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March 17, 2004

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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:

I am writing to give you a final opportunity to provide the prescription drug cost estimates that the Administration improperly withheld from Congress. If you continue to refuse to provide these documents, I and my colleagues on the Government Reform Committee will initiate legal action to enforce our rights to this information under the "Seven Member Rule" (18 U.S.C. § 2954).

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 I wrote to you to request the estimates of the cost of providing a prescription drug benefit to seniors prepared by the HHS Actuary, Richard S. Foster. We asked for these documents by February 17, 2004.

You failed to provide the cost estimates or even to acknowledge our request. Consequently, every member of the minority of the Committee on Government Reform wrote to you on March 2, 2004, to invoke our right to the documents under the Seven-Member Rule. Our request gave you until March 15, 2004, to respond.

Again, you have failed to respond or even to acknowledge our request.

On March 11, Knight Ridder revealed that Mr. Foster, the HHS Actuary, was told he would be fired if he disclosed HHS's cost estimates to members of Congress. An e-mail sent by Mr. Foster on June 26, 2003, stated: "This whole episode, which has gone on for three weeks, has been pretty nightmarish. I'm perhaps no longer in grave danger of being fired, but there remains a strong likelihood that I will have to resign in protest of the withholding of important

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technical information from key policy makers for political reasons.”¹ Articles in the *Washington Post*, the *New York Times*, the *Los Angeles Times*, and other newspapers confirmed the threat to Mr. Foster and added important details.²

These repeated refusals to turn over the prescription drug cost estimates are not acceptable. The information that we are seeking is readily accessible and is in no way confidential. In the conference report accompanying the Balanced Budget Act of 1997, Congress made clear that the Chief Actuary has an important role in advising the committees of jurisdiction in the development of legislation. The conference report states: “The process of monitoring, updating, and reforming the Medicare and Medicaid programs is greatly enhanced by the free flow of actuarial information from the Office of Actuary to the committees of jurisdiction in the Congress.”³

As members of the Government Reform Committee, the 19 members who wrote to you on March 2, 2004, have a legal right to information requested under the Seven-Member Rule. If we do not receive a response to our request for information by March 26, 2004, we will commence the process of enforcing our legal rights to the documents.

Sincerely,



Henry A. Waxman
Ranking Minority Member

¹ *E-mail from Richard S. Foster, Centers for Medicare and Medicaid Services, Knight Ridder Washington Bureau (posted Mar. 12, 2004).*

² *Official Says He Was Told To Withhold Medicare Data, Washington Post (Mar. 13, 2004); Democrats Demand Inquiry into Charge by Medicare Officer, New York Times (Mar. 14, 2004); Democratic Move To Revisit Medicare Bill Rejected, Los Angeles Times (Mar. 14, 2004); Democrats Seek Probe of Medicare Estimates, Washington Post (Mar. 16, 2004).*

³ *Balanced Budget Act of 1997, H.R. Conf. Rpt. 105-217, 1997 U.S.C.A.N. 176, 459 (July 30, 1997).*