training programs. The exception is set forth in a new § 415.174 of this final rule.

Under the exception, carriers may make physician fee schedule payment for reasonable and necessary low to mid-level evaluation and management services when furnished by a resident without the presence of a teaching physician if all of the following conditions are met:

• Services must be furnished in a center located in the outpatient department of a hospital or another ambulatory care entity in which the time spent by residents in patient care activities is included in determining intermediary payments to a hospital under § 413.86.

• Any resident furnishing the service without the presence of a teaching physician must have completed more than 6 months of an approved residency program. The center is responsible for furnishing this information to the carrier. The family practice groups recommended the 6-month requirement, and we believe it is an appropriate safeguard.

• The teaching physician may not supervise more than four residents at any given time and must direct the care from such proximity as to constitute immediate availability. The teaching physician must—

+ Have no other responsibilities at the time of the service for which payment is sought;

+ Assume management responsibility for those beneficiaries seen by the residents;

+ Ensure that the services furnished are appropriate;

+ Review with each resident during or immediately after each visit, the beneficiary's medical history, physical examination, diagnosis, and record of tests and therapies; and

+ Document the extent of his or her own participation in the review and direction of the services furnished to each beneficiary.

• The patients seen must be an identifiable group of individuals who consider the center to be the continuing source of their health care and in which services are furnished by residents under the medical direction of teaching physicians. The residents must generally follow the same group of patients throughout the course of their residency program. We are not requiring that the teaching physicians remain the same over any period of time.

• The range of services furnished by residents includes:

+ Acute care for undifferentiated problems or chronic care for ongoing conditions.

+ Coordination of care furnished by other physicians and providers.

+ Comprehensive care not limited by organ system, diagnosis, or gender.

We believe that the types of GME programs most likely to qualify for this exception include: family practice and some programs in general internal medicine, geriatrics, and pediatrics.

• The center must be located in a setting in which the resident's time is included in the full-time equivalency count used by the intermediary to make direct GME payments to a hospital for services of residents in that setting. In a freestanding setting in which residents are not counted for the purpose of making these payments, the services of licensed residents are already covered as physician services.

This exception to the teaching physician presence applies only to specific low- and mid-level evaluation and management codes for office or other outpatient visits for both new and established patients. The established patient codes to which the exception applies are CPT codes 99211, 99212, and 99213 (and their successor codes). New patient codes to which the exception applies are CPT codes 99201, 99202, and 99203 (and their successor codes). The teaching physician must be present for higher level evaluation and management codes and all invasive procedures.

In paragraph (b) of new § 415.174, we clarify that the exception may not be construed as providing a basis for the coverage of otherwise noncovered services under Medicare, such as routine physical checkups. Further, this special treatment for certain training situations does not apply to services involving medical school students. A service furnished by a medical school student is a noncovered service under Medicare even if the teaching physician is in the room. We will publish further instructions on the new policy in the Medicare Carriers Manual.

Comment: Some commenters who represent physician specialty organizations stated that they were opposed to any exception to the physician presence requirement if it was limited to a particular specialty. They believed that the same rules on physician presence should apply to all specialties. Some commenters indicated that special treatment for family practice programs ''devalued'' the importance of residency training in other programs. Many commenters argued that any special treatment given to family practice programs should apply to their programs as well. These include psychiatry, physical medicine, internal medicine, and obstetrics-gynecology. For example, several commenters believed that psychiatric residency programs should be given the same special treatment in the final rule as might be afforded to family practice programs. Some indicated that the costs of purchasing video equipment or one-way mirrors would be too great.

Response: The exception we are establishing at new § 415.174 is not limited to family practice programs; it applies to the indicated evaluation and management codes when furnished under the specified conditions. We are continuing to provide an additional, special exception for psychiatric programs in § 415.184 as originally proposed.

Comment: Some commenters indicated that their family practice clinics are not under the sponsorship of a hospital, and that their programs do not receive Medicare funds from a hospital for the time the resident is in the clinic.

Response: If the family practice clinic is freestanding (that is, not part of a hospital) and the residents are not included in any hospital's full-time equivalent count of residents, the services of licensed residents are payable under the physician fee schedule on the same basis as any other physician's services. This longstanding policy applies regardless of whether or not the resident's services are furnished within the scope of an approved GME training program.

Comment: Several commenters expressed concern that the same residents for whom we are requiring the presence of a teaching physician are not supervised by a teaching physician when they ''moonlight'' outside of their training programs.

Response: We recognize moonlighting situations and addressed the subject in the proposed rule. When licensed residents moonlight outside of their training program, Medicare pays for their services as physician services. Medicare does not pay a teaching hospital for these services through the direct GME payment mechanism or through the indirect medical education payment mechanism. In other words, in moonlighting situations, the Medicare program pays for the service only once.

Comment: One organization supported the proposed rule on ''moonlighting residents'' but sought clarification as to the impact of the proposal on inpatient services. Another commenter sought clarification of the policy when a licensed resident moonlights in another teaching hospital.

Response: The proposal reflects longstanding policy outlined in section 2020.8 of the Medicare Carriers Manual.