

THOMAS A. SCULLY, U.S. Department of Health and Human Services

Thomas A. Scully is the former administrator of the Centers for Medicare and Medicaid Services (“CMS”), the component of the Department of Health and Human Services (“HHS”) that provides health insurance to more than 75 million Americans.¹ Before joining CMS, Mr. Scully ran the Federation of American Hospitals and was the associate director of the Office of Management and Budget.² He resigned from CMS after it was revealed that he was engaged in job negotiations with law and investment firms with clients who would be affected by provisions of the Medicare bill, for which he was the administration’s lead negotiator.³

Federal rules bar appointees from discussing post-government employment with companies that could benefit from matters handled by those appointees.⁴ HHS ethics rules state that employees who seek jobs outside of government should recuse themselves from any official matter that involves the potential employer.⁵ On May 12, 2003, Mr. Scully received a waiver from the HHS ethics office that permitted him to look for employment in the health care sector because it was “neither practicable, nor in the interest of the Department, for Mr. Scully to remain disqualified from such a large number of important and broadly applicable matters while he is seeking future employment.”⁶

Under the terms of this waiver, Mr. Scully could look for employment with firms representing the pharmaceutical and healthcare industries while still functioning as the top negotiator on the legislative overhaul of the Medicare program.⁷ The result was that lawmakers

¹ Robert Pear, Medicare Chief Joins Firm With Health Clients, *The New York Times*, December 19, 2003. (Exhibit 1)

² Mary Agnes Carey, Scully Resigning as Medicare Chief After Negotiating With Possible Employers, *Congressional Quarterly Daily Monitor*, December 3, 2003. (Exhibit 2)

³ Carey, *Congressional Quarterly Daily Monitor*, Dec. 3, 2003.

⁴ 5 C.F.R. § 2635.604; *see also* Amy Goldstein, Administration Alters Rules on Ethics Waivers; Only White House Can Approve Key Officials’ Job Talks With Firms, *The Washington Post*, January 14, 2004. (Exhibit 3)

⁵ 45 C.F.R. §§ 73.735-801(a)(5); *see also* Robert Pear, Health Industry Bidding to Hire Medicare Chief, *The New York Times*, December 3, 2003. (Exhibit 4)

⁶ Memorandum from Associate General Counsel for Ethics to Secretary, Department of Health and Human Services (May 12, 2003). (Exhibit 5)

⁷ U.S. House of Representatives, Press Release, Stark, Schakowsky Question Ethics of Waiver Provided to Medicare Administrator Scully, December 11, 2003 [hereinafter “H.R. Press Release”]. (Exhibit 6) *See also* Letter from Joan Claybrook and Frank Clemente, Public Citizen, to Dara Corrigan, Acting Principal Deputy Inspector General, Department of Health and Human Services (Dec. 22, 2003). (Exhibit 7)

“who relied on Mr. Scully for information were kept in the dark”⁸ about the fact that he was seeking employment from firms that could benefit from the legislation “during the critical period of his negotiations over Medicare policy.”⁹

While acting as the lead negotiator for the Bush administration on “the broadest overhaul of Medicare since the program’s inception,”¹⁰ Mr. Scully “arranged government travel in order to facilitate his personal employment.”¹¹ On one trip, he was reimbursed \$26.84 for parking and mileage to a D.C. appointment that he claimed was 19 miles away when, in fact, it was only two miles from his HHS office.¹² On another trip, Mr. Scully improperly billed the government for a trip to Atlanta, where he met with representatives of Alston & Bird, one of his future employers.¹³ To avoid legal troubles, Mr. Scully agreed to pay \$9,782 for the trips he billed improperly to the federal government.¹⁴

Mr. Scully’s work as administrator for CMS generated significant controversy. For example, Richard S. Foster, the actuary for CMS, testified before Congress that Mr. Scully had threatened to fire him if he disclosed a less-than-flattering cost estimate for the administration’s prescription drug benefit program.¹⁵ Also, as a former hospital lobbyist, Mr. Scully was criticized for negotiating a weak settlement of fraud claims involving HCA Inc., the biggest member of Mr. Scully’s former employer, the Federation of American Hospitals.¹⁶

⁸ H.R. Press Release.

⁹ Letter from Joan Claybrook and Frank Clemente, Public Citizen, to Marilyn L. Glynn, Acting Director of U.S. Office of Government Ethics (Jan. 13, 2004). (Exhibit 8)

¹⁰ H.R. Press Release.

¹¹ U.S. Department of Justice, In re Alleged Violation of 31 U.S.C. § 3729 on the part of Thomas A. Scully, Settlement Agreement, p. 1 (July 6, 2006). (Exhibit 9)

¹² Id., p. 2.

¹³ Id., p. 3.

¹⁴ Amy Goldstein, Former Bush Advisor Agrees to Pay for Trips, *The Washington Post*, July 11, 2006. (Exhibit 10)

¹⁵ U.S. Department of Health & Human Services Inspector General, Statement by Dara Corrigan, Acting Principal Deputy Inspector General, Department of Health and Human Services on Thomas Scully and Richard Foster Investigation, July 6, 2004 (Exhibit 11); *see also* Robert Pear, Agency Sees Withholding of Medicare Data from Congress as Illegal, *The New York Times*, May 4, 2004. (Exhibit 12)

¹⁶ Anne C. Mulkern, Watchdogs or lap dogs? When advocates become regulators President Bush has installed more than 100 top officials who were once lobbyists, attorneys or spokespeople for the industries they oversee, *The Denver Post*, May 23, 2004. (Exhibit 13)

On December 18, 2003, Mr. Scully announced he would be joining the law firm Alston & Bird¹⁷ and the investment firm Welsh, Carson, Anderson & Stowe.¹⁸ Both of these firms have clients and investments that substantially benefitted from the revamped Medicare legislation.

¹⁷ Pear, *The New York Times*, Dec. 19, 2003.

¹⁸ Goldstein, *The Washington Post*, July 11, 2006.