

## ACFAS Explanation of CMS Rule on H&Ps

ACFAS members have expressed major concerns about the Centers for Medicare & Medicaid Services (CMS) rule on DPMs performing H&Ps in hospitals. Many foot and ankle surgeons still continue to face significant difficulties within their hospitals in the ability to perform these exams. As of January 26, 2007, the rule permits a physician, as defined in section 1861(r) of the *Social Security Act*, an oral and maxillofacial surgeon or other qualified individual to complete H&P exams in accordance with their state law and hospital policy. Section 1861(r) of the *Act* defines "physician" in the Medicare program to include DPMs. This new rule is helpful as it previously restricted DPMs and specified only doctor of medicine, osteopathy or oral and maxillofacial surgeon could perform H&Ps.

In section 482.22(c)(5) *Condition of Participation: Medical Staff*, it requires that each patient receive a H&P no more than 30 days before or 24 hours after admission and documentation be placed in the patient's medical record within 24 hours of admission. In addition, when an H&P is recorded within the 30 days before admission, the hospital must ensure that an updated medical record entry documenting an examination for any changes in the patient's condition is completed and documented in the patient's medical record within 24 hours after admission. The rules under Medicare Conditions of Participation (CoPs) are for Medicare participating hospitals and do not apply to free-standing ambulatory surgical centers. Hospitals certified or accredited by the American Osteopathic Association (AOA) and accept Medicare patients must comply with the Medicare CoPs for hospitals. Performing H&P exams are treated as privileges and hospitals can add rules as long as the hospital's policies and bylaws are consistent with CMS' rules. It is strongly recommended that ACFAS members consult their state's scope of practice law for DPMs. Many state laws on podiatry allow DPMs to function as licensed, independent medical providers.

Members experiencing difficulty with their privileging hospital should present a copy of the final rule (included in this toolkit) as well as the Joint Commission's clarifications (also included in this toolkit) and urge hospitals to revise their bylaws and recognize that performing H&Ps is a right that every DPM has within his/her licensure.