

## Special Report: NORWOOD-BUSH COMPROMISE COMES UP WITH WIN IN HOUSE



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**By Samuel Goldreich, *CQ Daily Monitor***

The House handed President Bush a major victory Thursday as it rewrote and passed a patients' rights bill (HR 2563) that would give patients significant new guarantees of health coverage but limited rights to sue insurers whose decisions harm them.

The 226-203 vote on final passage followed a cliffhanger 218-213 vote to amend the measure to reflect a last-minute deal between Bush and Charlie Norwood, R-Ga., a leading cosponsor of the bill who broke with his longtime allies in an effort to get a "law, not a bill." Bush had threatened to veto the legislation unless it was amended.

The House action sets up a post-recess conference with the Democratic-controlled Senate, which passed a far tougher version (S 1052) on June 29.

Republican leaders said the House bill would guarantee patients broad new rights to choose their own doctors, visit specialists, seek emergency care at the nearest hospital and participate in clinical trials.

But Sens. Edward M. Kennedy, D-Mass., and John Edwards, D-N.C., cosponsors of the Senate-passed version, denounced the amended House measure and said they would fight to change it in conference.

Senate Majority Leader Tom Daschle, S.D., said the House bill "shouldn't be viewed as the last word. I believe this is harmful to the best interests of every person in this country who has an insurance policy. We've got to do a better job than what this ... offers, and we'll try to do that in conference."

House Speaker J. Dennis Hastert, III., said there is room to further amend the bill in conference, but he warned that some people are in the debate for politics rather than policy.

"If the Senate decides to torpedo this thing -- we did everything we can to get this bill out -- I hope they wouldn't do that," he said.

### **By the Numbers**

No Republicans voted against the final bill. But five Democrats -- Ken Lucas, Ky., Collin C. Peterson, Minn., James A. Traficant Jr., Ohio, Adam Smith, Wash., and Robert E. "Bud" Cramer, Ala. -- voted yes.

On the critical Norwood amendment, Peterson, Lucas and Traficant joined 214 Republicans in adopting the proposal. Six Republicans -- Greg Ganske, Iowa, Jim Leach, Iowa, Timothy V. Johnson, III., Constance A. Morella, Md., Marge Roukema, N.J., and Christopher H. Smith, N.J.

-- voted to keep the tougher liability language of the underlying bill sponsored by Ganske, John D. Dingell, D-Mich, and Marion Berry, D-Ark.

Of 10 Republicans who sponsored the underlying bill, three -- Bob Barr, Ga., Benjamin A. Gilman, N.Y., and Steve Horn, Calif. -- switched sides to support Norwood's amendment.

Ganske, Dingell and others warned that Norwood's amendment would wipe out stronger state patients' rights laws and make it virtually impossible for patients to win redress in court when an insurer's denial of care results in injury.

Quoting from an analysis by a group of George Washington University health law professors, Ganske said the amendment meant, among other things, that state malpractice laws would not apply to any health plan treatment decision "whether it be negligent, reckless, willful or wanton."

Norwood acknowledged that his amendment -- written in the wee hours Thursday morning -- might provide health plans excessive legal protections or inadvertently pre-empt state laws in ways he did not intend. But he promised to fix the problems in conference.

"I know this isn't the final bill, and so do you," he told his erstwhile allies. "I know there are words that need to be changed."

The House also adopted, 236-194, an amendment by Ways and Means Chairman Bill Thomas, R-Calif., that would remove limits on the number of people who could set up tax-sheltered medical savings accounts and allow small businesses to join "association health plans" that could purchase insurance under federal, not state, regulation.

A third amendment, which would have created a federal medical malpractice law capping damages and setting time limits on lawsuits, was defeated, 207-221. That amendment, also offered by Thomas, would have grandfathered existing laws and allowed future state laws to supersede federal standards.

A Democratic motion to recommit failed on a 208-220 vote.

### **'No Apologies to Anyone'**

Most of the debate swirled around the Norwood amendment, which would allow patients to sue health plans in state courts over denial of care based on medical judgment. But lawsuits would have to be tried under new federal standards, with limits on damages.

The measure, as passed, would not allow suits against health plans until patients had exhausted administrative appeals. Non-economic damages for pain and suffering would be capped at \$1.5 million. Punitive damages, available only if a health plan ignored the recommendations of an independent medical review panel, also would be limited to \$1.5 million.

Norwood was at turns defiant and tearful as he explained why he shifted from successfully leading the charge for passage of a tougher patients' rights bill in 1999 that died in conference to striking a bargain with Bush for a weaker measure.

"I make no apologies to anyone," he said at one point, saying that "political reality" guided his actions. Without Bush's signature, Norwood said, patients would have no new protections against their insurers.

Hours later, after Ganske, Dingell and others had picked apart the language of his amendment, Norwood thanked them for their earlier support in the long patients' rights debate and told them how much he admired them.

In a choking voice, he saluted his health aide, who took the lead in drafting the amendment. "I don't know anyone who has taken a worse beating in my behalf in the last two weeks than Rodney Whitlock," Norwood said.

Senate sponsors were unrelenting in their attack on Bush and the Norwood amendment.

"This administration and this president is much too protective of HMOs," Kennedy said.

Edwards said the House bill would overturn existing state law patient protections and deny patients "an effective remedy" in court. "The more we see of President Bush's proposal, the less we like it," he said.