

(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) THE LOCAL DEPARTMENT OF SOCIAL SERVICES SHALL DETERMINE IF AN APPLICANT FOR MEDICAL ASSISTANCE FOR NURSING FACILITY CARE MEETS APPLICABLE ELIGIBILITY CRITERIA FOR ASSISTANCE AS PROVIDED UNDER FEDERAL AND STATE LAW AND ANY APPLICABLE REGULATIONS OTHER THAN THE ELIGIBILITY CRITERIA SET FORTH IN SUBSECTION (D) OF THIS SECTION.

(2) AFTER DETERMINING ELIGIBILITY, AND IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION, THE LOCAL DEPARTMENT OF SOCIAL SERVICES SHALL MAKE A DETERMINATION OF THE STATUS OF ANY COURT-APPROVED TRUST ESTABLISHED FOR OR COURT-APPROVED TRANSFER OF PROPERTY INCOME MADE BY OR FOR THE APPLICANT.

(D) (1) IF AN INDIVIDUAL WHO APPLIES FOR MEDICAL ASSISTANCE FOR NURSING FACILITY CARE WOULD BE CONSIDERED INELIGIBLE FOR ASSISTANCE AS A RESULT OF DEEMING A COURT-APPROVED TRUST ESTABLISHED FOR THE APPLICANT AS A MEDICAID QUALIFYING TRUST OR AS A RESULT OF DEEMING PROPERTY INCOME IN THE COURT-APPROVED TRUST AS AN IMPROPER TRANSFER OF ASSETS, THE LOCAL DEPARTMENT OF SOCIAL SERVICES SHALL, NONETHELESS, CONSIDER THE INDIVIDUAL'S APPLICATION AS A CASE OF UNDUE HARDSHIP AND CONSIDER THE INDIVIDUAL ELIGIBLE FOR MEDICAL ASSISTANCE FOR NURSING FACILITY CARE IF THE COURT-APPROVED TRUST MEETS THE FOLLOWING CRITERIA:

(I) THE APPLICANT'S MONTHLY GROSS INCOME FROM ALL SOURCES, WITHOUT REFERENCE TO THE COURT-APPROVED TRUST, EXCEEDS THE INCOME ELIGIBILITY STANDARD FOR MEDICAL ASSISTANCE AS SET BY THE DEPARTMENT BY REGULATION, BUT IS LESS THAN THE AVERAGE PRIVATE PAY RATE FOR NURSING FACILITY CARE FOR THE GEOGRAPHIC REGION IN WHICH THE APPLICANT LIVES;

(II) THE PROPERTY INCOME USED TO FUND THE TRUST IS LIMITED TO MONTHLY UNEARNED INCOME OWNED BY THE APPLICANT, INCLUDING ANY PENSION PAYMENT;

(III) THE APPLICANT AND THE PROGRAM ARE THE SOLE BENEFICIARIES OF THE TRUST;

(IV) UPON THE DEATH OF THE BENEFICIARY, A REMAINDER INTEREST IN THE CORPUS OF THE TRUST PASSES TO THE DEPARTMENT, AS THE STATE AGENCY RESPONSIBLE FOR ADMINISTERING THE MARYLAND MEDICAL ASSISTANCE PROGRAM; AND

(V) UNLESS OTHERWISE PROVIDED UNDER THIS SECTION OR § 14-108 OF THE ESTATES AND TRUSTS ARTICLE, THE TRUST IS NOT SUBJECT TO MODIFICATION BY THE BENEFICIARY OR THE TRUSTEE.