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Southern District of New York  
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AUG 13 2004

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA ex rel.  
MARK D. MANDEL,

Plaintiff,

- against -

ACCORDIS, INC., as successor to  
the Provider Services Division of HEALTH  
MANAGEMENT SYSTEMS, INC.,

Defendant.  
-----X

**STIPULATION AND ORDER  
OF SETTLEMENT AND DISMISSAL**

02 Civ. 9132 (RCC)

**I. PARTIES**

This Stipulation and Order of Settlement and Dismissal ("Stipulation and Order") is entered into among the United States of America, by its attorney, David N. Kelley, the United States Attorney for the Southern District of New York, and on behalf of the Office of Inspector General ("OIG") of the Department of Health and Human Services ("HHS") (collectively the "United States"), Accordis, Inc., as successor to the Provider Services Division of Health Management Systems, Inc. ("Accordis"), and Mark Mandel (the "Relator") (hereafter referred to as "the Parties"), through their authorized representatives.

## II. PREAMBLE

As a preamble to this Stipulation, the Parties agree to the following:

A. On or about February 27, 2003, Health Management Systems, Inc., completed the reorganization of its corporate structure by forming a parent holding company HMS Holdings Corp., a publicly-traded company located at 401 Park Avenue South, New York, New York 10016. HMS Holdings Corp. maintains two wholly-owned subsidiaries: Health Management Systems, Inc. and Accordis. Accordis provides business office outsourcing services for hospitals, emergency medical transport agencies, and other health care providers. Accordis' business office services include identifying third-party resources, submitting bills to third-party payers and patients, recovering and accounting for the amounts due, responding to customer service questions from patients, and securing cost-based reimbursement from entitlement programs.

B. Relator Mark Mandel is a resident of New York, New York. On November 14, 2002, the Relator filed a qui tam action in the United States District Court for the Southern District of New York captioned United States of America ex rel. Mark D. Mandel v. Health Management Systems, Inc., 02 Civ. 9132 (RCC) (hereinafter "the Civil Action"). The Relator is the former Vice President for Marketing Development of Health Management Systems, Inc. ("HMS"). The Relator alleged that in 2000, he was assigned to work on a contract between HMS and the Los Angeles Department of Health Services. The Relator further alleged that in connection with that assignment, he learned that the Provider Services Division of HMS entered "default diagnosis codes" on claims for reimbursement for outpatient services provided by Los Angeles County hospitals and clinics to beneficiaries of Medicare and MediCal, the

California Medicaid program. The United States is intervening in the Civil Action and simultaneously is filing the Complaint of the United States.

C. The Provider Services Division of HMS submitted or caused to be submitted claims for payment to the Medicare and MediCal Programs.

D. The United States contends that it has certain civil claims, as specified in Paragraph 3 below, against Accordis as the successor to the Provider Services Division of HMS arising from the insertion of default diagnosis codes instead of diagnosis codes taken from patients' actual medical records for outpatient services on claims for reimbursement submitted to Medicare and MediCal during the period from 1982 to 2000 (hereinafter referred to as the "Covered Conduct").

E. The United States also contends that it has certain administrative claims, as specified in Paragraph 4 below, against Accordis for the Covered Conduct

F. Accordis hereby appears and consents to the entry of this Stipulation and Order, without admitting any wrongdoing or liability under the False Claims Act, any other statute, and /or the common law. Neither this Stipulation and Order nor any of its provisions shall constitute an admission of liability or wrongdoing, nor is it a concession by the United States that its claims are not well founded.

G. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

### III. TERMS AND CONDITIONS

1. Accordis agrees to the entry of a judgment (in the form attached hereto as Exhibit A) against it and in favor of the United States, in full compromise and satisfaction of the allegations against it set forth in the Complaint of the United States, for the sum of one million three hundred fifty six thousand five hundred dollars (\$1,356,500) (the "Settlement Amount"). This Settlement Amount shall constitute a debt due and owing to the United States upon the Effective Date of this Stipulation and Order and is to be discharged by payment to the United States of the full Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of New York. Accordis agrees to make this electronic funds transfer no later than five business days after the Effective Date of this Stipulation and Order. Within five business days after the Effective Date of this Stipulation and Order, Accordis shall wire transfer to the law offices of William J. Hardy the sum of one hundred forty thousand dollars (\$140,000).

2. Contingent upon the United States receiving the Settlement Amount from Accordis, the United States agrees to pay \$257,735 to the client trust account of the law offices of William J. Hardy for the benefit of Mark D. Mandel.

3. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of Accordis in this Stipulation and Order, conditioned upon Accordis' full payment of the Settlement Amount, and subject to Paragraph 17 below (concerning bankruptcy proceedings commenced within 91 days of any payment under this Stipulation and Order), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Accordis, and its predecessors, successors, parents, subsidiaries and affiliates, and their present and former

officers, directors, employees, agents and representatives, from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud, for the Covered Conduct.

4. In consideration of the obligations of Accordis in this Stipulation and Order, conditioned upon Accordis' full payment of the Settlement Amount, and subject to Paragraph 17 below (concerning bankruptcy proceedings commenced within 91 days of any payment under this Stipulation and Order), the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Accordis under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities), for the Covered Conduct, except as reserved in Paragraph 5 below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Accordis from the Medicare, Medicaid, or other Federal health care program under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons for conduct and practices for which claims have been reserved in Paragraph 5 below.

5. Notwithstanding any term of this Stipulation and Order, specifically reserved and excluded from the scope and terms of this Stipulation and Order as to any entity or person (including Accordis and Relator) are the following claims of the United States:

- a. Any civil, criminal or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Stipulation and Order, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Stipulation and Order; and
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services.

6. Conditioned upon receipt of the payment described in Paragraph 2, the Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730 in connection with the Civil Action, or arising from the filing of the Civil Action, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d), and (d)(1) in connection with this Civil Action. The Relator agrees and confirms that this Stipulation and Order is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

7. Conditioned upon receipt of the payment described in Paragraph 2, the Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, agrees to release Accordis, and its predecessors, successors, parents, subsidiaries, and affiliates, and their present and former officers, directors, employees, agents and representatives from any and all claims,

charges, complaints, demands, actions, causes of action, suits, rights, debts, sums of money, costs, accounts, reckonings, covenants, contracts, agreements, promises, doings, omissions, damages, executions, obligations, liabilities and expenses, of every kind and nature (collectively, "Claims") that he ever had, now has, or may have, whether asserted or unasserted, from the beginning of the world to and including the date of entry of this Stipulation and Order, including, without limitation, any Claim arising from any allegation made by the Relator in, or arising from the filing of, the Civil Action and any Claim under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

8. Accordis agrees to release the Relator, and his heirs, successors, attorneys, agents, and assigns from any and all claims, charges, complaints, demands, actions, causes of action, suits, rights, debts, sums of money, costs, accounts, reckonings, covenants, contracts, agreements, promises, doings, omissions, damages, executions, obligations, liabilities and expenses, of every kind and nature (collectively, "Claims") that it ever had, now has, or may have, whether asserted or unasserted, from the beginning of the world to and including the date of entry of this Stipulation and Order, including, without limitation, any Claim arising from any allegation made by the Relator in, or arising from the filing of, the Civil Action and any Claim under 31 U.S.C. s. 3730(d) for expenses or attorney's fees and costs.

9. Accordis has entered into a Certification of Compliance Agreement ("CCA") with OIG-HHS, attached as Exhibit B, which is incorporated into this Stipulation and Order by reference. Accordis shall immediately upon execution of this Stipulation and Order implement its obligations under the CCA.

10. Accordis waives and shall not assert any defenses Accordis may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Stipulation and Order bars a remedy sought in such criminal prosecution or administrative action. Accordis agrees that this Stipulation and Order is not punitive in purpose or effect. Nothing in this paragraph or any other provision of this Stipulation and Order constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

11. Accordis fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which Accordis has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

12. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or any State payer, related to the Covered Conduct; and Accordis shall not resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.



13. Accordis agrees to the following:

- a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation § 31.205-47, and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Accordis, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on all government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program ("FEHBP"):
- (1) the matters covered by this Stipulation and Order;
  - (2) the United States' audit(s) and civil and criminal investigation(s) of the matters covered by this Stipulation and Order;
  - (3) Accordis's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and criminal investigations in connection with the matters covered by this Stipulation and Order (including attorney's fees);
  - (4) the negotiation and performance of this Stipulation and Order;
  - (5) the payment Accordis makes to the United States pursuant to this Stipulation and Order and any payments that Accordis may make to Relator, including costs and attorneys fees; and
  - (6) the negotiation of, and obligations undertaken pursuant to the CCA to prepare and submit reports to the OIG-HHS. However, nothing in this Paragraph 13.a.(6) that may apply to the obligations undertaken pursuant to the CCA affects the status of costs that are not allowable based on any other authority applicable to Accordis.

All costs described or set forth in this Paragraph 13.a. are hereafter, "unallowable costs."

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by Accordis, and Accordis shall not charge such unallowable costs directly or indirectly to any contracts with the United States or any State Medicaid Program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by Accordis or any of its parents, successors, subsidiaries, or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Accordis further agrees that within 90 days of the Effective Date of this Stipulation and Order, it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Accordis or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Accordis agrees that the United States, at a minimum, shall be entitled to recoup from Accordis any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Accordis, its parents, subsidiaries, or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Accordis or any of its parents', subsidiaries', or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Stipulation and Order shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Accordis's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

14. This Stipulation and Order is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 15 below.

15. Accordis waives and shall not seek payment for any of the health care billings covered by this Stipulation and Order from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors based upon the claims defined as Covered Conduct.

16. Accordis warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Stipulation and Order, they (a) have intended that the mutual promises, covenants, and obligations set forth in this Stipulation and Order constitute a contemporaneous exchange for new value given to Accordis, within the meaning of

11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Accordis was or became indebted to on or after the date of the payment of the Settlement Amount, within the meaning of 11 U.S.C. § 548(a)(1).

17. If within 91 days of the Effective Date of this Stipulation and Order or of any payment made hereunder, Accordis commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, (a) seeking to have any order for relief of Accordis' debts, or seeking to adjudicate Accordis as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Accordis or for all or any substantial part of Accordis' assets, Accordis agrees as follows:

a. Accordis's obligations under this Stipulation and Order may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and Accordis shall not argue or otherwise take the position in any such case, proceeding, or action that:

(i) Accordis' obligations under this Stipulation and Order may be avoided under 11 U.S.C. §§ 547 or 548;

(ii) Accordis was insolvent at the time this Stipulation and Order was entered into, or became insolvent as a result of the payment made to the United States hereunder;

or

(iii) The mutual promises, covenants, and obligations set forth in this Stipulation and Order do not constitute a contemporaneous exchange for new value given to Accordis.

b. If Accordis' obligations under this Stipulation and Order are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Stipulation and Order, and bring any civil and/or administrative claim, action, or proceeding against Accordis for the claims that would otherwise be covered by the releases provided in Paragraphs 3 and 4 above. Accordis agrees that:

(i) Any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude Accordis from participation in Medicare, Medicaid, or other Federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and that Accordis shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay;

(ii) Accordis shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceedings which are brought by the United States within 10 calendar days of written notification to Accordis that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Stipulation and Order; and

(iii) The United States has a valid claim against Accordis in the amount of \$1,356,500, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Accordis acknowledges that its agreements as set forth in this Paragraph are provided in exchange for valuable consideration provided in this Stipulation and Order.

18. Except as expressly provided to the contrary in this Stipulation and Order, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation and Order.

19. Accordis represents that this Stipulation and Order is being entered into freely and voluntarily without any degree of duress or compulsion whatsoever.

20. This Stipulation and Order is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Stipulation and Order shall be the United States District Court for the Southern District of New York, except that disputes arising under the CCA shall be resolved exclusively under the dispute resolution provisions in the CCA.

21. This Stipulation and Order and CCA constitute the complete agreement between the Parties. This Stipulation and Order may not be amended except by written consent of the Parties, except that only Accordis and OIG-HHS must agree in writing to modification of the CCA.

22. The Complaint of the United States is dismissed with prejudice.

23. The Civil Action commenced by the Relator is dismissed with prejudice.

24. The individuals signing this Stipulation and Order on behalf of Accordis represent and warrant that they are authorized by Accordis to execute this Stipulation and Order. The individual signing this Stipulation and Order on behalf of the Relator represents and warrants that he is authorized by Relator to execute this Stipulation and Order. The United States signatories represent that they are signing this Stipulation and Order in their official capacities and that they are authorized to execute this Stipulation and Order.

25. This Stipulation and Order may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation and Order.

26. This Stipulation and Order is binding on Accordis' affiliates, subsidiaries, predecessors, successors, transferees and assigns.

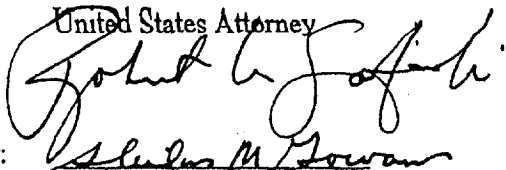
27. The "Effective Date" of this Stipulation and Order is the date on which this Stipulation and Order is entered by this Court.

**For the United States of America**

Dated: New York, New York  
August \_\_, 2004.

DAVID N. KELLEY  
United States Attorney


By:

  
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**For the United States Department of Health and Human Services  
Office of Inspector General**

Dated: Washington, D.C.  
August 11, 2004

By:

  
LARRY J. GOLDBERG  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services




**For Defendant Accordis, Inc.**

Dated: New York, New York  
August 12, 2004

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Attorney for Accordis, Inc.

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Dated: Boston, Massachusetts  
August \_\_, 2004

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**For Defendant Accordis, Inc.**

Dated: New York, New York  
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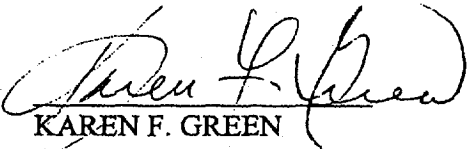
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Dated: Boston, Massachusetts  
August 12, 2004

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**For Defendant Accordis, Inc.**

Dated: New York, New York  
August \_\_, 2004

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Dated: Boston, Massachusetts  
August \_\_, 2004

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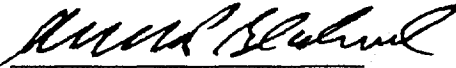
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Dated: Los Angeles, California  
August 11, 2004

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For the Relator Mark D. Mandel

Dated: Washington, D.C.  
August 10, 2004

LAW OFFICES OF WILLIAM J. HARDY  
Attorneys for Relator Mark D. Mandel

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Dated: New York, New York  
August 10, 2004

Mark D. Mandel by  
MARK D. MANDEL  
William J. Hardy with power of  
attorney and full  
permission of client  
Mark D. Mandel

SO ORDERED:

Richard B. Berman 8/13/04

UNITED STATES DISTRICT JUDGE