

Article - Health - General

Section 15-109.1

Annotated Code of Maryland

(1990 Replacement Volume and 1992 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Estates and Trusts

14-108.

(A) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(1) THE STATE MAKES SIGNIFICANT EXPENDITURES FOR NURSING HOME CARE UNDER THE MARYLAND MEDICAL ASSISTANCE PROGRAM;

(2) A LARGE NUMBER OF INDIVIDUALS DO NOT HAVE ENOUGH INCOME TO AFFORD NURSING HOME CARE, BUT HAVE TOO MUCH INCOME TO QUALIFY FOR STATE MEDICAL ASSISTANCE, A SITUATION POPULARLY REFERRED TO AS THE "UTAH GAP";

(3) SOME INDIVIDUALS IN THE UTAH GAP, THROUGH INNOVATIVE COURT-APPROVED TRUST ARRANGEMENTS, HAVE BECOME QUALIFIED FOR STATE MEDICAL ASSISTANCE, THEREBY INCREASING STATE MEDICAL ASSISTANCE EXPENDITURES; AND

(4) IT IS THEREFORE APPROPRIATE TO ENACT STATE LAWS THAT LIMIT THESE COURT-APPROVED TRUSTS IN A MANNER THAT IS CONSISTENT WITH TITLE XIX OF THE FEDERAL SOCIAL SECURITY ACT, 42 U.S.C. § 1396 ET SEQ., AS AMENDED, AND THAT PROVIDE THAT INDIVIDUALS WHO QUALIFY FOR ASSISTANCE AS A RESULT OF A CREATION OF THESE TRUSTS SHALL BE TREATED THE SAME AS ANY OTHER RECIPIENT OF MEDICAL ASSISTANCE FOR NURSING FACILITY CARE.

(B) IN ENACTING THIS SECTION, THE GENERAL ASSEMBLY INTENDS ONLY TO LIMIT CERTAIN COURT-APPROVED TRUSTS AND COURT-APPROVED TRANSFERS OF PROPERTY INCOME. IT IS NOT THE GENERAL ASSEMBLY'S INTENT TO APPROVE OR DISAPPROVE OF PRIVATELY CREATED TRUSTS OR PRIVATE TRANSFERS OF PROPERTY INCOME MADE UNDER THE SAME OR SIMILAR CIRCUMSTANCES.

(C) (1) UNLESS THE CIRCUMSTANCES SURROUNDING THE CREATION OF THE TRUST AND THE TRUST PROVISIONS MEET THE CRITERIA DESCRIBED IN § 15-109.1 OF THE HEALTH - GENERAL ARTICLE, A COURT MAY NOT AUTHORIZE, DIRECT, OR RATIFY ANY TRUST THAT EITHER HAS THE EFFECT OF QUALIFYING OR PURPORTS TO QUALIFY THE TRUST BENEFICIARY FOR MEDICAL ASSISTANCE FOR NURSING FACILITY CARE.