AN ACT ESTABLISHING FRAUD PREVENTION TRAINING AND FISCAL ACCOUNTABILITY REQUIREMENTS FOR CERTAIN MEDICAID IN-HOME CARE SERVICES; REQUIRING TRAINING AND EDUCATION IN FRAUD PREVENTION; REQUIRING REPORTING OF COST INFORMATION; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 53-6-402, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Fraud prevention education -- department responsibilities. (1) In an effort to prevent and reduce fraud in the Montana medicaid program, a provider of personal assistance or attendant services or supports shall provide training and continuing education to consumers and employees if the personal assistance or attendant services or supports are funded:

(a) as a medicaid state plan service;

(b) through a medicaid state plan option available to the state under 42 U.S.C. 1396n(k); or

(c) under a medicaid home and community-based services waiver for the elderly and disabled that is operated through a division of the department that administers long-term care services for senior citizens and individuals with physical disabilities.

(2) (a) The training must be presented in person whenever the provider:

(i) hires a new employee; or

(ii) enrolls a consumer to receive services.

(b) The provider shall require its employees and the consumers who are receiving services to review fraud prevention materials on an annual basis after completing the initial training.

(c) Each employee and consumer shall sign a document attesting to the fact that the employee or consumer received the in-person training or received and reviewed the fraud prevention materials.

(d) When the training involves services provided using a self-directed service model, the consumer may provide the training.

(3) The training and continuing education must include but is not limited to information on:

(a) activities that constitute fraud;

(b) ways to prevent fraud; and

(c) when and how to report fraud, including how to contact the medicaid fraud hotline.

(4) (a) The department and the medicaid fraud control unit provided for in 53-6-156 shall, in consultation with home and community-based services consumers, providers, and advocates, develop the elements to be included in the training.

(b) A provider required to provide training under this section may:

(i) develop training materials that meet the requirements developed by the department and the medicaid fraud control unit; or

(ii) use training materials approved by the department by rule.

(5) The department may adopt rules requiring other providers of medicaid home and community-based services that are provided in a person's home to provide the training required under this section.

(6) The department shall:

(a) review and approve fraud education materials; and

(b) monitor compliance with training requirements.

Section 2. Fiscal accountability for home and community-based services. (1) (a) A provider of personal assistance or attendant services or supports shall submit cost information to the department each year if the personal assistance or attendant services or supports are funded:

(i) as a state plan service;

(ii) through a medicaid state plan option available to the state under 42 U.S.C. 1396n(k); or

(iii) under a home and community-based services waiver for the elderly and disabled that is operated through a division of the department that administers long-term care services for senior citizens and individuals with physical disabilities.

(b) The information provided to the department must reflect costs incurred during the provider's most recent fiscal year.

(2) The department shall develop a standardized format for the information that includes the recognized expenditures incurred by providers.

(3) The department shall analyze cost information submitted by providers to determine at a minimum:

(a) the reasonable cost of providing the home and community-based services detailed in the report;

(b) the percentage of a provider's cost represented by payment of wages and benefits for direct-care employees; and

(c) the level of profit or loss that each provider incurred in delivering the service. The profit or loss must be determined by comparing the recognized cost of providing the service with the medicaid reimbursement provided for the same service.

(4) The department may adopt rules requiring other providers of medicaid home and community-based services that are provided in a person's home to submit the cost information required under this section.

Section 3. Section 53-6-402, MCA, is amended to read:

"53-6-402. Medicaid-funded home and community-based services -- waivers -- funding limitations -- populations -- services -- providers -- long-term care preadmission screening -- powers and duties of department -- rulemaking authority. (1) The department may obtain waivers of federal medicaid law in accordance with section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, and administer programs of home and community-based services funded with medicaid money for categories of persons with disabilities or persons who are elderly.

(2) The department may seek and obtain any necessary authorization provided under federal law to implement home and community-based services for seriously emotionally disturbed children pursuant to a waiver of federal law as permitted by section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n(c). The home and community-based services system shall strive to incorporate the following components:

(a) flexibility in design of the system to attempt to meet individual needs;

(b) local involvement in development and administration;

(c) encouragement of culturally sensitive and appropriately trained mental health providers;

(d) accountability of recipients and providers; and

(e) development of a system consistent with the state policy as provided in 52-2-301.

(3) The department may, subject to the terms and conditions of a federal waiver of law, administer programs of home and community-based services to serve persons with disabilities or persons who are elderly who meet the level of care requirements for one of the categories of long-term care services that may be funded with medicaid money. Persons with disabilities include persons with physical disabilities, chronic mental illness,

developmental disabilities, brain injury, or other characteristics and needs recognized as appropriate populations by the U.S. department of health and human services. Programs may serve combinations of populations and subsets of populations that are appropriate subjects for a particular program of services.

(4) The provision of services to a specific population through a home and community-based services program must be less costly in total medicaid funding than serving that population through the categories of long-term care facility services that the specific population would be eligible to receive otherwise.

(5) The department may initiate and operate a home and community-based services program to more efficiently apply available state general fund money, other available state and local public and private money, and federal money to the development and maintenance of medicaid-funded programs of health care and related services and to structure those programs for more efficient and effective delivery to specific populations.

(6) The department, in establishing programs of home and community-based services, shall administer the expenditures for each program within the available state spending authority that may be applied to that program. In establishing covered services for a home and community-based services program, the department shall establish those services in a manner to ensure that the resulting expenditures remain within the available funding for that program. To the extent permitted under federal law, the department may adopt financial participation requirements for enrollees in a home and community-based services program to foster appropriate utilization of services among enrollees and to maintain fiscal accountability of the program. The department may adopt financial participation requirements that may include but are not limited to copayments, payment of monthly or yearly enrollment fees, or deductibles. The financial participation requirements adopted by the department may vary among the various home and community-based services programs. The department, as necessary, may further limit enrollment in programs, reduce the per capita expenditures available to enrollees, and modify and reduce the types and amounts of services available through a home and community-based services program when the department determines that expenditures for a program are reasonably expected to exceed the available spending authority.

(7) The department may consider the following populations or subsets of populations for home and community-based services programs:

(a) persons with developmental disabilities who need, on an ongoing or frequent basis, habilitative and other specialized and supportive developmental disabilities services to meet their needs of daily living and to maintain the persons in community-integrated residential and day or work situations;

(b) persons with developmental disabilities who are 18 years of age and older and who are in need of habilitative and other specialized and supportive developmental disabilities services necessary to maintain the persons in personal residential situations and in integrated work opportunities;

(c) persons 18 years of age and older with developmental disabilities and chronic mental illness who are in need of mental health services in addition to habilitative and other developmental disabilities services necessary to meet their needs of daily living, to treat the their mental illness, and to maintain the persons in community-integrated residential and day or work situations;

(d) children under 21 years of age who are seriously emotionally disturbed and in need of mental health and other specialized and supportive services to treat their mental illness and to maintain the children with their families or in other community-integrated residential situations;

(e) persons 18 years of age and older with brain injuries who are in need, on an ongoing or frequent basis, of habilitative and other specialized and supportive services to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations;

(f) persons 18 years of age and older with physical disabilities who are in need, on an ongoing or frequent basis, of specialized health services and personal assistance and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations;

(g) persons with human immunodeficiency virus (HIV) infection who are in need of specialized health services and intensive pharmaceutical therapeutic regimens for abatement and control of the HIV infection and related symptoms in order to maintain the persons in personal residential situations;

(h) persons with chronic mental illness who suffer from serious chemical dependency and who are in need of intensive mental health and chemical dependency services to maintain the persons in personal or other community-integrated residential situations;

(i) persons 65 years of age and older who are in need, on an ongoing or frequent basis, of health services, personal assistance, and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations; or

(j) persons 18 years of age and older with chronic mental illness who are in need, on an ongoing or frequent basis, of specialized health services and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations.

(8) For each authorized program of home and community-based services, the department shall set limits on overall expenditures and enrollment and limit expenditures as necessary to conform with the requirements of section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, and the conditions placed upon approval of a program authorized through a waiver of federal law by the U.S. department of health and human services.

(9) A home and community-based services program may include any of the following categories of services as determined by the department to be appropriate for the population or populations to be served and as approved by the U.S. department of health and human services:

(a) case management services;

(b) homemaker services;

(c) home health aide services;

(d) personal care services;

(e) adult day health services;

(f) habilitation services;

(g) respite care services; and

(h) other cost-effective services appropriate for maintaining the health and well-being of persons and to avoid institutionalization of persons.

(10) Subject to the approval of the U.S. department of health and human services, the department may establish appropriate programs of home and community-based services under this section in conjunction with programs that have limited pools of providers or with managed care arrangements, as implemented through 53-6-116 and as authorized under section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, or in conjunction with a health insurance flexibility and accountability demonstration initiative or other demonstration project as authorized under section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315.

(11) (a) The department may conduct long-term care preadmission screenings in accordance with section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r.

(b) Long-term care preadmission screenings are required for all persons seeking admission to a long-term care facility.

(c) A person determined through a long-term care preadmission screening to have an intellectual disability or a mental illness may not reside in a long-term care facility unless the person meets the long-term care level-of-care determination applicable to the type of facility and is determined to have a primary need for the care

provided through the facility.

(d) The long-term care preadmission screenings must include a determination of whether the person needs specialized intellectual disability or mental health treatment while residing in the facility.

(12) The department may adopt rules necessary to implement the long-term care preadmission screening process as required by section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r. The rules must provide criteria, procedures, schedules, delegations of responsibilities, and other requirements necessary to implement long-term care preadmission screenings.

(13) The department shall adopt rules necessary for the implementation of each program of home and community-based services. The rules may include but are not limited to the following:

(a) the populations or subsets of populations, as provided in subsection (7), to be served in each program;

(b) limits on enrollment;

(c) limits on per capita expenditures;

(d) requirements and limitations for service costs and expenditures;

(e) eligibility categories criteria, requirements, and related measures;

(f) designation and description of the types and features of the particular services provided for under subsection (9);

(g) provider requirements and reimbursement;

(h) financial participation requirements for enrollees as provided in subsection (6);

(i) utilization measures;

(j) measures to ensure the appropriateness and quality of services to be delivered; and

(k) other appropriate provisions necessary to the administration of the program and the delivery of services in accordance with 42 U.S.C. 1396n and any conditions placed upon approval of a program by the U.S. department of health and human services.

(14) The department shall adopt rules for the provision of the fraud prevention training required under [section 1], including but not limited to establishing the elements that must be contained in fraud prevention education materials and the models that may be used for the training.

(15) The department shall adopt rules to carry out the cost reporting provisions of [section 2], including but not limited to the costs that a provider is required to report to the department, the format of the report, and

the deadline for filing the report."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 53, chapter 6, part 4, and the provisions of Title 53, chapter 6, part 4, apply to [sections 1 and 2].

- END -

I hereby certify that the within bill,

SB 0216, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day

of _____, 2015.

Speaker of the House

Signed this _____ day

of _____, 2015.

SENATE BILL NO. 216

INTRODUCED BY R. WEBB

AN ACT ESTABLISHING FRAUD PREVENTION TRAINING AND FISCAL ACCOUNTABILITY REQUIREMENTS FOR CERTAIN MEDICAID IN-HOME CARE SERVICES; REQUIRING TRAINING AND EDUCATION IN FRAUD PREVENTION; REQUIRING REPORTING OF COST INFORMATION; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 53-6-402, MCA.