

**MINUTES  
of the  
THIRD MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**August 10-11, 2009  
Red Rock State Park Hospitality Room  
Gallup**

**August 12, 2009  
Manuelito Chapter House  
Gallup**

The third meeting of the Indian Affairs Committee for the 2009 interim was called to order by Senator John Pinto, co-chair, on Monday, August 10, 2009, at 10:13 a.m. in the Hospitality Room at Red Rock State Park in Gallup, New Mexico.

**Present**

Rep. James Roger Madalena, Co-Chair  
Sen. John Pinto, Co-Chair  
Sen. Rod Adair (8/10)  
Rep. Eliseo Lee Alcon  
Rep. Ray Begaye  
Sen. Eric G. Griego (8/10)  
Rep. Sandra D. Jeff  
Sen. Lynda M. Lovejoy  
Rep. Patricia A. Lundstrom  
Sen. George K. Munoz  
Rep. Jane E. Powdrell-Culbert  
Sen. Nancy Rodriguez  
Rep. Gloria C. Vaughn

**Absent**

Sen. John C. Ryan

**Advisory Members**

Rep. Ernest H. Chavez  
Sen. Richard C. Martinez  
Rep. Debbie A. Rodella

Sen. Stuart Ingle  
Sen. Timothy Z. Jennings  
Rep. Ben Lujan  
Rep. Antonio "Moe" Maestas  
Sen. William E. Sharer

**Guest Legislators**

Sen. Timothy M. Keller (8/10)

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Damian Lara  
Jennie Lusk  
Tamar Stieber

**Monday, August 10****Welcome and Introductions**

Senator Pinto asked Representative Lundstrom to chair the meeting. Because the committee was one person shy of a quorum, she declared it a subcommittee and asked committee, staff and audience members to introduce themselves.

**Native American Crafts Authenticity and Preservation**

Tony Eriacho, Pueblo of Zuni, president of the Council for Indigenous Arts and Culture (CIAC), briefed the committee on a consumer education program that educates consumers about real and fake American Indian jewelry. Mr. Eriacho, who is instrumental in that program, also described a program in Flagstaff, Arizona, in which the U.S. Forest Service participates in inspecting and certifying Indian jewelry as authentic. In contrast, he said, New Mexico uses the honor system, which he said does not work. There are inspectors and there are rules, but the inspectors do not enforce the rules, he said.

Mr. Eriacho asked committee members to surround a display he brought with him showing a side-by-side comparison of Zuni jewelry that was handmade (authentic native materials; handmade by a Zuni artist), handcrafted (plastic, composite and/or imported materials; hand- or machine-made by a Zuni artist) and fake (not Indian-made). Noting that they look the same, he said there is nothing to distinguish the real from the fake. He also presented a display of several dozen colored stones of which only nine were real. Buyers do not usually ask about the authenticity of the Indian crafts they buy and often pay a lot of money for plastic and/or imported goods, he said.

Mr. Eriacho said it is currently up to vendors to represent accurately what they are selling, though many do not. He said the industry needs more stringent rules and oversight, especially because native artists and vendors are finding it difficult to compete against cheap fakes. Representative Lundstrom pointed out that Gallup is one of the worst areas for fakes. Mr. Eriacho said Indian artists and vendors need financial and other help in educating the public about fakes. In the meantime, he said, the CIAC has collaborated with the New Mexico and Arizona tourism departments in printing 34,000 glossy color brochures called "Which Is Authentic Indian Handmade?".

At 11:10 a.m., Representative Lundstrom announced the presence of a quorum and reconvened as a committee. She asked the committee for recommendations on the issues of authenticity and consumer protection with regard to Indian arts and crafts.

Senator Griego said Senate Memorial 55, which passed in the last session, asks the federal government to prohibit detachable country-of-origin stickers on imported items and instead to require some sort of permanent marking. He said he will support any measure to get the issue on the "radar screen" of New Mexico's congressional delegation and made a motion to send a letter to the delegation, with Senate Memorial 55 attached, for a federal rule change requiring permanent markings on imported goods. Senator Lovejoy seconded the motion, which passed unanimously.

Representative Jeff moved to send a letter to the congressional delegation asking that a similar letter be sent to the appropriate federal agency asking that such a rule be implemented immediately. Senator Griego seconded the motion; it passed unanimously.

Representative Begaye made a motion to send a letter to the Tourism Department asking for financial and other support for the CIAC's work. Senator Lovejoy suggested putting up billboards that warn consumers about fake Indian jewelry. Representative Lundstrom asked that the motion be amended to include billboards. Representative Begaye concurred. On a second by Representative Jeff, the motion was unanimously approved.

Marvis Aragon, deputy secretary of the Indian Affairs Department (IAD), said he was very taken with Mr. Eriacho's presentation. He said the IAD will work closely with Travis Suazo, tribal liaison for the Tourism Department, on promoting awareness about counterfeit Indian arts and crafts. Representative Lundstrom said the IAD should be the major player on the issue, not the Tourism Department. Representative Begaye said the IAD should be the conduit for all money coming into Indian country. He said he realizes that it would be a huge task for the IAD, but that perhaps the department could hire a contractor to do the work.

Representative Begaye asked for copies of past legislation on Native American arts and crafts authenticity. Representative Lundstrom requested information on the state's authority to regulate vendors and provide consumer information along federal roads.

Senator Keller said that the issue of authenticity has been around for hundreds of years, and the fact that it remains unsolved is an embarrassment for the state. He asked Deputy Secretary Aragon why the IAD has not been more involved in making Native American arts and crafts authenticity a strategic priority because "it seems like a good issue to champion". Deputy Secretary Aragon said the IAD has made its priorities such issues as health and economic development, acknowledging that the authenticity issue is related to economic development. Senator Keller said it would be a great public service if the state provided some proof of authenticity, though it might upset some vendors. Representative Lundstrom suggested that authentication might be performed on-site. Senator Griego said that authenticating Indian art is not only a matter of consumer protection but also one of intellectual property, and that both areas fall under federal jurisdiction. Representative Lundstrom suggested that the committee's next agenda

include a discussion on intellectual property.

Representative Jeff made a motion to request that funds be made available in the 2009 state fair budget for on-site authentication of Indian crafts at Indian Village, that staff put together recommendations on how that might work and that those recommendations be brought to the governor's cabinet. Seconded by Senator Lovejoy, the motion passed without objection.

Senator Keller suggested that agencies such as the All Indian Pueblo Council and the Consumer Protection Division (CPD) of the Attorney General's Office (AGO) might want to join forces to sue counterfeiters. Representative Jeff said she was particularly concerned about unauthorized use of the Zia symbol by such entities as the City of Santa Fe and Southwest Airlines. Representative Lundstrom asked for a briefing on that topic.

The committee recessed for lunch at 12:12 p.m.

### **Indian Arts and Crafts Sales Act**

The committee reconvened at 1:14 p.m. with a presentation from William Keller, assistant attorney general, CPD, AGO. Mr. Keller distributed an internet advertisement for "authentic" Navajo-style jewelry that is made in Thailand. He said more than 90 percent of so-called authentic Indian crafts are imported and arrive in the United States with country-of-origin stickers that can be peeled off, making it easy for vendors to represent the items as authentic.

Mr. Keller said the AGO last year filed suit against two Santa Fe stores selling fake Indian jewelry in violation of the state's Indian Arts and Crafts Sales Act. In the case against Golden Bear Trading in Santa Fe, the judge handed down a consent decree by which Golden Bear Trading will pay restitution both to defrauded customers and to the artist, Calvin Begay. The owners also have to pay a \$10,000 civil penalty to the AGO as well as \$2,500 in legal costs to the AGO and the Department of the Interior's Indian Arts and Crafts Board (IACB), which helped with the investigation, including supplying "buy money" for undercover purchases of fake items.

Mr. Keller noted that Golden Bear Trading is only one of hundreds of companies "doing the same deal". He said that amending the Indian Arts and Crafts Sales Act to augment the penalties for fraud will encourage compliance. He noted that House Bill 92 from the 2009 session, which would have made a felony any fraud involving property valued at a minimum of \$500 — rather than \$10,000, as the law currently reads — never made it to the Senate floor. Representative Madalena sponsored the bill, which Mr. Keller expects to be reintroduced in the 2011 session. In the meantime, his office will continue to work with the IACB as well as state and local Indian arts and crafts associations and groups like Mr. Eriacho's to educate consumers.

Mr. Keller said his office is very much committed to doing enforcement in this area, but he sometimes feels like he and his colleagues are "holding back the ocean with

our hand", especially with so many staff vacancies due to the state's hiring freeze.

Representative Lundstrom asked why, if fraud is both a federal and a state crime, it is not prosecuted in both jurisdictions. Mr. Keller said his office can only bring cases under the state's Indian Arts and Crafts Sales Act. The U.S. attorney can prosecute under the federal Unfair Practices Act, which has penalties that are far stiffer. However, he said, federal prosecutors generally will not take cases involving property valued at less than \$50,000. By way of comparison, the Golden Bear Trading case involved only \$2,400. Federal prosecutors also tend to prioritize terrorism and drug cases, he said.

Representative Lundstrom commented that all roads lead to enforcement and wondered if the AGO should be the lead agency in dealing with the issue rather than the Cultural Affairs Department, as is currently the case. Mr. Keller said he is not in a position to answer that question, but that "talks could occur".

Responding to questions from Senator Keller, Mr. Keller said he is unaware of any Native American artisans attempting to regulate the industry on their own. What would be most helpful, he said, would be passage of the bill enhancing the penalties for selling counterfeit goods. "I think the most effective enforcement is to get someone in jail", he said.

Representative Alcon said he agrees that bringing the value down to \$500 for a felony prosecution is appropriate because as the law stands now, the state has dozens of misdemeanor cases. Representative Powdrell-Culbert agreed, saying it would hit the counterfeiters so hard that it might be a deterrent. At present, she said, it is like swatting the flies in the meeting room. "You swat one and 10 others come. It has no impact.". She suggested that the Native community work with the AGO to file a major suit. Mr. Keller said it might be good to sit down together and have a summit, but that the best thing to do is get federal prosecutors involved because their penalties are far more stringent.

Senator Griego said the federal government is more experienced at, and has more resources to devote to, such issues as patenting, copyright, intellectual property, importation, etc. As such, he said, the attorney general should "figure out how to get the feds more on-board with this". He added that he knows "terrorism is a big thing, but there's not a lot of difference".

Senator Keller commented that, with passage of the State-Tribal Government Collaboration Act, sponsored by Senator Pinto, the issue could be raised in that arena. He suggested that the committee might want to put that issue on a future agenda.

Referring to a brochure the AGO co-produced to educate the public about fraudulent Indian art, Representative Lundstrom asked how "Ma and Pa Kettle from Oklahoma" might get a copy when buying Indian arts and crafts at the state fair. Mr. Keller said they would have to pick up a brochure at the Consumer Affairs booth.

Representative Lundstrom said that approach is ineffective. Mr. Keller replied that if she can figure out a way to get him out of his booth, he would be happy to do it. Mr. Eriacho said he agrees with Representative Lundstrom that the government has no real mechanism to educate the general public. Representative Lundstrom said there needs to be a better way, something with a little "sex appeal", to get the word out and get people to look at it.

Responding to questions from Representative Vaughn, Mr. Keller said the members of the Native American Arts and Crafts Authenticity Task Force are appointed by the governor, and no one from the AGO is on the committee. "You should be", Representative Vaughn said, adding that she would like the task force to report to the Indian Affairs Committee. Representative Lundstrom said she is concerned about gubernatorial appointees leading the task force because the task force would then become subject to the "whim of the governor's office".

### **Economic Value of Native Arts and Crafts to New Mexico**

Bruce Bernstein, Ph.D., executive director, Southwestern Association for Indian Arts (SWAIA), said the economic impact on New Mexico, not only of native arts and crafts but also of native culture, is huge, accounting for approximately half the state's \$4 billion tourist industry. He said those dollars are important to the well-being of New Mexico. For example, he said, some 80 percent of the Zuni population, and between 50 and 75 percent of the much larger Navajo population in New Mexico, make all or some of their income from the arts. He stressed, however, that his numbers are all "estimates and foggy", which he said makes it difficult to pinpoint the true impact that native arts and culture have on New Mexico's economy.

Mr. Bernstein said Native American arts and crafts are a \$500 million business, including \$200 million from Santa Fe's two-day Indian Market, which SWAIA puts on annually in late August. While SWAIA spends a year certifying the artists that participate in Indian Market — some of whom make 50 percent to 80 percent of their yearly income during those two days — the majority of the Indian art market is a "free-for-all", Mr. Bernstein said. He suggested creating some type of regulatory body — similar to the commissions that oversee restaurants, for example, or barber and beauty shops — to oversee the native art market.

Representative Lundstrom made a motion that staff work with local experts to draft a bill creating regulatory mechanisms for Indian arts and crafts. Representative Vaughn seconded the motion, which passed unanimously.

Representative Powdrell-Culbert asked about certification at the state fair's Indian Village and was surprised to hear that there is none. She said she would be pleased to be on a task force that would help establish broader protection of native industries.

Senator Lovejoy complimented SWAIA on its work and noted that people who complain about the expense of participating often forget that SWAIA functions almost

entirely through the work of volunteers. She said that her son sells jewelry at Indian Market and will not let his brother help make the jewelry because of the stringent rules requiring artists to do all their own work.

Mr. Bernstein said it surprises and frustrates him that the state pays so little attention to its native cultures; e.g., it offers no financial support, including advertising, for Indian Market, even though it is the biggest cultural event of the year in New Mexico. He thanked the committee for endorsing Senate Memorial 42, designating the third full week in August as Indian Arts and Culture Week, which Senator Pinto sponsored and the governor signed. Although there is no money attached to the bill, Mr. Bernstein said he thinks of it as a "foundational aspect" upon which to build.

Representative Lundstrom called Mr. Bernstein's comments about the state's lack of attention to native arts "a profound statement" and asked what the committee can do about it. Representative Madalena said education should be at the forefront, calling that a "no-brainer". Mr. Eriacho said SWAIA has the volunteers and the economic means to educate the public at Indian Market. Mr. Bernstein reminded Mr. Eriacho that SWAIA offered him a free booth a year ago to provide educational materials to the public, but that Mr. Eriacho has not taken advantage of the offer.

Responding to a series of questions from Representative Jeff, Mr. Bernstein explained that SWAIA:

- charges \$500 for a five-foot by 10-foot booth and \$650 for a 10-foot by 10-foot booth at Indian Market and will raise funds for qualifying artists who cannot afford the booth fee;
- covers only 20 percent of its operating costs, including putting on Indian Market, with the booth fees and raises funds to cover the remaining 80 percent of its operating costs;
- is a nonprofit organization that employs only nine staff members and depends heavily on its 540 volunteers to operate;
- holds Indian Market in Santa Fe because that is where Indian Market started 88 years ago and because Santa Fe is a center for the arts; and
- has a board of directors that is 51 percent Native American.

Representative Jeff said the booth fees are too expensive and asked Mr. Bernstein for a financial breakdown of SWAIA's operations so she could be sure the organization is not making a profit. Mr. Bernstein reminded Representative Jeff that SWAIA is a private, nonprofit organization (which means its books are not public records). He also pointed out that for the cost of their booth fee, artists at Indian Market get free advertising, have access to hundreds of thousands of potential customers and are on a world stage, so they get the dollars and the prestige. Representative Powdrell-Culbert said the booth fees at Indian Market are the going rate — equivalent to what the state fair and the Juneteenth festival charge.

## **Gallup Inter-Tribal Indian Ceremonial**

Representative Lundstrom and Louie Bonaguidi, president, Gallup Inter-Tribal Indian Ceremonial, discussed the status of the ceremonial, which celebrates its 88th year in August and is suffering a shortfall in funding. Representative Lundstrom said funding for the ceremonial was released only a week before it was set to begin and at only a portion of what it received in previous years, so organizers could only "hobble together" this year's ceremonial. She said she hopes people will not be disappointed.

Senator Munoz said he would like funding restored for the ceremonial and included in the IAD budget. Representative Begaye asked why the governor restructured the board and pulled out money. Representative Lundstrom said it was one of the governor's many line-item vetoes and just one of numerous casualties of the state's \$700 million budget deficit. She suggested the committee write a letter to the Legislative Finance Committee (LFC) and to the governor requesting full funding for next year's ceremonial. Senator Rodriguez suggested adding to the letter the amount of money the ceremonial generates.

Senator Lovejoy described the ceremonial as an "orphan trying to find a fiscal agent" and said she does not think the IAD is the right fiscal agent. Mr. Bonaguidi said he would like the county to be the fiscal agent because the ceremonial belongs to the community. He said the ceremonial is in desperate need of a director. The board asked the previous director to resign because she was not showing up for work despite drawing \$1,000 a week in salary.

Representatives Jeff and Begaye said the board needs restructuring. Representative Lundstrom agreed but said it is more urgent right now to get the state funding in place. She said she would bring to the committee a business plan the ceremonial board prepared for the LFC, which agreed to reinstate funding after the beginning of the current fiscal year if the ceremonial adheres to its business plan. Senator Adair pointed out that the fiscal year began 40 days ago. Mr. Bonaguidi said it was at that time that the LFC released \$75,000, which was the balance remaining from previous fiscal years.

Senator Adair said the number of tenants for the ceremonial has dwindled to a fraction of what it has been in previous years. Mr. Bonaguidi said the ceremonial is like any other business: its merchandise mix changes, and what was a draw in the 1950s and 1960s is no longer a draw today. He said he recalled when Native Americans from across the state and the country arrived for the ceremonial in wagons and camped on the hillside. He said the wagons are gone, but the quality of the art is better than it has ever been.

Senator Adair asked about the law for line-item vetoes. Representative Lundstrom said it is against the law to cut more than 50 percent of an agency's budget. She said the ceremonial originally had a budget of \$175,000 and ended up with \$12,000, and two staff positions were cut. Senator Adair said the veto was a clear violation of the

law and asked why it could not be fixed immediately. Senator Munoz said a California state senator sued Governor Arnold Schwarzenegger over line-item vetoes.

In response to questions from Representative Alcon, Mr. Bonaguidi said the ceremonial received state funding from 1936 until 1996, when Governor Gary Johnson cut the funding. He said he does not expect to receive state funding for the ceremonial forever, especially because the ceremonial sometimes has flush years. After one of the better years, it bought the Red Rock State Park, he said.

Following the discussion, the committee previewed the ceremonial's crafts competition.

### **Adventure Tourism**

Karl Loman, vice president, Adventure Gallup and Beyond, and Chuck Van Drunen of *Gallup Journey* magazine, asked that the committee support initiatives boosting adventure tourism in the Gallup area. That includes hiking, biking and a variety of other outdoor activities, some of them along 26 miles of trails that the Youth Conservation Corps built under the tutelage of Mr. Loman and his associates.

Mr. Loman said Gallup's open spaces and magnificent landscape are a natural draw for tourists and, as such, a commodity for the community, which he said has a "fire in its belly when it comes to entrepreneurship". Mr. Van Drunen, who is an avid mountain biker, said that the Zuni Mountains provide some of the finest mountain biking he has ever experienced — and that includes Utah and Colorado and even Ecuador and the Dominican Republic — and that Gallup is a gateway to the Grand Canyon. He asked for the committee's help in advertising Gallup as a destination for adventure tourism.

Following their presentation, Mr. Loman and Mr. Van Drunen led a few hardy committee, staff and audience members on a five-mile round-trip hike to Pyramid Peak.

### **Tuesday, August 11 — Behavioral Health Care and Long-Term Services**

Senator Pinto reconvened the meeting at 9:18 a.m. and turned the chair over to Representative Jeff. She introduced former Navajo Nation President Nelson Begaye, Church Rock Chapter Vice President Robinson Kelly and former state Senator Leonard Tsosie.

### **Out-of-State Recovery Resources**

Gordon Nez, case manager, Friendship House Association of American Indians, Inc., of San Francisco, discussed issues surrounding drug and alcohol abuse among Native Americans, including causes, treatment and prevention. He said there are few adequate recovery resources available for Indians outside of urban areas, but that centers such as Friendship House, a nationally accredited residential treatment center that specializes in services to Native Americans, can fill the void. Founded by a Crownpoint, New Mexico, native, Friendship House offers treatment based on best practices and

proven methodologies combined with traditional native practice — a combination Mr. Nez said helps people stay sober longer.

Mr. Nez explained that the nonprofit Friendship House is a Medicaid provider for California and Arizona residents but not for New Mexicans, because the HSD does not fund out-of-state treatment under Medicaid. This is a problem for New Mexico Native Americans seeking addiction treatment — especially in Gallup, which Mr. Nez called the "Indian capital of the world" — because of the dearth of treatment options in the state and the high costs and long waits for residential treatment. Mr. Nez asked the committee for its support in making treatment options like Friendship House available to New Mexico Indians.

Mr. Nez said Friendship House charges \$125 a day. Arizona Medicaid can pay up to \$187 a day for residential treatment for Arizona residents. Friendship House is funded through the Indian Health Service and, in Arizona, sub-grants from the state, he said.

Questions and comments from the committee included the following topics:

- people with addictions often wind up in jail rather than get treatment;
- jail time alone does not work for drug and alcohol addictions but must be combined with behavioral treatment;
- the liquor lobby "swarms like bees during session", when legislators try to carry legislation that is tough on drunk drivers;
- how can New Mexico get reimbursed for sending people to facilities like Friendship House?;
- the state is short \$300 million for Medicaid;
- Governor Richardson wants higher mandatory sentencing for DWI with court-ordered treatment, but perpetrators forced to undergo treatment often wind up drinking again within months; and
- funds for returning veterans to get treatment might be available to Native Americans seeking treatment.

### **Behavioral Health Collaborative Overview**

Linda Roebuck, chief executive officer, New Mexico Behavioral Health Collaborative (BHC), briefed the committee on the collaborative, a cabinet-level group comprising 15 state agencies, including the IAD, that work with the Office of the Governor to improve mental health and substance abuse services in New Mexico. The collaborative awarded a contract in January to a company called OptumHealth, represented at the meeting by executive director Sandy Forquer. OptumHealth took over from ValueOptions the management of benefits for Medicaid and other publicly funded behavioral health programs. The contract will be in effect through June 30, 2013. The FY10 contract includes the following agencies and funds:

- the Aging and Long-Term Services Department (ALTSD): \$59.4 thousand from the general fund;
- the Children, Youth and Families Department (CYFD): \$9,458.8 thousand

- from the general fund and federal funds;
- the Department of Health: \$5,757.5 thousand from the general fund and federal funds;
- the Corrections Department: \$6,593.5 thousand from the general fund;
- the Human Services Department (HSD):
  - \$53,320.8 thousand from the general fund and federal block grants for non-Medicaid services;
  - \$256,424 thousand from the general fund and federal funds for Medicaid managed care; and
  - \$46,306.5 thousand from the general fund and federal funds for Medicaid fee-for-service.

Representative Lundstrom asked Ms. Roebuck to prepare a spreadsheet to show by department the types and locations of services provided, the contract price and the funding sources.

Ms. Roebuck said the BHC has paid a total of \$226,757,363 for services and has served a total of 63,682 individuals, including 6,719 Native Americans in FY08 and 5,674 Native Americans in the first three quarters of FY09. Recently, she said, the collaborative expanded from 15 regional centers to 18. It has also applied for a grant from the Substance Abuse and Mental Health Services Administration (SAMHSA) for returning soldiers suffering from post-traumatic stress disorder and is requesting grant money from an access-to-recovery program. In response to a question from Senator Pinto, Ms. Roebuck said the BHC needs another \$500,000 for veterans' behavioral health services, especially in San Juan County, which she said has a very high proportion of veterans among the native population. Senator Pinto said he thought committee members could request \$1 million. "If you can give us more, we can spend it", she said. At present, however, the collaborative's ability to get funds has stagnated, she said.

Questions and comments from the committee and answers from Ms. Roebuck included the following subjects:

- What is the lead agency to which the BHC must report? (The collaborative is formally under the Department of Health but the only permanent co-chair of the collaborative is secretary of human services. The collaborative must be responsive to the other departments that comprise it.)
- How does the money flow and how are services delivered? (This will be discussed in further detail in front of the House Appropriations and Finance Committee.)
- What percentage of its funding comes from federal stimulus money? (Ms. Roebuck did not have the information but promised to get it for the committee.)
- How does the BHC approach the issue of drunk driving? (Ideally, one wants to find a balance between criminal sanctions and treatment.)
- The BHC has expanded its presence on Indian reservations.
- Where do people go if they need mental health services or help with a

substance abuse problem? (They can call a hotline or go to a local community mental health or substance abuse program.)

- What recourse do consumers have if they are unhappy about their care? (They can speak with an ombudsman.)
- What kind of outreach is being done on the Navajo Nation, and why is there not more funding there? (The BHC is simply trying to hold on to the money it has been allocated because it will go away next year.)
- The need is greater than the dollars available to treat those needs.
- There is a disconnect with service providers.

Dr. Forquer said OptumHealth has already contracted with 179 clinics. Another 58 are still in the application process, which will make a total of 237 clinics. That compares to ValueOptions' 201 clinics. In the meantime, said Dr. Forquer, no one has been turned away. Emergency cases are treated within two hours, she said.

Responding to Representative Begaye's concern about a "disconnect" with service providers, particularly with multistate contracts, Kim Horan, Native American liaison with the HSD's Behavioral Health Services Division (BHSD), assured the committee that the division would work with Medicaid if and when providers become Medicaid providers. Dr. Forquer said that OptumHealth does not provide contracts in dollars with Medicaid providers but instead uses "quality of care" contracts. When asked about accountability and transparency, Dr. Forquer said it was a "very collaborative process".

Ms. Horan told the committee that the CYFD has a year-long contract with American Indian Development Associates to offer such activities as drum groups, talking circles and sweat lodges to Native American children in the juvenile justice system, particularly at the Youth Diagnostic and Development Center (YDDC).

The committee recessed for lunch at noon and reconvened at 12:45 p.m.

### **Local Collaboratives**

Suzanne Pearlman, cross-agency team manager for local collaboratives, joined representatives from five local collaboratives in explaining how the collaboratives work, individually and collectively, and where they are located. The way each local collaborative works is driven by the specific needs of that community, she said. Some might concentrate on the needs of children while others might spend more time working with she said people on probation or parole. In the latter case, she said the Corrections Department would have a representative on the collaborative, for example. The top three priorities of a local collaborative are transportation, housing and crisis intervention, she explained.

Judith Arciniaco, director of justice systems, OptumHealth, said the most common court-imposed behavioral health modalities for people on parole or probation include substance abuse treatment, anger management or specific behavior modifications related to the crime. The Corrections Department will contract with a regional provider to

monitor parolees and probationers and to provide treatment. It is up to the individual to provide his or her own transportation. Sometimes the charges might be dropped if the person completes the program.

Regina Roanhorse of local collaborative (LC) 15 in the Gallup area described the "total community approach" (TCA) of the local collaboratives. TCA is a partnership between the BHC, the "statewide entity" (OptumHealth) and local communities most affected by substance abuse. It integrates local treatment services, prevention activities and law enforcement. The legislature made \$3 million available to local collaboratives in FY08 and FY09 for such TCA projects as a central intake system in LC 4 (San Miguel, Mora and Guadalupe counties); "multi-systemic therapy" for adolescents in LC 5 (Chaves, Lea and Eddy counties); adult drug court, intensive outpatient treatment and a range of prevention services for substance and alcohol abusers in LC 6 (Grant, Luna and Hidalgo counties); prevention activities for at-risk youth in LC 15 (the Navajo Nation); a central assessment and referral site in Rio Arriba County (part of LC 1); and mobile individual/group/family treatment in LC 8 (Colfax County).

Ms. Roanhorse discussed issues specific to the Navajo Nation that could benefit from behavioral intervention, including high unemployment, high crime, extreme poverty, a high suicide rate, high numbers of alcohol-related deaths, etc. In particular, Project TRUST — a New Mexico partnership developed with the University of New Mexico (UNM), the Department of Health, the New Mexico Assembly for School-Based Health Care Policy Project, the Navajo area Indian Health Service, the McKinley Coalition for Healthy and Resilient Youth and other organizations in Indian Country — set out to determine why evidence-based behavioral health services were not meeting the needs of Native American youth, many of whom exhibit behavioral health disparities, including suicide and underage drinking. The goals of Project TRUST, an acronym for "truth", "responsiveness", "understanding", "self-determination" and "transformation," are to develop a model and guidelines for culturally appropriate, client-centered approaches to behavioral health care for Native American youth and their families.

The panel also briefed the committee on a suicide prevention program called "Native Hope".

Representative Lundstrom requested that staff get information on the total amount of money each collaborative receives. She noted that although they all get the same amount of money for outreach, some collaboratives have greater needs, especially those in Indian country and other areas where outreach must be done in multiple languages and where there is a lack of public media outlets. The discrepancy is particularly keen in rural versus urban areas, she noted.

Other questions and comments from the committee on TCAs and local collaboratives covered the following topics:

- the role of TCA coordinators, such as Ms. Roanhorse;
- the lack of trust in Indian country of state entities;

- that money for teen suicide prevention programs should go primarily to high-risk areas; and
- that the distribution of money for programs is insufficient and poorly planned.

Noting that the committee was three hours behind schedule, Representative Jeff gave a few minutes to the remaining speakers to introduce themselves before moving on to the next agenda item. The speakers included Rick Vigil, former governor, Pueblo of Tesuque; Harrison Kinney, executive manager, BHSD; Carolyn Morris, director of Native American Affairs, OptumHealth; and Alicia King, Coalition for Healthy and Resilient Youth.

Following the presentation, Representative Lundstrom moved to request an appropriation of \$820,000 for behavioral health and human service programs for the Eastern Navajo Agency in McKinley County. Representative Begaye, who sponsored a similar bill that did not pass during the last legislative session, seconded the motion, which passed unanimously.

### **Navajo Nation Behavioral Health**

Albert Long, Navajo Department of Behavioral Health Services, said he had hoped to give a PowerPoint presentation of his organization's work, but recognizing the lateness of the hour, deferred. Instead, he invited the committee to tour the agency's new 72-bed behavioral health facility in what used to be the Shiprock hospital. He said the center would hold an open house on December 22, 2009 and that it would receive patients beginning January 10, 2010. He said the facility will provide treatment services using three modalities: a western medical approach; alternative treatments, including traditional native medicine and practices; and "faith-based initiatives".

### **Coordinated Long-Term Services (CoLTS)**

Stacie Pozernick, R.N., M.S.N., administrator for Home Care Options, Inc. of Gallup and a member of New Mexico CoLTS, stressed the importance that a home health care coordinator not only understand how to navigate the system of home health care options but also understand the community being served. She distributed handouts with home health care statistics, such as the ratio of providers to clients, in Indian country.

Representative Jeff asked home health care workers in the audience to introduce themselves and invited them and their clients to voice their complaints about the two CoLTS providers, Evercare of New Mexico and Amerigroup. Complaints included that:

- it can take up to six weeks to get clients' benefits approved;
- clients can wait as long as six months for much-needed medical equipment;
- clients often wait hours to be transported home from clinics;
- navigating through the providers' systems is difficult — dealing with Medicaid was much simpler; and
- it can take up to two months for home health workers to get paid, as opposed to the previous provider, which sent checks every week.

Cindy Padilla, secretary, ALTSD, said she appreciates that there have been problems since Evercare and Amerigroup came on board, that she realizes the complaints that consumers and workers expressed need to be addressed and that she will get back to the committee with answers. She said she is humbled by the level of commitment of home health care workers as represented by those in the audience. She distributed a hard copy of a slide presentation she had planned for the meeting but for which time did not allow. She said society needs to have a "long conversation" about aging in place and how to care for elders living with disabilities.

Representative Lundstrom made a motion that staff get a breakdown of the contracts with Amerigroup and Evercare, including what the state pays them and who manages the contracts. The motion was seconded and passed unanimously.

Representative Powdrell-Culbert said she concurs with many of the issues presenters raised about Amerigroup and Evercare, having experienced them personally when trying to help low-income people get services. She said the frustration level of dealing with the companies is "unbelievable" and that representatives have been rude to her. The fact that she has to use her position as a state legislator to try to get services for her clients means "that there's something wrong with the system", she said.

Laura Hopkins, chief executive officer, Amerigroup, responded to the complaints as follows:

- the average turnaround to pay home health care workers is 15 to 17 days — less than the 30-day maximum;
- based on a survey of its clients, Amerigroup determined that half were receiving no services, no care coordination and no care support prior to her agency becoming a CoLTS provider;
- clients are difficult to locate;
- Amerigroup "liberated" 67 people from nursing homes, moving them back into the community; and
- there is no incentive for the company not to act as quickly as possible if someone needs services because the sooner the company responds, the sooner it gets paid.

Ms. Hopkins acknowledged that there have been "bumps in the road" and that her company has made mistakes, but, she added, providers have made mistakes, too. She said the company has helped providers fix their mistakes, including teaching them how to get supplies for their clients and how to bill for their services. With regard to problems specific to Indian country, she said Amerigroup has worked very hard to get Native American entrepreneurs involved in the program.

Larry Heyek, deputy director, HSD, said the department contracted with Amerigroup and Evercare in July 2008 because Medicaid was unable to keep track of clients and one-third of mailings to registered clients were coming back to the HSD. Amerigroup and Evercare actually go out into the community to locate people, he said.

They also identify people who may not currently need services but will need them in the near future. For example, he said, the department now has 38,000 people in the system who were healthy when they first registered but now need services. The department realizes that "mistakes were made", he said, and the department is attempting to inform consumers and providers about services available through Amerigroup and Evercare and how to get them. He said the two agencies currently employ hundreds of people in New Mexico.

Ms. Esslinger, executive director, Evercare of New Mexico, said she is thrilled to be a partner in the CoLTS program and is especially honored to be serving so many Native Americans. She said the agency hired 16 Native Americans to be on staff and will hire more. As part of a new program, Evercare has an opportunity for improvement, she said. She identified the following "challenges":

- difficulty in physically locating clients;
- client access to services in rural areas;
- transportation for clients; and
- providers' confusion on how to bill Evercare.

Representative Jeff said she is very concerned that providers are not getting paid regularly and pointed out that Ms. Hopkins and Ms. Esslinger are probably getting paid regularly every week or every other week. Representative Vaughn demanded a commitment that Evercare and Amerigroup will try to help the clients who voiced complaints during the meeting and said she wants a follow-up report. Senator Pinto wanted to know how much money the agencies get from the state and federal governments.

Other committee questions and comments included the following topics:

- How much state and federal money do Amerigroup and Evercare receive?
- Why are clients on waiting lists for services or not getting services at all?
- How are clients prioritized for service?
- Are clients contacted while they are on a waiting list so they know they have not been forgotten?
- Coordination of care is of major importance.

Senator Lovejoy said Amerigroup and Evercare are "top-heavy" on administrators. She said she hopes that when Ms. Hopkins and Ms. Esslinger return to their air-conditioned offices, they will make plans to communicate better with their providers and clients. She said that health care should not be a money-making business, but that she is sure that Ms. Hopkins and Ms. Esslinger are making good salaries, and that they should be willing to earn smaller salaries and spread their services out in rural areas. She added that she is disappointed in Amerigroup, Evercare, the ALTSD, the HSD and the lobbyist who reassured her during the legislative session that problems would be resolved. She asked that they come up with better approaches and fix their missteps.

**Recess**

The committee recessed at 4:32 p.m.

### **Wednesday, August 12 — Manuelito Chapter House**

#### **Welcome and Introductions**

Speaking in Navajo, Senator Pinto reconvened the meeting at 9:05 a.m. in the Manuelito Chapter House in Gallup. He asked committee members and staff and members of the audience to introduce themselves. An honor guard presented the colors. Zuni Governor Norman Cooyate led the Pledge of Allegiance. A young girl sang the "Star-Spangled Banner". Senator Pinto passed the gavel to Representative Lundstrom at 9:34 a.m.

#### **Tribal Libraries**

Janice Kowemy, director and librarian at the Laguna Public Library, and Tamara Sandia of Jemez Pueblo Community Library identified for the committee some needs of libraries serving Indian nations, tribes and pueblos. They include:

- funding for salaries;
- funding for library expansions and upgrades;
- hiring a tribal libraries coordinator;
- reducing current funding restrictions; and
- professional development training and opportunities for degrees and certifications.

Ms. Kowemy and Ms. Sandia requested that the committee address those issues and endorse legislation that would meet those needs.

Representative Lundstrom asked State Librarian Susan Oberlander to update the committee on the State Library's work with tribal libraries. Ms. Oberlander said the New Mexico State Library regularly offers the following to public and tribal libraries:

- on-site visits, including 10 to tribal libraries last year;
- library training both at local libraries and in Santa Fe;
- preparation for summer reading programs, including training and materials;
- assistance to new libraries — for example, at the Pueblos of San Ildefonso and Nambé;
- distribution of state funding, including state grants-in-aid money that can now be used for operational expenses; and
- database services, newspaper subscriptions and state licensing fees for online magazines.

Regarding the hiring of a tribal libraries coordinator, Ms. Oberlander said the State Library had filed an advertisement with the State Personnel Office (SPO) just as the governor announced a hiring freeze. She noted that the State Library has nine other vacancies in addition to that of tribal libraries coordinator, and she does not know of any other alternatives except to wait for the hiring freeze to end. Ms. Oberlander stressed that

despite being short of staff, the State Library has not cut back on services and is trying to attend to tribal libraries as best as it can under the current economic circumstances. She said the State Library will be working with the Bureau of Business and Economic Research at UNM to look at funding in the state for all public and tribal libraries.

Comments and questions from the committee included concerns that:

- smaller libraries will suffer more than larger libraries because the funding formula distributes funds proportionate to the size of the library;
- many rural libraries, especially those not open full-time, did not receive adequate, if any, notice about the deadline for state grants-in-aid, and that they may have missed the deadline to expend those funds;
- the IAD is not doing all it should to help keep tribal libraries operating; and
- the funding process for smaller libraries is not clear-cut.

Representative Alcon said that if the tribal libraries coordinator position were filled, that would solve a lot of the problems facing tribal and other small libraries. Upon a motion made, seconded and approved unanimously, the committee agreed to send a letter from the committee co-chairs to the secretary of finance and administration, with a copy sent to the SPO, requesting that the position of tribal libraries coordinator be exempt from the state hiring freeze. Ms. Oberlander told the committee that the Department of Finance and Administration and the SPO rejected the State Library's request to fill the position. Representative Lundstrom said the executive branch may reconsider its position after receiving a strong letter from the committee.

Representative Lundstrom also requested a breakdown of how much funding each tribal library in the state receives and said she will ask the LFC to review the funding process.

### **Zuni Temporary Assistance for Needy Families (TANF)**

Governor Cooney told the committee that the Pueblo of Zuni needs additional funding for its TANF program, which he said has been hit especially hard by the country's economic woes. For example, he said, there are more low-income families needing financial assistance, teen pregnancies are on the rise, and the increase in the minimum wage has eaten up much of the pueblo's funds. He asked the committee to endorse legislation that would allow unused TANF funds from the Navajo Nation, which often does not expend all its TANF money, to be reallocated to the Pueblo of Zuni.

On a motion from Representative Alcon and seconded by Representative Jeff, the committee voted unanimously to send a letter to the U.S. Department of Health and Human Services asking that any unexpended TANF funds be redistributed to tribes and pueblos that need additional TANF money to help low-income families.

### **Navajo TANF**

Anthony Dineyazzie, senior program and project specialist with the Policy, Research and Data Section of the Navajo Nation Program for Self-Reliance, gave a

shortened overview of the Tribal Family Assistance Plan (TFAP), whose mission is funded in part by TANF and includes ending the dependence of Indian families on government benefits. Committee members asked how much TANF money remains unspent at the end of the year. It was \$12,000 last year, Mr. Dineyazzie said.

Senator Lovejoy pointed out that a portion of Navajo TANF funds reverts back to the federal government every year. She said that is unacceptable — that there is great need for that money within the Navajo Nation, and it is not being used. "If you keep reverting money back, someone is going to come and take it away from you", she said, reminding Mr. Dineyazzie of the Pueblo of Zuni's request to use those reverted funds.

### **Community Pantry**

Hilda Kendall, logistics coordinator, Gallup Community Pantry, gave the committee a brief history of the pantry and described its programs, which include:

- free fresh produce to needy families;
- an "emergency food box", which provides families with up to two weeks' worth of food up to four times a year;
- "food for kids", which serves between 25 and 30 children who otherwise might go hungry;
- the emergency food assistance program, which distributes food to approximately 2,000 people a month;
- the agency program, which distributes food to local nonprofit agencies and churches for distribution to clients; and
- the "dollar stretcher" and "meat box" programs, which provide low-cost food to families.

On a motion made, seconded and approved, the committee approved a capital outlay request for \$150,000 for the pantry.

### **Other Committee Business**

The committee voted unanimously to write a letter to Governor Richardson requesting that at least 10 percent of any budget item involving DWI be used toward counseling and rehabilitation. The committee discussed the need to come up with recommendations for the Public Education Department's Indian Education Advisory Council on spending state funds earmarked for education. Ms. Lusk told the committee that Nancy Martine-Alonzo, assistant secretary for Indian education, will be available to answer questions on that topic at the committee's October meeting in Mescalero. Representative Madalena requested that someone from the IAD also be present at the October meeting. IAD Deputy Secretary Aragon said someone from his department will be there. Responding to a complaint from the committee at its August meeting, he assured the committee that the department is working with UNM to create an Indian resource guide.

The committee adjourned at 1:00 p.m.