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

   Yes. Colorado has both a statutory and common law collateral source rule, but the common law rule prevails over the statutory rule for practical purposes. The statutory collateral source rule, C.R.S. § 13-21-111.6, states as follows:

   In any action by any person or his legal representative to recover damages for a tort resulting in death or injury to person or property, the court, after the finder of fact has returned its verdict stating the amount of damages to be awarded, shall reduce the amount of the verdict by the amount by which such person, his estate, or his personal representative has been or will be wholly or partially indemnified or compensated for his loss by any other person, corporation, insurance company, or fund in relation to the injury, damage, or death sustained; except that the verdict shall not be reduced by the amount by which such person, his estate, or his personal representative has been or will be wholly or partially indemnified or compensated by a benefit paid as a result of a contract entered into and paid for by or on behalf of such person. The court shall enter judgment on such reduced amount.

   The Colorado Supreme Court has held that this statute has not “swept away” the common law collateral source rule and only requires post-verdict offset of certain compensation received by the plaintiff. No offset is permitted if benefits arise from a contract entered into on the plaintiff’s behalf. *Volunteers of Am. Colo. Branch v. Gardenswartz*, 242 P.3d 1080, 1084 (Colo. 2010). A tortfeasor is not entitled to offset proceeds resulting from a plaintiff’s purchase of insurance. *Id.*

2. **Does your jurisdiction allow plaintiffs to recover expenses that were written off by the healthcare provider?**

   Yes, especially if written off in the context of an insurance agreement. In *VOA v. Gardenswartz*, 242 P.3d at 1085, the Colorado Supreme Court found that the healthcare provider gave up the right to seek compensation from a plaintiff for amounts billed, due to the contractual language of the agreement with the healthcare insurer. *Id.* The Court noted that write offs required of the plaintiff’s providers arose out of contractual agreements between plaintiff and an insurance company that negotiated the discounts. If plaintiff had not been insured, the write offs would not have been applied to his medical bills and he would have been responsible for them. The write offs were “as much of a benefit for which a plaintiff paid consideration as are the actual cash payments by his health insurance carrier to the health care providers.” *Id.*

3. **Must a plaintiff prove that medical services were reasonable and necessary to**
recover?

Yes. In a personal injury action, the correct measure of damages is the necessary and reasonable value of the medical services rendered. *Wal-Mart Stores, Inc. v. Crossgrove*, 276 P.3d 562, 566 (Colo. 2012) *citing Kendall v. Hargrave*, 349 P.2d 993, 994 (Colo. 1960). For all practical purposes, this is a low threshold and is easily met by plaintiffs, through their treating providers. A defendant may not introduce evidence, during trial or after, of what was paid toward proof of the paid amount being what is considered “reasonable.” *Id.*

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

   No, there is no case or statute in Colorado that states or suggests that a plaintiff must guarantee reimbursement to a healthcare provider if a judgment is rendered or settlement achieved. However, a defendant certainly may condition settlement on the Plaintiff reimbursing payment to health providers. Likewise, a provider may pursue an action to recover against a plaintiff that has obtained a judgment or settlement but does not pay for the services rendered.

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?)**

   The plaintiff can blackboard the billed amounts, regardless of any contractual agreement that reduces or discounts what actually is paid. The defendant may not introduce evidence of the contractual agreement, what was actually paid or the amount of the write off. *Wal-Mart v. Crossgrove*, 276 P.2d at 566; *VOA v. Gardenswartz*, 242 P.3d at 1084. We note that three justices dissented in *Wal-Mart v. Crossgrove*, a case in which the parties stipulated that $40,000 was accepted by the health care providers in full payment of all plaintiff’s medical bills in the action, but the plaintiff was nevertheless awarded (by virtue of the Colorado Supreme Court’s decision) the billed amount of $242,000 due to Colorado’s common law collateral source rule, which almost universally prohibits evidence of the “paid” amount of medical bills.