is not feasible to define the key portion for each and every billable service. In order to provide guidance, we stated some general guidelines in the proposed rule. Thus, in the case of surgical, high-risk, or other complex procedures, the teaching physician must be present during all critical portions of the procedure and immediately available to furnish services during the entire service or procedure. In the case of surgery, the teaching physician's presence is not required during opening and closing of the surgical field. In the case of procedures performed through an endoscope, the teaching physician must be present during the entire viewing.

In the case of evaluation and management services, the teaching physician must be present during the portion of the service that determines the level of service billed. The factors to be considered are complexity of medical decision-making, extent of history obtained, and extent of examination performed. We believe that the teaching physician should have considerable discretion in determining the key portion of the service, and we do not anticipate that carriers will deny claims submitted based on this discretion, as long as the claims are documented and in accord with our guidelines. If the teaching physician believes that a key portion of an entire evaluation and management service cannot be identified, the teaching physician should be present for the entire service.

We plan to address this matter further in carrier manual instructions.

Comment: Some commenters objected to the requirement of the proposed rule that the teaching physician be present during the viewing portion of a procedure such as an endoscopy. The commenters believed that the presence of the physician should be determined by the teaching physician based on the competence of the resident.

Response: In those situations, we believe that the carrier should pay for the interpretation of the viewed area by the teaching physician rather than by the resident. As indicated earlier, the viewing by the resident is not payable as a physician service; this service by the resident is paid under direct GME.

Comment: The majority of the commenters identified themselves as representatives of family practice residency programs. The commenters made the following points:

- Many appreciated the preamble language of the proposed rule indicating our willingness to consider adopting special rules for family practice programs.
- Many claimed that hospitals and health care delivery systems would cease residency training for family practice programs if the proposal went into effect without an exception.
- In a family practice program, the resident is the primary care-giver, and the faculty physician sees the patient only in a consultative role.
- It is beneficial for family practice residents to see patients alone in order to learn medical decision-making and to recognize their own limitations.
- A resident cannot be educated in the art and practice of medicine without unsupervised patient contact; the proposed policy would interfere with the development of a resident's bedside manner.
- One family practice resident objected to the low levels of fee payments for his services under Medicare and Medicaid.
- The teaching physician presence requirement intrudes upon the relationship between the resident and the patient and, in the view of some, would cause Medicare beneficiaries to lose confidence in the competence of their resident physician.
- The requirement would necessitate the hiring of more teaching physicians and inhibit the ability to finance family practice programs through patient care billings.
- In many cases, the presence of the teaching physician is superfluous.
- The proposal does not adequately recognize the way medicine is practiced in this country.
- The family practice teaching physician is responsible for supervising four or more residents and medical students who are seeing patients simultaneously. Since the teaching physician must remain with the medical students during patient care visits, he or she does not have time to be involved in services furnished by the residents.
- The family practice preceptors are responsible for signing the medical records after the residents have dictated their entries which, in the view of some, guarantees mandatory supervision for each and every visit.
- Some residents are experienced physicians who have been in private practice for years and are in the residency program only to obtain board certification. The proposal does not adequately address those residents.
- If the proposed policy is implemented, family practice clinics will refuse to treat Medicare beneficiaries. Thus, the beneficiaries will be forced to go to medical assistance clinics.
- The proposal would put the resident in the position of being a clerk rather than a physician.
- Care furnished in family practice programs is more cost-effective than care furnished in established practices; therefore, total Medicare costs are lower when services are provided by these programs.
- The physician presence requirement would inhibit the ability of family practice clinics to compete with managed care programs in the community.

In addition, the American Academy of Family Practice proposed a specific limited exception to the physician presence requirement that we have adopted in large part as set forth below.

Response: As we have discussed, we believe the physical presence requirement is necessary and appropriate as a general rule to ensure that Part B payment is not made when a teaching physician does not furnish a service for a patient; we also believe that hospitals and teaching physicians generally can, as a practical matter, reasonably meet the presence requirement and that Part B payment will be made as appropriate for the services and activities of teaching physicians. At the same time, we believe that, if the nature of a residency program is fundamentally incompatible with a physical presence requirement, it may be appropriate to make Part B payment if the teaching physicians satisfy certain conditions that demonstrate that they are sufficiently involved in the care of individual patients to warrant Medicare Part B payment. As reflected in the proposed rule, we believe a requirement of physical presence would be inherently incompatible with the nature of family practice residency programs, and thus unfairly deny reimbursement for the activities of teaching physicians in these programs and endanger the financial viability of these programs. Because of these considerations, we proposed a limited exception for family practice residency programs.

In light of the comments, we have concluded that an exception should not be limited to family practice programs, but instead should apply to any program that satisfies certain specified criteria. The criteria are designed to capture those residency programs with requirements that are incompatible with a physical presence requirement. Thus, in this final rule, we have decided to establish an exception to the physician presence requirement for certain evaluation and management services furnished in certain centers within the context of certain types of residency