interpretation that this paragraph is intended to provide for the possibility of a liberalization of the conditions as described in section 1877(b)(2)(A)(ii)(II). At this time, we are not imposing any additional terms or conditions for the application of this provision, and we solicit comments on this issue.

Billing

Section 1877(b)(2)(B) continues to require that the ancillary services be billed by one of the following:

- The physician performing or supervising the services.
- A group practice of which the performing or supervising physician is a member.
- An entity that is wholly owned by the physician or group practice.

(Note that, effective January 1, 1995, the statutory definition of group practice requires that a group practice bill under a billing number assigned to the group.)

c. Exception—Certain Prepaid Health Plans

Section 1877(b)(3) continues to specify that the prohibition on referrals does not apply to services furnished to their enrollees by Medicare-contracting health maintenance organizations (HMOs), Medicare-contracting competitive medical plans (CMPs), and prepaid health care organizations under a contract or agreement with us. OBRA '93 expands the exception to apply it to services furnished to their enrollees by Federally-qualified HMOs. (The Federally-qualified HMOs are not required to have a contract or agreement with us in order for the exception to apply.)

d. Exception—Hospital Financial Relationship Unrelated to the Provision of Clinical Laboratory Services

Before the enactment of OBRA '93, section 1877(b)(4) provided a general exception to the prohibition in the case of a financial relationship with a hospital if the financial relationship did not relate to the provision of clinical laboratory services. OBRA '93 omitted this general exception, replacing it with section 1877(e)(4). Section 1877(e)(4) provides that remuneration from a hospital to a physician that is unrelated to the provision of clinical laboratory services does not constitute compensation that would trigger the prohibition on referrals. However, SSA 94 revised the effective date provision in section 13562(b)(2)(B) of OBRA '93. This effective date provision now states that section 1877(b)(4) continues to apply until January 1, 1995 as it was in effect before OBRA '93.

e. Other Exceptions

Section 1877(b) (currently at (b)(4)) continues to authorize the Secretary to provide in regulations for additional exceptions for financial relationships, beyond those specified in the statute, if she determines they do not pose a risk of Medicare program or patient abuse.

6. Exceptions Applicable Only to Financial Relationships Consisting of Ownership or Investment Interests

OBRA '93 continues to provide that certain ownership or investment interests do not constitute a "financial relationship" for purposes of the section 1877 prohibition on referrals.

a. Exception—Certain Investment Securities and Shares

Before OBRA '93, section 1877(c) contained an exception for ownership of investment securities, provided they were purchased on terms generally available to the public and were in a corporation that was (1) listed for trading on various specified stock exchanges and (2) had, at the end of the corporation's most recent fiscal year, total assets exceeding \$100 million. These provisions were reflected in the proposed rule.

OBRA '93 has modified this provision in several ways. First, investment securities no longer have to be those purchased on terms generally available to the public; they must only be those which "may be purchased" on terms generally available to the public. Second, the securities can be those listed on additional exchanges, including any regional exchange in which quotations are published on a daily basis, or foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published on a daily basis.

Third, the investment securities no longer have to be in a corporation with \$100 million in total assets at the end of a fiscal year; now the holdings of the corporation must be measured in terms of "stockholder equity," and the amount has been modified from \$100 million to \$75 million. This amount can now either be measured at the end of the most recent fiscal year or based on the corporation's average during the previous 3 fiscal years.

Finally, OBRA '93 extends the exception to apply to mutual funds, exempting ownership of shares in a regulated investment company as defined in section 851(a) of the Internal Revenue Code of 1986, if the company had, at the end of its most recent fiscal year, or on average during the previous 3 fiscal years, total assets exceeding \$75 million.

Under the effective date provisions of OBRA '93, the amended version of section 1877(c) was not effective until January 1, 1995. SSA '94 revised the effective date provision to make the amended version of section 1877(c) effective retroactively to January 1, 1992; however, the revised effective date provision states that, prior to January 1, 1995, the amended section 1877(c) does not apply to any securities of a corporation that meets the requirements of section 1877(c)(2) as they appeared prior to OBRA '93. Section 1877(c)(2), prior to OBRA '93, contained the requirement that a corporation have \$100 million in total assets. This final rule reflects the amended version of section 1877(c). It also specifies that, until January 1, 1995, ownership of investment securities in a corporation with \$100 million in total assets can also qualify for the exception.

b. Exception—Ownership or Investment Interest in Certain Health Care Facilities

Section 1877(d) continues to provide additional exceptions to the prohibition on physician referrals for an ownership or investment interest of a physician (or an immediate family member of the physician) in three types of facilities:

- A hospital located in Puerto Rico.
- A laboratory located in a rural area (that is, an area outside of a Metropolitan Statistical Area as defined in section 1886(d)(2)(D)).
- A hospital outside of Puerto Rico if the referring physician is authorized to perform services at the hospital and the ownership or investment interest is in the hospital itself (and not merely in a subdivision of the hospital).

(Note that OBRA '93 contains changes to the above provisions that became effective on January 1, 1995. These extend the exceptions to designated health services and modify the exception for rural providers. Before OBRA '93, the exception applied if the laboratory furnishing the services is in a rural area (as defined in section 1886(d)(2)(D). The statute now provides that the exception applies in the case of designated health services furnished in a rural area (as defined in section 1886(d)(2)(D)) by an entity, if substantially all of the designated health services furnished by the entity are furnished to individuals residing in the rural area.

7. Exceptions Applicable Only to Financial Relationships Consisting of Certain Compensation Arrangements

Section 1877(e) continues to provide that certain compensation arrangements are not considered a "financial