

Per California Code of Regulations, title 2, section 548.5, the following information will be posted to CalHR's Career Executive Assignment Action Proposals website for 30 calendar days when departments propose new CEA concepts or major revisions to existing CEA concepts. Presence of the department-submitted CEA Action Proposal information on CalHR's website does not indicate CalHR support for the proposal.

A. GENERAL INFORMATION

1. Date

1/5/2015

2. Department

Department of Managed Health Care

3. Organizational Placement (Division/Branch/Office Name)

Office of Enforcement

4. CEA Position Title

Deputy Director, Office of Enforcement

5. Summary of proposed position description and how it relates to the program's mission or purpose. (2-3 sentences)

The Department of Managed Health Care (DMHC) is requesting to change the concept of the General Counsel, CEA B position to a Deputy Director, CEA B in the Office of Enforcement. The Deputy Director, Office of Enforcement (Deputy Director) is responsible for managing and directing the statewide activities of the Office of Enforcement. The incumbent directs attorneys, managers and support staff in the Office of Enforcement, and may personally perform the most difficult, complex and sensitive legal work of the Department of Managed Health Care in connection with the enforcement of the Knox-Keene Health Care Services Plan Act of 1975 (Act) administered by or affecting the department.

6. Reports to: (Class Title/Level)

Chief Deputy Director, Department of Managed Health Care/ 1st level

7. Relationship with Department Director (Select one)

- Member of department's Executive Management Team, and has frequent contact with director on a wide range of department-wide issues.
- Not a member of department's Executive Management Team but has frequent contact with the Executive Management Team on policy issues.

(Explain):

8. Organizational Level (Select one)

- 1st
- 2nd
- 3rd
- 4th
- 5th (mega departments only - 17,001+ allocated positions)

B. SUMMARY OF REQUEST

9. What are the duties and responsibilities of the CEA position? Be specific and provide examples.

Due to the regulatory nature of the DMHC a significant component of decision making and policy setting arises from legal review, legal action, and the establishment and modification of health care laws. The Director relies upon the Deputy Director as an expert in the formulation of legal and regulatory policies consistent with the Act, and the Director's vision for health care reform, and has delegated to the Deputy Director the authority to develop, recommend, and implement all policies and procedures necessary for the successful operation of the Office of Enforcement.

The Deputy Director will be solely responsible for the following policy setting duties and responsibilities:

Plans, organizes, directs, coordinates, and reviews the work of attorneys, managers and support staff in the Office of Enforcement in connection with the enforcement of the Act. Enforcement oversight includes health plan quality, access and continuity of care, denial of treatment, financial solvency concerns of health plans and risk bearing organizations (medical groups), and other issues. Analyzes, justifies and recommends enforcement actions to the Director. Supervises and mentors attorneys in the Office of Enforcement.

Plans, organizes, directs and conducts investigations and legal proceedings involving suspected violations of the Act and other laws administered, enforced, or affecting the department or the public. Performs, with broad discretion and independence, the most complex and sensitive legal work. This includes conducting the most difficult and complex litigation, appellate cases, settlements, post-trial negotiations, legal research, and hearings. Develops and implements strategy and tactics for the most complex and sensitive litigation and appeals within the purview of the Office of Enforcement.

Participates as a member of the executive management team in the development and implementation of department policy.

Assists the Department's Office of Legislative Affairs in developing and analyzing legislation. May represent the Department before the Legislature as to matters involving the Office of Enforcement.

B. SUMMARY OF REQUEST (continued)

10. How critical is the program's mission or purpose to the department's mission as a whole? Include a description of the degree to which the program is critical to the department's mission.

- Program is directly related to department's primary mission and is critical to achieving the department's goals.
- Program is indirectly related to department's primary mission.
- Program plays a supporting role in achieving department's mission (i.e., budget, personnel, other admin functions).

Description: The Deputy Director position is extremely critical to the Department's primary mission and goals. The mission of the Department is to protect consumers' health care rights and ensure a stable health care delivery system. The Affordable Care Act (ACA) and Governor's Coordinated Care Initiative (CCI) have dramatically changed the health care delivery system in California. The recent changes in healthcare are highly contentious and have resulted in significant and complex actions taken against health plans. Since January 2014 the Office of Enforcement has taken 474 enforcement actions against health plans which has resulted in more than \$7 million in penalties.

The Deputy Director plays a critical role in successful delivery of the DMHC's mission by ensuring that the appropriate enforcement actions and penalties are taken against non-compliant health plans.

B. SUMMARY OF REQUEST (continued)

11. Describe what has changed that makes this request necessary. Explain how the change justifies the current request. Be specific and provide examples.

In July 2014, the DMHC complied with a Governor's Office request to change all vacant General Counsel positions from CEA classifications to Exempt positions. As a result, the DMHC General Counsel is now in an Exempt position, leaving the CEA B position inactive. The DMHC would like to change the concept of the inactive CEA B from that of a General Counsel role to leading the Office of Enforcement.

Due to the high level of complexity and sensitivity of litigation performed by the Office of Enforcement, the Office recently established two Attorney IV positions. The addition of the Attorney IV positions has created an impact on the salaries of the supervising Assistant Chief Counsels as well as the Deputy Director. With the addition of the two Attorney IV positions, the supervising Assistant Chief Counsels have received a 9.61% pay differential increase in accordance with Pay Differential 8. The maximum salary of the Assistant Chief Counsel positions, with the Pay Differential, is now \$11,854.32.

The Deputy Director is a Chief Counsel II, CEA which is a civil service classification with a maximum salary of \$11,661 per month. The Chief Counsel II, CEA is not eligible for the pay increase per Pay Differential 8 because the Office of Enforcement does not have more than 40 legal staff. Due to this exclusion of the Chief Counsel II, CEA from the Pay Differential, one of the Chief Counsel II's subordinates earns a higher monthly salary than the Chief Counsel II, CEA. In addition, the second Assistant Chief Counsel has potential to earn more than the Chief Counsel II, CEA over time.

Changing the concept of the currently existing CEA B to allow the position to lead the Office of Enforcement would allow the DMHC to compensate the incumbent commensurate with the leadership and skill expected of this position, and avoid salary compaction issues.

C. ROLE IN POLICY INFLUENCE

12. Provide 3-5 specific examples of policy areas over which the CEA position will be the principle policy maker. Each example should cite a policy that would have an identifiable impact. Include a description of the statewide impact of the assigned program.

The DMHC is the only Managed Health Care Plan regulator in California responsible for the oversight of health plans with the intent of significantly improving quality control, accountability, and efficiency for its enrollees.

The Deputy Director oversees significant litigation for the DMHC. In many instances, the decision whether or not to prosecute a case has significant impact on the people of the State of California. As such, this Deputy Director serves as the gatekeeper between Health Care Service Plans and consumers, ensuring that services made available into the Health Care Service Plan market are rooted in organizations that demonstrate the required Act compliance standards of administrative, financial, and service stability. The Director relies upon the Deputy Director as an expert in the formulation of legal and regulatory policies consistent with the Act, and the Director's vision for health care reform, and has delegated to the Deputy Director the authority to develop, recommend, and implement all policies and procedures necessary for the successful operation and support of the Office of Enforcement and carrying out the mission of the Department.

For example, a health plan routinely failed to adequately process claims for expectant mothers requiring a state sponsored genetic test. The Department of Public Health (DPH) administers the program, and the compensation is set by statute. In failing to pay the DPH the required statutory compensation, the plan left its enrollees exposed to billing by the DPH for the balance between what it paid and the statutorily set compensation. The Office of Enforcement issued a \$1.5 million penalty and required the plan to work with DPH to identify enrollees that were billed for the services. The Deputy Director modified policy to require health plan's claims systems to correctly reimburse the DPH for future services. This position held a pivotal role in the development of department-wide policies with statewide health industry service delivery impact.

The Office of Enforcement has taken similar steps against providers that unlawfully balance bill enrollees for the amount not paid by a health plan for emergency services. The law requires that a plan reimburse a provider the reasonable and customary value of emergency services rendered. Further, the law precludes a provider from billing the enrollee for the balance between the billed amount and the amount paid by the health plan. When a particular provider violated this law, the Office of Enforcement issued a Cease and Desist Order prohibiting the conduct. The provider violated the Order and in response the Office of Enforcement sued the provider in Superior Court, obtaining a permanent injunction and a fine in the amount of \$562,000. This action served as notice to other providers that engaged in similar practices. When it became clear this was an industry wide issue, the Deputy Director through a coordinated effort with multiple programs coordinated and standardized legal policy response to multiple stakeholders with conflicting interests. This helped to streamline communications, reduce confusion, advise the Director and provide policy application consistency.

The Office of Enforcement has defended the Department in high profile litigation brought against the administration. In this matter, the Office of Enforcement was forced to defend several policy decisions established by the Chief Counsel II, CEA, other Deputy Directors of the DMHC, and approved by the Director including an allegation that the Department's correspondence to the plans served as an underground regulation, that the Department's policy regarding coverage of Applied Behavioral Analysis therapy was not supported in the law, and that the Department improperly raised attorney/client and attorney work product privileges in refusing to turn over enrollee complaints filed with the Department's consumer Help Center. While not successful in all aspects of the litigation, the Department's action served as an important reminder of the Department's obligation to assist in the provision of health care services to all the people of the State.

The DMHC's jurisdiction in managed care covers a broad spectrum of highly controversial and politically sensitive managed care issues. As new legal policies and regulations are developed and implemented, the complexity of enforcement actions, licensing compliance, and policy development responsibilities increase. This results in the development of new standards and requirements affecting the health care industry. As a regulator, the DMHC utilizes the legal process to effect change within the health care service delivery system. The Deputy Director is tasked with establishing and defending the policies, standards and requirements of the DMHC for the health care service plans we regulate. Without this pivotal position this cannot be accomplished.

C. ROLE IN POLICY INFLUENCE (continued)

13. What is the CEA position's scope and nature of decision-making authority?

The Deputy Director is charged with the decision making authority to bring actions for violations of the Knox Keene Act. As the litigation section of the Department, the Office of Enforcement routinely decides whether or not to prosecute a violation, based upon review of the evidence, the deterrent effect the prosecution will have, and the impact to the people of the State of California. The scope of authority for the Deputy Director is broad.

Disciplinary tools available include: ordering a plan to cover wrongly denied services, ordering reimbursement to enrollees for out-of-pocket expenses that should have been covered by the plan, ordering restitution payments for underpaid claims, and requiring Corrective Action Plans. Additionally, the DMHC may issue orders to cease and desist from unlawful practices, freeze enrollment, and even install monitors or conservators at health plans to rehabilitate or liquidate a failing plan's business, or levy administrative penalties.

14. Will the CEA position be developing and implementing new policy, or interpreting and implementing existing policy? How?

The Deputy Director works closely with the executive management team in the formulation of policy, including an analysis of possible statewide impact to all Department programs. Investigations conducted by the Office of Enforcement may identify gray areas in existing policy or law. Policy formulation will include review and revision of existing policy related to changes in enforcement activities, formulation of new policy related to new statutes affecting enforcement activities, and the development of policy, legislation and/or regulations related to enforcement activities and changing requirements. In addition, the Deputy Director is responsible for advising the Director and making recommendations for the establishment of policy that has department-wide impact. Policy in the area of enforcement activities is one of the most critical areas within the DMHC due to the public's sensitivity regarding any perception of the DMHC's unwillingness or inability to act in the public interest.