



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites	
------	------------------	----------------	--------------	-----------------	------------------	--------------	--

AB-1392 Hospitals: procurement contracts. (2023-2024)

SHARE THIS:  

Date Published: 10/16/2023 09:00 PM

Assembly Bill No. 1392

CHAPTER 840

An act to amend Sections 1339.85, 1339.86, and 1339.88 of, to amend, repeal, and add Section 1339.87 of, and to add Section 1339.89 to, the Health and Safety Code, relating to hospitals.

[Approved by Governor October 13, 2023. Filed with Secretary of State October 13, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1392, Rodriguez. Hospitals: procurement contracts.

Existing law requires 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 submit an annual report to the Department of Health Care Access and Information, formerly structured as the Office of Statewide Health Planning and Development, on the hospital's minority, women, LGBT, and disabled veteran business enterprise procurement efforts, as specified. Existing law imposes certain civil penalties for failure to file a report.

This bill would require those hospitals to annually submit, beginning July 1, 2025, and annually by July 1 thereafter, a plan, instead of the above-described report, for increasing procurement from minority, women, LGBT, and disabled veteran business tier 1 and tier 2 enterprises. In addition to the existing required contents within the report, the bill would require the plan to include short- and long-term goals and timetables, but not quotas, for increasing procurement from those business enterprises, the methods in which the hospital resolves any issues that may limit or impede an enterprise from becoming a supplier, and planned and past implementation of relevant recommendations made by the hospital diversity commission described below, among other changes.

The bill would authorize the department to review the plans for completeness. The bill would require the department to establish guidelines for hospitals to voluntarily utilize when pursuing procurement efforts, activities, or programs in accordance with these provisions.

The bill would make legislative findings that each licensed hospital and hospital that is part of a hospital system that is not required to submit a plan is encouraged to voluntarily adopt one for increasing procurement from the above-described business enterprises.

Existing law requires the department to convene a hospital diversity commission comprised of the public and health care, diversity, and procurement stakeholders, and sets forth the composition of the commission, including, among others, representatives of minority, women, LGBT, and disabled veteran business enterprises. Existing law prohibits the commissioners from receiving compensation for their services, but authorizes the department to reimburse them for their actual and necessary expenses, as specified.

This bill would add, to the list of commissioners, a representative of a group purchasing organization, as defined, 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. The bill would make other changes to the commission's structure and functions. The bill would authorize the department, upon appropriation for this purpose, to provide compensation to the commissioners for their services.

The bill would require the department to undertake outreach and provide assistance, based on the commission's recommendations, to hospitals, manufacturers, vendors, or group purchasing organizations of hospital goods and services, and to minority, women, LGBT, and disabled veteran business enterprises, as specified. The bill would authorize the department, upon appropriation for this purpose, to establish and operate a clearinghouse to maintain a database, and verify the statuses, of minority, women, LGBT, and disabled veteran businesses enterprises that are prime suppliers or subcontract suppliers to hospitals or other entities in the procurement ecosystem of hospital goods and services, as specified.

The bill would also make conforming changes to related provisions containing references to the above-described report and to the predecessor of the department.

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

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

SECTION 1. Section 1339.85 of the Health and Safety Code is amended to read:

1339.85. The Legislature finds and declares both 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 Department of Health Care Access and Information a plan explaining the hospital's supplier diversity statement and expressing its goals regarding certified minority, women, LGBT, and disabled veteran business enterprises, and the department placing that information on the department's internet website, that online resource will help facilitate these supplier relationships.

SEC. 2. Section 1339.86 of the Health and Safety Code is amended to read:

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

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

(b) "Department" means the Department of Health Care Access and Information, unless otherwise specified.

(c) "Director" means the Director of the Department of Health Care Access and Information, as described in Section 127005.

(d) "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.

(e) "Group purchasing organization" means a purchasing agent that arranges for, or negotiates the purchase of, a drug, device, biological, or medical supply for a licensed hospital.

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

(g) "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.

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

(i) "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.

SEC. 3. Section 1339.87 of the Health and Safety Code is amended to read:

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) 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.

(f) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 4. Section 1339.87 is added to the Health and Safety Code, to read:

1339.87. (a) (1) By July 1, 2025, and annually, by July 1 thereafter, 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 to the department a plan for increasing procurement from minority, women, LGBT, and disabled veteran business tier 1 and tier 2 enterprises.

(2) The plan shall 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 minority, women, LGBT, and disabled veteran business enterprises.

(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 minority, women, LGBT, and disabled veteran business enterprises to become potential suppliers.

(ii) The methods in which the hospital encourages its employees involved in procurement to seek out minority, women, LGBT, and disabled veteran business enterprises to become potential suppliers.

(iii) The methods in which the hospital conducts outreach and communication to minority, women, LGBT, and disabled veteran business enterprises.

(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 minority, women, LGBT, and disabled veteran business enterprises.

(v) The methods in which the hospital resolves any issues that may limit or impede an enterprise from becoming a supplier.

(vi) Information regarding appropriation contacts at the hospital for interested business enterprises, including the contact information of a diverse business outreach liaison and a description of the hospital's procurement process.

(D) (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.

(E) The planned and past implementation of relevant recommendations made by the hospital diversity commission, as described in paragraph (1) of subdivision (d) of Section 1339.88.

(3) The plan 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 plan required by subdivision (a) shall subject the licensed hospital to a civil penalty of one hundred dollars (\$100) per day. A hospital may request, and the department may grant, a 30-day extension to file the plan if needed due to unintended or unforeseen delays. The penalty imposed by this section shall be enforced by the department 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) The department shall establish and maintain a link on the department's internet website that provides public access to the contents of each licensed hospital's plan on minority, women, LGBT, and disabled veteran business enterprise procurement efforts. The department shall include a statement on the department's internet website that the information contained in the hospital's plan on minority, women, LGBT, and disabled veteran business enterprises is provided for informational purposes only.

(e) The Legislature 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 subdivision (a) is encouraged to voluntarily adopt a plan for increasing procurement from minority, women, LGBT, and disabled veteran business enterprises.

(f) The department may review the plans described in this section for completeness.

(g) The department, in consultation with the hospital diversity commission, shall establish guidelines for hospitals to voluntarily utilize when pursuing procurement efforts, activities, or programs in accordance with this chapter.

(h) This section shall become operative on January 1, 2025.

SEC. 5. Section 1339.88 of the Health and Safety Code is amended to read:

1339.88. (a) The department 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.

(8) One commissioner 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.

(9) An additional commissioner, at the discretion of the director.

(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. Half of the commissioners shall serve a two-year term, and the other half 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 functions of the hospital diversity commission shall include, but not be limited to, both 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.

(e) The department may, upon appropriation by the Legislature for this purpose, provide compensation to the commissioners for their services, and the department may reimburse the commissioners for their actual and necessary expenses incurred in connection with attending a meeting of the commission.

(f) The department shall undertake outreach and provide assistance, based on the commission's recommendations, to hospitals, manufacturers, vendors, or group purchasing organizations of hospital goods and services seeking to adopt the recommendations described in paragraph (1) of subdivision (d) or to increase procurement from minority, women, LGBT, and disabled veteran business enterprises.

(g) The department shall undertake outreach and provide assistance, based on the commission's recommendations, to minority, women, LGBT, and disabled veteran business enterprises seeking to be a supplier for a hospital, manufacturer, vendor, or group purchasing organization of hospital goods and services.

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

(i) 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 (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

SEC. 6. Section 1339.89 is added to the Health and Safety Code, to read:

1339.89. (a) The department may, upon appropriation by the Legislature for this purpose, establish and operate a clearinghouse to maintain a database, and verify the statuses, of minority, women, LGBT, and disabled veteran businesses enterprises that are prime suppliers or subcontract suppliers to hospitals or other entities in the procurement ecosystem of hospital goods and services.

(b) Subdivision (a) shall not be construed to require a hospital or other entity to utilize the clearinghouse. A hospital, in order to increase procurement from minority, women, LGBT, and disabled veteran business enterprises as reported by the hospital to the department pursuant to subdivisions (a) and (d) of Section 1339.87, or any other entity in the procurement ecosystem of hospital goods and services for purposes of procurement that it elects to pursue, may choose business enterprises that are included in the clearinghouse described in subdivision (a), or may 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.