its own patients. To qualify for this exception, the group must meet the definition of a group practice in section 1877(h)(4) and meet the requirements under section 1877(e)(7).

Finally, there are certain indications that the group practice may have some form of ownership interest in the laboratory entity (although it may not be a separate legal entity). The group pays rent for the space, manages the laboratory, employs all of the laboratory staff, owns some of the equipment, bills for its own patients, and retains the revenues associated with the testing of its own patients. In order for the group practice to refer to its own laboratory, it must qualify as a group practice under the definition in section 1877(h)(4), and meet the requirements of the in-office ancillary services exception in section 1877(b)(2).

Comment: Several commenters indicated that a number of group practices and the hospitals with which they are affiliated have for many years operated a laboratory facility that serves both hospital patients and the group practice's office patients. Under the terms of the agreement between the group and the hospital, the laboratory is operated under a shared services agreement, rather than as a true joint venture or under an "under arrangement" contract. The revenues, costs, profits, and losses resulting from services to hospital patients are attributed to the hospital and the revenues, costs, profits, and losses resulting from services provided to the group practice's office patients are attributed to the group practice. The commenters recommended a new exception that would be limited to teaching hospitals and would apply to clinical laboratory services furnished by a laboratory that is-

 Owned or operated by an organization or hospital that participates in an approved medical training program; and

• Used in common under a written arrangement with a group practice whose physician members constitute all or substantially all of the active medical and teaching staff of the organization or hospital.

Response: This comment is very similar to the previous comment. That is, it involves an arrangement between a hospital or organization and a group practice to share a laboratory facility. The commenters, however, do not address the specifics of the arrangement, so we cannot tell exactly how the situation will be affected by section 1877. In addition, it is not clear why the commenters limited their recommendation for a new exception to

just arrangements between teaching hospitals and group practices. However, as we pointed out in our response to the last comment, we believe that a new exception is unnecessary after OBRA '93 for most situations in which hospitals and other organizations share their laboratories with physicians.

In the commenter's example, for instance, the group practice physicians constitute all or substantially all of the active medical and teaching staff of the hospital or organization. The compensation that these physicians receive from the hospital or organization for their services should not prevent the physicians from referring to the hospital's laboratory, provided the arrangement meets the requirements under section 1877(e)(2) (for bona fide employment relationships) or (e)(3) (for personal services arrangements). The group practice physicians also appear to have some ownership interest in the laboratory, since they refer their own office patients there and the revenues, costs, profits, and losses of the group's office patients are attributed to the group. The group practice physicians can refer their own patients to each other, provided they meet the requirements of the in-office ancillary services exception in section 1877(b)(2).

*Comment:* One commenter indicated that there are large multi-specialty group practices that own clinics located adjacent to inpatient hospitals and the clinics share certain ancillary facilities, including laboratories, with the hospitals. In some cases, the ancillary services building literally becomes the bridge between the clinic and the hospital, so that a hospital patient enters the ancillary facility from the hospital, and a clinic patient enters the same facility from the clinic. Such a facility would be under the common control of both the clinic and the hospital, and both entities would share in the cost of personnel, space, equipment, supplies, and other operating expenses. The commenter questioned whether the physician group is entitled to treat such a shared facility as "in-office." The commenter believed that if the services furnished at the facility do not qualify for the in-office ancillary exception, the physician group's referrals for those services would be prohibited since the cost sharing agreement between the hospital and clinic would constitute a compensation arrangement under the statute. The commenter requested that we provide an additional exception to accommodate arrangements of this nature that meet all of the following conditions:

• The shared laboratory facility, the group practice, and hospital (or other

entity) are part of the same medical center campus.

• The costs of operation of the shared facility are shared on the basis of utilization originating from each part, so that each party pays only its own costs, and does not subsidize the provision of laboratory services to the other.

• The creation or continuation of such a shared facility arrangement is not conditional or otherwise related to the volume or value of referrals of patients between the clinic and hospital (or other entity) for other, nonlaboratory, covered Medicare services.

*Response:* The comments we have received on the issue of hospitals or similar organizations which share laboratories with group practices have revealed to us the complexity of many of the financial relationships involved in these arrangements. In some situations, one or both parties actually own the physical facility and/or its equipment, one party may pay rent to the other, and each party may provide the other with certain services both in the laboratory and in a practice context. It is impossible for us to analyze each and every configuration. However, as we pointed out in earlier responses on this issue, OBRA '93 has created additional exceptions which should address many of the interrelationships involved in these situations. We encourage hospitals and other organizations to analyze their own particular circumstances in light of these exceptions.

In regard to the particular situation raised by this commenter, the commenter describes a situation in which a laboratory is under the common control of both a group practice clinic and a hospital, each of which share in the cost of personnel, space, equipment, supplies, and other operating expenses. The commenter appeared to be concerned, primarily, about whether the in-office ancillary services exception would apply to services furnished in the laboratory for the patients of the group practice. The commenter provided few other details about ownership of the hospital or laboratory or whether there is any compensation passing between

The in-office ancillary services exception in section 1877(b)(2) does not appear to dictate any particular ownership arrangements between group practice physicians and the laboratory in which the services are provided. We believe that the group practice can take advantage of this exception and that members can refer to each other in the laboratory provided that the group meets the definition of a "group practice" under section 1877(h)(4) and

these parties.