Agenda Item 7: Federal Landscape Briefing

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HCAi
Department of Health Care Access and Information

Hospital Supplier Diversity Reporting Program

Federal Executive Orders and Guidance

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The information included in this presentation does not constitute legal advice.

Federal Administration's Executive Orders Related to Diversity, Equity, Inclusion, and Belonging

January 2025 Executive Orders

As reflected in CHA's Memorandum on the Impact of Presidential Executive Orders on California Laws: Hospital Equity and Disparity Reporting and Supplier Diversity Requirements:

Executive Order 14173 entitled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity explicitly mentions the "medical industry," among others, and:

- Orders federal agencies to "enforce our longstanding civil-rights laws and to combat illegal private-sector DEI preferences, mandates, policies, programs, and activities"

- Encourages the private sector to "end illegal discrimination and preferences, including DEI." This includes planning civil compliance investigations of private companies.

January 2025 Executive Orders

As discussed in CHA's Memorandum on the Impact of Presidential Executive Orders on California Laws: Hospital Equity and Disparity Reporting and Supplier Diversity Requirements:

While EOs do not legally mandate changes in private-sector policies, federal contractors and grant recipients *may be impacted* because:

- Agencies may impose contract or grant conditions requiring certification that "illegal" DEI preferences and policies are not used. (Different organizations, including educational institutions and public health entities, have seen this type of certification in many federal grant programs.)

- Perceived noncompliance could trigger grant terminations, contract enforcement actions, or civil compliance reviews. The Office of Management and Budget (OMB) issued a memorandum pausing funding for programs and activities "implicated by the President's Executive Orders, such as ending DEI."

Several lawsuits have been brought to challenge the EO and the OMB memo, resulting in various lower court rulings that have prevented federal officials from conditioning some federal funding on DEI activities.

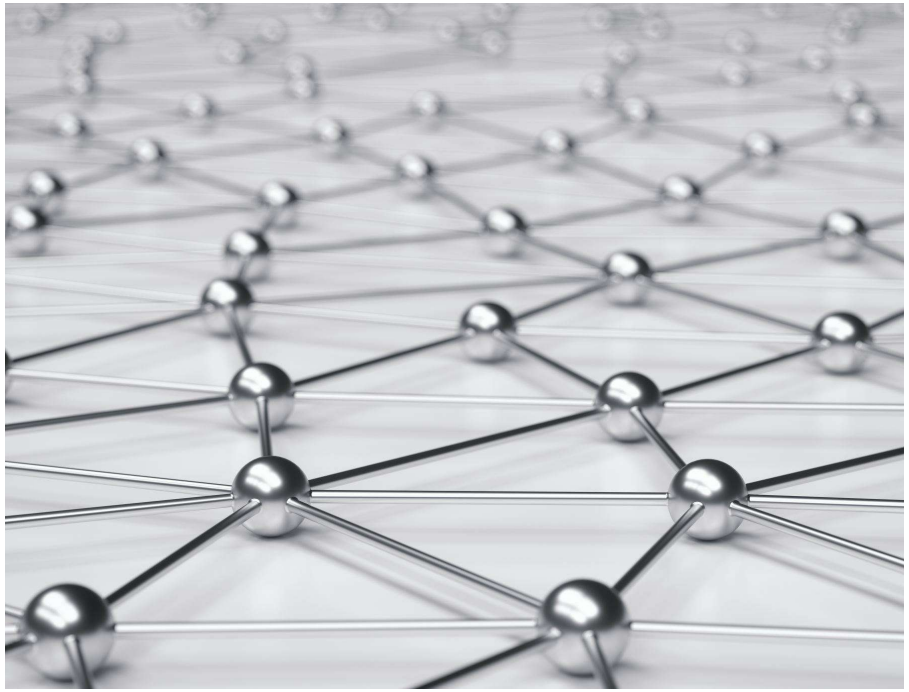
Prop 209 Impacted the Statutory Authority for the Hospital Supplier Diversity Reporting Program

- Proposition 209 - California 1996 Ballot Measure to Amend the California Constitution.
- Proposition 209 added the following text to California's constitution: "The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."
- The statutory authority for the HSDRP was drafted to ensure HCAI complied with state and federal laws impacting supplier diversity, including Proposition 209.

Statutory Authority for the Hospital Supplier Diversity Reporting Program

Under Health and Safety Code Section **1339.87.**

- Certain hospitals must submit a plan to HCAI for increasing diversity in procurement, as specified.
- The hospital's plan includes:
  - The hospital's supplier diversity policy statement.
  - Short- and long-term goals and timetables, ***but not quotas***, for increasing diverse procurement.
  - The hospital's outreach and communications to minority, women, LGBT, and disabled veteran business enterprises.
  - The hospital's diverse procurements.
  - Planned and past implementation of relevant recommendations made by the Commission



Statutory Authority for the Hospital Supplier Diversity Reporting Program

Under Health and Safety Code (HSC) Section **1339.87 cont.**

- This section *shall not be construed to require quotas, set-asides, or preferences* in a licensed hospital's procurement of goods or services. Licensed hospitals *retain the authority to use business judgment to select the supplier* for a particular contract.

CHA Guidance to Hospitals on Drafting Plans Required by HSC Section 1339.87

CHA's Guidance to Hospitals:

- "Hospitals should draft their plans carefully to avoid taking actions that could be misinterpreted as preferring one race/ethnic, gender, or national origin group over another. The plan should not provide benefits to one protected group of suppliers while excluding another."

- "Plans to increase supplier diversity are less likely to be considered unlawful if they offer benefits to all suppliers, rather than just those owned by a specific class of people."

HSC Section 1339.87 Complies with State/Federal Law

- A supplier diversity policy statement and a plan that includes goals and proposed timelines, but not quotas or preferences, for increasing diverse procurement does not guarantee any supplier a contract or benefit.
- Similarly, conducting outreach regarding procurement opportunities and reporting how this outreach includes diverse suppliers does not ensure a contract for any supplier.
    - While this activity may help expand the pool of suppliers the hospital can consider, the hospital's procurement decisions should be based on sound business judgment, as outlined in the statute.

HSC Section 1339.87 Complies with State/Federal Law continued

- Sharing information about the hospital's diverse procurements, as well as updates on the implementation of any relevant recommendations made by the Commission, is a transparency activity. This activity reports the diverse procurements made based on business judgment.
  - The Purpose for Transparency: Transparency is operating in such a way that it is easy for others to see what actions are performed. Transparency provides actionable information and supports accountability.

- The mandates under California's Hospital Supplier Diversity Reporting Program (Health and Safety Code Section 1339.85 – 1339.87) remain unchanged.

Commission Member Discussion

Public Comment