KENTUCKY

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1. **Does your jurisdiction maintain collateral source rules?**

   Yes, “[t]he collateral source rule has been long recognized in Kentucky.” *Schwartz v. Hasty*, 175 S.W.3d 621, 626 (Ky. Ct. App. 2005). The Kentucky Supreme Court has held that “[t]he general rule recognized in other jurisdictions is that damages recoverable for a wrong are not diminished by the fact that the injured party has been wholly or partly indemnified for his loss by insurance (to whose procurement the wrongdoer did not contribute).” *Taylor v. Jennison*, 335 S.W.2d 902, 903 (Ky. 1960).

   The Supreme Court further opined that “[w]e are convinced this rule is sound, particularly since there is no logical or legal reason why a wrongdoer should receive the benefit of insurance obtained by the injured party for his own protection. It is a collateral contractual arrangement which has no bearing upon the extent of liability of the wrongdoer.” *Id.*

   Note that in 1988 the Kentucky General Assembly attempted to abrogate the common law collateral source rule through passage of KRS § 411.188. However, that statute was declared unconstitutional under Kentucky’s Constitution in the *O’Bryan v. Hedgespeth*, 892 S.W.2d 571 (Ky. 1995).

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

   Yes. See answers to #1 and #5.

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

   Yes. In Kentucky, “the jury decides whether a plaintiff’s past medical bills were reasonable and stemmed from the injuries underlying the cause of action.” *Morgan v. Scott*, 291 S.W.3d 622, 643 (Ky. 2009). Even so, “[t]he question regarding the propriety of medical bills does not become a matter for the jury’s resolution if there is nothing in the record tending to show a dispute about the amount of those bills or their relationship to the alleged injuries underlying the action.” *Id.* Note KRS § 304.39-060(2)(b) imposes certain additional considerations in motor vehicle accident cases.
4. Must a plaintiff guarantee reimbursement payment to a healthcare provider if a judgment is rendered or a settlement achieved.

Kentucky does not have a hospital lien statute. Providers may intervene in the underlying tort action to assert and protect their right to payment of their medical expenses from the settlement or award 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 a healthcare provider have on a plaintiff’s ability to recover medical bills?)

The plaintiff would “blackboard” the full amount. A good example is provided by the Supreme Court’s opinion in Baptist Healthcare Sys., Inc. v. Miller, 177 S.W.3d 676 (Ky. 2005). That case dealt with the Medicare reimbursement agreement and whether the difference between that amount and the full billed amount constituted a collateral source. Id. at 683. The Court held that it did.

Specifically, the Supreme Court held that “it is absurd to suggest that the tortfeasor should receive a benefit from a contractual arrangement between Medicare and the health care provider. Simply because Medicare contracted with Ms. Miller's physician to provide care at a rate below usual fees does not relieve a tortfeasor from negligence or the duty to pay the reasonable value of [the plaintiff’s] medical expenses.” Id. at 683-84.

This section of the Compendium was prepared by an attorney not licensed in the State of Kentucky. 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 Kentucky.