1. Does your jurisdiction maintain a collateral source rule?

Yes. The collateral source rule “excludes evidence of benefits received by a plaintiff from a source collateral to the defendant” and the plaintiff has “a substantive right” not to have his recovery so reduced if indeed he recovered from insurance for which he paid.” Younts v. Baldor Elec. Co., 310 Ark. 86, 88, 90, 832 S.W.2d 832, 834, 835 (1992); AMI Civil (2016 ed.) 2215.

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

Yes. The rule states that gratuitous or discounted medical services are a collateral source not to be considered in assessing the damages due a personal injury plaintiff. Montgomery Ward & Co., Inc. v. Anderson, 334 Ark. 561, 976 S.W.2d 382 (1998); AMI Civil (2016 ed.) 2204.

Briefly, the Civil Justice Reform Act was enacted in 2003 and limited evidence of medical care and treatment-related damages to those costs actually paid on behalf of the plaintiff (or those unpaid bills for which the plaintiff or any third party was legally responsible). Ark. Code Ann. § 16-55-212(b). However, in 2009, the Arkansas Supreme Court ruled that the Act's medical-costs provision was unconstitutional; accordingly, medical bills are no longer limited to those costs actually paid on behalf of the plaintiff. Johnson v. Rockwell Automation, Inc., 2009 Ark. 241, 308 S.W.3d 135 (2009)(holding that because medical-costs provision is a rule of evidence, it violates separation of powers doctrine and power to dictate procedure and rules of evidence that is granted to the courts). Presumably, the Arkansas courts regressed to the former rule which is mentioned above.

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

Yes. A plaintiff seeking to recover medical expenses must prove those expenses were reasonable and necessary. Bell v. Stafford, 284 Ark. 196, 198, 680 S.W.2d 700, 702 (1984); AMI Civil (2016 ed.) 2204. It is well settled that the reasonableness and necessity of medical expenses are questions of fact, and damages will only be allowed if the plaintiff provides a sufficient evidentiary foundation. Young v. Barbera, 366 Ark. 120, 233 S.W.3d 651; Roy v. Atkins, 276 Ark. 586, 637 S.W.2d 598 (1982); Blissett v. Frisby, 249 Ark. 235, 458 S.W.2d 735 (1970). “Medical Testimony is not always necessary to prove reasonableness and necessity, which may be
established in some cases by testimony of a non-expert witness such as the injured party.” AMI Civil (2016 ed.) 2204; Kay v. Martin, 300 Ark. 193, 196, 777 S.W.2d 859, 861 (1989).

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

Absent a lien, no. Arkansas has adopted the Made Whole Doctrine stating that an insurer is not entitled to subrogation unless the insured has been made whole for his loss. Shelter Mut. Ins. Co. v. Bough, 310 Ark. 21, 28, 834 S.W.2d 637, 641 (1992); Franklin v. Healthsource of Arkansas, 328 Ark. 163, 169, 942 S.W.2d 837, 840 (1997); Riley v. State Farm Mut. Ins. Co., 2011 Ark. 256, 2, 381 S.W.3d 840, 843 (2011).

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 plaintiff can “blackboard” their entire damages. The law in Arkansas permits a claimant to introduce and “blackboard” medical costs that have been billed, regardless of whether or not plaintiff has paid them or will ever have to pay them. The Arkansas legislature passed the Civil Justice Reform Act of 2003 which included a provision that would permit plaintiffs to recover only those medical costs that had actually been paid. Ark. Code Ann. § 16-55-212(b). However, in 2009, the Arkansas Supreme Court found this provision of the Civil Justice Reform act to be unconstitutional. Johnson v. Rockwell Automation, Inc., 2009 Ark. 241, 308 S.W.3d 135 (2009).