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A. GENERAL INFORMATION

1. Date

2019-10-29

2. Department

Department of Justice

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

Division of Medi-Cal Fraud and Elder Abuse

4. CEA Position Title

Chief Assistant Attorney General

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

The incumbent provides administrative and policy direction to the Division statewide, and as a member of the Attorney General's Executive Staff, assists the Attorney General in formulating policies. The Chief Assistant Attorney General advises the Attorney General on legal issues and policies which impact the Department of Justice, directs the representation of state agencies in various courts, and ensures the protection of the public.

Federal law requires that each state have a Medicaid Fraud Control Unit (MFCU) that is housed in the office of the Attorneys General who have statewide authority in such matters. The MFCU in California is the Division of Medi-Cal Fraud and Elder Abuse.

6. Reports to: (Class Title/Level)

Chief Deputy Attorney General / CEA C

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.

Federal law requires that each state have a Medicaid Fraud Control Unit (MFCU) that is housed in the offices of those state Attorneys General who have statewide authority in such matters. The MFCU in California is the Division of Medi-Cal Fraud and Elder Abuse (DMFEA).

Under the direction of the Chief Deputy to the Attorney General (CDAG), the Chief Assistant Attorney General (CAAG) will be responsible for setting policy, directing operational activities, advocating solutions and positions, and implementing new programs and systems. This position will be accountable for the investigation and prosecution of Medi-Cal fraud and elder abuse throughout the State of California. This includes the management of the investigation and prosecution of cases with other federal, state, and local agencies; planning, organizing, managing and directing the statewide activities of subordinate attorneys, special agents, and investigative auditors conducting criminal investigations and prosecutions of Medi-Cal fraud and elder abuse activities in the state, creating task forces for the investigation of Medi-Cal fraud and elder abuse; assisting federal authorities in the development of policy at the national level on application of Medicaid; formulating and developing new and innovative programs regarding Medi-Cal fraud control functions to be initiated statewide; drafting legislation to support the Medi-Cal Fraud program and testifying before the legislature.

The CAAG acts for the Attorney General, as assigned, in meetings with legislators, department heads, court officials, and others; provides assistance to the Attorney General and Chief Deputy Attorney General in formulating policies and directs the implementation of those policies within the DMFEA; and is responsible for maintaining good relations with the public, the press, and various civic organizations. The CAAG also provides advice to the Attorney General and other elected officials and agency heads on matters of law and policy and their impact to the state. In addition, the CAAG assists in coordinating activities with other divisions within the Department of Justice (DOJ); reviews and gives final approval to opinions prepared for issuance by the Attorney General; and supervises preparation of the divisional budget and assists in presenting it to the legislature. Further, the CAAG directs informational activities within the agency such as preparation of status reports and office manuals, and the conduct of staff meetings; recommends and effects changes in personnel assignments; secures, trains, and evaluates the performance of personnel and takes or recommends appropriate action.

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: In California, the Medicaid program is known as Medi-Cal. It is an essential component in the delivery of health care to over 13 million low-income Californians. Administered by the State Department of Health Services, Medi-Cal accounts for around \$99 billion in annual expenditures and provides health coverage for one out of every three Californians. As the State's Medi-Cal Fraud Control Unit, it is the mission of the DOJ to investigate and prosecute both provider fraud harming California's Medi-Cal program by preventing the abuse of state and federal funds designated to provide health care for eligible persons and the abuse or neglect of elders and dependent adults in care facilities in California, whether through civil or criminal prosecutions.

The Program is extremely sensitive because the investigation and prosecution involves the integrity of providers of medical and pharmaceutical services throughout California. Additionally, since the Medicaid program is funded by tax dollars, there is substantial public interest in this program.

The financial burden for health care fraud lands firmly on the shoulders of the people of California in the form of higher premiums for health insurance and increased taxes for social programs. For those needing health care services, Medi-Cal fraud means the loss of already scarce funds to pay for vital services. There are also direct public health risks created by those who turn a profit by re-using syringes, performing needless medical procedures, or assigning unqualified staff to provide treatment.

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.

Historically, Medi-Cal Fraud and Elder Abuse has been housed as a Bureau under the Criminal Law Division. However, the Bureau's unique role extends beyond criminal law prosecutions. The Bureau is responsible for the research, investigation, and prosecution of crimes in both criminal and civil courts. This is unlike other areas of law which have a singular focus or only minimal overlap with each other. As a result, the Bureau employs a full complement of legal, investigative, and law enforcement staff necessary to see the work through from intake to prosecution. This includes general administrative staff, legal support staff, Special Agents, Field Representatives, Investigative Auditors, Property Controllers, Deputy Attorneys General, and their supervisors. In addition, the Bureau operates using federal grants specifically allocated to fund their mission. Due to the funding restrictions associated with the federal monies, the program largely operates as a stand-alone enterprise.

Due to the increasing number of cases being referred to the Bureau each year, the number of staff needed to handle the workload has increased. This increase is projected to continue each year as California's elderly population continues to grow. The 2017 California State Plan on Aging, produced by the California Department of Aging, detailed the significant growth projected to continue for the foreseeable future. The study identified that between 2017 and 2030 the state's elderly population will increase by approximately 40 percent. This population growth highlights the importance of the Bureau being proactive in creating a sustainable and efficient organizational structure to address the challenges ahead.

As California continues its implementation of federal health care reform, access to health care related services has increased. For example, the state expanded Medi-Cal (Medicaid in California) to cover adults without children and parent/caretaker relatives with incomes up to 138 percent of the federal poverty level. In addition, the state expanded Medi-Cal mental health and substance use disorder benefits to new recipients. As access and expansion of Medi-Cal programs continue to increase, so will the number of fraud cases reported to the Bureau. And, due to the changing laws and regulations governing access and eligibility, the Bureau will be responsible for adapting their policies and practices governing investigating and prosecuting associated cases of fraud and abuse.

Moving the Bureau out of the Criminal Law Division and creating its own division (DMFEA) would allow for more direct oversight of the growing workload and responsibilities of the Bureau. The CEAs requested would be able to focus solely on DMFEA issues as opposed to both the entire Criminal Law Division and the current Bureau.

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 Bureau of Medi-Cal Fraud and Elder Abuse has sole responsibility throughout California for proposing, adopting, and implementing operational rules, regulations, policies and procedures to promote, enhance and carry out the Attorney General's federally-funded mission to discover, investigate and prosecute, civilly and criminally, providers and suppliers of Medi-Cal services and goods who engage in (1) defrauding the Medi-Cal program, (2) failing to provide needed and appropriate health care to the state's most vulnerable citizens, and (3) providing abusive and harmful actions and care to the elderly. (42 CFR Part 1007, State Medicaid Fraud Control Units Rules.) The CAAG is responsible to ensure that no approved operation, investigation or prosecution violates the provisions of the federal funding which could directly result in a loss of significant funding to the California Attorney General's Office.

The CAAG will be responsible for meeting the federal Performance Standards in its funded mission under the oversight by the U.S. Office of Inspector General ("OIG") for Health and Human Services and develop policies to ensure on-going compliance with all federal rules. OIG applies the performance standards, developed in accordance with section 1902(a)(61) of the Social Security Act, as part of its oversight of all states' Medicaid Fraud Control Units ("MFCUs"). The standards assist OIG in the certification and recertification of the MFCUs and help to determine whether the MFCUs carry out their duties efficiently and effectively (77 FR 32645). The state Department of Health Care Services ("DHCS"), Program Integrity Unit ("PIU") works closely with the California DOJ/DMFEA to coordinate investigations involving California providers. The CAAG for DMFEA sets policies and parameters in its division of responsibility with the DHCS PIU in order to ensure both adequate and consistent on-going case referrals for prosecution. The competing but complementary interests of each program requires the CAAG to consistently monitor the flow of cases and develop and implement an annual Memorandum of Understanding with DHCS to ensure meaningful access to DHCS claims data to discover new cases and support existing investigations. Claims data is subject to the federal Health Insurance Portability and Accountability Act ("HIPAA") and the CAAG must develop and approve policies and procedures which will sufficiently protect the integrity and privacy of a patient's information without compromising DMFEA's ability to use the information to discover and prosecute instances of fraud by providers and suppliers. Every three years the CAAG must separately apply to the U.S. OIG for a renewal of permission to continue to mine the Medi-Cal health care claims data independent of the DHCS PIU. In this context, the CAAG has sole responsibility to develop and maintain a robust working relationship with the DHCS PIU through an atmosphere of mutual respect and must learn the PIU's current processes, entity makeup, and their available assets/skill-sets.

The CAAG must be familiar with all aspects of support operations in investigations, audits and prosecutions in order to ensure that staff resources are used to maximize efficiency and effectiveness. BMFEA has approximately 240 staff, comprised of 38 different classifications in 8 offices statewide. The CAAG will be centrally involved in decisions involving, for example, whether to (i) join in national investigations and prosecutions of prescription drug and medical-device pricing actions; (ii) whether and when to shape an investigation as primarily civil or criminal, (iii) intervene in a private, qui tam actions to protect or recover Medi-Cal covered disbursements, and (iv) what levels and kinds of investigative, audit, and legal manpower to assign to complex litigation. These decisions help to ensure that the DOJ provides high-quality, legally sound, and carefully considered representation in its most broadly important, often precedent-setting litigation on behalf of the People, the State, the Attorney General in his or her independent capacity, and other public agencies and officials.

C. ROLE IN POLICY INFLUENCE (continued)

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

The Chief Assistant Attorney General is at the second organizational level and reports directly to the Chief Deputy to the Attorney General, who in turn reports directly to the Attorney General. Traditionally, the Chief Deputy has been regarded to be at the same organizational level as the Attorney General. The incumbents in this position have a significant impact on the development of the Department's policy with regard to litigation of cases concerning Medi-Cal Fraud and Elder Abuse. The CAAG is a member of the management team of the Attorney General's legal offices, and in consultation with the Chief Deputy Attorney General, has continuous involvement in the establishment and implementation of division policy and is ultimately responsible for these policies being carried out by his or her respective specialized legal division.

This position meets the CEA criteria of being a "high administrative and policy-influencing" position in which the incumbent's "primary responsibility is the managing of a function or the rendering of management advice to top level administrative authority".

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

The Chief Assistant Attorney General (CAAG), in consultation with the Chief Deputy Attorney General, is responsible for the development, implementation and interpretation of new and existing policies, working with State or Federal agencies, law enforcement, the Legislature and the Governor's Office. The CAAG works within the existing DOJ structure to comment upon, propose, or implement policy pertaining to his or her respective specialized legal division. The CAAG is also responsible for ensuring that both existing policy and implementation of any new or amended policy is complied with by the staff within his or her division by overseeing the distribution of work, reviewing work product, developing legal strategies for case litigation, and planning for necessary training and development to ensure the division's goals are met. In addition, the CAAG reviews complex and sensitive issues that impact the entire Department and the entire state. For example, is there a need for a search warrant to obtain an individual's prescription drug information?