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April 16, 2025 • Updates

Seventh Circuit Reverses Conviction in Landmark Anti-Kickback Case

In a pivotal decision on April 14, 2025, the Seventh Circuit Court of Appeals overturned the conviction of Mark Sorensen, owner of SyMed Inc. (SyMed), finding insufficient evidence to support a violation of the federal Anti-Kickback Statute (AKS).¹ The Court's ruling delineates the boundaries between lawful marketing practices and illegal kickbacks in the health care industry. It also underscores that compensation arrangements with non-physicians are not categorically prohibited under the AKS so long as they do not compromise the independent judgment of health care providers.

Mark Sorensen, owner and operator of a Chicago-based DME distributor, SyMed, was convicted of conspiracy and multiple counts of offering and paying kickbacks related to marketing orthopedic braces to Medicare beneficiaries and sentenced to 42 months in prison and a nearly \$2 million forfeiture judgment. The government alleged that Mr. Sorensen paid illegal kickbacks to two marketing firms based on the number of leads generated, to a DME manufacturer based on the percentage of funds SyMed collected from Medicare and to a billing company with the funds SyMed retained. The business model included marketing firms publishing advertisements for orthopedic braces, and interested patients would respond via electronic forms providing their names, addresses and doctors' contact information. That information was then sent to a call center where a sales agent would fax a prefilled but unsigned prescription form to the patient's physician. When a physician signed the prescription, SyMed directed the manufacturer to ship the product and the billing agency billed Medicare for SyMed.

The Seventh Circuit unanimously reversed Sorensen's criminal AKS conviction concluding Sorensen's payments did not violate the AKS because there was insufficient evidence that any of the payees leveraged any influence or power over health care decisions or authorized any medical care. Focusing on the fact that 80% of the prescriptions were never signed and instead returned by physicians, the Court concluded that while "physicians and non-physicians alike may exert formal or informal influence on patients' choice of health care providers" that was not the case in this instance as the physicians clearly retained independent decision-making authority over patient care. While the Court characterized Sorensen's marketing tactics as "aggressive advertising efforts," such

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efforts were not equivalent to unlawful referrals of patients.

The ruling highlights that the AKS is intended to primarily target payments to individuals who can influence patient decisions, such as physicians, underscoring the necessity for prosecutors to demonstrate actual influence over health care decisions when alleging AKS violations.

Key Takeaways:

- Under the Court's ruling: (1) a mere recommendation for health care services is not necessarily an illegal referral, and (2) percentage-based compensation structures or per lead compensation are not per se unlawful.
- While this is a very significant decision and opens the door for nuanced arguments under the AKS, other Circuits have not adopted this narrow approach.
- As such, health care providers should seek counsel on how they structure compensation arrangements, including those involving marketing and sales, in order to ensure compliance with the AKS and meet safe harbor protections where applicable.

Polsinelli's Government Investigations attorneys have extensive experience advising on the Anti-Kickback Statute and are prepared to assist with any related compliance matter or any potential enforcement action.

[1] *United States v. Sorensen*, No. 24-1557, 2025 WL 1099080 (7th Cir. Apr. 14, 2025).