



## 340B Drug Pricing Program spawns two antitrust lawsuits

August 2, 2018

The 340B Drug Pricing Program has spawned two antitrust lawsuits related to CVS's acquisition of Wellpartner, a 340B administrator. 340B administrators contract with 340B covered entities (e.g., hospitals) to provide a software platform that tracks and monitors prescriptions dispensed under the 340B Program and helps covered entities maintain compliance with 340B Program requirements.

In December 2017, CVS announced that it had acquired Wellpartner and informed covered entities that use CVS as a contract pharmacy under the 340B Program that Wellpartner would be the exclusive program administrator for all CVS retail and specialty pharmacies, meaning that if the covered entities contracted with other 340B administrators for their contract pharmacy business, they would have to switch to Wellpartner in order for their patients to obtain 340B covered outpatient drugs at CVS.

The [first lawsuit](#) was filed in February 2018 by Sentry Data Systems, also a 340B administrator and a competitor of Wellpartner. The [second lawsuit](#) was filed in May 2018 by RxStrategies, another 340B administrator and Wellpartner competitor. Both lawsuits allege that CVS is engaged in antitrust violations. Specifically, they allege that CVS is using its market power as a large operator of contract pharmacies, which covered entities need to operate their 340B Program business most successfully, to force covered entities to contract with Wellpartner – an illegal tying arrangement in violation of Section 1 of the Sherman Act. In RxStrategy's words, "340B contract pharmacy services are the 'tying' product and 340B program administration services are the 'tied' product." According to Sentry, "CVS's dominant position in many regional retail pharmacy markets makes it an essential trading partner for covered entities seeking to establish a network of contract pharmacies in those areas," and its large market share of the retail pharmacy market, as well as specialty pharmaceutical services, makes it a "must have" contract pharmacy provider.

Sentry alleges, “CVS’s tie of contract pharmacy services and 340B [administrator] services will substantially foreclose competing providers of 340B [administrator] services.”

Both Sentry and RxStrategies allege that they have lost significant business since CVS’s Wellpartner acquisition announcement. Both lawsuits are still pending.

# Authors

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