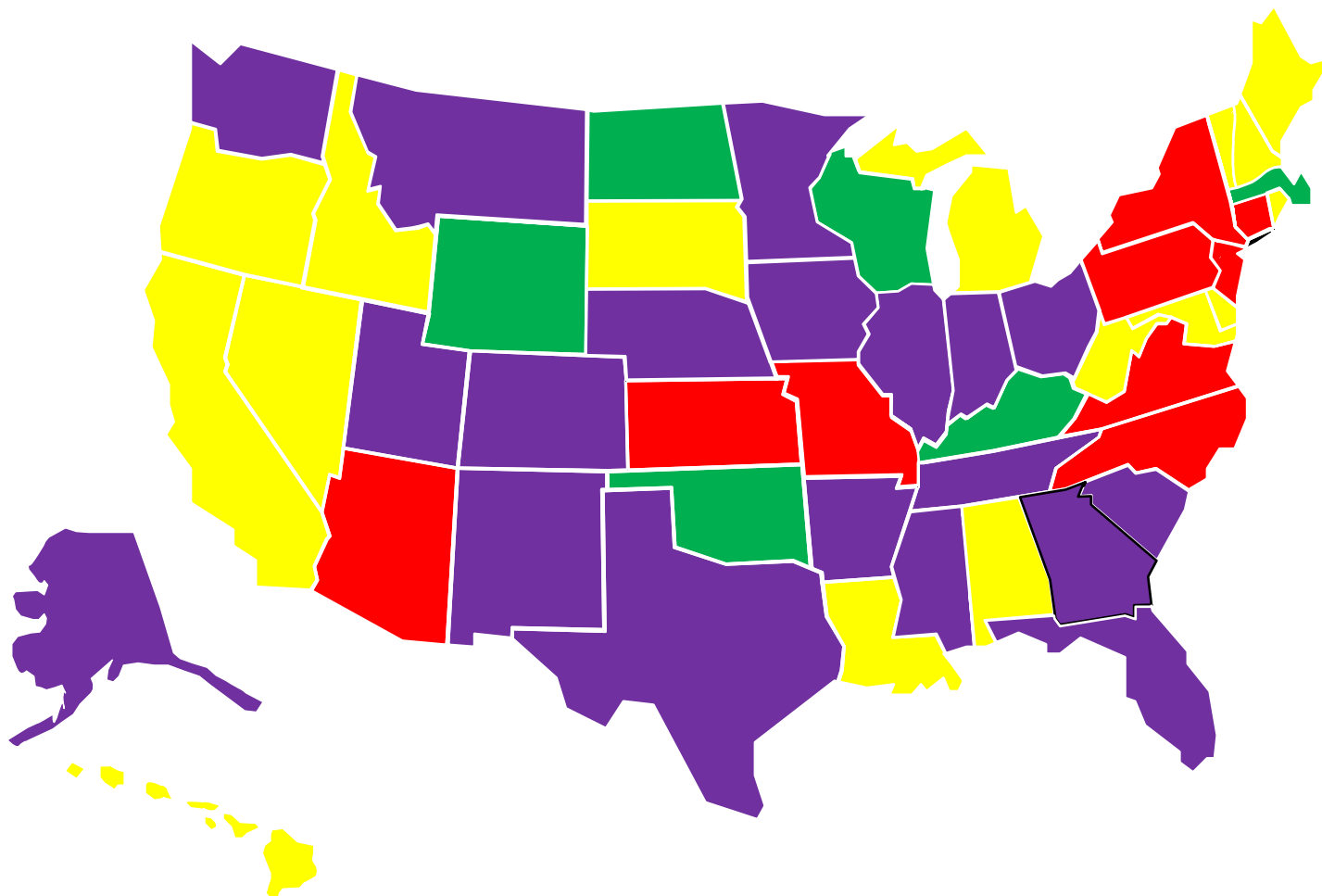


States Laws Restricting Subrogation and Reimbursement



States shown in red prohibit subrogation and reimbursement. States shown in purple apply the made whole and common fund doctrines. States shown in yellow apply the common fund doctrine See February 2014 AFHO Survey of State Reimbursement Laws.

AFHO STATE SURVEY OF REIMBURSEMENT LAWS IN THE HEALTH INSURANCE CONTEXT == FEBRUARY 2014

| STATE | IS REIMBURSEMENT PERMITTED? | IS THE MAKE WHOLE DOCTRINE APPLICABLE? | IS THE COMMON FUND DOCTRINE APPLICABLE? | MAY SETTLEMENTS BE STRUCTURED TO EXCLUDE MEDICAL COST? | MAY VICTIMS RECEIVE OTHER COMPENSATION FOR EXPENSES ARISING FROM THE CRIME? |
|-----------------------|--|---|---|---|---|
| <p>ALABAMA</p> | <p>Yes, even in absence of contractual language. <i>Int'l Underwriters v. Liao</i>, 548 So. 2d 163 (Ala. 1987).</p> <p>Nuance: Not permitted if insurer knew when it paid claim that another insurer bore primary responsibility for medical expenses. <i>Blue Cross v. Bowen</i>, 326 So.2d 754 (Ala. Civ. App. 1976).</p> | <p>Yes, unless plan language provides otherwise. <i>Ex parte State Farm Fire & Casualty Co.</i>, 764 So.2d 543 (Ala. 2000) (subrogation); <i>Wolfe v. Alfa Mut. Ins. Co.</i>, 2003 Ala. Civ. App. LEXIS 868 (Ala. Civ. App. Nov. 21, 2003) (subrogation).</p> <p>Nuance: The following types of damages are not included in determining whether the insured was made whole:</p> <p>1) punitive damages.</p> <p>2) plaintiff's attorney fees. <i>Lyons v. GEICO</i>, 689 So.2d 182 (Ala. Civ. App. 1997) (subrogation), <i>overruled on other grounds by Ex Parte State Farm, supra.</i> (CNA Insurance Companies v. Johnson Galleries, 639 So.2d 1355 (Ala. 1994).</p> <p>3) spousal damages for loss of consortium. <i>McKleroy v. Wilson</i>, 581 So.2d 796 (Ala. 1990) (subrogation), <i>overruled on other grounds by Ex Parte State Farm</i>, 764 So.2d 543 (Ala. 2000).</p> | <p>Yes, unless the following occur:</p> <p>1) insurer does something more in obtaining judgment against third party than intervening in a third party action. <i>Blue Cross & Blue Shield v. Freeman</i>, 447 So.2d 757 (Ala. Civ. App. 1983) (subrogation); OR 2) plaintiff's attorney becomes adversarial to insurer's subrogation interests, and will only seek recovery from third party to benefit his own client. <i>CNA Ins. Co. v. Johnson Galleries</i>, 639 So.2d 1355 (Ala. 1994).</p> <p>Amount of Fees and Costs that Insurer Must Pay: Pro rata share of attorney fees and costs. <i>Powell v. Blue Cross & Blue Shield</i>, 581 So.2d 772 (Ala. 1990), <i>overruled on other grounds by Ex Parte State Farm, supra.</i></p> | <p>Failure to claim medical expenses as damages does not defeat the right to subrogation. <i>McKleroy v. Wilson</i>, 581 So.2d 796 (Ala. 1990), <i>overruled on other grounds by, Ex Parte State Farm, supra.</i></p> | <p>Restitution: Code of Ala. § 15-18-65</p> <p>Crime Victim Compensation: Offset by other sums received by victim. <i>Id.</i> § 15-23-12. Compensation commission subrogated to victim's rights of other recovery. <i>Id.</i> § 15-23-14.</p> |

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| ALASKA | Unaddressed in health insurance context, but permitted in other contexts. <i>Maynard v. State Farm Mut. Auto. Ins. Co.</i> , 902 P.2d 1328 (Alaska 1995). | Unaddressed in health insurance context, but applied in other contexts. <i>See McCarter v. Alaska Nat'l Ins. Co.</i> , 883 P.2d 986 (Alaska 1984) (no equitable subrogation unless insured fully compensated). | Yes, <i>Edwards v. Alaska Pulp Corp.</i> , 920 P.2d 751, 755 (Alaska 1996), unless insurer participated in all aspects of litigation. <i>Alaska Native Tribal Health Consortium v. Settlement Funds Held for E.R.</i> , 84 P.3d 418, 434 (Alaska 2004). Amount of Fees and Costs that Insured Must Pay: "Reasonable fee." <i>Edwards v. Alaska Pulp Corp.</i> , 614 P.2d 1363 (Alaska 1996) | No | Restitution: Alaska Stat. § 12.55.045 Crime Victim Comp: Can be paid directly to service provider. <i>Id.</i> § 18.67.110. Compensation only for actual expenses. <i>Id.</i> § 18.67.090. State subrogated to victim's rights against perpetrator. <i>Id.</i> § 18.67.140. |

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| ARIZONA | <p>No. Reimbursement and subrogation generally prohibited. <i>Allstate Ins. Co. v. Druke</i>, 576 P.2d 489 (Ariz. 1978).</p> <p>Nuance: Allows introduction of evidence of collateral sources of benefits only in medical malpractice cases. Ariz. Rev. Stat. § 12-565</p> <p>The Arizona Court of Appeals has held that FEHBA does not preempt Arizona law governing contract-based subrogation rights. <i>Kobold v. Aetna Life Ins. Co.</i>, 309 P.3d 924 (Ariz. Ct. App. 2013)</p> | N/A because reimbursement is not permitted. | N/A because reimbursement is not permitted. | N/A because reimbursement is not permitted. | <p>Restitution: To victim or to victim compensation fund or insurance company if they compensated victim, although victim has priority. A.R.S. § 13-804. Victim can recover civil judgment in excess of restitution award. <i>Id.</i> § 13-807.</p> <p>Crime Victim Comp: Offset by funds received from other sources. <i>Id.</i> § 41-2407. State subrogated to victim's other rights of recovery. <i>Id.</i></p> |

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| <p>ARKANSAS</p> | <p>Yes. <i>Dean v. Colonia Underwriters Ins. Co.</i>, 915 S.W.2d 728 (Ark. App. 1996); <i>Storey v. Ark. Blue Cross & Blue Shield</i>, 704 S.W.2d 176 (Ark. 1986), but only if a clause provides for it. <i>Am. Pioneer Life Ins. Co. v. Rogers</i>, 753 S.W.2d 530, 533 (Ark. 1988).</p> | <p>Yes. <i>Franklin v. Healthsource of Arkansas</i>, 942 S.W.2d 837, 840 (Ark. 1997).</p> <p>Insured's attorney fees are considered in determining whether he was made whole. <i>Id.</i></p> | <p>Yes, Ark. Stat. Ann. § 23-79-146 (a)(2), unless insurer actively pursues its subrogation rights or communicates directly with tortfeasor to attempt direct settlement. <i>Cockman v. State Farm Automobile Insurance Co.</i>, 854 S.W.2d 343, 344 (Ark. 1993); Ark. Ins. Dep't Bulletin 9-95.</p> <p>Amount of Fees and Costs that Insured Must Pay: Proportionate share of the fees and costs that insured incurred in recovering from tortfeasor's insurer that includes medical expenses. Ark. Stat. Ann. 23-79-146; fee structure between insured and his attorney is determinative. <i>Commercial Standard Ins. Co. v. Combs</i>, 460 S.W.2d 770 (Ark. 1970).</p> | <p>No</p> | <p>Restitution: Can be paid to reimburse victim compensation fund if it has made award, A.C.A. § 5-4-205. Offsets civil recovery. <i>Id.</i></p> <p>Crime Victim Compensation: Can be paid directly to service provider. A.C.A. § 16-90-706.</p> |

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| <p>CALIFORNIA</p> | <p>Yes, but only if plan provisions apply only to proceeds actually received by the member. <i>Block v. Cal. Physicians' Serv.</i>, 244 Cal. App. 2d 266, 271 (Cal. Ct. App. 1966); <i>Lee v. State Farm Mut. Auto. Ins. Co.</i>, 57 Cal. App. 3d 458, 465 (Cal. Ct. App. 1976).</p> <p>Subrogation provisions grant right of reimbursement.</p> <p>Nuances: Recovery through reimbursement may not exceed 1/3 of insured's total recovery if insurer is insured and if insured hired an attorney; ½ if insured did not hire an attorney. Cal. Civil Code § 3040</p> <p>Permits the admissibility of evidence of collateral source payments and amounts paid to secure the benefit in medical malpractice actions. Cal. Civil Code § 3333.1</p> | <p>Unaddressed in health insurance context. However, applies in other contexts unless contract provides otherwise. <i>Am. Contractors Indem. Co., v. Saladino</i>, 115 Cal. App. 4th 1262, 1271 (Cal. Ct. App. 2004); <i>Plut v. Fireman's Fund Ins. Co.</i>, 85 Cal. App. 4th 98 (2000) (property damage); <i>Sapiano v. Williamsburg Nat. Ins. Co.</i>, 28 Cal. App. 4th 533, 536-37 (Cal. Ct. App. 1994) (property damage).</p> | <p>Yes. Ann. Cal. Civ. Code § 3040(f).</p> <p>Amount of Fees and Costs that Insured Must Pay: Pro rata share "commensurate with insured's reasonable attorney's fees and costs, in accordance with the common fund doctrine." Ann. Cal. Civ. Code § 3040(f).</p> | <p>Reimbursement limited to medical expenses only if insurance policy provides otherwise. <i>Hartford Accident & Indem. Co. v. Gropman</i>, 209 Cal. Rptr. 468 (Cal. App. 1984).</p> | <p>Restitution: Cal. Pen. Code § 1202.4. Offset by recovery from victim compensation fund. <i>Id.</i></p> <p>Crime Victim Compensation: Can be paid directly to service provider. Cal. Gov. Code. § 13957.7(c)(1). State subrogated to awardee's rights of other recovery. <i>Id.</i> § 13963.</p> |

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| COLORADO | Yes. <i>State Farm Mut. Auto. Ins. Co. v. Sanditen</i> , 701 P.2d 876 (Colo. App. 1985). | Yes. C.R.S. § 10-1-135 | Yes. C.R.S. 10-1-135 Amount of Fees and Costs that Insured Must Pay: “Reasonable share” of attorney’s fees and costs if it did not assist in the collection of damages from the third party. <i>Castellari v. Partners Health Plan of Colorado</i> , 860 P.2d 593, 595 (Colo. App. 1993). No elaboration on what “reasonable share” means. Under C.R.S. § 10-1-135, the payer of benefits is required to pay a “proportionate share” of the attorney fees when the payer of benefits is a beneficiary of the attorney services paid for by the insured party. | No | Restitution: Offset against civil recovery. C.R.S. § 18-1.3-603. No restitution for reimbursed loss, but victim can obtain restitution for insurance deductible. <i>Id.</i> Crime Victim Comp: Offset by sums from other sources. <i>Id.</i> § 24-4.1-110(1). Awardee must reimburse compensation fund for later received sums, but not if he is not made whole. <i>Id.</i> § 24-4.1-110(2). |
| CONNECTICUT | No, “unless otherwise provided by law.” Conn. Gen’l. Stat. Ann. § 52-225c. | N/A because subrogation is not permitted | N/A because subrogation is not permitted. | N/A because subrogation is not permitted | Restitution: Conn. Gen. Stat. § 53a-28 Crime Victim Comp: Other compensation only considered in setting award. <i>Id.</i> § 54-208. State subrogated to awardee’s rights of other recovery. <i>Id.</i> § 54-212. |

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| DELAWARE | <p>Yes, <i>Phillips v. Liberty Mut. Ins. Co.</i>, 253 A.2d 502 (Del. 1969), even in absence of reimbursement clause. <i>Int'l Underwriters, Inc. v. Blue Cross & Blue Shield, Inc.</i>, 449 A.2d 197, 200 (Del. 1982).</p> <p>Nuance: No fault statute for automobile accidents. Thus, insurer must seek recovery against the no fault carrier. Recovery contingent on whether the health insurer is ERISA-covered, self-funded or fully-insured, and whether it contains specific language that makes the no fault carrier the primary coverage and the health insurer the secondary no fault</p> | Unaddressed by state courts. | <p>Yes.</p> <p>Amount of Fees and Costs that Insurer Must Pay: Insurer must share in attorney fees and expenses "in some proportion." No formula specified. <i>Phillips v. Liberty Mut. Ins. Co.</i>, 253 A.2d 502 (Del. 1969); <i>Goodrich v. E.F. Hutton Group</i>, 681 A.2d 1039, 1044 (Del. 1996).</p> | No | <p>Restitution: Offset against civil recovery. 11 Del. Code § 4106.</p> <p>Crime Victim Comp: No. <i>Id.</i> §9015.</p> |

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|-----------------------------|---|---|---|---|--|
| DISTRICT OF COLUMBIA | Yes. <i>Murrell v. Criterion Ins. Co.</i> , 551 A.2d 95 (D.C. App. 1988). | Yes, unless plan language states otherwise; insurer can contract around it. <i>Pac. Coast Dist., Marine Engineer's Beneficial Ass'n & Nat'l Marine Engineers' Beneficial Ass'n, Appellants v. Travelers Casualty & Sur. Co., Appellees</i> , 782 A.2d 269, 276 (D.C. 2001). | No. Recognized, but never in the context of health insurance. <i>Wash. Public Int. Org. v. District of Columbia</i> , 436 A.2d 1299 (D.C. App. 1981). | No. Labeling damages to avoid insurance carrier's lien is prohibited. <i>Williams v. Lumbermen's Mut. Cas. Co.</i> , 664 A.2d 342 (D.C. 1995). | Restitution: D.C. Code § 16-711. Crime Victim Compensation: Offset by other recovery. Superior Court Crime Victims Compensation Program Rule 23. Payments can be made directly to healthcare provider. <i>Id.</i> , Rule 26. D.C. subrogated to awardee's rights of other recovery. |
| FLORIDA | Yes, even in absence of contractual clause. <i>Union Cent. Life Ins. Co. v. Carlisle</i> , 566 So. 2d 1335, 1337 (Fla. App. 1990); <i>Hough v. Huffman</i> , 555 So.2d 942 (Fla. App. 1990); <i>Titus v. Emmco Ins. Co.</i> , 109 So.2d 781 (Fla. App. 1959). | Yes; reimbursement cannot occur unless insured collects "all" of his damages. <i>Humana Health Plans v. Lawton</i> , 675 So. 2d 1382 (Fla. App. 1996). | Yes, unless insurer provides evidence of "substantial assistance" to insured from insurer in recovering from tortfeasor. <i>Schwab v. Town of Davie</i> , 492 So.2d 708 (Fla. App. 1986). Amount of Fees and Costs that Insurer Must Pay: actual amount recovered from tortfeasor less the insurer's pro rata share of costs and attorney fees incurred by insured. F.S.A. § 768.76(4). | Yes. If medical expenses not specified in settlement, reimbursement not permitted. <i>Davis v. Okaloosa County</i> , 620 So.2d 1123 (Fla. App. 1993). | Restitution: Offset against civil recovery. Fla. Stat. § 775.089(8). Crime Victim Comp: Awarded only to spare victim serious financial hardship. <i>Id.</i> § 960.13. Reduced by other recovery. <i>Id.</i> Medical expenses up to \$10K. <i>Id.</i> Service provider can be paid directly. <i>Id.</i> § 960.14. State subrogated to awardee's rights of other recovery, including insurance. <i>Id.</i> § 960.16. |

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|-----------------------|---|--|--|---|---|
| <p>GEORGIA</p> | <p>Prohibits subrogation, but permits reimbursement in two circumstances:</p> <p>1) If plan language so provides. <i>Shook v. Pilot Life Ins. Co.</i>, 373 S.E.2d 813 (Ga. App. 1988). Subrogation language insufficient to require reimbursement; insurer must specifically provide for reimbursement, <i>id</i>; or</p> <p>2) If insured receives duplicate payments from another source and insurer was unaware of such when it paid insured. <i>Yeargin v. Farmers Mut. Ins. Ass'n</i>, 234 S.E.2d 856 (Ga. App. 1977).</p> <p>Nuance: Insured must provide notice to insurer at least ten days before trial or settlement. Notice must inquire as to existence of reimbursement claim and request an itemization of insurer payments. Insurer must respond before settlement or trial. Ga. Code § 33-24-56.1.</p> | <p>Yes, Ga. Code Ann. § 33-24-56.1(b)(1), and insurer cannot contract around it. <i>Davis v. Kaiser Foundation Health Plan of Georgia, Inc.</i>, 521 S.E.2d 815 (1999).</p> <p>Insured must be made whole with respect to all economic and non-economic losses. Ga. Code Ann. § 33-24-56.1(b)(1). However, settlement for less than policy limits arguably constitutes full compensation for insured's losses. <i>Thompson v. Fed. Express Corp.</i>, 809 F. Supp. 950 (M.D. Ga. 1993).</p> | <p>Yes as a precondition to reimbursement. Ga. Code Ann. § 33-24-56.1(b)(2)</p> <p>Amount of Fees and Costs that Insurer Must Pay: Reimbursement claim reduced by <i>pro rata</i> share of fees and litigation expenses. <i>Id.</i></p> | <p>Yes. Unless medical benefits are specified in settlement or judgment, it is "impossible to determine" if insured has been made whole as required by Ga. Code § 33-24-56.1(b); <i>Homebuilders Ass'n v. Morris</i>, 518 S.E.2d 194 (Ga. App. 1999).</p> | <p>Restitution: Offsets civil recovery and recovery from victim compensation fund. O.C.G.A. § 17-14-6. Entities that have provided services to victim may also receive restitution. <i>Id.</i></p> <p>Crime Victim Comp: Permitted if victim has pursued restitution. <i>Id.</i> § 17-15-8. Medical expenses up to \$15K. <i>Id.</i> Offset by sums received from other sources. <i>Id.</i> State subrogated to awardee's rights of other recovery. <i>Id.</i> § 17-15-12.</p> |

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| <p>HAWAII</p> | <p>Right not explicitly recognized for health insurers, although a right is statutorily recognized for no-fault insurers and policy against double payment to insurer exists. HRS 431:19C-307 (reimbursement for no-fault insurers); <i>State Farm Fire & Cas. Co. v. Pac. Rent-All, Inc.</i>, 978 P.2d 753, 766 (Haw. 1999) (policy against double recovery).</p> <p>Courts, before judgment or stipulation to dismiss, must determine the validity of lienholder claims for payments made from collateral sources. Haw. Rev. Stat. § 663-10</p> | <p>Unaddressed in the subrogation/reimbursement context but recognized in the uninsured motorist context. <i>AIG Haw. Ins. Co. v. Rutledge</i>, 955 P.2d 1069 (Haw. App. 1998).</p> | <p>Unaddressed with respect to health insurance reimbursement or subrogation. However, statute governing liens provides that a “reasonable sum” shall be deducted for costs and fees incurred by plaintiff. HRS 663-10.</p> | <p>No</p> | <p>Restitution: HRS § 706-646. Paid into victim compensation fund if victim received an award from it. <i>Id.</i> Offset against award victim compensation fund. <i>Id.</i> § 706-646.</p> <p>Crime Victim Compensation: Reduced by sums received from other sources. <i>Id.</i> § 351-63. State subrogated to victim’s rights of recovery. <i>Id.</i> § 351-35</p> |

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| IDAHO | No reported cases create right of insurer to seek recovery from insured. However, insured must segregate amounts out of settlement due to insurer with known subrogation right. <i>Cedarholm v. State Farm Mut. Ins. Co.</i> , 338 P.2d 93 (Idaho 1959) | Not adopted by state courts. | Yes, provided (1) that insured has given insurer "timely and sufficient" notice of suit, <i>Miner v. Farmers Ins. Co.</i> , 778 P.2d 778 (Idaho 1989), and (2) that insurer derives "actual benefit" from recovery efforts of insured's counsel. <i>Boll v. State Farm Ins. Co.</i> , 92 P.3d 1081 (2004). If insurer declines to participate in action, it is on notice that it must later pay a proportionate share of the attorneys' fees out of the money recovered on its behalf. <i>Wensman v. Farmers Ins. Co.</i> , 997 P.2d 609 (Idaho 2000). Amount of Fees and Costs that Insurer Must Pay: amount insured reasonably expended in obtaining settlement in the litigation. <i>Cedarholm v. State Farm Mut. Ins. Cos.</i> , 338 P.2d 93, 96 (1959). <i>Note that it does not require a pro rata share.</i> | No | Restitution: Idaho Code § 19-5304(2). Can be paid to insurance companies who paid victim's expenses. <i>Id.</i> § 19-5304. Crime Victim Comp: Offset by sums received from other sources. <i>Id.</i> § 72-1016. State subrogated to awardee's rights to other compensation. <i>Id.</i> § 72-1023(1) |

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| ILLINOIS | Yes but only if plan language contains reimbursement provision. <i>In re Scott</i> , 567 N.E.2d 605 (Ill. App. 1991); <i>Principal Mutual Life Ins. Co. v. Baron</i> , 964 F. Supp. 1221 (N.D. Ill. 1997). | Yes, As of 01/01/13, subrogation and reimbursement claims are subject to a reduction based on comparative fault and if the injured party is not fully compensated due to limited liability insurance. 770 ILCS 23/50. | Yes, <i>Scholtens v. Schneider</i> , 671 N.E.2d 657 (Ill. 1996), unless insured's attorney rendered services knowing that insurer was an unwilling recipient. <i>Johnson v. State Farm Mut. Auto. Ins. Co.</i> , 752 N.E.2d 449 (Ill. App. 2001). Insured's attorney must show: (1) existence of fund created as a result of his legal services; (2) insured did not participate in fund's creation; (3) insurer will benefit from insured's attorney's efforts. <i>Id.</i> Amount of Fees and Costs that Insurer Must Pay: proportionate share of fees and expenses. <i>Bishop v. Burgard</i> , 764 N.E. 2d 24 (Ill. 2002). | No | Restitution: Can be paid to insurers who have indemnified victim. § 730 ILCS 5/5-5-6. Crime Victim Comp: Can be paid to any person that shouldered victim's expenses. 740 ILCS 45/10.1. Offset by other recovery <i>Id.</i> ; <i>Id.</i> 45/17. State subrogation condition can be imposed. <i>Id.</i> § 45/17 |

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| INDIANA | <p>Yes, but only if plan language contains reimbursement provision. <i>Mut. Hosp. Ins., Inc. v. MacGregor</i>, 368 N.E.2d 1376 (Ind. App. 1977), and probably even if it does not in light of policy against double recovery. <i>Hagerman v. Mut. Hosp. Ins., Inc.</i>, 371 N.E.2d 394 (Ind. 1978).</p> | <p>Yes. <i>Willard v. Automobile Underwriters, Inc.</i>, 407 N.E.2d 1192 (Ind. App. 1980)</p> <p>Nuance: Insurer's claim reduced in proportion to amount that insured's recovery was reduced by comparative fault or by uncollectability of claim's full value. Ind. Code § 34-51-2-19. See also <i>Capps v. Clegs</i>, 382 N.E.2d 947 (Ind. App. 1978).</p> | <p>Yes, if insurer does not assist in the collection of damages from tortfeasors. <i>Citizens Action Coalition of Indiana, Inc. v. North Indiana Pub.</i>, 796 N.E.2d 1264 (Ind. Ct. App. 2003).</p> <p>Amount of Fees and Costs that Insurer Must Pay: Insurer must pay pro rata share of reasonable costs and expenses including costs of depositions, witness costs, and attorney fees.</p> <p>Attorney Fee Formula: Lesser of the amount contracted with insured or 1/3 of recovery. Ind. Code §§ 34-51-2.19, 34-53-1-2.</p> | No | <p>Restitution: Ind. Code Ann. § 35-50-5-3.</p> <p>Victim Compensation Fund: <i>Id.</i> § 5-2-6.1-21(d).</p> <p>Direct payment to care provider permitted so long as it does not seek payment from another source. <i>Id.</i> at (e)-(f). State subrogated to awardee's rights, can put lien on award or reduce it by amount of collateral source payment. <i>Id.</i> § 5-2-6.1-22, 23, 32.</p> |

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| <p>IOWA</p> | <p>Yes. <i>Iowa Am. Ins. Co. v. Piphoo</i>, 456 N.W.2d 228, 229-30 (Iowa Ct. App. 1990). Uncertain whether permitted in absence of reimbursement clause, but Iowa recognizes that it provides strong reimbursement rights for insurers. <i>Allied Mut. Ins. Co., v. Heiken</i>, 675 N.W.2d 820, 825 (Iowa 2004).</p> <p>Nuance: Allows the introduction of evidence of collateral source payments. Iowa Code § 668.14.</p> | <p>Yes. <i>Cont. W. Ins. Co. v. Krebill</i>, 492 N.W.2d 405 (Iowa 1992); <i>Ludwig v. Farm Bureau Mut. Ins. Co.</i>, 393 N.W.2d 143, 146-47 (Iowa 1986).</p> <p>Nuance: Amount recovered can be parced and credited toward subrogation claims; <i>id.</i> at 146. “[a member] need not be paid in full for pain and suffering and disability before subrogation for medical expenses is allowed.” <i>Id.</i> at 145. See also <i>Iowa Am. Ins. Co. v. Piphoo</i>, 456 N.W.2d 228 (Iowa App. 1990).</p> | <p>Yes.</p> <p>Amount of Fees and Costs that Insured Must Pay: pro-rata share of attorney fees and costs. I.C.A. § 668.5; <i>Krapfl v. Farm Bureau Mut. Ins. Co.</i>, 548 N.W.2d 877, 879 (Iowa 1996).</p> | <p>Yes. See <i>Ludwig v. Farm Bureau Mut. Ins. Co.</i>, 393 N.W.2d 143 (Iowa 1986).</p> | <p>Restitution: Iowa Code § 910.2, 915.100. Award offset against future judgments. <i>Id.</i> § 910.8.</p> <p>Victim Compensation Fund: Medical expenses up to \$25K. <i>Id.</i> § 915.86. Offset by other sums received by victim. <i>Id.</i> § 915.87. State subrogated to victim’s other rights of recovery. <i>Id.</i> § 915.92.</p> |
| <p>KANSAS</p> | <p>Generally no, Kan. Admin. Regs. 40-1-20, unless exempt from regulation. Insurer prohibited from issuing contract that contains subrogation or reimbursement clause for medical, surgical, hospital or funeral expenses. <i>Id.</i></p> | <p>No case law as reimbursement is generally prohibited.</p> | <p>No case law as reimbursement is generally prohibited.</p> | <p>No</p> | <p>Victim Compensation Fund: Compensation for medical and other expenses. K.S.A. § 74-7305. Offset by other sums received by victim. <i>Id.</i> State subrogated to victim’s other rights of recovery. <i>Id.</i> § 74-7312.</p> |

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| KENTUCKY | Unaddressed. | <p>Adopted with respect to subrogation rights in workers compensation cases, although insurer may be able to contract around it. <i>Wine v. Globe Am. Cas. Co.</i>, 917 S.W.2d 558 (Ky. 1996).</p> <p>Formula in worker's compensation cases: Total loss = Total damages including pain and suffering less amount paid by insurer less percentage of insured's fault. <i>Great Am. Ins. Co. v. Witt</i>, 964 S.W.2d 428 (Ky. App. 1998), see also <i>Quillen v. Tru-Check, Inc.</i>, 2009-CA-000747-WC, 2009 WL 3337239 (Ky. Ct. App. Oct. 16, 2009) (unpublished W/C decision) ("However, with only one exception, that being our Court of Appeals' decision in <i>Great American Insurance Cos. v. Witt, supra</i>, no jurisdiction with a 'normal' third-party statute has allowed the injured worker to recover both workers' compensation benefits and tort damages and 'keep both recoveries.'")</p> | Unaddressed. | No | <p>Restitution: KRS § 532.032.</p> <p>Victim Compensation Fund: <i>Id.</i> § 346.130. Offset by other sums received by victim. <i>Id.</i> § 346.140. State subrogated to victim's other rights of recovery. <i>Id.</i> § 346.170.</p> |

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| LOUISIANA | <p>Yes but only if plan language contains reimbursement provision. <i>Martin v. La. Farm Bur. Cas. Ins. Co.</i>, 628 So.2d 1213, 1214 (La. Ct. App. 1993).</p> | <p>Yes, but only if plan language does not provide otherwise. <i>Roberts v. Richard</i>, 743 So. 2d 731, 734-35 (La. Ct. App. 1999).</p> <p>Nuance: Insured bears burden of proving that he was not made whole. <i>Wallace v. Aetna Life & Cas. Ins. Co.</i>, 499 So.2d 577 (La. App. 1986).</p> | <p>Yes, insurer must pay a proportionate share of costs and fees if on notice. <i>Barreca v. Cobb</i>, 668 So. 2d. 1129 (La. 1996).</p> <p>Nuance: Yes only if insurer has timely notice of insured's claim against third party to determine whether it wants to pursue a claim against the tortfeasor itself or rely upon insured's counsel. <i>Id.</i></p> | No | <p>Restitution: La. C.Cr.P. Art. 883.2</p> <p>Victim Compensation Fund: La. R.S. 46:1809. Offset by other sums received by victim. <i>Id.</i> State subrogated to victim's rights against perpetrator. <i>Id.</i> § 46.1814.</p> |
| MAINE | <p>Unclear. Unaddressed in case law, but implicitly recognized by statute requiring diminution of insurer's lien commensurate with decrease in insured's third-party recovery. 24-A M.R.S. § 2729-A; 24-A M.R.S. § 2836.</p> <p>In medical malpractice claims, Maine allows the introduction of evidence of collateral source payments after verdict, but prior to judgment. 24 Me Rev. Stat. § 2906.</p> | <p>Unaddressed in context of health insurance reimbursement. However, when the potential value of insured's third party recovery is diminished, an insurer's lien will also be reduced, so too is insurer's lien. 24-A M.R.S. § 2729-A; 24-A M.R.S. § 2836.</p> | <p>Yes. Insurer must share in costs and expenses incurred by insured in obtaining recovery from a third party. <i>York Ins. Group v. Van Hall</i>, 704 A.2d 366, 369 (Me. 1997).</p> | No | <p>Restitution: 17-A M.R.S. § 1325. Offset against civil judgment. <i>Id.</i> § 1327.</p> <p>Victim Compensation Fund: 5 M.R.S. § 3360-B. Award only for unreimbursed expenses. <i>Id.</i> § 3360-E.</p> |

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| <p>MARYLAND</p> | <p>Unclear. Issue has not been addressed head-on by courts, although reimbursement provisions have been enforced. <i>GEICO v. Group Hosp. Med. Servs., Inc.</i>, 589 A.2d 464 (Md. 1991), <i>overruled on other grounds</i>, 602 A.2d 1083 (D.C. App. 1992). MD courts have recognized both the equitable right of subrogation and the contractual right of subrogation. <i>Roberts v. Total Health Care, Inc.</i>, 675 A.2d 995 (Md. App. 1996), <i>affirmed</i> 709 A.2d 142 (Md. 1998); <i>Travelers Indemnity Co. v. Insurance Co. Of North America</i>, 519 A.2d 760 (Md. App. 1987).</p> | <p>No. <i>Stancil v. Erie Ins. Co.</i>, 740 A.2d 46, 49-50 (Md. Ct. Spec. App. 1999).</p> | <p>Yes, unless insurer intervenes in suit against tortfeasor and is represented by counsel. Md. Code Ann., Courts & Jud. Proc. § 11-112. Amount by which Insurer's recovery is reduced: (Total Attorneys Fees) <i>divided by</i> (Total Recovery for personal injury action); Multiply result by amount of subrogation or reimbursement claim. Total reduction cannot exceed 1/3 unless insurer agrees. <i>Id.</i></p> | <p>No</p> | <p>Restitution: Md. CRIMINAL PROCEDURE Code Ann. § 11-603. Offset against civil judgment. <i>Id.</i> Victim Compensation Fund: Medical expenses up to \$45K. Md. CRIMINAL PROCEDURE Code Ann. § 11-811. Offset by other sums received by victim, and state can enter into settlement with healthcare provider. <i>Id.</i> State subrogated to victim's other rights of recovery. <i>Id.</i> § 817.</p> |

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| MASSACHUSETTS | Yes, but only if plan language contains reimbursement provision. <i>Gen. Exch. Ins. Corp. v. Driscoll</i> , 52 N.E.2d 970 (Mass. 1944) (reimbursement permitted); <i>Frost v. Porter Leasing Corp.</i> , 436 N.E.2d 387 (Mass. 1982) (no equitable subrogation). | No. <i>Frost v. Porter Leasing Corp.</i> , 436 N.E.2d 387 (Mass. 1982) (concurring opinion) | Unaddressed. However, recovery of attorney fees generally prohibited absent an agreement or a statute or rule to the contrary. <i>Preferred Mut. Ins. Co. v. Gamache</i> , 686 N.E.2d 989, 991 (Mass. 1997) <i>Gamache</i> exception is limited to litigation against insurer over duty to defend but does not extend to suits over insurer's duty to indemnify. <i>Wilkinson v. Citation Ins. Co.</i> , 447 Mass. 663, 856 N.E.2d 829 (2006) | No | Victim Compensation Fund: Compensation only for out-of-pocket losses. ALM GL ch. 258C, §§2-3. Collection only to extent that expenses were not covered by insurance. <i>Id.</i> § 10. State subrogated to victim's other rights of recovery. <i>Id.</i> § 11. |
| MICHIGAN | Yes but only if plan language contains reimbursement provision. <i>Foremost Life Ins. Co. v. Waters</i> , 329 N.W.2d 688 (Mich. 1982); <i>Steinmann v. Dillion</i> , 670 N.W.2d 249 (Mich. App. 2003) In the case of automobile accidents, Michigan's no-fault laws eliminate or limit subrogation and reimbursement rights for medical expenses. <i>Great Lakes American Life Ins. Co. v. Citizens Ins. Co.</i> , 479 N.W.2d 20 (Mich. App. 1991). | Yes, but plan language can circumvent rule. <i>Copeland Oaks v. Haupt</i> , 209 F.3d 811 (6th Cir. 2000). | Yes. Amount by which Insurer's recovery is reduced: Reasonable attorney fees and costs, which remain undefined. <i>Foremost Life Ins. Co. v. Waters</i> , 337 N.W.2d 29, 32 (Mich. App. 1983). | No | Restitution: MCL § 769.1a. If victim received other compensation, restitution to be paid to compensating entity. <i>Id.</i> Offset against other compensatory damages. <i>Id.</i> Victim Compensation Fund: MCLS § 18.354. Offset by other sums received by victim. <i>Id.</i> § 18.361. State subrogated to victim's other rights of recovery. <i>Id.</i> § 364. |

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| MINNESOTA | <p>Yes, even in absence of reimbursement clause. <i>Westendorf v. Stasson</i>, 330 N.W.2d 699, 702-03 (Minn. 1983).</p> <p>Illegal for reimbursement clause not to include common fund and make whole provisions. Minn. Stat. Ann. § 62A.095, subd. 2.</p> | <p>Yes. <i>Westendorf v. Stasson</i>, 330 N.W.2d 699 (Minn. 1983), and insurer cannot contract around it. Minn. Stat. Ann... § 62A.095 subd. 2(1).</p> <p>Total loss includes damages for pain and suffering. <i>Hewitt v. Apollo Group</i>, 490 N.W.2d 898 (1992) (worker's compensation case).</p> | <p>Yes. Minn. Stat. Ann. § 62A.095, subd. 2(2).</p> <p>Amount by which Insurer's recovery is reduced: "pro rata share of the covered person's costs, disbursements, and reasonable attorney fees, and other expenses incurred in obtaining the recovery." <i>Id.</i></p> <p>Nuance: If insurer is represented by separate counsel, insurer and insured, through attorneys, can enter into an agreement on allocation. If no agreement reached, matter must be submitted to binding arbitration.</p> | <p>No. Reimbursement permitted even if settlement is structured to exclude compensation for medical expenses. <i>Westendorf v. Stasson</i>, 330 N.W.2d 699 (Minn. 1983).</p> | <p>Restitution: Minn. Stat. § 611A.04. Crime victim compensation board compensated by restitution to extent it compensated victim. <i>Id.</i></p> <p>Crime Victim Comp: Minn. Stat. § 611A.53. Offset by other sums received by victim. <i>Id.</i> § 611A.54. State subrogated to victim's other rights of recovery, and victim must assist state in enforcing its subrogation rights. <i>Id.</i> § 611A.61.</p> |

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| MISSISSIPPI | Yes. <i>Hare v. State</i> , 733 So.2d 277, 283 (Miss. 1999). | Yes, and doctrine cannot be overridden by plan language to the contrary. <i>Hare v. State</i> , 733 So.2d 277, 283 (Miss. 1999). | Not yet adopted in the context of health insurance subrogation or reimbursement. | No | <p>Restitution: Miss. Code Ann. § 99-37-3. Offset against civil judgment. <i>Id.</i> § 99-37-17.</p> <p>Crime Victim Comp: Offset by other sums received by victim. <i>Id.</i> § 99-41-17. Payment directly to healthcare provider. <i>Id.</i> § 99-41-23. State subrogated to victim's other rights of recovery. <i>Id.</i> § 99-41-21</p> |
| MISSOURI | <p>No. <i>Travelers Indem. Co. v. Chumbley</i>, 394 S.W.2d 418, 424 (Mo. Ct. App. 1965). <i>Schweiss v. Sisters of Mercy of St. Louis</i>, 950 S.W.2d 537 (Mo. Ct. App. 1997).</p> <p>Collateral source payments shall be deducted from any settlement or judgment by the Court, but only if evidence of payments is presented after trial. Mo. Rev. Stat. §490.715; §490.710</p> <p>The Missouri Supreme Court has held that the FEHBA does not preempt Missouri law barring subrogation. <i>Nevils v. Group Health Plan, Inc.</i>, 2014 Mo. LEXIS 6 (2014).</p> | N/A, because subrogation is not permitted. | N/A as reimbursement for medical expenses is prohibited. However, has been applied in other subrogation contexts. <i>Knopke v. Knopke</i> , 837 S.W.2d 907 (Mo. App. 1992) (corporate governance matter) | No | <p>Restitution: § 558.019 R.S.Mo.</p> <p>Crime Victim Comp: Only for unreimbursable expenses. § 595.030 R.S.Mo. Offset by other sums received by victim. <i>Id.</i> § 595.035. State subrogated to victim's other rights of recovery. <i>Id.</i> § 595.040.</p> |

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| MONTANA | Yes, but only where insured has been made whole. <i>Oberson v. Federated Mutual Ins. Co.</i> , 126 P.3d 459 (Mont. 2005). | Yes, and doctrine cannot be overridden by plan language because allowing reimbursement before insured has been made whole for total loss is violative of Art. II, Sect. 16 of Montana Constitution. <i>Oberson v. Federated Mutual Ins. Co.</i> , 126 P.3d 459 (Mont. 2005). Total loss includes costs and attorneys fees. <i>Skague v. Mountain States Telephone & Telegraph</i> , 565 P.2d 628 (1994). | Yes. <i>DeTienne Assoc. Ltd. Partnership v. Farmers Union Mutual Ins. Co.</i> , 879 P.2d 704 (1994). | No. | Restitution: Mont. Code Anno. § 46-18-241. Crime Victim Comp: Offset by other sums victim has or can receive. Mont. Code Anno. § 53-9-125. State subrogated to victim's other rights of recovery. § 53-9-132. |
| NEBRASKA | Yes. <i>Shelter Ins. Cos. v. Frohlich</i> , 498 N.W.2d 74, 78-79 (Neb. 1993), overruled on other grounds by <i>Blue Cross & Blue Shield v. Dailey</i> , 687 N.W.2d 689 (Neb. 2004). | Yes, despite plan language to the contrary and doctrine requires total compensation, above and beyond medical expenses. <i>Shelter Ins. Cos. v. Frohlich</i> , 498 N.W.2d 74, 82 (Neb. 1993); <i>Blue Cross & Blue Shield v. Dailey</i> , 687 N.W.2d 689 (Neb. 2004). In litigated dispute between insured and tortfeasor, total loss is the amount of the jury verdict; insured cannot argue that he has not been made whole on grounds that jury's verdict did not compensate him fully. <i>Bartunek v. Hormel & Co.</i> , 513 N.W.2d 545 (Neb. 1994). | Yes. When health insurer does not assist in the collection of damages from the third party, it will be required to share in cost, expenses, and attorneys' fees. <i>United Servs. Auto. Ass'n Corp v. Hills</i> , 109 N.W.2d 174, 177 (Neb. 1961). Nuance: Record must support finding that insurer received "substantial benefit" from efforts of insured's attorney. <i>Hauptman, O'Brien, Wolf & Lathrop, P.C. v. Milwaukee Guardian</i> , 578 N.W.2d 83 (Neb. App. 1998). May be most applicable when case settles with demand letter. Amount by which Insurer's recovery is reduced: No set formula. Following factors are relevant: (1) services actually performed; (2) amount at issue; (3) nature of case; (4) results of case; (5) difficulty of case; and (6) skill required and customary charges. <i>Id.</i> | No | Restitution: R.R.S. Neb. § 29-2280. Offset by other sums received, although perpetrator can be ordered to pay person who has covered victim's expenses. <i>Id.</i> § 29-2283. Person includes insurance company. <i>State v. Holecek</i> , 621 N.W.2d 100 (2000). Offset against any civil judgments later recovered. <i>Id.</i> § 29-2287. Victim Compensation fund subrogated to awardee's restitution. <i>Id.</i> § 2289. Crime Victim Comp: Permitted for uncompensated losses and awardee must refund any sums later received. <i>Id.</i> § 81-1817. State subrogated to victim's other rights of recovery. <i>Id.</i> § 81-1825. |

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| NEVADA | Yes. <i>Canfora v. Coast Hotels & Casino, Inc.</i> , 121 P.3d 599 (Nev. 2005); N.R.S. § 689A.230. | Unaddressed by state court. While specifically reserved for future determination by <i>Canfora v. Coast Hotels & Casino, Inc.</i> , 121 P.3d 599 (Nev. 2005), opinion in that case suggests that health insurer can contract around it in the event it is found to apply. | Yes. Passive beneficiaries of insured's attorney's work must pay "fair share" of fees and expenses. <i>State Dep't of Hum. Resources v. Elcano</i> , 794 P.2d 725 (Nev. 1990). | No | Restitution: Nev. Rev. Stat. Ann. § 176.033. Crime Victim Compensation: Payment can be made directly to service providers. <i>Id.</i> § 217.245. Post award, entities obligated to pay awardee must pay compensation board; other sums received offset against award. <i>Id.</i> § 217.180. State subrogated to victim's other rights of recovery. <i>Id.</i> § 217.240. Common fund doctrine applies in such circumstances. <i>State Victims of Crime Fund v. Barry</i> , 792 P.2d 26 (Nev. 1990). |
| NEW HAMPSHIRE | Yes but only if plan language contains reimbursement provision. <i>Wolters v. American Republic Ins. Co.</i> , 827 A.2d 197, 201-02 (N.H. 2003). | Yes, unless plan language says otherwise. <i>Dimick by Dimick v. Lewis</i> , 497 A.2d 1221, 1223 (N.H. 1985). Nuance: (1) Settlement situations. Net proceeds allocated to insurers on a pro-rata basis, proportionate to the insureds share of the total settlement. <i>Id.</i> ; (2) presumed that insured was totally compensated if he accepted settlement for less than policy limits. <i>Roy v. Ducnuigeen</i> , 532 A.2d 1388 (N.H. 1987). | Yes. Amount by which Insurer's recovery is reduced: Insurer must pay pro rata share of "legal expenses." <i>Lutkus v. Lutkus</i> , 692 A.2d 958, 961 (N.H. 1997). | No | Restitution: Award offset by civil damage awards. RSA 651:63 Crime Victim Compensation: RSA 21-M:8-h. No compensation for expenses that will likely be compensated by other sources. N.H. Admin. Rules, Jus 603.03. Victim must reimburse compensation fund to extent of receipt of other recovery. N.H. Admin. Rules, Jus 605.03. |

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| NEW JERSEY | No, due to N.J.S.A. 2A:15-97, statutory modification of the common law collateral source rule. <i>Perreira v. Rediger</i> , 778 A.2d 429, 431 (N.J. 2001) (interpreting NJ law to allocate a benefit to tortfeasors, which insurer reimbursement would destroy). | N/A because reimbursement is not permitted, although it was applied before <i>Perreira</i> barred reimbursement. | N/A because reimbursement is not permitted, although it was applied before <i>Perreira</i> barred reimbursement. | No | <p>Restitution: Permitted to extent of victim's loss. N.J. Stat. § 2A:93-5.1.</p> <p>Crime Victim Comp: Compensation for actual expenses. N.J. Stat. § 52:4B-12. Collateral sums are "taken into account." N.J. Stat. § 52:4B-19. State subrogated to victim's rights against perpetrator to extent of award. N.J. Stat. 52:4B-20</p> |

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| NEW MEXICO | <p>Yes. <i>Amica Mut. Ins. Co. v. Maloney</i>, 903 P.2d 834, 838 (N.M. 1995); <i>Aetna Life Insurance Co. v. Nix</i>, 512 P.2d 1251 (N.M. 1973).</p> | <p>Yes, but nuance. Nuance: “equitable apportionment” doctrine applies: When insured tort victim recovers only a portion of actual damages incurred, the insurer’s reimbursement will be reduced in equity. <i>Quality Chiropractic, PC v. Farmers Ins. Co. of Arizona</i>, 51 P.3d 1172, 1180 (N.M. Ct. App. 2002); see <i>White v. Sutherland</i>, 585 P.2d 331, 336 (N.M. Ct. App. 1978). Pain and suffering included in total loss calculation. <i>Quality Chiropractic, PC, supra</i>.</p> | <p>Yes, but see nuances. <i>Amica Mut. Ins. Co. v. Maloney</i>, 903 P.2d 834, 839-40 (N.M. 1995). Apportioning of attorney fees; Insurer must pay proportionate share of fees and costs. Nuance: : If insurer can prove that it actively participated in or substantially contributed to recovery against tortfeasor, insurer’s share of fees can be reduced or waived commensurate with level of participation in underlying litigation. <i>Amica Mut. Ins. Co. v. Maloney</i>, 903 P.2d 834, 840 (N.M. 1995). Settlement context: Active participation means insurer participated in the settlement negotiations with the insured for the <i>entire</i> settlement and substantially contributed to that <i>total</i> settlement award. Judgment context: Active participation means the insurer intervened in the suit and participated in the case or at the very least significantly contributed to discovery. Nuance: Insurer can request that its share of fees be reduced on grounds that fees were inequitable or excessive. <i>Id.</i> at 841.</p> | No | <p>Restitution: For actual damages to victim. N.M. Stat. Ann. § 31-17-1. Crime Victim Compensation: Award offset by other sums received, and awardee must reimburse compensation fund for sums received after award. N.M. Stat. Ann. § 31-22-14 C, D, E.</p> |

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| <p>NEW YORK</p> | <p>No. NY CLS Gen Oblig § 5-335.</p> <p>Nuance: Except where there is a statutory right of reimbursement. <i>Id</i>; <i>Calingo v. Meridian Res. Co.,LLC</i>, 2013 U.S. Disy. LEXIS 42759 (S.D.N.Y. 2013) (holding that FEHBA preempts section 5-335).</p> <p>Nuance: This limitation on reimbursement does not apply to a subrogation claim for recovery of additional first party benefits.</p> | <p>Yes. <i>Winkelman v. Excelsior Ins. Co.</i>, 85 N.Y.2d 577, 581 (N.Y. 1995); <i>Berry v. St. Peter's Hospital</i>, 678 N.Y.S.2d 674, 678 (N.Y. App. Div. 3d Dept. 1998); <i>Niemann v. Luca</i>, 645 N.Y.S.2d 401, 403 (N.Y. Supp. Ct. 1996)</p> | <p>Yes. <i>Richards v. United Health Servs.</i>, 509 N.Y.S.2d 172, 175 (N.Y. App. Div. 3d Dept.1986).</p> <p>Amount by which Insurer's recovery is reduced: Insured's attorney entitled to "reasonable compensation." <i>Id</i>. "Reasonable compensation" not defined any further.</p> <p>Potential Nuance: Common fund doctrine no longer requires creation of a common fund, but a "substantial benefit" conferred upon the parties. <i>Seinfeld v. Robinson</i>, 676 N.Y.S.2d 579 (1998) (corporate governance).</p> | <p>Yes. Insurer's right of reimbursement may be at risk if settlement does not specify medical costs when reimbursement clause specifically refers to repayment to insured of medical expenses from another source. <i>Teichman v. Community Hosp.</i>, 640 N.Y.S.2d 472 (1996).</p> <p>Nuance: Where parties have structured a settlement to exclude medical expenses, the court may examine its terms to see if it truly does exclude medical expenses. <i>Carpenter v. Saltone Corp.</i>, 716 N.Y.S.2d 86 (N.Y. Sup. Ct. 2000) (workers compensation).</p> | <p>Restitution: Civil damages are <i>not</i> required to be offset by amount of restitution award. NY CLS Penal § 60.27.</p> <p>Crime Victim Comp: Provides compensation for out-of-pocket unreimbursable expenses. NY CLS Exec §§ 626, 631. Offset by other sums received. <i>Id</i>. § 631. State subrogated to awardee's rights to other recovery. <i>Id</i>. § 634</p> |

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| NORTH CAROLINA | <p>No, due to administrative regulation barring insurer from creating or enforcing subrogation provisions. N.C. Admin. Code tit. 11, r. 12.0319; <i>In re Declaratory Ruling by North Carolina Com'r of Ins. Regarding 11</i>, 517 S.E.2d 134 (N.C. Ct. App. 1999).</p> <p>Nuance: Equitable subrogation for payments made on behalf of another insurer is available. <i>John Alden Life Ins. Co. v. N.C. Ins. Guar. Ass'n</i>, 589 S.E.2d 908, 910 (N.C. Ct. App. 2004).</p> | <p>Recognized, but unaddressed in context of health insurance. <i>St. Paul Fire & Marine Ins. Co. v. W. P. Rose Supply Co.</i>, 198 S.E.2d 482, 483 (N.C. Ct. App. 1973)</p> | <p>Yes. <i>Farm Bureau Ins. Co. of N.C., Inc. v. Blong</i>, 583 S.E.2d 307, 312 (N.C. Ct. App. 2003).</p> | <p>Not addressed.</p> | <p>Restitution: N.C. Gen. Stat. § 15A-1340.34. Can be paid to entity that provided assistance to victim. <i>Id.</i> § 15A-1340.37. Offset against civil judgment against perpetrator. <i>Id.</i></p> <p>Crime Victim Comp: Reduced to extent awardee will be or has been compensated from collateral source. <i>Id.</i> § 15B-11. Service providers paid directly. <i>Id.</i> § 15B-16. Comp fund subrogated to awardee's other rights of recovery. <i>Id.</i> § 15B-18. Subrogation of collateral source to award from compensation fund expressly prohibited. <i>Id.</i> § 15B-19.</p> |
| NORTH DAKOTA | <p>Yes. <i>State Auto. & Cas. v. Skjonsby</i>, 142 N.W.2d 98, 105 (N.D. 1966).</p> | <p>Unaddressed</p> | <p>Recognized but unaddressed in the health insurance context. <i>Hass v. DeKrey</i>, 643 N.W.2d 713, 719 (N.D. 2003); <i>Mann v. N.D. Tax Comm'r</i>, 736 N.W.2d 464, 476 (N.D. 2007); <i>Ritter, Laber and Assoc., Inc. v. Koch Oil, Inc.</i>, 740 N.W.2d 67, 75 (N.D. 2007).</p> <p>But dicta: "However, the common fund doctrine generally applies only in limited types of cases." <i>First Int'l Bank & Trust v. Peterson</i>, 797 N.W.2d 316, 324 (N.D. May 11, 2011) (citing class action and probate cases).</p> | <p>Not addressed.</p> | <p>Restitution: N.D. Cent. Code, § 12.1-32-02. Offsets against civil damages awarded. <i>Id.</i> § 12.1-32-08.</p> <p>Crime Victim Comp: <i>Id.</i> § 54-23.4-06. Reduced to extent awardee recovers losses from other sources. <i>Id.</i> State subrogated to awardee's other rights of recovery. <i>Id.</i> § 54-23.4-12.</p> |

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| OHIO | <p>Yes, but only if plan language contains reimbursement provision. <i>Blue Cross & Blue Shield Mut. v. Hrenko</i>, 647 N.E.2d 1358, 1359 (Ohio 1995); <i>Smith v. Traveler's Ins. Co.</i>, 362 N.E.2d 264, 266 (Ohio 1977), or if insured settled claim without notice to insurer. <i>Allstate Ins. Co. v. Dye</i>, 170 N.E.2d 862, 868 (Ohio Ct. App. 1960).</p> | <p>Yes, <i>Huron Co. Bd. of Commissioners v. Saunders</i>, 775 N.E.2d 892 (Ohio Ct. App. 2002), unless the plan clearly and unambiguously avoids the make-whole doctrine. To do so, the agreement must establish both (1) that the insurer has a right to a full or partial recovery of amounts paid by it on the insured's behalf and (2) that the insurer will be accorded priority over the insured as to any funds recovered. <i>N. Buckeye Educ. Council Group Health Benefits Plan v. Lawson</i>, 814 N.E.2d 1210, 1217 (Ohio 2004).</p> <p>Nuances: Doctrine does not apply if insured breaches agreement to protect insurer's subrogation rights. <i>Am. States Ins. Co. v. Fletcher</i>, 591 N.E.2d 320, 321 (Ohio App. 1990).</p> | <p>Districts are split—</p> <p>No common fund: <i>Wiswell v. Shelby Mut. Ins. Co.</i>, 515 N.E.2d 1214, 1216-17 (Ohio Ct. App., 6th Dist. 1986); <i>Davis v. Hamilton Mut. Ins. Co.</i>, 1992 WL 37771 (Ohio Ct. App. 6th Dist. February 28, 1992) (citing <i>Wiswell</i>).</p> <p>Attorney fees to avoid unjust enrichment: <i>Gaier v. Midwestern Group</i>, 601 N.E.2d 624, 627 (Ohio Ct. App., 2d Dist. 1991) (but withholding attorney fees because no showing of substantial detriment to plaintiff); <i>Thatcher v. Sowards</i>, 2000 WL 310239, at *3-4 (Ohio Ct. App., 4th Dist. March 22, 2000) (awarding attorney fees where insurer relied on the efforts of the insured to obtain reimbursement).</p> | Not addressed. | <p>Restitution: ORC Ann. 2929.18. Damages awarded in a civil recovery are offset by the restitution ordered. <i>Id.</i></p> <p>Crime Victim Compensation: Reduced to extent victim recouped losses from other sources. <i>Id.</i></p> <p>§ 2743.66. Attorney general can obtain reimbursement of award to extent losses it compensated were recouped from another source. <i>Id.</i></p> <p>§§ 2743.66, 2743.72. State subrogated to awardee's other rights of recovery. <i>Id.</i></p> <p>§ 2743.72.</p> |

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| OKLAHOMA | Yes, but only if plan language contains reimbursement provision. <i>Am. Med. Sec. v. Josephson</i> , 15 P.3d 976, 978 (Okla. Civ. App. 2000). | Yes unless plan language expressly and unequivocally provides that the insured does not have to be made whole. <i>Reeds v. Walker</i> , 157 P.3d 100 (Okla. 2006); <i>Tomlinson v. Cont. Cas. Co.</i> , 77 P.3d 628, 632 (Okla. Civ. App. 2003); <i>Equity Fire & Cas. Co. v. Youngblood</i> , 927 P.2d 572 (Okla. 1996). Nuances: (1) Settlement does not necessarily represent total damages, which is a question of fact. <i>Am. Med. Sec. v. Josephson, supra.</i> , at 979; (2) Total loss may include “pain and suffering loss of wages, disability and the like.” <i>Id.</i> | Oklahoma applies the common fund doctrine unless the plan language disclaims the doctrine. <i>Sollars v. Healthcare Recoveries</i> , 147 P.3d 289, 294 (Okla Ct. App., 3d Div. 2006). | Not addressed. | Restitution: 22 Okl. St. §§ 991a, 991f. Crime Victim Compensation: Reduced to extent economic loss is recouped from other sources. 21 Okl. St. § 142.10. State subrogated to awardee’s other rights of recovery, and awardee must hold proceeds of other recovery in trust to extent of award from compensation fund. <i>Id.</i> § 142.12. |

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| OREGON | Yes. | <p>Possibly. <i>Koch v. Spann</i>, 92 P.3d 146, 148 (Or. App. 2004). (“[Subrogation] enables a secondarily liable party who has been compelled to pay a debt to be made whole by collecting that debt from the primarily liable party who, in good conscience, should be required to pay”).</p> <p>ORS § 742.544: Statutory make-whole doctrine for motor vehicle accidents.</p> | <p>Yes. <i>State Farm Mut. Auto. Ins. v. Clinton</i>, 518 P.2d 645, 647 (Or. 1974).</p> <p>Amount by which Insurer’s recovery is reduced:</p> <p>Insured can claim “attorney fees and other expenses reasonably and necessarily incurred.” <i>State Farm Mut. Auto. Ins. v. Clinton</i>, 518 P.2d 645, 649 (Or. 1974). No further explanation of what “reasonable” means.</p> | Not addressed. | <p>Restitution: ORS § 137.106.</p> <p>Crime Victim Comp: Medical expenses up to \$20K. <i>Id.</i> § 147.035. Total award reduced by recovery from other sources. <i>Id.</i> § 147.125. State subrogated to awardee’s rights against perpetrator. <i>Id.</i> § 147.345</p> |

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| PENNSYLVANIA | <p>Yes in limited circumstances, but only if insurer places insured on notice of duty not to prejudice insurer's subrogation rights. <i>Blue Cross v. Platt</i>, 576 A.2d 1129 (Pa. Super. 1990).</p> <p>Exception: Reimbursement prohibited in motor-vehicle cases except motorcycle accidents. 75 Pa. Cons. Stat. § 1720; <i>Blue Cross v. Platt</i>, 576 A.2d 1129 (Pa. Super. Ct. 1990) (motorcycle accidents excepted).</p> <p>Nuance: Reimbursement permitted when insured's release of tortfeasor prejudices insurer's subrogation rights. <i>Am. Equitable Assurance Co. v. Mussoline</i>, 191 A.2d 862 (Pa. Super. Ct. 1963).</p> | <p>Recognized but unaddressed in context of health insurance. <i>Nationwide Mut. Ins. Co. v. DiTomo</i>, 330 Pa. Super. 117 (1984) (auto insurance).</p> | <p>Yes, 42 Pa. Code § 2503(8), even if insurer refuses to authorize insured's attorney to represent its subrogation interests. <i>Allstate Ins. Co. v. Clarke</i>, 527 A.2d 1021 (Pa. Super. 1987).</p> <p>Amount by which Insurer's recovery is reduced: Insured's attorney entitled to "reasonable" fee. <i>Allstate Ins. Co. v. Clarke</i>, 527 A.2d 1021, 1026 (Pa. Super. Ct. 1987).</p> | <p>No</p> | <p>Restitution: 18 Pa.C.S. § 1106. If victim has recouped losses from other sources, perpetrator must reimburse the entity that compensated victim, including insurance company, which has last priority. Id. Award goes first to property damage. Id. § 11.707.</p> <p>Crime Victim Comp: Compensation for medical expenses paid directly to service provider. <i>Id.</i> § 11.708 Award reduced by recovery from other sources. <i>Id.</i> § 11.707.</p> |

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| RHODE ISLAND | <p>Yes, even in the absence of a reimbursement clause. <i>Merchants Fire Assur. Corp. v. Hamilton Co.</i>, 69 A.2d 551, 554 (R.I. 1949). <i>United States Inv. & Dev. Corp. v. R.I. Dept. of Human Servs.</i>, 606 A.2d 1314, 1317 (R.I. 1992). <i>Hospital Service Corp. v. Pennsylvania Insurance Co.</i>, 227 A.2d 105(R.I. 1967)(recognizing conventional or contract based subrogation/reimbursement rights in the health plan context).</p> | <p>Yes, but insurer can contract around it by including priority plan language. <i>Ditomasso v. Ocean State Physicians Health Plan, Inc.</i>, No. 87-2467, 1988 R.I. Super. LEXIS 52 (R.I. Super. May 05, 1988).</p> | <p>Yes provided that costs and expenses are reasonable and necessary to obtain recovery and if insurer received a benefit from the efforts of the insured's attorney. <i>Jennings v. Nationwide Ins. Co.</i>, 669 A.2d 534, 536 (R.I. 1996).</p> <p>Amount recovery is reduced: Proportional share of fees and costs.</p> | <p>No</p> | <p>Restitution: R.I. Gen. Laws § 12-19-32.</p> <p>Crime Victim Compensation: Medical expenses paid directly to service provider. <i>Id.</i> § 12-25-19. Award offset by recovery from other sources. <i>Id.</i> § 12-25-23. Subrogation of collateral source to award from compensation fund expressly prohibited. <i>Id.</i> § 12-25-24. State required to sue perpetrator. <i>Id.</i> 12-25-26</p> |

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| <p>SOUTH CAROLINA</p> | <p>Yes but only if plan language contains reimbursement provision. S.C. Code §§ 38-71-190, 38-33-50; <i>Shumpert v. Time Ins. Co.</i>, 496 S.E.2d 653, 656 (S.C. App. 1998).</p> | <p>Yes. Insurer may not recover more than the amount of benefits it has paid to insured. S.C. Code § 38-71-190. <i>However, insured may petition director (government appointee) to rule that reimbursement would be inequitable.</i></p> | <p>Yes. <i>Provident Life & Accident Ins. Co. v. Driver</i>, 451 S.E.2d 924, 930 (S.C. App. 1994). Requirements: (1) attorney must preserve or protect common fund; (2) attorney's services must have aided in creating, preserving, or protecting it; (3) express or implied contract between attorney and the one who seeks to share in fund. <i>Blake v. Cannon</i>, 439 S.E.2d 302 (S.C. App. 1993); implied contract arises when insurer will benefit from attorney's services and implicitly consents to representation. <i>Petition of Crum</i>, 14 S.E.2d 21 (1941). Nuance: Entity seeking fees must prove that the fund <i>resulted from the litigation in question</i>. <i>In re Policy Mgmt. Sys. Corp. Shareholder Litigation</i>, Consolidated Civil Action No. 00-40-CP-1289 (S.C. Ct. of Common Pleas Dec. 10, 2001) Amount by which Insurer's recovery is reduced: Proportional share of fees and costs. <i>Id.</i> Nuance: Insurer may be excused from paying if it had to sue insured to obtain reimbursement and insured, knowing of insurer's subrogation rights, obtained judgment against tortfeasor without notifying insurer. <i>Id.</i></p> | <p>No</p> | <p>Restitution: S.C. Code Ann. § 17-25-322 Crime Victim Comp: Reduced by sums received from other sources. <i>Id.</i> § 16-3-1190. State is subrogated to victim's right of recovery. <i>Id.</i> § 16-3-1250.</p> |

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| <p>SOUTH DAKOTA</p> | <p>Yes. Upon recovering from tortfeasor, insured becomes trustee of the amount that he received from insurer, holding it for insurer's benefit. <i>Parker v. Hardy</i>, 41 N.W.2d 555 (S.D. 1950); <i>Bowen v. American Family Insurance Group</i>, 504 N.W.2d 604 (S.D. 1993).</p> | <p>No. Reimbursement and subrogation rights may arise by contract, independent of make whole doctrine. If contract does not provide for make whole rule, it will not be applied. <i>Julson v. Federated Mut. Ins. Co.</i>, 562 N.W.2d 117, 121 (S.D. 1997). See also <i>Westfield Ins. Co., v. Rowe</i>, 631 N.W.2d 175, 179 (S.D. 2001) (recovery permitted although insured not made whole).</p> | <p>Yes. <i>Bowen v. American Family Insurance Group</i>, 504 N.W.2d 604 (S.D. 1993). Amount by which Insurer's recovery is reduced: Proportional share of fees and costs. <i>Id.</i> Nuance: substantial benefit doctrine; no common fund need be created. <i>Kanahy v. State</i>, 401 N.W.2d 551 (S.D. 1987).</p> | <p>No</p> | <p>Restitution: S.D. Codified Laws § 23A-28-1. Expressly permitted even if victim can be compensated by insurance. <i>Id.</i> § 22-6-8. Offset against civil judgment. <i>Id.</i> § 23A-28-9. Crime Victim Comp: Reduced by sums received from other sources. <i>Id.</i> § 23A-28B-22. State subrogated to awardee's rights against perpetrator. <i>Id.</i> § 23A-28B-34. Jury must return special verdict to denominate types of damages. <i>Id.</i></p> |

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| TENNESSEE | <p>Yes, even in the absence of a reimbursement provision. <i>York v. Sevier County Ambulance Auth.</i>, 8 S.W.3d 616 (Tenn. 1999); <i>Wimberly v. Am. Cas.</i>, 584 S.W.2d 200, 203 (Tenn. 1979).</p> | <p>Yes, and insurer cannot contract out of it. <i>Health Cost Controls v. Gifford</i>, 239 S.W.3d 728 (Tenn. 2007).</p> <p>Nuance: Insured has the duty to demonstrate he was not made whole. <i>Abbott v. Blount County</i>, 207 S.W.3d 732, 735 (Tenn.2006).</p> <p>Nuance: In case of settlement, if insurer did not participate in the settlement negotiations and did not waive its subrogation rights, subrogation claim must be honored and the make-whole is inapplicable. <i>Doss v. Tennessee Farmers Mutual Ins. Co.</i>, 2001 Tenn. App. LEXIS 906 *10-12 (Tenn. Ct. App. 2001).</p> | <p>Yes, unless insurer notifies insured's attorney that it will represent itself and actively does so. <i>Tennessee Farmers Mutual insurance Co. v. Pritchett</i>, 391 S.W.2d 671 (Tenn. 1964); <i>Travelers Ins. Co. v. Williams</i>, 541 S.W.2d 587 (Tenn. 1976).</p> <p>Amount by which Insurer's recovery is reduced: Left to discretion of trial court. <i>Aaron v. Aaron</i>, 909 S.W.2d 408 (Ten. 1995).</p> | No | <p>Restitution: Tenn. Code Ann. § 39-11-118.</p> <p>Crime Victim Comp: Reduced by sums received from other sources. <i>Id.</i> § 29-13-106. Can be paid to healthcare provider. <i>Id.</i> § 29-13-111. State subrogated to awardee's rights against perpetrator. <i>Id.</i> § 29-13-113.</p> |

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| <p>TEXAS</p> | <p>Yes. <i>Ortiz v. Great Southern Fire & Cas. Ins. Co.</i>, 597 S.W.2d 342 (Tex. 1980).</p> <p>Effective January 1, 2014, Section 140.005 limits reimbursement by establishing a formula to calculate recoveries. If an insured is not represented by an attorney, payors may recover the lesser of (1) one-half of the individual's gross recovery or (2) the total cost of the benefits paid. If an insured is represented by an attorney, payors may recover the lesser of (1) one-half of the individual's gross recovery less attorney's fees and procurement costs or (2) the total cost of benefits paid less the attorney's fees and procurement costs. Tex. Civ. Prac. & Rem. Code § 140.005. Enacted by Acts 2013, 83rd Leg., ch. 180 (H.B. 1869), § 1, effective January 1, 2014. This provision only applies to claims that assert a contractual right of subrogation or recovery. <i>Id.</i> § 4.</p> | <p>Yes. <i>Ortiz v. Great Southern Fire & Casualty Ins. Co.</i>, 597 S.W.2d 342, 343 (Tex. 1980 (non-health insurance context)).</p> <p>Nuance: Will not apply if insured settles for less than tortfeasor's policy limits and released all claims. <i>Esparza v. Scott & White Health Plan</i>, 909 S.W.2d 548 (Tex. App. 1995).</p> <p>Nuance: Does not apply to contractual claims for reimbursement if the plan's language gives the insurer a clear right to recover. <i>Fortis Benefits v. Cantu</i>, 234 S.W.3d 642 (Tx. 2007)</p> | <p>Yes. Insurer must share in costs and expenses incurred by insured in obtaining recovery from a third party. <i>Ortiz v. Great S. Fire & Cas. Ins. Co.</i>, 597 S.W.2d 342, 344 (Tex. 1980). <i>Id.</i> If insurer does not assist in collection of damages from third party, it will be required to share in cost, expenses, and attorneys' fees. <i>Id.</i></p> <p>Nuance: May not apply if insurer intervenes or seeks subrogation.</p> <p>Section 140.007 codifies the common fund rule and includes specific provisions for when the insurer's attorney actively participates in obtaining a recovery. Tex. Civ. Prac. & Rem. Code § 140.007. Enacted by Acts 2013, 83rd Leg., ch. 180 (H.B. 1869), § 1, effective January 1, 2014.</p> | <p>Yes. Parties must specify which portion of settlement goes to type of expenses that insurer covered. <i>Ortiz, supra.</i></p> <p>Nuance: Insurer bears the burden of proof. <i>Id.</i></p> | <p>Restitution: Tex. Code Crim. Proc. art. 42.037.</p> <p>Awards from compensation fund considered, but unlike sums from other sources need not be subtracted from restitution award. <i>Id.</i> Restitution can be ordered to insurance company. <i>Id.</i>; <i>Drilling v. State</i>, 2005 Tex. App. LEXIS 1509 (Tex. App. Feb. 23, 2005).</p> <p>Crime Victim Compensation: Healthcare providers paid directly. Tex. Code Crim. Proc. art. 56.34. Fund is last resort. <i>Id.</i> Award reduced by sums from other sources. <i>Id.</i> art. 56.45. State subrogated to awardee's rights of other recovery. <i>Id.</i> art. 56.5</p> |

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| UTAH | Yes. <i>State Farm Mut. Auto. Ins. Co. v. Green</i> , 89 P.3d 97 (Utah 2003). | Yes. <i>Hill v. State Farm Mut. Auto Ins. Co.</i> , 765 P.2d 864, 866 (Utah 1988), but insurer can contract around it. <i>State Farm Mutual Automobile Ins. Co. v. Green</i> , 89 P.3d 97, (Utah 2003). Nuance: No presumption that settlement made insured whole. <i>Hill, supra</i> . | Yes, unless insurer actively participated in all aspects of litigation. <i>Stewart v. Utah Pub. Serv. Comm'n</i> , 885 P.2d 759, 783 (Utah 1994). | No | Restitution: Utah Code Ann. § 77-38a-301. Offset against civil judgment, <i>Id.</i> § 77-38a-403, and payable to insurer, who has low priority. <i>Id.</i> § 77-38a-404. Crime Victim Comp: Reduced if victim could or has recouped loss from another source, excluding restitution. <i>Id.</i> § 63M-7-512.. Award assigns claims against third parties to state. <i>Id.</i> § 63M-7-519. Civil damages must be categorized. <i>Id.</i> § 63M-7-520. |
| VERMONT | Yes. <i>Ulm v. Ford Motor Co.</i> , 750 A.2d 981, 992-93 (Vt. 2000). | No. | Yes. <i>Guiel v. Allstate Ins. Co.</i> , 756 A.2d 777, 781 (Vt. 2000). Nuance: Doctrine applies only after court has determined that it is equitable to apply it after considering factors such as extent of insurer's activities in prosecuting suit. <i>Id.</i> Amount by which Insurer's recovery is reduced: Proportional share of fees and costs. | No | Restitution: For out-of-pocket losses and uninsured medical expenses. 13 V.S.A. § 7043. Crime Victim Comp: For unreimbursed losses. <i>Id.</i> § 5356. State subrogated to victim's rights against perpetrator. <i>Id.</i> §§ 5357. |

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| VIRGINIA | No. Va. Code § 38.2-3405. | N/A because reimbursement is prohibited. | N/A because reimbursement is not permitted. | No | <p>Restitution: Va. Code Ann. § 19.2-305.1.</p> <p>Crime Victim Comp: For unreimbursed medical expenses, among other things. § 19.2-368.11:1. Commonwealth subrogated to awardee's other rights of recovery. <i>Id.</i> §§ 19.2-368.5, 19.2-368.15.</p> |
| WASHINGTON | Yes, but only to the extent that insured recovers payment for same loss from tortfeasor. <i>Paulson v. Dep't of Social & Health Servs.</i> , 898 P.2d 353 (Wash. App. 1995). | <p>Yes, <i>Thiringer v. Am. Motors Ins. Co.</i>, 588 P.2d 191 (Wash. 1978), <i>but only if insurer's subrogation right is not prejudiced by insured's settlement with tortfeasor.</i> <i>Kohfeld v. United P. Ins. Co.</i>, 931 P.2d 911 (Wash. App. 1997).</p> <p>Nuances: Insured made whole by judgment against tortfeasor. <i>Reichl v. State Farm Mut. Auto. Ins. Co.</i>, 880 P.2d 558 (Wash. App. 1994).</p> <p>Question of made whole does not arise until policy limits have been paid or offered. <i>Peterson v. Safeco Ins. Co. of Ill.</i>, 976 P.2d 632 (Wash. App. 1999).</p> | <p>Yes, <i>Covell v. City of Seattle</i>, 127 Wash.2d 874, 891, 905 P.2d 324 (1995);</p> <p>Nuances:</p> <p>(1) absent policy language addressing attorney fees, insurer is only obligated if it benefited. <i>Harwood v. Great Health Nw.</i>, 970 P.2d 760 (Wash. App. 1999).</p> <p>(2) if expenses were not related to insurer's claim for subrogation, such as expert witness fees that did not relate to the recovery of medical expenses, insurer not liable for such costs. <i>O'Neal v. Legg</i>, 764 P.2d 246 (Wash. App. 1988).</p> | No | <p>Restitution: Rev. Code Wash. (ARCW) § 7.68.120</p> <p>Crime Victim Comp: Reduced by amount of insurance available. <i>Id.</i> § 7.68.130. Effective 7/1/2011 victims must use private insurance before payments for benefits will be considered. <i>Id.</i> § 7.68.130(5).</p> |

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| WEST VIRGINIA | <p>Yes, but only if plan language contains reimbursement provision. <i>Fed. Kemper Ins. Co. v. Arnold</i>, 393 S.E.2d 669 (W.Va. 1990) (reimbursement permitted); <i>Richards v. Allstate Ins. Co.</i>, 455 S.E.2d 803 (W. Va. 1995).</p> | <p>Yes, <i>Provident Life & Accident Insurance Co., v. Bennett</i>, 483 S.E.2d 819, 825 (W. Va. 1997), but insurer can contract around it. <i>Kanawha Valley Radiologists, Inc. v. One Valley Bank, N.A.</i>, 210 W. Va. 223, 227 (W. Va. 2001).</p> <p>Nuance: Following factors apply in determining if insured is made whole: (1) parties' ability to prove liability; (2) the comparative fault; (3) complexity of the legal and medical issues; (4) future medical expenses; (5) nature of injuries; (6) assets or lack thereof above and beyond the insurance policy. <i>Id.</i></p> <p>Nuance: presumption exists that insured was made whole by any verdict or settlement.</p> | <p>Yes. <i>Fed. Kemper Ins. Co. v. Arnold</i>, 393 S.W.2d 669 (W. Va. 1990).</p> <p>Amount by which Insurer's recovery is reduced: pro rata share of attorney's fees and costs. <i>Id.</i></p> | No | <p>Restitution: For unreimbursed losses, but entity that compensates victim can be paid restitution. W. Va. Code § 61-11A-4.</p> <p>Crime Victim Comp: Reduced by sums that victim has or will receive from other sources. <i>Id.</i> § 14-2A-14. Can be paid directly to healthcare provider. <i>Id.</i> § 14-2A-19a. State subrogated to awardee's other rights of recovery if award not reduced for collateral sums. <i>Id.</i> § 14-2A-22. Subrogation rights of collateral sources do not extend towards under this article. <i>Id.</i> § 14-2A-23.</p> |

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| WISCONSIN | <p>Yes, <i>Houle v. School Dist. of Ashland</i>, 671 N.W.2d 395, 398 (Wisc. App. 2003), even in absence of reimbursement clause. <i>Ryan by Bye v. Sigmund</i>, 528 N.W.2d 43 (Wis. 1995).</p> | <p>Yes, <i>Rimes v. State Farm Mut. Auto Ins. Co.</i>, 316 N.W.2d 348 (Wisc. 1982); <i>Prudential Property & Casualty Ins. Co. v. Golla</i>, 532 N.W.2d 469 (Wisc. App. 1995), and insurer cannot contract around it. <i>Ruckel v. Gassner</i>, 646 N.W.2d 11, 13 (Wisc. 2002).</p> <p>Total loss includes <i>all</i> types of damages -- not just those that the insurer covers. <i>Valley Forge Ins. Co. v. Home Mut. Ins. Co.</i>, 396 N.W.2d 348 (Wis. Ct. Appeals 1986).</p> | <p>Yes, except when insurer participates in prosecution of suit against tortfeasor.</p> <p>Nuance: Three prerequisites must be met before doctrine applies:</p> <p>1) Recovery from tortfeasor results from sole effort of insured's attorney; 2) subrogated insurer must be notified of suit and that it be asked to contribute to legal fund if it does not participate; 3) insurer does not become a party to the action. <i>Oakley v. Fireman's Fund of Wisconsin</i>, 470 N.W.2d 882, 887 (1991). See also <i>Pacocha v. Operating Engineers Local 139 Health Benefit Fund</i>, 468 N.W.2d 211 (Wis. App. 1991); Wis. Stat. § 803.03.</p> <p>Amount by which Insurer's recovery is reduced: Fee arrangement between insured and attorney not necessarily dispositive; other factors, including nature of services must be considered and the value of the legal services to the insurer. <i>State Farm Mut. Auto. Ins. Co. v. Geline</i>, 179 N.W.2d 815 (Wisc. 1970) .</p> | No | <p>Restitution: For out of pocket expenses and can be ordered to go to insurance company, but victim has priority. Wis. Stat. § 973.20. Offset against civil recovery. <i>Id.</i> State subrogated to restitution rights if victim receives award from victim compensation fund. <i>Id.</i></p> <p>Crime Victim Comp: Reduced by sums received from other sources. <i>Id.</i> § 949.06. State subrogated to awardee's other rights of recovery. <i>Id.</i> § 949.15. If judgment categorizes damages, state subrogated only to type of damages fund reimbursed. <i>Id.</i></p> |

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|----------------|-----------------------------|--|---|--|---|
| WYOMING | Unaddressed | Unaddressed | Unaddressed | Unaddressed. | <p>Restitution: For actual damages. Wyo. Stat. § 7-9-103. Offset against civil recovery. <i>Id.</i> § 7-9-110. Paid to state if victim receives award from victim compensation fund. <i>Id.</i> § 1-40-112.</p> <p>Crime Victim Comp: Payments from other sources considered as compensation fund is a last resort. <i>Id.</i> § 1-40-110. State subrogated to awardee's rights against perpetrator. <i>Id.</i> § 1-40-112.</p> |