



# Montvale Surgical Center v. New Jersey Health Benefits Commission

(N.J. Super.Ct., App. Div.)

Topics Covered: Payment Issues (for Physicians), Usual, Customary and Reasonable Payments

**Outcome: Unfavorable**

## Issue

The issue in this case was whether a New Jersey government agency should pay an ambulatory surgical center out-of-network health care benefits at 160% of the Medicare rate, rather than, as required by statute, a rate determined by a “nationally recognized database.”

## AMA Interest

The AMA believes physicians should be fairly compensated for their professional services.

## Case Summary

Pursuant to the New Jersey State Health Benefits Program Act, N.J. Stat. §§ 52:14-17.25, et seq. (NJSHBPA), the New Jersey State Health Benefits Commission (SHBC) provides a State Health Benefits Program (SHBP) for state officers and employees. SHBP, which is self-insured, is administered by Horizon Blue Cross Blue Shield of New Jersey (Horizon).

NJSHBPA further provides that, subject to certain deductibles, SHBP participants are to receive “reimbursement for out-of-network charges at the rate of [either 70% or 80%] of reasonable and customary charges.” N.J. Stat. § 52:14-17.29(C) (1) & (2). NJSHBPA also states:

“Reasonable and customary charges” means charges based upon the 90th percentile of the usual, customary, and reasonable (UCR) fee schedule determined by the Health Insurance Association of America or a similar nationally recognized database of prevailing health care charges.

Notwithstanding this statute, Horizon, on behalf of SHBC, paid out-of-network surgery centers at 160% of Medicare rates.

Montvale Surgical Center was an out-of-network provider of health care services to SHBP participants. The participants, in turn, assigned their SHBP benefits to Montvale Surgical. For at least some of the procedures Montvale Surgical performed for SHBP participants, the 160% of Medicare reimbursement fell below the rates calculated under the FAIR Health, Inc.

database. Montvale Surgical therefore applied to Horizon for the difference in these reimbursement rates, but Horizon refused its application.

Montvale Surgical then appealed to the SHBC for an administrative declaration as to its right to receive payment under “a recognized database of prevailing health care charges,” rather than 160% of the Medicare rate. In its decision, SHBC noted that a purpose of the SHBP was to minimize the cost of health care to SHBP participants. SHBC then made the following observations:

There are very few market forces that limit what an out-of-network provider can charge. For that reason, non-participating providers are often reimbursed significantly more than their in-network counterparts. Allowing out-of-network providers to appeal reimbursement amounts ... undermines Horizon’s ability to recruit in-network providers. If a provider can appeal to receive additional payment beyond what the plan prescribes, it removes the incentive for providers to participate in the network. When a charge based system is used to generate reasonable and customary allowances, there is an incentive for out-of-network providers to inflate charges.

SHBC concluded that Montvale Surgical lacked standing to pursue an administrative appeal. In the alternative, SHBC found that it had discretion regarding the issuance of a declaratory ruling, and, even if it were wrong to deny standing, it was exercising its discretion to deny the request for a declaratory ruling.

Montvale Surgical appealed the SHBC ruling to the New Jersey Superior Court.

### **Litigation Center Involvement**

The Litigation Center joined with the Medical Society of New Jersey in an *amicus* brief, supporting Montvale Surgical Center. However, the Appellate Division denied the motion to file the brief.

New Jersey Superior Court brief