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DOJ Intervenes in FCA Suit Filed by 'Data Whistleblower,' Adding Insider Allegations

By Nina Youngstrom

For the first time, the Department of Justice (DOJ) has intervened in a novel whistleblower lawsuit against a health care organization that alleged the submission of false claims based on a statistical analysis of Medicare data. DOJ took the ball and ran with it, adding firsthand knowledge of the alleged fraud from insiders to the data from the outsider whistleblower.

The U.S. Attorney's Office for the Southern District of New York announced June 2 it intervened in the False Claims Act (FCA) lawsuit against a skilled nursing facility company that was set in motion by Integra Med Analytics LLC, an associated company of Integra Research Group LLC.^[1] The FCA lawsuit alleges that false claims were submitted to Medicare by Isaac Laufer,^[2] owner of Paragon Management SNF LLC; 10 of its skilled nursing facilities (SNFs) in the suburbs around New York City; and Paragon employee Tami Whitney, coordinator of rehabilitation services for the SNFs. They allegedly kept patients in the SNFs longer than necessary and billed for the most expensive therapy regardless of their clinical needs or ability to benefit. The SNFs include Oasis Rehabilitation and Nursing LLC, Treetops Rehabilitation & Care Center LLC and Long Island Care Center Inc.

Although auditors and enforcers often use data analysis to identify outliers, this case is unusual because a whistleblower set it in motion purely with a statistical analysis. Integra Med Analytics used "unique algorithms and statistical processes" to identify alleged false claims "with specificity," according to its 2017 complaint. "The role that data whistleblowers can play is one of a force multiplier as they can detect frauds the government may not have had the opportunity to do yet," said attorney Mary Inman, with Constantine Cannon. "Hospitals should be prepared to see more of these cases," although so far they have been dismissed by courts in the hospital realm for alleged MS-DRG upcoding. Also, with claims data publicly available, data whistleblowers could pursue other avenues of potential fraud, including inpatient admissions vs. observation and evaluation and management upcoding, said attorney Max Voldman, with Constantine Cannon. When DOJ is on board, "it's data plus an investigation." That model may prove fruitful given the government's limited resources, he noted.

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