NORTH DAKOTA

1. Does your jurisdiction maintain a collateral source rule?

North Dakota has a collateral source statute which provides,

After an award of economic damages, the party responsible for the payment thereof is entitled to and may apply to the court for a reduction of the economic damages to the extent that the economic losses presented to the trier of fact are covered by payment from a collateral source. A “collateral source” payment is any sum from any source paid or to be paid to cover an economic loss which need not be repaid by the party recovering economic damages, but does not include life insurance, other death or retirement benefits, or any insurance or benefits purchased by the party recovering economic damages.

N.D. Cent. Code § 32-03.2-06 (1987). The North Dakota Supreme Court has held that to the extent that an insured benefits from a service benefit agreement between the insured’s health insurance carrier and health care providers, the benefit is traceable to the insurance policy and, therefore, is properly included in the personal insurance exception of this statute. Dewitz v. Emery, 508 N.W. 2d 334, 340 (N.D. 1993). The court has further held that the personal insurance exception in this section includes insurance purchased for a minor by a parent. Id. Additionally, courts have held that social security disability benefits fall within the personal insurance exception of this statute. Krein v. Indus. Co., of Wyoming, 2003 U.S. Dist. LEXIS 18760 (D.N.D. Oct. 21, 2003).

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

No North Dakota statute or case law directly addresses this issue, but it appears that an argument can be made that any write off acts as a collateral source and should be subject to N. D. Cent. Code § 32-03.2-06 (1987).

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

North Dakota does not require expert medical testimony to lay the foundation for the admission of medical bills and/or expenses into evidence. Erdmann v. Thomas, 446 N.W. 2d 245, 247 (N.D. 1989). A plaintiff’s testimony can be sufficient to establish that the medical bills were incurred as a result of an accident. Id. However, once the threshold issue of past medical expenses has been met by sworn testimony, “the question whether the medical expenses were

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

   N. D. Cent. Code § 35-18-01 provides that a hospital is entitled to a lien for the reasonable value of hospitalization services rendered to persons injured in an accident. The lien “attaches to all claims for relief, claims, demands, and judgments recovered on account of the injuries against persons or corporations liable to the injured person in tort for damages occasioned by negligence causing the injuries, and attaches to the proceeds of the settlement of such claims or demands . . . .”

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 plaintiff’s ability to recover medical bills?)**

   Under current North Dakota law, a plaintiff may recover for expenses written off by healthcare providers pursuant to the service benefit agreement between a plaintiff’s healthcare insurer and healthcare provider, as this benefit is considered to be part of the plaintiff’s insurance policy and included in the personal insurance exception of N. D. Cent. Code § 32-03.2-06. *Dewitz*, 508 N.W. 2d at 340.

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*This section of the Compendium was prepared by an attorney not licensed in the State of North Dakota. 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 North Dakota.*