

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

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

Senior Assistant Attorney General

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

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. The Senior Assistant Attorney General (SAAG) plans, organizes, and directs, the statewide activities of attorneys, investigators and auditors responsible for Civil Prosecutions related to Medi-Cal Fraud and Elder Abuse. The incumbent assists in providing administrative and policy direction to the Division statewide.

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.

Under the direction of the Chief Assistant Attorney General (CAAG), the Civil Senior Assistant Attorney General (SAAG) performs a dual role as both a program administrator and as a highly experienced specialized attorney. The Civil SAAG plans, organizes, and directs the work of the Civil Prosecutions Section within the Division of Medi-Cal Fraud and Elder Abuse (DMFEA). The SAAG develops policies and procedures with regard to the Civil Prosecutions Section.

The Civil SAAG oversees all state and federal civil prosecutions for recovery attributable to fraud by Medi-Cal providers and suppliers and those providers engaged in the willful or intentional neglect or abuse of vulnerable or dependent adults. The Civil SAAG will be responsible for developing and implementing policies and priorities in the oversight of civil functions of the DMFEA in cooperation and in conjunction with the Criminal SAAG. Additionally, the SAAG will oversee the effective integration of civil cases with the National Association of Medicaid Fraud Control Units' (NAMFCU) global team process with a view toward ensuring that California is aggressively represented in the leadership and composition of global teams. Additionally, the SAAG will be responsible for ensuring that civil Deputy Attorney Generals are trained in the most effective investigation of civil fraud cases, including False Claims Act (FCA) cases, particularly in terms of data analysis and damages evaluations, as well as pre-trial and trial skills in federal and state court.

The Civil SAAG will provide executive level-oversight of professional development within the Civil Prosecutions Section, handle the day-to-day operation of the Section, which includes assisting in policy matters, and providing guidance 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 of Justice's (DOJ) administrative staff to develop and/or review annual budget workplans and approve contractual agreements that include the Civil Prosecutions 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: 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 (MFCU), it is the mission of the DOJ to investigate and prosecute both provider fraud harming California's Medi-Cal program and the abuse or neglect of elders and dependent adults in care facilities in California, whether through civil or criminal prosecutions.

Based on government and private studies, and on the hundreds of millions of dollars of fraud the Bureau of Medi-Cal Fraud and Elder Abuse frequently recovers in a single year, the amount stolen from Californians by Medi-Cal fraud could reach billions of dollars annually.

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 Division of Medi-Cal Fraud and Elder Abuse (DMFEA) 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 SAAG assists in ensuring 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 SAAG will assist in the responsibility of 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 SAAG for the Civil Prosecutions Section will assist in setting 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 management 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 SAAG 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 SAAG must assist the CAAG in separately applying 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 SAAG will assist in the 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 SAAG must be familiar with all aspect of support operations in investigations, audits, and prosecutions within the Civil Prosecutions Section in order to ensure that staff resources are used to maximize efficiency and effectiveness. The SAAG will be centrally involved in decisions involving the Civil Prosecutions Section, for example, whether and when to shape an investigation as primarily civil or criminal, or intervene in a private, qui tam actions to protect or recover Medi-Cal covered disbursements, and what levels and kinds of investigative, audit and legal manpower to assign to complex civil 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 SAAG has both administrative and policymaking authority. Thus, the SAAG of the Civil Prosecutions Section will have decision-making authority with respect to a large professional staff within the section, consisting of both attorneys, paralegals, and investigative auditors, 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 Civil Prosecutions Section staff, the CAAG of the Division of Medi-Cal Fraud and Elder Abuse, and other members of the Executive Management Team on Medi-Cal Fraud 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 DOJ 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, in consultation with the Chief Deputy Attorney General and CAAG, 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 SAAG will work within the existing DOJ structure to comment upon, propose, or implement policy pertaining to his/her respective specialized legal program. The SAAG 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/her section, by overseeing the distribution of work, reviewing staff's work product, developing legal strategies for case litigation, and planning for necessary training and development to ensure the Civil Prosecutions Section's goals are met. Further, the SAAG reviews complex and sensitive issues impacting the entire DOJ and the entire State such as whether or not there is a need for search warrants to obtain prescription drug information. He or she communicates these issues and their impact to the DOJ's executive level management, the CAAGs, and the Chief Deputy Attorney General. He or she may also communicate and consult with the Director of the DOJ's Division of Law Enforcement or the California Justice Information Services Division, the bridge to the Federal and other States' criminal justice agencies on issues that crossover into these divisions.