



THE COLLATERAL SOURCE RULE & WRITE-OFFS: WHAT IS THE TRUE VALUE OF MEDICAL SERVICES?

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Consider a personal injury case in which an injured claimant requires medical treatment for which she is billed \$189,978.63. Because the claimant has private medical insurance, the hospital accepts \$39,691.73 in satisfaction of the bill. When the individual sues for reimbursement of the medical bills, how much can she recover for the cost of her injuries? Is it the \$189,978.63 she was billed? Or is it the \$39,691.73 the hospital accepted as full payment for the treatment?

A healthcare provider often accepts a lesser amount in satisfaction of the bill pursuant to a contractual agreement between the healthcare and insurance providers, Medicare, or Medicaid. The amount beyond what is accepted in full satisfaction of the bill is considered a “write-off.” In determining the amount of damages to be presented as evidence in trial to a jury, judges are often left to decide whether to admit as evidence the higher, billed amount, or the lesser amount actually paid as the cost of services rendered. This was the precise issue addressed in a 2011 case from the California Supreme Court, *Howell v. Hamilton Meats & Provisions, Inc.*¹ After a very thorough examination of the issue, the court ultimately found the injured individual could only be compensated up to the amount of services for which she had actually paid.

THE COLLATERAL SOURCE RULE

The Collateral Source Rule (“CSR”) precludes the admission of evidence that a source external to the injured plaintiff paid for some or all of the damages the plaintiff seeks to recover. The issue when applying this rule to medical services paid by insurance companies or governmental health plans, is whether the amount “written-off” by healthcare providers is considered a collateral payment to which the Collateral Source Rule applies.

APPROACHES

State courts are utilizing two major approaches and a variety of hybrids to address this issue.

1. *Accept evidence of Billed amounts only*

Many states follow the CSR in its traditional form, permitting only evidence of the higher billed amount during a trial. The jury is not informed that the payment came from a collateral source, nor that the collateral source actually paid less than the billed amount. If she wins, the plaintiff may recover up to the higher billed amount of her medical treatment.

States that follow the Collateral Source Rule in its most traditional form do so first and foremost based on the premise that the defendant tortfeasor should not benefit from the plaintiff’s method of payment or

the fact that the Plaintiff has private insurance. Without the collateral source, plaintiff would have paid the full billed amount. The amount a defendant tortfeasor must pay as a result of his harmful conduct should not be different depending on whether the victim is insured. Unless the insured plaintiff is permitted to recover the full cost of the services, the defendant tortfeasor does not pay the full cost of his negligence.

Whether the court allows in the billed amount and plaintiff benefits from the write-off, or allows in the paid amount only so the defendant benefits from the write-off, only one party gets to benefit. In either scenario someone receives the benefit of the write-off; state that deem write offs as collateral source say that the windfall should go to the party that was wronged, not the tortfeasor.

Opponents of this position argue that prohibiting evidence of the reduced amount would create a windfall to the plaintiff because she was never responsible for the full amount (by way of the collateral source).² She should not be allowed to benefit from a non-existent debt.

States that permit evidence of the billed amount, thus allowing for recovery up to the billed amount include: CO, GA, HI, KY, MS, MO, NV, NH, NM, NC, SC, SD, VT, VI, WA, WV, WI, WY, and DC.

2. *Accept evidence of paid amounts only*

Many states have abrogated the traditional Collateral Source Rule and permit only evidence of the lower, actually paid amount during a trial while still prohibiting evidence that the payment came from a collateral source. The jury is neither informed that the healthcare provider billed a higher amount nor that a lower payment was accepted in satisfaction of a higher bill. The plaintiff may recover up to the amount actually paid for her medical treatment.

This position rests on two basic premises:

1) The write-off is not admissible as the plaintiff's damages because it was paid by no one and can be recovered by no one. To be recoverable as "expenses," monies must generally have been expended. The CSR cannot be applied to monies never paid, thus it cannot extend so far as to allow the plaintiff to recover sums no one ever paid (neither plaintiff nor the collateral source). Plaintiff should only be able to recover that amount expended on medical services, it would violate the spirit of traditional tort law to award her beyond that which she was actually required to pay.

If damages are defined as the amount which will compensate for all the detriment proximately caused by the tortfeasor, to borrow from California Civil Code, the amount the healthcare provider accepts in satisfaction of the bill is that which has compensated for the detriment caused and thus is the proper amount of damages awarded. The amount the plaintiff actually pays for the medical treatment is the plaintiff's "economic loss." This is the amount the services cost plaintiff and not an arbitrary bill that the healthcare provider never actually expects to be paid. The "[v]alue of damages the plaintiff *avoided*" has never been the measure of tort recovery.³

2) Defendant tortfeasor should only be liable for the market-value of services rendered. The "market-value" of services isn't the amount billed but the amount actually accepted by the healthcare provider because providers often overcharge and do not bill the actual amount in order to compensate for the uninsured. Hospitals have been known to charge \$15 for an aspirin, which is hardly market-value.

The discounted amount is a result of negotiations for the healthcare provider's business and commercial interest, and not intended as a benefit to an individual plain-

tiff, but rather as a benefit to the entire PPO membership for a variety of services. The amount the provider accepts for its services seems to be an implicit statement of value.

States that only permit evidence of the paid amount in every scenario, thus allowing for recovery only up to the paid amount include: AR, CA, OK, and TX.⁴

A HYBRID APPROACH

In light of all these considerations, many states have chosen to create a hybrid of the two approaches. As the healthcare system stands today, the only customers paying the full bill are uninsured, self-paying private citizens. "Before managed care, hospitals billed insured and uninsured patients similarly. In 1960, 'there were no discounts; everyone paid the same rates' – usually cost plus ten percent. But as some insurers demanded deep discounting, hospitals vigorously shifted costs to patients with less clout."⁵ Many hospitals have a charge scale where the amount billed a patient is determined by the patient's income, poverty level, or whether they are receiving governmental healthcare assistance. The price of a procedure may even vary from hospital to hospital for the same individual. Because hospitals charge different rates to different customers for even the same services, an argument can be made that the true value of services is neither the amount charged nor the amount accepted, but somewhere in between. For this reason and in light of all the reasons given above, a majority of states choose to combine the best aspects of each view and create a more balanced system. While states balance these competing interests in a variety of ways, there are three main hybrid approaches.

Because plausible arguments can be made that both amounts are the cost of services (or conversely, neither is), some states permit evidence of both the full billed amount and the reduced paid amount to permit the finder of fact to decide. Some states also permit evidence of premiums paid to secure the write-off benefit, or evidence that the Collateral Source has subrogation claim rights.

States that follow this approach include: AL, IN, IA, KS, OH, PA, RI, and TN.

A large number of states permit only evidence of the billed amount during trial, but reduce the award once the verdict is returned. Some courts do so automatically and others simply allow for a post-verdict motion for reduction where the judge decides. This approach balances the need for

the Collateral Source Rule with the recognition that the amount of the full bill is likely higher than market value.

States that follow this approach include: (billed amount + *post-verdict* reduction) AK, CT, FL, ID, IL, ME, MD, MA, MI, MN, MT, NE, NJ, NY, ND, OR, and UT.

A number of other states have an entirely separate rule for dealing with plaintiffs whose collateral sources are public, such as Medicare or Medicaid. Because these programs are funded by the taxpayer, they are not wholly collateral to the defendant, which makes their payments not subject to the CSR. Additionally, plaintiffs pay little if anything to receive the benefits accrued from Medicare or Medicaid.

States that follow this approach include: (billed amount + *post-verdict* reduction) AZ, KS, DE, LA, MI, MT, NE, and RI.

CONCLUSION

Knowing what approach your jurisdiction has adopted can make a significant difference in evaluating exposure for trial or in accurately advising your client of settlement value. If a Plaintiff has the luxury of presenting a minimum of \$189,000 in medical bills in a case where \$39,000 was accepted by the provider as full payment, why would she ever take less than \$189,000 in settlement? In venues where there is uncertainty or a lack of consistency applied among judges, an early inquiry or motion in limine should be attempted to gain clarity in advance of settlement negotiations and trial. It pays to be aware of what your jurisdiction does.

This article could not be written without the assistance and input of Bonnie Blumert, Law Clerk at Pierce Couch Hendrickson Baysinger & Green.



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¹ *Howell v. Hamilton Meats & Provisions, Inc.* 52 Cal.4th 541, 257 P.3d 1130 (2011).

² *Hanif v. Hous. Auth.*, 200 Cal. App. 3d 635, 246 Cal. Rptr. 192 (Ct. App. 1988).

³ *Hamilton Meats*, 52 Cal.4th at 564, 257 P.3d at 1144.

⁴ 12 O.S. §3009.1 (2011) for cases filed after Nov. 1, 2011.

⁵ Mark A. Hall & Carl Schneider, *Patients As Consumers: Courts, Contracts, and the New Medical Marketplace*, 106 Mich. L.Rev. 643, 663 (2008).

50-STATE SURVEY COLLATERAL SOURCE RULE & WRITE-OFFS

BLUE STATES: PAID EVIDENCE ONLY

RED STATES: BILLED EVIDENCE ONLY

PURPLE STATES: HYBRID APPROACH

STATE	PRIVATE INSURANCE		MEDICARE/MEDICAID		AUTHORITY + NOTES
	MAXIMUM RECOVERY	EVIDENCE ACCEPTED	MAXIMUM RECOVERY	EVIDENCE ACCEPTED	
ALABAMA	Billed	Billed, paid & premiums	Billed	Billed, paid & premiums	Ala. Code §§ 12-21-45, 6-5-22: essentially circumventing the need for a "billed v paid" distinction. <i>also admissible</i> : Plaintiff's obligation to repay Collateral Source
ALASKA	Billed + post-verdict reduction	Billed (implied)	Billed + post-verdict reduction	Billed	Alaska Stat. § 9.17.070. , Alaska Stat. § 9.55.548: limits damages to amounts exceeding that already paid by a collateral source in MedMal cases (except for CS in the form of death benefits and fed programs where subrogation is required by law). <i>Reid v. Williams</i> , 964 P.2d 453, 456 (Alaska 1998). <i>Jones v. Bowie Industries, Inc.</i> , 282 P.3d 316 (Alaska 2012).
ARIZONA	Billed	MedMal: Billed, paid, & premiums Other: Billed	Billed	MedMal: Billed, paid, & premiums Other: Billed	<i>Lopez v. Safeway Stores, Inc.</i> , 129 P.3d 487, 496 (Ariz. 2006). A write-off is considered a collateral source.
ARKANSAS	Paid	Paid	Paid	Paid	Ark. Code § 16-55-212(b).
CALIFORNIA	Paid	Paid	Paid	Paid	Insurance : <i>Howell v. Hamilton Meats & Provisions, Inc.</i> , 52 Cal. 4th 541, 550, 257 P.3d 1130, 1134 (2011), reh'g denied (Nov. 2, 2011). Medicare/caid : <i>Hanif v. Hous. Auth.</i> , 200 Cal. App. 3d 635, 639, 246 Cal. Rptr. 192, 194 (Ct. App. 1988).
COLORADO	Billed	Billed	Billed	Billed	Colo. Rev. Stat. § 13-21-111.6 (2008) allows a reduction of the verdict by the amount paid by the CS EXCEPT where the payments arose from contractual obligations intended to benefit the injured party. <i>Barnett v. American Family Mut. Ins. Co.</i> , 843 P.2d 1302, 1309 (Colo. 1993). <i>Crossgrove v. Wal-Mart Stores, Inc.</i> , 280 P.3d 29 (Colo. Ct. App. 2010) aff'd, 2012 CO 31, 276 P.3d 562 (Colo. 2012).
CONNECTICUT	Billed + post-verdict reduction	Billed	Billed + post-verdict reduction	Billed	<i>Hernandez v. Marquez</i> , 377482, 2004 WL 113616 (Conn. Super. Ct. Jan. 5, 2004). Conn. Gen. Stat. Ann. § 52-225 (West) – recovery is reduced post-verdict by the total amount of collateral sources paid minus premiums paid for the benefit.
DELAWARE	Billed	Billed	MedMal: Post-verdict reduction Other: Billed	Billed	<i>Mitchell v. Haldar</i> 883 A.2d 32 (Del. 2005). Del. Code Ann. tit. 18 § 6862.
FLORIDA	Billed + post-verdict reduction	Billed	Billed	Billed	Under Fla. Stat. § 768.76(1) (2008): the write-off is a collateral source. REDUCTION: by the amount contributed by the CS less the cost of consideration for that benefit. Note: no reduction for Medicare/Medicaid/Workers' Comp/gov programs because the Federal government has a right to subrogation claims.
GEORGIA	Billed	Billed	Billed	Billed	Ga. Code Ann., § 51-12-1 – CSR is applicable in tort cases, but not applicable in breach of contract cases: <i>Amalgamated Transit Union Local 1324 v. Roberts</i> , 263 Ga. 405, 434 S.E.2d 450 (1993). <i>Olariu v. Marrero</i> , 549 S.E.2d 121 (Ga. 2001) A write-off is a collateral source (adhering to the traditional CSR).
HAWAII	Billed	Billed	Billed	Billed	Traditional CSR: <i>Bynum v. Magno</i> , 101 P.3d 1149 (Hawaii 2004).
IDAHO	Billed + post-verdict reduction	Billed	Billed + post-verdict reduction	Billed	Idaho Code Ann § 6-1606 (2008). <i>Dyett v. McKinley</i> , 81 P.3d 1236 (Idaho 2003).
ILLINOIS	MedMal: Billed + post-verdict reduction Other: Billed	Billed	MedMal: Billed + post-verdict reduction Other: Billed	Billed	<i>Wilson v. Hoffman Group, Inc.</i> , 546 N.E.2d 524, 530-31 (Ill. 1989). "reasonable value" of medical services is the amount billed the provider. MedMal cases : 735 Ill. Comp. Stat. § 5/2-1005 (2008). Reduction post-verdict – 50% of the benefits provided for lost wages by private or governmental disability programs, 100% of the benefits provided for medical/hospital/nursing or caretaking charges (BUT NOT for benefits where there is a right of subrogation, or where the reduction would exceed 50% of the award). Done by Application for Reduction w/in 30 days of the judgment
INDIANA	Billed	Billed & paid	Billed	Billed & paid	<i>Shirley v. Russell</i> , 663 N.E.2d 532 (Ind. 1996); <i>Stanley v. Walker</i> , 906 N.E.2d 852 (Ind. 2009); Ind. Code § 34-44-1-1 (2008). The CSR does not bar evidence that a lesser amount was accepted by a medical provider, but evidence that payment came from a third-party is INADMISSIBLE. The CSR does NOT apply to write-offs because they are not payments. Inadmissible evidence for Personal Injury/Wrongful death actions: payments of life insurance or death benefits, insurance benefits for which plaintiff or his family paid for directly, and <i>payments made by the state/US or its agencies</i> .

STATE	PRIVATE INSURANCE		MEDICARE/MEDICAID		AUTHORITY + NOTES
	MAXIMUM RECOVERY	EVIDENCE ACCEPTED	MAXIMUM RECOVERY	EVIDENCE ACCEPTED	
IOWA	Billed	Billed, paid & premiums	Billed	Billed, paid & premiums	Plaintiff is entitled to reasonable value of services and can show this through billed and paid amounts, and expert witness testimony as to reasonableness. <i>Pexa v. Auto Owners Ins. Co.</i> , 686 N.W.2d 150 (Iowa 2004) Iowa Code § 668.14. Iowa Code § 147.136: MED MAL Cases – prohibits an award that includes any losses replaced or indemnified by insurance or gov/employment benefit programs.
KANSAS	Billed	Billed & paid	Billed	Billed & paid	Follows common law CSR: Rst. 2d Torts § 920A(2). State statute ruled unconstitutional (§ 60-3802) <i>Martinez v. Milburn Enterprises, Inc.</i> , 290 Kan. 572, 233 P.3d 205 (2010). The source of the CS payment is inadmissible, but the billed & paid amounts may be used to establish reasonableness of medical services because the Write-off is not a CS.
KENTUCKY	Billed	Billed	Billed	Billed	<i>Baptist Healthcare Sys., Inc. v. Miller</i> , 177 S.W.3d 676 (Ky. 2005). (no mention of write-offs specifically).
LOUISIANA	Billed	Billed	Medicaid: paid, Medicare: billed	Medicaid: paid, Medicare: billed	<i>Griffin v. Louisiana Sheriff's Auto Risk Ass'n</i> , 802 So. 2d 691 (La.App. 1 Cir. 2001) writ denied, 801 So. 2d 376 (La.App. 1 Cir. 2001). Medicaid/care: because Medicaid is free for its recipients, they cannot recover the write-off, but Medicare recipients can recover it since they pay consideration for it. <i>Bozeman v. State</i> , 879 So.2d 692 (La. 2004).
MAINE	MedMal: post-verdict reduction if coll. Source <i>doesn't</i> subrogate w/in 30 days Other: Billed	Billed	MedMal: post-verdict reductions for Medicare/caid and Soc. Sec. if Def makes Pf whole for any subrogation claims Other: Billed	Billed	Professional negligence case: post-verdict reduction by the amount paid by a CS if the source has NOT exercised its subrogation rights w/in 30 days after notice of the verdict. Reductions are taken for Medicare/Medicaid, Social Security (provided that the Def. makes the plaintiff whole for any related subrogation claims.) Me. Rev. Stat. Ann. tit. 24, § 2906(2) (2008). <i>Barday v. Donnelly</i> , CV-04-508, 2006 WL 381876 (Me. Super. Jan. 27, 2006).
MARYLAND	MedMal: Billed + post-verdict reduction motion Other: Billed	Billed + evidence of reasonableness	MedMal: Billed + post-verdict reduction motion Other: Billed	Billed + evidence of reasonableness	Evidence of CS payments admissible to show malingering or an exaggeration of an injury, if alleged. Plaintiffs are entitled to the "reasonable value" of medical services, and the court hasn't said which amount that is, but it has said that neither amount properly establishes the value. The plaintiff must offer some evidence that the amount charged was fair and reasonable." See, e.g., <i>Simco Sales Service v. Schweigman</i> , 205 A.2d 245, 249 (Md. 1964) (plaintiff satisfied burden where hospital's director of admissions and accounts testified that the hospital charges were fair and reasonable and were the customary charges made by the hospital for such services). Md. Code Ann., Cts. & Jud. Proc. § 10-104(e)(1) (West 2008). (Damages claims under \$25,000 do not need supporting evidence of reasonableness.) <i>Brethren Mut. Ins. Co. v. Suchoza</i> , 212 Md. App. 43, 66 A.3d 1073, 1076 (2013)
MASSACHUSETTS	MedMal: mandatory post-verdict reduction Other: Billed	Billed	MedMal: mandatory post-verdict reduction Other: Billed	Billed	Healthcare liability claims: mandatory post-verdict reduction by the amount paid by a CS, off-set by amount of premiums/consideration paid. Mass. Gen. Laws ch. 231, § 60G(a) (2008). Medicaid Write-offs ARE payments. and are "not a proper element of damages in a malpractice action." <i>Sylvestre v. Martin</i> , SUCV2003-05988, 2008 WL 82631 (Mass. Super. Jan. 4, 2008).
MICHIGAN	Billed + Mandatory post-verdict reduction less premiums paid	Billed	Medicaid: billed Medicare: billed + post-verdict reduction	Billed	Mich. Comp. Laws § 600.6303 (2008). Medicaid payments are not a collateral source. See <i>Shinholster v. Annapolis Hosp.</i> , 660 N.W.2d 361, 372-73 (Mich App. 2003), <i>aff'd in part rev'd in part</i> 671 N.W.2d 539 (Mich 2004). A write-off "has not been paid, nor is it payable, such that it is not a collateral source." <i>Detary v. Advantage Health Physicians, PC</i> , 308179, 2012 WL 6035024 (Mich. Ct. App. Nov. 29, 2012) appeal denied, 493 Mich. 970, 829 N.W.2d 862 (2013).
MINNESOTA	Billed + post-verdict reduction	Billed	Billed + post-verdict reduction	Billed	<i>Swanson v. Brewster</i> , 784 N.W.2d 264 Write-offs are collateral sources and must be deducted by trial court from a jury award. Minn. Stat. Ann. § 548.251 (West). CSR still applies, but amount paid by CS is reduced from verdict.
MISSISSIPPI	Billed	Billed	Billed	Billed	Medicare/caid: <i>Robinson Property Group, L.P. v. Mitchell</i> , 7 So.3d 240 (Miss. 2009). <i>Wal-Mart Stores, Inc. v. Frierson</i> , 818 So. 2d 1135, 1139 (Miss. 2002). (paid amount admissible for impeachment purposes only)
MISSOURI	Billed	Billed	Billed	Billed	<i>Washington by Washington v. Barnes Hosp.</i> , 897 S.W.2d 611, 619 (Mo. 1995), <i>Smith v. Shaw</i> , 159 S.W.3d 830, 832 (Mo. 2005). CS payments admissible when plaintiff makes financial condition an issue.
MONTANA	Personal Injury: post-verdict reduction Other: Billed	Billed	Billed	Billed, but not yet specifically addressed	Mont. Code Ann. 27-1-308, when award >\$50,000 and Plaintiff is fully compensated for damages, recovery is reduced by CS payments that are not subject to subrogation (less premiums Plaintiff paid for 5 previous years). <i>Fretts v. GT Advanced Technologies Corp.</i> , CV 11-160-M-CWM, 2013 WL 816684 (D. Mont. Mar. 5, 2013). Medicare/caid remains unaddressed. <i>Elliott v. Goulet</i> , 2012 WL 8530906 (Mont. Dist.) (Trial Order).
NEBRASKA	Billed + post-verdict reduction	Billed	Billed	Billed	Neb. Rev. Stat. 44-2819 (2008), bodily injury or wrongful death cases: evidence of medical reimbursement insurance is inadmissible. reduction by amt of nonrefundable medical reimbursement insurance minus premiums paid. Medicare/caid payments: excluded from the statute and covered by traditional CSR.
NEVADA	Billed	Billed (but worker's comp benefits may be admissible)	Billed	Billed	Write-offs are collateral sources. <i>Tri-County Equip. & Leasing v. Klinko</i> , 286 P.3d 593 (Nev.2012) (Gibbons, J. concurring). <i>Alexander v. Wal-Mart Stores, Inc.</i> , 2:11-CV-752 JCM PAL, 2013 WL 427132 (D. Nev. Feb. 1, 2013).
NEW HAMPSHIRE	Billed	Billed	Billed	Billed	<i>Carson v. Maurer</i> , 424 A.2d 825 (N.H. 1980), overruled by <i>Community Resources for Justice, Inc. v. City of Manchester</i> , 154 N.H. 748 (2007) on other grounds.
NEW JERSEY	Billed + post-verdict reduction	Billed	Billed	Billed	N.J. Stat § 2A: 15-97 – Verdict reduced by amount of CS payment (other than workers' comp and life insurance) less premiums paid. <i>Perreira v. Rediger</i> , 778 A.2d 429 (N.J. 2001). <i>Cockerline v. Menendez</i> , 411 N.J. Super. 596, 988 A.2d 575, (App. Div. 2010).
NEW MEXICO	Billed	Billed	Billed	Billed	<i>Summit Properties, Inc. v. Pub. Serv. Co. of New Mexico</i> , 2005-NMCA-090, 138 N.M. 208, 118 P.3d 716.

STATE	PRIVATE INSURANCE		MEDICARE/MEDICAID		AUTHORITY + NOTES
	MAXIMUM RECOVERY	EVIDENCE ACCEPTED	MAXIMUM RECOVERY	EVIDENCE ACCEPTED	
NEW YORK	Billed + post-verdict reduction	Billed	Billed + post-verdict reduction	Billed	N.Y. C.P.L.R. LAW § 4545 (McKinney 2008). 4545(a): MedMal: evidence admissible of indemnification from a CS, verdict reduced accordingly (minus amount of premiums paid for past 2 years). 4545(b): actions against a public employer for PI/wrongful death – evidence admissible of CS payment, but not CSes that are entitled to liens against recovery, to reduce verdict accordingly (minus premiums). 4545(c): PI/ injury to property/wrongful death – evidence admissible of CS payment, but not CSes that are entitled to liens against recovery, to reduce verdict accordingly (minus 2 yrs of premiums + amt of maintaining such benefits). 4545(d): charitable contributions – are not considered collateral sources, inadmissible to reduce award
NORTH CAROLINA	Billed	Billed	Billed	Billed	<i>Fallis v. Watauga Med. Ctr., Inc.</i> , 132 N.C. App. 43, 510 S.E.2d 199 (1999). <i>Young v. Baltimore & O. R. Co.</i> , 266 N.C. 458, 463, 146 S.E.2d 441, 444 (1966).
NORTH DAKOTA	Billed + post-verdict reduction	Billed	Billed + post-verdict reduction	Billed	<i>N.D. Cent. Code Ann.</i> § 32-03.2-06 (West).
OHIO	Billed	Billed & paid (if no subrogation right) + premiums paid	Billed	Billed & paid (if no subrogation right) + premiums paid	<i>Ohio Rev. Code Ann.</i> § 2315.20 (West 2008). <i>Robinson v. Bates</i> , 112 Ohio St. 3d 17, 857 N.E.2d 1195 (2006).
OKLAHOMA	Paid	Paid	Paid	Paid	12 O.S. § 3009.1 (2011). Cases filed pre-Nov 1., 2011: no precedent, <i>Brown v. USA Truck, Inc.</i> , 2013 WL 653195 (W.D. Okla. 2013).
OREGON	Billed + post-verdict reduction MOTION	Billed	Billed + post-verdict reduction MOTION	Billed	Write-offs are collateral source payments. Or. Rev. Stat. Ann. § 31.580 (West). <i>White v. Jubitz Corp.</i> , 219 Or. App. 62, 182 P.3d 215 (2008) aff'd, 347 Or. 212, 219 P.3d 566 (2009). <i>Cohens v. McGee</i> , 219 Or. App. 78, 180 P.3d 1240, 1241 (2008).
PENNSYLVANIA	MedMal: paid, Other: billed	MedMal: paid, Other: billed	MedMal: paid, Other: billed	MedMal: paid, Other: billed	<i>Nigra v. Walsh</i> , 2002 PA Super 113, 797 A.2d 353 (2002). CSR does not apply to Write-Offs in MedMal : <i>Moorhead v. Crozer Chester Medical Center</i> , 564 Pa. 156, 765 A.2d 786 (2001) (abrogated on other grounds). 40 P.S. § 1303.508: Subrogation right eliminated in certain instances.
RHODE ISLAND	MedMal: Billed Other: billed	MedMal: Billed & paid & premiums Other: billed	Billed	Billed	Trial courts split. Some have found <i>R.I. Gen. Laws Ann.</i> § 9-19-34.1 (West) unconstitutional. <i>Maguire v. Licht, C.A.</i> PC1999-3391, 2001 WL 1006060 (R.I. Super. Aug. 16, 2001); <i>Esposito v. O'Hair</i> , 886 A.2d 1197 (R.I. 2005). Medicare/caid : Jacqueline G. Kelley, Esq., Stephen P. Sheehan, Esq., <i>Collateral Source Rule Applies to Medicaid Without Exception for Medical Malpractice Cases</i> , R.I. B.J., November/December 2006, at 17. In trial, jury instructed to reduce award by any sum equal to the difference between what plaintiff contributed and what it received from collateral source (if CS evidence is introduced).
SOUTH CAROLINA	Billed	Billed	Billed	Billed	<i>Covington v. George</i> , 597 S.E.2d 142, 144 (S.C. 2004).
SOUTH DAKOTA	Billed	Billed	Billed	Billed	<i>Cruz v. Goth</i> , 2009 S.D. 19, 763 N.W.2d 810. <i>Papke v. Harbert</i> , 2007 S.D. 87, 738 N.W.2d 510, 530. Evidence of Write-offs is not permissible: Plaintiff is entitled to recover the reasonable value of medical services which is a question for the jury. Ruling that either amount is the reasonable value makes the other value inherently unreasonable. SDCL § 21-3-12, MedMal exception: evidence that special damages were paid for or are payable by insurance (not subject to subrogation or that was purchased privately) or state/fed gov't programs (not subject to subrogation).
TENNESSEE	MedMal: paid Other: billed	MedMal: paid Other: billed	MedMal: paid Other: billed	MedMal: paid Other: billed	<i>Tenn. Code Ann.</i> § 29-26-119 (2008). A Plaintiff may recover unsubrogated moneys. <i>Cassie Nalawagan v. Hai v. Dang</i> , No. 06–2745–STA–dkv, 2010 WL 4340797, at *2–*3 (W.D.Tenn. Oct.27, 2010). <i>Calaway ex rel. Calaway v. Schucker</i> , 2:02-CV-02715-STA, 2013 WL 960495 (W.D. Tenn. Mar. 12, 2013).
TEXAS	Paid	Paid	Paid	Paid	<i>Tex. Civ. Prac. & Rem. Code Ann.</i> § 41.0105 (West). <i>Haygood v. De Escabedo</i> , 356 S.W.3d 390 (Tex. 2011), reh'g denied (Jan. 27, 2012).
UTAH	MedMal: Billed + post-verdict reduction for unsubrogated moneys Other: billed	Evidence to establish reasonableness	MedMal: Billed + post-verdict reduction for unsubrogated moneys Other: billed	Evidence to establish reasonableness	Requested damages need only be “reasonable and necessary.” <i>Gorostieta v. Parkinson</i> , 17 P.3d 1110 (Utah 2000); <i>Hansen v. Mountain Fuel Supply Co.</i> , 858 P.2d 970, 981 (Utah 1993). <i>Utah Code Ann.</i> § 78B-3-405 (West). What evidence is admissible to establish “reasonable and necessary” has yet to be determined, but a district court held in 2012 that only the billed amount is permitted. <i>Sanchez v. Cache Valley Specialty Hosp., LLC</i> , 2012 WL 6057104 (Utah Dist. Ct.) (Trial Order).
VERMONT	Billed	Billed	Billed	Billed	<i>Windsor School Dist. v. State</i> , 956 A.2d 528 (Vt. 2008).
VIRGINIA	Billed	Billed	Billed PAID in federal court	Billed PAID in federal court	<i>Acuar v. Letourneau</i> , 531 S.E.2d 316, 320 (Va. 2000); <i>Va. Code Ann.</i> § 8.01-35 (2008). Write-offs are akin to payments. FEDERAL COURT: The collateral source rule does not apply to the illusory “charge” of \$96,500.91 since that amount was not paid by any collateral source. See <i>McAmis v. Wallace</i> , 980 F. Supp. 181 (W.D. Va. 1997).
WASHINGTON	Billed	Billed	Billed	Billed	<i>Diaz v. State</i> , 175 Wash. 2d 457, 285 P.3d 873 (2012) preempting RCWA 7.70.080 (2006).
WEST VIRGINIA	Billed	Billed	Billed	Billed	<i>Keesee v. General Refuse, Inc.</i> , 604 S.E.2d 449, 452 (W.Va. 2004). Case law does not indicate that the court has evaluated the specific issue of writeoffs and their implication under the CSR. <i>State Farm Mut. Auto. Ins. Co. v. Schatken</i> , 230 W. Va. 201, 737 S.E.2d 229, 237 (2012).
WISCONSIN	Billed	Billed	Billed	Billed	<i>Leitinger v. DBart, Inc.</i> , 736 N.W.2d 1 (Wis. 2007).
WYOMING	Billed	Billed	Billed	Billed	<i>Garnick v. Teton County School Dist. No. 1</i> , 39 P.3d 1034, 1041 (Wyo. 2002).
WASHINGTON D.C.	Billed	Billed	Billed	Billed	<i>Hardi v. Mezzanotte</i> , 818 A.2d 974, 984 (D.C. 2003); <i>Calva-Cerqueira v. United States</i> , 281 F.Supp.2d 279, 295 (D.D.C. 2003) dismissed, 04-5005, 2004 WL 2915332 (D.C. Cir. Dec. 16, 2004).