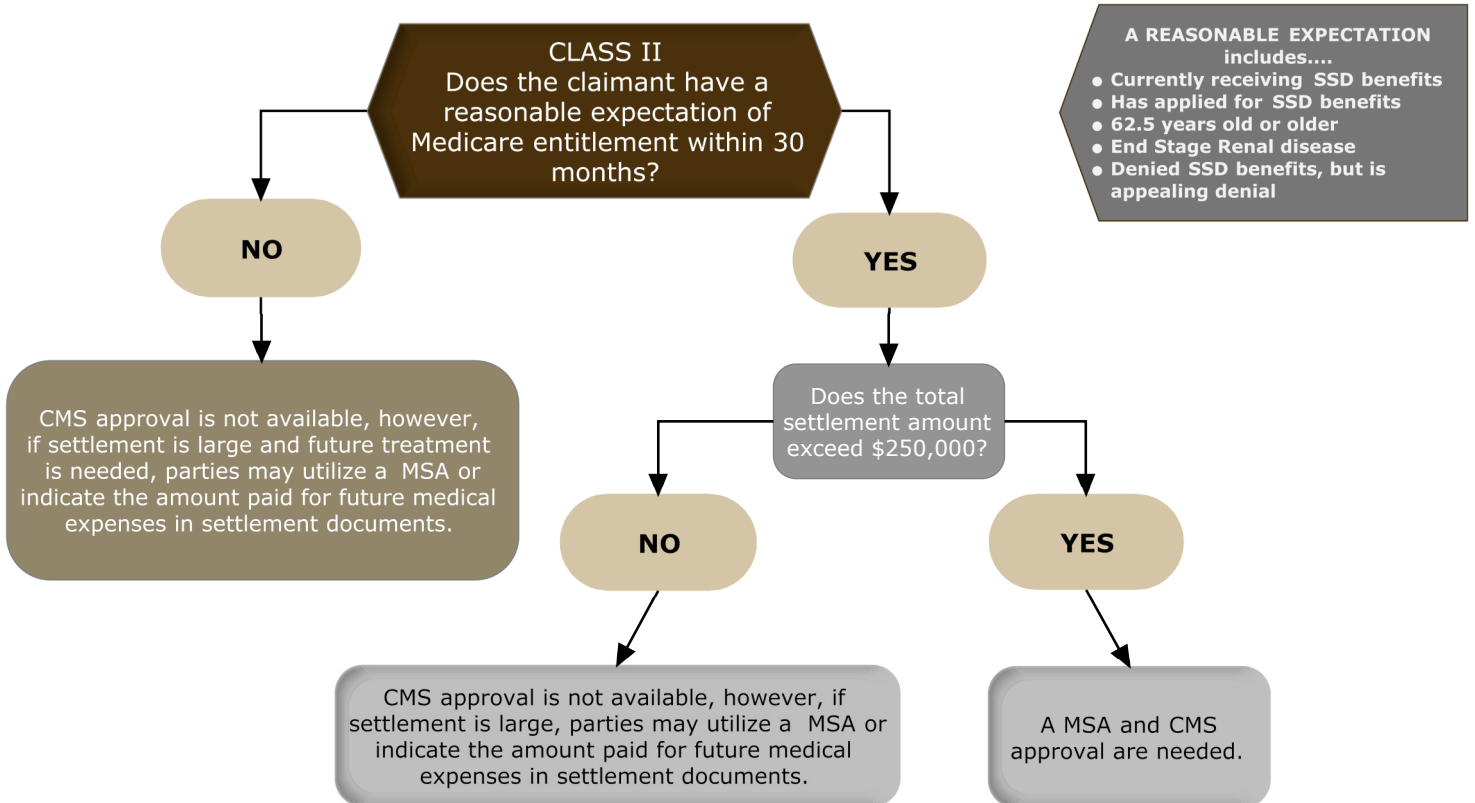
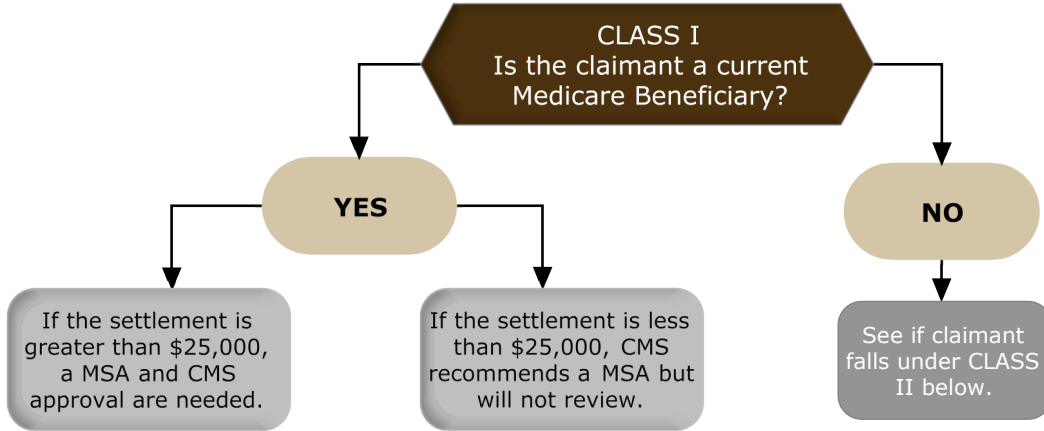


**MEDICARE SET-ASIDES IN
 WORKERS' COMPENSATION CASES**



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Workers' Compensation Medicare Set-asides Quick Reference Guide

When Should Medicare Set-asides be Used in Workers' Compensation Cases?

CLASS I

Medicare Beneficiaries – Is the claimant a Medicare beneficiary?

- ◆ A Medicare Set-aside ("MSA") arrangement and CMS approval is appropriate in all settlements involving Medicare beneficiaries if the total settlement is greater than \$25,000, regardless of the reason for Medicare eligibility.
- ◆ CMS recommends a MSA for Medicare beneficiaries if the total settlement is \$25,000 or below, even though CMS will not review and pre-approve the same.

CLASS II

Does the claimant have a "reasonable expectation" of Medicare entitlement?

- ◆ A MSA arrangement is appropriate if the claimant has a "reasonable expectation" of becoming a Medicare beneficiary within 30 months from the date of the settlement AND the total settlement is greater than \$250,000.
- ◆ If the claimant has a reasonable expectation of Medicare entitlement within 30 months and the total settlement amount is large but does not meet the CMS review threshold, the parties may utilize a MSA or designate a sum to cover future medical expenses in the settlement documents although CMS will not review and pre-approve the same.

What constitutes a "reasonable expectation?" Some factors to consider include:

1. Whether the individual has applied for Social Security Disability ("SSD") benefits. Medicare coverage begins 24 months after entitlement to SSD benefits.
2. Whether the individual anticipates appealing a denial of SSD benefits.
3. Whether the individual is in the process of appealing and/or refiling for SSD benefits.
4. Whether the individual is 62 ½ years old (i.e., may be eligible for Medicare based upon his/her age within 30 months).
5. Whether the individual has End Stage Renal Disease.

CLASS I AND CLASS II DOLLAR THRESHOLD

What Should be Included to Determine if a Case Meets the Dollar Threshold?

1. Money being paid at the time of the settlement for past, present and future medical and prescription expenses;
2. Money being paid for indemnity and vocational benefits;
3. Attorneys' fees and costs;
4. Prior settlement amounts for the same claim, if any;
5. Any settlement advances that were made;
6. Lien payments (including repayment of Medicare conditional payments);
7. Any amounts forgiven by the carrier or employer; and
8. Any liability settlement paid for the same workers' compensation injury (unless apportioned by a court on the merits).

Note: When calculating the total settlement amount, the expected payout must be included instead of the purchase price or present value.

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