

# Memorandum

**TO:** Vocational Rehabilitation Counselors  
**CC:** Vocational Rehabilitation Specialists, Kris Peterson  
**FROM:** Glenn Morton  
**DATE:** December 2, 2005  
**SUBJECT:** Meeting Announcement & Results of September 23, 2005 Meeting

The next informal meeting between court staff and certified vocational rehabilitation counselors is scheduled for Friday, December 16, 2005, at 2:00 pm. The meeting will be held at the court's administrative facilities at 1221 "N" Street, Suite 402, in Lincoln (TierOne Center). Meetings are now held on a quarterly basis, and the 2006 schedule will be considered at the December meeting.

The following are the results from the September 23, 2005 meeting. If you have questions or concerns about any of the discussions or decisions at this meeting please notify the court prior to the next meeting and they will be considered at that time.

## **1. Proposed Changes to Job Placement Instructions.**

A revised "Job Placement Information & Instructions" form (as circulated with the outcomes memorandum from the June 24, 2005 meeting) was approved with three additional changes. Paragraph "a" of the form was further amended to state that the counselor is not responsible for finding the employee a job, and that the employee must comply with the counselor's expectations regarding job placement activities (see also paragraph 6 below). Paragraph "a.1." of the form was also amended to strike the reference to a specific mileage rate, as this changes from time to time. The final, revised form (see attached copy) is now in effect.

## **2. Amended plans.**

There was discussion regarding when an amended plan is needed in a formal training program. The court's specialists noted that an amended plan has generally been required if there is a change in the (1) estimated completion date, (2) vocational goal, (3) program of study/focus area, and/or (4) projected wage. However, changes to the billing information (see Section IV of the plan form) have not required an amended plan, but could be accomplished by simply notifying the court specialist. However, questions were raised regarding the difference between an amended plan and new plan, the procedural distinctions between a new and amended plan, and when an amended plan should be forwarded on for the insurer's agreement.

After further consideration, it is suggested by the court staff that attempting to distinguish between new and amended plans may be overly confusing and counter productive. Rather, a more productive approach might be to focus on which proposed changes to a plan must be

forwarded on for employer/insurer agreement after approval by the court specialist, and which changes can go into effect immediately upon approval by the specialist. From this perspective, it is suggested that any change to a previously approved plan, other than general directory type information and other than billing information as shown in Section IV of the plan form, should require agreement by the employer/insurer. (Note, however, that the proposed starting date and estimated completion date are not considered billing information even though those items are currently listed in Section IV of the form. Changes to those items would require employer/insurer agreement.) This suggestion and any other questions on this issue will be discussed further at the December meeting.

### **3. Courtesy copies of draft plans.**

The courts specialists expressed concern that practice of providing draft copies of plans to the parties is causing confusion in that the parties sometimes rely upon these drafts rather than waiting for the plan as approved by the court. Some counselors said they do not share draft copies with anyone other than the client. Others said they do share draft copies, in order to expedite employer/insurer approval of the plan and/or in the belief that this is required by Rule 42,C . There was discussion, but no resolution, as to whether Rule 42,C in fact requires the sharing of draft copies, and also discussion of possible alternatives to alleviate the problem. These included (1) not sending the signature page, (2) including a cover letter or stamping the plan as a “draft” copy, or (3) sending a letter explaining the proposed plan rather than the plan form itself. However, there was no final resolution on this issue, and there will be further discussion at the December meeting.

### **4. Denial Letters.**

It was agreed that the court’s denial letter will be amended to alert the parties that a vocational rehabilitation issue can receive an expedited hearing before the court. It was the general consensus that expedited hearings are not occurring now on a regular basis, and that the parties, and especially the employees, need to know this is available. Counselors are prohibited from providing legal advice, and including this notice in the denial letter will help to insure that employees are aware of their options.

### **5. Plan Signatures.**

It was suggested that the court allow plan documents to be submitted by fax or e-mail, rather than requiring documents with original signatures. In the future the court will accept signed plan documents by fax or as a PDF attachment to an e-mail, and if signed plan documents are submitted by fax or e-mail then it is NOT necessary to follow-up with the original documents. However, the counselor must retain the original documents in his or her files.

### **6. “Active Participation” in a job placement plan.**

A counselor requested discussion on how many job contacts/applications should an employee be required to make when engaged in a job placement plan. This arose from a case in which the

employee refused to do more visits than required for unemployment purposes, given that the court has established no specific requirements in this regard. After discussion, it was agreed that the courts Job Placement Information & Instructions” form will be further amended to state that the employee is required to comply with the counselor’s expectations with regard to job placement activities.

**7. Internet Job Applications.**

A counselor requested discussion on how counselors are monitoring/following up with employers when the employee is making job applications by the Internet, given that it is often difficult to get confirmation that the application was actually submitted. Various thoughts and ideas were shared, including having the employee print the completed application, if possible, or using CareerLink, which sends a verification when the application is sent to the employer. CareerLink was thought to be available in all the major cities in Nebraska.

**8. Transferable skills.**

There was a beginning discussion regarding transferable skills analysis, and what should be included in the plan justification regarding transferable skills. There was discussion that an explanation should be included if the employee appears to have transferable skills that are not being utilized in the proposed plan. However, concerns were also expressed as to whether work history is being sufficiently addressed in plan preparation, especially with regard to the 4<sup>th</sup> and 5<sup>th</sup> return to work priorities, and that additional discussion is needed on such an important topic.

**9. Next meeting agenda items.** At the next meeting on December 16, 2005 we will address the following items as time permits:

- a. Meeting Dates for 2006.
- b. Court Specialist Case Assignments. Effective December 1, 2005 changes have been made to the specialist’s “coverage areas”, or the manner in which cases are distributed among the specialists.
- c. Court Approved Vendors. Reports have been received that at least one vendor may be holding itself out as being approved or endorsed by the court. However, there are NO court approved or endorsed vocational rehabilitation vendors, and counselors are asked to report any such instances to the court.
- d. Amended Plans. This will be a continuation of discussions begun at the September 23, 2005 meeting. (See item 2 above.)
- e. LB 13 Implementation. LB 13 amended section 48-162.01(3) to require that any vocational rehabilitation plan must be evaluated by a specialist of the court prior to implementation, and that the specialist must make a independent determination as to the appropriateness of a proposed plan. This became operative September 4, 2005. As

administrator of the Workers' Compensation Trust Fund I have taken the position that absent compliance with section 48-162.03(3) the fund is not obligated to pay for expenses related to a vocational rehabilitation plan.

f. Courtesy copies of draft plans. This will be a continuation of discussions begun at the September 23, 2005 meeting. (See item 3 above.)

g. Transferable Skills Analysis. This will be a continuation of discussions begun during the September 23, 2005 meeting. (See item 8 above.) It has been suggested that the employee's vocational history should be a required consideration in any plan involving the 4<sup>th</sup> or 5<sup>th</sup> return to work priorities, and that the plan justification should address this history, the method used in the analysis, and how the employees transferable skills were considered in developing the plan..

**10. Future meeting agenda items.** The following topics will be addressed at future meetings, not necessarily in this order. Any suggestions for additional agenda items are welcome.

a. Counselor/job placement specialist certification process.

b. Case Closure Form. The legislature is increasingly requesting information regarding the vocational rehabilitation program and the success of vocational rehabilitation plans. However, existing data is insufficient to allow the court to respond fully to these requests. Could the Case Closure Form be amended to provide the necessary data, and if so, what data should be collected?

c. Job Placement Plans. What is the counselor's role and what are the counselor's obligations in a job placement plan?