

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

March 1, 2024

2. Department

Department of Developmental Services

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

Program Services/Policy and Program Development Division

4. CEA Position Title

Manager, Home and Community-Based Services Branch

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

The Department of Developmental Services (DDS) requests establishment of a CEA to serve as the Manager, Home and Community-Based Services (HCBS) Branch. The CEA is responsible for formulating, developing, implementing, and monitoring statewide policies and processes for program compliance with the HCBS Waivers, State Plan Amendment (SPA), the Electronic Visit Verification (EVV) Program, and other related HCBS Programs. The CEA provides statewide leadership and direction and ensures a strong programmatic focus on person-centered service planning, service access and equity, and cultural and linguistic competence as well as uphold the values of the Lanterman Disabilities Services Act (Lanterman Act) in support of the DDS Mission.

6. Reports to: (Class Title/Level)

Deputy Director, Policy and Program Development Division/3rd org 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.

The Branch Manager, HCBS, formulates, develops, and implements policies and processes for program compliance and monitoring of the statewide HCBS Waivers, SPA, EVV Program, and related programs. The position provides statewide leadership and direction and ensures a strong programmatic focus on person-centered service planning, service access and equity, and cultural and linguistic competence as well as uphold the values of the Lanterman Act in support of the DDS Mission. Specific duties and responsibilities include:

Oversee the implementation of strategies, programs, and policies to ensure DDS and the regional centers (RCs) are in full compliance with the conditions of participation for two 1915(c) HCBS Waivers and a SPA authorized pursuant to section 1915(i) of the Social Security Act. This includes the policy development for directives to RCs and providers on implementation of new and changing Waiver and SPA requirements and for monitoring RCs and providers. Oversee the provision of needed technical assistance and training to RCs, providers, individuals served, disability advocates, and other community engagement groups, on implementing effective HCBS Waiver and SPA compliance measures and processes for new and evolving guidance from the federal Centers for Medicare and Medicaid Services (CMS). This includes reviewing relevant data to monitor compliance measures, identifying potential issues or barriers to compliance, and recommending a relevant course of action based on the identified issues.

Oversee the implementation of strategies and programs to ensure DDS is complying with new federal regulations regarding HCBS integrated settings across impacted services (42 Code of Federal Regulations Part 430, 431, et al.). Work closely with the RCs, contractors, and providers to track progress made to assure service delivery meets all applicable requirements. Research and review DDS' policies and procedures to ensure full compliance with revised CMS rules, under Section 1915(c) of the Social Security Act, and develop, implement, and promulgate policies and procedures that fully align the DDS with relevant HCBS requirements; and develops policies for tracking and monitoring of DDS and RC activities under the approved Statewide Transition Plan (STP). Oversee the preparation and/or review of RC and provider directives and regulation packages.

Lead HCBS workgroup and other community engagement meetings and serves as liaison to the Department of Health Care Services (DHCS) for final reporting to CMS on Waiver/SPA programs. Oversee the preparation of agenda and materials for HCBS workgroups, community engagement meetings, legislative and budget briefings. Identifies possible issues and ongoing support needs, consults with community engagement groups, and works to develop strategies to ensure DDS obtains and maintains federal approval and funding for HCBS-related activities.

Leads EVV workgroup and community engagement meetings and serves as liaison to DHCS for final reporting on DDS provider EVV compliance. Oversee the planning, organizing, coordinating, and directing of DDS' activities in implementing the EVV program pursuant to Subsection I of Section 1903 of the Social Security Act (42 U.S.C. 1396b). Oversee and monitor activities needed for implementation of EVV including training of RC staff, service providers, and service recipients, public outreach/education, and coordination with EVV contractor. Review and monitor formal work plans associated with project communications, staffing, procurement planning, regulation development and implementation, contingency planning, and quality assurance monitoring. Provide policy direction and oversee the collaborative development and implementation of statewide EVV regulations and procedures. Oversee the interpretation and implementation of all EVV regulation related matters and advise other Executive Management on potential impact of policies on the EVV program.

Oversee the activities of statewide RC agencies, in relation to the HCBS, EVV, and related initiatives and projects. Communicates extensively with other members of Executive Management, control agencies, DHCS, Department of Social Services, Department of Aging, RCs, individuals served and their families, service provider organizations and representatives, and other community engagement groups, regarding the status of DDS' efforts to comply with HCBS Waivers/SPA and regulations and in implementing the EVV program. Plan, direct and oversee the activities of the Branch and provide guidance and direction to staff. Support the development of employee skills and knowledge. Develop and maintain long term goals and objectives for the Branch and allocate resources to address these priorities. Oversee the development of all necessary policy, regulations, standards, legislation, and procedures required to accomplish the goals of the Branch.

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: DDS oversees the coordination and delivery of services to over 400,000 individuals with intellectual and developmental disabilities (IDD) through a network of 21 RCs and over 24,000 community service providers under the Lanterman Act. DDS' mission is to ensure Californians with developmental disabilities have the opportunity to make choices and lead independent, productive lives as members of their communities in the least restrictive setting possible. The state's service system is designed to meet the needs and choices of individuals at each stage of their lives, and, to the extent possible, serve them in their home communities, providing choices that are reflective of lifestyle, cultural and linguistic backgrounds.

DDS receives over \$5 billion annually in federal financial participation (FFP) for services provided to individuals served by the RCs through two 1915(c) HCBS Waivers and an SPA authorized pursuant to section 1915(i) of the Social Security Act. The Medicaid (Medi-Cal) HCBS Waiver program permits a state to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. They include, but are not limited to, residential services, independent and supported living services, day programs, transportation, supported employment, and respite. States are required to comply with comprehensive conditions of participation to receive Medicaid funding for services provided to individuals.

The developmental disabilities service system sustainability in California is dependent on continued receipt of FFP, as approximately 80% of the individuals served through DDS are eligible for Medi-Cal and a significant portion of the services they receive are eligible for Medicaid funding under the HCBS Waivers/SPA. The \$5 billion in FFP is approximately 36% of the estimated total cost for services provided to individuals with IDD. Services provided under the Lanterman Act are deemed an entitlement program, therefore, any reduction in federal reimbursements would result in either a backfill by the State's General Fund or a reduction of services that would put the Lanterman Act entitlement at risk.

In addition to FFP providing for system sustainability, compliance with the HCBS Waivers/SPA conditions of participation (e.g., person-centered planning, facilitation of the individual's choice, their individual satisfaction, etc.) supports quality services and optimal outcomes for individuals consistent with the Lanterman Act. The new federal rule for settings provides individuals served with opportunities to seek employment and work in competitive and integrated settings, engage in community life, control personal resources, and receive services to the same degree as individuals who do not receive Medi-Cal funded services. This means that settings need to focus on the nature and quality of individuals' experiences and that individuals have an active role in the development of their plan, the planning process is person-centered, and the plan reflects the individual's service and supports and what is important both to them and for them.

The CEA will develop the statewide policies and oversee the implementation of strategies, programs, and policies to ensure DDS, RCs and service providers are in full compliance with the conditions of participation and federal assurances required for HCBS Waivers, SPA and EVV. This CEA will also develop the policies and oversee the implementation of strategies and programs to ensure DDS is complying with new federal regulations regarding HCBS settings across impacted services. Further, the CEA will be responsible to ensure all activities in DDS' HCBS Programs, including EVV, result in quality services and assures the opportunity for individuals with IDD to exercise their right to make choices consistent with Lanterman Act values that provide for person-centered planning as well as ensuring service access and equity.

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.

Recent new program initiatives and expansions of both the SDP and HCBS programs have resulted in too broad of a policy and management span of control for the current CEA. Therefore, DDS is establishing a new CEA for the HCBS Program and making a concurrent major change in concept and to retitle the ADD to Branch Manager, SDP. Changes specific to the CEA, HCBS, include, but are not limited to the following:

Statewide Transition Plan (STP) Approved - In 2014, the CMS published HCBS Final Rule (42 CFR §§ 441.301(c)(4)-(5) and 441.710(a)(1).) that requires states to ensure that any Medicaid-funded HCBS services promote person-centered planning, individual choice, and increased independence and are provided in the most integrated setting possible. The rule, originally set to take effect in 2019, has been pushed back twice, with the first key date set for March 17, 2023, when all service providers must have adopted policies consistent with the final rule and full compliance for all settings not directly impacted by the direct service workforce shortage. On June 30, 2023, CMS granted approval of California's STP to bring approximately 7,000 settings into compliance, and maintain their compliance, with the federal HCBS regulations. This approval included milestones for California to be in full compliance by December 31, 2024, and for ensuring ongoing compliance. If full compliance is not reached by December 31, 2024, DDS could be subject to fiscal penalties and increased CMS reviews. The CEA will be the primary policy maker for all activities to achieve full compliance and for ongoing compliance including monitoring and oversight of RCs and providers and for remediation plans to bring non-compliant providers into compliance.

CMS Report on Heightened Scrutiny – On August 15, 2023, CMS notified California of the findings of their site visit of several settings that were identified by the state and/or community engagement groups as having the qualities of an institution as outlined at 42 CFR § 441.301(c)(5) and required CMS to conduct “heightened scrutiny” reviews to determine if the providers were in compliance with the HCBS settings criteria. CMS identified several systemic issues of serious concern that require remediation actions by DDS. This CEA will be the primary policy maker for identifying the actions DDS will be required to take to remediate systemic issues at settings identified as Heightened Scrutiny and monitoring the application of those also across all HCBS settings.

New DDS HCBS/SPA Resources - The 2023 Budget Act authorized six additional permanent positions and the conversion of three limited-term positions to permanent positions to address new and ongoing DDS efforts that align California's developmental disabilities system with federal requirements necessary for continued federal funding for HCBS programs. CMS requires the state to verify continued compliance with federal requirements, including expanded monitoring requirements and enhanced person-centered service planning in all settings on an ongoing basis and increased reporting requirements under the approved STP.

New RC HCBS/SPA Monitors - The 2023 Budget Act authorized 50 new positions for RCs to support ongoing monitoring and other activities to facilitate compliance under the approved STP and an increase in the number of individuals enrolled in the HCBS Waivers/SPA. The RCs have extensive responsibilities for new required federal monitoring and reporting requirements associated with the HCBS Waivers/SPA including periodic review of services and quality assurance activities. The CEA will be responsible to develop policy and oversight protocols for guidance and direction to RCs to ensure the new RC positions are effectively used by RCs to bring community providers into full compliance with Waiver/SPA conditions of participation including the federal regulations on integrated settings.

Grant Funding of \$15 million – The 2023 Budget Act authorized \$15 million to assist providers in complying with the HCBS Final Rule on integrated settings, and to support broader work in each community that promotes and sustains ongoing compliance. The CEA will be responsible to review the current status of HCBS compliance by DDS providers to determine the priorities for RCs and providers in the use of these funds to meet the needs of the individuals served in their local area and for developing the criteria for DDS to use for review and approval of the funding.

Rulemaking Process – Trailer bill language to the 2022 Budget Act provided temporary authority to DDS to issue administrative program directives to implement and comply with the numerous program changes required to comply with the HCBS Final Rule (WIC 4685.10). Several Directives have been issued and will continue to be issued as DDS implements the STP to come into full compliance. The Legislature allowed this temporary authority only until completion of the regulatory process. The CEA will be the primary policy maker in drafting the administrative program directives and in working with community engagement groups and the Office of Regulations to promulgate regulations to support statewide compliance with the STP, person-centered service planning and for ongoing changes based on CMS rule and policy changes. The CEA will be responsible for these HCBS Waiver/SPA policies to ensure over \$5 billion in FFP is received and for optimal outcomes for individuals with IDD consistent with the Lanterman Act and DDS' Mission.

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 examples of policy areas below all have a statewide impact on the quality of services and outcomes for over 400,000 individuals served in support of DDS' Mission and the continued receipt of over \$5 billion in federal funding.

Implementation of Statewide Transition Plan Policies - On June 30, 2023, CMS granted approval of California's STP to bring settings into compliance with the federal HCBS regulations found at 42 CFR §§ 441.301(c)(4)-(5) and 441.710(a)(1). This approval included milestones for California to be in full compliance by December 31, 2024, and for ensuring ongoing compliance. This CEA will be the primary policy maker for all activities to achieve full programmatic compliance including recommendations for changes to statute, regulations, policies, and protocols to bring state standards and HCBS settings into full compliance. Specific examples of policies to effectuate continued alignment with the HCBS Final Rule include strengthening requirements and expanding resources for person-centered service planning, enhanced on-site monitoring of providers, development of tools for collecting ongoing input from individuals served, on-going training for RCs, providers, individuals served and their families, and development of quality measures for the required reporting to CMS on continuing compliance efforts.

"Heightened Scrutiny" Settings Policies – On August 15, 2023, CMS notified California of the findings of their site visit of several settings that were identified by the state and/or community engagement groups as having the qualities of an institution as outlined at 42 CFR § 441.301(c)(5) and required a CMS conducted heightened scrutiny review to determine if they comply with the HCBS settings criteria at 42 CFR § 441.301(c)(4). CMS identified several systemic issues of serious concern that require remediation actions by DDS. This CEA will be the primary policy maker for identifying the criteria for evaluating settings "presumed to be institutional" per CMS guidance, identifying the actions DDS will take to remediate the issues and for on-going monitoring of the remediation activities of the individual settings to ensure compliance with all of the settings criteria. In addition, the CEA will be responsible for policies consistent with CMS rules that allow for a "heightened scrutiny process", allowing the state to present evidence and public input to demonstrate that these settings do, in fact, comply with the new requirements.

New RC HCBS/SPA Monitors - The 2023 Budget Act authorized 50 new positions for RCs to address and sustain new and ongoing efforts that align California's developmental disabilities system with federal requirements necessary for continued federal funding for HCBS programs. These new RC positions are critical for DDS to successfully implement all required activities under the approved STP as the RCs have extensive responsibilities for new required federal monitoring and reporting requirements associated with the HCBS Waivers/SPA. The CEA will be responsible for policies for oversight protocols for guidance and direction to RCs to ensure the new RC positions are effectively used by RCs to bring community providers into full compliance with Waiver/SPA conditions of participation including new monitoring responsibilities for non-residential settings such as employment and day programs.

Grant Funding Policies – The 2023 Budget Act authorized \$15 million to assist providers in complying with the HCBS Final Rule on integrated setting, and to support broader work in each community that promotes and sustains ongoing compliance. The CEA will be the primary policy maker to review the current status of HCBS compliance by DDS providers to determine the priorities for the use of these funds to meet the needs of the individuals served in their local area and for developing the criteria for DDS to use for review and approval of the funding. This will include policies for funding priorities, updated criteria, and guidelines for processing HCBS compliance funding in conjunction with community engagement and feedback from RCs, review and approval of funding proposals submitted, and providing oversight and technical assistance to RCs and providers on approved projects.

Expanded HCBS Monitoring Program Policies - DDS has been delegated the responsibility for operation of the HCBS Waivers/SPA through an Interagency Agreement with DHCS. A critical condition of participation in the HCBS Waivers/SPA is ensuring that the HCBS Waiver is implemented by RCs in accordance with Medicaid statute and regulation. DDS performs comprehensive biennial program monitoring reviews of RCs with follow-up audits in alternate years. Prior to the Final Rule on integrated settings, CMS only required quality assurance monitoring of residential settings as a condition of participation for HCBS Waivers/SPA. The HCBS Final Rule expanded the quality assurance reviews to apply to all settings (e.g., day programs, etc.) where multiple individuals receive services. The CEA will be responsible for expanding the HCBS Monitoring Protocol and processes to include all required services under integrated settings and to provide guidance and oversight to RCs on their expanded quality assurance reviews. Specific examples of policies include the development of a due process appeals systems for providers found not in compliance with HCBS Waivers/SPA rules for integrated settings, remediation options for providers not in compliance, required communications to individuals served on their options, and for coordination with sister departments providing generic services in such settings to individuals served.

C. ROLE IN POLICY INFLUENCE (continued)

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

The proposed CEA position's scope and nature of decision-making authority is statewide, broad, and significant as it relates to formulating, developing, and implementing policies to ensure DDS, RCs, and over 24,000 providers are in full compliance with HCBS Waivers/SPA conditions of participation to receive over \$5 billion in FFP for services provided. These policies impact the quality of services provided to over 400,000 individuals and their families and have a statewide impact on services and DDS' budget as well as an individual impact on individuals and their families, RCs, and providers. Depending on the significance of the policy this CEA will have authority to independently decide policy options or to work in collaboration with the Deputy Director and other executive management and to advise the directorate on the most critical policy decisions.

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

The CEA will be developing and implementing new policy and also interpreting and implementing existing policies. There are current policies related to a variety of systems and activities for compliance with conditions of participation for HCBS Waivers/SPA. The CEA will also be developing and implementing new policies required under the recently approved STP for integrated settings. The position will also be developing and implementing new policies based on identified issues in bringing providers into compliance with HCBS rules and in response to changing federal and state statutes and regulations.

The new policies will be developed and implemented with input from CMS, DHCS and other sister state departments, the DS Task Force, HCBS workgroups, disability advocates, individuals served and their families, and other community engagement groups, and in coordination with other DDS divisions and offices in Program Services, Operations, and Data Analytics and Strategy.

The CEA will continually evaluate effectiveness and compliance with HCBS Programs and, as needed, develop and implement new and amended policies to ensure compliance. In addition, the CEA will be in the lead policy role to draft and promulgate regulations for maintaining compliance with HCBS Waivers/SPA and through monitoring and other activities ensure these policies are adhered to.