1. **Does your jurisdiction maintain a collateral source rule?**  Delaware follows a traditional collateral source rule which provides that a tort plaintiff may recover medical expenses from a tortfeasor even when the expenses have been paid by a third party (private insurance, etc.). In order to apply the collateral source rule, the source must be unrelated to the tortfeasor. *Yarrington v. Thornburg*, 205 A.2d 1 (Del. Supr. 1964). In addition, the plaintiff must have paid consideration for the collateral source. *Kerr v. Onusko*, 2004 WL 2735456 (Del. Super. 2004); *aff’d Onusko v. Kerr*, 880 A.2d 1022 (Del. Supr. 2005). Notably, in 2015 the Delaware Supreme Court held that the collateral source rule does not apply to Medicare write-offs. *Stayton v. Del. Health Corp.*, 117 A.3d 521 (Del. Supr. 2015).

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

   A plaintiff can recover for medical expenses “written off” by a healthcare provider. *Mitchell v. Haldar*, 883 A.2d 32 (Del. Supr. 2004). As noted above, however, this does not apply to Medicare write-offs. Plaintiffs are permitted to “blackboard” the full value of their medical expenses, “regardless of whether a balance is owed or a reduced rate satisfied the bill.” *Id.* at 39. Evidence of a discount or write-off (except for Medicare) is inadmissible. Additionally, a private insurance carrier’s contractual agreement with a healthcare provider to reduce or write-off certain charges has no bearing on a plaintiff’s ability to “blackboard” the full value of the expenses.

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

   In order to recover medical expenses, a plaintiff “must demonstrate that value claimed for those medical services was reasonable” and “that the need for those medical services was proximately caused by the negligence of the alleged tortfeasor.” *Id.* at 35. Generally this is accomplished through expert medical testimony.

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

   In Delaware, healthcare providers have a lien to recover costs for medical services rendered to a plaintiff. The lien is enforceable when a settlement is reached or judgment is entered. 25 Del. C. § 4303. There is no statutory requirement that a plaintiff guarantee reimbursement of a lien,
though there is a statutory requirement providing for satisfaction of existing liens out of a judgment or settlement proceeds.

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 private insurance carrier’s contractual agreement with a healthcare provider to reduce or write-off certain charges has no bearing on a plaintiff’s ability to “blackboard” the full value of the expenses.

*This section of the Compendium was prepared by an attorney not licensed in the State of Delaware. Although the attorney used his/her best efforts to set forth the current law, users of this section of the Compendium should rely solely on counsel licensed in the State of Delaware.*