



Statement of Dara Corrigan
Acting Principal Deputy Inspector General
Department of Health and Human Services
on
Thomas Scully and Richard Foster Investigation

The Office of Inspector General (OIG) completed its investigation into issues concerning Thomas Scully, the former Administrator of the Centers for Medicare and Medicaid Services (CMS), and Richard Foster, the CMS Chief Actuary. A report detailing OIG findings has been presented to the Department of Health and Human Services.

OIG conducted an investigation into whether (1) CMS provided information requested by Congressional Members and staff about the Medicare Prescription Drug, Improvement and Modernization Act (MMA), and, if CMS did not, whether withholding such information violated any criminal law; (2) Scully threatened Foster and, if threats occurred, whether such threats violated any criminal law or administrative policy; and (3) the CMS Actuary has an independent legal obligation to disclose information to Congress.

The General Accounting Office (GAO) will now make a legal determination as to whether the Department may have violated Federal appropriations law.

Based on our investigation, we conclude that:

- CMS did not provide premium estimates that had been requested by Members of Congress. Additionally, CMS did not provide Congressional staff with some overall estimates of the total cost of the Medicare bill, as well as other requests. Our investigation failed to produce evidence that criminal statutes were violated in connection with the withholding of information from Members of Congress or staffers.
- Scully warned Foster that he would take disciplinary action if Foster provided certain information in response to Congressional requests. Scully also advised a Congressional staffer that he would fire Foster for releasing information. A staff assistant to Scully conveyed similar warnings to Foster. Scully never took any disciplinary action against Foster. Scully's conduct did not violate criminal law. If Scully were still employed as the Administrator of CMS, we would have referred this matter to the Department for possible administrative action associated with the Department's Standards of Ethical Conduct. Since Scully is no longer a Federal employee, such a referral is not being made.

- The CMS Actuary had no legal authority to disclose information independently to Congress. The Administrator of CMS has the final authority to determine the flow of information to Congress.

OIG investigations relating to Scully's waiver and CMS's contracting process in promoting the new Medicare law are still open matters. No further information will be available on these cases while investigations continue.

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