

Information to Prepare for Appeal Hearings in the FED Era

This document provides the information that every assessor, assessor supervisor, or other AAA personnel representing the agency at an appeals hearing should know. Key elements are bold-faced.

Purpose of the FED

The purpose of the FED is to determine clinical eligibility for Medicaid long term services and supports by identifying individuals that are Nursing Facility Clinically Eligible (NFCE) versus those that are Nursing Facility Ineligible (NFI).

NFCE is defined as:

- The individual has an illness, injury, disability or medical condition diagnosed by a physician.
- As a result of that diagnosed illness, injury, disability or medical condition, the individual requires care and services above the level of room and board.
- The needed care and services are either:
 - Skilled nursing or rehabilitation services specified by the Medicare Program;
 - or
 - Health-related care and services that may not be as inherently complex as skilled nursing or rehabilitation services but which are needed and provided on a regular basis in the context of a planned program of health care and management and were previously available only through institutional facilities.
- A physician certifies that the individual is NFCE.

The FED was created to reduce inconsistencies found in NFCE determinations with the Level of Care Determination (LCD) assessment tool in a study of approximately 80,000 completed LCDs assessments in 2012-13. This study showed that about 15% who were reported to not need assistance across key domains used to define NFCE (e.g., Activities of Daily Living [ADL], toileting, cognition, mobility, and eating) were nonetheless found to be NFCE. Conversely, some individuals with a significant disability within these domains were not found to be NFCE. Additional problems with the LCD that the FED is designed to address are:

- The length of time administering the LCD takes, which can be upwards to 90 minutes. This can be problematic for some individuals for example:
 - An individual with a traumatic brain injury who finds it difficult to concentrate for this length of time
 - An older person with a medical condition that makes a lengthy interview physically exhausting.
- The ability for assessors to skip detailed cognitive assessment;
- The need to attribute disability to specific physiologic systems or medical conditions. This is an issue because:
 - Some disabilities are not the result of a medical condition
 - There can be faulty assumptions when a medical condition exists that it will create an impairment in all people with that condition.

Additionally, the **FED was designed to be well-matched with the interRAI HC assessment tool** being used with all NFCE participants receiving Medicaid long term services and supports within CHC. The interRAI HC is a standardized well-researched and validated assessment tool used broadly in this country and around the world.

Construction of the FED

Researchers from the University of Pittsburgh developed the FED as a shorter assessment tool based on the interRAI HC. Using the interRAI HC questions, probes, and scoring the FED assess the five domains listed above. The FED development was completed in 2016-17, reviewed by community stakeholders, and approved by OLTL.

Since its first development, **the FED has undergone two field-tests comparing the results of the LCD outcome with a FED outcome for the same participant.** The threshold upon which either an NFI or NFCE determination results were set by comparing data from the studies of the FED. Specifically, the proportion of participants using the LCD found to be NFCE and the proportion of the same participants found to be NFCE using the FED were compared. A similar comparison was made looking at participants found to be NFI. Based on these comparisons, and additional statistical analysis, it is possible to determine where the NFCE determination should be set. FED Appendix A lists all of the items and the combination of items that result in an NFCE determination. FED Appendix B contains a matrix indicating the items that result in an NFCE determination. It is important to note that the threshold set for NFCE is a policy decision outside of an assessor's sphere of influence.

Administering the FED

Only those individuals meeting the CMS requirements as an assessor and having successfully completed a comprehensive eight-module, competency-based training can administer the FED. The training is designed to eliminate inconsistencies in the use of the FED by providing numerous case examples with immediate feedback to the learner. Successful completion requires full completion of all eight modules and a score of 90% or higher on the 30-question final exam.

The FED is constructed in such a way that the assessor responds to each item by clicking on the appropriate description. The assessor places no value on the importance of one item over another, thereby eliminating the need for the assessor to interpret the item in the context of the definition of NFCE.

Each section of the FED provides a section for comments, should the assessor observe any unique situations that warrant noting. Additionally, the FED cannot be submitted as finished until after all the items in the assessment are completed and the assessor indicates agreement or disagreement with the determination, allowing the assessor to note any unusual or significant issues not captured with the assessment tool, but having a potentially important impact on the final determination. It is important to note that assessors cannot go back and adjust responses after the determination is provided. It is at this point that they can agree or disagree with the determination and state their reasons in the comments section.