
THIRD READING

Bill No: AB 1392
Author: Rodriguez (D)
Amended: 9/8/23 in Senate
Vote: 21

SENATE HEALTH COMMITTEE: 10-2, 7/5/23

AYES: Eggman, Glazer, Gonzalez, Hurtado, Limón, Menjivar, Roth, Rubio,
Wahab, Wiener

NOES: Nguyen, Grove

SENATE APPROPRIATIONS COMMITTEE: 5-2, 9/1/23

AYES: Portantino, Ashby, Bradford, Wahab, Wiener

NOES: Jones, Seyarto

ASSEMBLY FLOOR: 60-10, 5/25/23 - See last page for vote

SUBJECT: Hospitals: procurement contracts

SOURCE: California Hispanic Chambers of Commerce
Los Angeles Latino Chamber of Commerce

DIGEST: This bill requires specified hospitals to submit an annual plan, rather than a report, for increasing procurement from minority, women, LGBT, and disabled veteran business enterprises. This bill permits the Department of Health Care Access and Information (HCAI) to establish and operate a clearinghouse to maintain a database, and verify the statuses, of those business enterprises.

Senate Floor Amendments of 9/8/23 delete the terms “detailed and verifiable” in relation to the plans hospitals are required to submit to HCAI for procuring products from diverse business entities. These amendments also permit HCAI to review, rather than audit, the plans hospitals submit for completeness. Lastly, these amendments specify that the guidance HCAI develops for hospitals in their procurement efforts is voluntary.

ANALYSIS:

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. [HSC §127000, et seq.]
- 2) Requires each hospital with operating expenses of \$50 million or more, and each hospital with operating expenses of \$25 million 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 (“targeted business enterprises”) 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 targeted business enterprises, including:
 - i) How the hospital encourages and seeks out targeted business enterprises to become potential suppliers;
 - ii) How the hospital encourages its employees involved in procurement to seek out targeted business enterprises to become potential suppliers;
 - iii) How the hospital conducts outreach and communication to targeted business enterprises;
 - iv) How the hospital supports organizations that promote or certify targeted business enterprises; and,
 - v) Information regarding appropriate contacts at the hospital for interested business enterprises.
 - c) The hospital’s procurements that are made from targeted 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, and from applying to hospital producer or licensee contracts. Grants hospitals the

authority to use business judgment to select the supplier for a particular contract. [HSC §1339.87]

- 4) Makes a hospital that fails to file the report subject to a civil penalty of \$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. [HSC §1339.87]
- 5) Requires each hospital subject to these provisions to annually update its supplier diversity report and submit the new report to HCAI no later than July 1. Requires HCAI to establish and maintain a link on its website that provides public access to the contents of each hospital's report on targeted business enterprises procurement efforts. [HSC §1339.87]
- 6) Requires HCAI to convene a hospital diversity commission, with specified commissioners, 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]

This bill:

- 1) Requires hospitals identified in 2) above of existing law to submit an annual plan, rather than a report, beginning July 1, 2025, for increasing procurement from targeted business enterprises. Requires the plan to include, in addition to the information in 2) above of existing law:
 - a) Short- and long-term goals and timetables, but not quotas, for increasing procurement from targeted business enterprises;
 - b) 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 targeted business enterprises;
 - c) Methods in which the hospital resolves any issues that may limit or impede an enterprise from becoming a supplier; and,
 - d) The planned and past implementation of relevant recommendations made by the hospital diversity commission, as specified.
- 2) Permits HCAI to review the plans required in this bill for completeness.

- 3) Makes legislative findings and declarations that each hospital that is not required to submit a plan pursuant to this bill is encouraged to voluntarily adopt a plan for increasing procurement from targeted business enterprises.
- 4) 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.
- 5) Permits HCAI's Director to add a commissioner to the hospital diversity commission. Permits HCAI, upon appropriation, to provide compensation to the commissioners for their services, as specified.
- 6) Requires the 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 adopt recommendations made by the hospital diversity commission or to increase procurement from targeted business enterprises.
- 7) Permits HCAI, upon appropriation by the Legislature, to establish and operate a clearinghouse to maintain a database, and verify the statuses, of targeted business enterprises that are prime suppliers or subcontract suppliers to hospitals or other entities in the procurement ecosystem of hospital goods and services. Prohibits this provision from being construed to require a hospital or other entity to utilize the clearinghouse.
- 8) Permits a hospital, in order to increase procurement from targeted 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 targeted business enterprises not included in the clearinghouse and that are prime suppliers and subcontract suppliers of hospital goods and services.

Comments

- 1) *Author's statement.* According to the author, increasing diverse procurement spending, benefits hospitals by widening the supplier pool and increasing competition on contracts. It also benefits disadvantaged communities by opening more economic opportunities and creating a supplier roster that reflects a hospital's patients and community. AB 962 (Burke, Chapter 815, Statutes of 2019) recognized these benefits and required hospitals to report their supplier diversity efforts, outreach, and data to HCAI. However, HCAI reported in its

latest report that only 2% of hospital spending went to diverse suppliers. They deserve more. This bill improves the Hospital Supplier Diversity Program by adopting strategies from successful programs like the California Public Utilities Commission (CPUC) Supplier Diversity Program and the California Department of Insurance's (CDI) Insurance Diversity Initiative. This bill requires hospitals to submit a detailed and verifiable plan with short- and long-term goals and timetables to increase diverse procurement.

- 2) *Background.* According to information provided by the author of this bill, only 2% of nearly \$120 billion in total hospital procurement dollars are spent on targeted business enterprises. The existing Hospital Supplier Diversity Program only requires hospitals to submit a report on previous procurement efforts. Although this is helpful to the Hospital Diversity Commission for devising recommendations and understanding the industry, the reports are far shorter, less detailed, and less ambitious than plans submitted to the CPUC for their Supplier Diversity Program. The CPUC's Supplier Diversity Program has a 31.1% rate of procurement dollars spent on targeted business enterprises, surpassing the CPUC's goal of 21.5%. Though the Hospital Diversity Commission releases recommendations, hospitals are not required to implement these recommendations. The program also provides little assistance to hospitals. CDI's Supplier Diversity Initiative has had educational and networking summits since 2012. The CPUC also provides outreach and assistance through workshops, webinars, feedback, and education. HCAI, in contrast, has only suggested creating an "En Banc style" of meeting in the future in their November 15, 2022, report.

[NOTE: For more information, see the Senate Health Committee analysis dated June 19, 2023]

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, unknown ongoing costs for HCAI, likely \$1 million - \$2 million (California Health Data and Planning Fund), including ongoing costs for staffing resources and a one-time cost of \$1 million for development costs for the clearinghouse.

SUPPORT: (Verified 9/11/23)

California Hispanic Chambers of Commerce (co-source)
Los Angeles Latino Chamber of Commerce (co-source)
California Association for Micro Enterprise Opportunity
California African American Chamber of Commerce

California Nurses Association
Coalition of Small and Disabled Veteran Businesses
Greater Riverside Hispanic Chamber of Commerce
Small Business Majority
The East Los Angeles Community Union
Vanir Construction Management
Vasquez + Company, LLC
Veterans Chamber of Commerce

OPPOSITION: (Verified 9/11/23)

Association of California Healthcare Districts
California Hospital Association
Department of Finance
District Hospital Leadership Forum
PIH Health

ARGUMENTS IN SUPPORT: The sponsors and supporters of this bill, who largely represent businesses, argue that according to the American Hospital Association increasing procurement diversity is not just a social mission but a business strategy that widens the supplier pool and increases competition on the price and quality of goods and services. 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. Supporters further argue that in the most recent report that HCAI released, diverse procurement spending only accounted for 2% of the total hospital procurement spending of \$119,600,502,405, and cite the diversity programs under the CPUC and CDI as two successful models.

ARGUMENTS IN OPPOSITION: Several entities representing the hospital industry argue that under current law, hospitals submit an annual report to HCAI on their targeted business enterprise procurement efforts to help inform future regulations. They state that California's hospitals support the goals of this reporting requirement, but it is an additional administrative requirement that equals additional resources at a time when many hospitals are already stretched thin. These entities request the following amendments:

- Delay the requirement that hospitals must develop detailed and verifiable plans until at least 2027. This would allow HCAI to collect five years of data and would give the Hospital Supplier Diversity Commission time to evaluate and develop recommendations for the state's consideration;
- 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,
- Delete the \$100 per day penalty for not reporting to HCAI.

The Department of Finance is opposed to this bill as it creates costs and pressures to the California Health Data and Planning Fund that are not included in the 2023 budget plan. These added costs and pressures may also result in increased fees on health care facilities and/or the costs of care. In addition, current law already provides various and substantial anti-discrimination protections for the targeted business enterprises in this bill. Adding additional safeguards at added costs may not be warranted, subject to policy determination.

ASSEMBLY FLOOR: 60-10, 5/25/23

AYES: Addis, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Juan Carrillo, Wendy Carrillo, Cervantes, Connolly, Mike Fong, Friedman, Gabriel, Garcia, Gipson, Grayson, Haney, Hart, Holden, Irwin, Jackson, Jones-Sawyer, Kalra, Lee, Low, Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Ortega, Pacheco, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Santiago, Schiavo, Soria, Ting, Valencia, Villapudua, Wallis, Ward, Weber, Wicks, Wilson, Wood, Zbur, Rendon

NOES: Megan Dahle, Davies, Dixon, Essayli, Vince Fong, Gallagher, Lackey, Jim Patterson, Joe Patterson, Sanchez

NO VOTE RECORDED: Aguiar-Curry, Calderon, Chen, Flora, Hoover, Mathis, Stephanie Nguyen, Papan, Ta, Waldron

Prepared by: Reyes Diaz / HEALTH / (916) 651-4111
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