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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.

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:

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.

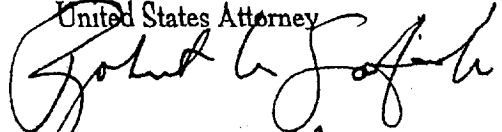
c. Treatment of Unallowable Costs Previously Submitted for Payment: Accordis further agrees that within 90 days of the Effective Date of this Stipulation and Order, it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal 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.

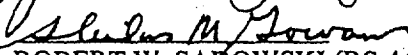
For the United States of America

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

