

# Drugmakers Seek Review of Intervention in HHS Rebate Pilot Suit

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Reporter

- Major drugmakers are asking a federal appeals court to reverse an order that denied them from intervening in a case between hospitals groups and the US government over a federal drug rebate pilot program.
- The drugmakers requested to join the case to defend the government’s rebate pilot, but a lower court rejected the motion because they couldn’t demonstrate that the US wouldn’t adequately represent their interests.
- The rebate pilot would have shifted how the 340B Drug Pricing Program operates, with covered providers buying medicines at full market price and then submitting data to drugmakers to receive a rebate.

Major drugmakers are asking a federal appeals court to reverse an order that denied them from intervening in a case now closed between hospitals groups and the US government over a federal drug rebate pilot program.

The [request](#) from AbbVie Inc., AstraZeneca Plc, Boehringer Ingelheim Pharmaceuticals Inc., Novo Nordisk A/S, and the Pharmaceutical Research and Manufacturers of America asks the US Court of Appeals for the First Circuit to hear why they should have intervened in a [case](#) brought by the American Hospital Association against the Department of Health and Human Services’ [340B Rebate Model Pilot Program](#).

The drugmakers requested to join the case, seeking to defend the government’s rebate pilot, but a lower court [rejected](#) the motion because they couldn’t demonstrate that the US wouldn’t adequately represent their interests in defending against the lawsuit.

The US District Court for the District of Maine halted the pilot from going into effect after finding that HHS likely violated administrative procedures while implementing it. The hospital groups and government later agreed to drop the suit as HHS reconsiders the program.

“The appeal is not moot because Appellants’ claim on appeal is capable of repetition yet evading review,” the drugmakers said March 20 in a response to an order to show cause. “Should this Court disagree, however, the appropriate course would be to vacate the district court’s order denying Appellants’ motions to intervene.”

“Unless this Court corrects the fundamental legal errors in the district court’s intervention order, there is a substantial risk the district court will again deny Appellants their right to intervene,” the companies added.

The rebate pilot, administered by the HHS’s US Health Resources & Services Administration, would have significantly shifted how the 340B Drug Pricing Program operates.

Drugmakers under the federal program currently provide up-front drug discounts to covered safety-net hospitals, clinics, and health centers that treat a disproportionate number of low-income and uninsured patients. But under the pilot, covered providers would buy certain medicines at full market price and then submit data to drugmakers to receive a rebate.

Pharmaceutical companies have increasingly criticized the 340B program for its massive growth and questioned how providers implement savings from the steep drug discounts they get. The pilot would ensure discounts are going to eligible patients and prevent duplicate discounts, they say.

Hospitals and other providers under 340B, however, have argued that rebates would pose overwhelming financial challenges for entities that already operate on razor-thin margins.

Sidley Austin LLP, Arnold & Porter Kaye Scholer LLP, Kirkland & Ellis LLP, and Covington & Burling LLP representing drugmakers.

The case is [American Hospital Association v. AbbVie Inc.](#), 1st Cir., No., response to order to show cause 3/20/26.