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Former Prosecutors: Data Drives More Cases, Consider Same Metrics

By Nina Youngstrom

Data analysis is changing the complexion of civil and criminal investigations, serving as a sort of X-ray vision of providers and their financial relationships with other entities, two former prosecutors say. Data speaks in a different way to jurors than witnesses, and has now been used as a surrogate for an insider in a False Claims Act case, and with the government increasing its investment and reliance on analytics, health care organizations should follow suit, they say.

“The idea a prosecutor can show a jury how one doctor compares to his peers—that’s a powerful piece of evidence that didn’t exist five years ago,” said Jason Mehta, a former assistant U.S. attorney in the middle district of Florida, at a Health Care Compliance Association webinar Oct. 30. “It’s one thing to say, ‘This guy gave everyone a stent.’ It’s another thing to say, ‘This doctor is the number one physician with stenting in the country.’”

While it’s hard to make a criminal case without live testimony from a witness, prosecutors have been able to settle civil False Claims Act cases without a witness, relying instead on data, said A. Lee Bentley III, the former U.S. attorney for the middle district of Florida, at the webinar. “Data is even more critical on the civil side,” he contended. For example, false claims cases with compounding pharmacies in Florida “were built almost exclusively on data,” Mehta said. They resulted in big-dollar settlements with Med Match Pharmacy in Jacksonville, which paid \$4.7 million, OHM Pharmacy in Auburndale, which paid \$4.1 million, and others.

From Subpoenas to Statistics

Bentley said more data is available—including a database that ranks physicians by their Medicare payments—and the government is improving its analytic capability with outside help. For one thing, the government has a 3% fund. “3% of *qui tam* recoveries go into a fund the government can use to develop more whistleblower cases, and the government increasingly is spending that money to retain top-flight companies” in data analytics, such as Acumen Data, he noted.

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