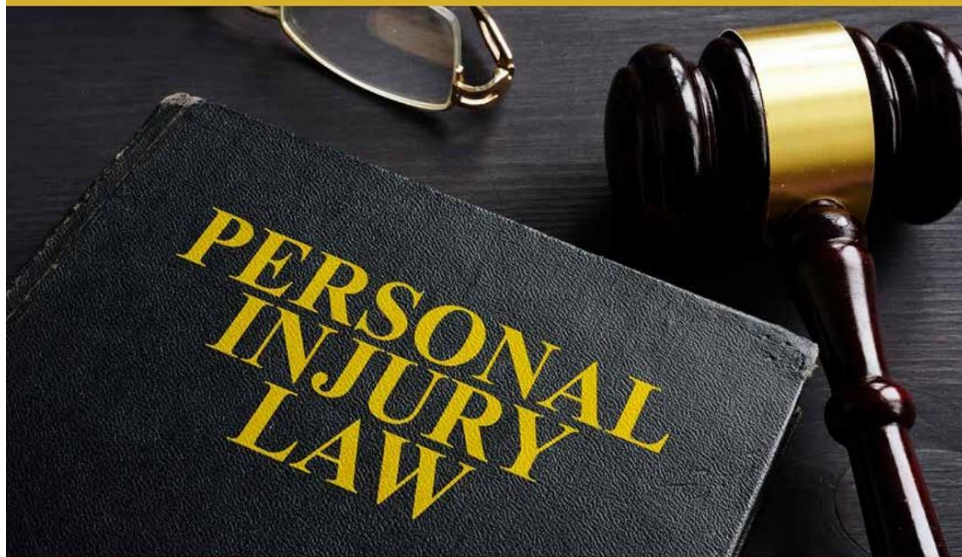




COLLATERAL
SOURCE RULE &
WRITE-OFFS

a State-by-State Analysis

Compendium of Law



SUMMER 2019

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50 State Survey: Collateral Source Rule & Write-Offs (2019)

Red: billed evidence only

Purple: 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 2016 WL 4493586, <u>Magrinat v. Maddox</u> : plaintiff entitled to recover the amount of the medical bill for which he was liable, not simply the amount for which doctor agreed to sell the debt to third party.
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). <u>Reid v. Williams</u> , 964 P.2d 453, 456 (Alaska 1998). <u>Jones v. Bowie Industries, Inc.</u> , 282 P.3d 316 (Alaska 2012). 2013 WL 3177834, <u>American President Lines, LTD v. Marine Mechanical Inc.</u> : the calculation of damages requires a process by which the final award id calculated based on the amount of the collateral benefit received and the amount the claimant paid to secure such a benefit; only applies to tort actions and not contract damages.
Arizona	Billed	MedMal: Billed, paid, and premiums Other: Billed	billed	MedMal: Billed, paid, and premiums Other: Billed	<u>Lopez v. Safeway Stores, Inc.</u> , 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). Ark. Code 16-212(b) held unconstitutional by <u>Johnson v. Rockwell Automation Inc.</u> , (2009 ARK 241) for violation of separation of powers-limits damages.

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					<p>16-114-208 Damages statute also held unconstitutional by <u>McMullin v. U.S.</u> (515 F.Supp.2d 904); trial court must exclude evidence of payments received by an injured party from sources collateral to the wrongdoer, such as private insurance or government benefits.</p> <p>2015 WL 11108888, <u>Finley v. Evans</u>: The parties may argue their competing theories of damages to the jury, with the jury ultimately determining the proper measure of damages that, from a consideration of all the evidence, would fairly and reasonably compensate plaintiff for her alleged injuries, should she establish liability and recover.</p>
California	Paid	paid	Paid	Paid	<p>Insurance: <u>Howell v. Hamilton Meats & Provisions, Inc.</u>, 52 Cal. 4th 541, 550, 257 P.3d 1130, 1134 (2011), reh'g denied (Nov. 2, 2011). Medicare/caid: <u>Hanif v. Hous. Auth.</u>, 200 Cal. App. 3d 635, 639, 246 Cal. Rptr. 192, 194 (Ct. App. 1988).</p>
Colorado	Billed	Billed	Billed	billed	<p>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. <u>Barnett v. American Family Mut. Ins. Co.</u>, 843 P.2d 1302, 1309 (Colo. 1993). <u>Crossgrove v. Wal-Mart Stores, Inc.</u>, 280 P.3d 29 (Colo. Ct. App. 2010) <u>aff'd</u>, 2012 CO 31, 276 P.3d 562 (Colo. 2012).</p> <p><u>Smith v. Kinningham</u>, 328 P.3d 258 (2013): Alleged Medicaid benefits paid were collateral source benefits, supporting finding of inadmissibility.</p>
Connecticut	Billed + post-verdict reduction	Billed	Billed + post-verdict reduction	Billed	<p><u>Hernandez v. Marquez</u>, 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</p>

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	Maximum Recovery	Evidence Accepted	Maximum Recovery	Evidence Accepted	
Delaware	Billed	Billed	MedMal: Post-verdict reduction. Other: Billed	billed	<p><u>Mitchell v. Haldar</u> 883 A.2d 32 (Del. 2005). Del. Code Ann. tit. 18 § 6862.</p> <p><u>Smith v. Mahoney</u>, 150 A.3d 1200 (2016): collateral source rule did not apply to damages for past medical expenses beyond amount actually paid by Medicaid to medical providers.</p> <p><u>Stayton v. Delaware Health Corp.</u>, 204 WL 4782997: Unlike private insurance, participation in Medicare is involuntary. One does not freely contract for Medicare benefits the way one obtains private insurance.</p> <p><u>Sweiger v. Delaware Park, LLC</u>, 2013 WL 6662787: The collateral source rule provides that it is the tortfeasor's responsibility to compensate for the reasonable value of all harm that he or she causes and that responsibility is not confined to the net loss that the injured party receives.</p>
Florida	Billed + Post-verdict reduction	Billed	Billed	Billed	<p>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.</p> <p>Note: no reduction for Medicare/Medicaid/Workers' Comp/gov't programs if the Fed gov't has a right to subrogation claims.</p> <p>No evidence of Medicare discounts. <u>Thyssenkrupp Elevator Corp. v. Lasky</u>, 868 So. 2d 547 (Fla. 4th DCA 2003).</p> <p>Amount of contractual discount for which no right of subrogation exists is amount of the setoff. <u>Goble v. Frohman</u>, 901 So. 2d 830 (Fla. 2005).</p> <p>Compensatory damages do not include the difference between the amount Medicare providers accepted and the amount billed. <u>Cooperative Leasing, Inc. v. Johnson</u>, 872 So. 2d 956 (Fla. 2nd DCA 2004).</p>

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	Maximum Recovery	Evidence Accepted	Maximum Recovery	Evidence Accepted	
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: <u>Amalgamated Transit Union Local 1324 v. Roberts</u> , 263 Ga. 405, 434 S.E.2d 450 (1993). <u>Olariu v. Marrero</u> , 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: <u>Bynum v. Magno</u> , 101 P.3d 1149 (Hawaii 2004).
Idaho	Billed + Post-verdict reduction	Billed	Billed + Post-verdict reduction	Billed	Idaho Code Ann § 6-1606 (2008). <u>Dyet v. McKinley</u> , 81 P.3d 1236 (Idaho 2003)- no longer good law; Abrogated by <u>Verska v. Saint Alphonsus Regional Medical Center</u> , 151 Idaho 889. <u>Joseph v. Robrahn</u> , 2015 WL 4545752: Court instructed Plaintiff to present the entirety of his medical bills and, if damages are awarded, the Court would consider the extent to which damages should be reduced by any contractual write-offs that neither Plaintiff nor any insurer was obligated to pay.
Illinois	MedMal: Billed + Post-verdict reduction. Other: Billed	Billed	MedMal: Billed + Post-verdict reduction. Other: Billed	Billed	<u>Wilson v. Hoffman Group, Inc.</u> , 546 N.E.2d 524, 530-31 (Ill. 1989). “reasonable value” of medical services is the amount billed the provider MED MAL 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.

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	Maximum Recovery	Evidence Accepted	Maximum Recovery	Evidence Accepted	
					<u>Segovia v. Romero</u> , 8 N.E.3d 581: Collateral source rule did not bar tortfeasor from seeking setoff of medical payments previously made by his insurer.
Indiana	billed	billed & paid	billed	billed & paid	<p><u>Shirley v. Russell</u>, 663 N.E.2d 532 (Ind. 1996); <u>Stanley v. Walker</u>, 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.</p> <p>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>.</p> <p>IC 34-44-1-2; <u>Patchett v. Lee</u>, 60 N.E.3d 1025: Collateral source statute permits personal-injury defendant to introduced discounted reimbursements made by government payers.</p> <p><u>Patchett v. Lee</u>, 29S04-1610-CT-549 (Ind. Oct. 21, 2016).</p> <p>In <u>Patchett v. Lee</u>, the Court extended the Stanley decision to apply to payments made through the Healthy Indiana Plan (HIP). The Court held that the rationale behind its decision in Stanley, to allow the jury to make a determination of the reasonable value of medical services, applied equally to reduced HIP reimbursements as it does to payments made through private insurance companies. The Court reasoned that the factfinder should hear evidence of the amount a medical service provider accepts as payment in full, even when the payer is a governmental healthcare program. Evidence of the amount the healthcare provider charges coupled with the discounted amount it accepts as payment in full is useful in</p>

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	Maximum Recovery	Evidence Accepted	Maximum Recovery	Evidence Accepted	
					determining the reasonable value of the services provided. By admitting both the billed and accepted amounts into evidence, Indiana courts allow juries to determine what damages are warranted in a particular case to make the plaintiff whole.
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. <u>Pexa v. Auto Owners Ins. Co.</u> , 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) <u>Martinez v. Milburn Enterprises, Inc.</u> , 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	<u>Baptist Healthcare Sys., Inc. v. Miller</u> , 177 S.W.3d 676 (Ky. 2005). (no mention of write-offs specifically).
Louisiana	Billed	Billed	Medicaid: paid, Medicare: billed	Medicaid: paid, Medicare: billed	<u>Griffin v. Louisiana Sheriff's Auto Risk Ass'n</u> , 802 So. 2d 691 (La.App. 1 Cir. 2001) <u>writ denied</u> , 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. <u>Bozeman v. State</u> , 879 So.2d 692 (La. 2004).

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State	Private Insurance		Medicare/Medicaid		Authority + Notes
	Maximum Recovery	Evidence Accepted	Maximum Recovery	Evidence Accepted	
					<u>Lockett v. UV Ins. Risk Retention Group, Inc.</u> , 180 So.3d 557 Collateral source rule applied to reduced or written-off amount of bill from healthcare provider.
Maine	MedMal: post-verdict reduction if coll. Source <i>doesn't</i> subrogate w/in 30 days Other: billed	Billed and paid (with redaction of payor identity)	MedMal: post-verdict reduction for Medicare/caid and Soc. Sec. if Def makes Pf whole for any subrogation claims Other: billed	Billed and paid (with redaction of payor identity)	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). <u>Barday v. Donnelly</u> , 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." <i>See, e.g., 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.) <u>Brethren Mut. Ins. Co. v. Suchoza</u> , 212 Md. App. 43, 66 A.3d 1073, 1076 (2013).

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State	Private Insurance		Medicare/Medicaid		Authority + Notes
	Maximum Recovery	Evidence Accepted	Maximum Recovery	Evidence Accepted	
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.” <u>Sylvestre v. Martin</u> , 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 <u>Shinholster v. Annapolis Hosp.</u> , 660 N.W.2d 361, 372-73 (Mich App. 2003), <i>aff'd in part rev'd in part</i> <u>671 N.W.2d 539 (Mich 2004)</u> . A write-off “has not been paid, nor is it payable, such that it is not a collateral source.” <u>Detary v. Advantage Health Physicians, PC</u> , 308179, 2012 WL 6035024 (Mich. Ct. App. Nov. 29, 2012) <u>appeal denied</u> , 493 Mich. 970, 829 N.W.2d 862 (2013)
Minnesota	Billed + post-verdict reduction	Billed	Billed + post-verdict reduction	Billed	<u>Swanson v. Brewster</u> , 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. <u>Renswick v. Wenzel</u> , 819 N.W.2d 198 (2012): Medicare payments and Medicare-negotiated discounts are excepted from collateral-source statute’s reduction of damages.
Mississippi	billed	Billed	Billed	Billed	Medicare/caid: <u>Robinson Property Group, L.P. v. Mitchell</u> , 7 So.3d 240 (Miss. 2009). <u>Wal-Mart Stores, Inc. v. Frierson</u> , 818 So. 2d 1135, 1139 (Miss. 2002). (paid amount admissible for impeachment purposes only.)

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	Maximum Recovery	Evidence Accepted	Maximum Recovery	Evidence Accepted	
Missouri	Billed	Billed	billed	billed	Effective August 28, 2017, Missouri passed a law which ostensibly limits a Plaintiff's claimed medical expenses to the amount actually paid and/or outstanding for medical care. <i>Section 490.715, RSMo.</i> Under the prior law, the jury was allowed to hear both the full amount charged and the full amount paid and/or outstanding to consider the amount of damages. However, some recent cases cast doubt on the new law (See e.g., <i>Brancati v. Bi-State Development Agency d/b/a Metro</i> (ED106359 December 18, 2018), and lower courts are not necessarily applying it uniformly. Until the Missouri Supreme Court formally resolves this issue, the law will remain in a state of flux.
Montana	Billed + post-verdict reduction	Billed + paid generally, but not in specific case at issue	Billed + post-verdict reduction	Billed + paid generally, but not in specific case at issue	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). Evidence of reasonable value of medical services can include amount insurers actually pay for such services in other instances, without saying whether insurer paid in case at bar or if plaintiff is eligible for payment. See <i>Meek v. Mont. Eighth Judicial Dist. Court</i> , 2015 MT 130, ¶ 22 <i>French v. Beighle</i> , 382 Mont. 408 (2015): evidence of patient's health insurance was inadmissible collateral source evidence.
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)	Billed	Billed	Write-offs are collateral sources. <i>Tri-County Equip. & Leasing v. Klinke</i> , 286 P.3d 593 (Nev.2012) (Gibbons, J. concurring).

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State	Private Insurance		Medicare/Medicaid		Authority + Notes
	Maximum Recovery	Evidence Accepted	Maximum Recovery	Evidence Accepted	
		benefits may be admissible)			<u>Alexander v. Wal-Mart Stores, Inc.</u> , 2:11-CV-752 JCM PAL, 2013 WL 427132 (D. Nev. Feb. 1, 2013).
New Hampshire	Billed	Billed	Billed	Billed	<u>Carson v. Maurer</u> , 424 A.2d 825 (N.H. 1980), overruled by <u>Community Resources for Justice, Inc. v. City of Manchester</u> , 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 <u>Perreira v. Rediger</u> , 778 A.2d 429 (N.J. 2001). <u>Cockerline v. Menendez</u> , 411 N.J. Super. 596, 988 A.2d 575, (App. Div. 2010).
New Mexico	Billed	Billed	Billed	Billed	<u>Summit Properties, Inc. v. Pub. Serv. Co. of New Mexico</u> , 2005-NMCA-090, 138 N.M. 208, 118 P.3d 716; and, <u>Selgado v. Commercial Warehouse Co.</u> , 1974-NMCA-093, 86 N.M. 633, 526 P.2d 430.
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

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	Maximum Recovery	Evidence Accepted	Maximum Recovery	Evidence Accepted	
North Carolina	Billed	Billed	Billed	billed	<u>Fallis v. Watauga Med. Ctr., Inc.</u> , 132 N.C. App. 43, 510 S.E.2d 199 (1999). <u>Young v. Baltimore & O. R. Co.</u> , 266 N.C. 458, 463, 146 S.E.2d 441, 444 (1966).
North Dakota	Billed + post-verdict reduction	Billed	Billed + post-verdict reduction	Billed	N.D. Cent. Code Ann. § 32-03.2-06 (West).
Ohio	billed	Billed & paid (if no subrogation right) + premiums paid	Billed	Billed & paid (if no subrogation right) + premiums paid	<u>Ohio Rev. Code Ann.</u> § 2315.20 (West 2008). <u>Robinson v. Bates</u> , 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; <u>Brown v. USA Truck, Inc.</u> , 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). <u>White v. Jubitz Corp.</u> , 219 Or. App. 62, 182 P.3d 215 (2008) aff'd, 347 Or. 212, 219 P.3d 566 (2009). <u>Cohens v. McGee</u> , 219 Or. App. 78, 180 P.3d 1240, 1241 (2008).
Pennsylvania	MedMal: paid, Other: billed	MedMal: paid, Other:	MedMal: paid, Other: billed	MedMal: paid, Other: billed	<u>Nigra v. Walsh</u> , 2002 PA Super 113, 797 A.2d 353 (2002); <u>Martin v. Soblotney</u> , 466 A. 2d 1022 (Pa. 1983); <u>Carlson v. Bubash</u> , 639 A.2d 458 (Pa. Super 1993). CSR does not apply to Write-Offs in MedMal: <u>Moorhead v. Crozer Chester Medical Center</u> , 564 Pa. 156, 765 A.2d 786 (2001) (abrogated on other grounds). 40 P.S. § 1303.508: Subrogation right eliminated in certain instances

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State	Private Insurance		Medicare/Medicaid		Authority + Notes
	Maximum Recovery	Evidence Accepted	Maximum Recovery	Evidence Accepted	
Rhode Island	MedMal: billed Other: billed	MedMal: Billed & paid & premiums Other: billed	Billed	billed	<p>Trial courts split. Some have found <u>R.I. Gen. Laws Ann. § 9-19-34.1</u> (West) unconstitutional. <u>Maguire v. Licht</u>, C.A. PC1999-3391, 2001 WL 1006060 (R.I. Super. Aug. 16, 2001); <u>Esposito v. O'Hair</u>, 886 A.2d 1197 (R.I. 2005).</p> <p>Medicare/caid: Jacqueline G. Kelley, Esq., Stephen P. Sheehan, Esq., <u>Collateral Source Rule Applies to Medicaid Without Exception for Medical Malpractice Cases</u>, R.I. B.J., November/December 2006, at 17.</p> <p>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).</p>
South Carolina	Billed	Billed	Billed	Billed	<u>Covington v. George</u> , 597 S.E.2d 142, 144 (S.C. 2004).
South Dakota	Billed	Billed	Billed	billed	<p><u>Cruz v. Goth</u>, 2009 S.D. 19, 763 N.W.2d 810. <u>Papke v. Harbert</u>, 2007 S.D. 87, 738 N.W.2d 510, 530.</p> <p>Evidence of write-offs is impermissible: Plaintiff is entitled to recover the <i>reasonable value</i> of medical services which is a question for the jury. Ruling that either amount is the reasonable value makes the other value inherently <i>unreasonable</i>.</p> <p>SDCL § 21-3-12, MedMal exception: evidence that <i>special</i> 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).</p>
Tennessee	MedMal: paid Other: billed	MedMal: paid Other: billed	MedMal: paid Other: billed	MedMal: paid Other: billed	<p><u>Tenn. Code Ann. § 29-26-119</u> (2008). A Plaintiff may recover unbrogated moneys.</p> <p><u>Cassie Nalawagan v. Hai v. Dang</u>, No. 06-2745-STA-dkv, 2010 WL 4340797, at *2-*3 (W.D.Tenn. Oct.27, 2010)</p> <p><u>Calaway ex rel. Calaway v. Schucker</u>, 2:02-CV-02715-STA, 2013 WL 960495 (W.D. Tenn. Mar. 12, 2013).</p>

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	Maximum Recovery	Evidence Accepted	Maximum Recovery	Evidence Accepted	
Texas	Paid	Paid	Paid	paid	Tex. Civ. Prac. & Rem. Code An.. § 41.0105 (West). <u>Haygood v. De Escabedo</u> , 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 established reasonableness	MedMal: Billed + post-verdict reduction for unsubrogated moneys	Evidence to established reasonableness	Utah Code Ann. § 78B-3-405 (West). Requested damages need only be “reasonable and necessary” <u>Gorostieta v. Parkinson</u> , 17 P.3d 1110 (Utah 2000); <u>Hansen v. Mountain Fuel Supply Co.</u> , 858 P.2d 970, 981 (Utah 1993). What evidence can be used to establish reasonableness has yet to be determined, but a district court held in 2012 that only the billed amount is permitted. <u>Sanchez v. Cache Valley Specialty Hosp., LLC</u> , 2012 WL 6057104 (Utah Dist. Ct.) (Trial Order).
Vermont	Billed	Billed	Billed	Billed	<u>Windsor School Dist. v. State</u> , 956 A.2d 528 (Vt. 2008).
Virginia	Billed	Billed	Billed, PAID in federal court	billed, PAID in federal court	<u>Acuar v. Letourneau</u> , 531 S.E.2d 316, 320 (Va. 2000); Va. Code Ann. § 8.01-35 (2008). 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 <u>McAmis v. Wallace</u> , 980 F. Supp. 181 (W.D. Va. 1997).
Washington	Billed	Billed	Billed	Billed	<u>Diaz v. State</u> , 175 Wash. 2d 457, 285 P.3d 873 (2012) preempting RCWA 7.70.080 (2006).
West Virginia	Billed	Billed	Billed	billed	<u>Keesee v. General Refuse, Inc.</u> , 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. <u>State Farm Mut. Auto. Ins. Co. v. Schatken</u> , 230 W. Va. 201, 737 S.E.2d 229, 237 (2012). <u>Kenney v. Liston</u> , 233 W.Va. 620 (2014). Collateral source rule prohibited evidence of medical provider’s discount of medical bills.

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Red: billed evidence only

Purple: hybrid approach

State	Private Insurance		Medicare/Medicaid		Authority + Notes
	Maximum Recovery	Evidence Accepted	Maximum Recovery	Evidence Accepted	
Wisconsin	Billed	Billed	Billed	Billed	<p><u>Leitinger v. DBart, Inc.</u>, 736 N.W.2d 1 (Wis. 2007).</p> <p><u>Orlowski v. State Farm Mut. Auto Ins. Co.</u>, 810 N.W.2d 775 (2012): Insured was entitled to recover the reasonable value of medical services she received, including written-off medical expenses.</p>
Wyoming	Billed	Billed	Billed	Billed	<p><u>Prager v. Campbell County Memorial Hospital</u>, 731 F.3d 1046 (10th Cir. 2013): <u>Court did not abuse discretion in excluding, pursuant to collateral-source rule, evidence of workers' compensation payments to patient's medical-care providers, despite defendants' contentions that lesser amount accepted by providers was more accurate reflection of patient's medical expenses.</u></p> <p><u>Banks v. Crowner</u>, 694 P.2d 101 (Wyo. 1985): <u>Even if medical services are rendered gratuitously to one who is injured by tortious conduct of another, such payments made to or benefits conferred on injured party from other sources are not credited against tort-feasor's liability, even if they cover all or part of the harm for which tort-feasor is liable.</u></p> <p><u>Garnick v. Teton County School Dist. No. 1</u>, 39 P.3d 1034, 1041 (Wyo. 2002).</p>
Washington D.C.	Billed	Billed	Billed	Billed	<p><u>Hardi v. Mezzanotte</u>, 818 A.2d 974, 984 (D.C. 2003); <u>Calva-Cerqueira v. United States</u>, 281 F.Supp.2d 279, 295 (D.D.C. 2003) dismissed, 04-5005, 2004 WL 2915332 (D.C. Cir. Dec. 16, 2004).</p>