

# PUBLICATION

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## Specialty Pharmacy's Antitrust Claim against Humana Fails

August 31, 2017

**On August 9, District Judge Susan Wigenton (D. NJ) issued a ruling in *Prime Aid Pharmacy v. Humana*, Civ. No. 16-2104, granting Humana's motion to dismiss the plaintiff's Second Amended Complaint, finding that the plaintiff had failed to allege an actionable antitrust claim against Humana.**

In the action, Prime Aid contended that Humana had engaged in anti-competitive conduct by "steering" patients to its own specialty pharmacy (Humana Pharmacy Solutions), causing Prime Aid to lose business. Prime Aid asserted that Humana's conduct violated Section 2 of the Sherman Act and the New Jersey antitrust analogue to that provision. In rejecting Prime Aid's claims, the court acknowledged that to assert a Section 2 antitrust claim, the plaintiff must, among other things, "plead a proper relevant market" and found that Prime Aid had failed to do so.

While Prime Aid contended that the relevant market was "the market for specialty pharmacy services to New Jersey insureds who are locked in to the Humana network," the court rejected that contention. Specifically, the court held that specialty pharmacy services are not a market separate from the market for health insurance plans and that Humana did not have market power in the health insurance plan market. In addition, the court held that insureds are not "locked-in" to the Humana network because they are able to change their insurer annually during enrollment windows and stated that "restriction to approved providers is inherent in any health care plan."

The court also rejected Prime Aid's contention that insureds are effectively "locked-in" due to continuity of care issues, finding that this circumstance does not render patients "locked-in" for antitrust purposes, particularly where there are other specialty pharmacy options in New Jersey in addition to the plaintiff and the defendant. Finally, the court noted that the New Jersey Antitrust Act mandates that it "shall be construed in harmony with rulings and judicial interpretations of comparable federal antitrust statutes" and for that reason the failure of Prime Aid's federal antitrust claim was fatal to its state law claim as well.