COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research & Regulatory Reform

2020 Sunrise Review

Peer Support Professionals

October 15, 2020

COLORADO
Department of Regulatory Agencies
Executive Director's Office

October 15, 2020

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The General Assembly established the sunrise review process in 1985 as a way to determine whether regulation of a certain profession or occupation is necessary before enacting laws for such regulation and to determine the least restrictive regulatory alternative consistent with the public interest. Pursuant to section 24-34-104.1, Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research, and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA, and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient, and inclusive regulations that reduce barriers to entry into various professions, and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed its evaluation of the sunrise application for the regulation of Peer Support Professionals and is pleased to submit this written report.

The report discusses the question of whether there is a need for regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm, and whether the public can be adequately protected by other means in a more cost-effective manner.

To learn more about the sunrise review process, among COPRRR's other functions, visit coprrr.colorado.gov.

Sincerely,

Patty Salazar
Executive Director

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Background

Sunrise Process

Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA's Colorado Office of Policy, Research and Regulatory Reform (COPRRR) must prepare a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:[1]

> (I) 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 the harm is easily recognizable and not remote or dependent upon tenuous argument;
>
> (II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence;
>
> (III) Whether the public can be adequately protected by other means in a more cost-effective manner; and
>
> (IV) Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation.

Methodology

During the sunrise review, COPRRR staff performed a literature search, contacted and interviewed the sunrise applicant, interviewed other stakeholders, reviewed regulatory laws in other states and surveyed nearby states. To determine the number and types of complaints filed against peer support professionals in Colorado, COPRRR staff contacted staff in the Office of Behavioral Health in the Department of Human Services, the Department of Health Care Policy and Financing and the Department of Public Health

[1] § 24-34-104.1(4)(b), C.R.S.

and Environment. COPRRR staff also contacted representatives from the Colorado Providers Association and the National Association for Alcoholism and Drug Abuse Counselors.

Profile of the Profession

A peer support professional (peer), also known as a peer support specialist, is someone who has experience with a mental health condition, such as post-traumatic stress disorder or depression, or a substance use disorder, and is trained to work with others with similar conditions.[2]

Peers first meet with their clients to assess their needs and help them to set goals, such as finding stable housing or becoming more independent. Then they schedule meetings to help their clients develop strategies to meet these goals. Strategies may include joining a counseling group, seeking assistance with employment and peer-to-peer mentoring.[3]

Peers help to provide whatever support a client needs to help them be successful in their recovery. If a client is having trouble getting to therapy, for instance, a peer may accompany a client to their appointments and sit with them in the waiting room. Establishing a healthy lifestyle and learning to provide self-care is important to those who are in treatment or recovery, so a peer may help a client establish a healthy walking routine or find a recreational or social group to join.

Since peers have a history similar to their clients, it is important for them to share their stories. Doing this can help instill hope in the client which is necessary for overcoming both mental illness and addiction. Peers act as mentors to their clients, and they endeavor to establish a professional working relationship based on trust.

Peers may work in primary care offices, emergency rooms, inpatient facilities and recovery centers. They work with their clients on the phone, online or in person. Peers are not clinically trained, but they often work on teams with psychologists and social workers.[4]

Peers should have good communication, interpersonal and active-listening skills, and peers use their experience of a shared disorder to establish a connection with their clients.[5] To become a peer, an individual is typically required to have a high school diploma or its equivalent and a history with a mental health or substance use disorder.[6]

Some employers also require certification through a peer support organization that includes experiential training. The two certifying bodies available in Colorado are the

[2] You're a what? Peer support specialist. *U.S. Bureau of Labor Statistics*. Retrieved March 13, 2020, from https://www.bls.gov/careeroutlook/2017/youre-a-what/peer-support-specialist.htm?view_full
[3] You're a what? Peer support specialist. *U.S. Bureau of Labor Statistics*. Retrieved March 13, 2020, from https://www.bls.gov/careeroutlook/2017/youre-a-what/peer-support-specialist.htm?view_full
[4] You're a what? Peer support specialist. *U.S. Bureau of Labor Statistics*. Retrieved March 13, 2020, from https://www.bls.gov/careeroutlook/2017/youre-a-what/peer-support-specialist.htm?view_full
[5] You're a what? Peer support specialist. *U.S. Bureau of Labor Statistics*. Retrieved March 13, 2020, from https://www.bls.gov/careeroutlook/2017/youre-a-what/peer-support-specialist.htm?view_full
[6] You're a what? Peer support specialist. *U.S. Bureau of Labor Statistics*. Retrieved March 13, 2020, from https://www.bls.gov/careeroutlook/2017/youre-a-what/peer-support-specialist.htm?view_full

Colorado Providers Association (COPA) and the National Association for Alcoholism and Drug Abuse Counselors (NAADAC).

COPA, a professional trade association for recovery treatment providers, offers the following credential to peers: Colorado Peer and Family Specialist (CPFS) certification. The CPFS credential is affiliated with International Certification and Reciprocity Consortium (IR&RC) certification, which offers reciprocity with member boards in other states.

In order to qualify for the CPFS credential, a candidate must first have a history of a mental health diagnosis, be engaged in recovery from a substance use disorder or have a history of caregiving for a person with a mental health or substance use disorder.[7]

A candidate must also meet the following qualifications:[8]

- Have a high school diploma,
- Be a Colorado resident for over half the year,
- Complete 60 hours of training,
- Complete 500 hours of work experience,
- Complete 25 hours working directly with a supervisor, and
- Pass the IR&RC examination.

Finally, a candidate must sign a code of ethics statement.[9]

The total cost for CPFS certification is $295, which covers the application fee and the examination fee.[10]

The IR&RC examination is a computer-based examination administered by COPA at testing sites throughout the state. The examination contains 75 questions and 10 pre-test questions and must be completed in two hours.[11] The questions address the following topics:[12]

- Advocacy,
- Recovery and wellness support,
- Mentoring and education, and
- Ethical responsibility.

[7] Colorado Providers Association. *Certification Requirements.* Retrieved July 16, 2020, from https://www.coprovidersassociation.org/certification-requirements
[8] Colorado Providers Association. *Certification Requirements.* Retrieved July 16, 2020, from https://www.coprovidersassociation.org/certification-requirements
[9] Colorado Providers Association. *Certification Requirements.* Retrieved July 16, 2020, from https://www.coprovidersassociation.org/certification-requirements
[10] Colorado Providers Association. *Certification Requirements.* Retrieved July 16, 2020, from https://www.coprovidersassociation.org/certification-requirements
[11] *Colorado Peer and Family Specialist Certification Manual,* Colorado Providers Association (April 2020), p. 22.
[12] *Colorado Peer and Family Specialist Certification Manual,* Colorado Providers Association (April 2020), p. 22.

NAADAC, another organization that credentials peers, offers a National Certified Peer Recovery Support Specialist (NCPRSS) credential. NAADAC is a professional association for addiction counselors and other professionals who specialize in addiction prevention, recovery, treatment and education.

The NCPRSS certification was created for individuals who are in recovery from substance use or co-occurring mental health disorders.[13] An individual may qualify for NCPRSS certification if they meet the following requirements:[14]

- Have at least a high-school diploma or equivalent;
- Have at least two years in recovery from a substance use disorder or co-occurring mental health disorder;
- Complete 200 hours of experience working in a peer recovery setting;
- Complete 60 hours of peer recovery training and education;
- Submit a signed statement that they have read and will adhere to the NAADAC code of ethics;
- Provide two references, one of which must be a professional reference; and
- Pass the NCPRSS examination.

The cost of initial NCPRSS certification is $235 and the examination fee is $150. The certification must be renewed every two years and the renewal fee is $200.[15]

The NCPRSS examination is a written examination. The examination contains 125 multiple-choice questions covering the following topics: [16]

- The role of a peer,
- Basic concepts of recovery practice,
- Pharmacology, and
- Ethics.

Peers are considered a type of community health worker, and they often work part time. While data specific to peers is not available through the U.S. Bureau of Labor Statistics, it reported that approximately 51,900 community support workers were employed in the United States as of May 2016, and the median annual wage was $37,040.[17]

[13] NAADAC. *National Certified Peer Recovery Support Specialist*. Retrieved July 16, 2020, from https://www.naadac.org/ncprss
[14] NAADAC. *National Certified Peer Recovery Support Specialist*. Retrieved July 16, 2020, from https://www.naadac.org/ncprss
[15] NAADAC. *National Certified Peer Recovery Support Specialist*. Retrieved July 16, 2020, from https://www.naadac.org/ncprss
[16] NAADAC. *National Certified Peer Recovery Support Specialist*. Retrieved September 10, 2020, from https://www.naadac.org/ncprss
[17] You're a what? Peer support specialist. *U.S. Bureau of Labor Statistics*. Retrieved March 13, 2020, from https://www.bls.gov/careeroutlook/2017/youre-a-what/peer-support-specialist.htm?view_full

It is unknown how many peers are working in Colorado. However, at this time, 125 peers in Colorado hold CPFS certification through COPA, and 10 peers in Colorado hold NCPRSS certification through NAADAC.

Proposal for Regulation

Mental Health Colorado and the Colorado Mental Wellness Network (Applicant) submitted a sunrise application to the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) in the Department of Regulatory Agencies for review consistent with the provisions of section 24-34-104.1, Colorado Revised Statutes.

The application identifies certification by the state government as the appropriate level of regulation necessary to protect the public. The Applicant proposes that the state establish qualifications for certification and require anyone providing peer support services to obtain certification through the state.

The state would require peers to have lived and shared experience with either a substance use disorder or a mental health condition, and it would establish minimum standards for training and experience necessary to obtain certification.

According to the Applicant, essential components for effective service delivery include high-quality training and informed supervision consistent with the National Association of Peer Supporters' standards. The Substance Abuse and Mental Health Services Administration has also established competencies for peers who work in the behavioral health field.

The Applicant proposes that the state approve peer training programs and would require training courses to deliver competency- and skills-based curriculum to establish a foundation of ethical and practice standards that align with national standards. With regulation, all training courses would be standardized to establish the foundation of ethical and practice standards developed for the peer support profession.

Additionally, the Applicant proposes that the state establish a set of core competencies and an examination that measures these core competencies. The state would also establish statewide standards for the supervision of peers consistent with national standards.

In addition to establishing the necessary competencies to become a peer and granting certification, the Applicant also proposes that the state take complaints against peers and have the authority to take action against a certificate holder for violating the ethical standards of practice and to protect the public health, safety and welfare.

Finally, the Applicant proposes that certificate holders obtain continuing education in order to renew a certificate. As required by statute, the Applicant submitted an application for mandatory continuing education, but they did not delineate what the requirements should be.

According to the Applicant, establishing statewide standards for training, supervision, certification and a regulatory board will ensure consistency in service delivery across the peer support workforce.

However, the Applicant does not intend for the certification requirement to prevent natural and community-based networks, such as family members, religious groups or advocacy organizations, from providing support to these populations.

Summary of Current Regulation

The Colorado Regulatory Environment

Peer support professionals (peers) are employed in various settings in the state, such as psychiatric hospitals, organizations that serve the homeless, the state behavioral-health crisis hotline, mental health centers and substance use disorder treatment facilities. Peers also work with offender reentry programs.

Colorado has not enacted any state laws or rules that establish a regulatory program for peers. However, the Office of Behavioral Health (OBH) in the Department of Human Services and the Department of Public Health and Environment (CDPHE) regulates behavioral health facilities. CDPHE also regulates health-care facilities.

Further, the Department of Health Care Policy and Financing requires peer support services to be provided by individuals with certification in order to be reimbursed through Medicaid.

Regulation in Other States

Regulation of peers varies from state to state. Some states require private, professional certification. Others require individual peers to obtain certification through a state agency, and several states do not regulate peer support professionals at all. In many states, certification is required in order to bill Medicaid for peer support services.

Staff in the Colorado Office of Policy, Research and Regulatory Reform surveyed seven nearby states to gather information related to their complaint and disciplinary history. Idaho and Kansas failed to respond to the survey.

Table 1 illustrates the number of certified peer support professionals in each state that responded to the survey.

Table 1
Certification Activity

States	Peers
Nebraska	37
New Mexico	425
Oklahoma	1,136
Utah	420
Wyoming	103

Nebraska
Nebraska requires state certification in order to work as a peer. Nebraska's peer certification program was only recently created in 2019, and so far it has not received any complaints against peers, nor has it taken any disciplinary action.

New Mexico
New Mexico requires peers to obtain certification through a private, professional organization. While New Mexico was unable to provide historical complaint and disciplinary information, program staff reported complaints generally related to relapse and criminal charges against a peer.

Oklahoma
While Oklahoma does require peers to obtain certification issued by a state agency, program staff was unable to provide statistics related to complaint and disciplinary activity.

Utah
Utah requires peers to have state-issued certification in order to bill Medicaid. However, program staff was unable to provide any data related to complaint or disciplinary activity.

Wyoming
Wyoming has established a state-issued certification program for all peers who work in community mental health and substance abuse centers and in order to bill Medicaid for peer support services. As of July 1, 2020, Wyoming entered into a contract with a vendor to provide these services. While Wyoming does not have the authority to take complaints or discipline peers, program staff did report that issues related to peers primarily concerned relapsing and inappropriate client relationships.

Analysis and Recommendations

Public Harm

The first sunrise criterion asks:

> 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.

In order to determine whether the regulation of peer support professionals (peers) is necessary, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) requested that Mental Health Colorado and the Colorado Mental Wellness Network (Applicant) provide specific cases of harm to the public.

The Applicant submitted four cases, and COPRRR obtained several additional cases from other sources. In total, 18 cases were reported alleging:

- Boundary violations,
- Exploitation,
- Fraud,
- Inappropriate conduct,
- Inadequate provision of services,
- Inadequate supervision,
- Misconduct against other peers,
- Risking clients' safety, and
- Sexual assault.

COPRRR reviewed each case to determine whether there is clear evidence of harm. A description of each case as it was provided to COPRRR staff is detailed below, and COPRRR's analysis follows each case description. Except where indicated, all of these cases took place in Colorado.

> **Case 1 – Exploitation**
> A peer told a client about an opportunity to be interviewed by a reporter. The peer promised the client that he would be on the news and be a part of the story. The client was a chronically homeless alcoholic, who with the help of the peer had been placed in a residential treatment facility. The peer then encouraged the client to leave the treatment facility and go to Denver for the news story. This request was approved of by the peer's supervisor. The news story would have promoted the peer and the peer's employer. The client, who had been in treatment for only one month, was granted leave, but he never made it to the location and never made it back to treatment. Instead, the client relapsed and returned to living on the streets.

Analysis

A client may have been harmed when a peer and the peer's employer put the client's treatment at risk. If peers were regulated, there could be an investigation to see if the peer violated the law and whether disciplinary action was appropriate. However, in this case, the responsibility for this activity may be better placed with the entity where the peer worked rather than the individual peer.

Case 2 – Boundary Violation

A peer was working with a client who was having a difficult time getting into treatment for a substance use disorder. The peer was concerned about the client relapsing and invited the client, who was experiencing homelessness, to stay at the peer's house. The peer also promised to get the client into a treatment facility. The peer sent the client to a treatment facility on his or her own, but the client was denied entry to the treatment facility. The peer never heard from the client again.

Analysis

While it was likely done with the best of intentions, by inviting the client to stay with the peer, the peer violated the professional boundary that should exist between a client and a peer. Also, the peer should not have promised to get the client into treatment since this was outside the peer's control. When peers make promises they cannot keep, a client's trust in the peer may be broken which can damage a client's recovery. However, in this case, it is unknown if the client was in fact harmed.

Case 3 – Boundary Violation

A peer who was working at a community mental health center made promises to a client, including offering a place to stay, money and opportunities that were not available. Consequently, the client stopped going to appointments with his or her treatment team. Prior to this, the staff had noticed an improvement in the client's mental health. The staff do not know what happened to the client.

Analysis

The peer violated the professional boundary that should exist between a client and a peer. By doing this and by making promises for things that were not available, the peer may have violated the client's trust and put the client's mental health at risk. It is unclear whether the client was actually harmed in this case.

Case 4 – Inadequate Supervision

Supervisors at a location that employs peers do not honor their obligations to provide supervision. They are too busy to support peers with debriefing after their challenging days. Providing the time for debriefing was an expectation from their employer that was never met. The lack of support and supervision led to

one of the peers having to take a medical leave due to the secondary trauma endured from the job. This peer had to resign from the job due to the unhealthy and unsupportive work environment.

Analysis
This case does not provide enough specifics to determine whether the lack of supervision harmed any of the clients. Professional regulation is not intended to protect the regulated community. Harm to the peers themselves by the employers would be better addressed through regulating the entities that employ peers.

The following cases were provided to COPRRR from additional sources.

Case 5 – Inappropriate Conduct
A peer was working at a skilled nursing facility in order to help individuals with mental health conditions to transition into less restrictive settings. When a patient confided to the peer about past trauma, the peer mocked the patient. The patient then became uncooperative and refused to work with other staff and was unable to transition to a less restrictive setting. Consequently, the patient remained in a locked facility.

Analysis
While a peer does not provide counseling services, a peer often works alongside other treatment providers and a peer's misconduct can undermine treatment and other services the individual is receiving. In this case, the patient may have lost trust in the treatment team. It is ultimately unknown if the individual would have been able to live more independently. That said, licensed clinicians in skilled nursing facilities are responsible for the wellbeing of the patient and for supervising unlicensed staff.

Case 6 – Inappropriate Conduct
A peer in a skilled nursing facility promised an individual who was living with a serious medical condition and depression with an opportunity for independent living without consulting with other treatment staff. Unfortunately, it was not possible for the individual to live independently, and the individual subsequently became more depressed.

Analysis
The client's mental health may have been harmed when the peer made false promises to the client. However, licensed clinicians in a skilled nursing facility are ultimately responsible for unlicensed staff.

Case 7 – Inadequate Services
Two peers were co-facilitating a Wellness Recovery Action Plan (WRAP) workshop for individuals with multiple types of mental health conditions. One of the peers had appropriate training to facilitate the workshop and the other did not. The peer without training used the workshop to promote chiropractic services. As a result, the participants were upset, the outcomes sought during the group, including increased self-sufficiency, self-advocacy and increased hope, were not achieved and the participants continued to require a higher level of care.

Analysis
The participants in a WRAP workshop may have been harmed when an individual who was providing services was not trained and the goals of the workshop were not met. It is unknown whether the individuals were able to attain these goals through other means. However, it is ultimately the responsibility of the organization that set up the WRAP training to ensure the facilitators are adequately trained to provide services.

Case 8 – Inadequate Services
A peer was facilitating a WRAP workshop for individuals with substance abuse problems who were required by a court to complete the workshop. The recovery coach was not trained to facilitate a WRAP workshop. The group was not run well, and some participants seemed to lose confidence in the workshop and refused to participate. Consequently, one individual's probation was revoked and another individual's parental rights were terminated.

Analysis
The individuals participating in the workshop may have been harmed when it was facilitated by someone without relevant training. The consequences for some of these individuals were serious. However, the participants were required by the court to complete the workshop and they decided not to do so. That said, the organization that arranged the WRAP training was responsible for ensuring the peers were adequately trained to provide services, especially when the stakes were so high for the participants.

Case 9 – Fraud
A peer was working with individuals with mental health conditions. She was supposed to meet with her clients by telephone or in the community. She billed Medicaid for services that she did not provide and fabricated the documentation.

Analysis
Clearly, the peer's clients were harmed when they did not receive peer support services as intended, and the public was harmed when it paid for services that were not provided. If peers were regulated, it is possible that this individual would not qualify for certification due to her history of fraud, especially since it directly related to the provision of peer

services. However, an employer that is providing services to individuals with mental illness is responsible for vetting its employees and disqualifying such applicants from employment.

Case 10 – Improper Provision of Services
A peer provided an assessment to 15 individuals who were experiencing homelessness or at risk of homelessness. The assessment is intended to determine resource allocation, and it includes very personal questions. However, the individuals who were provided the assessment did not meet the criteria for the assessment. When the individuals were told that they did not qualify, they experienced increased anxiety and depression and several individuals stopped obtaining services and subsequently remained homeless.

Analysis
It is the responsibility of the organization where the peer worked to ensure the peer was properly trained and supervised and that tasks assigned to the peer were appropriate.

Case 11 – Boundary Violation
A peer who was working with a woman with mental health issues lost her housing, and the client felt compelled to allow the peer to move in with her. After moving into the client's home, the peer started an affair with the client's husband. Later, the client was asked to leave her home, and the peer continued living with the client's family.

Analysis
A mentally ill woman was likely harmed in this case. The most important duty of a peer is to consider the welfare of the client. When professional boundaries are blurred, the client is at a disadvantage and the client's trust in the system connected to the peer may be damaged. In this case, the peer benefited from the relationship to the detriment of the client. The peer damaged the client's support system which was important to her health and wellbeing. This is in direct conflict with the purpose of peer support, which is intended to help a client build a community of support, not dismantle it. If peers were regulated by the state, the peer could be investigated for possible violations of the law and may be disciplined for her conduct.

Case 12 –Exploitation
A peer was working with individuals recovering from drug abuse. A client reported the peer to his employer after he began selling drugs to the clients who he was supposed to be helping. The peer was subsequently fired.

Analysis
The clients may have been harmed when an individual exploited the peer relationship as an opportunity for personal gain and put the clients'

sobriety at risk. While the peer was caught and removed from the organization, it is possible he could find work providing peer services elsewhere in the state. If peers were regulated by the state, an investigation could be initiated and action could be taken to prevent this individual from working as a peer.

Case 13 – Boundary Violation
A peer who was working with an individual with severe and persistent mental illness initiated a romantic relationship with the client. After staff at the organization uncovered this, the peer was fired.

Analysis
The client in this case may have been harmed by the peer who treated the peer relationship as an opportunity for personal gain. An individual who is being helped by a peer may feel compelled to engage in a romantic relationship if they feel the help they are receiving is contingent upon it. When a peer exploits this vulnerability, a client may lose trust in the organization that employed the peer and his or her gains in treatment may be damaged. If peers were regulated in Colorado, the regulatory authority could investigate the peer's conduct and take action if necessary to protect the public. While the peer's employer took appropriate action, this may not prevent the individual from being hired to work as a peer elsewhere in the state.

Case 14 – Sexual Assault
In 2017, a peer was convicted of sexual assault of two patients at a medical facility in Wisconsin. One of these patients was receiving treatment for past sexual trauma.

Analysis
Clearly, the peer harmed two patients when he sexually assaulted them at a medical facility. While this conduct is contemptible, the peer has been convicted of a crime, and if future employers conduct criminal history background checks, it is unlikely he will be hired as a peer again.

Case 15 – Sexual Assault
In 2020, a peer was arrested for engaging in sexual activity with a patient at a mental health clinic in Florida. The patient reported the peer for sexual battery, but the peer, who admitted to having sex with the patient, alleged that it was consensual.

Analysis
This case highlights why peers should not engage in sexual activity with their clients. In this case, the peer claimed that the sex act was consensual, but the patient said that she was afraid of the peer. While the peer has not yet been convicted of a crime, the underlying facts of

this case demonstrate that the patient was harmed when the peer took advantage of the peer relationship at the patient's expense. Regardless of whether the peer is ultimately convicted of a crime, if the State of Colorado regulated peers, it could investigate a case like this and discipline the peer, which may include revoking his privilege to work as a peer in Colorado.

COPRRR staff contacted the Colorado Providers Association (COPA) and the National Association for Alcoholism and Drug Abuse Counselors (NAADAC) in order to identify additional cases of harm. While COPA reported that it does have a grievance process, it did not report any complaints or disciplinary actions against certificate holders. NAADAC also has a grievance process, and it provided the following three cases.

Case 16 – Boundary Violation
A peer in California was working with a man in treatment when she initiated a personal relationship with him. When she realized a personal relationship was inappropriate, she ended it. She did not hold certification through NAADAC, but NAADAC did send her a letter advising her of the boundary violation.

Analysis
When professional boundaries are blurred, a client may feel compelled to enter into a relationship with a peer because they may fear the loss of services. In this case, the peer ended the relationship when she realized it was inappropriate, and while a boundary violation occurred, there is no allegation of harm in this case.

Case 17 – Risking Clients' Safety
A complaint was filed against a peer in New York because the peer was speeding when he was driving his clients to appointments which risked the safety of the clients. The peer was not certified through NAADAC, so the complainant was advised to file a complaint with the State of New York.

Analysis
In this case, no clients were harmed.

Case 18 – Peer to Peer Misconduct
A peer in Washington borrowed the car of another peer and failed to pay tolls when driving across toll areas or advise the owner of the charges that accrued. The owner of the car then was left with several tickets and late fees. Since the peer was not certified by NAADAC, the complainant was referred to the State of Washington.

Analysis
In this case, no clients were harmed.

COPRRR also contacted the Office of Behavioral Health (OBH) in the Department of Human Services, the Department of Public Health and Environment (CDPHE) and the Department of Health Care Policy and Financing (HCPF). However, none of these state agencies were able to provide any cases of harm related to peers.

While a review of several other nearby states provided little evidence of complaint or disciplinary activity, agencies in other states that oversee the provision of peer support reported that concerns about peers often relate to relapsing, inappropriate client relationships and criminal conduct.

Overall, COPRRR staff utilized a variety of sources in an attempt to identify instances in which unregulated peers were harming consumers. A comprehensive review of the information revealed a few cases in which consumers were clearly harmed. The means of harm were varied, including cases involving fraud, exploitation, boundary violations and sexual assault, and the potential harm to clients is a failure to stay in treatment for mental illness or a failure to maintain sobriety, which could lead to an increased need for public services, homelessness and self-harm.

Need for Regulation

The second sunrise criterion asks:

> Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence.

A peer by definition is someone who has experience with a mental health or substance use condition and is trained to work with others with similar conditions. For example, a peer may have a diagnosis of manic depression or have recovered from an addiction to pain killers.

While the provision of peer support services does not require a high level of education, peers would likely benefit from some initial training. For one, peers need to understand their role, duties and responsibilities. They also need to understand how to provide these services ethically. For example, peers should learn about the importance of maintaining professional boundaries and how this may be accomplished. Additionally, peers need to know what signs to look for when a client is in crisis and may require a higher level of care.

Most of the cases uncovered by COPRRR, however, did not involve misconduct that could be eliminated through training. An individual does not need to complete a course to know that fraud, exploiting clients to sell drugs and sexual assault are wrong, and a training course is unlikely to prevent someone from engaging in this behavior.

While several boundary violations were reported to COPRRR, only two of these cases provided clear evidence of harm. It should be noted, however, that these cases were anecdotal and have not been verified by other sources.

Considering this, it is questionable whether the harm uncovered during the review is sufficient to warrant an assurance of professional competence.

Prior to introducing a bill requiring mandatory continuing education (MCE), section 24-34-901, Colorado Revised Statutes, requires information concerning the need for the requirement to be submitted to the Executive Director of the Department of Regulatory Agencies (Executive Director and DORA, respectively).

Upon receiving an MCE application, the Executive Director must:

- Conduct an analysis and evaluation of any proposal to impose mandatory continuing education on a given profession or occupation, and
- Present a written report to the General Assembly that addresses whether the proposed continuing education requirement would likely protect the public.

COPRRR, located within the Office of the Executive Director of DORA, is responsible for fulfilling this statutory mandate. During the sunrise review, COPRRR received an application related to MCE for peers, as required, and conducted an evaluation of the proposal to impose continuing education requirements on peers.

The harm uncovered in this report is insufficient to warrant an assurance of initial or continued competence.

Alternatives to Regulation

The third sunrise criterion asks:

> Whether the public can be adequately protected by other means in a more cost-effective manner.

One alternative to regulation of peers by the state is private, professional certification, which provides some assurance of initial and continued competency.

Peers in Colorado may obtain certification through two different organizations: COPA and NAADAC. Both of these organizations have grievance processes and may take action against a certificate holder.

Many employers already require peers to obtain private certification. Peer support services are often covered by Medicaid, and HCPF requires peers to maintain private certification in order to bill Medicaid for services.

While employers may require certification through COPA or NAADAC, it is not always required. Moreover, not all entities that employ peers are regulated by the state and some of these entities are not supported through public funds, so peers working in these organizations may not be required to maintain certification.

Additionally, there is some concern among stakeholders that the private certifying bodies operating in Colorado may be insufficient to protect the public. While these entities have established grievance processes, it is unknown whether they are adequate for public protection. Notably, no evidence of harm was uncovered through the certifying bodies.

Another alternative to regulating individual peers would be through regulation of the entities that hire peers. While the state could not take action against the individual peer for wrongdoing, by regulating the entities that employ peers, it could hold the employers accountable.

Clients of peer support services do not typically choose the individuals with whom they will be working. Peers are typically rooted in organizations that hire, train and supervise them, such as community mental health centers and substance use disorder treatment facilities. While peers are not trained to provide behavioral health services, they often work under the direction and supervision of licensed behavioral health practitioners.

Many, but not all, entities that employ peers are regulated by state agencies. Both OBH and CDPHE have authority to establish standards for behavioral health facilities, which include public and private alcohol and substance use treatment facilities and community health centers. CDPHE also regulates other health-care facilities.

Therefore, state agencies have some ability to protect the public through establishing standards for peer support services that are provided through the existing regulated entities.

Collateral Consequences

The fourth sunrise criterion asks:

> Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

Peers work with individuals who are vulnerable to abuse and exploitation. In this sunrise review, three cases were uncovered in which peers leveraged their positions to sell drugs or sexually assault their clients.

Clearly, it is important that employers carefully vet peers to ensure that they are not placing clients with individuals who have a history of abuse or exploitation of at-risk

children or adults. If a regulatory program were put in place for peers or for their employers, then it would be reasonable to consider criminal history during the application process.

However, since peers must have a diagnosis of either prior mental illness or substance abuse, they often have had experience with the judicial system. In fact, some peers specifically work with the offender population and their history is important to helping offenders navigate probation or parole and may help to reduce their chances of reoffending.

Therefore, while it is important that peers are vetted, the state must also recognize that some individuals with a criminal history may be able to provide peer support services safely, and their experience with the judicial system may at times be an asset.

Conclusion

According to the Applicant, state certification would ensure that peers have obtained the minimum training and experience necessary to provide high-quality and ethical practice to the vulnerable, at-risk clients that they serve. It would also ensure that peers have lived and shared experience with mental health or substance use disorders, or both.

The Applicant seeks certification by the state government in order to standardize the qualifications necessary to work in this field, align practice and supervision standards with national organizations, and create a grievance process.

Peers are working with individuals who may have severe, pervasive mental illnesses, individuals with severe alcohol or substance use disorders and individuals who may suffer from both. A peer, by definition, must also have a history of mental illness or be in recovery from a substance use disorder.

Clients of peer support services and peers themselves are subject to having problems with establishing and maintaining good boundaries with others. Both clients and peers are at risk of relapse, and many clients and peers themselves have suffered traumatic experiences, such as abuse and exploitation.

While many peers work for entities that are regulated, such as community mental health centers or publicly funded substance abuse treatment facilities, others work in environments that have little state oversight. Some employers may require peers to have private certification and others may not.

Stakeholders expressed concern that some employers in Colorado may be hiring peers before they have been in recovery for a sufficient amount of time. Doing this could be problematic because it increases the chance of a peer relapsing and the potential for harm to the peer's clients.

Professional and occupational regulation, however, is typically cash funded by the regulated community through license, certification or registration fees. While COPRRR staff do not know how many peers are working in Colorado, only 135 peers currently hold private certification. When the pool of regulated individuals is so few, the cost of regulation can be prohibitive.

Peers are often part-time workers who may only earn minimum wage. In some cases, they may be providing services in exchange for housing. Therefore, peers may not be able to afford a potentially expensive regulatory program and creating one would likely shrink the pool of those who are able to provide services in Colorado.

For these reasons, the state must carefully consider whether other mechanisms are already in place that provide public protection before establishing a new regulatory program.

Many of the cases reported during the review may be addressed by the employers themselves who already have an interest in protecting their clients. Recall, clients are not hiring peers on their own; peers are rooted in existing organizations which have the ability to determine the necessary qualifications for their employees.

During the sunrise review, COPRRR uncovered a few cases of harm, but COPRRR also uncovered cases of employers taking appropriate actions to protect their clients. By conducting background checks, interviewing applicants and considering where the applicants are in their recovery, employers can help to protect their clients and their organizations. Employers may also prevent harm by requiring peers to complete a training program and requiring ongoing, regular supervision by licensed clinical staff.

Since many entities that hire peers are regulated, the state already has some ability to protect the public through existing regulatory programs. For instance, OBH regulates behavioral health, substance use disorder and offender reentry programs. CDPHE regulates health-care facilities, and professional boards within DORA regulate the licensed clinical professionals that work with peers.

While the state regulates many entities that hire peers, it does not regulate them all. The General Assembly, for example, recently considered regulating sober-living facilities and decided against it, instead requiring some sober-living facilities to maintain private accreditation that is approved by OBH. The state also does not regulate privately funded substance use disorder treatment facilities.

The sunrise review did not conduct a review of these facilities, so it cannot opine on whether the regulation of these facilities should be expanded or increased. However, as the state does require many of these facilities to be regulated, it does not seem reasonable to burden the lowest paid, non-clinical staff in these same entities with regulation.

In conclusion, it is questionable whether the few cases of harm identified in the review provide sufficient evidence of harm to warrant regulation of the individual peers who are providing these services.

Recommendation – Do not regulate peers.