

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON HEALTH  
Jim Wood, Chair  
AB 1392 (Rodriguez) – As Amended March 30, 2023

**SUBJECT:** Hospitals: procurement contracts.

**SUMMARY:** Requires the Department of Health Care Access and Information (HCAI) to require hospitals with operating expenses of \$50 million dollars or more, and hospitals with operating expenses of \$25 million or more that are part of a hospital system, to annually submit a detailed and verifiable plan for creating procurement from minority, women, Lesbian, Gay, Bisexual, Transgender (LGBT), and disabled veteran business enterprises (MWLGBTDVBES). Specifically, **this bill:**

- 1) Requires HCAI to require hospitals with operating expenses of \$50 million dollars or more, and hospitals with operating expenses of \$25 million or more that are part of a hospital system, to annually submit a detailed and verifiable plan for creating procurement from MWLGBTDVBES.
- 2) Requires the plan to include all of the following:
  - a) The hospital's supplier diversity policy statement;
  - b) Short- and long-term goals and timetables, but not quotas, for increasing procurement from MWLGBTDVBES;
  - c) The hospital's outreach and communications to minority, women, LGBT, and disabled veteran business enterprises, including all of the following:
    - i) The methods in which the hospital encourages and seeks out both prime suppliers and subcontract suppliers from MWLGBTDVBES to become potential suppliers;
    - ii) The methods in which the hospital encourages its employees involved in procurement to seek out MWLGBTDVBES to become potential suppliers;
    - iii) The methods in which the hospital conducts outreach and communication to MWLGBTDVBES;
    - iv) The methods in which the hospital supports, partners with, or interacts with organizations and other entities in the procurement ecosystem that promote, certify, or contract with MWLGBTDVBES;
    - v) The methods in which the hospital resolves any issues that may limit or impede an enterprise from becoming a supplier; and,
    - vi) Information regarding appropriate contacts at the hospital for interested business enterprises.

- d) The hospital's procurements that are made from MWLGBTDVBEs with at least a majority of the enterprise's workforce in California, with each category aggregated separately, to the extent that information is readily accessible; and,
  - e) The planned and past implementation of relevant recommendations made by the hospital diversity commission as described in 6) in existing law below.
- 3) Authorizes a hospital that is part of a hospital system or is organized within a regional network within a hospital system to report the diversity of its procurement in compliance with this bill from a system-wide or regional network level if there are suppliers that provide services or goods to all hospitals within the hospital system or regional network. Requires a hospital to report the diversity of the remainder of its procurement, including the suppliers that do not resource the entire hospital system or regional network, as an individual hospital.
  - 4) Authorizes the plan to include other relevant information.
  - 5) Requires HCAI to establish a supplier diversity web page on its internet website to inform diverse suppliers on the hospital's procurement process, including the contact information of a diverse business outreach liaison.
  - 6) Authorizes HCAI to audit the plans required by this bill for compliance and accuracy, and requires HCAI, in consultation with the hospital diversity commission, to establish guidelines for hospitals to voluntarily utilize when pursuing procurement efforts, activities, or programs in accordance with this bill.
  - 7) Adds an additional commissioner to the existing diversity commission who is a representative of a group purchasing organization, manufacturer, or vendor of goods and services for hospitals who, at the time of appointment, is a practitioner or expert in the field of supplier diversity. Grants the Director of HCAI the discretion to appoint additional commissioners.
  - 8) Authorizes HCAI to provide compensation to the commissioners for their services.
  - 9) Requires HCAI to provide outreach and assistance, in consultation with the commissioners, to hospitals, manufacturers, vendors, or group purchasing organizations of hospital goods and services seeking to increase procurement from MWLGBTDVBEs.
  - 10) Requires HCAI to provide outreach and assistance, in consultation with the commissioners, to MWLGBTDVBEs seeking to be a supplier for a hospital, manufacturer, vendor, or group purchasing organization of hospital goods and services.
  - 11) Authorizes HCAI to establish and operate a clearinghouse to maintain a database, and verify the statuses, of MWLGBTDVBEs that are prime suppliers or subcontract suppliers to hospitals or other entities in the procurement ecosystem of hospital goods and services.
  - 12) Prohibits 11) above from being construed to require a hospital or other entity to utilize the clearinghouse. Authorizes a hospital, in order to increase procurement from minority, women, LGBT, and disabled veteran business enterprises as reported by the hospital to HCAI, or any other entity in the procurement ecosystem of hospital goods and services for

purposes of procurement that it elects to pursue, to choose business enterprises that are included in the clearinghouse or to choose other minority, women, LGBT, and disabled veteran business enterprises not included in the clearinghouse and that are prime suppliers and subcontract suppliers of hospital goods and services.

- 13) Finds and declares that each licensed hospital and hospital that is part of a hospital system that is not required to submit a plan pursuant to this bill is encouraged to voluntarily adopt a detailed and verifiable plan for increasing procurement from minority, women, LGBT, and disabled veteran business enterprises.

**EXISTING LAW:**

- 1) Establishes HCAI in the California Health and Human Services Agency to expand equitable access to quality, affordable health care for all Californians through resilient facilities, actionable information, and the health workforce each community needs. [Health and Safety Code (HSC) §127000, *et seq.*]
- 2) Requires, by July 1, 2021, each licensed hospital with operating expenses of fifty million dollars (\$50,000,000) or more, and each licensed hospital with operating expenses of twenty-five million dollars (\$25,000,000) or more that is part of a hospital system, to submit a report to HCAI on its minority, women, LGBT, and disabled veteran business enterprise procurement efforts during the previous year. Requires the report to include all of the following:
  - a) The hospital's supplier diversity policy statement;
  - b) The hospital's outreach and communications to minority, women, LGBT, and disabled veteran business enterprises, including:
    - i) How the hospital encourages and seeks out minority, women, LGBT, and disabled veteran business enterprises to become potential suppliers;
    - ii) How the hospital encourages its employees involved in procurement to seek out minority, women, LGBT, and disabled veteran business enterprises to become potential suppliers;
    - iii) How the hospital conducts outreach and communication to minority, women, LGBT, and disabled veteran business enterprises;
    - iv) How the hospital supports organizations that promote or certify minority, women, LGBT, and disabled veteran business enterprises; and,
    - v) Information regarding appropriate contacts at the hospital for interested business enterprises.
  - c) The hospital's procurements that are made from minority, women, LGBT, and disabled veteran business enterprises with at least a majority of the enterprise's workforce in California, with each category aggregated separately, to the extent that information is readily accessible. [HSC § 1339.87]
- 3) Prohibits these provisions from being construed to require quotas, set-asides, or preferences in a licensed hospital's procurement of goods or services, nor to apply to hospital producer or licensee contracts. Grants licensed hospitals the authority to use business judgment to select the supplier for a particular contract. [*Id.*]
- 4) Makes a hospital that fails to file the report subject to a civil penalty of one hundred dollars (\$100) per day. Authorizes a hospital to request, and HCAI to grant, a 30-day extension to

file the report if needed due to unintended or unforeseen delays. [*Id.*]

- 5) Requires, on and after July 1, 2021, each licensed hospital subject to these provisions to annually update its supplier diversity report and submit the new report to HCAI no later than July 1 of that year. Requires HCAI, by July 31, 2021, to establish and maintain a link on the its internet website that provides public access to the contents of each licensed hospital's report on MWLGBTDVBE procurement efforts. [*Id.*]
- 6) Requires HCAI to convene a hospital diversity commission to advise and provide recommendations to HCAI and the hospital industry on the best methods to increase procurement with diverse suppliers within the hospital industry. (HSC § 1339.88)

**FISCAL EFFECT:** Unknown. This bill has not yet been analyzed by a fiscal Committee.

**COMMENTS:**

1) **PURPOSE OF THIS BILL.** According to the author, AB 962 (Burke), Chapter 815, Statutes of 2019, requires hospitals to submit an annual report to HCAI on their supplier diversity procurement efforts and outreach and how they support these enterprises in their procurement processes. These reports were intended to acknowledge and increase procurement diversity as a social mission and a business strategy that widens the supplier pool and increases competition on the price and quality of goods and services. The author states that with a more diverse procurement pool, MWLGBTDVBEs have more economic opportunities with a hospital's supplier roster that mirrors the patient and community populations. However, in the most recent report that HCAI released, diverse procurement spending only accounted for 1% of hospital procurement spending. MWLGBTDVBEs deserve more dollars from our healthcare industry. The author concludes that this bill would achieve that goal by aligning the existing Hospital Supplier Diversity Commission with the more robust California Public Utilities Commission (CPUC) Supplier Diversity Program and the Insurance Commissioner's Insurance Diversity Initiative by requiring hospitals to submit instead an annual detailed and verifiable plan with short- and long-term goals and timetables to increase procurement from MWLGBTDVBEs.

2) **BACKGROUND.**

a) **Supplier diversity.** Beginning in 1986, the Legislature enacted a series of statutes to establish a supplier diversity program to encourage a fair proportion of the total purchases and contracts for commodities, supplies, technology, property, and services for utilities regulated by CPUC awarded to MWLGBTDVBEs. The CPUC established a supplier clearinghouse to verify the status of firms seeking certification as women, minority, or LGBT owned businesses, and the clearinghouse includes in its database the disabled veteran owned businesses that are certified by the Department of General Services. According to the CPUC's most recent report to the Legislature on its supplier diversity program, in 2021, the utilities' overall diverse supplier spend and percentage improved from their 2020 results. The utilities' procurement from diverse suppliers increased 4.6% from \$11.7 billion in 2020 to \$12.3 billion in 2021 and the WMDVLGBTBE percentage increased from 30.1% to 31.2%, continuing to exceed the CPUC's General Order (GO) 156 overall WMDVLGBTBE 21.5% goal.

Building on the CPUC program, in 2012, AB 53 (Solorio), Chapter 414, Statutes of 2012, was enacted to require all major insurers to submit an annual report to the Insurance Commissioner regarding the implementation of their efforts to increase procurement from women, minority, and disabled veteran business enterprises. While this program had a sunset date of January 1, 2019, and therefore is no longer in statute, there is still an Insurance Diversity Initiative at the Department of Insurance (DOI). Among other things, this initiative administers surveys to measure progress and encourage better results, and convenes an Annual Diversity Summit. The DOI has also established an Insurance Diversity Task Force, with a membership similar to the hospital diversity commission.

**b) California Hospital Diversity Program.** According to the 2022 Hospital Supplier Diversity Commission First-Year Recommendations Report, the commission has been meeting regularly since March 2021, and has reviewed baseline data from the first year Hospital Supplier Diversity Reports, heard from hospitals with more mature supplier diversity programs on some best practices in the hospital industry, and learned more about hospital procurement and supplier diversity. Some of the recommendations are as follows:

**i) For the Hospital Industry:**

- (1) Executive leadership should create a supplier diversity policy statement that promotes the use of diverse suppliers;
- (2) Executive leadership should develop and implement outreach and reporting metrics that support contracting with diverse suppliers;
- (3) Executive leadership should develop and implement hospital supplier diversity procurement metrics that are owned by executive leadership;
- (4) Executive leadership should develop, implement, and fund an internal hospital accountability system to meet specified metrics related to outreach, diverse business usage and provision of technical support for implementation;
- (5) Executive leadership should develop and implement an inclusion policy for hospitals to identify and track spend with diverse business enterprises (e.g., minority business enterprises, women business enterprises, disabled veteran enterprises, LGBTQ business enterprises);
- (6) Executive leadership should develop and implement procurement processes and policies to document and mitigate internal criteria that may limit or impede diverse suppliers' ability to competitively respond to bids; and,
- (7) Executive leadership should develop and implement a supplier diversity webpage to inform diverse suppliers on the hospital's procurement process including the contact information of a diverse business outreach liaison.

**ii) For the HCAI Director:**

- (1) HCAI should produce annual regular analyses, as defined by staff, with the data, which should include, but not limited to, analysis statewide, by region, and by hospital type; distribution of spend with diverse businesses; and, spending comparisons and benchmarks;
- (2) HCAI should publish on its website and distribute via HCAI communication channels, a list of hospitals required to report based on thresholds outlined in the statute for each annual reporting period and are required to submit supplier diversity reports to HCAI;

- (3) HCAI should revise reporting regulations to require disaggregated reporting from hospitals, which could include categories of hospital spending, counts of diverse suppliers, supplier demographics by category, and allowing for reporting of intersectional identities for diverse supplier (e.g., suppliers that are both minority and woman owned); and,
- (4) HCAI should collaborate with other public supplier diversity transparency programs, including CPUC, DOI, and California Secretary of State on lessons learned, best practices, challenges/obstacles to advance program goals.

Under the current program, 342 hospitals were required to submit reports for the 2021 report year. Of the 342: 313 hospitals had expenses in excess of \$50 million and 29 hospitals that had expenses in excess of \$25 million (and are part of a hospital system.)

For the 2021 report period, the program did not yet have a regulation that details the process on penalties and appeals for hospitals, therefore, penalties for late submission were not enforced for 2021 report period. In 2021: 28 Hospitals submitted their reports late (without extensions) and 29 Hospitals submitted their reports late (with an extension).

According to the 2021 report, diverse procurement spending accounted for 2% of the total hospital procurement spending of \$119,600,502,405.

- 3) **SUPPORT.** California Association for Micro Enterprise Opportunity (CAMEO) supports this bill and states that according to the American Hospital Association, increasing procurement diversity is a business strategy that widens the supplier pool and increases competition on the price and quality of goods and services. As a result, hospitals prioritizing supplier diversity benefit from greater innovation and value through cost reductions, better contract terms, and improved service. The community also benefits from local job creation and a supplier roster that mirrors the patient and community populations. Additionally, diverse businesses are more likely to work as small businesses, which tend to hire people from diverse backgrounds, providing people from marginalized communities with a pathway to financial security and upward mobility.

CAMEO notes that in the most recent report released by HCAI, diverse procurement spending accounted for 2% of the total hospital procurement spending of \$119,600,502,405. These figures need to improve, and California has two successful state supplier diversity programs: The CPUC Supplier Diversity Program and the Insurance Commissioner's Insurance Diversity Program. These programs act as a central source of best practices for procurement methods by experts. CAMEO supported both efforts over the years to improve supplier diversity.

- 4) **OPPOSE UNLESS AMENDED.** The California Hospital Association (CHA) and the District Hospital Leadership Forum are both opposed to this bill unless it is amended. CHA states that hospitals strive to support and uplift the businesses in their communities. One of the ways this is done is through the Hospital Supplier Diversity Program, established in AB 962. Under the statute, hospitals must submit an annual report to HCAI on their MWLGBTDVBE procurement efforts to help inform future regulations. In light of the efforts that are already under way, CHA requests the following amendments:
  - a) Delay the requirement that hospitals must develop detailed and verifiable plans until 2027. This would allow HCAI to collect five years of data and would give the Hospital

Supplier Diversity Commission, established in AB 962 to advise HCAI, time to evaluate and develop recommendations for the state's consideration;

- b) Similar to hospital community benefit assessments, extend the plan submission requirements from annually to every three years. Because the strategy to increase supplier diversity can often take time to develop and mature, there is not much change year over year; and,
- c) Delete the \$100 per day penalty for not reporting to HCAI.

CHA states that it is important to note that hospitals routinely participate in group purchasing organizations (GPOs) to save money on the supplies and services they need to deliver patient care. Purchasing through GPOs allows both larger health systems and small critical access hospitals to pool the buying power of multiple providers to negotiate the best prices. Hospitals do not control from where GPOs purchase their supplies and services. For the supplies and services that hospitals directly purchase, hospitals are doing what they can to increase procurement diversity. For example, hospitals do obtain some services, like non-core staffing and information technology, from local, diverse providers. However, increasing diversity among suppliers is more challenging due to a lack of manufacturing choices in some areas. CHA concludes that while hospitals and health systems support supplier diversity, the author and committee should allow the current Hospital Supplier Diversity Program to mature and the Hospital Supplier Diversity Advisory Committee to complete its work prior to implementing additional requirements.

## 5) PREVIOUS LEGISLATION.

- a) AB 962 required hospitals to submit an annual report to HCAI on their supplier diversity procurement efforts, including a policy statement, outreach to diverse businesses, and how they support these enterprises in their procurement processes.
- b) AB 1678 (Gordon) Chapter 633, Statutes of 2014, extended provisions of the supplier diversity program at the CPUC to include LGBT business enterprises.
- c) AB 53 requires all major insurers to submit an annual report to the Insurance Commissioner regarding the implementation of their efforts to increase procurement from women, minority, and disabled veteran business enterprises. Sunsetted these provisions on January 1, 2019.
- d) AB 2758 (Bradford) Chapter 475, Statutes of 2010, requires cable corporations (with gross annual revenues exceeding \$25 million) to annually submit a detailed and verifiable plan for increasing women, minority, and disabled veteran business enterprise procurement. Specified that renewable energy, wireless telecommunications, broadband, smart grid and rail projects should be projects of focus for utility diversity procurement.
- e) SB 2398 (Dills), Chapter 516, Statutes of 1990, included disabled veteran business enterprises in the classes of entities eligible under the women and minority-owned business programs.
- f) AB 3678 (Moor), Chapter 1259, Statutes of 1986, required each electrical, gas, and telephone corporation (with gross annual revenues exceeding \$25 million) to annually submit a detailed and verifiable plan for increasing women and minority-business-owned

procurement in all categories that includes short- and long-term goals and timetables, and furnish an annual report. Required the CPUC to establish guidelines for the plans.

- 6) **SUGGESTED AMENDMENT.** As this bill moves forward, the author may wish to work with HCAI to clarify that any compensation offered to commission members should be limited to a per diem of no more than \$100 a day.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Cameo - California Association for Micro Enterprise Opportunity  
Small Business Majority  
Telacu  
Vasquez & Company, LLC

**Opposition**

None on file.

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