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HEALTH LAW NEWS

SEPTEMBER 09, 2026

HEALTH CARE PHILANTHROPY UPDATE: TREASURY'S PROPOSED RULE OFFERS LESSONS FOR FOUNDATIONS ON DONOR INTENT AND ENDOWMENT MANAGEMENT

The U.S. Department of the Treasury ("Treasury") and the IRS recently proposed regulations that would deny § 501(c)(3) tax-exempt status to private schools that maintain race-based admissions, scholarship or related programs. While the proposal is directed at educational institutions, the preamble contains important lessons for health care foundations and other charitable organizations managing donor-restricted funds.

In discussing the potential impact of the rule, Treasury expressly acknowledges that donor-imposed restrictions may require modification. The preamble notes that where "a race-based scholarship was endowed by a donor, whose letter of intent explicitly stated that eligibility relies on race-based criteria, schools may need to work with the donors, or the donors' heirs, to find an alternative set of eligibility criteria." Treasury further recognizes that this process may involve legal and administrative costs.

Although the proposed regulations focus on scholarship funds, the underlying issue is broader. Health care foundations routinely administer donor-restricted funds intended to support specific programs, populations, facilities or charitable purposes. As laws, regulations, reimbursement systems and community needs evolve, restrictions that once appeared straightforward may become difficult, impracticable or even impermissible to administer.

The proposed rule serves as a reminder of a core principle of the Uniform Prudent Management of Institutional Funds Act ("UPMIFA"): preserving donor intent often requires understanding the donor's broader charitable objective, not merely the literal restriction contained in a gift agreement. Health care foundations that document both the restriction and the donor's rationale are often better positioned if modification later becomes necessary.

KEY TAKEAWAYS FOR HEALTH CARE FOUNDATIONS

- **Document the donor's purpose, not just the restriction**. Gift agreements should explain why the donor wishes to support a particular initiative. If modification is later required, evidence of the donor's overarching charitable intent may be critical.
- **Build flexibility into new gift agreements**. Consider including alternative-use, variance or successor-program provisions that allow the health care foundation to adapt to future changes while remaining faithful to donor intent.
- **Review existing restricted funds**. Now may be an appropriate time to identify funds tied to outdated programs, terminology or assumptions that could create future administrative challenges.
- **Think around corners**. When accepting significant endowment gifts, health care foundations should consider how the restriction would function if programs close, service lines evolve, facilities merge or community health needs change.

Treasury's proposal illustrates how quickly changes in law or public policy can force charitable organizations to revisit donor restrictions that may have existed for decades.

If you have questions regarding the proposed regulations or would like assistance reviewing endowment funds, donor-restricted funds, gift agreements or other charitable assets for potential UPMIFA considerations, please contact:

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