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Inquiry Confirms Medicare Chief Threatened Actuary

By ROBERT PEAR

WASHINGTON, July 6 - An internal investigation by the Department of Health and Human Services confirms that the top Medicare official threatened to fire the program's chief actuary if he told Congress that drug benefits would probably cost much more than the White House acknowledged.

A report on the investigation, issued Tuesday, says the administrator of Medicare, Thomas A. Scully, issued the threat to Richard S. Foster while lawmakers were considering huge changes in the program last year. As a result, Mr. Foster's cost estimate did not become known until after the legislation was enacted.

But neither the threat nor the withholding of information violated any criminal law, the report said. It accepted the Justice Department's view that Mr. Scully had "the final authority to determine the flow of information to Congress." Moreover, it said, the actuary "had no authority to disclose information independently to Congress."

Mr. Scully, who resigned in December, in part to become a lobbyist for health care companies, had denied threatening Mr. Foster but had acknowledged having told him to withhold the information from Congress.

The report, by Dara Corrigan, the department's acting principal deputy inspector general, said, "Our investigation revealed that the Centers for Medicare and Medicaid Services did not provide information requested by Congressional members and staff, and that Scully threatened to sanction Foster if he disclosed unauthorized information."

The report said that if Mr. Scully still worked for the government, he might be subject to disciplinary action for possible violation of the department's standards of ethical conduct.

But Ms. Corrigan discovered "no criminal violations," though she sent her findings to the General Accounting Office, a Congressional investigative arm, to determine if Medicare officials had violated an appropriations law that protects the right of federal employees to communicate with Congress. In May, the Congressional Research Service said Mr. Scully's order to Mr. Foster apparently violated that law, which has been on the books in various forms since 1912.

William A. Pierce, a spokesman for the department, said Tuesday that the threat was not illegal because the actuary was supposed to report to the head of the Medicare program, who, Mr. Pierce said, had a right to dismiss him in case of insubordination. "No laws were broken," Mr. Pierce said.

But Representative Pete Stark of California, the senior Democrat on the House Ways and Means Subcommittee on Health, said, "It sounds as though the Bush administration examined itself and found

it did nothing wrong."

The senior Democrat on the Senate Finance Committee, Max Baucus of Montana, said that given a limited scope of the investigation, "we cannot know about the involvement or knowledge of White House officials" in the suppression of information.

When [President Bush](#) signed the Medicare bill on Dec. 8, he hailed it as "the greatest advance in health care coverage for America's seniors since the founding of Medicare" in 1965. Republicans were counting on the measure to help them win votes from the elderly in this year's elections. But Democrats, including [Senator John Kerry](#), the party's expected presidential nominee, have waged a campaign to discredit the law, which they say is more helpful to drug companies and insurers than to elderly and disabled people.

The internal investigation was ordered by Tommy G. Thompson, the secretary of health and human services, on March 16, four days after House Democrats requested such an inquiry, and nearly four months after Congress approved the Medicare overhaul.

In recent weeks, Mr. Scully has registered as a lobbyist for major drug companies, including Abbott Laboratories and Aventis; for Caremark Rx, a pharmacy benefit manager; and for the American Chiropractic Association and the American College of Gastroenterology, among other clients. All are affected by the new Medicare law, which Mr. Scully helped write.

Mr. Scully did not reply to messages left Tuesday at his office and his home and on his cellphone. In an interview in March, he acknowledged disagreements with Mr. Foster but said, "I never told Rick he would be fired."

Mr. Foster had estimated that the Medicare legislation would cost \$500 billion to \$600 billion over 10 years. The White House told Congress the cost would not exceed \$400 billion.

Ms. Corrigan said she had uncovered numerous requests from Congress for data and cost estimates prepared by the Bush administration. In many cases, she said, Mr. Scully did not recall the requests.

"On June 17 and Nov. 7, 2003," the report said, "the minority staff director for the House Ways and Means Subcommittee on Health made written requests to Foster for estimates of the total cost of the Medicare bill. Scully did not recall the staff director's requests."