1. Does your jurisdiction maintain a collateral source rule?

Pursuant to Section 768.76, Florida Statutes, a defendant is entitled to redress for any damages that have been paid or are payable to a plaintiff from collateral sources. In Florida, trial courts must reduce an award "by the total of all amounts which have been paid for the benefit of the claimant, or which are otherwise available to the claimant, from all collateral sources." Fla. Stat. § 768.76(1); See Goble v. Frohman, 901 So. 2d 830 (Fla. 2005); Joerg v. State Farm Mut. Auto. Ins. Co., 176 So. 3d 1247 (Fla. 2015). The reduction is offset to the extent of any amount which has been paid, contributed, or forfeited by, or on behalf of, the claimant or members of the claimant's immediate family to secure her or his right to any collateral source benefit which the claimant is receiving as a result of her or his injury. Id.

Note, the aforesaid reduction does not apply to collateral sources for which a subrogation or reimbursement right exists. Fla. Stat. § 768.76(1). The statute also explicitly states that "benefits received under Medicare, or any other federal program providing for a Federal Government lien on or right of reimbursement from the plaintiff’s recovery, the Workers’ Compensation Law, the Medicaid program of Title XIX of the Social Security Act or from any medical services program administered by the Department of Health shall not be considered a collateral source." Fla. Stat. § 768.76(2). Moreover, Section 768.76 does not allow reductions for future medical expenses. Allstate Ins. Co. v. Rudnick, 761 So. 2d 289, 292-93 (Fla. 2000).

In Florida, collateral sources include any payments made to the claimant, or made on the claimant's behalf, by or pursuant to:

(1) The United States Social Security Act, except Title XVIII and Title XIX; any federal, state, or local income disability act; or any other public programs providing medical expenses, disability payments, or other similar benefits, except those prohibited by federal law and those expressly excluded by law as collateral sources.

(2) Any health, sickness, or income disability insurance; automobile accident insurance that provides health benefits or income disability coverage; and any other similar insurance benefits, except life insurance benefits available to the claimant, whether purchased by her or him or provided by others.
(3) Any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services.

(4) Any contractual or voluntary wage continuation plan provided by employers or by any other system intended to provide wages during a period of disability.

2. **Does your jurisdiction allow plaintiff recovery for expenses written off by the healthcare provider?**

Medical expense damages must compensate a plaintiff for only actual economic loss. Thus, a plaintiff may recover damages for only those medical expenses actually paid – not those that are written down or off. *See generally Goble v. Frohman*, 901 So. 2d 830 (Fla. 2005).

3. **Must a plaintiff prove medical services were reasonable or necessary in order to recover?**

In Florida, an injured party is entitled to recover the reasonable value of medical care resulting from the defendant's negligence. *Cooperative Leasing v. Johnson*, 872 So. 2d 956, 958 (Fla. 2d DCA 2004; *see also Warner v. Ware*, 182 So. 605 (Fla. 1938). Thus, in actions for personal injury, the plaintiff may recover the expenses incurred in effecting a cure for the injury. *Albert v. Miami Transit Co.*, 154 Fla. 186, 17 So. 2d 89 (Fla. 1944). The expenses must be necessary and reasonable. *See Shaw v. Puleo*, 159 So. 2d 641 (Fla. 1964); *Vaughn v. Patterson*, 238 So. 2d 129 (Fla. 1st DCA 1970); *Schmidt v. Tracey*, 150 So. 2d 275 (Fla. 2nd DCA 1963). The reasonable value of medical services is limited to the amount accepted as payment in full for medical services. *Cooperative Leasing, Inc. v. Johnson*, at 958 (Fla. 2nd DCA 2004). The Plaintiff bears the burden of proving necessity and reasonableness of any claimed medical expenses. *See Albertson’s, Inc. v. Brady*, 475 So. 2d 986 (Fla. 2d DCA 1985), rev. denied, 486 So. 2d 595 (1986); *E. W. Karate Ass’n v. Riquelme*, 638 So. 2d 604 (Fla. 4th DCA 1994); *Columbia Hosp. (Palm Beaches) Ltd. Partnership v. Hasson*, 33 So. 3d 148 (Fla. 4th DCA 2010).

4. **Must a plaintiff guarantee reimbursement to a healthcare provider if judgment is rendered or settlement achieved?**

For judgment, no. However, if a Plaintiff executed a letter of protection (promise to reimburse the healthcare provider from funds received from a judgment or settlement), then the Plaintiff made a promise to reimburse the healthcare provider from funds received pursuant to a judgment or settlement further to the terms outlined in the letter of protection. *Smith v. Geico Cas. Ins.*, 127 So. 3d 808 (Fla. 2nd DCA 2013). If the Plaintiff fails to resolve medical bills and liens after getting proceeds from a judgment or settlement, the Plaintiff may face consequences and remain liable for any outstanding medical bills and liens. *Berger v. Silverstein, Silverstein & Silverstein, P.A.*, 727 So. 2d 312 (Fla. 3rd DCA 1999). Moreover, the Plaintiff's attorney faces ethical consequences if he distributes the judgment or settlement proceeds without ensuring healthcare provider bills and liens are satisfied. *The Florida Bar v. Pintaluga*, No. SC13-1021, No. 2013-50,648 (15C) (Fla. 2013). Thus, although the plaintiff is not required to guarantee
reimbursement to a healthcare provider if judgment is rendered, there are legal obligations imposed upon the plaintiff and its counsel for failure to satisfy medical bills and liens. Upon entry of a judgment or settlement, the plaintiff's attorney may petition the court for equitable distribution. *Id.; see Gregory v. Previtera*, 2014 Fla. Cir. LEXIS 19718 (Fla. 6th DCA 2014).

For settlement, yes, as it can be included in the settlement agreement and release.

5. **If an insurance carrier maintains a contractual agreement with a healthcare provider that reduces payments, what can a plaintiff "blackboard" as damages (i.e. what effect does a preexisting agreement between an insurance carrier and healthcare provider have on a plaintiff's ability to recover medical bills?)**

**Private Insurance**

A plaintiff’s recoverable medical damages are only those actually paid by the insurance provider. *See Goble v. Frohman*, 901 So. 2d 830 (Fla. 2005); *Horton v. Channing*, 698 So. 2d 865 (Fla. 1st DCA 1997). It is likely reversible error to admit evidence of medical damages in excess of the sum actually paid or owed. *See Dourado v. Ford Motor Co.*, 843 So. 2d 913 (Fla. 4th DCA 2003); *Horton v. Channing*, 698 So. 2d 865 (Fla. 1st DCA 1997). The contractual discounts constitute "amounts which have been paid for the benefit of the claimant, or which are otherwise available to the claimant, from [a] collateral source[.]") *Goble v. Frohman*, at 833 (Fla. 2005). Therefore, under section 768.76, the amount of the contractual discount, for which no right of reimbursement or subrogation exists, is an amount that should be set off against an award of compensatory damages. *Id.*

**Medicare and Medicaid**

A plaintiff cannot recover the full amount charged by a medical provider when the medical provider accepts a lesser payment from Medicare. Indeed, evidence of the full or original bill is inadmissible. *See Cooperative Leasing v. Johnson*, 872 So. 2d 956 (Fla. 2d DCA 2004). The appropriate measure of compensatory damages for past medical expenses when a plaintiff has received Medicare benefits does not include the difference between the amount that the Medicare providers agreed to accept and the total amount of the plaintiff's medical bills. *Id.*

The original amount is irrelevant because it does not tend to prove that the claimant has suffered any loss by reason of the charge. *See Thyssenkrupp v. Lasky*, 868 So. 2d 547, 551 (Fla. 4th DCA 2003).