

Legislative History for Connecticut Act

SB 466 PA 434 1984

HOUSE - 6680-6686 (7)

Senate - 1643-1647 (5)

G.A.E. - 241-242, 259, 270-274 (8)

Top.

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate  
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CONNECTICUT  
GEN ASSEMBLY  
HOUSE

PROCEEDINGS  
1984

VOL. 27

PART 18

6333-6686

House of Representatives

Tuesday, May 8, 1984

DEPUTY SPEAKER FRANKEL:

The bill is passed.

CLERK:

Calendar page 8. Calendar No. 683, File No. 660, Substitute for Senate Bill No. 408, AN ACT CONCERNING VENDOR OR FRAUD AND ABUSE IN THE GENERAL ASSISTANCE PROGRAM AND THE WITHHOLDING OF REIMBURSEMENT OF TOWNS FOR COSTS OF GENERAL ASSISTANCE AND MEDICAL ASSISTANCE. (As amended by Senate Amendment Schedule "A"). Favorable Report of the Committee on Judiciary.

REP. MOYNIHAN: (10th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Moynihan.

REP. MOYNIHAN: (10th)

Mr. Speaker, may this item be passed temporarily.

DEPUTY SPEAKER FRANKEL:

The motion is to pass aside as temporarily. Is there objection? Is there objection?

Seeing none, it is so ordered.

CLERK:

Calendar No. 686, File No. 418, Substitute for Senate Bill No. 466, AN ACT CONCERNING PUBLIC BIDDING, (As amended by Senate Amendment Schedule "A"). Favorable

Report of the Committee on Government Administration and Elections.

REP. ATKINS: (140th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. John Atkins.

REP. ATKINS: (140th)

I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the Senate.

DEPUTY SPEAKER FRANKEL:

The question is on acceptance and passage in concurrence with the Senate. Will you remark sir?

REP. ATKINS: (140th)

Thank you Mr. Speaker. What this bill would do, would be to prohibit the substitution of a subcontractor for work GC committed to do with his own firm and his own bid or on a public building.

Additionally, the bill would permit sanctions for any general who violates any provisions of the law relating to the public building contractors. The contractor could be prohibited from bidding on other state contracts for up to 24 months.

And, at this point I'd like the Clerk to call an

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amendment. LCO 2980, previously designated Senate "A", and I be allowed to summarize.

DEPUTY SPEAKER FRANKEL:

The Clerk has LCO No. 2980, which was previously designated Senate "A". Would the Clerk please call the amendment only.

CLERK:

LCO No. 28 -- correction, LCO No. 2980, designated Senate Amendment Schedule "A", offered by Sen. Lovegrove of the 28th district.

DEPUTY SPEAKER FRANKEL:

Is there objection to summarization in lieu of reading by the Clerk? Hearing none, you may proceed Rep. Atkins.

REP. ATKINS: (140th)

Thank you Mr. Speaker. What Senate "A" does is make the provision regarding the application of sanctions in the original filed permissive rather demandatory and it also removes the requirement of any prohibition on bidding for at least 12 months, and I would move the amendment.

DEPUTY SPEAKER FRANKEL:

The gentleman has moved adoption of Senate Amendment Schedule "A". Will you remark on its adoption? Will you

remark on the adoption of Senate "A"?

REP. SCHMIDLE: (106th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Mae Schmidle.

REP. SCHMIDLE: (106th)

Mr. Speaker, through you, a question to Rep. Atkins.

DEPUTY SPEAKER FRANKEL:

Pose your questions please, madame.

REP. SCHMIDLE: (106th)

What is the effect of Senator Lovegrove's amendment when he strikes out the word shall and includes the word may instead?

DEPUTY SPEAKER FRANKEL:

Rep. Atkins.

REP. ATKINS: (140th)

Through you, Mr. Speaker, it makes it permissive rather than mandatory.

DEPUTY SPEAKER FRANKEL:

Rep. Schmidle, you have the floor madame.

REP. SCHMIDLE: (106th)

Through you sir, again to Rep. Atkins, is that the equivalent of gutting the bill?

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DEPUTY SPEAKER FRANKEL:

Rep. Atkins, do you care to respond?

REP. ATKINS: (140th)

Through you, Mr. Speaker, no. It does change the penalty section of the bill, but the jist of the bill is certainly still in place.

DEPUTY SPEAKER FRANKEL:

Rep. Schmidle, you have the floor madame.

REP. SCHMIDLE: (106th)

Yes, one more question. In other words is it your feeling that the bill is still an improvement over the legislation that we now have even with this particular provision?

DEPUTY SPEAKER FRANKEL:

Rep. Atkins,

REP. ATKINS: (140th)

Through you Mr. Speaker, absolutely. It still does prohibit the substitution of a subcontractor for work, a GC committed to do.

REP. SCHMIDLE: (106th)

Okay, thank you sir.

DEPUTY SPEAKER FRANKEL:

Will you remark further? Will you remark further on the adoption of Senate "A"? If not, all those in favor

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please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER FRANKEL:

Those opposed nay.

REPRESENTATIVES:

No.

DEPUTY SPEAKER FRANKEL:

The Chair is in doubt. We'll try your minds again.

All those in favor in the adoption of Senate Amendment Schedule "A" please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER FRANKEL:

Those opposed nay.

REPRESENTATIVES:

No.

DEPUTY SPEAKER FRANKEL:

The ayes have it. Senate "A" is adopted.

Will you remark further on this bill as amended?

Will you remark further?

If not, staff and guest please come to the well, Members please be seated. Will the Clerk please open the machine.

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CLERK:

The House of Representatives is now voting by roll. Will the members please return to the Chamber immediately.

The House of Representatives is now voting by roll. Will the members please return to the Chamber immediately.

DEPUTY SPEAKER FRANKEL:

Have all the members voted? Have all the members voted and is your vote properly cast? If so, the machine will be locked.

Will the Clerk please take a tally.

Will the Clerk please announce the tally.

CLERK:

Senate Bill 466, as amended by Senate Amendment Schedule "A",

Total Number Voting	146
Necessary for Passage	74
Those voting Yea	142
Those voting Nay	4
Those absent and not Voting	5

DEPUTY SPEAKER FRANKEL:

The bill as amended is passed.

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GEN. ASSEMBLY  
SENATE

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PART 5

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SENATE

TUESDAY  
APRIL 24, 1984

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THE CLERK:

Cal. 281, File 418. Substitute for Senate Bill No. 466.

AN ACT CONCERNING PUBLIC BIDDING. Favorable report of the Committee on Government Administration and Elections. The Clerk has an amendment.

THE CHAIR:

Senator Robertson.

SENATOR ROBERTSON:

Mr. President, under our rules, may I absent myself from this bill.

THE CHAIR:

The record will so note.

SENATOR ROBERTSON:

Thank you, sir.

THE CHAIR:

Senator Daniels.

SENATOR DANIELS:

Mr. President, I move for the acceptance of the Committee's favorable report and passage of the bill.

THE CHAIR:

The Clerk please call the amendment.

THE CLERK:

The Clerk has Senate Amendment Schedule A. LCO 2980.

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ROC

THE CHAIR:

Senator Lovegrove.

SENATOR LOVEGROVE:

Mr. President, I move adoption of the amendment and the waiver of the reading.

THE CHAIR:

Without objection, you may proceed.

SENATOR LOVEGROVE:

Mr. President, all this amendment does is make the suspension of a firm when it is found to be in violation of the public bidding process up to the discretion of the Commissioner.

THE CHAIR:

Do you wish to remark further on the amendment? Senator Daniels.

SENATOR DANIELS:

Mr. President, I just simply rise to support the amendment.

THE CHAIR:

Do you wish to remark further? All those in favor of the amendment will signify by saying Aye. Those opposed Nay. The Ayes have it. SENATE AMENDMENT A IS ADOPTED.

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THE CLERK:

No further amendments.

THE CHAIR:

Senator Daniels.

SENATOR DANIELS:

Mr. President, the bill, as amended, would prohibit except for good cause the substitution of a subcontractor for work a general contractor is committed to do with his own firm in his bid on a public building. The statutes now permit an awarding authority to allow substitutes for original subcontractors for good cause, meaning generally some problems that subcontractors are having.

This bill would permit substitution for good cause arising from general contractors as well, ah, general problems of the general contractors as well. In addition, the bill would establish sanctions for any general contractor who violates any of the provisions of the law relating to the public building contracts.

If there is no objection, Mr. President, I ask that this be placed on the Consent Calendar.

THE CHAIR:

We have to vote on it because of the absence of Senator Robertson who excused himself under the rules. The Clerk please make an announcement for an immediate roll call.

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THE CLERK:

Will all senators please ~~take~~ their seats. An immediate roll call has been called for in the Senate. An immediate roll call has been called for in the Senate. Will all senators be seated.

THE CHAIR:

The question before the chamber is a motion to adopt Cal. 281, Substitute for Senate Bill No. 466, File 418, as amended by Senate Amendment Schedule A. The machine is open. Please record your vote. Is the P.A. system working outside this chamber? Thank you. Would the Clerk announce again that an immediate roll call is in process.

THE CLERK:

An immediate roll call has been called for in the Senate. Will all senators please take their seats. An immediate roll call has been called for in the Senate. Will all senators please be seated.

THE CHAIR:

Senator Skowronski. The machine is closed. The Clerk please tally the vote.

RESULT OF THE VOTE: 34 Yea. 0 Nay. THE BILL IS ADOPTED.

May I ask that the senators please, this is going to be a long afternoon. Please don't wander beyond the confines of

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the chamber. If you have to go outside of the chamber, please pay attention to the call. You are going to come in later on and ask to be recorded. I think that we have to understand that we have to cooperate if we are going to complete this Calendar.

How do you wish to vote, Senator Skowronski.

SENATOR SKOWRONSKI:

In the affirmative, Mr. President.

THE CHAIR:

The record will so note.

THE CLERK:

Cal. 306, File 238. House Bill No. 5185. AN ACT CONCERNING NOTIFICATION OF BENEFITS AVAILABLE UNDER THE WORKERS' COMPENSATION REHABILITATION PROGRAM. Favorable report of the Committee on Labor and Public Relations. The Clerk has an amendment.

THE CHAIR:

Senator Harper.

SENATOR HARPER:

Thank you, Mr. President. I believe the amendment will be withdrawn.

THE CHAIR:

Will you move the bill please.

JOINT  
STANDING  
COMMITTEE  
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GAE

March 5, 1984

MR. CUTTS: (continued)

legislature in 1982. In a very general way, we believe it's a step backward. Our attempt to hold the prime contractor solely and fully accountable for what happens out there on the construction site.

Wording of Section one is verbatim from the cancelled statute. At the very least, it would add costs and delays to the design phase of a capitol construction project.

Section two of the proposed bill is considered unnecessary and if absent of section one it would be redundant. Under the current statutes, the prime bidders must list classes of work to be performed by others. Who will do them and at what price. By inference, then, he's expected to do all other work required with his own forces, and his bid is so evaluated based upon objective criteria. All of this is provided currently in Section 4-137 a.

The third bill which I would like to speak to you about is Senate Bill 466. This also proposes a change in our current bid statute. As it is presently written, the department must oppose this bill. However, we would be supportive if you see fit to make some wording changes on line 40. In lieu of the words, in any case, on line 40, please substitute, except for good cause. The existing wording in that proposed statute could very well lead us to a complete stoppage of work without recourse.

For example, if a general contractor required a license to do some work which he was required to do in the preparation of his bid document, and for some reason or another lost that license between the time that he submitted his bid and the contract was awarded, he would be at an impasse. Under this statute, he could not subcontract it and other laws pertaining to licensing, he couldn't do the work himself. And we would be absolutely stymied. The worse thing I could think of would happen, if we're talking about a general contractor who does site work and he loses his blasting licence, without blasting you can't start a construction project without that hole in the ground.

Substitute wording is suggested as a way of avoiding such an impasse. The term good cause is already defined in the statutes and we believe such wording, such a change in wording may be feasible then for us to gain compliance with both the letter and intent of the legislation. I have no other comments.

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SEN. DANIELS: Could you give to this committee before Friday the suggested language that you just outlined for us, in writing.

MR. CUTTS: Yes, sir, I will. I believe it's the commissioner's intent to provide you with copies and perhaps a little more detail in writing than I have mentioned orally.

SEN. DANIELS: Okay. I ask the indulgence of the committee. Please, since we are going to have an opportunity to talk with representatives of DAS when we get ready to consider these bills, please keep your questions rather short. I believe, Maç, you had a question.

REP. SCHMIDLE: Well, yeah, I had a question, but, are you saying that we're going to be able to come back and ask some of these questions?

SEN. DANIELS: Yes.

REP. SCHMIDLE: All right. Then I'll wait. Thank you.

SEN. DANIELS: Okay. Thank you. Thank you very much, Mr. Cutts.

MR. CUTTS: Thank you.

MR. AMBROGIO: Mr. Chairman, the next series of bills that have been proposed, presented by the Department of Administrative Services are from the Bureau of Collection Services. And those are SB 457, 458, 459, 462, 463 and 465 respectively.

Again, an opening letter from the commissioner is as follows: The Bureau of Collection Services is unique among DAS bureaus. Its total responsibility relates to revenue. Its mission is to recover from patients, recipients of public assistance and their legally liable relatives the maximum amount expended in their behalf.

Maximum recover is increasingly important as the state makes every effort to hold taxation to a minimum while maintaining maximum services. It is essential that each individual receiving care or assistance fulfill every obligation possible within their circumstances. Accordingly, it is this Bureau's and my responsibility to recommend to you every reasonable means of assuring the fulfillment of client statutory responsibility for payment of obligations.

MR. EACOTT: (continued)

completed in full. It's the only industry I know where retention is held until the end of the job. This obviously hurts the minority and small subcontractors. I'm talking about the female owned businesses, the black owned businesses, the Puerto Rican owned businesses. They are the ones that are generally under-financed and when you retain money that they've had to pay in wages, in some cases one year or two years, it makes it most difficult for them to compete. Thank you for your time.

REP. ATKIN: Thank you. Mr. Eacott, you did indicate on the list that you wanted to speak on 466. Do you have an opinion on that?

MR. EACOTT: We are opposed to bill 466 which attempts to do in the back door what 461 is trying to do. Again, tying the hands of the general contractor. A quick illustration is there's usually on the state works, a 60 day delay in the awarding of a contract. You have to hold your bid open for 60 days. The day of a bid award, the day of the bidding, the general contractor may decide to do a portion of the job with his own forces. Sixty days later he may have become much busier, gotten other work and say I can't do that portion with my own forces. I want to subcontract that portion of the work. This would prevent him from doing that. It ties the general contractor's hands who ultimately is the responsible party, the party the state goes to, not the subcontractor or the supplier.

REP. ATKIN: Are there any further questions for Mr. Eacott? Rep. Torpey and then Rep. Candelori.

REP. TORPEY: On 460, I'd like to ask you the same question. Why should we have to listen to subcontractors at all? Your smiling. Do you hear that question a lot?

MR. EACOTT: I love your question.

REP. TORPEY: I hope I love your answer. What is it?

MR. EACOTT: Well, the general contractor - from the general contractor's view and probably from the interest of the state in the long run, the most responsible way to do this is to obviously have one responsible bid, listing no one other than the general contractor for the total project. You'll get the lowest prices. You put the

MR. SORENSEN: (continued)

Otentimes it's held back one, two or three years. For marginal contractors or small business people, this is an undue burden. One of the arguements that we propose and purport is true is that the practice of retainage drives up the cost of construction. A subcontractor who knows that he's on a \$4 million project and he's going to have 5-10% of his money withheld for a year or two years, he has to build that cost of borrowing that money into his bid price and that ultimately is going to cost the State of Connecticut more money and we're saying by either eliminating or reducing it, you can ultimately lower construction costs.

If you would allow me, I would like to address the issue of listing, bid listing, which is contained in bills 460, 461, and 466. Two years ago when we came before this committee and the committee acted without benefit of public hearing to change the prefile bid statute to a bid listing statute, we expressed two major concerns. These concerns basicially were that the current statute which is now in effect does not address the number of subtrades which a general contractor can bid and it doesn't mandate that the state has to list any particular number. We were assured at that time both by the General Contractors Association and by the Public Works Department that that wasn't going to be the case.

Mr. Cutts alluded earlier that the objective behind SB461 bid listing and prefile bidding both was to protect the subcontractor from bid listing and at the same time give the state the best possible job at the best possible price. If I could refer to - I have included in my packet and I have earmarked these two pages, two general low bidding bids for two major state construction projects which have occurred in the last four or five months. The first one is the project I believe is the New Haven Juvenile Court facility and the State of Connecticut on all bid listing projects has only required the listing of three trades. Prefile bidding required a listing of seventeen. We were assured by the State of Connecticut that that wasn't going to be the case when we expressed our concern that the state would have the option of choosing how many the general contractor had to bid list and we were concerned that the general

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MR. SORENSEN: (continued)

contracting industry - I have some stiff competition out there, I realize (referring to background noise) - that the general contracting industry would have to bid list all the same trades. I hold for your peruse two general bids. In both of these, and in every bid that I have spoken to Mr. Cutts about and he said yes, they only require the listing of three trades; the electrical, mechanical and the plumbing. We argue that that's not enough.

On the first project, you will see that the bid price of - the general bid price for the low bidding general contractor was almost \$4 million. He is proposing to do - he lists no other subcontractor except a contractor, \$59,000 who is going to do some kitchen equipment work. He has not listed the elevator work for which he must be a licensed elevator installer, he is not; he lists no other trade and there is masonry, there is dry wall, there are acoustics, and our contention is that he is - this bidder and others like him are subverting the intent of the law.

Public Works isn't helping the situation because they require only three trades. Now if you go to the next bid that I have earmarked, it's the bid for the construction of the Hartford Court Facility in the State of Connecticut. I think the title is on there.

The price of this job, or the low bidding general contractor who was awarded the general contract, is for \$18 million. Now Public Works has contended that they don't want to be bothered with the small contractor and I can understand that. As a good example here, the mason contractor. His subcontract was only \$4 million. He wasn't listed. I'm the Executive Director, as I mentioned earlier, of the Mason Contractors Association of Connecticut and I can swear to you today that 90% of our members were contacted by general contractors who did not list a mason contractor but who were trying to get prices from them with an indication that they would do the work.

I'm only referring to these to indicate our position and we feel there is a validity to our position. --

REP. ATKIN: -- I know you have a couple of other bills, Mitch, but --

MR. SORENSEN: -- Well, basically, these statements refer to basically 466, 461 and - and 461. We do not feel that Public Works' bill, 460, goes far enough to correct the procedure. I can understand Public Works' relating to 466, I can understand Public Works' concern over some of the language in there.

We had as our guest speaker for our association's annual meeting, Deputy Commissioner Cassin from Public Works. We expressed to him our concern last September about this problem: general bidders doing work which they indicated they would do themselves, and if they can do the work with their own forces and they indicate that they can, we have no problem, fine. However, if they only intend to do the work themselves to shop around after the fact and give it out to somebody else, we object to that and we think the law is weak in this area and should be addressed.

Mr. Cassin indicated at that time that he was aware of the situation but that the statute lacked teeth for him to enforce it. 466 is what we felt was an answer to Mr. Cassin's position that there was no teeth in the law with which to enforce it.

REP. ATKIN: Thanks, Mitch. Any questions? Rep. Lyons.

REP. LYONS: I just wondered, is retainage a practice which is used in the private sector and if so, what percentage is generally retained?

MR. SORENSEN: In the private sector, it can go anywhere from no retainage, I know United Aircraft retains 15% retainage, and we have a growing number of contractors who, because of the current financial climate, can't afford to bid even in the private sector when retainage and those excess amounts are withheld.

REP. LYONS: How would you answer the statement that was made that this is a method they use to make sure that your work is completed?

MR. SORENSEN: Our position is that retainage is not going to insure prompt completion but a forceful, accurate, manning of the job, seeing - overseeing that the work is done and is done properly and that paperwork and everything else is expedited so the state will obtain

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MR. SORENSEN: (continued)  
the same end result.

REP. LYONS: I just have one other question. You mentioned sometimes the payments were held up for a year or two years. Why is there that delay and should perhaps the time factor be addressed even more than the percent of the retainage.

MR. SORENSEN: I think you wind up if you address the time, that is realistic, you're talking - the general contractors who were here were talking a year to two years and you noticed that I indicated that it was a year, two years or three years, because oftentimes the payments are slow, the awarding authority in both the public and private sector oftentimes is earning interest on his money that is held. They have it in certain certificates or bonds that don't mature, so they delay. I'm not saying this is universal but this is the practice. When this money is funneled down to the general contracting industry the same argument takes place. They oftentimes can delay the passage on of this money to some contractors for who that money is really earmarked for. It is estimated, and we had a survey done through our national organization, that in any major construction project, 85% of the construction work is done by the subcontracting industry with 10-15%, 25% at the most, being done by the general contracting industry.

REP. LYONS: So you're saying that even when the job is absolutely completed and they've signed off on it, there's still a very extensive delay in receiving that payment?

MR. SORENSEN: Not universally but most of the time. I don't want to say every general contractor is guilty of that practice because that would not be the case. There are some that abuse that practice more than others.

REP. LYONS: Thank you.

REP. ATKIN: Rep. Torpey.

REP. TORPEY: If there's some question about the job being done properly or done completely, do you still object to withholding?

MR. SORENSEN: Do you if there's a question that it hasn't been done properly?

REP. TORPEY: Yes, if they notify you in writing --

MR. SORENSEN: -- No question about it, but usually --

REP. TORPEY: -- Excuse me, no question about what?

MR. SORENSEN: That if you - if the awarding authority is unhappy with the job. One of the things that Mr. Cutts alluded to relative to the federal government was the federal government is not too happy about bid listing. He didn't choose to allude to the fact that the federal government has eliminated retainage. The federal government has found that on projects where they are progressing well, the work is done, and they eliminate the practice of retainage.

REP. TORPEY: My question is if there is some problem with the job and they notify you that there is a problem, do you object to withholding under those circumstances?

MR. SORENSEN: I guess I have to say no. I could understand that. I think that's why before this committee there is a bill to bring it down to 2½% instead of eliminating the entire thing. I recognize that.

REP. ATKIN: Are there further questions? Thanks, Mitch. Don Ingalls followed by Hal Albert.

MR. DONALD INGALLS: Mr. Chairman, members of the committee, I'm Don Ingalls of Connecticut Health Plan and Health Maintenance Organization serving the Greater Bridgeport area. I also chair the legislative committee of the Association of Connecticut HMO's.

I appreciate the opportunity to testify on Senate Bill 465, An Act Requiring Coverage by Providers of Health Care Benefits for Care and Treatment at State Operated Facilities. Unlike traditional insurers, HMO's actually provide or arrange for a comprehensive health service in addition to paying for the care of their members. A key element in our system is that all care is arranged by the members personal physician in our plan. This prior approval mechanism allows the HMO to ensure that appropriate care is provided to members in