1. Does your jurisdiction maintain a collateral source rule?


SDCL § 21-3-12 provides:

In any action for damages for personal injury or death alleging health care malpractice on the part of any physician, chiropractor, dentist, hospital, registered nurse, licensed practical nurse, or other practitioner of the healing arts, whether founded upon tort or contract, if it is alleged that the claimant suffered special damages by reason of such injury or death, evidence shall be admissible which is relevant to prove that any such special damages were paid for or are payable by, in whole or in part, insurance which is not subject to subrogation and which was not purchased privately, in whole or in part, by the claimant, claimant's decedent, or a member of the immediate family of claimant or claimant's decedent, or were paid for, or are payable by, in whole or in part, state or federal governmental programs not subject to subrogation.

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

Yes. However, plaintiffs may only recover the reasonable value of the medical services provided, as determined by the jury. *See Papke*, 638 N.W.2d at 635. The Supreme Court of South Dakota has refused to rule as a matter of law that the reasonable value of medical services equals the amount paid, not the amount billed, or vice versa. *Id.* Additionally, the Court has previously applied the collateral source rule to preclude defendants from entering into evidence the amounts “written off” by medical care providers because of contractual agreements with sources independent of defendants. *Id.* at 536.

3. Must a plaintiff prove medical services were reasonable or necessary in order to recover?
Yes. See Papke, 638 N.W.2d at 635 (“In South Dakota, it is well settled that plaintiffs are entitled to recover the reasonable value of their medical services, and what constitutes a reasonable value for those services is a jury question.”)

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

   There does not appear to be any case law addressing this precise question.

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 contractual agreement between an insurance carrier and healthcare provider that reduces payments appears to have no effect on a plaintiff’s ability to recover medical bills because of the applicability of the collateral source rule. See Papke, 638 N.W.2d at 530–36.

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