ASSEMBLY THIRD READING
AB 1392 (Rodriguez)
As Amended March 30, 2023
Majority vote

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).

COMMENTS

1) *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 the California Public Utilities Commission (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 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 (CDI). Among other things, this initiative administers surveys to measure progress and encourage better results, and convenes an Annual Diversity Summit. The CDI has also established an Insurance Diversity Task Force, with a membership similar to the hospital diversity commission.

2) *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:

   a) *For the Hospital Industry:*

      i) Executive leadership should create a supplier diversity policy statement that promotes the use of diverse suppliers;

ii) Executive leadership should develop and implement outreach and reporting metrics that support contracting with diverse suppliers;

iii) Executive leadership should develop and implement hospital supplier diversity procurement metrics that are owned by executive leadership;

iv) 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;

v) 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);

vi) 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,

vii) 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.

b) *For the HCAI Director:*

i) 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;

ii) 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;

iii) 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,

iv) HCAI should collaborate with other public supplier diversity transparency programs, including CPUC, CDI, 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.

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.

Arguments in 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.

Arguments in Opposition 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:

1) 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;

2) 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,

3) 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.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, HCAI estimates costs to implement the requirements of this bill will be $986,000 for fiscal year (FY) 2024-25 and ongoing to build out the program to support expanded outreach, engagement, and compliance activities.

If HCAI elects to build out the clearinghouse, costs will also include additional information technology staff positions to support the planning, development and ongoing maintenance and operations of the clearinghouse, which would add $377,000 to the overall FY 2024-25 and ongoing costs. HCAI estimates it will also require $1 million in FY 2024-25 to support contracting with external developers to develop the system in partnership with state staff.

Thus, HCAI estimates the overall costs of this bill to be $2.36 million for FY 2024-25 and $1.38 million in FY 2025-26 and ongoing (California Health Data and Planning Fund).

VOTES

ASM HEALTH: 10-1-4

YES: Wood, Aguiar-Curry, Arambula, Boerner Horvath, Wendy Carrillo, Maienschein, Rodriguez, Santiago, Villapudua, Weber
NO: Joe Patterson
ABS, ABST OR NV: Waldron, Flora, Vince Fong, McCarty

ASM APPROPRIATIONS: 12-3-1
YES: Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Mathis, Papan, Pellerin, Weber, Ortega
NO: Megan Dahle, Dixon, Sanchez
ABS, ABST OR NV: Robert Rivas

UPDATED

VERSION: March 30, 2023

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