATORY  
IME REPORTS IN COMPENSABILITY HEARINGS



WHAT THE COMPENSABILITY DECISION PROCESS WOULD LOOK LIKE WITH A 38-DAY IME REPORT DEADLINE

## ADJUSTER

- Select IME doctor who can comply with new deadlines

## IME DOCTOR

- Hold the IME and issue the report within 38 days of the date of injury

## CLAIMANT

- Cooperate with Adjuster as to attending voluntary IME and providing all necessary consent forms

## DCD

- IME orders for compensability hearings no longer issued
- Issue compensability decision within 60 days of date of injury only if claimant cooperated in discovery

STAKEHOLDER RESPONSIBILITIES TO ENSURE EFFICIENT  
OPERATION OF DISCOVERY

Day 60  
Employer timeline for discovery  
extended; claimant's benefits  
extended



Day 91  
Adjuster receives IME report



Day 105  
Hearing notice mailed to both  
parties



Day 119  
Hearing held



Day 125  
Decision mailed  
  
If compensability denied  
employer is credited

RECOMMENDED STATUTORY CHANGES TO EXTEND  
DISCOVERY AND BENEFITS BEYOND 60 DAYS

## ADJUSTER

- Select IME doctor within extended timeline
- Pay claimant extended benefits

## IME DOCTOR

- Hold the IME and issue the report within extended timeline

## CLAIMANT

- Cooperate with Adjuster for extended benefits OR benefits suspended

## DCD

- Suspends benefits for noncompliance of IME orders
- Issue decision for compensability if adjuster exceeds extended timeline
- Issue credits if compensability denied

STAKEHOLDER RESPONSIBILITIES NEEDED TO ENSURE  
EXTENSIONS OF DISCOVERY AND BENEFITS