



COMPLIANCE REVIEW REPORT

DEPARTMENT OF MANAGED HEALTH CARE

Compliance Review Unit
State Personnel Board
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INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authorities' personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training, to ensure compliance with civil service laws and Board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews.

Pursuant to Government Code section 18502, subdivision (c), the SPB and the California Department of Human Resources (CalHR) may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." SPB and CalHR, by mutual agreement, expanded the scope of program areas to be audited to include more operational practices that have been delegated to departments and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a statewide basis.

As such, SPB also conducts compliance reviews of appointing authorities' personnel practices to ensure that state departments are appropriately managing the following non-merit-related personnel functions: compensation and pay, leave, and policy and processes. These reviews will help to avoid and prevent potential costly litigation related to improper personnel practices, and deter waste, fraud, and abuse.

The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

It should be noted that this report only contains findings from this hiring authority's compliance review. Other issues found in SPB appeals and special investigations as well as audit and review findings by other agencies such as the CalHR and the California State Auditor are reported elsewhere.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the Department of Managed Health Care (DMHC) personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

Area	Finding
Examinations	Examinations Complied with Civil Service Laws and Board Rules
Examinations	Permanent Withhold Actions Complied with Civil Service Laws and Board Rules
Appointments	Probationary Evaluations Were Not Timely ¹
Equal Employment Opportunity	Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements
Mandated Training	Ethics Training Was Not Provided for All Filers ²
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors ³
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Exceptions to Salary Rules Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

¹ Repeat finding. The May 28, 2018, DMHC Compliance Review Report identified 6 missing probationary reports in 5 of the 62 appointment files reviewed. Additionally, the 3/27/15, DMHC Compliance Review Report identified 3 missing probationary reports in 3 of the 24 appointment files reviewed.

² Repeat finding. The May 28, 2018, DMHC Compliance Review Report identified all 165 existing filers and all 194 new filers not receiving ethics training within 6 months of appointment.

³ Repeat finding. The May 28, 2018, DMHC Compliance Review Report identified 6 of 55 new supervisors not receiving sexual harassment prevention training within 6 months of their appointment.

Area	Finding
Compensation and Pay	Incorrect Authorization of Bilingual Pay
Compensation and Pay	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Incorrectly Posted Leave Usage and/or Leave Credit
Leave	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Neptotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Performance Appraisals Were Not Provided Timely to All Employees ⁴

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Technical
- Green = In Compliance

BACKGROUND

The mission of the DMHC is to protect consumers' health care rights and ensure a stable health care delivery system. The DMHC accomplishes its mission by ensuring that the health care system works for consumers. The DMHC protects the health care rights of

⁴ Repeat finding. The 5/28/18, DMHC Compliance Review Report identified three of the 20 employees reviewed as not receiving performance appraisals.

more than 26 million Californians by regulating health care service plans, assisting consumers through a Help Center, providing legal advice and counsel, educating consumers on their rights and responsibilities, and preserving the financial stability of the managed health care system.

The DMHC employs approximately 442 employees in the following nine statewide offices: Office of the Director, Help Center, Office of Enforcement, Office of Legal Services, Office of Administrative Services, Office of Technology and Innovation, Office of Financial Review, Office of Plan Licensing, and Office of Plan Monitoring.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the DMHC's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes⁵. The primary objective of the review was to determine if the DMHC's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

A cross-section of the DMHC's examinations were selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the DMHC provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed the DMHC's permanent withhold actions documentation, including Withhold Determination Worksheets, State applications (STD 678), class specifications, and withhold letters.

A cross-section of the DMHC's appointments were selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the DMHC provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The DMHC did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the DMHC did not make any additional appointments during the compliance review period.

⁵ Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

The DMHC's appointments were also selected for review to ensure the DMHC applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the DMHC provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay: bilingual pay, monthly pay differentials, alternate range movements, and out-of-class assignments.

During the compliance review period, the DMHC did not issue or authorize hiring above minimum requests, red circle rate requests, and arduous pay.

The review of the DMHC's EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal discrimination complaint process; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

The DMHC's PSC's were also reviewed.⁶ It was beyond the scope of the compliance review to make conclusions as to whether the DMHC's justifications for the contracts were legally sufficient. The review was limited to whether the DMHC's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The DMHC's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors, managers, and CEAs were provided leadership and development training and sexual harassment prevention training within statutory timelines.

The CRU reviewed the DMHC's Leave Activity and Correction Certification forms to verify that the DMHC created a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely. The CRU selected a small cross-section of the DMHC's units in order to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of the DMHC's employees' employment and pay history, state service records, and leave accrual histories to ensure employees with non-qualifying pay periods did not receive vacation/sick leave and/or annual leave accruals or state service credit. Additionally, the

⁶If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

CRU reviewed a selection of the DMHC employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of DMHC positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

Moreover, the CRU reviewed the DMHC's policies and processes concerning nepotism, workers' compensation, performance appraisals. The review was limited to whether the DMHC's policies and processes adhered to procedural requirements.

On December 4, 2020 an exit conference was held with the DMHC to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the DMHC's written response on December 19, 2020, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931, subd. (a).) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application with the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) The final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, July 1, 2019, through March 31, 2020, the DMHC conducted six examinations. The CRU reviewed those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Associate Life Actuary	Open	Education and Experience (E&E) ⁷	Continuous	2
Career Executive Assignment (CEA) A	CEA	Statement of Qualifications ⁸	Until Filed	10
Corporation Examiner	Open	E&E	Continuous	33
Corporation Examiner IV (Specialist)	Open	E&E	Continuous	5
Corporation Examiner IV (Supervisor)	Open	E&E	Continuous	2
Senior Health Care Service Plan Analyst	Open	E&E	Continuous	4

FINDING NO. 1 – Examinations Complied with Civil Service Laws and Board Rules

The CRU reviewed six examinations which the DMHC administered in order to create eligible lists from which to make appointments. The DMHC published and distributed examination bulletins containing the required information for all examinations. Applications received by the DMHC were accepted prior to the final filing date. Applicants were notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. The CRU found no deficiencies in the examinations that the DMHC conducted during the compliance review period.

⁷ In an Education and Experience examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

⁸ In a Statement of Qualifications examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

Permanent Withhold Actions

Departments are granted statutory authority to permit withhold of eligible from lists based on specified criteria. (Gov. Code, § 18935.) Permanent appointments and promotions within the state civil service system shall be merit-based, ascertained by a competitive examination process. (Cal. Const., art. VII, § 1, subd. (b).) If a candidate for appointment is found not to satisfy the minimum qualifications, the appointing power shall provide written notice to the candidate, specifying which qualification(s) are not satisfied and the reason(s) why. The candidate shall have an opportunity to establish that s/he meets the qualifications. (Cal. Code Regs., tit. 2, § 249.4, subd. (b).) if the candidate fails to respond or fails to establish that s/he meets the minimum qualification, the candidate's name shall be removed from the eligibility list. (Cal. Code Regs., tit. 2, § 249.4, subd. (b)(1), (2)), (HR Manual, section 1105.) The appointing authority shall promptly notify the candidate in writing, and shall notify the candidate of his or her appeal rights. (*Ibid.*) A permanent withhold does not necessarily permanently restrict a candidate from retaking the examination for the same classification in the future; however, the appointing authority may place a withhold on the candidate's subsequent eligibility record if the candidate still does not meet the minimum qualifications or continues to be unsuitable. (HR Manual, Section 1105). State agency human resources offices are required to maintain specific withhold documentation for a period of five years. (*Ibid.*)

During the period under review, July 1, 2019, through March 31, 2020, the DMHC conducted two permanent withhold actions. The CRU reviewed both of those, which are listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
Associate Governmental Program Analyst	9PB04	9/20/19	9/20/20	Failed to Meet Minimum Qualifications
Associate Governmental Program Analyst	9PB04	10/1/19	10/14/20	Failed to Meet Minimum Qualifications

FINDING NO. 2 – Permanent Withhold Actions Complied with Civil Service Laws and Board Rules

The CRU found no deficiencies in the permanent withhold actions undertaken by the department during the compliance review period.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) The hiring process for eligible candidates chosen for job interviews shall be competitive and be designed and administered to hire candidates who will be successful. (Cal. Code Regs., tit. 2, § 250, subd. (b).) Interviews shall be conducted using job-related criteria. (*Ibid.*) Persons selected for appointment shall satisfy the minimum qualifications of the classification to which he or she is appointed or have previously passed probation and achieved permanent status in that same classification. (Cal. Code Regs., tit. 2, § 250, subd. (d).) While persons selected for appointment may meet some or most of the preferred or desirable qualifications, they are not required to meet all the preferred or desirable qualifications. (*Ibid.*) This section does not apply to intra-agency job reassignments. (Cal. Code Regs., tit. 2, § 250, subd. (e).)

During the period under review, July 1, 2019, through March 31, 2020, the DMHC made 117 appointments. The CRU reviewed 23 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	1
Assistant Chief Counsel	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Attorney IV	Certification List	Permanent	Full Time	2
Attorney III	Certification List	Permanent	Full Time	1
Auditor I	Certification List	Permanent	Full Time	1
Corporation Examiner	Certification List	Permanent	Full Time	1
Health Program Specialist I	Certification List	Permanent	Full Time	2
Information Technology Associate	Certification List	Permanent	Full Time	1
Legal Secretary	Certification List	Permanent	Full Time	1
Nurse Evaluator II, Health Services	Certification List	Permanent	Full Time	1
Program Technician II	Certification List	Permanent	Full Time	1
Senior Health Care Service Plan Analyst	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Staff Services Analyst (General)	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	1
Staff Services Manager III	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	1
Associate Personnel Analyst	Transfer	Permanent	Full Time	1
Office Technician (General)	Transfer	Limited Term	Full Time	1
Staff Services Manager I	Transfer	Permanent	Full Time	1

FINDING NO. 3 – Probationary Evaluations Were Not Timely

Summary: The DMHC did not provide in a timely manner 2 probationary reports of performance for the 23 appointments reviewed by the CRU, as reflected in the table below. This is the third consecutive time this has been a finding for the DMHC.

Classification	Appointment Type	Number of Appointments	Total Number of Late Probation Reports
Associate Governmental Program Analyst	Transfer	1	1
Health Program Specialist I	Certification List	1	1
		2	2

Criteria: The service of a probationary period is required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as the department rules may require. (Gov. Code, § 19172.) A report of the probationer's performance shall be made to the employee at

sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Cal. Code Regs., tit. 2, § 599.795.) A written appraisal of performance shall be made to the Department within 10 days after the end of each one-third portion of the probationary period. (*Ibid.*) The Board's record retention rules require that appointing powers retain all probationary reports for five years from the date the record is created. (Cal. Code Regs., tit. 2, § 26, subd. (a)(3).)

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: The DMHC states that some supervisors and managers marked probationary evaluations as completed on the Learning Management System even though the evaluations were not provided to the employee or submitted to the Human Resources Office.

Corrective Action: Within 90 days of the date of this report, the DMHC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate conformity with the probationary requirements of Government Code section 19172 and California Code of Regulations, title 2, section 599.795. As this is the third time this is a finding for DMHC, serious attempts must be made to achieve compliance in this area. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; and cooperate with the CalHR, in

accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795, subd. (a).)

Pursuant to Government Code section 19795, subdivision (a), in a state agency with less than 500 employees, like DMHC, the EEO Officer may be the Personnel Officer.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

FINDING NO. 4 – Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the DMHC's EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Director of the DMHC. The DMHC also provided evidence of its efforts to promote EEO in its hiring and employment practices and to increase its hiring of persons with a disability.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element and the business or person performing the services is an independent contractor that does not have status as an employee of the state. (Cal. Code Regs., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the

civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include, but are not limited to, private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the period under review, July 1, 2019, through March 31, 2020, the DMHC had 16 PSC's that were in effect. The CRU reviewed eight of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Axene Health Partners, LLC	Actuarial Services	10/1/19-9/30/22	\$450,000	Yes	Yes
Bay Area Legal Aid	Legal	12/1/19-12/31/22	\$1,310,417	Yes	Yes
Legal Aid Society of San Diego	Legal	12/1/19-12/31/22	\$1,850,000	Yes	Yes
Managed Healthcare Unlimited, Inc.	Consulting Services	7/1/19-6/30/22	\$1,587,000	Yes	Yes
MAXIMUS Federal Services, Inc.	Service/Maintenance	1/1/20-12/31/22	\$3,207,816	Yes	Yes
MAXIMUS Federal Services, Inc.	Clinical Consultant Service	1/1/20-12/31/22	\$6,300,000	Yes	Yes
Pershing Yoakley & Associates	Consulting Services	11/14/19 - 11/30/22	\$3,000,000	Yes	Yes
Southwest Answering Service	Service/Maintenance	8/1/19-7/31/20	\$9,336	Yes	Yes

FINDING NO. 5 – Personal Services Contracts Complied with Procedural Requirements

The total dollar amount of all the PSC's reviewed was \$16,127,569. It was beyond the scope of the review to make conclusions as to whether DMHC justifications for the contract were legally sufficient. For all PSC's reviewed, the DMHC provided specific and detailed factual information in the written justifications as to how each of the contracts met at least one condition set forth in Government Code section 19130, subdivision (b). Additionally, DMHC complied with proper notification to all organizations that represent state employees who perform the type or work contracted. Accordingly, the DMHC PSC's complied with civil service laws and board rules.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), and (b), & 19995.4, subd. (b).)

Additionally, the training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or Career Executive Assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, § 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs, the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biennial basis. (*Ibid.*)

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the DMHC's mandated training program that was in effect during the compliance review period, April 1, 2018, through September 30, 2019. The DMHC's new basic supervisory training was found to be in compliance, while the DMHC's ethics training and sexual harassment prevention training were found to be out of compliance.

FINDING NO. 6 – Ethics Training Was Not Provided for All Filers

Summary: The DMHC did not provide ethics training to 59 of 75 existing filers. In addition, the DMHC did not provide ethics training to 17 of 32 new filers within 6 months of their appointment. This is the second consecutive time this has been a finding for the DMHC.

Criteria: New filers must be provided ethics training within six months of appointment. Existing filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)

Severity: Very Serious. The department does not ensure that its filers are aware of prohibitions related to their official position and influence.

Cause: The DMHC stated the certificates of completion could not be located due to the relocation of the Training Office. This is believed to be an isolated incident which won't occur in the future.

Corrective Action: Within 90 days of this report, the DMHC must submit to the SPB a written correction action response which addresses the corrections the department will implement to demonstrate conformity with Government Code section 11146.3. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

FINDING NO. 7 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The DMHC provided sexual harassment prevention training to its 6 new supervisors within 6 months of their appointment. However, the DMHC did not provide sexual harassment prevention training to 77 of 77 existing supervisors every 2 years. This is the second consecutive time this has been a finding for the DMHC.

Criteria: Each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subd. (a).)

Severity: Very Serious. The department does not ensure that all existing supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.

Cause: The DMHC stated that due to procurement delays, they did not have a training vendor or training platform during a portion of 2017 and 2018.

Corrective Action: Within 90 days of the date of this report, the DMHC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that supervisors

are provided sexual harassment prevention training in accordance with Government Code section 12950.1. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee’s salary rate⁹ upon appointment depending on the appointment type, the employee’s state employment and pay history, and tenure.

Typically, agencies appoint employees to the minimum rate of the salary range for the class. Special provisions for appointments above the minimum exist to meet special recruitment needs and to accommodate employees who transfer into a class from another civil service class and are already receiving salaries above the minimum.

During the period under review, July 1, 2019, through March 31, 2020, the DMHC made 117 appointments. The CRU reviewed 23 of those appointments to determine if the DMHC applied salary regulations accurately and correctly processed employees’ compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	\$4,496
Assistant Chief Counsel	Certification List	Permanent	Full Time	\$12,651
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$6,446
Attorney III	Certification List	Permanent	Full Time	\$9,210
Attorney IV	Certification List	Permanent	Full Time	\$12,747
Attorney IV	Certification List	Permanent	Full Time	\$12,683
Auditor I	Certification List	Permanent	Full Time	\$3,635
Corporation Examiner	Certification List	Permanent	Full Time	\$4,692
Health Program Specialist I	Certification List	Permanent	Full Time	\$6,768

⁹ “Rate” is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Health Program Specialist I	Certification List	Permanent	Full Time	\$5,961
Information Technology Associate	Certification List	Permanent	Full Time	\$4,823
Legal Secretary	Certification List	Permanent	Full Time	\$3,555
Nurse Evaluator II, Health Services	Certification List	Permanent	Full Time	\$5,755
Program Technician II	Certification List	Permanent	Full Time	\$3,248
Senior Health Care Service Plan Analyst	Certification List	Permanent	Full Time	\$6,516
Staff Services Analyst (General)	Certification List	Permanent	Full Time	\$4,842
Staff Services Manager I	Certification List	Permanent	Full Time	\$6,124
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	\$8,352
Staff Services Manager III	Certification List	Permanent	Full Time	\$8,770
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	\$5,149
Associate Personnel Analyst	Transfer	Permanent	Full Time	\$6,446
Office Technician (General)	Transfer	Limited Term	Full Time	\$3,242
Staff Services Manager I	Transfer	Permanent	Full Time	\$6,751

FINDING NO. 8 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the salary determinations that were reviewed. The DMHC appropriately calculated and keyed the salaries for each appointment and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Exceptions to Salary

California Code of Regulations sections 599.674 and 599.676 allow employees to receive a salary rate up to one step (5%) above the salary rate they last received. In those

instances when these rules do not provide employees with the equivalent rate last received (1) upon transfer to a deep class or (2) in their former class, then under the authority of Government Code section 19836, an exception to these salary rules can be made. Exceptions to these rules should be applied uniformly for all employees. (Classification and Pay Guide Section 285.)

For those affected employees incurring salary loss upon transfer to a deep class, CalHR recommends placing the employee on a T&D Assignment for a period of time sufficient to meet the higher alternate range criteria. Upon successful completion of the T&D assignment, the employee may be transferred to the transferable range, and then moved to the next higher alternate range effective the same day. If this does not provide the employee their current salary, departments may process an exception so the employee does not incur a salary loss. (*Ibid.*)

According to, “All departments have delegated authority to approve an exception to the salary rules under the following circumstances: when there is a salary loss upon transfer to a deep class; when there is a reappointment or reinstatement without a break in service.”

During the period under review, July 1, 2019, through March 31, 2020, the DMHC authorized three salary exception requests. The CRU reviewed those authorized salary exception requests, listed below, to determine if the DMHC correctly verified, approved and documented the salary exception authorization process:

Classification	Prior Classification	T&D Assignment? (Y/N)	Approved Salary
Corporation Examiner	Associate Management Auditor	No	\$7,083
Staff Services Analyst	Executive Assistant	No	\$5,058
Staff Services Analyst	Management Services Technician	No	\$4,556

FINDING NO. 9– Exceptions to Salary Rules Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found that the exception to salary determinations the DMHC made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Alternate Range Movement Salary Determination (within same classification)

If an employee qualifies under established criteria and moves from one alternate range to another alternate range of a class, the employee shall receive an increase or a decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges. (Cal. Code Regs., tit. 2, § 599.681.) However, in many instances, the CalHR provides salary rules departments must use when employees move between alternate ranges. These rules are described in the alternate range criteria. (CalHR Pay Scales). When no salary rule or method is cited in the alternate range criteria, departments must default to Rule 599.681.

During the period under review, July 1, 2019, through March 31, 2020, the DMHC employees made ten alternate range movements within a classification. The CRU reviewed seven of those alternate range movements to determine if the DMHC applied salary regulations accurately and correctly processed each employee's compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Attorney	C	D	Full Time	\$7,818
Attorney	C	D	Full Time	\$8,041
Attorney	C	D	Full Time	\$8,041
Information Technology Specialist I	B	C	Full Time	\$8,197
Legal Secretary	A	B	Full Time	\$3,920
Legal Secretary	A	B	Full Time	\$3,920
Staff Services Analyst (General)	B	C	Full Time	\$4,556

FINDING NO. 10 – Alternate Range Movements Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU determined that the alternate range movements the DMHC made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages 10 percent or more of the total time worked. According to the Pay Differential 14, the 10 percent time standard is calculated based on the time spent conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with the specific bilingual transactions.

Typically, the department must review the position duty statement to confirm the percentage of time performing bilingual skills and verify the monthly pay differential is granted to a certified bilingual employee in a designated bilingual position. The position, not the employee, receives the bilingual designation and the department must verify that the incumbent successfully participated in an Oral Fluency Examination prior to issuing the additional pay.

During the period under review, July 1, 2019, through March 31, 2020, the DMHC issued bilingual pay to two employees. The CRU reviewed both of those bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Time Base	No. of Appts.
Staff Services Analyst (General)	R01	Full Time	1
Supervising Program Technician II	S04	Full Time	1

FINDING NO. 11 – Incorrect Authorization of Bilingual Pay

Summary: The CRU found one error in the DMHC's authorization of bilingual pay:

Classification	Description of Finding	Criteria
Staff Services Analyst (General)	DMHC failed to supply supporting documentation to certify that the position requires the use of bilingual skills on a continuing basis averaging 10 percent of the time.	Government Code, section 7296 and Pay Differential 14

Criteria: For any state agency, a "qualified" bilingual employee, person, or interpreter is someone who CalHR has tested and certified, someone

who was tested and certified by a state agency or other approved testing authority, and/or someone who has met the testing or certification standards for outside or contract interpreters as proficient in both the English language and the non-English language to be used. (Gov. Code, § 7296 subd. (a) (3).) An individual must be in a position that has been certified by the department as a position which requires the use of bilingual skills on a continuing basis averaging 10 percent of the time spent either conversing, interpreting or transcribing in a second language and time spent on closely related activities performed directly in conjunction with specific bilingual transactions. (Pay Differential 14.)

Severity: Very Serious. Failure to comply with the state civil service pay plan by incorrectly applying compensation rules in accordance with CalHR's policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay.

Cause: The DMHC states that it relied upon the documentation received when the employee was in a different classification receiving bilingual pay in the same unit.

Corrective Action: DMHC indicates it has established a process in which all bilingual pay documentation is reviewed by Human Resources staff and the Bilingual Coordinator before the pay differential is processed by the Transaction specialist. Within 90 days of the date of this report, the DMHC must submit to the SPB copies of relevant documentation demonstrating that the corrective action has been implemented.

Pay Differentials

A pay differential is special additional pay recognizing unusual competencies, circumstances, or working conditions applying to some or all incumbents in select classes. A pay differential may be appropriate in those instances when a subgroup of positions within the overall job class might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Typically, pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary responsibilities; special licenses, skills or training; performance-based pay; incentive-based pay; or, recruitment and retention. (Classification and Pay Manual Section 230.)

California State Civil Service Pay Scales Section 14 describes the qualifying pay criteria for the majority of pay differentials. However, some of the alternate range criteria in the pay scales function as pay differentials. Generally, departments issuing pay differentials should, in order to justify the additional pay, document the following: the effective date of the pay differential, the collective bargaining unit identifier, the classification applicable to the salary rate and conditions along with the specific criteria, and any relevant documentation to verify the employee meets the criteria.

During the period under review, July 1, 2019, through March 31, 2020, the DMHC issued pay differentials¹⁰ to six employees. The CRU reviewed those pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Investigator	244	\$125
Nurse Evaluator IV, Health Services	136-154	\$100
Program Technician II	411	\$150
Program Technician II	411	\$150
Program Technician II	411	\$150
Supervising Program Technician II	411	\$150

FINDING NO. 12 – Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the pay differentials that the DMHC authorized during the compliance review period. Pay differentials were issued correctly in recognition of unusual competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

Out-of-Class Assignments and Pay

For excluded¹¹ and most rank and file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(2).) A higher

¹⁰ For the purposes of CRU’s review, only monthly pay differentials were selected for review at this time.
¹¹ “Excluded employee” means an employee as defined in section 3527, subd. (b) of the Government Code (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to section 18801.1 of the Government Code.

classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(3).)

According to the Classification and Pay Guide, OOC assignments should only be used as a last resort to accommodate temporary staffing needs. All civil service alternatives should be explored first before using OOC assignments. However, certain MOU provisions and the California Code of Regulations, title 2, section 599.810 allow for short-term OOC assignments to meet temporary staffing needs. Should OOC work become necessary, the assignment would be made pursuant to the applicable MOU provisions or salary regulations. Before assigning the OOC work, the department should have a plan to correct the situation before the 120-day time period expires. (Classification and Pay Guide Section 375.)

During the period under review, July 1, 2019, through March 31, 2020, the DMHC issued OOC pay to 16 employees. The CRU reviewed six of those OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Assistant Chief Counsel	M02	Career Executive Assignment	6/2019-2/2020
Associate Governmental Program Analyst	R01	Staff Services Manager I	7/2019-11/2019
Attorney	R02	Attorney III	8/2019-11/2019
Corporation Examiner IV (Supervisor)	S01	Supervising Corporation Examiner	7/2019-11/2019
Staff Health Care Service Plan	R01	Senior Health Care Service Plan Analyst	8/2019-10/2019
Staff Services Manager I	S01	Staff Services Manager II	3/2020-7/2020

FINDING NO. 13 – Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the OOC pay assignments that the DMHC authorized during the compliance review period. OOC pay was issued appropriately to employees performing, more than 50 percent of the time, the full range of duties and responsibilities

allocated to an existing class and not allocated to the class in which the person has a current, legal appointment.

Leave

Positive Paid Employees

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee's time to ensure that the Constitutional limit of 9 months in any 12 consecutive months is not exceeded. The ATW method of counting time is used in order to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days¹² worked and paid absences,¹³ is counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded. (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

For student assistants, graduate student assistants, youth aides, and seasonal classifications a maximum work-time limit of 1,500 hours within 12 consecutive months may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

¹² For example, two hours or ten hours counts as one day.

¹³ For example, vacation, sick leave, compensating time off, etc.

Generally, permanent intermittent employees may work up to 1,500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2,000 hours in any calendar year.

Additionally, according to Government Code section 21224, retired annuitant appointments shall not exceed a maximum of 960 hours in any fiscal year (July-June), regardless of the number of state employers, without reinstatement, loss or interruption of benefits.

At the time of the review, the DMHC had eight positive paid employees whose hours were tracked. The CRU reviewed four of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

Classification	Tenure	Time Frame	Time Worked
Associate Governmental Program Analyst	Permanent	Intermittent	1,137.5 Hours
Attorney IV	Retired Annuitant	Intermittent	235.5 Hours
Information Technology Manager II	Retired Annuitant	Intermittent	863.75 Hours
Office Technician (General)	Retired Annuitant	Intermittent	960 Hours

FINDING NO. 14 – Positive Paid Employees Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The DMHC provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

Administrative Time Off

ATO is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. (Human Resources Manual Section 2121.) Most often, ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation, or when work facilities are unavailable. (*Ibid.*) ATO can also be granted when employees need time off for reasons such as blood or organ donation; extreme weather preventing safe travel to work; states of emergency; voting; and when employees need time off to attend special events. (*Ibid.*)

During the period under review, January 1, 2019, through December 31, 2019, the DMHC placed five employees on ATO. The CRU reviewed three of these ATO appointments to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
Associate Life Actuary	10/31/2019	8 Hours
Attorney III	12/20/2019 & 12/23/2019	16 Hours
Staff Services Manager III	9/12/2019-9/18/2019	40 Hours

FINDING NO. 15 – Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The DMHC provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

Leave Auditing and Timekeeping

Departments must keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. (Cal. Code Regs., tit. 2, § 599.665.)

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) Departments shall create an audit process to review and correct leave input errors on a monthly basis. The review of leave accounting records shall be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. (*Ibid.*) If an employee’s attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*) Accurate and timely attendance reporting is required of all departments and is subject to audit. (*Ibid.*)

During the period under review, October 1, 2019, through December 31, 2019, the DMHC reported 30 units comprised of 438 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
November 2019	121	23	23	0
November 2019	132	4	4	0
November 2019	251	9	9	0
November 2019	411	30	30	0
November 2019	571	30	30	0
November 2019	574	1	1	0
December 2019	121	23	23	0
December 2019	132	5	5	0
December 2019	251	9	9	0
December 2019	411	31	31	0
December 2019	571	30	30	0
December 2019	574	1	1	0

FINDING NO. 16 – Incorrectly Posted Leave Usage and/or Leave Credit

Summary: The DMHC incorrectly entered leave usage on 1 of 30 timesheets into the Leave Accounting System (LAS) during the November, 2019 pay period. As a result, the employee had more leave taken off her leave balance than appropriate.

Criteria: Departments shall create a monthly internal audit process to verify that all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) If an employee’s attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*)

Severity: Very serious. Errors in posting leave usage and/or leave credits puts the department at risk of incurring additional costs from the initiation of collection efforts from overpayments, the risk of liability related to recovering inappropriately credited leave hours and funds, and/or the increase of the state's pension payments.

Cause: The DMHC states the Transaction Specialist keyed leave using other available leave credits due to the employee identifying more leave credits than available on the timesheet.

Corrective Action: DMHC has indicated that if an employee's timesheet has errors, it will be returned to the employee to make amendments, and the LAS will be updated accordingly. Additionally, the DMHC has corrected the keying error. No further action is needed on this finding.

State Service

The state recognizes two different types of absences while an employee is on pay status; paid or unpaid. The unpaid absences can affect whether a pay period is considered to be a qualifying or non-qualifying pay period for state service and leave accruals.

Generally, an employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service.¹⁴ (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

Hourly or daily rate employees working at a department in which the full-time workweek is 40 hours who earn the equivalent of 160 hours of service in a monthly pay period or accumulated pay periods shall be considered to have a complete month, a month of service, or continuous service. (Cal. Code Regs., tit. 2, § 599.609.)

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs. tit. 2, § 599.608.) When computing months of total state service to determine a change in the

¹⁴ Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, 19997.4 and California Code of Regulations, title 2, sections 599.609, 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.776.1, 599.787, 599.791, 599.840 and 599.843 provide further clarification for calculating state time.

monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. (Cal. Code Regs. tit. 2 , § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees¹⁵ shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

Permanent intermittent employees also earn leave credits on the pay period following the accumulated accrual of 160 hours worked. Hours worked in excess of 160 hours in a monthly pay period, are not counted or accumulated towards leave credits.

During the period under review, July 1, 2019, through March 31, 2020, the DMHC had three employees with non-qualifying pay period transactions. The CRU reviewed those transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time base	Number Reviewed
Non Qualifying Pay Period	Full Time	3

FINDING NO. 17 – Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU determined that the DMHC ensured employees with non-qualifying pay periods did not receive vacation/sick leave, annual leave, and/or state service accruals. The CRU found no deficiencies in this area.

Policy and Processes

Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California’s merit based civil service. (*Ibid.*) Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. (*Ibid.*)

¹⁵ As identified in Government Code sections 19858.3, subd. (a), 19858.3, subd. (b), or 19858.3, subd. (c) or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subd. (c), or California Code of Regulations, title 2, section 599.752, subd. (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

Personal relationships for this purpose include association by blood, adoption, marriage and/or cohabitation. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

FINDING NO. 18 – Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the policy was disseminated to all staff and emphasized the DMHC’s commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the DMHC’s nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

Workers’ Compensation

Employers shall provide to every new employee, either at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers’ compensation law. (Cal. Code Regs., tit. 8, § 9880 subd. (a).) This notice shall include the right to predesignate their personal physician or medical group; a form that the employee may use as an optional method for notifying the employer of the name of employee’s “personal physician,” as defined by Labor Code section 4600. (Cal. Code Regs., tit. 8, § 9880, subd. (c)(7) & (8).) Additionally, within one working day of receiving notice or knowledge that the employee has suffered a work related injury or illness, employers shall provide a claim form and notice of potential eligibility for benefits to the injured employee. (Labor Code, § 5401 subd. (a).)

Public employers may choose to extend workers’ compensation coverage to volunteers that perform services for the organization. (Human Resources Manual Section 1415.) Workers’ compensation coverage is not mandatory for volunteers as it is for employees. (*Ibid.*) This is specific to the legally uninsured state departments participating in the Master Agreement. (*Ibid.*) Departments with an insurance policy for workers’ compensation coverage should contact their State Compensation Insurance Fund (State Fund) office to discuss the status of volunteers. (*Ibid.*)

In this case, the DMHC did not employ volunteers during the compliance review period.

FINDING NO. 19 – Workers’ Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the DMHC provides notice to their employees to inform them of their rights and responsibilities under California’s Workers’ Compensation Law. Furthermore, the CRU verified that when the DMHC received workers’ compensation claims, they properly provided claim forms within one working day of notice or knowledge of injury.

Performance Appraisals

According to Government Code section 19992.2, subdivision (a), appointing powers must “prepare performance reports.” Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee’s probationary period.

The CRU selected 39 permanent DMHC employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines. These are listed below:

Classification	Date Performance Appraisals Due	Date Performance Appraisal Provided ¹⁶
Accounting Administrator I (Supervisor)	11/30/2019	12/5/2019
Assistant Chief Counsel	2/5/2019	12/9/2019
Associate Governmental Program Analyst	11/30/2019	9/4/2019
Associate Governmental Program Analyst	7/31/2019	2/27/2019
Associate Governmental Program Analyst	8/12/2019	9/30/2019
Associate Governmental Program Analyst	8/15/2019	12/2/2019
Associate Governmental Program Analyst	11/1/2019	11/25/2019
Associate Governmental Program Analyst	9/30/2019	8/1/2019

¹⁶ For the purposes of the compliance review, the CRU does not consider performance appraisals to be late until 30 days after the due date have elapsed.

Classification	Date Performance Appraisals Due	Date Performance Appraisal Provided ¹⁶
Associate Governmental Program Analyst	12/31/2019	11/30/2019
Associate Governmental Program Analyst	5/26/2019	9/23/2019
Associate Governmental Program Analyst	6/15/2019	11/25/2019
Attorney	11/30/2019	9/3/2019
Attorney	8/6/2019	9/4/2019
Attorney I	12/10/2019	3/1/2019
Corporation Examiner	5/1/2019	5/30/2019
Corporation Examiner	10/31/2019	10/30/2019
Corporation Examiner	9/19/2019	9/23/2019
Corporation Examiner IV (Supervisor)	10/22/2019	10/25/2019
Health Program Specialist I	2/16/2019	4/30/2019
Health Program Specialist II	6/30/2019	1/23/2019
Health Program Specialist II	9/30/2019	6/30/2019
Information Technician Manager I	12/18/2019	2/13/2019
Information Technician Specialist I	12/31/2019	Not Provided
Information Technician Specialist I	4/23/2019	1/23/2019
Information Technician Specialist II	11/30/2019	8/5/2020
Office Technician (General)	6/17/2019	3/28/2019
Office Technician (General)	12/29/2019	4/29/2020
Senior Accounting Officer (Specialist)	8/1/2019	4/5/2019
Staff Health Care Service Plan Analyst	9/25/2019	10/29/2019
Staff Services Analyst (General)	3/13/2019	4/30/2019
Staff Services Analyst (General)	11/30/2019	11/12/2019
Staff Services Analyst (General)	10/4/2019	11/27/2019
Staff Services Manager I	10/31/2019	11/26/2019
Staff Services Manager I	11/30/2019	8/6/2019
Staff Services Manager I	1/31/2019	5/9/2019
Staff Services Manager I	11/30/2019	3/4/2020
Staff Services Manager I	10/31/2019	4/30/2019

Classification	Date Performance Appraisals Due	Date Performance Appraisal Provided ¹⁶
Staff Services Manager II (Supervisory)	7/23/2019	10/31/2019
Staff Services Manager II (Supervisory)	5/15/2019	2/3/2020

FINDING NO. 20 – Performance Appraisals Were Not Provided Timely to All Employees

Summary: The DMHC did not provide an annual performance appraisal to 1 employee, and did not provide performance appraisals in a timely manner to 9 of 39 employees reviewed after the completion of the employee’s probationary period. This is the second consecutive time this has been a finding for the DMHC.

Criteria: Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule. (Gov. Code, § 19992.2, subd. (a).) Each supervisor, as designated by the appointing power, shall make an appraisal in writing and shall discuss with the employee overall work performance at least once in each twelve calendar months following the end of the employee's probationary period. (Cal. Code Regs., tit. 2, § 599.798.)

Severity: Serious. The department does not ensure that all of its employees are appraised of work performance issues and/or goals in a systematic manner.

Cause: The DMHC stated that it provides annual performance appraisals to employees during the employee’s birth month, which resulted in a delay that was out of compliance with the code for some employees.

Corrective Action: Within 90 days of the date of this report, the DMHC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

DEPARTMENTAL RESPONSE

The DMHC's response is attached as Attachment 1.

SPB REPLY

Based upon the DMHC's written response, the DMHC will comply with the corrective actions specified in these report findings. Within 90 days of the date of this report, a written corrective action response including documentation demonstrating implementation of the corrective actions specified, must be submitted to the CRU.

Gavin Newsom, Governor
State of California



Health and Human Services Agency
DEPARTMENT OF MANAGED HEALTH CARE
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Sacramento, CA 95814
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December 18, 2020

Suzanne Ambrose, Executive Officer
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

Re: Response to State Personnel Board (SPB) Draft Compliance Review Report

Dear Ms. Ambrose:

We appreciate the opportunity to provide comments to the draft SPB Compliance Review Report for the Department of Managed Health Care (DMHC).

The DMHC recognizes the importance of efforts to evaluate personnel practices to ensure compliance and foster implementation of best practices. We continually strive for excellence in our employment, development, and contracting practices and are pleased to see these efforts reflected in our compliance in the areas of Examinations, Equal Employment Opportunity, Personal Services Contracts, and Compensation and Pay. Our overall compliance in six of the twenty area findings also demonstrates DMHC's commitment to adhering to civil service laws, board regulations, bargaining agreements, and our DMHC delegation agreements.

The following are DMHC's responses to the six deficiencies noted in the draft report.

Finding #3 – Probationary Evaluations Were Not Timely

The DMHC did not provide in a timely manner two probationary reports of performance for the 23 appointments reviewed by the CRU.

DMHC Response

During the compliance review period, the DMHC used the Learning Management System (LMS) to verify probationary evaluation completion by supervisors and submission of completed probationary reports. It has since been discovered that supervisors and managers can mark the item completed even though the reports were not provided to the employee nor submitted to the Human Resources (HR) Office.

The DMHC is committed to adhering to the guidelines set forth by regulations on the collection of probation reports. As an improvement from the last finding, we were able to

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provide and collect all reports. To ensure continued compliance, we have switched from using the LMS for tracking completion to a manual verification and notification process. The HR Office now sends calendar appointments, reminder alerts, and email notifications to the supervisors with the due dates of probationary reports for their employees. Additionally, the Office of Administrative Services Deputy Director has been proactive in notifying program Deputy Directors of past due and upcoming due dates for their office. The HR Analysts have also scheduled follow-up reminders for program supervisors to ensure reports are provided to the employee timely and submitted to HR within the required timeframe.

Finding #6 – Ethics Training Was Not Provided for All Filers

The DMHC did not provide ethics training to 59 of 75 existing filers. In addition, the DMHC did not provide ethics training to 17 of 32 new filers within six months of their appointment.

DMHC Response

The DMHC provided training for all existing and new filers within six months of their appointment, as evidenced by the DMHC's training tracking log. Each year, the DMHC rolls out department-wide Ethics training and employees are instructed to submit their certificate of completion to the DMHC Training Office. Once received, the Training Office manually tracks the certificates in an Excel spreadsheet that was provided for this audit. However, at the time of the audit, the actual certificates of completion could not be located. The Training Office temporarily relocated, and the box of certificates were not accounted for. The DMHC believes this is an unfortunate and isolated incident that will not occur in the future.

To ensure compliance, the DMHC will pursue a contract with the vendor to house the course in the DMHC's LMS. In doing so, the LMS will be used to assign and track completion for all employees.

Finding #7 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

The DMHC provided sexual harassment prevention training to its six new supervisors within six months of their appointment. However, the DMHC did not provide sexual harassment prevention training to 77 of 77 existing supervisors every two years.

DMHC Response

It has been the DMHC's process to roll out department-wide Sexual Harassment Prevention training each year during the month of September. In 2017, the DMHC transitioned to a new training platform that had an implementation date of October 2017, as it was not cost effective to renew the training contract with the existing vendor. Due

to procurement delays, the contract was not executed until March 2018, leaving the DMHC without a Sexual Harassment Prevention training vendor/tool.

Since March 2018, the DMHC tracks and assigns the training via the LMS.

Finding #11 – Incorrect Authorization of Bilingual Pay

The CRU found one error in the DMHC's authorization of bilingual pay.

DMHC Response

The DMHC monitors and verifies the bilingual pay documentation of employees to ensure employees are authorized to receive the bilingual pay differential. In this case, the review relied upon the documentation that was received when the employee was in a different classification receiving bilingual pay in the same unit. The employee has since transferred to a different department.

The DMHC has now established a process in which all bilingual pay documentation is reviewed by an HR analyst and approved by the Bilingual Coordinator before the pay differential is processed by the Transaction Specialist.

Finding #16 – Incorrectly Posted Leave Usage and/or Leave Credit

The DMHC incorrectly entered leave usage on one of 30 timesheets into the Leave Accounting System (LAS) during the November 2019 pay period. As a result, the employee had more leave taken off her leave balance than appropriate.

DMHC Response

The DMHC vigilantly monitors and audits timesheets. For the month of November 2019, the referenced employee identified more leave credits than available on their timesheet; therefore, the Transaction Specialist keyed leave using other available leave credits. This error has already been corrected.

The DMHC will continue to monitor and audit timesheets to ensure correct leave usage is entered into the system. If an employee's attendance record is determined to have errors, the Transaction Specialist will have the timesheet amended by the employee and update the LAS accordingly once an approved amended timesheet is received.

Finding #20 – Performance Appraisals Were Not Provided Timely to All Employees

The DMHC did not provide an annual performance appraisal to one employee and did not provide performance appraisals in a timely manner to 45 9 (per SPB email dated 12/9/2020) of 39 employees reviewed after the completion of the employee's probationary period.

DMHC Response

The DMHC provides annual performance appraisals to employees during the employee's birth month, which sometimes results in a delay that is out of compliance with the code. Additionally, during the compliance review period, the DMHC used the LMS to verify completion by supervisors and submission of completed annual performance appraisals. It has since been discovered that supervisors and managers can mark the item completed even though the reports were not provided to the employee nor submitted to the HR Office.

The DMHC is committed to adhering to the guidelines set forth by regulations in providing annual performance appraisals to employees in a timely manner. To ensure continued compliance, we have switched from using the LMS for tracking completion to a manual verification and notification process. The HR Office now sends calendar appointments, reminder alerts, and email notifications to the supervisors with the due dates of annual performance appraisals for their employees. Additionally, the Office of Administrative Services Deputy Director has been proactive in notifying program Deputy Directors of past due and upcoming due dates for their office. The HR Analysts have also scheduled follow-up reminders for program supervisors to ensure annual performance appraisals are provided to the employee timely and submitted to HR within the required timeframe. Finally, the DMHC will implement a new requirement for all annual performance appraisals to be completed during the employee birth month regardless of the time since the final probationary report, to remain in compliance with mandated timeframes.

If you have any questions or would like any additional information, please contact Noreen Hunter at (916) 327-2438 or noreen.hunter@dmhc.ca.gov.

Sincerely,



Nichole Eshelman
Deputy Director
Office of Administration

NE:nh

cc: Mary Watanabe, Director

The Corrective Action Response (CAR) is an opportunity for departments to demonstrate necessary steps have been implemented to correct the non-compliant Findings (deficiency) found as a result of the Compliance Review.

For each non-compliant Finding, refer to the Corrective Action section of that Finding in the review report. Copies of relevant documentation demonstrating that the Corrective Action has been or is in the process of being corrected must be included with the CAR. Examples include, but are not limited to, updated internal policies or procedures (should be included for most findings), a training log for mandated training, and/or any new or updated forms, plans, or documents that have been implemented.

CORRECTIVE ACTION RESPONSE

DEPARTMENT: Department of Managed Health Care	BRANCH/DIVISION/PROGRAM: Office of Administrative Services (OAS) / Workforce Support Division
CONTACT PERSON (NAME AND TITLE): Nichole Eshelman, OAS Deputy Director	CORRECTIVE ACTION RESPONSE DATE: 04/08/2021

FINDING (DEFICIENCY) BY NUMBER	ACTION ITEM(S) ALREADY OR TO BE COMPLETED	TIMEFRAME(S)	POLICY/PROCEDURE
Finding as stated in the report, by number	Description of 1) completed or planned corrective action(s) and 2) of supporting documentation	Actual or Estimated Completion Date	Is a copy of the updated Policy or Procedure Included?
3	See attached written response for Finding No. 3.	03/01/2021	Yes. See attachments 1 through 7.
6	See attached written response for Finding No. 6.	04/01/2021	Yes. See attachment 8.

FINDING (DEFICIENCY) BY NUMBER	ACTION ITEM(S) ALREADY OR TO BE COMPLETED	TIMEFRAME(S)	POLICY/PROCEDURE
7	See attached written response for Finding No. 7.	12/7/2020	Yes. See attachment 9.
11	See attached written response for Finding No. 11.	12/7/2020	Yes. See attachments 10 through 12.
16	*Per SPB Compliance Review Final Report, "No further action is needed on this finding."	N/A	N/A
20	See attached written response for Finding No. 20.	03/01/2021	Yes. See attachments 1 through 6.