

WEST VIRGINIA LEGISLATURE
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John Sylvia
Director

August 20, 2013

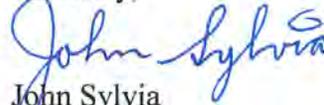
The Honorable Herb Snyder
West Virginia Senate
Room 217W, Building 1
State Capitol Complex

The Honorable Jim Morgan
West Virginia House of Delegates
Room 213E, Building 1
State Capitol Complex

Dear Chairs:

The attached letter-report provides the analysis for the Sunrise application submitted by the West Virginia Association of Alcoholism & Drug Abuse Counselors, Inc., and the West Virginia Certification Board for Addiction & Prevention Professionals. The application was submitted on May 31, 2013, and it proposes mandatory certification and state licensure of alcohol and drug counselors. Pursuant to W. Va. Code §30-1A-3(e), this analysis is provided to the Joint Committee on Government Organization by the December 31, 2013 deadline. **In the final analysis, the Legislative Auditor does not recommend the creation of a state licensing board to regulate the profession of alcohol and drug counselors.**

Sincerely,


John Sylvia

Sunrise Report

Licensing of Alcohol and Drug Addiction Counselors

August 2012

Background

The West Virginia Association of Alcoholism and Drug Abuse Counselors, Inc. (WVAADC) and the West Virginia Certification Board for Addiction and Prevention Professionals (WVCBAPP) submitted a Sunrise application on May 31, 2013, proposing mandatory certification and licensure for alcohol and drug counselors (ADCs) who have specific training in counseling individuals with alcohol and drug addiction. It should be noted that the WVCBAPP is a private, non-governmental certification board. For the purpose of this report, ADCs include “licensed alcohol and drug counselors,” “licensed advanced alcohol and drug counselors,” “licensed alcohol and drug clinical supervisors,” and “licensed advanced alcohol and drug clinical supervisors.” These are the license classifications being proposed in the Sunrise application. This is the second Sunrise application the Applicants have submitted concerning ADCs. The first application was submitted in 1999, and it proposed mandatory licensure of ADCs. After review of the 1999 application, the Legislative Auditor concluded that mandatory licensure would not enhance safety to the public. **After review of the 2013 Sunrise application, the Legislative Auditor stands by the 1999 recommendation not to create a separate license for ADCs.**

The Applicants Do Not Document Harm to the Public from the Current Practice of ADCs

West Virginia Code §30-1A-3 requires the Performance Evaluation and Research Division (PERD) to evaluate Sunrise applications based on the following criteria:

- Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument;
- Whether the practice of the profession requires specialized skill or training which is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational competence;
- Whether the public can be adequately protected by other means in a more cost-effective manner; and
- Whether the professional or occupational group or organization should be regulated as proposed in the application.

A primary concern in reviewing a Sunrise application is to determine if the unregulated practice or the current state of regulation is clearly harmful or endangers the health and safety of the public. It is clear that the practice of this profession requires specialized training. Although the Applicants give several examples of the harm and cost to society from drug and alcohol

abuse, they do not document any clear examples of harm to the public that comes from the unregulated practice of alcohol and drug counseling. The Applicants stated that they could not provide specific case examples of harm due to federal confidentiality requirements. However, the Applicants state that a source of harm to the public from alcohol and drug counseling stems from those who practice “*without being certified*” and “*who are not obligated to a code of ethics and do not meet an educational or experience standard.*” The Applicants indicate that they cannot determine the prevalence of people who provide alcohol and drug counseling who are not certified and do not meet any educational or experience standards. Furthermore, the Applicants acknowledge that there are legal remedies to protect the public from such individuals. It should also be pointed out as a critical part of this analysis that the Applicant’s proposed legislation would allow individuals to practice without certification or meeting educational standards, as long as they do not claim to be “*licensed alcohol and drug counselors.*”

The Legislative Auditor conducted a legal case search and found no court cases directly involving the practice of alcohol and drug counseling being brought within West Virginia in the last three years. **This part of the analysis concludes that the Applicants do not provide convincing evidence that there is significant harm to the public from the current practice of ADCs.**

Establishing a Separate Licensing Board for ADCs Would Not Enhance the Level of Safety Beyond What Is Currently Being Provided in the State

One of the issues raised in the 1999 PERD report was that approximately 75 percent of the 190 individuals currently certified by the WVCBAPP were already licensed by other occupational licensing boards. According to the updated Sunrise application, approximately 72 percent of the 381 practitioners certified by the WVCBAPP are already licensed by other occupational licensing boards. These practitioners are predominantly licensed by the Board of Examiners in Counseling, the Board of Examiners of Psychologists, and the Board of Social Work Examiners with the remaining licensed by other various State occupational licensing boards. The increase in the number of WVCBAPP-certified practitioners who are already licensed by other occupational licensing boards shows that practitioners are receiving the additional training and WVCBAPP certification if they are choosing to provide alcohol and drug counseling. There are currently 108 individuals certified by the WVCBAPP who reported not being licensed by an existing occupational licensing board. The majority of these individuals generally work in a supervised environment according to the application.

Although the Applicants acknowledge the capabilities of licensed practitioners in providing alcohol and drug counseling, they argue that “alcohol and drug counseling is recognized as a distinct profession due to the complexities and physiological impact of the disease of addiction.” While the Legislative Auditor does not disagree with this assertion, making this distinction speaks to a difference in quality of services and not harm to the public.

The Proposed Legislation Represents Title Protection Which Provides Minimal Additional Public Protection

Although the lack of documented harm is an important factor against establishing a licensing board for this profession, an equally important factor against the proposal is that the licensing board would not constitute added public protection. The primary interest that the Applicants seek to gain from establishing a licensing board is to create a title that can only be used by those licensed by the board. This is strictly “title protection.” This would allow other licensed professions or occupations from engaging in ADC who are authorized by their respective licensing board as long as they do not represent themselves as a “licensed alcohol and drug counselor,” “licensed advanced alcohol and drug counselor,” “licensed alcohol and drug clinical supervisor,” or “licensed advanced alcohol and drug clinical supervisor.” Regarding unlicensed individuals, the proposed legislation does not restrict members of the clergy, peer groups, or self-help groups from performing peer counseling or self-help activities so long as they do not represent themselves as a licensed alcohol and drug counselor. **The Legislative Auditor has consistently recommended against establishing a state licensing agency that has the primary purpose of title protection. The fact that such a proposal would allow others to practice the profession as long as a certain title is not used reveals that the issue is not so much any potential harm that may come from the unregulated practice as it is the use of a title.**

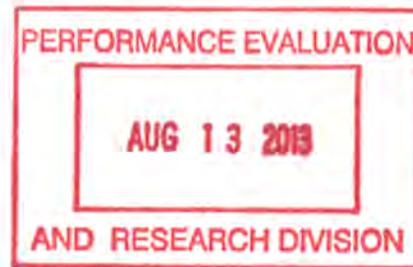
Moreover, the proposed licensing board would piggyback the credentialing requirements of the International Certification and Reciprocity Consortium (IC&RC), an international organization that sets credentialing and reciprocity standards for addiction counseling professionals. The Legislative Auditor has consistently recommended against establishing a licensing board that will strictly piggyback a national organization’s credential. **It has been the Legislative Auditor’s opinion that creating a state entity, as proposed, to act as a conduit to a national organization’s credential would be an unnecessary layer of government, considering that individuals can simply seek the national organization’s or its state chapter’s credential directly.**

Conclusion

The proposed state licensure of ADCs would provide minimal, if any, added protection to the public than what is presently available. The Legislative Auditor concludes that creating a state licensing agency that results essentially in title protection and a piggyback to a national organization is unwarranted. **Therefore, the Legislative Auditor does not recommend the creation of a state licensing board to regulate the profession of alcohol and drug counselors.**

August 11, 2013

John Silva
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610



Dear Mr. Silva,

Please allow this letter and the attached response to serve as the written response from the West Virginia Association of Alcoholism & Drug Abuse Counselors, Inc. (WVAADC) & the West Virginia Certification Board of Addiction and Prevention Professionals (WVCBAPP) to the draft copy of the Performance and Research Division's report on the sunrise application for licensure for Licensed Alcohol & Drug Counselors (LADC) & Licensed Advanced Alcohol & Drug Counselors (LAADC), which are referred to in the received correspondence as "ADC's". It is important to note that the educational requirements and scope of practice differ for ADC's versus AADC's.

We appreciate the time spent by the Legislative Auditors Office reviewing our extensive Sunrise Application and supporting documentation.

Representatives from WVAADC & WVCBAPP met with your staff for nearly two hours during the exit conference during which time we discussed the rationale for your recommendations.

Both organizations respectfully and whole heartedly disagree with the findings. We stand firm and united in our belief that licensure of Alcohol & Drug Counselors and Advanced Alcohol & Drug Counselors is essential to help combat West Virginia's growing substance abuse crisis and to ensure individuals and their families that seek alcohol & drug counseling are received from a qualified professional. Twenty nine other states require licensure for alcohol & drug counselors and advanced alcohol & drug counselors and an additional 9 states have mandatory certification or an additional regulatory policy that essentially mandates certification.

We would like to provide further clarification and support for our application and provide a response to the items in question by the draft response.

LICENSURE OF ADDICTIONS COUNSELORS WILL PROTECT THE PUBLIC

"The applicants do not document harm to the public from the current practice of ADC's"

First, we are not clear about the statement quoted above. We don't assert that there is harm to public by the practice of currently certified Alcohol & Drug Counselors. In fact it is our assertion that those who are currently certified as Alcohol & Drug Counselors and Advanced Alcohol & Drug Counselors by the International Credentialing & Reciprocity Consortium (IC&RC) are the only professionals who can demonstrate competencies to treat alcohol and drug problems as evidenced by passing the national exam and meeting all subsequent requirements for certification. It is important to note that the criteria for the Alcohol & Drug Counselors and Advanced Alcohol & Drug Counselors who earn certification are given reciprocity by 47 states and territories, five Native American territories, all branches of the U.S. Armed Forces as well as

24 countries and are recognized as experts in the area of alcohol and drug treatment. Our assertion is that the public, more specifically the disenfranchised victims of the disease of addiction, has a potential for harm if they receive services from someone who doesn't possess the demonstrated competencies to provide alcohol and drug counseling. We respect our allied professions and want only for those who are already providing sound, ethical, effective treatment to clients with substance use disorders to submit themselves to certification and licensure to protect the most vulnerable.

As you stated in the letter case law is difficult to find. It is our belief and experience that clients don't file ethical complaints, malpractice or civil suits because they:

1. Fear of discrimination and further scrutiny as they would have to submit all of their confidential personal medical records to their counsel as well as the opposing counsel. This would make those private documents public record. Requests for "in camera" hearings are rarely granted.
2. Are trying to fight a life threatening chronic condition;
3. Generally lack funds to procure legal representation for a suit (many clients are economically disadvantaged and have little access to care much less the cash to retain legal counsel);

We appreciate that you recognize that we meet the criteria listed "whether the practice of the profession requires specialized skill or training which is readily measurable or quantifiable so that examination or training requirement would reasonably assure initial and continuing professional or occupational competence."

LICENSURE WOULD ENHANCE THE LEVEL OF SAFETY BEYOND WHAT IS CURRENTLY BEING PROVIDED

Regarding individual who have submitted themselves to an additional voluntary certification through the WVCBAPP process, it is true that a large percentage are licensed by other allied professional boards. The issue is **not** those 380 who have chosen to attain the highest level of international certification in WV. The concern is that only 7% of those licensed in allied professions (i.e. psychology, licensed professional counselors and social workers) have made the choice to obtain certification if they are providing alcohol and drug counseling. The documented need for substance abuse treatment in WV is 152,000 West Virginians in need of treatment. Those who are afflicted with the disease of addiction are desperate for help and the families of these West Virginians are seeking help from individuals who have not documented that they are qualified to hold themselves out as alcohol and drug counselors. Through licensure we seek to protect those vulnerable and weakened individuals and families by ensuring that they understand the qualifications of those they are seeing out for alcohol and drug treatment.

LICENSURE CAN BE CONDUCTED IN A COST EFFICIENT MANNER THROUGH THE WVCBAPP

Regarding whether the public can be adequately protected by other means in a more cost effective manner, the WVCBAPP already has the capacity to assume the licensure requirements. WVCBAPP maintains a physical office in Dunbar, WV and employs a staff person who maintains records for each certified professional. During the exit conference Mr. Armentrout referenced the cost associated with a new board. Mr. Bailey (WVCBAPP Representative) asked for additional information regarding what data is available from the state to give specifics regarding the costs to which Mr. Armentrout was referring. We would appreciate having access to this information. Mention has been made of housing licensure with the WV Board of Examiners in Counseling (WVBEC) and although we have met with WVBEC, provided our sunrise application and invited further discussion we have not been contacted by them for further dialogue. We feel we have the infrastructure to support our own independent board without being absorbed by another board. The WVCBAPP is an affiliate of the IC&RC and have additional guidance and support available.

LICENSURE OF ALCOHOL AND DRUG COUNSELORS IS MORE THAN A TITLE

With regard to the statement on the final page of the draft report "The LA has consistently recommended against establishing a licensing board that will strictly piggyback a national organization's credential." Certification through IC& RC is VOLUNTARY- there is no national structure that requires certification thus part of the basis for our application. When reviewing the requirements of most other states that have licensure or mandatory certification, they adopt the requirements as set forth by this international credentialing body. One reason for adopting those internationally recognized requirements is that the credential has portability and positive impact on work force issues (i.e. those who move from VA, OH, etc. could come to WV and be able to provide life saving services without undue or additional requirements). Further, our license would require additional education that isn't required by the national organizations credential.

The chart listed below highlights the fact that our surrounding states with the exception of Pennsylvania all have mandatory certification, a form of registration that serves as a de facto certification (i.e. persons can't be employed and/or won't be hired without certification) or have already made the decision to license alcohol and drug counselors.

The other very serious concern this raises is on of work force development and retention in West Virginia. We have very large border areas which attract our citizens to work out of state where they are recognized as professionals and compensated in a manner that they choose to commute.

Regulatory Status	WV	Virginia	Ohio	Maryland	District of Columbia	Pennsylvania	Kentucky
Voluntary Certification	X					X	
Mandatory Registration/Certification					X		X
Mandatory Licensure		X	X	X			Currently Seeking through Legislation

We take exception to the statement on page two that the “proposed legislation would allow individuals to practice without certification or meeting educational standards, as long as they do not claim to be “licensed alcohol and drug counselors”.

First, we would direct attention to existing language contained in WV §30-30-18. Regarding Social Work: “Exemptions from this article...

(2) Licensed or qualified members of other professions, such as physicians, psychologists, lawyers, counselors, clergy, educators, or the general public engaged in social work-like activities, from doing social work consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "licensed social worker" or "licensed clinical social worker" or a variation thereof;”

In addition, WV Chapter 30 for Licensed Professional Counselors and Marriage and Family Therapists states “(7) The activities and services of qualified members of other recognized professions such as physicians, psychologists, psychoanalysts, social workers, lawyers, clergy, nurses or teachers performing counseling or marriage and family therapy consistent with the laws of this state, their training and any code of ethics of their professions so long as such persons do not represent themselves as licensed professional counselors or licensed marriage and family therapists as defined by section three of this article.”

We simply modified the same structure in our draft legislation.

Additionally, the statement related to “peer group, self help group, peer counseling and self help activities” was included in the draft legislation to honor and recognize that we are in no way seeking to regulate those activities. We would have no basis upon which to recommend regulation as the activities are outside of the scope of practice of a licensed alcohol and drug counselor or a licensed advanced alcohol & drug counselor.

Further, both national organizations have credentials that are either in place or are soon to be released that specifically address peer support, which you may have heard referred to as “recovery coaching, peer coaching, peer support, peer counseling” or some variation of those words. The scope of practice for those folks is clearly defined and separate from what we seek regulation. Of course each state may choose to adopt either, both, neither or create some structure of their own.

The role of peers is clearly important and celebrated especially in our profession. There are volumes of historical documents that provide this information. William White, a preeminent addiction researcher, author and historian has compiled extensive documentation which is on his website www.williamwhitepapers.com. He has also summarized in very simple terms the differences between addictions counselors, recovery coaches and mutual aid sponsors. The document is attached to help inform the LA office and legislators of these important distinctions.

We also want to make the point that those seeking services from qualified addiction professionals experience enough confusion with people in certain systems using the job classification and job title “addictions counselor” or “drug and alcohol counselor” and rather than this being seen as “title protection” it is intended to be ***“Public Protection”*** ensuring that when a patient or his/her family seek services and someone identifies themselves as a “Licensed Alcohol and Drug Counselor” or “Licensed Advanced Alcohol & Drug Counselor” they have some assurance that the person providing the life saving treatment has demonstrated competency in the practice of the profession of alcohol and drug counseling.

We are asking for nothing more than to have the same access to privileges our allied professions currently enjoy under West Virginia law.

PREVIOUS LEGISLATIVE ACTION SUPPORTS THE NEED FOR LICENSURE

Finally, we believe that licensure would support the efforts of the legislature in recent sessions to protect the public by ensuring alcohol and drug treatment is provided by individuals with the appropriate education and training. During the 2012 and 2013 legislative session, the Opiate Treatment Programs (OTP’s) legislation and rules were updated and included a requirement that staff be certified through WVCBAPP (or other international or national certification) or be in the process of becoming certified. One can only surmise that our legislators recognized the value of that particular subset of clients receiving counseling from those who can demonstrate competence through examination and certification. The fact is that the counselors who provide alcohol and drug counseling in the OTP’s DO NOT prescribe, administer or monitor the medications, the programs have physicians and nurses who do- as it would be out of the scope of practice for an alcohol and drug counselor to provide those services. Therefore, the services the alcohol & drug counselors are providing are the same or comparable services that are being provided by all alcohol & drug counselors.

The legislature also expressed its legislative intent to have state mandated substance abuse treatment provided by specially certified, educated and trained professionals with its updated WV DUI Safety and Treatment programs code and rules in 2010 and 2011. Program coordinators who provide education, assessment and counseling through the WV DUI Safety and Treatment program are required to be certified as an Alcohol & Drug Counselor along with the Clinical Supervisor credential (CS).

By requiring opioid treatment and DUI programs to employ certified alcohol and drug counselors, the Legislature has clearly recognized the value of the skills and competencies offered by ADC's and their role in protecting the public.

It is our belief that licensure of ADC's and AADC's would benefit the public by ensuring that all individuals seeking substance abuse treatment receive care from a qualified professional not just those in a opioid or DUI treatment program.

FEDERAL LAW WHICH SUPPORTS PUBLIC SAFETY BY REQUIRING ADDITIONAL REGULATION

Additionally Federal Law pertaining to the Department of Transportation (DOT) regulation – 49 CFR Part 40 – which is a law that encompass all DOT agencies, including, but not limited to, the United States Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA) which describes required procedures for conducting workplace drug and alcohol testing for the Federally regulated transportation industry.

In 2009 Department of Transportation Secretary Ray LaHood stated: "Safety is our no. 1 priority at the U.S. Department of Transportation. And a cornerstone of our safety policy is ensuring that transportation providers across all modes – on roads, rails, water, or in the air, over land and underground – employ operators who are 100 percent drug- and alcohol-free. We want – and we insist upon – safety-conscious employees at all times and under all circumstances."

49 CFR Part 40 states:

"The Substance Abuse Professional (SAP) as a person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. In order to be a SAP, you need to have certain credentials, possess specific knowledge, receive training, and **achieve a passing score on an examination. There is also a continuing education requirement.**" The examination in in addition to any state licenses that the professional might hold. In other words, everyone submits to additional examination and has to substantiate competence & knowledge- one cannot become a SAP by virtue of degree, license or experience alone.

Further, the federal law states:

"Credentials: You cannot be a SAP unless you are a licensed physician (Doctor of Medicine or Osteopathy); or a licensed or certified social worker; or a licensed or certified psychologist; or a licensed or certified employee assistance professional; or a state-licensed or certified marriage and family therapist; or an alcohol and drug abuse counselor certified by the National

Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC), or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC), or by the National Board of Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC).

Knowledge: You cannot be a SAP unless you have knowledge of and clinical experience in the diagnosis and treatment of substance abuse-related disorders. You cannot be a SAP without understanding how the SAP role relates to the special responsibilities employers have for ensuring the safety of the traveling public. Nor can you be a SAP unless you are well informed about Part 40, pertinent DOT agency regulations, these SAP guidelines, and any significant changes to them. It is important to note that your degrees and certificates alone do not confer to you these knowledge requirements.

Training: You cannot be a SAP unless you receive qualification training. The qualification training must include the nine required components laid out in Section 281(c) of Part 40”

This is additional support for public safety and establishment and regulation of those who provide alcohol and drug counseling activities.

CONCLUSION

Again, we thank you and the Legislative Auditor and the staff who have reviewed our application. We thank the Joint Committee on Government Operations and Joint Committee on Government Organization for allowing us the opportunity to respond both in person and in writing. We hope that we have cleared up some of the concerns and provided additional support for the very important health, safety and workforce issues that will be addressed further with the provision of licensure for alcohol and drug counselors and advanced alcohol and drug counselors.

Respectfully submitted on behalf of the West Virginia Association of Alcoholism & Drug Abuse Counselors, Inc & the West Virginia Certification Board for Addiction and Prevention Professionals.



Susie Mullens, WVAADC President & WVCBAPP Board Member
MS, LPC, ALPS, AADC-CS, Licensed Psychologist

Distinguishing the Addiction Counselor, Recovery Coach and Mutual Aid Sponsor/Guide

William White 2006 & 2009

Handout 1.1

	Counselor	Recovery Coach	Sponsor
Foundational Knowledge	Emphasis on formal education (theory & science); Vetted by the profession	Emphasis on experiential knowledge & training; Vetted by the community	Emphasis on experiential knowledge; Vetted by reputation within the community of recovery
Organizational Context	Works within organizational hierarchy of treatment organization & with direct supervision	Organizational settings span treatment organizations, allied service organizations & recovery community organizations; Varied degree of supervision	Minimal hierarchy & no formal supervision
Service/Support Framework	Works within a particular organizational treatment philosophy	Works across multiple frameworks of recovery via choices of those with whom they work	Works within beliefs & practices of a particular recovery fellowship
Service/Support Relationship	Significant power differential; Extreme separation of helper/ helpee roles; Explicit ethical guidelines	Minimal power differential; Ethical guidelines being developed; Moderate external accountability <i>Recovery Coach has to work under a framework for 100 hours International</i>	Minimal power differential; Support is reciprocal; Relationship governed by group conscience; No external accountability
Style of Helping	Formal, personally guarded & strategic	Variable by organizational setting but generally personal & informal	Informal, open & spontaneous
Use of Self	Self-disclosure discouraged or prohibited	Strategic use of one's own story; Role model expectation	Strategic use of one's own story; Role model expectation

Distinguishing the Addiction Counselor, Recovery Coach and Mutual Aid Sponsor/Guide

William White 2006 & 2009

Handout 1.1

	Counselor	Recovery Coach	Sponsor
Temporal Orientation	Considerable focus on past experience	Focus on present: What can you do today to strengthen your recovery?	Variable by fellowship & stage of recovery of sponsee
Duration of Service/Support Relationship	Brief & ever briefer	Measured in months or years (Via sustained recovery checkups)	Variable but can span years
Role of Community in Recovery	Intrapersonal & interpersonal focus; Minimal focus on ecology of recovery Minimal advocacy	Focus on linking to community resources & building community recovery capital; Significant advocacy work	Intrapersonal & interpersonal focus; Minimal focus on ecology of recovery Minimal advocacy
Documentation	Extensive & burdensome	Minimal but growing	None
Money	Works as a paid helper; Client or third party pays for service	Works in paid or volunteer role; Service may be paid for by person being coached or a third party	Provides support only as part of one's own service work; No fees paid to sponsor or recovery fellowship