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ONE HUNDRED EIGHTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON GOVERNMENT REFORM

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INDEPENDENT

March 2, 2004

The Honorable Tommy G. Thompson  
Secretary of Health and Human Services  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Mr. Secretary:

On February 3, 2004, Rep. Charles E. Rangel, the ranking member of the Committee on Ways and Means, Rep. John D. Dingell, the ranking member of the Committee on Energy and Commerce, and Rep. Henry A. Waxman, the ranking member of the Committee on Government Reform, wrote to you regarding the Administration's recent disclosure that the Medicare prescription drug legislation will cost the taxpayers nearly \$140 billion more than anticipated. In the letter, the three ranking members asked for copies of the cost estimates and other analyses prepared by the HHS Office of the Actuary during congressional consideration of the legislation last year. This request for information has not been answered.

The information requested by the ranking members is important to our efforts, as members of the Committee on Government Reform, to fulfill our oversight and legislative responsibilities. Consequently, we are invoking our rights to this information under the "Seven-Member Rule" (5 U.S.C. § 2954). This law requires you to "submit any information . . . relating to any matter within the jurisdiction of the committee" when requested by at least seven members of the Government Reform Committee.

### Background

During congressional consideration of H.R. 1, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Administration officials repeatedly stated that the cost of the legislation would be \$400 billion over ten years. Two days before House passage of the legislation, Tom Scully, the administrator of the Center for Medicare and Medicaid Services (CMS), wrote in the *New York Times*: "We are spending \$400 billion."<sup>1</sup> On the day prior to

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<sup>1</sup> Tom Scully, *The Medicare Bill: A Good Thing*, *New York Times* (Nov. 20, 2003) (letter to the editor).

Senate passage, HHS Secretary Tommy Thompson repeated the claim on national television, placing the cost at “\$400 billion over 10-year[s], \$40 billion a year.”<sup>2</sup>

On February 2, 2004, however, the Administration released its budget proposal for fiscal year 2005. This budget proposal indicated that the new Medicare legislation would cost \$534 billion over the next ten years. This new estimate was \$139 billion more than was estimated at the time the bill was signed into law, just two months earlier.

In response to questions, the President said on January 30, 2004, that he learned of the new estimate of the costs of the drug benefit only two weeks earlier.<sup>3</sup> But press accounts now indicate that senior Administration officials were aware of these costs during congressional consideration of the legislation. The *Washington Post* reported that “administration officials had indications for months that the new Medicare prescription drug law might cost considerably more than the \$400 billion advertised by the White House and Congress.”<sup>4</sup> CMS Administrator Scully said, “the [cost] estimate may be surprising to some people, but it’s not shocking to me.”<sup>5</sup>

Indeed, Secretary Thompson said that these higher cost estimates were shared with selected individuals in Congress, presumably Republican leaders and their staff. He told the *New York Times* that “Congressional staff knew our actuarial numbers. . . . There was no attempt to keep our numbers camouflaged.”<sup>6</sup> The cost estimates were not shared, however, with leading Democrats or their staffs. Reps. Rangel and Dingell, the ranking Democrats on the two committees of jurisdiction and official members of the conference committee, were never informed of the higher cost estimates. Nor were the estimates shared with Rep. Waxman, the ranking member of the Committee on Government Reform and the second most senior Democrat on the Energy and Commerce Committee. They were also not disclosed to the public.

The new cost estimate for the final bill has significant implications — for both the credibility of the Administration and the substance of the legislation. If the Administration’s new higher estimate is correct, the limited prescription drug benefit passed by Congress will now have a far higher price tag than previously represented by senior Administration officials. It would be a serious matter if these officials knew about the higher estimate but withheld it from key members of Congress and the public.

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<sup>2</sup> *Special Report with Brit Hume*, Fox News (Nov. 24, 2003).

<sup>3</sup> *Bush Says He’s Undaunted by Drug Costs*, New York Times (Jan. 31, 2004); *White House Brushes Aside Criticism over Medicare Plan*, Los Angeles Times (Jan. 31, 2004).

<sup>4</sup> *Higher Medicare Costs Suspected for Months*, Washington Post (Jan. 31, 2004).

<sup>5</sup> *White House Defends Medicare Law Despite Higher Price Tag*, New York Times (Jan. 30, 2004).

<sup>6</sup> *White House Now Says Congress Underestimated New Medicare Costs*, New York Times (Feb. 2, 2004).

### Information Requested

In their February 3 letter, the three ranking members wrote that “Congress and the public should know what the Administration knew about the costs of the prescription drug benefit.” We agree. We therefore request all estimates of the costs of adding a new prescription drug benefit to Medicare, as well as any cost estimates and other analyses (e.g., plan and beneficiary participation and effect on solvency of the Medicare Hospital Insurance Trust Fund) for legislation to increase the participation of HMOs and other private plans under Medicare, prepared since January 1, 2003, by the HHS Office of the Actuary. This information should include any estimates and analyses by the Office of the Actuary of:

- (1) S. 1, the legislation passed by the Senate (including any estimates and analyses of the legislation as it was introduced and as it was reported out of committee);
- (2) H.R. 1, the legislation passed by the House (including any estimates and analyses of the bill as it was introduced and as it was reported out of committee);
- (3) Versions of the final legislation that were under consideration by the House-Senate conference committee; and
- (4) The final legislation signed by the President on December 8, 2003.

This request is made under the authority of the Seven-Member Rule, which provides that “[a]n Executive agency, on request of the Committee on Government [Reform] of the House of Representatives, or of any seven members thereof . . . shall submit any information requested of it relating to any matter within the jurisdiction of the committee.”<sup>7</sup> As a federal court recently held, “[r]eading the terms of Section 2954 in their ordinary and common meanings as this Court must . . . the Court finds that the ‘Seven Member Rule’ requires an executive agency to submit all information requested of it by the Committee relating to all matters within the Committee’s jurisdiction upon the Committee’s request.”<sup>8</sup>

In this case, we are entitled to the requested information under the Seven-Member Rule because the information we seek is within the jurisdiction of the Committee on Government Reform. Under the Rules of the House of Representatives, the Committee has jurisdiction over

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<sup>7</sup> 5 U.S.C. § 2954. The statutory language refers to the “Committee on Government Operations.” This Committee was renamed the Committee on Government Reform and Oversight in the 104<sup>th</sup> Congress and again renamed the Committee on Government Reform in the 106<sup>th</sup> Congress. References in law to the Committee on Government Operations are treated as referring to this Committee. *See References in Law to Committees and Officers of the House of Representatives*, Pub. L. No. 104-14, § 1(6), 109 Stat. 186 (1995).

<sup>8</sup> *Waxman v. Evans*, 2002 U.S. Dist. LEXIS 25975 (C.D. Cal. 2002), *vacated as moot*, 52 Fed. Appx. 84 (9<sup>th</sup> Cir. 2002), *as amended by Waxman v. Evans*, No. 02-55825 (9<sup>th</sup> Cir. Jan. 9, 2003) (order clarifying that the judgment of the district court was not reversed).

“Government management and accounting measures generally.”<sup>9</sup> Moreover, as the principal investigative committee in the House, our Committee’s broad oversight jurisdiction encompasses authority to investigate “any matter” within the legislative jurisdiction of other committees so that we can make “findings and recommendations” that we report to “other standing committee[s] having jurisdiction over the matter involved.”<sup>10</sup>

Please provide the requested information by March 15, 2004. If HHS withholds any information responsive to these requests, please state the basis for not providing the information requested.

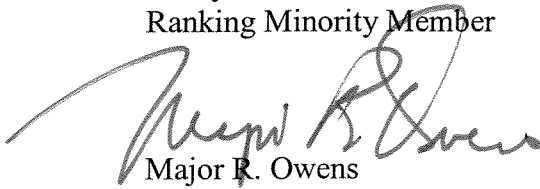
Sincerely,



Henry A. Waxman  
Ranking Minority Member



Tom Lantos  
Member of Congress



Major R. Owens  
Member of Congress



Edolphus Towns  
Member of Congress



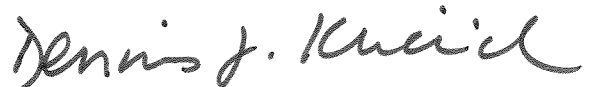
Bernard Sanders  
Member of Congress



Carolyn B. Maloney  
Member of Congress



Elijah E. Cummings  
Member of Congress



Dennis J. Kucinich  
Member of Congress



Danny K. Davis  
Member of Congress



Wm. Lacy Clay  
Member of Congress

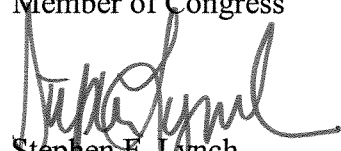
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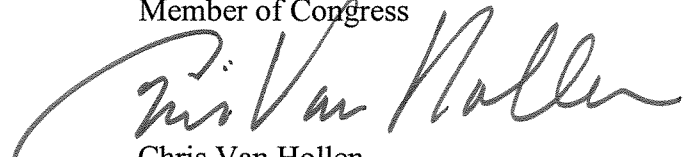
<sup>9</sup> Rule X(h)(4).

<sup>10</sup> Rule X, cl. 4(c)(2).

  
Paul E. Kanjorski  
Member of Congress

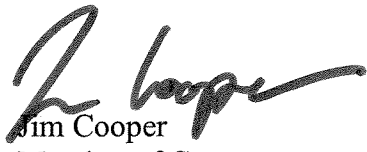
  
Diane E. Watson  
Member of Congress


  
Stephen F. Lynch  
Member of Congress

  
Chris Van Hollen  
Member of Congress

  
C.A. Dutch Ruppertsberger  
Member of Congress

  
Eleanor Holmes Norton  
Member of Congress

  
Jim Cooper  
Member of Congress

  
John F. Tierney  
Member of Congress

  
Linda T. Sánchez  
Member of Congress