

**New York State Department of Health
Traumatic Brain Injury Program
Nursing Home Transition and Diversion Program
HOUSING PROGRAM GUIDELINES**

**Revised
Effective October 1, 2019**

Introduction

The Traumatic Brain Injury (TBI) and Nursing Home Transition and Diversion (NHTD) Housing Programs are rental subsidy programs of last resort for Medicaid recipients participating in the TBI or NHTD 1915(c) Home and Community-Based Services waiver programs, respectively. Unless otherwise provided, this document will refer to these programs collectively as the TBI/NHTD Housing Program or simply the Program. Only Medicaid recipients enrolled and actively participating in the TBI or NHTD waiver programs are eligible to apply for the TBI/NHTD Housing Program. The Program offers qualified applicants a monthly rental subsidy and assistance with utilities and certain one-time costs.

Each TBI and NHTD waiver participant has unique housing needs. Some individuals enroll in the waivers after lengthy nursing home stays and no longer have the financial support needed to maintain housing in the community. Others find that, as a result of an injury or other change, their current community residence no longer accommodates their needs.

The goal of the TBI/NHTD Housing Program is to address housing-related barriers to community-based long-term care until alternative funding sources become available, such as through Housing and Urban Development (HUD) Housing Choice Vouchers, other housing finance programs, or the participant's personal resources. To facilitate the transfer of individuals to other housing funding sources, the TBI/NHTD Housing Program is consistent with federal HUD standards to the extent possible. This includes guidelines for fair market value (FMV) rental costs, financial disclosure, household use and composition, tenant responsibilities, and the demonstrated individual needs of waiver participants.

The TBI/NHTD Housing Program Guidelines outline these and other Program policies and are intended for use by and as an aid to Regional Resource Development Centers (RRDCs), Service Coordinators (SCs), waiver participants, and others who assist waiver participants to secure housing or housing support through the Program and other means.

In order to provide necessary supports under the Program, the New York State Department of Health (NYSDOH) requires Program recipients, participating landlords, realtors and housing management corporations, SCs, and any other service providers to comply with the guidance set forth in this document.

Principles of the TBI/NHTD Housing Program

- TBI/NHTD waiver participants should be afforded the opportunity to live in appropriate, community-integrated, safe, and accessible housing.
- TBI/NHTD waiver participants should be offered a variety of housing options.
- The TBI/NHTD Housing Program is a program of last resort and offered only after all other personal, federal, State, and local resources are exhausted. Prior to application to the TBI/NHTD Housing Program, every effort should be made to assist an individual to find and obtain or apply for alternative housing or housing support to meet the individual's housing needs.
- The TBI/NHTD Housing Program is not a Medicaid or state-only medical assistance

service, nor is it an entitlement program.

- Not all TBI/NHTD waiver participants require or are qualified to receive a housing subsidy or housing support assistance through the Program.
- The TBI/NHTD Housing Program does not enter into mortgage agreements with banks or financial organizations and does not support “rent to own” agreements or any other household expenses associated with home ownership (association fees, co-op expenses, water bills, taxes).
- Each waiver participant receiving a subsidy through the Program must have his/her own bedroom with adequate living space. Living space must meet the qualifications in the housing quality standards checklist for the Program.
- Residences must be fully integrated into the broader community to the same degree of access as individuals not receiving waiver services. Specialized and congregate living arrangements will not be supported through the TBI/NHTD Housing Program. The setting will not be approved if it co-locates multiple individuals with the same diagnosis, service needs or disability. Residential settings of four or more unrelated individuals are excluded. NYSDOH may deny a request for housing support if it does not consider the residence to be fully integrated into the community at large. Living arrangements must be considered independent home settings. Certified residences (group homes, supervised apartments) are not eligible for housing support.
- Residences owned by the waiver participant, family members or the participant’s special needs trust will not be supported through the TBI/NHTD Housing Program.
- All activities related to the TBI/NHTD Housing Program will be administered uniformly, fairly, and in such a way as not to violate privacy rights or discriminate on the basis of race, color, nationality, religion, familial status, disability, gender, sexual orientation, or other legally protected status.

Funding for the TBI/NHTD Housing Program

The TBI/NHTD Housing Program is a limited funding resource. Availability of initial and continued funding of housing supports is contingent upon annual appropriations provided through the New York State Legislature. As such, all subsidies will be reviewed/re-submitted and approved on an annual basis, consistent with the State budget cycle.

Participation in the TBI/NHTD Housing Program

Eligibility and Continued Participation

Under the Program, rental subsidies, one-time payments, and assistance with utility costs are available to qualified waiver participants who are actively receiving waiver services, to help them maintain accessible, affordable housing in the community where waiver services are to be provided. All housing support must be within fair market rates. The TBI/NHTD Housing Program funds are a resource of last resort and will only be considered after all other available resources are exhausted.

The Regional Resource Development Center (RRDC) is responsible for reviewing waiver participants' applications for the Program, and verifying participants' waiver eligibility, and housing and financial needs. NYSDOH reviews all housing subsidy requests referred by the RRDC and makes the final decision on awarding assistance under the Program.

To qualify, individuals must:

- Be eligible for Medicaid with coverage for home and community-based services (HCBS) (individuals with excess income must arrange to meet their obligation on a monthly basis through a spend-down in order to maintain full Medicaid eligibility); be a participant in the TBI/NHTD Medicaid Waiver; have an approved service plan and be actively receiving waiver services; be financially unable to obtain and maintain housing at fair market value in the community without supplemental rental subsidies according to a determination of financial need. Individual budgets are reviewed to assess income, supplemental resources, and expenses in order to determine if the individual can independently sustain the full cost of the rent. The individual must have sufficient income and resources to maintain the individual's share of the rent and other costs associated with community life.
- Not reside in settings of four or more unrelated individuals.
- Not reside in a congregate care or assisted living setting.
- Not have current or future ownership or investment rights in the residence.

Additionally, TBI/NHTD waiver participants requesting housing support must agree to:

- disclose all available financial resources including, but not limited to: Social Security Disability Insurance/Supplemental Security Income (SSDI/SSI) including copies of bank statements, New York State Supplemental Program (SSP), Special Needs Trusts (SNT), Workers Compensation, and insurance settlements. If a participant's SNT includes provisions for housing support, this resource must be requested prior to approval of a housing subsidy;
- make application to, and keep current (via waiting lists), all available public and NYSDOH community and health care housing options, including HUD Housing Choice Vouchers and other rental subsidy programs;
- contribute one-third (1/3) of the individual's monthly income (after spend-down) towards fair market rent;
- adhere to the terms of the individual's lease, comply with the standards of the TBI/NHTD Housing Program and TBI/NHTD Waiver Program Manuals, fulfill the service requirements established in their service plan, actively participate in waiver services; and

- adhere to all rules regarding non-permitted actions under federal housing policy (including, but not limited to, possession, manufacture or sale of methamphetamine and related chemical entities).

The TBI/NHTD Housing Program is a resource of last resort to be used only for those services identified in these program guidelines and approved by NYSDOH. Once approved, TBI/NHTD housing support will remain available to the waiver participant as long as:

- there is sufficient funding to support the program throughout the fiscal year;
- the waiver participant continues to be eligible for waiver services, has an approved service plan, and is actively receiving services;
- the waiver participant continues to demonstrate financial need;
- the waiver participant complies with the requirements of the TBI/NHTD Housing Program as outlined in this Program Manual;
- the waiver participant maintains an active application for the HUD Housing Choice Program and/or other available subsidies; and
- funding for the program continues to be appropriated through the New York State Enacted Budget.

The TBI/NHTD Housing Program is provided to assist individuals in meeting the costs of reasonably priced, accessible housing. It is not a grant to offset more expensive rental costs, expenses associated with home ownership, or mortgage obligations. The cost of the rental unit must be within the HUD established Fair Market Rent (FMR) guidelines. The participant may not increase their share of the rent to offset the cost of a unit that is above FMR. A participant may not leave the Section 8 HUD program or other on-going housing subsidy program in order to apply for TBI/NHTD subsidized housing. A lease cannot be amended to improperly reflect FMR rental amounts that allows the participant to supplement the expense with other funds off the record.

A waiver participant may not receive a TBI/NHTD housing subsidy while receiving the benefit of any other housing subsidy for the same or different unit. This may include, but is not limited to:

- public/federal Bureau of Indian Affairs housing assistance;
- tenant-based assistance under the HOME Program; and
- housing assistance provided through NYSDOH managed care systems, OMH, OASAS, or any other federal, State, or local housing subsidy.

All waiver participants should be encouraged, if appropriate, to apply for the Supplemental Nutrition Assistance Program (SNAP) and Home Energy Assistance Program (HEAP) to supplement their household budget. This assistance is not considered as income when determining financial eligibility for a TBI/NHTD housing subsidy. A request for a utility subsidy will not be approved unless an application to HEAP has been made.

The TBI/NHTD Housing Subsidy may not be used to pay rent to a Special Needs Trust (SNT) that serves as the landlord and/or owner of the property in which the participant resides. Families/providers may not develop housing on behalf of a participant that it will later seek housing support as the landlord.

Prior approval by NYSDOH for all housing support is required. Household members not receiving TBI/NHTD waiver services will not be eligible for assistance.

Participants are referred to the TBI/NHTD Housing Program by the individual's Service Coordinator for approval by the Regional Resource Development Center (RRDC) and NYSDOH TBI/NHTD waiver staff.

The payment standard will be based on the allowed number of bedrooms provided for by the TBI/NHTD Housing Program. The TBI/NHTD Housing Program will not support or be responsible for the additional costs such as: the cost of extra bedrooms, maintenance costs, membership fees, HOA/co-op costs, parking, garage, storage, insurance, snow removal, wood purchases, lot rentals, taxes, water and sewer incurred by a waiver participant. The TBI/NHTD Housing Program will not provide any financial support for expenses incurred due to home ownership, ownership interest or associated with home ownership. The TBI/NHTD Housing payment standard will not be adjusted to support living arrangements that are not at FMR and/or the approved size of the unit without additional justification and prior approval by NYSDOH.

Grounds for Denial of a Housing Support Request

NYSDOH may deny housing assistance to applicants and participants who:

- do not meet eligibility criteria for the TBI/NHTD Housing Program;
- do not provide required information or documentation upon request and in a timely manner;
- fail to complete any aspect of the leasing process;
- have a history of non-compliance with the TBI/NHTD Housing Program, poor rental history or history of poor tenancy;
- request a subsidy for a lease that exceeds the allotted number of bedrooms or rent above FMR;
- arranges for payment out of pocket for an excess rent above the payment standard or to adjust the lease to appear the rent is within FMV standards;
- have a history of security deposit(s) being withheld or not returned due to the condition of the apartment;
- have a history of not maintaining a safe, clean living arrangement;
- have a history of criminal activity or unsafe/dangerous behaviors that would adversely affect the health, safety or well-being of other waiver participants, staff, neighbors, and/or landlords, or cause damage to the property, including but not limited to manufacturing or producing any illegal substance including but not limited to methamphetamine;
- have a family member that resides or co-habits with the applicant or participant and who has a lifetime registration under the State sex offender program or has been convicted of a violent sex crime;
- currently owe rent or other obligations to landlords, management companies, or public housing entities;
- have committed fraud, bribery or any other corruption, including intentional withholding or misrepresentation of information related to the individual's application or benefits derived from the individual's participation in any housing assistance program;
- have a roommate, family member, or co-habitant who is illegally using a controlled substance or abuses alcohol in a way that may interfere with the health, safety or right of peaceful enjoyment of the premises by other residents;
- have engaged in threatening, abusive, or violent behavior to any waiver support staff, landlord or neighbor;

- demonstrate any socially inappropriate behavior that threatens waiver support staff and neighbors;
- have a roommate or co-habitant who has been convicted of manufacturing or producing any illegal substance including but not limited to methamphetamine;
- have a landlord who refuses to provide necessary documentation and/or supply accurate and complete tax information;
- have a landlord with a history of providing sub-standard housing or presents discriminatory housing practices; or
- have a history of excessive apartment moves without sufficient justification for the need for the move.

NYSDOH may choose to waive these exceptions if the participant:

- demonstrates to RRDC satisfaction that he/she is no longer engaging in drug-related criminal activity or abuse of alcohol;
- has been successfully rehabilitated as indicated by appropriate clinical recommendation; and
- participates in rehabilitative services and no longer presents a threat to him/herself or others.

Any waiver of these requirements must be requested and approved by NYSDOH prior to approving the housing subsidy.

NYSDOH may also deny housing assistance if:

- the residence is not fully integrated into the broader community to the same degree of access as individuals not receiving waiver services;
- the residence is not an independent home setting or does not meet federal home and community-based settings standards;
- the residence is a specialized or a congregate living arrangement;
- the residence is a certified residence such as a group home or supervised apartment;
- the residence is on the grounds of, or immediately adjacent to, a public or private institution;
- the residence co-locates multiple individuals with the same diagnosis, service needs, or disability;
- there are four (4) or more unrelated individuals, residing or intending to reside at the residence;
- the applicant or participant does not have his or her own bedroom; or
- the residence does not have a kitchen and living space that is separate from sleeping quarters (except for one-bed studio apartments).

Any waiver of these requirements must be requested and approved by NYSDOH prior to approving the housing subsidy.

A waiver participant may need either a reasonable accommodation or a reasonable modification or both, in order to have an equal opportunity to use and enjoy a dwelling, including public and common use space. The TBI/NHTD Housing Program will not be responsible for physical adjustments outside of the individual residence. A reasonable accommodation is a change, exception or adjustment to a rule, policy, practice or service. A reasonable modification is a structural change made to the premises. Generally, the housing provider is responsible for

costs associated with reasonable accommodation and the waiver participant is responsible for costs associated with a reasonable modification. (Note: Environmental modifications are a waiver service.)

Working with TBI/NHTD Waiver Participants to Identify Housing Needs

The Service Coordinator is responsible to clearly present and specify to the participant that the TBI/NHTD Housing Program is only available to those who are active participants receiving TBI/NHTD Medicaid Waiver services and who demonstrate an identifiable financial need. Financial need is demonstrated on the Housing Budget Sheet. The waiver participant's expenses, including 1/3 of income applied to rent, must be equal to or exceed the total income after all available resources are exhausted. It must also be made clear that the TBI/NHTD housing subsidy is not payment in full or a guarantor of rent and is the payer of last resort. Consideration must be given to the long-term outcome of the waiver participant, should the resources of the TBI/NHTD Housing Program no longer be available.

The Service Coordinator's role is to assist the waiver participant in locating affordable housing considered typical for the community in which the individual resides. Locations that are not fully integrated with the community will not be considered for rental support.

The Service Coordinator is responsible to ensure that emergency plans are in place, and that the plans have been reviewed with the participant. Emergency plans should be prominently posted within the unit. Additional copies should be readily available for friends or family members. The plan should address, at a minimum, the following:

- what to do in case the tenant becomes locked out;
- evacuation procedures in case of an emergency;
- location of closest hospital emergency room;
- list of emergency phone numbers in an accessible place; and
- emergency transportation arrangements.

Initial Application

Prior to locating a housing unit, the participant/applicant will seek prior approval from NYSDOH to begin the housing search (*See Attachment #2: Prior Approval Request*). When a waiver participant makes an initial housing subsidy request, he/she is required to provide complete and accurate information regarding the household composition and his/her personal assets and income (*see Attachment #3: Payment Request Form*). Failure to present complete, correct, current, timely and true information may result in the denial of the application.

The TBI/NHTD Housing Program will not support requests for assistance for new living arrangements that are established without the expressed prior approval of NYSDOH. If a Service Coordination agency enters into a lease on behalf of a waiver applicant/participant without prior approval, the TBI/NHTD Housing Program will not reimburse the provider/participant for incurred expenses.

The RRDC is responsible for ensuring that each housing support request represents an individual designated as a current TBI/NHTD waiver participant actively receiving services and in need of housing based on financial need or an applicant who will soon be determined eligible for waiver services. Additionally, NYSDOH must have sufficient funding to support the projected

subsidy and housing support costs for that individual. Consideration must be provided as to the outcome of the individual should the TBI/NHTD Housing Program no longer be available or the participant loses housing support from the TBI/NHTD Housing Program.

Prior to submission to the Payment Agent, the Participant, Service Coordinator and RRDC staff will review each application to ensure accuracy and completeness. Any incorrect payments made based on inaccurate application information may result in recoupment from the Participant, Service Coordination Agency and/or RRDC and/or denial of the subsidy. The Service Coordinator is responsible to notify the RRDC and the Payment Agent of any changes in the status of the participant as related to their housing support in a timely manner. Any payments made as a result of insufficient/improper action by the participant, Service Coordinator or RRDC may be charged back to the responsible party.

All payment requests are entered in the portal system by the Service Coordinator, authorized by the RRDC and approved by NYSDOH prior to payment.

A copy of all housing information, annual updates, and subsequent requests must be maintained by the Service Coordination Agency and the RRDC.

Role of Regional Resource Development Center (RRDC)

The Regional Resource Development Centers are located in nine designated regions throughout the State. (*See Attachment #1: Regional Resource Development Centers by Counties Served.*)

RRDC staff are responsible for the oversight of the TBI/NHTD Housing Programs in its assigned region(s) in conjunction with NYSDOH. The Regional Resource Development Specialist (RRDS) is responsible for maintaining up-to-date records of all active participants receiving subsidies, monitoring housing-related expenses, inspecting units, addressing participants' concerns/complaints, and insuring that funds are assigned appropriately.

In conjunction with NYSDOH, the RRDC approves waiver participants for the TBI/NHTD Housing Program and must assist Service Coordinators in assessing the housing needs of waiver participants. The RRDS also prioritizes the housing needs for the region, projects costs of rental subsidies, housing supports and utilities, and monitors the expenditures. NYSDOH may establish priorities for housing support based on available resources. As such, prior approval from NYSDOH is required prior to initiating the home search.

On a yearly basis, the RRDC will conduct home visits for a minimum of five percent (5%) of all housing subsidy recipients in the region. The home visit includes:

- verification of information provided by the Service Coordinator, participant and/or landlord;
- confirmation of the members of the household; and
- confirmation of the condition of the home and compliance with home quality standards.

During these visits, the RRDC staff may also review the participant's household budget with the participant. RRDC staff may request to review recent household bills with the participant as a means of verifying that the participant is successfully meeting their financial obligations on a monthly basis. The RRDC is responsible to select the participants' apartments and to provide sufficient notice to the participant and/or landlord/owner. The visits will be completed in

conjunction with the audit year (April to April).

An annual review of the Housing Quality Standards (HQS) Checklist (*see Attachment #4*) is also required to ensure that the residence continues to meet established standards.

The RRDC will investigate and respond to complaints by participants, landlords/owners and neighbors. All complaints and resolutions will be documented. The Payment Agent, Public Partnerships, LLC (PPL), also maintains a customer service line to address payment inquiries.

Additional responsibilities of the RRDC include:

- provide training and technical assistance to Service Coordinators in conjunction with the Payment Agent, for completing the-necessary paperwork and data input necessary to maintain the housing subsidy and insure compliance with the program guidelines;
- at the direction of NYSDOH, approve/deny subsidy requests in accordance with program guidelines;
- maintain records of TBI/NHTD Housing Program recipients and track program expenditures and individual payments;
- review the TBI/NHTD Housing Quality Standards Checklists (*see Attachment 4*) for each participant to verify that the subsidized housing meets the minimum standards established in accordance with these program guidelines;
- identify possible deficiencies in the quality of subsidized housing and take the necessary steps to remedy deficiencies;
- communicate with the Service Coordinators regarding any housing issues and provide assistance with remediation as needed;
- complete a regional audit on an annual basis of all subsidies and support provided;
- ensure that each application represents an individual designated as needing housing in the region;
- monitor and approve all entries into the housing web portal developed by the Payment Agent and entered by Service Coordinators;
- review and approve housing subsidy paperwork/data for the region and authorize payment in conjunction with NYSDOH;
- authorize all payment requests entered in the payment portal and address requests for payment information by the Payment Agent; and
- monitor on-going payments, confirm monthly enrollment in the Program.

Role of the Service Coordinator and Service Coordination Agency

In addition to assisting with the completion of TBI/NHTD Housing Program forms, the Service Coordinator, under the direction of the Service Coordination agency, helps the waiver participant to:

- identify the individual's specific housing needs and initiate the housing search process;
- evaluate the individual's finances and potential payment obligations for rent and utilities, including assisting with the development of a basic household budget to address on-going monthly income and monthly payment obligations for items such as rent and utilities;
- review other possible housing options and rental support programs within the community;
- arrange the final details associated with securing a rental unit, including lease review

and execution, credit and background checks, security deposits, coordination of necessary rent, utilities and household goods to occupy the community residence;

- monitor the participant's budget and payments on an on-going basis to ensure timely and correct payment of the participant's share of household expenses;
- maintain housing quality standards of the home and inspect for needed improvements;
- assist the participant in maintaining eligibility for the TBI/NHTD Housing Program;
- review and update documentation to support financial and programmatic need;
- facilitate the participant's move to the HUD Housing Choice Program and/or other available housing resources as it becomes available;
- provide oversight of participant payments and account balances on an on-going basis;
- ensure the TBI/NHTD Housing Program is the payer of last resort and that all payments made on behalf of the participant are accurate and appropriate; and
- inform the RRDC of any pertinent changes in the participant's status that may impact the amount and/or status of housing support.

The Service Coordinator is responsible to reinforce with the participant the importance of meeting household payment obligations. The Service Coordinator is responsible for the oversight in determining whether the participant is meeting those obligations on a monthly basis. The TBI/NHTD Housing Program is not responsible for payment of rental arrears that have occurred as a result of the participant's failure to: make timely payments, provide sufficient notification of payment changes, or to provide sufficient notification to the individual's landlord. Additionally, the TBI/NHTD Housing Program will not be responsible for costs incurred due to actions or inaction by the landlord or management company that directly impact payment systems or amounts. Service Coordinators are required to inform participants of the individual's payment responsibilities and to advise participants on how to apply to the Local Department of Social Services (LDSS) for emergency assistance as needed.

The Service Coordinator is also responsible for tracking changes in lease terms and conditions, rental amounts and utility costs. The Service Coordinator must review rent increases with the participant and inform the RRDC of any changes in a timely manner. All rent increases must be reviewed to ensure any increase is in accordance with TBI/NHTD Housing Program guidelines and local ordinances. The amount of the participant's housing support must be updated and adjusted accordingly. Since the participant's portion of the individual's rent is based on the individual's income and resources, payment responsibilities will change in response to the participant's financial circumstances, such as an increase in income or the addition of roommates or family members residing in the home.

A change in the amount of monthly rental and/or utility costs will require an adjustment to the amount of the housing subsidy monthly payment and may require an adjustment to the participant's payment share.

Additional tasks the Service Coordinator performs:

- assists the waiver participant with completion of applications for HUD Housing Choice Vouchers, HEAP or other housing assistance as required by the TBI/NHTD Housing Program; copies of these applications, as well as their status (denied, approved, pending), must be maintained in the participant's case record/file. Status of applications must be periodically (at least yearly) verified and updated;
- assist in locating desirable, affordable, accessible housing of an individual's choice that meets fair market rents for housing in the region;

- assist with landlord/owner interactions and negotiations, as necessary;
- coordinate with the waiver participant to ensure that the individual's portion of rent is paid to the landlord;
- assess and monitor the rental property initially and annually thereafter, using the TBI/NHTD Housing Quality Standards Checklist, and by visiting and inspecting the home and taking pictures;
- assist the participant in resolving housing issues;
- perform inspections of the property as needed;
- monitor monthly payments and expenses; and
- collect and submit all required documents necessary for the annual housing audit process.

The Service Coordinator is responsible for maintaining up-to-date housing records for each participant in receipt of housing support. This information includes, at a minimum, the following documents:

- housing contact information: landlord/owner name, address, phone number, email addresses, and relationship to the participant;
- copies of any Special Needs Trust (SNT) or supplemental income used to support the participant;
- leases which indicate the rental dates, monthly rent, amount of participant's rent obligation, and landlord/rental agent contact information;
- listing of all full time residents in the subsidized residence;
- emergency contact information related to housing;
- copies of any tenant agreements, restrictions or requirements not included in the lease;
- copies of the Certificate(s) of Occupancy and any fire inspections;
- copies of current and all previous leases signed by the participant;
- copies of utility bills;
- copies of any insurances and/or warranties related to the subsidized unit;
- copies of all TBI/NHTD Housing Program forms, budgets and requests for payment;
- all information related to one-time payments (security, moving costs);
- Housing Quality Standards Checklists;
- financial documentation to support eligibility for the TBI/NHTD Housing Program;
- Initial Waiver Participant Attestation and annual signed Waiver Participant Contract; and
- copies of applications for HUD Housing Choice Vouchers, HEAP or other public housing, as well as the status (denied, approved, pending), must be maintained in the participant's case record/file.

All subsidized housing must be assessed by the Service Coordinator using the TBI/NHTD Housing Quality Standards Checklist prior to the approval of the subsidy and before a waiver participant takes residence. The unit must also be inspected annually and when emergency repairs are required. Initial housing deficiencies must be remedied before the waiver participant takes occupancy or within established timelines after occupancy occurs and the Plan of Correction is noted on the Checklist. Participants are responsible to provide sufficient notification to the Service Coordinator and landlord of plans to move, terminate the lease or to withdraw from the Housing Program in order to insure all security deposits and rental payments are not jeopardized due to failure to meet the terms of the lease.

The Service Coordination agency, RRDC and Payment Agent are responsible for training the

Service Coordinator about the requirements and processes of the TBI/NHTD Housing Program. The RRDC, in conjunction with the Payment Agent, can provide technical assistance on the submission of all requested data into the Payment Agent portal.

Each participant's housing subsidy is reassessed by the RRDC in conjunction with the Service Coordinator on an annual basis and must support the goals and intent of the participant's service plan. Each subsidy must be reviewed and approved on an annual basis regardless of the terms of the lease.

If at any time a Service Coordinator notes a potentially serious housing deficiency or situations that do not meet the TBI/NHTD Housing Quality Standards, the Service Coordinator will contact the landlord/owner and notify the RRDC. The Service Coordinator may be required to assist the participant with relocation to other affordable and suitable housing or termination from the Housing Program (should they be responsible for the conditions).

All concerns about housing deficiencies are to be addressed in writing to the RRDC.

The Service Coordinator and/or Service Coordination agency may not enter into any arrangement/agreement on behalf of the participant and/or NYSDOH without prior approval from NYSDOH and/or the RRDC. The TBI/NHTD Housing Program will not be responsible for costs incurred by a provider agency and/or participant that did not receive prior approval from the RRDC/NYSDOH.

Role of TBI/NHTD Housing Payment Agent

The Payment Agent is responsible for processing statewide rental, utility and one-time payments to landlords, utility companies and other payees once a housing support request is approved by the RRDC and NYSDOH.

The Payment Agent communicates directly with the RRDC, Service Coordinators, and NYSDOH. The Payment Agent is not required to, but may respond directly to, landlords or waiver participants regarding payment issues.

The Payment Agent processes housing support requests as they are received from the RRDC. A payment will not be initiated without authorization by the RRDC. Any discrepancies or problems will be communicated directly to the RRDC responsible for resolving the issue.

Once an initial monthly rental or utility subsidy is approved by the RRDC and received by the Payment Agent, it will be automatically generated each month. All housing support payments terminate annually and must be requested and entered into the payment system and authorized by the RRDC in conjunction with the annual audit. The annual audit must be completed by April 1 of each year in order for payments to continue. A change request must be processed for an adjustment in amount, change of payee or termination of a subsidy. The change must be approved by the RRDC and NYSDOH and received by the Payment Agent.

The Payment Agent is responsible to track all expenditures, recoupments and reconciliations and provides a detailed tracking of all subsidy and housing support payments to NYSDOH on a monthly basis. **No vendor (landlord/management company/utility) will be issued a payment without a confirmed tax identification number.** The Payment Agent will issue annual 1099 reports to all vendors receiving payments over \$599 in a calendar year.

The Payment Agent is also responsible for notifying NYSDOH and the RRDC of any identified

overpayments of rent and utilities or potential recoupment of security deposits, such as returned deposits that are received on an on-going basis.

The Payment Agent will reconcile all payments received on behalf of the TBI/NHTD Housing Program.

The Payment Agent is responsible to train all “end users” of the web portal and data systems.

Lease and Tenancy

A lease is a contract between a landlord and a tenant which contains the terms and conditions of the rental. It cannot be changed while it is in effect unless both parties agree. A party must sign the lease in order to be bound by its terms. Any changes to a lease should be initiated by both parties. At a minimum, leases should identify the premise, specify the names and addresses of the parties, the amount and due dates of the rent, any additional fees associated with the unit (late fees, etc.), the duration of the rental, the conditions of occupancy, and the rights and obligations as agreed to by both parties.

The tenant/participant must have legal capacity to enter a lease under State and local law. “Legal capacity” means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the landlord/owner.

The tenant/participant and the landlord/owner must enter a written lease for the unit. The lease must be executed by the landlord/owner and the tenant and should not exceed one (1) year. Note: Since funding for the TBI/NHTD is allocated on an annual basis, housing support is approved on an annual basis and as resources are available. With the approval of NYSDOH, a participant may enter into a lease of more than one year, with the understanding that housing support is approved annually. The Housing Program will not subsidize a rental unit that is a sub-lease, nor are waiver participants allowed to sublet their own units.

If the landlord/owner uses a standard lease, the lease must be in a standard form consistent with documents used for all other tenants. Leases must use words with common and everyday meaning and must be clear and coherent.

If a lease states that the landlord/owner may recover attorney’s fees and costs incurred if a lawsuit arises, a tenant automatically has a reciprocal right to recover those fees as well.

The initial term of the lease must be for one year. During the initial term of the lease, the owner may not raise the rent.

During the term of the lease, the owner may terminate the tenancy per New York State and local law regarding lease terminations and eviction.

If the landlord/owner does not use a standard lease form, the landlord/owner may use another form of lease, such as an RRDC contract or model lease (*see Attachment #5*). The RRDC may review the lease to determine if the lease complies with program policies. The RRDC may decline to approve the subsidizing of the unit, if it is determined that the lease does not comply with TBI/NHTD Housing Program standards.

If the tenant/participant and the landlord/owner agree to any changes in the lease, such changes must be in writing, in accordance with the requirements of the TBI/NHTD Housing

Program, and the landlord/owner must immediately give the participant/Service Coordinator/RRDC a copy of such changes. A lease may only be terminated for justified cause (life/safety, poor conditions) and approved by the RRDC.

Housing assistance shall not be continued unless the new terms are approved by NYSDOH, the Participant/Service Coordinator/RRDC.

All lease information must be reviewed and approved on an annual basis by the Service Coordinator and RRDC. An annual audit of all housing files is completed consistent with the State fiscal year. Failure to provide a lease and supporting documents annually will result in the termination of a housing subsidy. The termination will be effective April 1 of the audit year.

The tenant/participant must notify the Service Coordinator/RRDC of any changes in the rent/security amount(s) or term of the lease at least thirty (30) days before any such changes go into effect.

The tenant/participant must notify the Service Coordinator/RRDC of any plans to vacate the unit. Sufficient notice must be provided to the landlord/management company to ensure security deposits are returned to the program.

It is illegal for any person to require a prospective tenant to pay a bonus, commonly called "key money," above the lawful rent and security deposit for preference in renting a vacant apartment. Key money is not to be confused with fees that may be legally charged by a licensed real estate broker.

Term of the Lease

The term of a lease must be for one (1) year. With the approval of NYSDOH, a participant may enter into a lease of more than one year, with the understanding that housing support is approved annually. During the term of the lease, the landlord/owner may not increase the rent. When seeking housing support from the TBI/NHTD Housing Program, the initial rent must be within the Fair Market Value (FMV).

Annual rent increases must be in compliance with local ordinances related to rental stabilization and/or the Rent Guidelines Board. For purposes of the TBI/NHTD Housing Program, the rent adjustment in any one year may not exceed five percent (5%) of the established rent amount without approval from NYSDOH. Landlords may seek rent increases for certain types of building-wide major capital improvements (MCI) that benefit all tenants, such as the replacement of a boiler or installation of new equipment. Rents may be increased for substantial increases in dwelling space, new equipment, improvements or furnishings.

All rental increases require prior approval from the RRDC for payment by the TBI/NHTD Housing Program; in certain situations, the RRDC *may* approve increases above five percent (5%) per year, with prior approval by NYSDOH and additional justification.

Landlord/Owner Termination of Tenancy

A tenant/participant with a lease is protected from eviction during the lease period so long as the participant does not violate any substantial provision of the lease or any local housing laws or codes. Landlords must give formal notice of their intention to obtain legal possession of the living arrangement.

During the term of the lease, the landlord/owner may terminate the tenancy per New York State and local law regarding lease terminations and eviction. If a participant seeks to continue receiving housing support from the TBI/NHTD Housing Program, they must inform the individual's Service Coordinator of their intent to renew the lease. Landlords may refuse to renew a lease with cause. Until the new signed lease is returned to the tenant, the lease is not effective and, therefore, the rent increase portion need not be paid. Participants must review and sign the lease in a timely manner or jeopardize the individual's continued participation in the TBI/NHTD Housing Program. Any costs incurred as a result of failure to timely execute the lease may become the responsibility of the participant. The TBI/NHTD Housing Program will not retroactively pay rent increases incurred as a result of the landlord's/owner's/participant's failure to provide sufficient notification of the change in rental amounts or failure to execute a lease renewal in a timely manner.

A tenant/participant can legally be evicted only after the landlord has brought a court proceeding and has obtained a judgment of possession. The landlord/owner must give a copy of any eviction notice to the tenant/participant. A participant should never ignore legal papers; an eviction notice can still be sent if a tenant did not appear in court to answer court papers (petition) sent by the landlord. The TBI/NHTD waiver participant is responsible to provide a copy to the individual's Service Coordinator. This information will be relayed to the RRDC upon receipt by the Service Coordinator. Failure to provide sufficient notification to the RRDC may result in the participant and/or Service Coordinator being charged for any payments made by the Program that cannot be otherwise recouped. The landlord/owner may only evict the tenant/participant from the unit by instituting a court action.

Participant Absence from the Dwelling

Any information or certification requested by the RRDC to verify that the participant is living in the unit must be provided to the RRDC by either the Service Coordinator and/or the participant.

If the participant plans on being absent from the dwelling for thirty (30) days or more, they must notify their Service Coordinator/and or RRDC. The Service Coordinator must promptly notify the RRDC of the participant's absence from the unit.

Absence means that the participant has not resided in the unit for thirty (30) or more days. The participant and/or Service Coordinator must request permission in writing from the RRDC to extend the individual's housing support for absences that will exceed thirty (30) days.

The RRDC will make a determination within five (5) business days of the request. An authorized absence may not exceed any timeline established in the lease or cannot exceed sixty (60) consecutive days. Any participant absent for more than thirty (30) days without authorization may be terminated from the TBI/NHTD Housing Program.

Authorized absences may include, but are not limited to:

- prolonged hospitalization;
- absences beyond the control of the participant (e.g., death in the family, other family member illness); or
- other absences deemed necessary by the Service Coordinator and/or RRDC.

Participants may be readmitted to the TBI/NHTD Housing Program if the individual's assistance

has been terminated due to authorized absences.

Sub-Leasing of Subsidized Housing is Prohibited

Subletting and assignment are methods of transferring the tenant's legal interest in an apartment to another person. To sublet means that the tenant is temporarily leaving the apartment and therefore is transferring the use of the apartment to another person. To assign a unit means that the tenant is transferring the entire interest in the apartment lease to someone else and is permanently vacating the premises. Sub-leasing or assigning of a residence subsidized by the TBI/NHTD Housing Program is prohibited. The subsidized unit is to be used solely as the primary residence for the TBI/NHTD waiver participant and the lease cannot be transferred. The TBI/NHTD Housing Program does not support sub-lease arrangements. The TBI/NHTD Housing Program does not support a unit that a waiver participant sub-lets from another person; nor does it allow the participant to sublet the individual's subsidized unit to another person.

Housing Types That May be Supported by a Housing Subsidy

The TBI/NHTD Housing Program will only approve the following housing rental types:

- single family dwellings;
- duplex or two-family dwellings;
- apartments, landlord-owned condominiums or cooperatives;
- manufactured/mobile housing;
- manufactured/mobile home space rentals; or
- shared housing (no more than three (3) unrelated individuals residing together).

The TBI/NHTD Housing Program will not support any costs associated with home ownership (association fees, cooperative fees, management costs, etc.).

Housing Types That Will Not be Supported by a Housing Subsidy

- nursing homes, board and care homes or facilities providing continual medical, nursing or mental health services;
- college or other school dormitories;
- a unit occupied by its owner;
- a unit receiving any duplicative federal, State or local housing subsidy; or
- units on the grounds of a public or private institution.

Housing Subsidy Calculations

Waiver participants living alone generally live in one (1) bedroom apartments or studio, and are required to contribute one-third (1/3) of the individual's income (after Medicaid (MA) spend-down) towards rent. The TBI/NHTD Housing Program pays the remainder of the fair market rent directly to the landlord or designated payee. In order to receive a TBI/NHTD housing subsidy, financial need must be established by the participant, justified by the Service Coordinator and submitted to the RRDC. When an individual lives with other co-payers, the cost of the individual's rent may be reduced to a level that does not require a rental subsidy (rental share is less than 1/3 of the participant's income). *Example: Waiver participant resides in a one bedroom apartment. FMR is \$962. The participant receives \$858 per month in SSI.*

$1/3 \text{ of } \$858 = \$286. \quad \$962 \text{ (rent)} - \$286 \text{ (participant share)} = \$676 \text{ in housing subsidy.}$

Waiver participants living with a spouse/life partner in their own home are not eligible for a TBI/NHTD rental subsidy. The TBI/NHTD Housing Program is not intended to be used to purchase or maintain homes for individuals and their families and, as such, does not pay mortgages, home owner expenses or otherwise pay participants' spouses/life partners for dwelling in what is essentially their own home. However, to the extent possible, the Service Coordinator/RRDC will try to find resources to assist homeowners. They may also refer individuals to other housing resources in their communities, such as public housing authorities or federal Housing and Urban Development (HUD) lenders that may be able to provide additional assistance.

Waiver participants living with family members in a rental unit will have their housing costs considered within the following context. If the TBI/NHTD waiver participant and the individual's family mutually agree to maintain a rental unit together, a housing subsidy may be allowable if the following requirements are met:

- The housing must be within the parameters of fair market rent for affordable accessible housing as established by the federal HUD Housing Choice Vouchers program for the area.
- The living areas and number of bedrooms should be adequate for the comfort, privacy and safety needs of the participant and family members; living areas and kitchens may not be shared with other residents (outside of the family) of the building.
- All adult family members (over the age of eighteen (18) unless a full-time student under the age of twenty-five (25)) are required to pay their fair share of the rent regardless of the funding source of their income. Students will be asked to demonstrate proof of their student status. At the time the family member is no longer a student and/or over the age of eighteen (18), they must become contributing members of the residence. They must contribute or be assigned an equal share of the rental amount.
- Children must reside in the home at least 50% of the week to qualify as a full-time resident in the home. Temporary stays of weekends, school vacations, etc., are not sufficient to justify an additional bedroom supported by the TBI/NHTD Housing Program. Additional bedrooms will not be subsidized unless the child resides in the home on a full-time basis.
- Income received for children in the family, such as Social Security Assistance (SSA) benefits, that includes support for housing, will be considered as part of the total family income.
- Family member is defined as a: husband, wife, life partner, son, daughter, stepchildren, and grandparents residing in the home on a full-time basis. As a family member these individuals must contribute an equal share of the rent unless identified as a child who is a student.

Example: Participant resides with his wife and two minor children in a three bedroom apartment. The FMR rent is \$1,537. The participant's monthly SSI is \$858. The rent of \$1,537 is divided by 2 = \$768.50. 1/3 of the participant's income is \$286. $\$768.50 - \$286 =$ housing subsidy of \$482. If the number of adult residents in the home increases, the total rent is divided by the number of residents first before calculating the participant's share.

Waiver participants choosing to live in a bedroom with the individual's immediate family in a family owned home (non-spousal) will only be considered when no other

arrangement is available, and the family is providing sufficient care and supervision of the participant. In this circumstance the participant must have their own bedroom and share common space with the family. In this circumstance, in order to receive a subsidy, the waiver participant is required to pay a monthly amount (rent) documented in a lease agreement or Memorandum of Understanding. The participant must have full access to the home, the ability to come and go as desired, guests can access the home as directed by the participant. The home must meet all other household requirements such as Housing Quality Standards and Certificate of Occupancy.

Example: Subsidy is calculated based on ½ of the FMR for a one bedroom apartment. FMR is \$962. The rent calculation is ½ of \$962 = \$481. The participant's monthly SSI is \$858. 1/3 of \$858 = \$286. \$481-\$286 = housing subsidy of \$195.

When the waiver participant is living with another unrelated tenant/roommate who is not a waiver participant, the total monthly subsidized payment will be calculated after dividing the total rent amount by the number of adult residents in the home and then applying the participant's share of one third (1/3) of the individual's total monthly income to the fair market rent for the apartment. Additional roommates are calculated proportionally the same way.

Example: The FMR for a three bedroom apartment is \$1537. Three roommates equal 1/3 of the total rent each (\$511). The waiver participant will pay 1/3 of the individual's total income (SSI of \$858 = \$286) toward the individual's share of the rent and the TBI/NHTD Housing Program will subsidize the remaining portion of the waiver participant's 1/3 of the rent (\$511-\$286 = \$225 rental subsidy).

When the participant is living with another unrelated tenant (not a waiver participant) who also has a spouse or child (not waiver participants), the total monthly subsidized payment will be one third (1/3) of fair market rent for an apartment with the appropriate number of bedrooms. The participant is required to contribute one third (1/3) of the individual's total monthly income toward this payment. A spouse and/or adult child (eighteen (18) years of age or older and not a full-time student) must also contribute to the monthly payment using the same guidelines as above. For example: if there are three unrelated (to the participant) adults sharing an apartment who are not waiver participants, the participant is required to pay 1/3 of his total monthly income toward 1/3 of the fair market rent for the apartment. The Housing Program would pay the remaining amount if not paid completely by the participant's share.

Example: The participant resides with a roommate who is married and has a child in a three bedroom apartment. The FMR is \$1537. 2/3 of the rent is paid by the roommate(s). The participant is responsible for \$512.33. 1/3 of his SSI income is \$286. The housing subsidy will be \$226.33.

A participant/tenant must notify the landlord and the Service Coordinator/RRDC of the name(s) of any occupant of the apartment or changes in tenancy within thirty (30) days of the change.

If the participant is to reside in a separate living arrangement/apartment included within or on the grounds of a family residence, the unit must have a Certificate of Occupancy (C of O) indicating zoning approval and must have passed all required inspections. The apartment is required to have a separate entry and egress, not share space with the family and must afford the participant the privacy of an independent apartment. The apartment must meet Housing Quality Standards. The subsidy calculation, in such cases, will be based on the fair market rent for a one-bedroom apartment in the geographic area. 1099 tax notices will be issued to all

landlords regardless of the relationship with the subsidy recipient.

Subsidy Calculation Method

Allowable housing subsidies are based on the participant's total annual income after MA spend-down, which includes all financial resources available to the participant for support in the community before any taxes, deductions or exclusions. Annual income also means amounts derived during a twelve (12) month period from assets to which any adult member of the household has access.

Annual income includes, but is not limited to:

- the full income amount after MA spend-down including salary, honoraria, overtime pay, commissions, fees, tips, bonuses, donations and compensation for personal services;
- interest, dividends and other net income of any kind from real or personal property;
- welfare assistance, Temporary Assistance for Needy Families (TANF), Public Assistance;
- Social Security benefits, retirement funds, pensions, annuities, insurance policies, disability or death benefits including, but not limited to, lump sum or prospective monthly amounts;
- payments in place of earnings such as unemployment and disability compensation, worker's compensation, and severance pay;
- Victims of Violent Crimes Compensation, court awards, alimony and child support; and
- routine income guaranteed through the provisions of a special needs trust (SNT) and regular contributions or gifts received from organizations or from persons not residing in the housing unit.

Participants must report *all income amounts and sources in writing* at the time they seek a housing subsidy and upon review of their service plan. The waiver participant certifies that all information provided to the Service Coordinator/RRDC is true and correct. Any change in income must be reported at the time it occurs. Any change in the status of the household, e.g., people residing in the home, must be reported at the time of the change. Home Energy Assistance Program (HEAP), Supplemental Nutrition Assistance Program (SNAP) benefits, and Foster Care Income is excluded from the calculation.

Any entitlements received for or by minor children residing with the participant will be included in the participant's income amount. A participant must have legal custody of a minor child for more than fifty percent (50%) of the time in order for the child to be considered in determining the necessary number of bedrooms for the family.

The TBI/NHTD Housing Program payment standard will not be adjusted to support living arrangements that are not a fair market rent and/or the approved size of the unit. Payment standards for each jurisdiction shall be identical to those established for the HUD Section 8 Fair Market Rent (FMR) in that area.

The TBI/NHTD Housing Program does not support own home financing or housing arrangements developed by the family or SNT specifically for the benefit of the waiver participant.

The TBI/NHTD Housing Program does not provide income deductions for: medical, disability, children, childcare, or utilities. Income is calculated after Medicaid (MA) spend-down.

A special needs trust (SNT) is created to ensure that beneficiaries (participant/applicant) can enjoy the use of assets which are intended to be held for their benefit. The purpose of the special needs trust is to enhance the quality of life for the person. The term "special needs" is used in this discussion to describe any trust that is established to fund the supplemental needs of an individual with disabilities (waiver participant/applicant) while maintaining that individual's eligibility for services. As the name implies, special needs trusts are designed to hold assets in trust and can be used to pay for the beneficiary's special or supplemental needs which the government does not provide. These trusts typically pay for things like education, recreation, counseling, and medical attention beyond the simple necessities of life. However, the trustee may use trust funds for food, clothing, and shelter if doing so is in the participant's best interest. SNTs frequently provide shelter in-kind by purchasing or renting housing on behalf of its beneficiary. However, most SNTs do not specifically address housing assistance programs. Since there are a number of different types of trusts, each trust must be reviewed individually to determine if funds are dedicated in the trust to support the participant's housing.

- The TBI/NHTD Housing Program will not subsidize a home owned by the participant's SNT or by a provider of waiver services.
- A copy of any SNT must be included in the application for a housing/utility/household goods subsidy.
- Prior to approval of a subsidy, the Trustee must be contacted by the RRDC/Service Coordinator and documented in the narrative.
- The denial by the SNT to provide housing support must be verified prior to approving a subsidy.

Should an SNT determine that it will not support or assist in providing a participant's housing, the RRDC will request that the trust confirm the decision in writing for inclusion in the documents requesting a housing subsidy.

Family Guests

Participants in the TBI/NHTD Housing Program are permitted to have a guest or guests in the household. If the guest resides in the unit for more than fifty percent (50%) of the time or routinely four (4) nights per week, the guest(s) will be considered an unauthorized household member. Arrangements must be made with the Service Coordinator/RRDC to amend the lease and housing subsidy to reflect adjusted equitable share or the "guest" must vacate the premises.

Should additional roommates move in, apartment space must be reassessed by the Service Coordinator and/or RRDC to address the participant's needs and share of the rent. Subsidy calculations will be reconfigured to reflect the waiver participant's fair share. Landlords must be notified of any new occupants to the residence and the lease must be amended to reflect the names of the additional tenants in the residence.

Certificate of Occupancy (C of O)

In order to better protect waiver participants and ensure that the subsidized property meets local building standards, NYSDOH requires all property receiving a TBI/NHTD Housing Program subsidy have documentation of a current Certificate of Occupancy (C of O).

An acceptable C of O identifies the address of the property, the number of residential units certified and the approved use for the building. The dates of issue and termination of certification are noted on the document. The certification *may* be approved for several years or *may* be re-issued when:

- an initial occupation of a new building occurs;
- an alteration to an existing building occurs;
- there is a change in use of the building;
- a building permit is issued; or
- a documented certificate of occupancy has expired.

Documentation of a C of O may be obtained from the landlord/owner, the local Building Department or from a Building Department website. It is the responsibility of the landlord/owner to produce the document. The Service Coordinator is responsible to maintain a copy and to send a copy to the RRDC.

The TBI/NHTD Housing Program will not subsidize any housing that does not have a current and appropriate C of O. In cases where documentation indicates the reason why a C of O could not be obtained, the landlord/owner must provide proof of fire inspection and/or approved occupancy by the local authority. Note that in cases where a family has established a separate living arrangement attached or included in their property that is subsidized by NYSDOH, documentation that it is a “legal apartment” must be provided to the RRDC prior to authorizing the subsidy.

Manufactured or Mobile Homes

A manufactured home park is land which is used to accommodate three or more manufactured homes occupied for year-round living. In rural areas, where there is limited rental stock, the TBI/NHTD Housing Program may consider supporting mobile/manufactured home lot rentals. Generally, a lot rental is well below the fair market rent for a one bedroom apartment in the same county. This request will be addressed on a case-by-case basis only. A subsidy will not be approved without the RRDC inspecting the premises prior to approving the request. The TBI/NHTD Housing Program does not support “rent to own” payments. The TBI/NHTD Housing Program will not support funding for other services associated with a lot rental such as costs related to water and/or sewer.

Tenants in a manufactured/mobile home park are entitled to a livable, sanitary and safe park, including all common areas, roads and lot. Lease provisions inconsistent with this right are illegal and unenforceable. Failure to provide water or other essential utility services, or to repair sewer problems are examples of a violation of the lease. Park owners may not willfully or intentionally fail to provide any service or facility once they have agreed to do so.

In order to receive TBI/NHTD Housing supports, tenants/participants are required to execute an annual lease with the park owner. All other requirements associated with the TBI/NHTD Housing Program apply.

Park owners are required to provide tenants ninety (90) days’ notice of any assessments or fee changes.

Manufactured home and mobile home parks are fairly regulated by local government for the benefit of both the home resident and other citizens of the municipality. Therefore, it is imperative that the tenant/participant receiving TBI/NHTD housing support for their lot rental has reviewed all local ordinances and rules and received all of the approvals necessary to maintain the home in the park.

Housing Quality Standards (HQS)

Tenants have the right to a livable, safe and sanitary apartment. This is a right that is implied in every written residential lease. Any lease provision that waives this right is contrary to public policy and is therefore void. Any uninhabitable condition caused by the tenant/participant or persons under their direction or control does not constitute a breach of the warranty of habitability.

Landlords/owners must keep apartments and the building's public areas in "good repair" and clean from vermin, garbage or other offensive material. Landlords/owners are required to maintain electrical, plumbing, sanitary, heating and ventilating systems in good and safe working order. All utilities must be in service for all initial inspections or inspections prior to the tenant move-in. If during the initial inspection a majority of items on the checklist are determined deficient, the inspection will terminate, and a re-inspection will not be scheduled for at least 30 days. If the unit does not pass the second inspection, the waiver participant will be advised to find another apartment.

Housing Quality Standards (HQS) are minimum standards for tenant-based programs and are required both at initial occupancy and during the term of the lease (annually and emergency). Owners and landlords are encouraged to provide housing above HQS standards. The HQS checklist used by the TBI/NHTD Housing-Program and completed by the Service Coordinator and/or RRDC is consistent with the checklist used by HUD. Living arrangements must pass the HQS inspection **before** the beginning date of the subsidized lease (*see Attachment #4*). The property landlord/owner and the waiver participant are each responsible for the unit meeting HQS requirements.

When utilities are included in the lease, heat must be at least supplied from October 1 through May 31 or as conditions warrant. Landlords must provide all tenants with both hot and cold water. Local codes may provide additional conditions. Before signing a lease requiring payment of individual heating and cooling bills, prospective tenants should receive from the landlord a summary of the past year's bill.

Utilities must be legally connected according to the local codes. Adequate water pressure must be provided to all faucets, sinks, tubs, showers, toilets, and other sources of end termination.

Tenants/participants may keep pets in their apartments unless specifically prohibited in their lease. Landlords/owners may be able to evict tenants who violate a lease provision prohibiting pets and the individual's housing subsidy may also be terminated for this lease violation. Pets cannot present a nuisance or interfere with other tenants and cannot damage the apartment. A service animal is defined by Title II and Title III of the Americans with Disabilities Act (ADA) and means any animal that is individually trained to work or perform tasks for the benefit of the individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. Guide and service/assistance animals are permitted regardless of the no-pet clause in the lease. Assistance animals are a means to provide a reasonable accommodation for an individual with a disability, but a person with a disability is not automatically entitled to have an

assistance animal. Reasonable accommodation requires that there is a relationship between the person's disability and his or her need for the animal. The landlord/owner is permitted to verify that the individual requesting the assistance animal is a person with a disability and that the animal is needed to assist with the disability.

Tenants/participants residing in a multiple unit building may install and maintain their own locks on their apartment entrance door in addition to the lock supplied by the landlord. Failure to provide the landlord with a duplicate key if requested, *may* be construed as a violation of the lease and could lead to eviction proceedings.

Requirements and Guidelines for Inspections

When a request for a rental subsidy is submitted to the RRDC, the unit being considered must be available for inspection. The housing subsidy cannot be approved without an approved Housing Quality Standards Inspection.

The Service Coordinator will inspect all units to ensure that they meet HQS guidelines. No unit will be subsidized unless HQS is met. Units will be inspected at least annually by the Service Coordinator, and at other times as needed, to determine that units meet health and safety standards.

The Service Coordinator and RRDC must be allowed to inspect the dwelling unit at reasonable times with reasonable notice. The participant and landlord/owner will be notified of the inspection appointment.

If the landlord/owner or participant misses the scheduled inspection and fails to reschedule the inspection, the Service Coordinator/RRDC will schedule one more inspection prior to notifying the participant that the subsidy cannot go forward.

All utilities should be in service prior to the Service Coordinator inspection. If the utilities are not in service at the time of inspection, either the Service Coordinator or RRDC staff will schedule a re-inspection, or the landlord/owner and tenant/participant will both certify that the utilities are operable and functioning and the participant has full access of the premises.

The following are the types of inspections the Service Coordinator will perform:

- **Initial:** an inspection that must take place to insure the unit passes HQS before the subsidy can begin;
- **Annual:** an inspection to determine that the unit continues to meet HQS; this inspection must be conducted at the time of the annual housing audit;
- **Complaint:** an inspection caused by receiving a complaint regarding the unit by anyone, including the tenant;
- **Special:** an inspection requested by a third party (i.e., RRDC request); and
- **Emergency:** an inspection that takes place in the event of a perceived emergency; these will take precedence over all other inspections.

Tenants/participants have the right to privacy within their rental units. A landlord may enter a tenant's/participant's apartment with reasonable prior notice and at a reasonable time, to provide necessary or agreed upon repairs or services; in accordance with the lease; or to show the apartment to prospective tenants or purchasers. In an emergency, a landlord/owner may enter the apartment without the tenant's/participant's consent. A landlord may not abuse this

limited right of entry or use it to harass a tenant/participant.

Tenants/participants with disabilities who need a reasonable accommodation should notify the landlord/owner. Structural modification of a premise cannot be made without landlord/owner consent and the landlord may condition permission for the modification on the tenant, such as requiring the tenant/participant restore the interior of the premises to the condition that existed before the modification. Additional funds may be provided as security for this restoration. This condition will require prior approval from the RRDC/NYSDOH.

Initial Housing Quality Standards Inspections (HQS)

The Service Coordinator will inspect the unit, determine whether the unit satisfies HQS and notify the participant and landlord/owner of the determination within five (5) business days of the inspection.

The initial inspection will be conducted to:

- determine if the unit and property meet HQS as defined in these Guidelines; and
- document the current condition of the unit to assist in future evaluations of whether the condition of the unit exceeds normal wear and tear.

The Service Coordinator will complete the Housing Quality Standards Checklist and review it with the participant. A copy of the signed document is then submitted to the RRDC prior to approval of the subsidy. The Service Coordinator may photograph the premises prior to subsidy approval and move-in. The photographs will be provided to the RRDC.

If the unit fails the initial HQS inspection, the participant and landlord/owner will be advised of the needed repairs. A Plan of Correction will be noted on the HQS Checklist. Once repairs are completed, the Service Coordinator/RRDC will be notified so that another inspection may be completed.

Annual HQS Inspections

The Service Coordinator will conduct HQS inspections at the time of the TBI/NHTD Housing Program annual audit (at the end of the NYS fiscal year). Special inspections may be scheduled between anniversary dates.

HQS deficiencies that cause a unit to fail inspection must be corrected by the landlord or the tenant, based on who was responsible for the deficiency. A Plan of Correction will be noted on the HQS Checklist. Failure to complete the necessary repairs in a timely manner may result in termination of the subsidy.

The landlord and/or participant must allow the Service Coordinator/RRDC to inspect the unit at reasonable times with reasonable notice.

When it has been determined that a dwelling unit fails to meet Housing Quality Standards because of action or inaction by the owner/landlord, and the owner/landlord has been given an opportunity to correct the problem(s) but fails to do so within the allotted time frame, the rent for the unit shall be abated. The owner/landlord will be advised that the affected tenant/waiver participant will not be responsible for payments while the unit is in abatement.

The Housing Quality Standards checklist must include documentation that the Certificate of Occupancy has been reviewed and indicate the number on the certificate. Photographs of the unit should be maintained in the participant's file.

Weekend inspections may be conducted under extenuating circumstances at the discretion of the Service Coordinator/RRDC. The Service Coordinator/RRDC will provide the participant with as much notice as possible when scheduling the inspection.

Verification of HQS Deficiencies

The Service Coordinator may elect to do a re-inspection to verify that all HQS deficiencies have been corrected. A re-inspection is not necessary if the Service Coordinator can obtain verification by other means (i.e., participant/landlord attestation).

Other than in the case of life threatening HQS deficiencies, a Service Coordinator may accept a landlord/owner's and/or participant's written certification that the deficiencies have been corrected.

There are certain HQS deficiencies that are the waiver participant's responsibility. They are classified as follows:

- Failure to maintain and clean the unit on a routine basis, so that the unit is free of debris and safe to occupy. The owner is not responsible for vermin infestation caused by the participant's living habits;
- Participant paid utilities not in service;
- Failure to maintain supplied appliances; and
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear. This includes act or lack of action that is the responsibility of the participant (i.e., break-ins, vandalism, theft, etc.). "Normal wear and tear" is defined as items that could be charged against the tenant's security deposit under State law and court practice.

The landlord/owner is responsible for all other HQS violations.

When the deficiencies are the responsibility of the participant, the landlord/owner or a representative of the landlord/owner must also certify that the deficiencies have been corrected. Failure of the participant to make the necessary repairs may result in eviction and/or termination from the TBI/NHTD Housing Program.

When the deficiencies are the responsibility of the landlord/owner, the participant must also verify that the deficiencies have been corrected.

Verification that repairs were completed may be made at the next on-site inspection. No rental increases or lease renewals will be approved while repairs are pending.

Emergency Repair Items

The following items are considered an emergency and must be corrected by the responsible party (landlord/owner or tenant) within twenty-four (24) hours of notice by the inspector:

- lack of security for the unit (e.g., door and window locks);
- waterlogged ceiling in imminent danger of falling;
- major plumbing leaks or flooding;
- natural gas leak or fumes;
- electrical problem which could result in shock or fire;
- no heat and the internal temperature jeopardizes the life and safety of the participant;
- inoperable smoke detector;
- utilities not in service;
- no running hot and/or cold potable water;
- broken glass where someone could be injured;
- obstacle(s) which prevents tenant's entrance or exit; and
- lack of functioning toilet and bathing facilities.

In cases where there is leaking gas, potential of fire, and/or other threat to public safety, and the responsible party cannot be notified, or it is impossible to make the repair, proper authorities will be notified by the Service Coordinator/Participant/RRDC.

In the case of vermin, bed bugs, and/or other infestations that are not due to participant action/inaction, landlords/owners must provide a plan and time frame for remediation, within twenty-four (24) hours of being notified of the problem. Housing Program funds may be used to house or relocate the participant on an emergency basis pending the resolution of the problem or to replace damaged items. In cases where the TBI/NHTD Housing Program is subsidizing the remediation of the infestation, bids must be secured prior to approving the subsidy request. The TBI/NHTD Housing Program will not provide funds to maintain a participant's items in storage unless in extreme circumstances and a specific justification is provided and approved by NYSDOH.

If the emergency repair item(s) are not corrected in the period required by the RRDC and the landlord/owner is responsible, the subsidy payment may be abated, or may be terminated on a permanent basis.

Re-inspections

The Service Coordinator/RRDC may schedule a re-inspection of the unit. A prior notification of the re-inspection will be provided to the landlord and the participant. The notice may contain a warning that payments will be abated (in the case of landlord/owner's responsibility), or a warning of intent to terminate the subsidy (in the case of participant's responsibility).

Rent Increases

Rent and rental increases may not be approved if the unit is in a failed condition and does not meet Housing Quality Standards. A landlord may not request a rent increase more than once in the lease year. The landlord must notify the participant of the increase at least 60 days before the current lease expires. A landlord/owner may not seek a rent increase during the initial lease period, which is one year. Requests for rent increases require prior approval of the RRDC and cannot be more than five percent (5%) of the prior year's rent unless under special circumstances approved by the RRDC prior to lease renewal. The RRDC will review the request and determine if it meets "reasonable rent" standards by comparing the rents for similar units in the same area. The RRDC will notify the waiver participant of its decision to approve or deny the increase request in writing. All rent increase criteria must be indicated in the lease.

Failure to notify the RRDC of the change in rental amount resulting in rental arrears, late fees and/or penalties may be assigned to the responsible party (participant, Service Coordination agency or RRDC). Penalties incurred due to the Service Coordinator/participant action/inaction may not be approved for payment by the RRDC.

Lease Renewals/Move Out/Vacate Inspections

A tenant/participant may only renew the lease with the consent of the landlord, Service Coordinator and the RRDC if they wish to continue to receive a subsidy. Although a lease may contain an automatic renewal clause, payment of the increase still requires the approval of the RRDC. The landlord must give timely, written notice to the tenant/participant of the right of renewal. If the tenant/participant chooses to terminate the lease, he/she must provide written notification to the landlord/Service Coordinator/RRDC sixty (60) days prior to the lease end date. Participants are advised to check the terms of their lease related to ending the agreement. If the owner/landlord chooses to end the lease, they must provide the participant written notice. Evictions require written notification and court proceedings. The landlord does not have to prove the participant has breached the lease to evict him/her after the term of the lease has expired.

The Service Coordinator must conduct a move-out inspection prior to the lease termination or eviction. If possible, both the tenant and landlord should be present for this inspection. The Service Coordinator will be responsible for notifying the RRDC of the status of the apartment, the return of the security deposit and any damages incurred by the participant. Every effort should be made by the participant to ensure full return of security deposit back to the program, if included in the original subsidy. The participant will be responsible for payment of damages and may be responsible for any lost security deposits to the program as a result of their action. The Service Coordinator will photograph the condition of the unit upon departure. If the TBI/NHTD Housing Program was responsible for the security deposit, all security payments must be returned to the Payment Agent, not to the participant.

The Service Coordinator/RRDC will notify the landlord/participant in writing of the date of the TBI/NHTD Housing Program termination and will copy the participant. The TBI/NHTD Housing Program will not be responsible for the cost of any damages other than the retention of the security deposit. Failure of the participant to pay for damages may result in denial of any future support.

Lead Based Paint, Asbestos, Mold and Radon

Housing built before 1978 may contain lead-based paint. Lead exposure is especially harmful to young children and pregnant women. Lead from paint chips and dust can pose health hazards if not taken care of properly. Before a tenant rents a unit that is pre-1978 housing, the landlord must disclose the presence of lead-based paint and lead-based paint hazards in the unit. Tenants must also receive a federally approved pamphlet on lead poisoning prevention.

Participants will **not** be allowed to move into a unit unless it passes the Housing Quality Standards (HQS) inspection. All deficiencies must be remedied prior to occupation of the unit. Landlords must protect against the possibility that a tenant will be poisoned by peeling of dangerous lead-based paint, asbestos and radon. Apartments with lead based paint, radon, mold and asbestos hazards must be remedied prior to occupancy.

Smoke and Carbon Monoxide Detectors

At least one battery operated or hard wired smoke detector must be present and working on each level of the living arrangement and within 10 feet of each room used for sleeping. The smoke detector must be audible in the bedroom space. Smoke detectors must be installed in all housing units for which a TBI/NHTD Housing Program subsidy is provided. A combination smoke/carbon monoxide detector is preferred but not required. Service Coordinators will periodically test smoke detectors during their home visits with participants. Inoperable smoke detectors are a serious health/safety threat and will be treated by the Service Coordinator/RRDC as an emergency repair item. If the smoke detector is not operating properly, the Service Coordinator/participant will contact the landlord/management company by phone and request the smoke detector be repaired within twenty-four (24) hours. The Service Coordinator will verify that the repairs have been made in the unit the day following notification of the complaint.

If the Service Coordinator/landlord/owner determines that the participant has disconnected the smoke detector (by removing batteries or other means), the participant will be required to repair the smoke detector within twenty-four (24) hours, and the Service Coordinator will re-inspect the unit the following day. The TBI/NHTD Housing Program will not support expenses related to this action.

Landlords have the right to charge a maximum of \$10.00 from tenants for newly installed battery-operated smoke detectors.

Existing one and two family, cooperative or condominium residences constructed prior to January 1, 2008 must have at least a battery-operated carbon monoxide detector on the lowest floor of the residence having a sleeping area, while homes built after this date are required to have the alarms hard-wired into the building.

Effective April 1, 2019, all businesses must sell smoke detectors that are either a ten (10) year sealed; non-removable battery or hardwired detector.

New York City requires the installation of carbon monoxide detecting devices within proximity of sleeping rooms in apartments and private homes. Landlords have the right to charge a maximum of \$25.00 from tenants for newly installed battery-operated carbon monoxide detectors. Check local ordinances to confirm requirements. Many management companies have an affidavit of installation available for review.

Moves with Continued Assistance

If a participant plans to move to another living arrangement and seeks to continue housing support, notification must be provided to the landlord, Service Coordinator and RRDC at least sixty (60) days prior to the move date. Any move to another living arrangement with continued housing support must be "cost neutral." The subsidy amount for the new arrangement cannot be more than the current subsidy amount. The participant cannot assume that the new living arrangement will be automatically approved by the RRDC. A new housing subsidy request must be submitted to the RRDC.

The TBI/NHTD Housing Program must be the payer of last resort for all costs associated with moving. NHTD waiver participants must seek Moving Assistance as a waiver service. Participants moving from nursing facilities must seek Community Transitional Services as a

waiver service.

A participant may move to a new unit if the subsidized lease for the old unit has terminated or the participant's individual needs warrant a new living situation. These conditions include:

- Landlord/owner of the property has not complied with the conditions of the TBI/NHTD Housing Program.
- The lease has been terminated by mutual agreement of the landlord/owner and the tenant/participant.
- The landlord/owner has given the tenant/participant a notice to vacate or has commenced an action to evict the tenant/participant or has obtained a court judgment or other process allowing the landlord/owner to evict the tenant/participant.
- The tenant/participant has provided the landlord/owner proper notification of the individual's plan to end the lease after its full term.

If the tenant/participant terminates the lease, the participant must give the Service Coordinator/RRDC a copy of the notice to the landlord/owner.

Participants wishing to move to another apartment and continue their participation in the TBI/NHTD Housing Program must:

- notify their Service Coordinator/RRDC of their desire to move at least sixty (60) days prior to their lease termination date and receive prior approval from the RRDC for costs associated with the move;
- follow standard lease termination procedures;
- work with the Service Coordinator to find a new living situation that is within Fair Market Value guidelines, or "cost neutral" to the TBI/NHTD Housing Program, i.e., the new arrangement cannot exceed the current costs;
- exhaust all informal and community resources prior to requesting assistance for moving expenses or emergency assistance; and
- ensure the new unit meets HQS standards.

Participants will **not** be permitted to move more than once in a twelve (12) month period unless the Service Coordinator/RRDC approves the move based on a documented reason over which the participant has no control (e.g., landlord/owner's failure to correct life/safety violations, fire and/or other emergency circumstances). If the participant moves from the unit before the initial term of the lease ends without the owner's and the RRDC's approval, it will be considered a serious lease violation and will be subject to termination from the program.

The TBI/NHTD Housing Program will not support multiple moves within a five (5) year period.

The TBI/NHTD Housing Program will not support costs to keep participants' furnishings in storage for any reason.

The RRDC may deny to subsidize a move if:

- The participant has violated the terms of their lease agreement and/or the provisions of the TBI/NHTD Housing Program;
- Return of the security deposit has been denied due to actions by the participant; and/or
- Excessive moving costs are incurred as a result of the move.

Participants are required to give proper written sixty (60) day advance notice of intent to terminate the lease to the landlord/owner. The participant is required to give the Service Coordinator/RRDC a copy of the notice to terminate the lease at the same time it gives the notice to the landlord/owner. The request to terminate must include a statement explaining the reason for the lease termination and must be signed by tenant/participant and landlord. If the participant moves from the unit before the initial term of the lease ends without prior approval from the landlord/owner and RRDC, it will be considered a serious lease violation and will be subject to termination from the TBI Housing Program. Any costs or overpayments incurred due to failure to properly notify the landlord, RRDC and Payment Agent may be charged back to the participant and/or Service Coordination agency.

Participants who move from one region to another will be considered eligible for housing supports in the new region, as long as the participant continues to meet the terms and conditions of the TBI/NHTD Housing Program. The participant will notify the Service Coordinator and RRDC of the individual's desire to move outside the current region prior to the move.

The "receiving RRDC" must be notified of the participant's intent to move. The participant must seek prior approval for housing support from the new RRDC prior to relocating to the new region. Any move to another living arrangement with continued housing support must be "cost neutral." The subsidy amount for the new arrangement cannot be more than the current subsidy amount. The participant cannot assume that the new living arrangement will be automatically approved by the new RRDC. A new housing subsidy request must be submitted to the RRDC. Any requests for assistance for moving costs is at the discretion of the RRDC and requires prior approval.

Co-signing for a Waiver Participant's Lease

The TBI/NHTD Housing Program encourages landlords to accept the waiver participant as the sole signatory on a lease. If a co-signature is required, a family member, power of attorney, and/or Trustee should be encouraged to assume this responsibility. When this is not possible, the Service Coordination agency may be asked by the landlord to function as the co-signer for the waiver participant. NYSDOH does not require or encourage any entity to co-sign a lease. Landlords/owners usually dispense with the co-signature at the time of lease renewal if the waiver participant has successfully met the terms of the lease. Any costs incurred as a co-signatory will not be assumed by the TBI/NHTD Housing Program. NYSDOH does not provide letters of guarantor indicating that the TBI/NHTD Housing Program is responsible for the rent of a unit.

Since many TBI/NHTD waiver participants do not have the extra funds to pay for housing applications and related costs, TBI/NHTD Housing Program funds may be utilized to pay for credit checks, background checks and reference confirmations. Payment must be made directly to the landlord/owner or management company incurring the costs.

Housing Supports

Housing Support Funds are a one (1) time allocation intended to assist the waiver participant with household items needed to establish a home in the community. TBI/NHTD Housing Program funds are only to be used as a last resort. TBI/NHTD Housing Program funds are also available for basic housing supports, e.g., those basic items needed by an individual to occupy a residence, including furniture, basic kitchen appliances, pots, linens and various basic

household items. Household goods may include pots and pans, cooking utensils, dishes, microwave, towels and sheets, lamps, and basic furniture such as bed, couch, chairs, dining table. Housing support funds are not to be provided for air conditioners or luxury items such as designer furniture or expensive appliances. Individuals transitioning from nursing homes must first exhaust resources available from the waiver such as Community Transitional Services (CTS). All requests for funding must be approved by the RRDC and NYSDOH prior to the purchase. Security payments made by the TBI/NHTD Housing Program must be returned to the Payment Agent upon termination of the lease.

Housing support funding is not available for construction or capital projects. Housing support funds may be utilized for “one (1) time” expenses such as broker’s fees, moving expenses or toward other exigent circumstances, such as emergency payments, extermination of pests, or to address other health related conditions that are not the responsibility of the landlord/owner. These expenses must be reviewed and approved by the RRDC prior to the expenditure, on a case-by-case basis when all other resources have been exhausted. Other resources such as supplemental needs trusts, family and community agencies should be explored before requesting Housing support funds. Checks will be provided directly to the provider or through the Service Coordination agency and will not be issued directly to the participant. Costs associated with the purchase must be fair and reasonable with the consideration that the TBI/NHTD Housing Program is a limited resource.

There may be some situations when the individual has been receiving TB/NHTDI waiver services for more than five (5) years and replacement of some items is necessary. Housing supports may also be provided in certain circumstances where the participant has experienced personal losses due to no fault of their own (e.g., fire). These requests must be reviewed by the RRDC and approved prior to the purchase and approved by NYSDOH on a case-by-case basis.

Waiver participants are eligible for a maximum of \$1,200 for housing supports if already living in the community, and \$1,600 if moving from a residential facility within a five (5) year period. Payment may be made directly to a vendor or to the Service Coordination agency purchasing the items on behalf of the waiver participant. Payments will not be made directly to the participant or a family member.

TBI/NHTD waiver participants transitioning from a nursing home to their own home in the community may be eligible for waiver Community Transitional Services (CTS) funding. CTS assistance must be accessed by eligible individuals prior to applying for a rental subsidy, housing supports and/or moving expenses. Costs may not exceed \$8,000 per waiver enrollment payable to the CTS provider on behalf of the waiver participant. Upon termination of the lease, all security payments made on behalf of the participant through CTS services will be returned to the CTS provider and a paid claim adjustment through eMedNY will be implemented.

Real Estate Brokers

A participant may retain a real estate broker to find a suitable living arrangement. New York State licenses real estate brokers and salespersons. Brokers charge a commission for their services which is usually a stated percentage of the first year’s rent. The amount of the commission is not set by law and should be negotiated between parties and approved by the RRDC prior to signing the written agreement. The request for funding to pay for the broker must be submitted to the RRDC and approved by the RRDC and NYSDOH prior to securing the service. The broker must assist the participant in finding and obtaining the apartment before a

commission may be charged. The fee should not be paid until the participant is offered a lease signed by the landlord. The broker and/or landlord may also charge a reasonable amount to conduct a credit check. A copy of the broker's license, the broker/salesperson's completed W-9 IRS form and the broker's agreement must be provided to the RRDC with the request for payment. A W-9 form is required for any payee receiving more than five hundred ninety-nine dollars (\$599) or more through the Payment Agent.

Apartment list services that charge a fee for providing information about the location and availability of apartments will not be paid through the TBI/NHTD Housing Program.

Lobby Attendant Service

Tenants of multiple dwellings with eight or more apartments are entitled to maintain a lobby attendant service for their safety and security at their own expense. The TBI/NHTD Housing Program will not support this expense.

Obtaining Funding for Household Goods

TBI/NHTD Housing Program funds will be paid directly to the landlord/owner; the utility company(ies) or vendor (household goods) by the Payment Agent. Vendors are required to provide the Payment Agent a W-9 IRS form prior to receiving payment. A W-9 form is required for any payee receiving more than five hundred ninety-nine dollars (\$599) or more in the calendar year through the Payment Agent.

The Service Coordinator will assist the waiver participant in obtaining the necessary household goods and submitting copies of all receipts payable to the agency for reimbursement with the payment request application. The Service Coordination agency and the Service Coordinators are responsible for ensuring that funds are used for items approved by the RRDC and NYSDOH. Household goods may be purchased from local stores and placed on layaway.

It is necessary to obtain approval for housing support funds prior to the purchase of the items. A list of all items and their cost must be submitted with the payment request to the RRDC for approval.

Checks for approved purchases will then be issued by the Payment Agent to the vendor or reimbursed to the Service Coordination agency making the purchase on behalf of its service recipient. Under no circumstances will a check be issued to the participant or the individual's family member(s). It is the responsibility of the Service Coordination agency to obtain receipts for ALL items purchased. Service Coordination agencies may be subject to audit.

No advance payments will be permitted. Any items returned or balance remaining after ninety (90) days must be returned to the Payment Agent.

The Service Coordination agency is responsible for accurately accounting for the use of the funds by way of receipts for each item purchased. Copies of the receipts should be maintained in the waiver participant's file along with the Household Goods Actual Expenditures form (see *Attachment #6*). NYSDOH or its representatives may request an audit of these funds at any time.

Utility Subsidies

The TBI/NHTD Housing Program currently subsidizes a number of participants' monthly utilities, when financial need is verified. This includes gas, electric, propane and/or oil when no other funding support is available.

Utility subsidies assist with payments of utility costs for heat and electricity, are contingent on individual financial need and funding availability. Due to the limited funds available for the program, waiver participants will be required to seek assistance through HEAP or secure apartments that include utilities. Additionally, the TBI/NHTD Housing Program does not provide support for internet and/or cable fees. Participants are required to establish a monthly budget payment plan if they are seeking a utility subsidy. Service Coordinators are responsible for confirming balances on the budget plans at least every six (6) months, whenever the participant's service plan is amended or when the participant moves to ensure that overpayments are not occurring. All utility vendors must submit a W-9 IRS form prior to payment. A W-9 form is required for any payee receiving more than five hundred ninety-nine dollars (\$599) through the Payment Agent.

Note: Upon issuance of these guidelines, the program will not subsidize water and/or sewer bills. Telephone bills will no longer be subsidized. All current subsidies of this nature will be "grandfathered in," but will not be transferred to new residences.

Utility Payment Policy

In cases where two waiver participants share living space, the budgeted amount will be divided in half, the TBI/NHTD Housing Program will continue to pay two-thirds (2/3) of that amount. A copy of the payment request must be maintained in the participants' records and uploaded annually to the web portal provided by the Payment Agent. The information must specify the name of the account holder, address and account number. Any existing utility subsidies must be recalculated when an application for the Home Energy Assistance Program (HEAP) is approved.

When the waiver participant shares living space with a non-waiver participant, the non-waiver individual is responsible for one-half of the total bill. The TBI/NHTD Housing Program will continue to pay two-thirds (2/3) of the waiver participant's half of the bill until such time as the participant moves or leaves the TBI/NHTD Housing Program. Should an account accrue a credit of five hundred dollars (\$500) or more, the utility subsidy will be suspended until such time that the credit is spent down to seventy-five dollars (\$75) or less.

Budgeting

It is the responsibility of the Service Coordinator to review the waiver participant's budget regularly and monitor payments to prevent overpayments or delinquent bills. This includes review of any checking or savings account balances to ensure that the Service Coordinator is monitoring the participant's income and expenditures and no misuse of funds has occurred. Service Coordinators must complete a review of account balances at least every six (6) months, or whenever the participant's service plan is updated, or the participant moves. This review should include any accounts that may have a credit balance that would impact the income stream or Medicaid eligibility of the participant.

Disapproval of Landlord/Owner

The RRDC may deny participation by a landlord/owner in the TBI/NHTD Housing Program for any of the following reasons:

- The landlord/owner has a history or practice of non-compliance with housing quality standards for units leased and has consistently failed to make needed repairs.
- The landlord/owner has a history or practice of renting units that fail State or local codes and do not have a Certificate of Occupancy.
- The landlord refuses to complete required IRS information necessary for 1099 reporting.
- The landlord refuses to provide the participant a lease.
- The landlord is seeking to establish a congregate living situation or segregated housing complex specific to individuals with disabilities.
- The landlord is a trustee of the waiver participant's SNT.

Should a landlord refuse or fail to submit a W-9 IRS form to the Payment Agent, the Payment Agent will not be able to process subsidy payments, and a participant may be required to seek a new housing situation. A W-9 form is required for any payee receiving more than five hundred ninety-nine dollars (\$599) through the Payment Agent.

The landlord/owner is responsible for screening and selection of the participant to occupy the living arrangement. The Service Coordinator/RRDC will not be liable or responsible to the landlord/owner or other persons for the participant's behavior or the individual's conduct as a tenant.

Housing support funds may be utilized to pay for credit and background checks necessary to effectuate the lease, if no other available funds exist.

The cost of meals or supportive services may not be included in rent paid to the landlord/owner. The living arrangement cannot provide services such as case management, which could be considered a duplication of waiver services.

The living arrangement should be considered an independent living arrangement without supervision, direction and restrictions for the participant.

The lease may not require the tenant or family members to pay for ancillary services or additional rent, and the landlord/owner may not charge the tenant extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

Obligations of the Participant (Tenant)

Each participant is requested, as part of the housing application, to sign a Waiver Participant Attestation delineating the individual's responsibilities to provide complete and accurate information. The Service Coordinator is responsible for reviewing the rights and responsibilities with the participant and answering questions prior to having the participant sign the Waiver Participant Contract. This document is completed when the subsidy is approved and is updated on an annual basis and whenever a participant moves. A copy of the Waiver Participant Contract will be included in the letter approving the initial subsidy and updated annually (see *Attachment #9*).

- The participant must supply any information that the landlord, Service Coordinator, RRDC or NYSDOH determines as necessary in the administration of the program within designated time frames. Any information supplied by the participant must be true and complete.
- The participant is responsible for any breach in housing quality standards that is the result of activities by the participant, household members or their guests, beyond normal wear and tear or acts of nature.
- The participant and landlord must allow the Service Coordinator/RRDC to inspect the unit at reasonable times and after reasonable notice.
- The participant and co-habitant(s) may not commit any serious or repeated violation of the lease including, but not limited to:
 - failure to make payment of rental share;
 - failure to maintain the unit in a safe and sanitary manner;
 - failure to maintain the right to peaceful enjoyment by neighbors.
- The participant must promptly give the Service Coordinator/RRDC a copy of any landlord/owner notices including but not limited to eviction, lease termination and or lease renewal.
- The participant must use the subsidized unit for the individual's sole continuous residence. The unit must be the participant's only residence.
- Any co-habitants and roommates residing in the subsidized living arrangement must be approved by the landlord/Service Coordinator/RRDC.
- The participant must promptly inform the Service Coordinator/RRDC of any changes to the household composition.
- The participant must request Service Coordinator/RRDC approval to add any other member as an occupant of the unit.
- The participant must not assign the lease, sublease or transfer the unit.

Information the Participant Must Submit Upon Change at Lease Renewal or Thirty (30) Days Prior to the Change, Whichever is Sooner

- Increase/decreases in income
- Change in household composition
- Change of mailing address
- Change in residence
- Change in assets
- Change in Medicaid eligibility or waiver eligibility status
- Deficiencies in housing quality standards
- Unsafe conditions in the home
- Criminal conviction

Complaints

The Regional Resource Development Center (RRDC) will investigate and respond to complaints made by waiver participants regarding housing support and/or the conditions of the property and landlord issues. Payment issues may also be directed to the Payment Agent customer service line at: 1-888-752-8268 or pplny-cs@pcgus.com. All complaints will be documented and the RRDC may request that complaints be presented in writing.

Annual Audit

Each year the NYSDOH completes an audit of the TBI/NHTD Housing Program. An annual reexamination of eligibility for housing support must be completed for each Housing Program participant. The purpose of this audit is to ensure the participant continues to need the program; that required documents are current; expenditures are within budgeted guidelines and payments are within subsidy guidelines. All housing subsidy requests and payments must be reviewed and approved by the Regional Resource Development Center (RRDC) at least annually.

An annual reexamination of eligibility for the TBI/NHTD Housing Program must be completed for each participant. The review must be completed in conjunction with the NYSDOH state fiscal year (April 1-March 31) on an annual basis. The audit may be completed more frequently at the request of NYSDOH. The participant will be informed of the audit no later than January 31. Failure to successfully provide the required information during the audit process will result in the termination of housing support effective April 1.

Information included in the annual review must include:

- eligibility for TBI/NHTD waiver services (including Medicaid eligibility);
- approved current Service Plan and active participation in services;
- updating the Participant Profile and landlord information;
- annual income and other household support (Income Attestation);
- review and/or recalculation of the participant's budget;
- copies of Special Needs Trust and status;
- review of any relevant housing costs which may impact the subsidy calculation;
- participant's compliance with the standards of the Housing Program;
- review and signature of Waiver Participant Contract;
- confirmation of TBI/NHTD Housing Program eligibility and subsidy amounts;
- landlord verification of tenancy, lease term and renewal dates, Certificate of Occupancy, and W-9;
- Electronic Fund Transfer form for landlords seeking direct deposit of subsidy funds;
- status of paid utilities and copy of most recent bill; and
- annual inspection of the home and completion of HQS.

The Service Coordinator and RRDC will conduct an annual audit of all participants receiving a TBI/NHTD Housing Subsidy. The RRDC may conduct a home visit to confirm the status of the rental property and meeting with the participant.

If the participant fails to respond to the request for information, supply the necessary documentation in a timely manner or comply with the guidelines of the TBI/NHTD Housing Program, a notice must be sent to the participant and Service Coordinator informing them that they have failed to submit the required information for review.

A termination notice from the Housing Program will be sent if the participant/Service Coordinator fails to respond to the second notice. The participant and landlord/owner will be advised that the subsidy will terminate in sixty (60) days.

The RRDC will also conduct an annual audit of its internal housing processes in order to insure required documents are current; verify income and assets; insure expenditures are within budget guidelines; and payments are within subsidy guidelines. All housing subsidy transactions must be reviewed by the RRDC on a monthly basis to confirm eligibility for the

subsidy, payments made, and outstanding recoupments and to identify inconsistent payment information.

In conjunction with the audit, all supporting documents and payment requests must be re-entered into the portal by the Service Coordinator. The RRDC reviews and approves all information annually. Failure to provide the information may result in the termination or abatement of housing support.

If it is determined that the housing support should be discontinued, the participant and/or landlord/owner will receive notification of the discontinuation and the effective date.

Failure of the Service Coordination agency and/or the RRDC to properly audit the subsidy that results in overpayments or late fees may be charged back to the agency. Failure of the participant to provide proper notification of changes may result in overpayments or late fees may be charged back to the participant or termination from the TBI/NHTD Housing Program.

Upon completion of the audit process, each year the participant will be provided a letter re-authorizing participation in the TBI/NHTD Housing Program. This letter will confirm the location of the subsidized unit and the amount of rental assistance provided by NYSDOH. Failure to successfully complete the audit within established timelines will result in the termination of housing support.

Rent Payments

Late Payments

A payment will be considered in arrears if the payment has not been received by the landlord/owner by the close of business on the day in which the payment due date is noted on the lease or utility bill. The TBI/NHTD Housing Program will only reimburse late fees as provided for in the participant's lease and only if the delay of payment was due to the fault of NYSDOH or its Payment Agent.

The TBI/NHTD Housing Program will not subsidize rent and/or utility arrears. Service Coordinators will advise participants of this policy and assist individuals to address arrears by applying to the Local Department of Social Services for emergency assistance. In order to ensure that the participant is maintaining the individual's share of rental payments, the Service Coordinator will review rental journals and bills on a periodic basis with the waiver participant. This activity may be done in conjunction with Independent Living Skills Training (ILST) services, if available. Any communication from the landlord to the participant must be reviewed regularly.

Should rent arrears occur, the Service Coordinator must assist the waiver participant in arranging for back payment. The Service Coordinator must also advise the participant that failure to pay the individual's portion of the rent/utility may result in the termination of the individual's housing subsidy in accordance with the signed Waiver Participant Contract. In order to monitor the status of rental payments, the Service Coordinator must inform the RRDC of any rent issues. All arrears payments require the prior approval of the RRDC. The TBI/NHTD Housing Program will not make payments on behalf of the waiver participant and allow the participant to "repay" the program over time. Nor will it be responsible for payments incurred as a result of the waiver participant's action or inaction.

If a non-waiver individual living with a waiver participant is in arrears on the individual's portion

of the rent/utility, the individual will be notified by the Service Coordinator that they must either meet the terms of the lease or vacate the apartment. The Service Coordinator will notify the participant and RRDC of this communication and notify the landlord/owner. Any late fees incurred will be the responsibility of the individual who failed to make timely payments.

Overpayments

The RRDC is responsible for determining if an overpayment has occurred and *if* it is collectable. If it is determined that a refund is collectable, the RRDC will send a letter to the payee and notify the Payment Agent via e-mail regarding the status of the overpayment and date of landlord notification.

The RRDC and Service Coordinators are responsible and accountable for prudent spending and monitoring of the TBI/NHTD Housing Program funds. All overpayments and security deposits to landlords/owners and utility companies should be recouped. The RRDC and Service Coordinator are jointly responsible for this activity. Failure of the Service Coordination agency and/or the RRDC to properly monitor the subsidy resulting in overpayments may be charged back to the agency. Failure of the participant to provide proper notification of changes that may result in overpayments or late fees may be charged back to the participant and/or lead to termination from the TBI/NHTD Housing Program.

Security Deposits and Recouping Overpayments

The landlord/owner may collect a security deposit from the tenant in accordance with NYS and local tenant law as well as standard private market practice. Virtually all leases require tenants to give the landlord a security deposit. The security deposit is usually at least one month's rent. If a lease is renewed at a greater amount or the rent is increased during the term of the lease, the landlord is permitted to collect additional money from the participant in order to bring the security deposit up to the new monthly rent. A landlord may use the security deposit as reimbursement for the reasonable cost of repairs beyond normal wear and tear, if the participant damages the apartment, or as reimbursement for any unpaid rent upon termination of the lease.

If the individual is transitioning from a nursing home, the security deposit may be paid by the TBI/NHTD waiver's Community Transitional Service (CTS). Upon the lease termination, the security deposit will be returned to the CTS provider. The CTS provider will then initiate a paid claim void/adjustment through eMedNY. Instructions for this process are available on the eMedNY website.

When the TBI/NHTD Housing Program has paid the security deposit on behalf of the participant, the landlord must return the security deposit, less any lawful deduction to the Payment Agent, not the participant, at the end of the lease and within a reasonable time. The landlord is obligated to return the security deposit to the Payment Agent regardless of who requested the return. Security provided by the Program must not be returned directly to the participant/tenant.

If a building/apartment is sold, the landlord must transfer all security deposits to the new owner or return the funds to the source of the security payment (the participant/Payment Agent/CTS provider). Landlords must notify the participant of the name and address of the new owner.

NYSDOH recognizes there may be circumstances that warrant the retaining of a security deposit by a landlord/owner.

Upon termination of the lease, if the security deposit is not sufficient to cover amounts the participant owes under the lease, the landlord/owner may seek to collect the balance from the participant. The TBI/NHTD Housing Program will not pay for any damages beyond the cost of the security. The Service Coordinator is responsible to inspect the unit prior to initiating the lease and upon termination of the lease, and to inform the RRDC of the plan to secure return of the security deposit. It is highly recommended that the Service Coordinator take pictures of the apartment prior to and after the term of the lease. This information should be included in the participant record. In the case of damage to the unit, the RRDC will notify the Service Coordinator and/or participant of the intent to seek repayment from the participant for the lost security. Failure to properly complete inspections and to notify the RRDC of the condition of the unit may result in loss of revenue charged back to the Service Coordination agency.

When the RRDC determines that the security deposit should be returned to the Payment Agent, a letter will be sent requesting the refund and the Payment Agent will be notified of the request. If the security deposit has not been received by the Payment Agent within four (4) weeks of the request, the RRDC will contact the Service Coordinator/landlord/utility provider and determine a course of action.

If, in the judgment of the Service Coordinator/RRDC, pursuit of security recoupment is warranted, a second letter will be sent restating the responsibility of the landlord/payee to return the overpayment to the NYSDOH Payment Agent.

When an overpayment or security deposit is returned to the Payment Agent, the RRDC will be notified of the amount received by the Payment Agent. The RRDC will notify the participant and the Service Coordinator of the receipt of funds.

The Payment Agent will maintain a database by region or utilize the web portal to track all payments, overpayments and security deposits. A TBI/NHTD Housing Program report will be available to NYSDOH TBI/NHTD waiver management on a monthly basis. The NYSDOH will track the recoupment of funds via reports provided by the Payment Agent.

In the case of overpayments due to Payment Agent error, the Payment Agent will be responsible for recouping the overpayments and letters sent to the payees. The Payment Agent will communicate with the RRDC and waiver management staff to determine the most appropriate course of action.

If for any reason payments are made to the participant, the RRDC will take necessary steps to recoup the payment from the participant. If necessary, a re-payment plan will be established.

If funds are not returned to NYSDOH within ninety (90) days, a decision will be made by the RRDC and NYSDOH waiver management staff to seek further action and terminate the participant from the Housing Program.

Notice to the Waiver Participant/Service Coordinator/Landlord/Owner

Upon approval of a housing subsidy, the waiver participant will receive a letter confirming the date of first payment, the amount of the subsidy, the name of the landlord/owner receiving the payment and the amount of the participant share to be made directly to the landlord/owner. The Service Coordinator and the landlord will receive a copy of the notice. Included in the notice to the participant, the RRDC will provide a copy of the signed waiver participant contract. Waiver participants will be advised that a copy of the TBI/NHTD Housing Program guidelines are

available on the NYSDOH website, or the participant may contact the RRDC and/or Service Coordinator to request a copy.

Should the RRDC determine that a landlord/owner or living arrangement does not meet the TBI/NHTD Housing Program guidelines, the RRDC will notify the landlord/owner that the arrangement is not acceptable and provide a copy of the notice to the waiver participant and Service Coordinator.

Should the RRDC determine that the waiver participant does not meet the TBI/NHTD Housing Program guidelines, the RRDC will notify the waiver participant and provide a copy of the notice to the Service Coordinator. Waiver participants will be advised that a copy of the TBI/NHTD Housing Program guidelines are available on the NYSDOH website, or the participant may contact the RRDC and/or Service Coordinator to request a copy. If the denial is related to the TBI/NHTD Housing Program only and not related to waiver eligibility, the RRDC will be available for a case conference to consider whether the decision relating to the participant's circumstances are in accordance with the program guidelines and TBI/NHTD Waiver policies.

Each year upon completion of the annual audit, the RRDC will notify the waiver participant/ landlord/owner and Service Coordinator of the continuation or termination of the housing support. The letter will confirm the continuation or termination of the subsidy, the effective date, the name of the landlord/owner receiving the payment and the amount of the subsidy and participant share. If the housing support subsidy is being terminated, the participant will be advised of the reason for the action and the effective date. The RRDC will be available for a case conference to consider whether the decision relating to the participant's circumstances are in accordance with the program guidelines and TBI/NHTD Waiver policies.

The RRDC, in conjunction with NYSDOH, may deny a request for TBI/NHTD Housing Program support when State funding for the program is insufficient to support continued assistance for participants or the request does not meet the terms of the Program guidelines. The participant will be provided notice of this determination.

Housing Forms and Instructions

The following forms and instructions are to be used when a waiver participant seeks housing support. The RRDC may assist in answering questions about completing the forms. Due to the amount of data entered via the web portal, every attempt has been made to reduce the amount of paper documentation. Any questions regarding the use of the Payment Agent web portal can be directed to the RRDC and/or the Payment Agent. All requests and updated information must be submitted via the web portal for review and approval prior to payment. Only the RRDC can authorize a payment. All supporting documentation must be uploaded to web portal for review and to support funding requests.

Regional Resource Development Centers by Counties Served (Attachment #1)

TBI/NHTD Housing Subsidy Prior Approval Request (Attachment #2)

Payment Request Form and Narrative (Attachment #3)

This document provides the RRDC with important necessary information to review, approve and process the various components of the housing application and calculate the participant's share of payments. The justification narrative must be submitted with all

requests for subsidies or supports. This narrative must clearly demonstrate the need for the housing support and describe the circumstances associated with the request for funding. This form is used for Initial Housing and Utility Applications, one-time payment requests (household goods, security, late fees arrears payments) and change in status (increase, decrease).

Housing Quality Standards (HQS) Checklist (Attachment #4)

Housing Quality Standards (HQS) are minimum standards for tenant-based programs and are required both at initial occupancy and during the term of the lease. The HQS checklist used by the TBI/NHTD Housing Program is consistent with the checklist used by HUD. Newly leased units must pass the HQS inspection **before** the beginning date of the subsidized lease. The HQS is completed as an initial inspection, annually in conjunction with the annual audit, when emergency repairs are required, and whenever a participant moves.

Sample Lease (Attachment #5)

Household Goods - Actual Expenditures (Attachment #6)

This document provides the RRDC with an accounting of requested and actual purchases made with housing support funds. Copies of all receipts must be attached. Signature by the Service Coordinator attests to the expenditures and actual purchases.

Waiver Participant Attestation (Attachment #7)

This document is used at the time the participant/applicant initially requests a subsidy. It verifies that the participant is providing true and complete information related to the individual's subsidy application. The participant attests that all information provided to the RRDC and Service Coordinator regarding household composition, personal assets and income are accurate and complete. The document is signed by the participant and Service Coordinator. Failure to sign and timely submit this document is sufficient justification to deny a request for housing support.

Budget Form (Attachment #8)

This form is used to identify all income and expenses for the waiver participant and to plan a household budget. The amounts reflected are used to calculate the subsidy amounts and as verification of the participant's household income. Failure to complete and timely submit this form is justification to deny a request for housing support.

Waiver Participant Contract (Attachment #9)

This document informs the waiver participant of the individual's responsibility to abide by the basic expectations of tenancy for landlords and tenants under the NYSDOH TBI/NHTD Housing Program. The document is signed by the participant and Service Coordinator. Failure to sign, timely submit and adhere to the terms of this document is sufficient justification to deny/withdraw a request for housing support.

Supporting Documentation

There are a number of documents that must be provided to the RRDC prior to approval of TBI/NHTD Housing Program support. These documents must also be uploaded to the web portal maintained by the Payment Agent and included in the participant profile.

Waiver Participant Attestation: This signed document certifies that all information provided to the RRDC is true and correct. The document is completed at the time of initial payment/subsidy request and at the time of annual audit.

Waiver Participant Contract: This contract confirms the waiver participant's understanding of the individual's rights and responsibilities associated with receipt of any TBI/NHTD Housing Program support. The document is completed and signed by the participant and Service Coordinator at the time the subsidy is approved, annually during the audit process and whenever a participant moves to a new location.

Payment Request Form: This form confirms the waiver participant and payee demographic information provided in the web portal. It also provides the calculation for the actual subsidy and one – time payment amount(s). A list of any requested household purchase(s) must be attached. A list of all adults and children (with ages) residing in the home must also be attached.

Income Verification: Copies of all documents confirming all sources of the participant's annual/monthly income. This information is attached to the Waiver Participant Attestation and may also be attached to the Budget Worksheet. Information must reflect income within the year that the participant is seeking the subsidy and is completed annually at the time of audit. Verification of income must be provided prior to approval of a subsidy request.

Monthly Budget Worksheet: This worksheet confirms income and expenditures. This document confirms the participant's attestation of all assets and all income.

Trust Information: A copy of any special needs trust maintained on behalf of the participant. If the trust does not contribute to the participant's household costs, the trustee must provide written confirmation of denial to support the participant's rental expenses.

Lease: The signed lease in effect for the current year. All leases must be for one year, unless approved by NYSDOH. All rental subsidies require a signed lease.

W-9 Forms: A W-9 form is required for any payee receiving more than five hundred ninety-nine dollars (\$599) through the Payment Agent.

Housing Quality Standards (HQS) Checklist: This checklist must reflect the residence address indicated on the lease. The HQS is completed as an initial inspection, annually in conjunction with the annual audit, when emergency repairs are required and whenever a participant moves.

Certificate of Occupancy (C of O): The C of O must reflect the address approved for the housing subsidy and reflected on the HQS.

Household Goods Actual Expenditures Form: A copy of the form and all receipts for approved purchases.

Each document is to be uploaded to the web portal separately and coded as directed by the RRDC. All information is to be updated annually. Only the RRDC may authorize a payment. Failure to accurately report information and timely submit all requested documents at the time of application and upon annual audit will result in the termination of housing support. This includes required documents from the landlord. Payments will not be made unless accurate and true tax information is provided to the RRDC.

Denial or Termination of Housing Assistance under the Program

Insufficient Funding: The RRDC, in conjunction with NYSDOH, may be required to suspend or terminate the TBI/NHTD Housing Program, payments under the Program, or the processing of new applications to the Program when State funding is insufficient to support continued or additional assistance for new or existing participants.

A participant must be determined eligible for NHTD/TBI waiver services and actively participating in waiver services to apply for and to receive housing assistance under the Program. If a participant loses waiver eligibility or stops active participation for any reason, assistance under the Program will be terminated.

For TBI waiver recipients, reasons that may give rise to deny or terminate include, but are not limited to, the following situations:

- The participant is no longer waiver eligible.
- The applicant/participant chooses not to receive waiver services.
- The applicant/participant is not between the ages of 18-64 upon application.
- The applicant/participant is not able to provide medical verification/documentation to support a diagnosis of Traumatic/Acquired Brain Injury.
- The applicant/participant is not a recipient of Medicaid coverage that supports community based long term care services.
- The applicant/participant is not able to identify an HCBS compliant community residence where waiver services will be provided.
- Informal supports, non-Medicaid supports, State Plan Medicaid services, and/or waiver services are not sufficient to safely serve or maintain the individual's health and welfare in the community.
- The applicant/participant does not require nursing home Level of Care (LOC) as a result of their Traumatic/Acquired Brain Injury based on the LOC assessment.
- The services and supports available through the waiver and all other sources are not sufficient to maintain the individual's health and welfare in the community.
- The applicant/participant chooses to receive services from, or may be more appropriately served by, another Home and Community Based Services Medicaid waiver (other than the NHTD waiver).
- The participant is hospitalized for more than 30 days and there is no scheduled discharge date.
- The participant is admitted to a nursing home, psychiatric, rehabilitation, assistive living, or other congregate care/institutional setting for other than a short term.
- The participant is incarcerated for more than 30 days.
- The participant is residing outside the state of New York for more than 30 days.
- The participant is not actively participating in waiver services and/or does not receive Service Coordination monthly, including not allowing waiver providers to

provide services.

For NHTD waiver recipients, reasons that may give rise to deny or discontinue housing support include, but are not limited to, the following situations:

- The participant is no longer waiver eligible.
- The applicant/participant chooses not to receive waiver services.
- The applicant/participant is not at least eighteen (18) years of age upon application.
- The applicant/participant is not a recipient of Medicaid coverage that supports community based long term care services.
- The applicant/participant is not able to identify an HCBS compliant community residence where waiver services will be provided.
- Informal supports, non-Medicaid supports, State Plan Medicaid services, and/or waiver services are not sufficient to safely serve or maintain the individual's health and welfare in the community.
- The applicant/participant does not require nursing home Level of Care (LOC), based on the LOC assessment.
- The services and supports available through the waiver and all other sources are not sufficient to maintain the individual's health and welfare in the community.
- The applicant/participant chooses to receive services from, or may be more appropriately served by, another Home and Community Based Services Medicaid waiver.
- The participant is hospitalized for more than thirty (30) days and there is no scheduled discharge date.
- The participant is admitted to a nursing home, psychiatric, rehabilitation, assistive living, or other congregate care/institutional setting for other than a short term.
- The participant is incarcerated for more than thirty (30) days.
- The participant is residing outside the state of New York for more than thirty (30) days.
- The participant is not actively participating in waiver services and/or does not receive ongoing Service Coordination, including not allowing waiver providers to provide services.

A Notice of Denial or Discontinuation of waiver eligibility is sent to an individual when the person is not eligible to receive or continue to receive TBI or NHTD waiver services as determined by NYSDOH or the RRDC. When an individual is no longer eligible to participate in the TBI/NHTD waiver, they become ineligible for TBI/NHTD housing support. If this is a temporary situation, for example, the individual returns to a nursing home or enters inpatient rehabilitation, the RRDC may wish to continue the housing subsidy to hold the living arrangement for up to three months while evaluating a more permanent plan for the individual. When the participant indicates that he/she agrees with the discontinuation of TBI/NHTD waiver services, the participant's housing subsidy will terminate thirty (30) days (with one intervening first of the month) from the effective date of the TBI/NHTD waiver Notice of Discontinuation.

When a TBI/NHTD waiver recipient is sent a Notice of Discontinuance from the waiver and timely requests a Fair Hearing and Aid Continuing, the individual's housing subsidy will remain in place until the issuance of a Decision After Fair Hearing denying waiver benefits. The waiver participant will receive notification that housing support may terminate based on the outcome of the Fair Hearing. If the Decision After Fair Hearing grants the recipient's request to continue to receive waiver benefits, the housing subsidy will continue, and the participant will be notified of the continuation of the subsidy.

Timeline sequence for termination of housing subsidy:

- The waiver participant receives a Notice of Intent to Discontinue waiver services:
 - The participant will be notified that the housing subsidy will be terminated upon termination of waiver services. A copy of the notice of the termination of the housing support will be provided to the participant and the individual's Service Coordinator.
 - The participant will be advised that they have sixty (60) calendar days to seek a Fair Hearing related to the individual's waiver services and if seeking Aid Continuing, the request must be made by the effective date of the Notice of Decision. Housing support will continue through the period allowed to request the Fair Hearing (60 days).
- If Aid Continuing is granted, the housing subsidy continues until such time as a Fair Hearing decision is rendered. The participant/Service Coordinator will be notified that housing support will remain until a Fair Hearing decision is rendered.
- If the participant does not request a Fair Hearing and the waiver discontinuation proceeds, housing support will be terminated one month following the last available date to request a Fair Hearing (with one intervening first of the month). At this time, the participant, Service Coordinator and landlord/owner will be notified of the date housing support will cease.
- If the Fair Hearing decision affirms the RRDC decision for discontinuation, housing support will be continued for the next two successive months following the Fair Hearing decision. At the time the Fair Hearing decision is rendered, the participant, Service Coordinator and landlord/owner will be notified by the RRDC of the date housing support will cease.

When the participant is discontinued from the TBI/NHTD Medicaid waiver, it is the responsibility of the participant and Service Coordinator to **also** notify the landlord in writing that housing support is being terminated and to confirm an alternative payment process with the landlord/owner. Notification must be completed in sufficient time to avoid any additional costs to the Housing Program. Every effort will be made to secure the return of security deposits, if made by NYSDOH. Should the participant and/or Service Coordinator fail to properly notify the landlord of the subsidy termination, any costs incurred as a result of insufficient and/or inadequate notification may be charged to the participant and/or Service Coordination agency.

At the time the landlord/owner is notified that housing support is being terminated NYSDOH and the Payment Agent must be notified that the participant has been discontinued from the TBI/NHTD Housing Program. The RRDC will send a confirmation letter to the landlord/owner and copy the Service Coordinator/participant. The date and amount of the final payment will be included in the notification and the RRDC will request that all security funds be returned to the Payment Agent or waiver service provider.

Termination of Housing Support with Continued Waiver Eligibility

NYSDOH or the RRDC may deny a housing support request or terminate housing support for a

participant receiving assistance under the Program because of a participant's action or failure to act. NYSDOH or the RRDC may consider all of the circumstances in each case, including the seriousness of the case, the extent of participation or culpability of the participant and/or individual family members, the type and status of the living arrangement and the effects of denial or termination of assistance on the participant. The RRDC is encouraged to enlist the assistance of the Service Coordinator and NYSDOH as appropriate.

NYSDOH or the RRDC may deny or terminate assistance under the TBI/NHTD Housing Program for a waiver participant at any time for reasons including, but not limited to, those noted below:

- violation by the participant of any obligation under the Program;
- failure to timely complete and submit required documentation and financial information;
- failure to meet the terms of the lease, including non-payment of the non-subsidized portion of rent;
- the living arrangement is considered congregate care or is not considered an independent living arrangement;
- the living arrangement is owned by the participant, spouse, participant's SNT or family member;
- commission of crimes of physical violence against persons or property, or any other criminal activity, including drug-related criminal activity, violent sex crimes or any crimes that adversely affects the health, safety or wellbeing of the participant, other residents or staff;
- activities that cause damage to the property in excess of normal wear and tear;
- failure to maintain a safe clean living environment;
- failure to pay rent or utilities for which the participant, family member or roommate is responsible;
- disturbances to the neighbors or apartment complex;
- fraud, bribery, or any other corruption in connection with any housing subsidy assistance program, including the intentional withholding or misrepresentation of information related to their housing application or benefits derived therefrom;
- eviction from the subsidized residence;
- illegal use by any family member of a controlled substance or abuse of alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents or in the immediate vicinity of the premises;
- illegal use of a controlled substance or alcohol; or
- knowledge that the participant or current household member was convicted or incarcerated for any alcohol or drug-related criminal activity that took place on or near the premises.

NYSDOH, or the RRDC with the approval of NYSDOH, *may* waive the requirement to deny or terminate if:

- emergent issues associated with the case warrant additional consideration;
- the participant demonstrates to the satisfaction of the RRDC that they are no longer engaging in illegal or inappropriate activity;
- the participant has successfully completed a supervised drug, mental health or alcohol rehabilitation program;
- the participant has otherwise been rehabilitated successfully, or is participating in a supervised drug or alcohol rehabilitation program; or

- the participant has reimbursed NYSDOH and/or the landlord/owner for any fees/penalties, arrears or damage repairs.

Additionally, any reasons identified as reasons for the denial of housing support under the Program, identified on pages 6 and 7 of these guidelines, are incorporated here and may also serve as grounds for denial or termination from the Program.

Waiver participants who were residing in a setting with four (4) or more unrelated individuals and were receiving housing support effective September 1, 2017 may continue to reside in their current setting without having their housing support terminated. These participants will be encouraged to seek new housing arrangements as circumstances become available.

NYSDOH or the RRDC may impose specific conditions or requirements in order for a subsidy to continue; to restore a subsidy; or waive requirements.

When NYSDOH or the RRDC seeks to deny or terminate housing support, a copy of the notification will be sent to the participant, Service Coordinator and landlord. The notice will include the specific date support is intended to be terminated and the reason for the action. Termination from the TBI/NHTD Housing Program is not an eviction proceeding. Housing support will terminate on the date of termination provided in the notice, but no earlier than sixty (60) calendar days from the date the notice is received. The notice is deemed received by the participant on the date the first-class letter is mailed or the date the notice is hand delivered to the participant.

Case Conference and Reconsideration

Housing assistance provided by the NHTD/TBI Housing Program is not a Medicaid waiver service and as such, does not have a Fair Hearing right of appeal attached to it. The RRDC will be available for a case conference to review and reconsider whether the RRDC's decision related to housing support should be upheld, withdrawn or amended. The participant may request to have representatives at the conference. The request for the conference must be made directly to the RRDC by the participant in writing or via phone within ten (10) calendar days of receipt of the termination or denial notice.

If the participant does not request a conference in accordance with these guidelines, then the RRDC's decision will become final as provided above (upon the date of termination provided in the initial notice, but no earlier than sixty (60) calendar days from the date the notice is received).

If the participant requests a conference within ten (10) calendar days of receipt of the notice, housing support will not be denied or terminated prior to the case conference.

The RRDC will make reasonable efforts to schedule the conference timely and at a time, place, and manner that takes into consideration the participant's needs. If the participant does not participate in the conference, the RRDC may determine that the participant has withdrawn his or her conference and reconsideration request. The participant will be notified of this decision.

A notice summarizing the case conference and providing the RRDC's decision to uphold, withdraw, or amend the initial decision will be provided to the participant by the RRDC within ten (10) business days of the conference. If the participant did not participate, the notice will be given within ten (10) business days of the date on which the conference was scheduled to be

held.

If, after the conference, the RRDC upholds its decision to deny or terminate housing support, then housing support will terminate upon the date of termination provided in the conference notice and summary. This date will be no earlier than the later of thirty (30) calendar days from the date the conference summary notice was received or sixty (60) calendar days from the date the initial notice is received. Notices are deemed received by the participant on the date the first-class letter is mailed or the date the notice is hand delivered to the participant.

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