

Memorandum

TO: Vocational Rehabilitation Counselors and Job Placement Specialists
CC: Vocational Rehabilitation Specialists, Nancy Sedlacek
FROM: Glenn Morton
DATE: April 26, 2013
SUBJECT: Meeting Announcement & Results of January 25, 2013 meeting

The next informal meeting between court staff and certified vocational rehabilitation service providers is scheduled for Friday, May 10, 2013, at 2:00 pm. The meeting will be held at the court's administrative offices at 1221 "N" Street, Suite 402, in Lincoln. Meetings are held on a quarterly basis, with future meetings tentatively scheduled for July 26, 2013 and October 25, 2013.

The following are the results from the January 25, 2013 meeting. Please bring any questions or concerns regarding the discussions or decisions to the attention of court's Vocational Rehabilitation Section and they will be considered at the next meeting.

- 1. ACH/Debit Cards:** There were discussions regarding the planning and implementation of the new debit card and direct deposit system for payments from the Workers' Compensation Trust Fund, as reflected in the attached "Relia Card/Direct Deposit Information Update 1/25/13." Notices were sent out following the meeting in accordance with that document, and the system went into effect March 1, 2013. Responses have been overwhelmingly positive.
- 2. Case Closure Form:** Discussions continued regarding draft revisions to the case closure report form (VR-37E), copies of which were circulated to all certified counselors prior to the meeting. The purpose of the revisions is to allow the court to better respond to inquiries from the Legislature and others regarding the performance of the vocational rehabilitation program. It was noted that the revised form does not include cost information, which is due largely to the inability to appropriately allocate costs when a counselor is assigned to provide both vocational rehabilitation services and a loss of earning power evaluation. The form is applicable only to vocational rehabilitation services, and some services may be applicable to both the evaluation and development of a vocational rehabilitation plan and to a loss of earning power evaluation (e.g., a labor market survey).

There was a consensus at this meeting that the revised form and related instructions are acceptable and should be approved by the court. The revised form may now be used on a voluntary basis and will be required effective July 1, 2013. This will allow for further changes and clean-up of the form to be made before July 1, 2013, if necessary, so that full and complete data can then be collected for the entire fiscal year beginning on that date.

- 3. Other Form Changes:** Possible changes were discussed to the counselor designation form (VR-42) in response to a concern that the current form does not adequately address reopened cases if the counselor has been appointed (vs. agreed to). It was also suggested that the

employee's Social Security Number be removed from the form. Draft changes to the form will be circulated prior to the next meeting and considered at that meeting.

4. Legislative Update: There was discussion regarding various workers' compensation related legislative bills introduced during the current legislative session. Of these, only LB 307 would touch upon vocational rehabilitation in that it would amend section 48-162.01(7) by adding the following new language:

“The employee's refusal to undertake or failure to cooperate with a physical, medical, or vocational rehabilitation program or refusal to be evaluated as provided in this subsection shall result in a rebuttable presumption that the employee's disability would have been reduced or his or her condition would have been improved if he or she had undertaken or cooperated with such physical, medical, or vocational rehabilitation program or evaluation.”

LB 307 remains in the Business & Labor Committee as of the date of this memorandum. Other workers' compensation bills of note are LBs 21, 141, 307, 310, 324, and 584. Descriptions and current status of these bills can be found on the Legislatures web site at <<http://nebraskalegislature.gov>>.

5. Early Intervention: Legislative Resolution 581 was introduced during the previous legislative session in order to analyze the effectiveness of vocational rehabilitation in workers' compensation cases in Nebraska. The resolution was heard by the Business and Labor Committee on October 19, 2012, and several witnesses testified regarding the need for the counselors to become involved earlier in the process. However, no follow-up bill was introduced during in the current legislative session to implement this recommendation.

As a result, it was suggested at this meeting that a work committee should meet to consider options and possible future action to promote earlier intervention by the counselors. An open invitation was subsequently sent to all certified counselors and a meeting was held on March 8, 2013. There was a general agreement among the participants at that meeting that the focus should be on the ability of a counselor to develop a vocational rehabilitation plan prior to maximum medical improvement. However, the question then becomes what standard should be applied in determining the appropriateness of the plan? Absent permanent impairment and restrictions how would a counselor and court specialist decide if a plan is needed, and if so, what type of plan is appropriate? Further, would there be a sufficient basis for authorizing payments from the Workers' Compensation Trust Fund for such a plan?

6. Rebuttal Counselors Using Plan Form: A question was raised regarding rebuttal counselors filling out the vocational rehabilitation plan form (VR-44) rather than, or in addition to, providing a narrative opinion. This can cause difficulties and confusion should a judge approve such a plan in that the counselor of record would then be required to implement a plan developed by another counselor. There was a clear and strong consensus among the participants that this practice is inappropriate, and that any rebuttal opinion should be provided in narrative format only. Such a practice is also arguably contrary section 48-162.01(3) which contemplates that only a counselor chosen or selected in accordance with that subsection shall develop and implement a plan.

7. Next meeting agenda items: At the next meeting on May 10, 2013 the following will be addressed as time permits:

- a. ACH/Debit Cards: Update on implementation of ACH/Debit Card payments.
- b. Case Closure Form: Update on implementation of revised case closure report form.
- c. Form Revisions: Review of proposed changes to the counselor designation form (VR-42) (see attached draft).
- d. Mileage Reimbursement: Discussion of changes implemented or to be implemented by the court regarding mileage reimbursement.
- e. Mileage Reimbursement: Consideration of additional possible options for simplifying and improving the system for requesting and approving mileage reimbursement.
- f. General Issues: Discussion of any other issues of concern or interest to the counselors or court specialists.

8. Future meeting agenda items: No additional agenda items are currently identified for future meetings. Suggestions are welcome.