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## Coates' Canons Blog: Boards of Social Services and Fraud Investigations

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County Departments of Social Services are responsible for administering public assistance programs, such as Medicaid, the Low Income Energy Assistance Program, and the Supplemental Nutrition Assistance Program (SNAP or the “Program-Formerly-Known-As-Food-Stamps”). Department directors and staff members play an active role in monitoring these programs for potential client fraud and cooperating with law enforcement officials as appropriate. As some departments are in the process of revising their fraud policies, they have asked what the role of the governing board – the appointed board of social services – must be in these fraud investigations. The short answer is: it depends...

Typical lawyer answer, I know. But it is the truth. It will depend on (1) the program involved and (2) the relationship between the director and the board.

There is no overarching statute or regulation addressing investigations of fraud in social services programs or the role of the DSS board in those investigations. Rather, each program is subject to its own set of laws and regulations. For example, several programs follow this formula:

- The director must refer suspected fraud to the county board of social services for review.
- The board must review the case and decide whether the person committed fraud and, if so, what steps the agency should take in response, such as recoupment or referral for criminal prosecution, and
- The board may delegate this authority to the director.

This formula applies in programs such as Work First, Medicaid, special assistance, and low income energy assistance.

For some other programs, the law may not specifically identify a role for the board of social services. For example:

- The regulations governing the SNAP program do not recognize any role for the board in fraud investigations. Instead, the director or an employee designated by the director acts as the initial “hearing officer” and any appeal of a hearing officer’s decision goes directly to the state.
- The regulations governing the subsidized child care program have clear guidance regarding the imposition of sanctions for fraud, but do not say who is responsible for investigating, reviewing, or making decisions in particular cases. The responsibility lies with the “local purchasing agency,” which may be either the local department of social services or an agency that has contracted with the department to assume this role. The manual refers to responsibilities of “staff” but makes no mention of the board or the director.

If the law is silent about the role of the board, it may still be possible to involve the board to some extent either in specific case review (such as in the subsidized child care program) or general program review and policy making. For example, the board is required to “consult with the director of social services about problems relating to his office....” (G.S. 108A-9 (3)) If a specific program is experiencing a particularly high volume of fraud cases, the board may become involved in examining the work processes or policies that are in place for that program.

### Revising or Adopting Policies

As departments continue to review, revise or adopt their local policies, they should keep in mind that there is some flexibility in developing fraud investigation and oversight policies and that the board should be involved in deciding what its role should be. The board’s role may include actively reviewing cases, developing policies governing investigations, or simply delegating most of the responsibility to the director of the agency.

Because applicable law varies from program to program, a local department of social services would not be able to adopt

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a single policy governing board involvement with fraud investigations that applies to all programs. While there may be some common features across programs, departments should carefully review the laws that apply to each program and ensure that the policy for each program conforms to the applicable laws.

One of the key issues that will need to be addressed in those policies is delegation. If the board is required by law to play a role in a fraud investigation but it is allowed to delegate its responsibilities to the director, the board should affirmatively decide whether it wishes to make such a delegation. Once it makes a decision, the policies should be amended to reflect that decision. Based on several conversations with directors and board members, it seems that many of these delegations take place informally and without any type of documentation. Because the board membership can change fairly often, it is important to put these types of decisions in writing. Doing so helps the next group of board members evaluate and possibly revisit policies that affect their role and level of involvement.

## Links

- [ncrules.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2068%20-%20social%20services%20-%20rulemaking/10a%20ncac%2068%20.0303.pdf](https://ncrules.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2068%20-%20social%20services%20-%20rulemaking/10a%20ncac%2068%20.0303.pdf)
- [ncrules.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2071%20-%20adult%20and%20family%20support/subchapter%20w/10a%20ncac%2071w%20.0606.pdf](https://ncrules.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2071%20-%20adult%20and%20family%20support/subchapter%20w/10a%20ncac%2071w%20.0606.pdf)
- [info.dhhs.state.nc.us/olm/manuals/dma/abd/man/MA2900.htm#TopOfPage](https://info.dhhs.state.nc.us/olm/manuals/dma/abd/man/MA2900.htm#TopOfPage)
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