1. Does your jurisdiction maintain a collateral source rule?


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

Yes. In South Carolina, a plaintiff in a personal injury action seeking damages for the cost of medical services is entitled to recover the reasonable value of those medical services, not necessarily the amount paid. Haselden v. Davis, 353 S.C. 481, 484, 579 S.E.2d 293, 295 (2003) (citing 22 Am. Jur. 2d Damages, § 198 (1988)). Thus, a plaintiff can present to the jury the total medical bills incurred, regardless of payment, Medicare reduction, and like factors. Id.; Mitchell v. Fortis Ins. Co., 385 S.C. 570, 595-96, 686 S.E.2d 176, 189 (2009) (holding the trial court did not err in permitting the jury to evaluate the value of the plaintiff’s medical care in assessing damages despite the fact that the plaintiff received the medical care for free); Covington v. George, 359 S.C. 100, 597 S.E. 2d 142 (2004)(evidence that amount hospital accepted in payment was less than what charged for its services was inadmissible under the collateral source rule).

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

Yes. In personal injury actions, the general rule is that the plaintiff may recover for the necessary and reasonable expenses caused by the injury, such as amounts necessarily incurred for medicine, medical services, hospital expense and care, and nursing. See e.g., Haselden v. Davis, 353 S.C. 481, 484, 579 S.E.2d 293, 295 (2003) (citing 22 Am. Jur. 2d Damages, § 198 (1988));

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

In the event Plaintiff has health insurance, the right of reimbursement depends on the contract with the health insurance company. Subrogation rights are available under health insurance contracts that expressly provide for it. “[A] health insurer which does not include a provision for subrogation in the accident and health policy is not entitled to subrogation. Shumpert v. Time Ins. Co., 329 S.C. 605; 496 S.E.2d 653 (Ct. App. 1998) (emphasis in original). In fact, a health provider without a contractual right of subrogation cannot even pursue equitable subrogation. “[A] health insurer which does not include a provision for subrogation in the insurance policy is not entitled to obtain subrogation through the alternative means of equitable subrogation.” Id.

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 pre-existing agreement between an insurance carrier and a healthcare provider has no impact on plaintiff’s ability to admit the full amount of his/her medical bills at trial. Plaintiff is entitled to recover the actual value of the medical services before applying any contractual reduction. Covington v. George, 359 S.C. 100, 105, 597 S.E.2d 142, 145 (2004). As a result, Plaintiff can “blackboard” what the healthcare provider billed as opposed to what the insurance carrier paid. Further, if the collateral source providing the payment to the injured party is wholly independent, the rule will be applied and the injured party’s damages will not be reduced by the payments received from the collateral source. See Powers v. Temple, 250 S.C. 149, 156 S.E.2d 759 (1967) (tortfeasor’s liability for damages not reduced by disability payments from employer); New Foundation Baptist Church v. Davis, 257 S.C. 443, 186 S.E.2d 247 (1972) (tortfeasor’s liability for damages not reduced by value of gratuitous repairs). In other words, no set-off is applied to the verdict for payments made by the insurance carrier or for reductions accepted by the healthcare provider.