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

   Yes. In Nebraska, the collateral source rule provides that, “…benefits received by the plaintiff from a source wholly independent of and collateral to the wrongdoer will not diminish the damages otherwise recoverable from the wrongdoer.” *Hiway 20 Terminal, Inc. v. Tri-Cty. Agri-Supply, Inc.*, 232 Neb. 763, 443 N.W.2d 872 (1989).

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

   Yes, in Nebraska, this is controlled by statute. *Neb. Rev. Stat. § 52-401* states that, “The measure of damages for medical expenses in personal injury claims shall be the private party rate, not the discounted amount.”

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

   Yes. A plaintiff who is injured as a result of the negligence of another must prove the reasonable value of medical care and supplies *reasonably needed by and actually provided to* the plaintiff. *Connelly v. City of Omaha*, 284 Neb. 131, 816 N.W.2d 742 (2012). *See also NJI2d Civ. 4.01(2).*

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

   A physician, nurse, chiropractor or hospital can perfect a lien upon a judgment or settlement if: (1) written notice is served upon the person or corporation from whom damages are claimed and (2) such written notice states the amount due and the nature of the services rendered. If a lawsuit is pending, the provider may file a notice of lien in the pending action. *See Neb. Rev. Stat. § 52-401.* At this juncture, the statute names only a physician, nurse, chiropractor or hospital, and therefore, it is somewhat unclear if the same applies to other medical providers, such as a physical therapist.

   Nebraska also recognizes equitable subrogation, but insurers are limited by the “made whole doctrine.” Under Nebraska law, an insurer may not recover under subrogation unless an insured has been *fully compensated for his injuries*. *See Blue Cross and Blue Shield of Nebraska,*
Inc. v. Dailey, 268 Neb. 733 (2004). The Court reasoned that the equitable principals surrounding equitable subrogation are to prevent double recovery. Id. An insurer cannot include a policy provision that attempts to allow for subrogation when an insured has not been fully compensated, or “made whole.” Id. Whether an insured has been “made whole” is a fact question that may need to be resolved.

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?)

In a vast majority of cases, plaintiff can “blackboard” the private party rate, pursuant to Neb. Rev. Stat. § 52-401, as discussed above. However, under Nebraska law, the medical care itself must not only be necessary, but the cost incurred for that medical care must be reasonable. See Steinauer v. Sarpy Cty., 217 Neb. 830, 353 N.W.2d 715 (1984). In certain situations, it may be possible to demonstrate that the private party rate is not a fair and reasonable measurement of plaintiff’s damages.