1. **Does your jurisdiction maintain a collateral source rule?**

   Yes. Arizona law follows the Restatement on the collateral source rule, such that “the collateral source rule requires that payments made to or benefits conferred on the injured party from other sources are not credited against the tortfeasor’s liability, although they cover all or a part of the harm for which the tortfeasor is liable.” *Taylor v. Southern Pac. Transp. Co.*, 130 Ariz. 516, 519-20, 637 P.2d 726, 729-30 (1981) (quoting Restatement (Second) of Torts, § 902 (2) (1979)).

   “The rationale for this rule is that simply because the injured party might have provided by contract for reimbursement of medical expenses, it should not be used to lessen the tortfeasor's liability. There should be no windfall for a tortfeasor because he injured an insured instead of a non-insured.” *Taylor v. S. Pac. Transp. Co.*, 130 Ariz. 516, 519–20, 637 P.2d 726, 729–30 (1981) (quoting Restatement (Second) of Torts, § 920A(2) (1979)).

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

   The short answer is yes; subject to qualifications discussed in number three, below. This issue was discussed by the Arizona Court of Appeals in *Lopez v. Safeway Stores, Inc.*, 212 Ariz. 198, 129 P.3d 487 (App. 2006); see also RAJI Civil (5th) Personal Injury Damages 1(3) (2013).

   In *Lopez*, the Court of Appeals specifically held that a plaintiff was permitted to recover the full amount of the medical expenses charged to the plaintiff, but written off by the medical provider. In its holding, the *Lopez* court noted that Arizona’s collateral source rule even “applies when, due to a healthcare provider’s gratuitous treatment, a plaintiff neither incurs nor is responsible for payment of the reasonable value of medical services, but nonetheless can claim and recover compensation for that value from the tortfeasor.” *Id.* at 203, 492 (citing Restatement (Second) of Torts § 902A(2), cmt. c(3)).

3. **Must a plaintiff prove medical services were reasonable and necessary in order to recover?**
Yes. The law in Arizona is that a tort victim may recover damages for “reasonable medical and other expenses.” Lopez v. Safeway Stores, Inc., 212 Ariz. 198; 129 P.3d 487, 493 (App. 2006), quoting Restatement (Second) of Torts §924. In addition, the plaintiff has to prove that the medical services were causally related to the incident that caused the injury. In order to prove that the medical services were reasonable and necessary and causally related, the plaintiff has to offer testimony from his or her treating physician(s) and/or his or her medical expert(s) that the plaintiff’s medical bills are reasonable and necessary and causally related to the incident that caused the injury. Haven v. Taylor, 2014 WL 3608782, (2014) citing Larsen v. Decker, 196 Ariz. 239, 995 P.2d 281 (2000).

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

A.R.S. §33-931 provides that: “Every individual, partnership, firm, association, corporation or institution or any governmental unit that maintains and operates a health care institution or provides health care services in this state and that has been duly licensed by this state, or any political subdivision or private entity with ambulances operated, licensed or registered pursuant to title 36, chapter 21.1, is entitled to a lien for the care and treatment or transportation of an injured person. The lien shall be for the claimant's customary charges for care and treatment or transportation of an injured person. A lien pursuant to this section extends to all claims of liability or indemnity, except health insurance and underinsured and uninsured motorist coverage as defined in section 20-259.01, for damages accruing to the person to whom the services are rendered, or to that person's legal representative, on account of the injuries that gave rise to the claims and that required the services.”

In addition, depending on the terms of the plaintiff’s contract of insurance with his or her health insurance carrier, the plaintiff may have to repay the amounts paid by his or her health insurance, subject to any negotiated reduction between the plaintiff and the insurance carrier. With respect to ERISA plans, full repayment is generally required.

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 pre-existing agreement between an insurance carrier and healthcare provider have on a plaintiff’s ability to recover medical bills)?**

A pre-existing agreement between an insurance carrier and a healthcare provider has no effect on the plaintiff’s ability to recover medical bills. Despite any such contractual agreement, plaintiffs are entitled to claim and recover the full amount of reasonable medical expenses charged, based on the reasonable value of medical services rendered, including amounts written off from the bills pursuant to contractual rate reductions. See, e.g., Lindholm v. Hassan, 369 F.Supp.2d 1104, 1110 (D.S.D.2005); Mitchell v. Haldar, 883 A.2d 32, 40 (Del.2005); Hardi v. Mezzanotte, 818 A.2d 974, 985 (D.C.2003); Olariu v. Marrero, 248 Ga.App. 824, 549 S.E.2d 121, 123 (2001); Arthur v. Catour, 345 Ill.App.3d 804, 281 Ill.Dec. 243, 803 N.E.2d 647, 650 (2004); Bozeman v. Louisiana, 879 So.2d 692, 705–06 (La.2004); Wal-Mart Stores, Inc. v. Frierson, 818 So.2d 1135, 1139–40 (Miss.2002); Brown v. Van Noy, 879 S.W.2d 667, 676 (Mo.App.1994); Robinson, 828

There have been several cases that have adopted the view that the plaintiff should only be allowed to recover and/or “blackboard” the amount of medical expenses actually paid as opposed to the amounts actually charged. However, this is the minority view and, as referenced by the Court of Appeals in Lopez v. Safeway Stores, Inc., 212 Ariz. 198, 129 P.3d 487 (App. 2006) application of the collateral source rule as it currently stands is consistent with the purpose of compensatory damages which is to make the tort victim whole.

“The injured party should be made whole by the tortfeasor, not by a combination of compensation from the tortfeasor and collateral sources. The wrongdoer cannot reap the benefit of a contract for which the wrongdoer paid no compensation. The extent of [defendant's] liability to [plaintiff] cannot be “measured by deducting financial benefits received by [plaintiff] from collateral sources.” In other words, “it is the tortfeasor's responsibility to compensate for all harm that he [or she] causes, not confined to the net loss that the injured party receives.” Restatement (Second) of Torts § 920A cmt. b (1977). To the extent that such a result provides a windfall to the injured party, we have previously recognized that consequence and concluded that the victim of the wrong rather than the wrongdoer should receive the windfall. Id.