

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

6/19/19

2. Department

Justice

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

Public Rights Division/Healthcare Rights and Access Section

4. CEA Position Title

Senior Assistant Attorney General

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

The new Healthcare Rights and Access Section (Section) will centralize the Division of Public Rights' healthcare expertise into one section to provide increased focus, efficiency of collaboration and coordination on healthcare issues. The Section is charged with the authority to implement proactive legal and policy work to increase and protect access to quality, affordable healthcare in the State of California. The Section is responsible for overseeing and leading all work in the areas of consumer healthcare rights, including healthcare and prescription drug marketing, nonprofit healthcare transactions, violations of antitrust laws, healthcare privacy and healthcare civil rights, such as reproductive rights and LGBTQ rights in the healthcare context. The Senior Assistant Attorney General (SAAG), performs a dual role as both a program administrator and as a highly experienced and specialized attorney. The SAAG implements department-wide policies, advises the department's executive management team, and coordinates the handling of especially complex and sensitive matters with senior leadership of the department, client agencies, and the Governor's Office of Legal Affairs.

6. Reports to: (Class Title/Level)

Chief Assistant Attorney General / CEA B

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 Senior Assistant Attorney General (SAAG) performs a dual role as both a program administrator and as a highly experienced specialized attorney. The SAAG plans, organizes, and directs the work of the statewide Section within the Division of Public Rights. The SAAG develops policies and procedures with regard to the Section. The SAAG serves as a technical expert and primary legal advisor to the Attorney General, Chief Deputy to the Attorney General, and client state agencies, on complex legal issues impacting healthcare. Many of these issues require legal research, negotiation, and representation in legal proceedings of several years duration.

The SAAG will supervise staff assigned to five areas of healthcare: unlawful business practices impacting consumers, including false advertising, antitrust violations, nonprofit healthcare transactions, healthcare privacy, and civil rights issues arising in the healthcare context. The Section will handle a wide-range of healthcare litigation and investigations such as, but not limited to: defense of the Affordable Care Act; enforcement of the Sherman and Cartwright Acts; actions to redress violations of healthcare laws; enforcement of statutory requirements governing pharmacy benefit managers and prescription drug laws; prosecution of violations of charity care and other conditions placed on healthcare facilities by the Attorney General; protection of civil rights related to healthcare including reproductive health and LGBTQ health; prosecutions of violations of statutes and regulations regarding access to affordable, quality healthcare for consumers; enforcement of California's health parity laws; enforcement of federal and state language access requirements; enforcement of unlawful business practice and false advertising laws related to healthcare; and enforcement of patient privacy and privacy laws.

The SAAG will supervise staff in four geographical locations (Sacramento, San Francisco/Oakland, Los Angeles, and San Diego) of the Attorney General's office and has responsibility for directing the work of attorneys specializing in the various areas of healthcare.

The SAAG will provide executive-level oversight of professional development within the Section, handle the day-to-day operation of the Section, which includes assisting in policy matters, and providing guidance and leadership to the Section's attorneys and management team. On a statewide basis, the SAAG provides functional and strategic supervision to the Supervising Deputy Attorneys General, Deputy Attorneys General, and paralegals. This position will also work with the department's administrative staff to develop and/or review annual budget workplans and approve contractual agreements that include the Section as a party.

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 Attorney General represents the People of California in civil and criminal matters before trial courts, appellate courts and the supreme courts of California and the United States.

Protecting and enhancing access to affordable, quality healthcare has become a growing concern for all Californians. The Healthcare Rights and Access Section (Section) will centralize the Division of Public Rights' healthcare expertise into one Section to provide for increased focus, efficiency, collaboration and coordination on healthcare issues. The Attorney General developed a pilot program, the Healthcare Strike Force (HSF) on February 01, 2018. The HSF has handled extensive litigation in defense of the Affordable Care Act (ACA), including intervention in national litigation, in order to undertake the defense of the ACA, and reproductive rights. The Section would incorporate and build on the HCF's work, by filing enforcement actions to redress violations of substantive healthcare laws; enforcing statutory requirements governing pharmacy benefit managers; initiating enforcement, litigation and policy actions involving reproductive and LGBTQ healthcare rights and access to care; prosecuting violations of charity care and other conditions placed on healthcare facilities by the Attorney General; redressing violations of statutes and regulations governing sober living homes and crisis pregnancy centers; enforcing California's health parity laws; enforcing federal and state language access requirements; reviewing hospital/healthcare facility transactions; and enforcing patient privacy and Healthcare Privacy and Portability Act (HIPPA) laws. The Section will coordinate positions on issues of broad legal or policy significance in healthcare to promote consistency and high-quality advice and representation, reporting of market conditions and analysis of healthcare pricing, working with other sections throughout the department, at senior levels of client agencies, and in the Governor's Office of Legal Affairs. It will promote excellence in all aspects of the department's work in healthcare, leading the development and use of best practices and policies. These activities are integral to the department's mission.

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.

The Department of Justice formed the Healthcare Strike Force Unit (HSF) as a pilot program in February of 2018 to focus on healthcare issues and help determine the need for a healthcare section. The following positions were allocated to the HSF: (1) one Supervising Deputy Attorney General, and (8) Deputy Attorneys General. In just one year, the HSF has handled (9) nine cases, resulting in (2) two injunctions, (1) one stay, (1) one summary judgment, and one appellate win so far. For example, HSF successfully intervened in two federal cases to defend statutes, including the Affordable Care Act (ACA), when the federal government had abandoned defending the law. All totaled, the HSF has filed at least 13 amicus briefs and at least 12 comment letters covering reproductive rights, access to healthcare, and affordability. In addition to handling the extensive litigation in defense of the Affordable Care Act (ACA), the HSF has submitted comment letters and engaged in litigation challenging violations of constitutional rights, and other legal violations across an array of proposed statutes and regulations, including the federal Administrative Procedure Act. The actions have addressed LGBTQ and reproductive rights involving access to care, healthcare as a right, state funding and other statutory issues impacting access to care or benefits.

The new Healthcare Rights and Access Section (Section) will centralize all of the Division of Public Rights' healthcare expertise into one section, to provide for increased efficiency, collaboration and coordination on healthcare issues. The Section will continue to absorb the existing work of the HSF as well as absorbing the following workload from the Charitable Trust Section: review of all nonprofit healthcare transactions; enforcement of charity care policies in hospitals; and investigations regarding a hospital's community benefit initiatives, including the use of potential "secret shoppers" to investigate whether patients are receiving the necessary community benefit. In addition, the Section would devote attorney resources to developing expertise with patient privacy and Healthcare Insurance Privacy and Portability Act (HIPPA) regulations, and work in consultation with the Health, Education and Welfare Section to advance more progressive policies within state agencies that help reduce prices, expand access, and address quality of care issues. The Section will take over all healthcare civil rights cases, leading work in reproductive and LGBT health rights, including work in religious conscience and exemption laws in healthcare. The Section would also expand on the department's work into affirmative investigations to enforce substantive healthcare laws. The Section will absorb from the Consumer Law Section all healthcare including but not limited to healthcare privacy, medical debt, and healthcare fraud and false advertising cases and investigations. Lastly, the Section will absorb from the Antitrust Section all health-related antitrust work, leading all healthcare investigations and litigation.

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 SAAG will have significant policy influence and involvement at the department's executive and senior management level. The SAAG will develop, recommend and implement decisions on a wide range of significant healthcare policy issues, including, in coordination with the State Solicitor General, issues that will be decided in litigation before the state and federal Supreme Courts. For instance, the SAAG will be responsible for developing legal arguments in defense of the ACA, and explaining the interface between constitutionality protected reproductive rights and the right to exercise religious beliefs. In directing this complex and sensitive litigation, the SAAG will be expected to balance opposing interests and recommend action among stakeholders (inside the department and in state agencies and the Governor's Office), and help formulate and refine decisions, including resolving conflicts, concerning positions to be adopted in litigation. These positions often involve statutory or other legal issues that affect not only the case before the court but also the future application of a statute or legal principle to other programs and thousands of institutions and individuals statewide. Agreed positions can also help define consistent approaches to be advanced by department lawyers when the same issues arise in different litigation contexts and can have important effects in shaping the development of the law.

Policy implementation takes place not only via litigation, but also through investigations, and comments filed with administrative and legislative agencies on behalf of the Attorney General. The SAAG will direct comments on proposals relevant to healthcare issues by developing legislative and Congressional testimony, reviewing amicus briefs and submitting comment letters to administrative agencies on behalf of the Attorney General, etc. For example, the HSF has written comment letters alleging violations of the federal Administrative Procedure Act and other legal policies, including comments on (i) home health workers programs; (ii) funding of reproductive health providers under Title X; (iii) contraceptive laws; (iv) nondiscrimination provisions of the ACA; (v) risk adjustment payments under the ACA; and (vi) Medicaid work requirements.

The SAAG will often be the senior department official most directly familiar with the work being done on significant healthcare cases, while at the same time having a department-wide perspective on both the issues being litigated and the appropriate allocation of staff resources. The SAAG is expected to bring an executive-level perspective to legal policy issues and how they relate to the programs and priorities of the Attorney General. The SAAG will be centrally involved in decisions involving, for example, whether to (i) investigate certain prescription drug pricing actions; (ii) join multistate litigation on medical practices, or procedures; (iii) file an amicus brief in litigation to protect the rights of women and members of the LGBTQ community to healthcare services; and (iv) advance a specific argument at trial or in an appellate brief. These decisions help to ensure that the department 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.

The SAAG will also lead the adoption and implementation of department-wide policies relating to healthcare enforcement, investigations, and litigation in general. Through implementation of these policies the SAAG will be personally and substantially involved in important decisions relating to these matters, including making decisions in some matters and in others making recommendations for actions by the Division, the Chief Deputy, or the Attorney General.

C. ROLE IN POLICY INFLUENCE (continued)

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

The SAAG has both administrative and policymaking authority. Thus, the SAAG will have decision-making authority with respect to a large professional staff in the Section, consisting of both attorneys and analysts, and their areas of assignment. The SAAG will often exercise final delegated authority over investigations, litigation, or the content of briefs or other materials in significant cases or as to organizational actions, policies, or procedures. The SAAG will make decisions or provide perspectives and counsel to the Section staff, the Chief Assistant Attorney General of the Public Rights Division and other members of the Executive Management Team on legal healthcare litigation or issues that arise in especially significant cases or that have far reaching implications. The SAAG will frequently coordinate consultation processes, and lead or actively participate in consideration and decisions with senior lawyers and policymakers, including other CEAs and Exempt appointees, both within the department and in other agencies or offices. For example, the SAAG will often be called upon to decide whether and how to present difficult legal arguments that could affect the work of other Sections or departments in state government. The SAAG will also often serve as a liaison between the Executive Management team and the leadership of particular litigating Sections in high-profile cases, ensuring that the Section understands and implements executive direction and that the Management team is kept apprised of significant developments.

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

The SAAG will be centrally involved in both the development and the implementation of new department-wide and statewide policies relating to healthcare. As an example, the SAAG and the Healthcare Rights and Access Section could be asked to work on and defend new state programs to extend healthcare coverage or make it more affordable. Similarly, the SAAG would be expected to track and offer recommendations on new litigation, or proposed federal legislation that might fundamentally change healthcare laws. And the SAAG could be asked to develop new legal theories for holding drug producers and manufacturers of medical equipment responsible for the consequences of public use of their products.

In addition the SAAG will also be centrally involved in the interpretation and implementation of the existing policies, in the context of developing and articulating department, client agency, or consensus positions in especially complex, sensitive, and broadly significant litigation, as discussed in response to other questions. For instance, the Attorney General has been very active in defending the ACA when the current federal administration has failed to do so. It is anticipated that the new Section and the SAAG will continue to defend this existing program. Moreover, the SAAG will have a significant role in continuing protect the state's residents from attempts to curtail federal funding for public healthcare programs that provide access to contraceptive, abortion and other care services.