

78B-3-405 Amount of award reduced by amounts of collateral sources available to plaintiff -- No reduction where subrogation right exists -- Collateral sources defined -- Procedure to preserve subrogation rights -- Evidence admissible -- Exceptions.

- (1) In all malpractice actions against health care providers as defined in Section 78B-3-403 in which damages are awarded to compensate the plaintiff for losses sustained, the court shall reduce the amount of the award by the total of all amounts paid to the plaintiff from all collateral sources which are available to him. No reduction may be made for collateral sources for which a subrogation right exists as provided in this section nor shall there be a reduction for any collateral payment not included in the award of damages.
- (2) Upon a finding of liability and an awarding of damages by the trier of fact, the court shall receive evidence concerning the total amounts of collateral sources which have been paid to or for the benefit of the plaintiff or are otherwise available to him. The court shall also take testimony of any amount which has been paid, contributed, or forfeited by, or on behalf of the plaintiff or members of his immediate family to secure his right to any collateral source benefit which he is receiving as a result of his injury, and shall offset any reduction in the award by those amounts. Evidence may not be received and a reduction may not be made with respect to future collateral source benefits except as specified in Subsection (5).
- (3) For purposes of this section "collateral source" means payments made to or for the benefit of the plaintiff for:
 - (a) medical expenses and disability payments payable under the United States Social Security Act, any federal, state, or local income disability act, or any other public program, except the federal programs which are required by law to seek subrogation;
 - (b) any health, sickness, or income replacement insurance, automobile accident insurance that provides health benefits or income replacement coverage, and any other similar insurance benefits, except life insurance benefits available to the plaintiff, whether purchased by the plaintiff or provided by others;
 - (c) any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except benefits received as gifts, contributions, or assistance made gratuitously; and
 - (d) any contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability.
- (4) To preserve subrogation rights for amounts paid or received prior to settlement or judgment, a provider of collateral sources shall, at least 30 days before settlement or trial of the action, serve a written notice upon each health care provider against whom the malpractice action has been asserted. The written notice shall state:
 - (a) the name and address of the provider of collateral sources;
 - (b) the amount of collateral sources paid;
 - (c) the names and addresses of all persons who received payment; and
 - (d) the items and purposes for which payment has been made.
- (5) Evidence is admissible of government programs that provide payments or benefits available in the future to or for the benefit of the plaintiff to the extent available irrespective of the recipient's ability to pay. Evidence of the likelihood or unlikelihood that the programs, payments, or benefits will be available in the future is also admissible. The trier of fact may consider the evidence in determining the amount of damages awarded to a plaintiff for future expenses.
- (6) A provider of collateral sources is not entitled to recover any amount of benefits from a health care provider, the plaintiff, or any other person or entity as reimbursement for collateral source payments made prior to settlement or judgment, including any payments made under Title

26, Chapter 19, Medical Benefits Recovery Act, except to the extent that subrogation rights to amounts paid prior to settlement or judgment are preserved as provided in this section.

(7) All policies of insurance providing benefits affected by this section are construed in accordance with this section.

Renumbered and Amended by Chapter 3, 2008 General Session