professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association, that meets the following conditions:

• Each physician member of the group furnishes substantially the full range of services that the physician routinely furnishes, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment, and personnel.

• Substantially all of the services of the physician members of the group are furnished through the group, are billed in the name of the group, and amounts so received are treated as receipts of the group.

• The overhead expenses of and the income from the practice are distributed in accordance with methods previously determined. (OBRA '93 eliminates the requirement that the methods be previously determined by members of the group.)

the group.)
The group practice complies with all other standards established by the Secretary in regulations.

In addition, **ÖBRA** '93 amended section 1877(h)(4). The predecessor provision of section 1877(h)(4) provided that, in the case of a faculty practice plan associated with a hospital with an approved medical residency training program in which physician members may furnish a variety of different specialty services and furnish professional services both within and outside the group, as well as perform other tasks such as research, the conditions contained in the definition of 'group practice'' apply only with respect to the services furnished within the faculty practice plan. OBRA '93 added, as an addition to a faculty practice plan associated with a hospital, a faculty practice plan associated with an institution of higher education or a medical school.

(Note that OBRA '93 makes other changes to the definition of group practice that will become effective January 1, 1995.)

## a. Exception—Physicians' Services

Section 1877(b)(1) continues to specify that the prohibition does not apply to services furnished on a referral basis if the services are physicians' services, as defined in section 1861(q), furnished personally by (or under the personal supervision of) another physician in the same group practice (as defined in section 1877(h)(4)) as the referring physician.

## b. Exception—In-Office Ancillary Services

Section 1877(b)(2) continues to specify that the prohibition does not

apply to referrals for certain in-office ancillary services. Both the predecessor provisions and current provisions of section 1877(b)(2) contain requirements that must be met in order for the exception to apply. These requirements concern who may furnish the services, where the services are furnished, and how the services must be billed.

## Who May Furnish the Services

Under the predecessor provisions of section 1877(b)(2)(A)(i), the services had to be personally furnished by the referring physician, a physician who was a member of the same group as the referring physician, or individuals employed by the physician or group practice and who were personally supervised by the physician or by another physician in the group practice. OBRA '93 amends this provision to require that the individual performing the service be *directly* supervised by the physician or by another physician in the group practice and dropped the employment requirement.

## Where the Services May Be Furnished

The predecessor provision of section 1877(b)(2)(A)(ii) required that the services be furnished in either of the following:

• A building in which the referring physician (or another physician who is a member of the same group practice) furnishes physicians' services unrelated to the furnishing of clinical laboratory services.

• In the case of a referring physician who is a member of a group practice, in another building that is used by the group practice for the centralized provision of the group's clinical laboratory services.

OBRA '93 amended this provision to require, in the group practice situation, that the building be used for the provision of some or all of the group's clinical laboratory services. That is, this provision no longer requires that the provision of laboratory services be centralized at that site.

The statute contains an undesignated paragraph at the end of the group practice location requirements that reads as follows: "unless the Secretary determines other terms and conditions under which the provision of such services does not present a risk of program or patient abuse, \* \* \*"

We believe that, because of the way the paragraph is indented, how it applies to the in-office ancillary services exception is ambiguous. It could apply to all of paragraph (b)(2)(A)(ii) or apply to only paragraph (b)(2)(A)(ii)(II). If it applies to all of paragraph (b)(2)(A)(ii), it would affect both solo and group practitioners. If it applies to only paragraph (b)(2)(A)(ii)(II), it would affect only group practices.

The Conference Report that accompanied OBRA '93 (H. Rep. No. 213, 103rd Cong., 1st Sess. 810 (1993)) points out that the conference agreement includes an exception for clinical laboratory services provided by a group practice that has multiple office locations. The Report also says that the conferees expect that the Secretary will publish regulations specifying other terms and conditions under which group practices may qualify for a group practice exception to the general prohibition. Arguably, the Congress had only group practices in mind in drafting the provision at issue. Therefore, we believe that the undesignated paragraph applies to only paragraph (b)(2)(A)(ii)(II), which concerns the site requirements as they relate to a group practice.

In addition, this paragraph could be read to mean that the Secretary is allowed to *liberalize* the circumstances in paragraph (b)(2)(A)(ii)(II) (the building/location requirements) if she determines that there are other, additional "terms and conditions' under which an entity can provide services without presenting a risk of program or patient abuse. In this case, the interpretation would not appear redundant with the undesignated paragraph that follows at the end of section 1877(b)(2)(B), which authorizes the Secretary to impose additional "requirements" for application of the inoffice exception.

We could also interpret "other terms and conditions" as including any different terms or conditions, whether they are more restrictive or more liberal, that the Secretary may add to the list in paragraph (b)(2)(A)(ii) or in (b)(2)(A)(ii)(II). However, more restrictive conditions could make the two undesignated paragraphs redundant.

Alternatively, the paragraph following section 1877(b)(2)(A)(ii)(II)(bb) could be read to mean that the circumstances in (b)(2)(A)(ii) must be met for the exception to apply unless the Secretary determines other terms and conditions under which there will be no patient or program abuse, and which should be substituted for the list of conditions in (b)(2)(A)(ii). We do not believe that this reading would conflict with the paragraph that follows section 1877(b)(2)(B), because the Secretary could then still add more requirements to the list of those in paragraph (b)(2)(A)(ii) (with (b)(2)(A)(ii) now consisting of the Secretary's substitutions). Therefore, it is our