

Guidelines for Medicare Set-Aside Arrangements in Lump Sum Settlements

| Medicare status and lump sum settlement amount: | Does the application need to address Medicare's interest? | Is the CMS letter required prior to approval of the application? | Can the set-aside amount be used in calculating indemnity due? | What language must be used in the proposed order of approval? |
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| Medicare eligible or current beneficiary, and settlement amount is over \$25,000.00 (current CMS review threshold). | YES. | YES. | NO. Set-aside amounts do not count as indemnity. Settlement amount alone must be sufficient to cover the indemnity due. | Settlement amount and set-aside amounts listed separately. For example, "upon payment of \$50,000.00 plus \$10,000.00 to fund a Medicare Set-Aside . . ." |
| Medicare eligible or current beneficiary, and settlement amount is under \$25,000.00. | YES. | NO (below threshold). | NO. Set-aside amounts do not count as indemnity. Settlement amount alone must be sufficient to cover the indemnity due. | Settlement amount and set-aside amounts listed separately. For example, "upon payment of \$15,000.00 plus \$1,000.00 to fund a Medicare Set-Aside . . ." |
| Reasonable expectation ¹ of Medicare enrollment within 30 months and settlement amount is over \$250,000.00. | YES. | YES. | NO. Set-aside amounts do not count as indemnity. Settlement amount alone must be sufficient to cover the indemnity due. | Settlement amount and set-aside amounts listed separately. For example, "upon payment of \$255,000.00 plus \$50,000.00 to fund a Medicare Set-Aside . . ." |
| Reasonable expectation ¹ of Medicare enrollment within 30 months and settlement amount is under \$250,000.00. | NO. Parties do not need to address Medicare's interests when claimant is not Medicare eligible or current beneficiary, and the settlement is below the CMS review threshold. | NO (below threshold). | YES. Any set-aside would be voluntary and the entire amount can be used to calculate indemnity coverage. | Total amount can include any voluntary set-aside funds. |
| No reasonable expectation ¹ of Medicare enrollment within 30 months, regardless of settlement amount. | NO. | NO. | YES. Any set-aside would be voluntary and the entire amount can be used to calculate indemnity coverage. | Total amount can include any voluntary set-aside funds. |

¹One has a "reasonable expectation" of Medicare enrollment within 30 months if any of the following apply:

- He/she has applied for Social Security Disability Benefits (SSDI) (becomes eligible for Medicare after receiving SSDI for 24 months).
- He/she is appealing or anticipates appealing a denial of an application for SSDI.
- He/she is age 62.5 (will be eligible when he/she turns 65, which is within 30 months).
- He/she has an end stage renal disease condition.