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PROFESSIONAL MEDICAL LIABILITY TRUST 2008 ISSUE BRIEF

The medical liability crisis continues and Congressional attempts to craft a national remedy are uncertain. The impact on patient access still worsens in certain states, among certain high-risk specialties, and for several high-risk medical conditions.

AMGA developed a model to combat high medical liability costs: the Professional Medical Liability Trust (PMLT). The PMLT will help to stabilize liability coverage rates, promote commercial insurer competition, reduce the formation of off-shore captive insurance companies, and improve peer review. With PMLT, physician's transition to affordable, dependable liability coverage may be expedited.

The PMLT would facilitate for-profit provider's development of liability expense reserve funds – either for payment of liability expenses or in preparation for self insurance or a risk retention group -- without incurring prohibitively costly tax burdens on earnings set aside for the reserve fund. Providers now incur as high as a 35% tax rate on profits earmarked for a reserve fund, plus possible state tax expenses. These tax consequences makes switching from commercial to self insurance more difficult: it's harder to accumulate sufficient reserve which is generally as much as the indemnity coverage cost.

Under PMLT, physicians would be allowed to place an annual set aside of limited tax-exempt retained earnings into a reserve fund, with the total fund amount would be capped at a maximum contribution level or a rolling average based upon the groups' liability coverage expenses or size. Reserve funds could only be expended for authorized uses, such as payment of deductibles or claim-related expenses.

Several advantages are presented by the PMLT concept. The reserve fund could be maintained for liability expenses or rolled over for self-insurance or risk-retention group formation. This would favorably affect insurance carrier competition, provide a downward pressure on liability coverage costs, and reduce the attractiveness of off-shore captive formation (and keep the funds in local communities).

Beneficial operational impacts are also expected from PMLTs. Similar to other self-funded liability insurance methods, PMLTs are anticipated to increase physician peer review, strengthen risk-management and improve healthcare quality. In addition, hiring and retaining physicians would be enhanced, for potential employees would view the built-up escrow as an employment benefit.

The PMLT requires a legislative change to allow this retention and limited use of tax-exempt retained earnings, and it has generated interest in Members of Congress and Treasury Department officials familiar with the concept.

AMGA Strategic Objectives:

- That Congress consider and pass PMLT legislation.