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

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Date</td>
<td>2. Department</td>
</tr>
<tr>
<td>3/25/2022</td>
<td>Justice</td>
</tr>
</tbody>
</table>

3. Organizational Placement (Division/Branch/Office Name)
Division of Medi-Cal Fraud and Elder Abuse

4. CEA Position Title
Assistant Chief

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

The Assistant Chief works under the direction of the Chief Assistant Attorney General to plan, organize and direct the work of staff including, but not limited to, sworn and non-sworn investigators and analysts working in the field of Medi-Cal fraud and the abuse and neglect of Medi-Cal beneficiaries statewide.

The Assistant Chief represents the Attorney General and testifies before the courts, the Legislature, local, State or Federal governmental agencies, and the public on sensitive and complex matters. The Assistant Chief advises the Attorney General on matters of crime which should become the subject of investigation and serves as a key policy advisor to the Chief Assistant Attorney General on investigative issues impacting the Department of Justice.

6. Reports to: *(Class Title/Level)*
Chief Assistant Attorney General - Career Executive Assignment, Level 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)
9. What are the duties and responsibilities of the CEA position? Be specific and provide examples.

Pursuant to Title 42, sections 1396a and 1396b of the United States Code, every state with a Medicaid program must have a corresponding Medicaid Fraud Control Unit (MFCU) separate from the state’s Medicaid program. The MFCU is responsible for investigating and prosecuting provider fraud against the state’s Medicaid and reviewing complaints of abuse or neglect of patients in Medicaid-funded healthcare facilities and acting upon such complaints under the state’s criminal laws, or referring them to other state agencies for action. (42 USC §§ 1396a(a)(61), 1396b(q).) In other words, for a state to receive funds from the federal government to fund the Medicaid program, the state must have a MFCU that investigates and prosecute fraud perpetrated by Medicaid providers and abuse of patients in Medicaid funded facilities (typically general acute care hospitals, skilled nursing facilities, etc.).

Medi-Cal is California’s Medicaid program and the Division of Medi-Cal Fraud and Elder Abuse (DMFEA) is California’s designated MFCU. DMFEA is a vertical prosecution unit consisting primarily of Deputy Attorneys General, Special Agents, Investigative Auditors, and support staff working collaboratively across eight regional offices to investigate and prosecute cases throughout California. DMFEA’s mission is to investigate and prosecute those who defraud taxpayers of hundreds of millions of dollars and divert scarce Medi-Cal resources from vulnerable Californians. DMFEA also investigates and prosecutes those who abuse or neglect elder or dependent adults living in long-term care facilities, such as skilled nursing facilities or residential care facilities for the elderly as well as the abuse and neglect of all Medi-Cal recipients in non-institutional settings, when the abuse or neglect is connected to the provision of care.


The Assistant Chief of the Investigations Section works under the direction of the DMFEA Chief Assistant Attorney General to plan, organize, and direct the work of sworn and non-sworn staff performing initial complaint and case referral assessment, data development and mining, digital forensic analysis, and investigative activities supporting the DMFEA mission.

The DMFEA Assistant Chief plans, directs and evaluates DMFEA investigative activities from receipt of complaint/referral through resolution, whether by case closure, trial, plea, or settlement. The Assistant Chief allocates staff and budget resources among the various functions to ensure staff are trained in accordance with the Commission on Peace Officer Standards and Training (POST) requirements and all applicable bargaining unit agreements. The Assistant Chief also serves as the primary law enforcement contact for local, state, and federal allied agencies as well as other states’ MFCUs and law enforcement.

The Assistant Chief manages and provides functional and strategic supervision to DMFEA’s senior investigative management who collectively supervise division staff engaged in case assessment, data development and mining, digital forensic analysis, and all other investigative activities. Through subordinate managers, the Assistant Chief ensures staff and division accountability to State requirements for personnel practices, health and safety, collective bargaining agreements, and training. The Assistant Chief assures consistent and uniform policies and implementation of all workplace conditions affecting employment.

The Assistant Chief represents the Attorney General and testifies before the Legislature, the courts, other governmental agencies and the public on sensitive and complex matters within the DMFEA’s jurisdiction. The Assistant Chief advises the Chief Assistant Attorney General, the Chief Deputy Attorney General, and the Attorney General on matters of criminal activity which should become the subject of investigation. Also, the Assistant Chief serves as a key advisor to the Attorney General on investigative issues and strategies impacting the Department of Justice (DOJ).

The Assistant Chief also provides recommendations to the Chief Assistant Attorney General regarding administrative and policy direction for the Division.
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 more than 13 million low-income Californians. Administered through the United States Department of Health and Human Services and the California Department of Health Care Services (DHCS), Medi-Cal accounts for approximately $100 billion in annual expenditures and provides health care for one in three Californians. As a condition of receiving federal funding for Medi-Cal, California must have an established MFCU. The DMFEA is California's MFCU. As the MFCU, it is the mission of the DOJ's DMFEA to investigate and prosecute, both civilly and criminally, Medi-Cal provider fraud and the abuse or neglect of Medi-Cal recipients.

The DOJ is responsible for protecting the human rights of all people residing in California. Access to healthcare is a basic human right. When criminals defraud the very system designed to safeguard vulnerable people's access to health care the DOJ must act. The DMFEA is the DOJ's arm for these investigations and prosecutions. Therefore, the DMFEA is the first and primary line of defense for vulnerable Californians against those that would seek to manipulate the Medi-Cal program and deprive them of critical services. Furthermore, the financial burden for healthcare fraud rests firmly on the shoulders of the People of California in the form of higher premiums for health insurance and increased taxes for social welfare programs. Therefore, it is the responsibility of the DOJ to hold these fraudsters accountable and safeguard the public.
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.

On September 23, 2020, the former Bureau of Medi-Cal Fraud and Elder Abuse was elevated to an independent legal division within the Department of Justice, now known as the Division of Medi-Cal Fraud and Elder Abuse (DMFEA). The newly formed division currently has three CEAs - a Chief Assistant Attorney General and two Senior Assistant Attorneys General (one for each of the two prosecutorial sections - criminal and civil). These three CEAs function as the division’s executive team, though they represent less than half of the division.

Because DMFEA is a vertical prosecution unit, responsible for every step in the investigative and prosecutorial process, the division employs a full complement of legal, investigative, and law enforcement staff necessary to work a complaint/referral from intake through resolution. This includes general administrative staff, legal support staff, Special Agents, Field Representatives, Investigative Auditors, Property Controllers, Deputy Attorneys General, and their supervisors. Of DMFEA’s approximately 279 total positions, approximately 171 positions (61%) are in the Investigations Section. Of those in the Investigations Section, approximately 92 positions (54%) are sworn.

In addition to DMFEA becoming a division, recent legislation has significantly expanded DMFEA’s authority resulting in the need for new investigation strategies, techniques, policies, and procedures. The Consolidated Appropriations Act of 2021, Section 207, Division CC, December 27, 2020, amended provisions of the Social Security Act. Before enactment of this legislation, DMFEA’s authority for abuse and neglect cases was limited to: (1) abuse or neglect of patients in health care facilities that receive payments from the Medicaid program; and (2) abuse or neglect of patients residing in “board and care facilities.” The expanded authority allows DMFEA to investigate and prosecute abuse or neglect of Medi-Cal patients “in a noninstitutional or other setting.” This legislation empowers the DMFEA to crack down on bad actors exploiting Medi-Cal beneficiaries, often in their own homes, while ensuring the efficiency and effectiveness of the Medi-Cal program. Historically, abuse or neglect occurring outside of long-term care facilities was within the province of local law enforcement. This expanded authority significantly broadens DMFEA’s focus, referral basis, and workload.

The Assistant Chief will be responsible for creating and implementing policies and procedures for investigating cases that fall within DMFEA’s newly expanded authority. The Assistant Chief will also be responsible for creating policies that prioritize which cases should be investigated and prosecuted by DMFEA and which should be referred to outside agencies. Additionally, the Assistant Chief will be responsible for ensuring all employees within the Investigations Section, especially Special Agents and Investigative Auditors, receive appropriate training and have appropriate equipment to conduct these new types of investigations properly. The Assistant Chief will also be responsible, through subordinate managers, for the oversight of the investigation of these new cases.

As DMFEA creates policies and procedures for the investigation of the new cases, the Assistant Chief will be the liaison to other states’ MFCUs to develop best practices and coordinate multi-jurisdictional investigations. The Assistant Chief will also work with law enforcement representatives from other state and federal agencies to coordinate our efforts in this new realm.
## 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 DMFEA has sole responsibility in 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 defraud the Medi-Cal program, fail to provide needed and appropriate health care to the State’s most vulnerable citizens and engage in abusive and harmful actions and care to dependent adults and the elderly. (42 CFR Part 1007, State MFCU Rules.)

The Assistant Chief will be responsible for adherence to the Federal Performance Standards under the oversight of the United States Department of Health and Human Services' Office of the Inspector General (OIG). The 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' MFCUs. The standards determine whether the MFCU is performing their duties efficiently and effectively (77 FR 32645) and influence the OIG’s certification and recertification determinations. The Assistant Chief will develop policies to ensure on-going compliance with all federal rules. Additionally, the Assistant Chief will ensure that no approved operation or investigation violates the provisions of the MFCU Federal funding which could directly result in a loss of significant funding to the State.

The DMFEA closely collaborates with the Department of Health Care Services (DHCS) to coordinate investigations involving California providers. The Assistant Chief will set policies and parameters for the each department's respective responsibilities to ensure adequate and consistent on-going case referrals for investigation and prosecution. The competing but complementary interests of each department requires consistent monitoring of the flow of cases and development/implementation of an annual Memorandum of Understanding with DHCS to ensure meaningful access to Medi-Cal claims data to discover new cases and support existing investigations. Medi-Cal claims data is subject to the Federal Health Insurance Portability and Accountability Act (HIPAA) and the Assistant Chief will develop and approve policies and procedures to 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.

The Assistant Chief will review the United States Department of Health and Human Services' OIG renewal document seeking authority to continue to mine Medi-Cal claims data, for anomalies leading to potential cases, independent of the DHCS. In this context, the Assistant Chief will develop and maintain a robust, working relationship with DHCS through an atmosphere of mutual respect while learning the DHCS' current processes, entity makeup, and their available assets/skill-sets.

The Assistant Chief will define policies supporting the complaint and case referral assessment process ensuring that DMFEA's case authority boundary is not eclipsed or exceeded. Also, the Assistant Chief will develop and refine DMFEA policy regarding investigative techniques and procedures and instigate benchmarks to monitor utilization and compliance.

The Assistant Chief will be responsible for DMFEA's operation planning, as well as surveillance and undercover operation policies. The Assistant Chief will determine appropriate staffing complements and equipment readiness for all field operations, and in care facilities to ensure both public safety and peace officer safety are maintained.

The proposed Assistant Chief will create and implement policies defining and supporting investigations that fall within DMFEA's newly expanded investigative authority. As of December 2020, the DMFEA has investigative jurisdiction for injury or abuse of Medi-Cal beneficiaries. This new, vast authority is untenable without policy parameters to define situations and circumstances under which the DMFEA shall or may employ this expanded authority. During the policy creation surrounding the DMFEA’s expanded authority, the proposed Assistant Chief will liaise with other states' Medicaid Fraud Control Units to ensure California’s policies are equivalent or exceeding nationwide best practices. The proposed Assistant Chief will also develop policies to triage and prioritize cases for investigation based on jurisdiction, resource availability, needed skills and abilities and statute of limitation concerns. Additionally, the proposed Assistant Chief will establish policy to ensure that potential investigative cases that fall outside of DMFEA's jurisdiction are distributed to the proper allied agencies or authorities.

The proposed Assistant Chief will institute policies that solidify DMFEA's new, independent division organizational structure with respect to consistent sworn and non-sworn classification use, overtime parameters and supervisory span of control. Also, the proposed Assistant Chief will set policy directly affecting peace officer safety and public safety. Peace officer safety is guided by proper training and equipment provision. For example: use of non-lethal versus lethal force, body armor utility and body camera operating and data retention policies. Without these specific policies, the DMFEA is vulnerable to peace officer injury or death and significant Departmental liability.
C. ROLE IN POLICY INFLUENCE (continued)

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

The Assistant Chief will have both administrative and policymaking authority.

The Assistant Chief will have decision-making authority with respect to a large staff consisting of the Assistant Bureau Chief classification, the Special Agent series, the Investigative Auditor series, research and information technology analyst and supervisor series, and various clerical series. The Assistant Chief will often exercise final delegated authority over case referrals, investigations, or other materials in significant cases or as to DMFEA's organizational actions, policies, or procedures.

The Assistant Chief will make decisions or provide perspectives and counsel to the sworn and non-sworn investigative staff, the CAAG, the SAAG of the Criminal Prosecutions Section, the SAAG of the Civil Prosecutions Section, and other members of the Executive Management Team regarding Medi-Cal Fraud or issues that arise in especially significant cases or cases that have far reaching implications.

The Assistant Chief will frequently coordinate consultation processes, and lead or actively participate in consideration and decisions with senior investigators and policymakers, including other CEAs and Exempt appointees, both within the DOJ and in other California or national agencies. The Assistant Chief will often be called upon to decide whether to employ and how to present difficult investigative strategies that could affect the work of other DOJ divisions or California or national agencies engaged in similar work.

The Assistant Chief will serve as a decision making liaison to the leadership of other DOJ divisions working high-profile investigations and cases to ensure Department visibility of DMFEA activities and significant developments.

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

The Assistant Chief will develop new policy and implement existing policy.

The Assistant Chief will develop new policies surrounding DMFEA's newly expanded authority, investigative techniques, and prioritization. The Assistant Chief will also institute new policies that solidify DMFEA's new organizational structure within the DOJ and operational actions.

The Assistant Chief will develop new policies and interpret existing policies that govern authority over case referrals, investigations, or other materials in significant cases and will also implement existing policies regarding COVID-19 safety protocols and investigations in skilled nursing facilities, Medi-Cal fraud investigative techniques, and policies regarding training and equipment.