

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

June 15, 2017

2. Department

Industrial Relations

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

Division of Administration, Anti-Fraud Unit

4. CEA Position Title

Chief, Anti-Fraud Unit

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

Under the direction of the DIR Director, the new Chief of the Anti- Fraud Unit (CAFU) will perform a critical leadership role in planning, organizing, directing, and evaluating the administrative and investigative activities performed by the AFU. The position will provide executive oversight and policy development in assuring that the DIR is able to combat all forms of Workers' Compensation fraud, and protect the welfare of injured workers. This result will be achieved, in part, by deterring the activities of fraudulent providers who are diverting system resources while compromising care for injured workers. The CAFU will coordinate anti-fraud activities by involving state departmental programs and oversight agencies such as Labor and Workforce Development Agency (LWDA), Department of Insurance (DOI), Federal, State, and local law enforcement agencies in fraud prevention, detection and deterrence activities thereby directly supporting DIR's mission to improve working conditions for California's wage earners and to advance opportunities for profitable employment in California.

6. Reports to: (Class Title/Level)

Director, DIR

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.

Under the direction of the DIR Director, the CAFU in collaboration with the Executive management and other executive team leaders, will be responsible for planning, organizing, directing, and evaluating the administrative and investigative activities performed by the AFU. The position will provide executive oversight and policy development in assuring that the DIR is able to combat all forms of workers compensation fraud, and protect the welfare of injured workers through enforcement of the California Labor Code and other applicable State and federal laws enabling detection, prevention, investigation, and referral for prosecution as necessary. The AFU has the primary responsibility for the investigation of all suspected fraudulent acts on various types of Workers' Compensation fraud, including, but not limited to activities by medical providers, suppliers, attorneys and employers. Key components of the work include: (1) Strategy: (a) Identifying and articulating anti-fraud objectives in support of overall DIR's policy and mission, (b) Assuring the anti-fraud activities are aligned with agencies and departments such as Labor and Workforce Development Agency (LWDA), California Department of Insurance (CDI) etc., to maximize overall value to the state; (2) Execution: (a) Creating a systematic, repeatable and documented process to carry out anti-fraud activities, (b) Organizing the AFU work to most effectively and efficiently deliver the DIR anti-fraud strategy; (3) Management: (a) Ensure adequate staffing of qualified professionals through recruitment, selection and training, (b) Ensure that confidentiality of investigation is maintained by all AFU staff to protect DIR from civil liability, (c) Ongoing direction of staff to carry out work in accordance with the anti-fraud plan, California Labor Code and other applicable State and federal laws; (4) Measurement: (a) Deployment of analytic tools to extract information from DIR databases and relevant state and federal databases to identify provider fraud, monitor and detect fraud patterns, and develop strategies to stop workers' compensation fraud, (b) Manage activities of the unit in accordance with new data, findings, or legal consultation; (5) Communication: (a) Establishing and developing reports on fraud unit outcomes (b) Presenting reports to internal and external audiences which may include referral of appropriate law enforcement and/or regulatory agencies.

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: Established in 1927, DIR's mission is to protect and improve working conditions for California's wage earners and to advance opportunities for profitable employment in California. DIR administers and enforces laws governing wages, hours and breaks, overtime, retaliation, workplace safety and health, apprenticeship training programs, effective, evidence- based medical care and other benefits for injured workers. DIR also publishes materials and holds workshops and seminars to promote healthy employment relations, conducts research to improve its programs, and coordinates with other agencies to target egregious violators of labor laws and tax laws in the underground economy.

The AFU program is critical to the mission or purpose as a whole because it will set a standard of guidelines while consistently promoting accountability within the workers' compensation network of providers, employers, and employees/claimants. Healthcare fraud is of an economical concern on both the state and federal level as this equates to taxpayer's fund abuse. Workers' compensation medical fraud has been shown to impair the condition of injured workers, contribute to longer disability, result in drug addiction and shift resources away from those in need of effective evidence- based medical care as well. While employer and employee fraud also undermine the system and divert resources such as false injury claims or false business classification for lower premium. All types of fraud diminish the effectiveness of the workers' compensation system in its goal to protect and compensate for injury or illness occurring in the workplace.

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.

Fraud diminish benefits to intended recipients, impede economic growth, and violate the legal and ethical principles to which DIR is committed to, and has the responsibility to safeguard taxpayer funds. The recent widespread and highly publicized prevalence of workers compensation medical fraud provoked the California Legislature, in 2016, to enact Assembly Bill (AB) 1244 and Senate Bill (SB) 1160 resulting in statutory changes in Labor Code 4615 and 139.21. AB 1244 seeks to combat workers' compensation fraud by changing the incentives facing medical providers in the California Workers' Compensation system. Specifically, AB 1244 created a suspension process for medical providers who commit serious crimes or are involved in fraudulent activity that is modeled after the suspension process for Medi-Cal. AB 1244 follows the lead of Medi-Cal and require the suspension of a medical provider if the medical provider is convicted of a felony, a misdemeanor connected to fraud, a misdemeanor connected to patient or privilege abuse, or the medical provider's license is suspended or revoked. SB 1160 addresses fraud in the workers' compensation lien process in three ways: (1) SB 1160 requires that, when a medical provider is charged with workers' compensation, Medicare, or Medi-Cal fraud, his or her liens must be stayed until criminal charges are resolved. If the medical provider is cleared of all charges, his or her liens will be adjudicated in the same way as other liens without prejudice. Similar anti-fraud provisions are utilized by the Medi-Cal and Medicare systems in their fight against medical fraud; (2) SB 1160 requires all lien claimants to file a declaration as to which specific category provided under existing law allows the claimant to file a lien. As the statute that provides the specific categories for filing a lien is unchanged by SB 1160, the causes for filing a lien under existing law remain unchanged by SB 1160 – including denied industrial injuries. The only change is that a lien claimant must now file a declaration to support an assertion of rights; (3) SB 1160 prospectively prohibits lien assignments in the workers' compensation system, unless the medical provider has ceased doing business. SB 1160 also clarifies the law on lien assignments made between 2013 and 2016. In a recent letter to the Commission on Health and Safety and Workers' Compensation, Senator Tony Mendoza, the author of SB 1160 identified fraud as a specter haunting the workers' compensation system and presenting a fundamental challenge to the operation of system for all stakeholders. Specifically, the letter cited the recent press coverage by the Center of Investigative Reporting, which detailed more than \$1 billion in fraudulent activity by a variety of medical providers. While all of the schemes were different, each had one common feature: the use of the workers' compensation lien system to monetize the fraud.

These legislation created significant new responsibilities for DIR to carry out extensive anti- fraud efforts, and the 2017-18 budget includes additional resources and staff. In further assessment of this situation, RAND Corporation, a nonprofit institution that helps improve policy and decision making through research and analysis, issued a 2017 report, which observed that, at present, California's provider anti-fraud efforts are sub-optimized because various responsibilities and supporting information are spread across multiple entities. To address this issue, RAND recommended that DIR establish a centralized and permanent anti- fraud unit, with a leader responsible for shaping and implementing the effort. In creating this new position, the DIR recognizes the necessity of building an organizational structure and a set of processes to execute the work. The work will be guided, in part, by the analytics generated from the expanding and increasingly usable DIR databases such as Electronic Adjudication Management System (EAMS) and Workers' compensation information system (WCIS). In recent years, DIR's Division of Workers' Compensation (DWC) legal and medical professionals have developed anti-fraud expertise to help initiate the Anti- Fraud Unit. However, only a small number of providers, representing less approximately 1% of all medical payments have been processed.

The DIR has been flooded with queries on fraud since the passage of AB 1244 and SB 1160, and it is critically important to have a single point of contact for other state agencies and external parties. It is necessary to have a leader in place responsible for the administration, revision, interpretation, and application of Anti-Fraud policies. These policies will be reviewed annually and revised as needed.

The CAFU will reflect integrity, objectivity, accountability, transparency and leadership in carrying out DIR's anti-fraud mandate.

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.

In accordance with applicable state and federal laws and regulations, the department's mission and the Director's objectives, the CAFU will be the principal policy maker in these areas:

1. Fraud detection. Detection is the key in mitigating fraud when there are gaps in the state's fraud prevention programs or when perpetrators circumvent existing policies. The CAFU will be responsible for obtaining data from a wide variety of internal and external sources, including, but not limited to: DIR Division of Workers' Compensation (DWC); California Department of Insurance (CDI); Division of Corporations (DOC), State Compensation Insurance Fund (SCIF), Federal and State court prosecutions; professional licensing agencies, California Workers' Compensation Insurance Rating Bureau (WCIRB), Medicare, and Medi-Cal. These data will be used to identify individual and collective examples of provider fraud patterns and act as one of the basis for designing effective AFU activities. The CAFU will establish policies that facilitate the development of controls that will aid in the detection and prevention of fraud, improprieties, and red flags for any indication of irregularity. The policies must adopt a preventative approach for identifying, analyzing and managing the risk of Fraud that could prevent DIR from achieving its objectives or strategies. This detection effort will have a statewide economic impact by mitigating inappropriate workers' compensation costs for the state by identifying the malefactors that drive up benefits costs, and maintaining the integrity of taxpayers' funds. It is also anticipated to improve medical care for injured workers through establishing anti-fraud safeguards.

2. Fraud Control. The CAFU will be responsible for overseeing the processes used to carry out the DIR anti-fraud activities. These activities will result in an increase in lien stays, suspensions and lien consolidations that affect the entire state. In addition, this unit will work with the Uninsured Employer Fund(UEF) and the WCIRB to focus on employers who are violating insurance coverage requirements, The CAFU will be involved in working with prosecutors throughout the state to optimize their efforts to address all types of Workers' Compensation fraud. CAFU will work to compliment the anti-fraud initiatives, and activities of CDI and SCIF to effectively keep insurance costs down and protect California employers and employees. The CAFU will assist the insurance regulatory community by conducting the following activities: maintain and improve electronic databases regarding fraudulent insurance activities; disseminate the results of research and analysis of insurance fraud trends, as well as case-specific analysis, to the insurance regulatory community; and provide a liaison function between insurance regulators, law enforcement (federal, state, local and international) and other specific anti-fraud organizations. By taking all reasonable steps (including the institution of criminal or civil proceedings) to recover costs that has been misappropriated or otherwise been obtained as a result -either directly or indirectly- of Fraud, the State's funds will be appropriately distributed.

3. Communication. The CAFU will be responsible for meeting with stakeholders from throughout the state to discuss to discuss Department objectives and processes. The intent is to inform all parties about the serious, consistent and relentless efforts by the DIR to prevent, identify and control fraud. When program outcomes are available, the CAFU will be responsible for communicating these results to all parties through comprehensive reports. The CAFU will also refer cases to DOI's Enforcement Branch- Fraud Division as applicable. The CAFU will engage all levels in the workers' compensation network share the same commitment and to lead by example in ensuring adherence to appropriate regulations, procedures, practices, and codes of ethics. The expectation will be is that individuals and organizations involved in workers' compensation will conduct itself with honesty and at the highest standards. DIR's message will be clear: Fraud will neither be tolerated nor perpetuated. This will have a significant impact on the state's goal of government transparency.

C. ROLE IN POLICY INFLUENCE (continued)

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

In collaboration with the DIR Director and other senior executives, the CAFU will be responsible for making key strategic decisions in identifying, tracking and deterring provider fraud. Policies by the CAFU will outline the requirements for the development of controls that will assist in the detection, prevention and response to Fraud.

The Position and its decision-making authority will be designed to encompass the following:

- Maintaining the highest standard of ethics, professional conduct and fiduciary duty & responsibilities
- Establishing and maintaining a robust anti-fraud program
- Protection of State's funds and other assets
- Maintaining integrity of CAFU staff and work products
- Security of the Workers' Compensation network
- Protecting the reputation of DIR and its employees
- Maintaining highest level of confidentiality for all parties involved during investigation
- Empowering injured workers, and
- Maintaining the highest level of services to the community and individuals.

The CAFU may also represent the Anti-fraud policy in the absence of the DIR Director as needed.

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

In collaboration with the Director, the CAFU will implement existing and develop new policies by: taking all reasonable steps to prevent, detect, and effectively and promptly remediate fraud and issues affecting the Worker's Compensation system; requiring compliance with the highest standards of ethics in the area of avoidance of fraud (it is critical that all those required to meet such standards understand what is expected and why); periodically assessing the risk of fraud and the effectiveness of detection, mitigation and investigation strategies; and recognizing that effective implementation of this policy requires clear delineation of roles and responsibilities, provision of adequate resources and training to AFU staff, promotion of continuous analysis of experience with the objective of improving performance in addressing problems and reducing risks, and prompt law enforcement referral where necessary. For example, in the case of existing policies, the CAFU would be responsible for enhancing existing processes to expand the scope of targeted providers by creating a cross-silo database that tracks all providers and fraud networks. For new policies, the CAFU may, for example, analyze the impact of legislation which could apply to Medi-Cal fraud standards to Workers' Compensation thereby expanding the pool of targets to include providers faced with credible fraud allegations. In addition, the CAFU could work on legislation to enhance the Director's ability to suspend Qualified Medical Examinations (QMEs) until the resolution of fraud prosecutions.