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AB-962 Hospitals: procurement contracts. (2019-2020)

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Date Published: 10/14/2019 09:00 PM

Assembly Bill No. 962

CHAPTER 815

An act to add Chapter 2.17 (commencing with Section 1339.85) to Division 2 of the Health and Safety Code, relating to hospitals.

[Approved by Governor October 12, 2019. Filed with Secretary of State October 12, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 962, Burke. Hospitals: procurement contracts.

Existing law requires the State Department of Public Health to license and regulate health care facilities, including hospitals. Existing law establishes the Office of Statewide Health Planning and Development, which is vested with all the duties, powers, purposes, responsibilities, and jurisdiction of the State Department of Public Health relating to health planning and research development.

This bill would require a licensed hospital with operating expenses of \$50,000,000 or more, and a licensed hospital with operating expenses of \$25,000,000 or more that is part of a hospital system, to annually submit a report to the office on its minority, women, LGBT, and disabled veteran business enterprise procurement efforts, as specified. The bill would require the reports to be submitted by July 1, 2021, and then updated annually thereafter. The bill would impose specified civil penalties for a failure to submit a report. The bill would require the office to maintain a link on the office's internet website that provides public access to the content of those reports, as specified.

The bill would require the office to convene a hospital diversity commission comprised of a member of the public and health care, diversity, and procurement stakeholders who are appointed by the Director of Statewide Health Planning and Development for specified terms of office. The bill would require the commission, on or before July 1, 2020, to hold an initial meeting with all commissioners. The bill would require the commission, among other things, to promote and provide outreach to hospitals that are actively engaged in supplier diversity issues. The bill would prohibit the commissioners from receiving compensation for their services, but authorize the office to reimburse them for their actual and necessary expenses incurred in connection with attending a meeting of the commission. The bill would require the office to review and revise, if necessary, the office's conflicts of interest regulations to ensure that each commissioner is required to disclose conflicts of interest to the public.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 2.17 (commencing with Section 1339.85) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 2.17. Hospital procurement contracts: disclosures

1339.85. The Legislature finds and declares all of the following:

(a) It is in the state's interest to encourage competitive business opportunities for all of its people. Hospitals are uniquely positioned to build relationships within the communities they serve through the development, inclusion, and utilization of certified minority, women, lesbian, gay, bisexual, transgender (LGBT), and disabled veteran business enterprises whenever possible. National companies are able to leverage buying power to save costs to the benefit of patients.

(b) By providing that each major hospital submit to the Office of Statewide Health Planning and Development a report explaining the hospital's supplier diversity statement and expressing its goals regarding certified minority, women, LGBT, and disabled veteran business enterprises, and the office placing that information on the office's internet website, that online resource will help facilitate these supplier relationships.

1339.86. For the purposes of this chapter, the following definitions apply:

(a) "Control" means to exercise the power to make policy decisions.

(b) "Director" means the Director of Statewide Health Planning and Development, as described in Section 127005.

(c) "Disabled veteran business enterprise" has the same meaning as defined in subparagraph (A) of paragraph (7) of subdivision (b) of Section 999 of the Military and Veterans Code or any successor provision. Disabled veteran business enterprise certification eligibility requirements shall be consistent with the requirements imposed by the Department of General Services, and this chapter shall only apply to a disabled veteran business enterprise certified by the Department of General Services.

(d) "LGBT business enterprise" means at least 51 percent of a business is owned by a lesbian, gay, bisexual, or transgender person or persons.

(e) "Minority business enterprise" means a business enterprise, physically located in the United States or its trust territories, that is at least 51 percent owned by a minority group or groups, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority groups. "Minority" includes African Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans.

(f) "Office" means the Office of Statewide Health Planning and Development.

(g) "Operating expenses" means operating expenses, excluding physician professional fees, as reflected in the annual financial report submitted to the office.

(h) "Women business enterprise" means a business enterprise physically located in the United States or its trust territories, that is at least 51 percent owned by a woman or women, or, in the case of any publicly owned business at least 51 percent of the stock of which is owned by one or more women.

1339.87. (a) (1) 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, shall submit a report to the office on its minority, women, LGBT, and disabled veteran business enterprise procurement efforts during the previous year.

(2) The report shall 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.

(v) Information regarding appropriate contacts at the hospital for interested business enterprises.

(C) (i) 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.

(ii) A hospital that is part of a hospital system or is organized within a regional network within a hospital system may report the diversity of its procurement in compliance with this subparagraph from a systemwide or regional network level if there are suppliers that provide services or goods to all hospitals within the hospital system or regional network. A hospital shall 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.

(3) The report may include other relevant information.

(b) This section shall not be construed to require quotas, set-asides, or preferences in a licensed hospital's procurement of goods or services, nor does this section apply to hospital producer or licensee contracts. Licensed hospitals retain the authority to use business judgment to select the supplier for a particular contract.

(c) Failure to file the report required by subdivision (a) or (d) shall subject the licensed hospital to a civil penalty of one hundred dollars (\$100) per day. A hospital may request, and the office may grant, a 30-day extension to file the report if needed due to unintended or unforeseen delays. The penalty imposed by this section shall be enforced by the office and is appealable by means of any remedy provided by Sections 128770 and 128775. This subdivision is the sole means for enforcement of this section.

(d) On and after July 1, 2021, each licensed hospital specified in subdivision (a) shall annually update its supplier diversity report and submit the new report to the office no later than July 1 of that year.

(e) By July 31, 2021, the office shall establish and maintain a link on the office's internet website that provides public access to the contents of each licensed hospital's report on minority, women, LGBT, and disabled veteran business enterprise procurement efforts. The office shall include a statement on the office's internet website that the information contained in the hospital's report on minority, women, LGBT, and disabled veteran business enterprises is provided for informational purposes only.

1339.88. (a) The office shall convene a hospital diversity commission comprised of the public and health care, diversity, and procurement stakeholders, as set forth in this section.

(b) The hospital diversity commission shall be comprised of the following commissioners who are appointed by the director:

(1) One commissioner who is a member of the public and shall serve as the chair of the commission.

(2) Two commissioners who are representatives of the hospital industry who, at the time of appointment, serve as practitioners in the field of supplier diversity.

(3) Two commissioners who are representatives of a minority business enterprise.

(4) Two commissioners who are representatives of a women business enterprise.

(5) One commissioner who is a representative of a disabled veteran business enterprise.

(6) One commissioner who is a representative of an LGBT business enterprise.

(7) Two commissioners with expertise in the field of supplier diversity.

(c) (1) The initial terms of the commissioners shall be established to create staggered terms of office by drawing lots at the first meeting of the commission. Six of the commissioners shall serve a two-year term, and five of the commissioners shall serve a one-year term.

(2) After an initial term of office is complete, a commissioner shall serve a two-year term.

(3) The director shall fill a vacancy in the term of a commissioner.

(d) The hospital diversity commission shall do all of the following:

(1) Advise and provide recommendations to the director and the hospital industry on the best methods to increase procurement with diverse suppliers within the hospital industry.

(2) Meet quarterly or as deemed necessary by the director.

(3) Promote and provide outreach to hospitals that are actively engaged in supplier diversity issues.

(e) On or before July 1, 2020, the hospital diversity commission shall hold an initial meeting with all commissioners.

(f) The commissioners shall not receive compensation for their services, but the office may reimburse the commissioners for their actual and necessary expenses incurred in connection with attending a meeting of the commission.

(g) The office shall review and revise, if necessary, the office's conflicts of interest regulations to ensure that each commissioner is required to disclose conflicts of interest to the public.

(h) The hospital diversity commission shall comply with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).