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BestWire

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LENGTH: 591 words**HEADLINE:** GAO SAYS FORMER MEDICARE CHIEF SHOULD REPAY SALARY**BODY:**

WASHINGTON (BestWire) - Former Medicare chief **Thomas Scully**, who went to extraordinary lengths to keep cost estimates of Medicare's new prescription drug plan from Congress, should give the government his salary back, the Government Accountability Office said the week of Sept 6.

That finding by the GAO, Congress' nonpartisan investigatory arm, adds yet another element to the controversy that has dogged the Medicare Modernization Act since its inception last year. Democrats and others have criticized the new law for a raft of reasons, such as program cuts to cancer doctors, higher-than-projected costs, billions in subsidies to insurers and a complicated drug benefit.

One key complaint about the law is that the Bush administration hid its true cost from Congress. Last year, conservative Republican House members said they would not vote for a bill costing more than \$400 billion over 10 years; the true cost of the bill, according to Medicare's chief actuary, Richard Foster, was more than \$100 billion higher than that. Scully threatened to fire Foster if he revealed those figures to Congress, prompting the GAO investigation.

Though the GAO's finding -- that Scully should put his salary back into the federal treasury -- seems odd, it actually has its basis in law. Federal law bars federal agencies from paying officials who prevent other federal employees from communicating with Congress. Scully was administrator of the Centers for Medicare & Medicaid Services, an agency of the U.S. Department of Health and Human Services. But, according to the GAO general counsel's office, "Because HHS was prohibited from paying Mr. Scully's salary after he barred Mr. Foster from communicating with Congress, HHS should consider such payments improper. Therefore, we recommend that HHS seek to recover these payments."

HHS spokesman Bill Pierce said that the agency would not seek to recoup Scully's salary.

The HHS' inspector general's office, Pierce said, previously concluded that Scully has the authority to limit the information that leaves his agency. The GAO's findings, he added, are rooted in a dispute between the executive and legislative branches of the federal government that dates back to the Clinton administration. "Therefore, it is not a surprise that the GAO -- an arm of Congress -- is going to issue a report coming down squarely on the side of the legislative branch," Pierce said.

The HHS' inspector general concluded in July that Foster had been threatened and that information had been withheld from lawmakers, but its report found no criminal violations (BestWire, July 7, 2004). The GAO report is the second official, nonpartisan finding that Scully threatened to fire Foster if he revealed the Medicare bill's true cost. An April report by the Congressional Research Service found that Scully had indeed made such a threat, but that it was unlikely to lead to criminal prosecution (BestWire, May 4, 2004).

Fourteen days after Congress passed the new Medicare law in December, Scully left CMS to work for a law firm that represents hospitals, drug companies and other corporations with millions at stake in the Medicare program he helped shape. There was also a minor controversy centering on the fact he was actively job-hunting with a firm whose financial fortunes were directly affected by the decisions he made as CMS administrator (BestWire, Dec. 22, 2003).

(By Chris Grier, Washington bureau manager, BestWeek: Chris.Grier@ambest.com)

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