

## **CHALLENGE INDUSTRIES, INC. CRIMINAL BACKGROUND CHECK POLICY**

### **Commitment to Ethical Conduct**

Challenge staff and volunteers are expected to adhere to the highest ethical standards. Challenge's intent is to protect its consumers, safeguard the privacy of all applicants whose background is being checked, and comply with all applicable laws.

### **Required Background Check**

Challenge will comply with all laws requiring Criminal Background Checks of prospective employees and volunteers. In particular, we will comply with Chapter 575 of the Laws of 2004 of the Office of People with Developmental Disabilities and Part 550 Criminal History Record Checks of 2007 of the Office of Mental Health, any amendments to these laws, and all regulations promulgated by OPWDD, OMH, or other regulatory authorities. In addition, we will observe any other laws or regulations governing background checks of applicants. In any event in which a provision of this policy conflicts with any law or regulation which govern our behavior, that provision will be considered void. It is always Challenge's policy to comply with the law and with current regulations.

### **Which Applicants are Covered**

We assume that every staff member will have regular and substantial unsupervised contact with consumers. "Staff member", for the purposes of this policy, includes every person on Challenge's payroll who is subject to minimum wage and to tax withholding requirements. Hourly employees are staff members. People employed by Challenge under a Supported Employment program are considered staff members, even if they are also consumers protected under this policy.

Disabled consumers who are "Sheltered Workshop" participants are eligible to be paid less than minimum wage under Challenge's 14(c) certificate, are not subject to tax withholding or FICA tax payments under Challenge's IRS Letter of Determination, and are not considered Challenge staff members. They are not subject to Criminal Background Checks.

Consultants who are not on Challenge's payroll, but are contracted to come to Challenge's premises to perform services directly to consumers on Challenge's behalf are covered by this policy. We will perform a criminal background check before allowing any consultant to have regular and substantial unsupervised contact with consumers.

Employees of other entities covered by Chapter 575 of the Laws of 2004 and Part 550 Criminal History Record Checks of 2007 who come to Challenge's premises to provide direct services to consumers on behalf of the other entity are presumed to have passed the appropriate criminal background check taken by their employer. Examples are Medicaid Service Coordinators, counselors or therapists employed by legitimate provider agencies, or group home representatives who come to Challenge to dispense

medications. Challenge will take care to allow employees only of legitimate provider agencies to come onto our premises to provide such services.

Challenge will make sure that any other entity under contract with Challenge who provides services to our consumers is an approved provider agency before we will allow employees of that entity to have regular and substantial unsupervised contact with our consumers. An example is transportation: Gadabout is an approved provider.

Volunteers are subject to the criminal background check if they will have regular and substantial unsupervised contact with consumers. If they will not have such contact, they are not subject to the check. An example of volunteers subject to the criminal background check is an intern who interacts directly with consumers as part of their internship, such as an Occupational Therapy student. Examples of volunteers not subject to the check include members of the Board or a committee of the Board, and fund-raising volunteers. If there is any doubt about whether a volunteer will have regular and substantial unsupervised contact with consumers and is therefore subject to a criminal background check, Human Resources must be consulted before the volunteer is allowed unsupervised access Challenge's premises.

Other visitors and contractors who come to Challenge's premises are not considered to be staff members or volunteers subject to a criminal background check. Examples are personal visitors escorted by a staff member, building contractors and repair technicians. It is the responsibility of staff to ensure that these visitors do not have substantial unsupervised contact with consumers.

### **When Applicants May Start to Work**

Challenge will not employ a job applicant, or allow a volunteer to interact with consumers unsupervised, until the results of the criminal background check have come back. We currently do not provisionally employ an applicant but will allow volunteers/interns to work under direct supervision of staff until results of the Criminal Background Checks are completed.

### **Who May See Applicants' Paperwork and Results**

Members of the Human Resources department and their designated back-ups may be selected by Challenge to act as an Authorized Party with OPWDD and/or OMH to request, receive and review information related to a Criminal Background Check. Only authorized parties will have access to the OPWDD Secure Message Center or OMH Salute Fingerprint System. Any employee selected to act as an Authorized party will submit a properly completed Authorized Party Designation Form signed by the President of Challenge.

Authorized Parties will make every effort to protect the privacy of an applicant while taking the applicant's fingerprints on a card. However, if there is need for the assistance of another person in taking the fingerprints (for example, because the applicant has a disability making it difficult to fully extend his or her fingers), the Authorized Party may use that assistance with the applicant's consent. Preference will

be given to asking another Authorized Party before asking any other staff member for assistance.

Authorized Parties will not discuss the specific contents of any information regarding an applicant, other than to inform the hiring manager whether OPWDD or OMH has issued or not issued a denial for the applicant. If an abeyance has been issued, the Authorized Party will inform the hiring manager that there will be a delay before hiring, and will contact the applicant to make sure that the applicant knows how to proceed if he or she wishes to be hired. If a pending denial has been issued, the Authorized Party will inform the hiring manager that there is a pending denial, but will not reveal the reason.

On occasion Challenge will employ consumers receiving Supported Employment services from Challenge. The Challenge staff member assisting the consumer is known as an "Employment Advisor". If an applicant is a Supported Employment consumer applying for a staff position, the Authorized Party will notify the Employment Advisor assisting the applicant whether a denial has been issued, but will not disclose the nature of the reason for the denial to the Employment Advisor. The Authorized Party will explain to the Employment Advisor what steps the applicant may take to protect his or her rights.

#### **How Files Are to be Kept**

Criminal History Record Checks of all staff and volunteers are confidential and may not be shown to anyone other than an Authorized Party, and employee of New York State authorized by current regulations to examine the records, or the President of Challenge. They are stored separately from employee files and destroyed within one year per OPWDD and six years from the date employee is no longer considered to be a subject individual per OMH.

Criminal History Record Checks of any staff not hired or volunteers who don't begin their volunteer service are confidential and may not be shown to anyone other than an Authorized Party, an employee of New York State authorized by current regulations to examine the records, or the President of Challenge. They are stored separately from employee files and destroyed within one year per OPWDD and six years from the date employee is no longer considered to be a subject individual per OMH. Applicants not hired because of a denial will be notified within fourteen days. Challenge will inform the CBC unit within fourteen days if the applicant decides not to accept an offer of employment or volunteer service.

A roster is kept of all active employees and volunteers who have been subject to the Criminal Background Check. When employment or volunteer service is terminated, Challenge will notify the CBC unit with fourteen days.

#### **For Circumstances When a Prospective Employee's Application is Denied**

In the event that a criminal background is present and employment is denied by either OPWDD or OMH, Challenge will notify the applicant in writing and they have the right to

request a copy of their criminal record summary. Documentation of the notification will be kept confidential along with other criminal background information.

### **Employees Who Are Subject to Child Abuse Screening**

Certain employees (i.e. Medicaid Service Coordinators) whose work may include unsupervised contact with consumers who are minors are subject to a child abuse screening. Under this regulation, the prospective employee will give consent to the background check and Human Resources or its designated Authorized Party will conduct the screening through the NYS Office of Children and Family Services (OCFS) online clearance system. Until the screening is complete, the employee will not provide services to the consumer. All information provided by OCFS will be kept confidential and stored with the criminal background check information.