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

Yes, Illinois maintains a relatively robust and traditional collateral source rule. See generally *Wills v. Foster*, 229 Ill.2d 393 (2008). The one area where the collateral source rule has been modified is in medical malpractice claims. 735 ILCS 5/2-1205. This includes a reduction of “50% of the benefits provided for lost wages or private or governmental disability income programs, which have been paid . . . and 100% of the benefits provided for medical charges, hospital charges, or nursing or caretaking charges, which have been paid.” 735 ILCS 5/2-1205.

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

Yes. The Illinois Supreme Court has clarified that Illinois is a “reasonable value” State. *Wills v. Foster*, 229 Ill.2d at 413-414 (2008) Any comment by the defendant on the billed amount versus the paid amount would run afoul with the collateral source rule. *Id.* at 413-414. As such, a plaintiff is able to claim and recover the entire billed amount, and write offs and write downs are irrelevant. *Id.*

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

Yes. *Arthur v Catour*, 216 Ill.2d 72, 81 (2005). In order to recover past medical costs a plaintiff must show that they became liable at one point to pay a sum certain amount for medical services and that the charges were reasonable for the services they received. *Barreto v. City of Waukegan*, 133 Ill.App.3d 119, 130 (2nd Dist. 1985). With respect to the reasonableness of a charge, *prima facie* evidence of reasonableness is established if a bill is introduced through testimony or otherwise, the bill reflects charges for treatment rendered, and the bill has been paid. *Baker v. Hutson*, 333 Ill.App.3d 486, 493 (5th Dist. 2002). If a past bill has not been paid, the injured party can establish reasonableness by introducing testimony from a person having knowledge of the services, the ordinary and customary charges for the same, and testifying that said charges are reasonable. *Id.*

In regard to recovering for future medical costs, a plaintiff must prove with “reasonable certainty” that future medical services will be needed to address their injuries. *Pry v. Alton & S.*
A defendant is free to attack the reasonableness of a claimed amount through cross examination and the presentation of its own witnesses. *Wills v. Foster*, 229 Ill.2d. at 418.

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

Under Illinois law, a Plaintiff must guarantee reimbursement payment to a healthcare provider if judgment is rendered or settlement achieved if the healthcare provider placed a lien on the Plaintiff’s claim. The Health Care Services Lien Act, 770 ILCS 23/1, covers healthcare liens relating to the treatment of the Plaintiff prior to judgment or settlement of the Plaintiff’s claims. *Wendling v. S. Ill. Hosp. Servs.*, 242 Ill. 2d 261, 263, 950 N.E.2d 646, 647 (2011) The Health Care Services Lien Act does not cover services rendered under the provisions of the Workers’ Compensation Act or the Workers’ Occupational Diseases Act. *Rogalla v. Christie Clinic, P.C.*, 341 Ill. App. 3d 410, 414, 794 N.E.2d 384 (2003). A lien holder can seek payment of the amount of reasonable charges that remain unpaid. 770 ILCS 23/45. Under Section 10 of the Health Care Services Lien Act, if healthcare liens exceed 40% of the sum recovered by the Plaintiff, then all the liens of health care professionals shall not exceed 20% of the verdict, judgment, award, settlement, or compromise; and all the liens of health care providers shall not exceed 20% of the verdict, judgment, award, settlement, or compromise. 770 ILCS 23/10.

Any payments made by the Illinois Department of Public Aid, Medicare, or Medicaid on behalf of the Plaintiff to a healthcare provider extinguishes the healthcare provider's right to secure a lien. Illinois law requires healthcare providers to accept payment from Medicaid, if the injured person is covered by the program. *Evanston Hospital v. Hauck*, 1 F.3d 540 (7th Cir. 1993). If Medicare pays for medical care under such circumstances, the payment is construed as a "conditional payment." 42 U.S.C. § 1395y(b)(2)(B)(i) (2012); 42 C.F.R. § 411.52 (2012). Medicare has a direct right to recover the entire amount of the bills paid from the entity responsible to make the primary payment, or alternatively from the individual or entity which received payment from the responsible party. 42 U.S.C. §1395y(b)(2)(B)(iii) (2012). If the Plaintiff is covered by a Medicare or Medicaid program and Medicare pays for their medical treatment for the accident, Medicare has the right to reimbursement from any recovery the Plaintiff receives. Medicare and Medicaid have priority in recouping funds from liable third parties. *Chi. Trust Co. v. Dept' of Pub. Aid (In re Estate of Calhoun)*, 291 Ill. App. 3d 839, 842, 684 N.E.2d 842, 844 (1997).

Medicaid may also place a lien on a recovery, but the amount of the reimbursement is more limited than Medicare. Medicaid can only assert reimbursement against the portion of the recovery which is designated for medical expenses. Any portion of the recovery for lost wages, past or future pain and suffering, or disability is excluded from this amount.
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?)

Illinois allows a plaintiff to recover medical bills based on the reasonable-value approach. *Wills v. Foster*, 229 Ill. 2d 393, 413 (2008). The reasonable-value approach states that the plaintiff may seek to recover the amount originally billed by the medical provider, therefore, Illinois plaintiffs are not limited to presenting the reduced rate the plaintiff’s private insurer actually paid. *Klesowitch v. Smith*, 2016 IL App (1st) 150414, ¶ 43. In Illinois, for a plaintiff to submit medical bills into evidence, he or she must establish proper foundation to show the reasonableness of the amounts charged in the medical bills. *Wills*, 229 Ill. 2d at 414 (citing *Arthur v. Catour*, 216 Ill. 2d 72, 81-83 (2005)). A medical bill is *prima facie* reasonable if the plaintiff enters evidence, through testimony or otherwise, that the medical bill was rendered and paid. *Arthur*, 216 Ill. 2d at 82.

If a medical bill has not been paid, a plaintiff has an opportunity to establish the reasonableness of the medical bill by introducing expert testimony. *Id*. The plaintiff must present testimony that the medical bill charges are the “usual and customary” charges for such services rendered to the plaintiff. *Id*. A plaintiff cannot solely produce medical bills, the plaintiff must establish the reasonable cost by expert testimony, similar to proving damages for services that have yet to be rendered, e.g., in the case of future medical treatments. *Id*. at 83.

Defendants are able to cross-examine any witnesses plaintiff may call to establish reasonableness, and to call its own witnesses to testify that the billed amounts do not reflect the reasonable value of the services rendered to the plaintiff. *Wills*, 229 Ill. 2d at 418. However, defendants may not “introduce evidence that the plaintiff’s medical bills were settled for a lesser amount, because to do so would undermine the collateral source rule.” *Id*. 