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independent contractors leads to different results. That is, it might make it more difficult for the group practice to satisfy the 85 percent aggregate services requirement in the definition, depending on the number of part-time employees and contractors. However, it would allow for almost any associated physician to make referrals and supervise the performance of laboratory services.

Response: As evidenced by the range of comments we received concerning this group member issue, whatever approach we select may not address all of the concerns raised by the commenters. Essentially, we agree that the issue of who qualifies as a "member" of a group practice raises a number of complex questions. As we understand it, group practices typically have partners, full-time physician employees, part-time physician employees, and physician contractors.

We take the position that all of these physicians can be members of a group for purposes of the group practice provisions of section 1877. We consider physician partners and full-time and part-time physician employees and contract physicians to be members during the time they furnish services to patients of the group practice that are provided through the group and are billed in the name of the group. Thus, their services would be considered in determining whether the group practice as a whole meets the requirement that substantially all of the services of physician members be furnished through the group.

Examples are as follows:

• A group practice consists of two physician partners, five full-time physician employees, two part-time physician employees, and a contractor physician who spends one morning a week at the group practice delivering specialty services. The two partners and the full-time employees practice only through the group. The two part-time employees devote 50 percent of their time to the group, and the contractor physician spends 10 percent of his or her time with the group.

7 physicians at	700%	
2 physicians at 50% =	100%	
1 physician at 10% =.	10%	
	810%	divided by 10 = 81%

 In another group practice, two physician partners spend 100 percent of their patient care hours through the group. Five part-time physician employees spend 70 percent each, and two other part-time physician employees spend 25 percent of their time at the group practice. A contractor physician devotes 10 percent.

2 physicians at 100% =.	200%	
5 physicians at 70% =.	350%	
2 physicians at 25% =.	50%	
1 physician at 10% =.	10%	
	610%	divided by 10 = 61%

In these examples, using 75 percent as the threshold, the first group practice would qualify, but the second would not.

On balance, we believe this approach is the most appropriate and is neither overly restrictive nor overly permissive. It will eliminate problems that might arise for many group practices that employ physicians or contract for the services of physician specialists on a part-time basis. Because this approach is not overly restrictive, we do not believe it will obstruct rural group practices. On the other hand, as demonstrated in the above example, the inclusion of part-time physicians may cause some group practices to fail to meet the 75 percent aggregate requirement.

To clarify our position about this issue, we have included the following definition under section 411.351 ("Definitions"):

Members of the group means physician partners and full-time and part-time physician employees and physician contractors during the time they furnish services to patients of the group practice that are furnished through the group and are billed in the name of the group.

c. Individual Billing by a Group Practice Physician

Comment: A few commenters indicated that some group practices permit the physicians of the group to bill Medicare under their unique physician identification number. Under the proposed rule, they do not meet the definition of a group practice because services furnished by the group physicians are not billed in the name of the group. The commenters requested an exception for a few group practices that actually practice medicine as a group but do not qualify because of this element of the new definition of group practice.

One commenter indicated that many group practices have made a decision to have each physician bill independently and reassign benefits to the group rather than for services to be billed under the group's provider number. This decision is based on the desire of some physicians within the group to be nonparticipating physicians but only for the services billed by the group as group services. (As nonparticipating physicians, they can bill the beneficiary directly and charge for the part of the bill that is more than the Medicare approved amount, with certain limitations.) According to the commenter, the physicians would agree to bill under a group provider number except for an informal, nonregulatory position that all physician members of a group practice must make a joint decision to be either participating or nonparticipating physicians. The commenter recommended that the final rule clarify that billing in the name of the group allows for physician members of a group to make individual choices about participating or not participating in Medicare. It was suggested that such a decision could be made at a "department level" within the group practice by differentiating between specialty categories.

Response: The definition of a group practice set forth in section 1877(h)(4)(A) requires that substantially all of the services of physicians who are members of the group be provided through the group and be billed in the name of the group. (Beginning January 1, 1995, services must be billed under a billing number assigned to the group.) Under this language, an organization whose individual physicians bill in their own name does not constitute a group practice. Additionally, the services of a physician who does not bill in the group's name cannot be counted in determining whether the group practice satisfies the substantially all

criteria.

We recognize that, under the in-office ancillary services exception found in section 1877(b)(2)(B), the physician who performs or supervises the performance of the services may also bill for those services. As mentioned above, however, when a physician bills in this manner, he or she is doing so as a solo practitioner and not as a member of a group practice.

Finally, when a bill is submitted in the name of the group on an assignment-related basis, it is the group that accepts assignment. A Medicare participation agreement under section 1842(h)(1) is an agreement to accept assignment in all cases. Therefore, any participation agreement with respect to services