

noble purpose of safeguarding the interests of employees."

In another case, Judge William G. Young, of the Federal District Court in Boston said, "It is deeply troubling that, in the health insurance context, Erisa has evolved into a shield of immunity which thwarts the legitimate claims of the very people it was designed to protect."

Judge Young said he was distressed by "the failure of Congress to amend a statute that, due to the changing realities of the modern health care system, has gone conspicuously awry," leaving many consumers "without any remedy" for the wrongful denial of health benefits.

Disputes over benefits have become common as more employers provide coverage to workers through H.M.O.'s and other types of managed care, which try to rein in costs by controlling the use of services.

Here are some examples of the ways in which judges have expressed concern:

Judge John C. Portfolio of the United States Court of Appeals for the 10th Circuit, in Denver, said he was "moved by the tragic circumstances" of a woman with leukemia who died after her H.M.O. refused approval for a bone marrow transplant. But, he said, the 1974 law "gives us no choice," and the woman's husband, who had sued for damages, is "left without a remedy."

The United States Court of Appeals for the Eighth Circuit, in St. Louis, said the law protected an H.M.O. against a suit by the family of a Missouri man, Buddy Kuhl, who died after being denied approval for heart surgery recommended by his doctors. "Modification of Erisa in light of questionable modern insurance practices must be the job of Congress, not the courts," said Judge C. Arlen Beam.

The United States Court of Appeals for the Sixth Circuit, in Cincinnati, said that Federal law barred claims against a "utilization review" company that refused to approve psychiatric care for a man who later committed suicide. Because of Erisa, the court said, people who sue an H.M.O. or an insurer for wrongful death "may be left without a meaningful remedy."

Federal District Judge Nathaniel M. Gorton, in Worcester, Mass., said that the husband of a woman who died of breast cancer was "left without any meaningful remedy" against an H.M.O. that had refused to authorize treatment.

Federal District Judge Marvin J. Garbis, in Baltimore, acknowledged that a Maryland man may be left "without an adequate remedy" for damages caused by his H.M.O.'s refusal to pay for eye surgery and other necessary treatments. But, Judge Garbis said, whether Erisa should be "re-examined and re-formed in light of modern health care is an issue which must be addressed and resolved by the legislature rather than the courts."

The United States Court of Appeals for the Ninth Circuit, in San Francisco, ruled last month that an insurance company did not have to surrender the money it saved by denying care to a Seattle woman, Rhonda Bast, who later died of breast cancer.

"This case presents a tragic set of facts," Judge David R. Thompson said. But "without action by Congress, there is nothing we can do to help the Basts and others who may find themselves in this same unfortunate situation."

Democrats and some Republicans in Congress are pushing legislation that would make it easier for patients to sue H.M.O.'s and insurance wrong decision, he or she can be sued, said Representative Charlie Norwood, Republican of Georgia, but "H.M.O.'s are shielded from liability for their decisions by Erisa."

Changes in Erisa will not come easily. The Supreme Court has described it as "an enormously complex and detailed statute" that carefully balances many powerful competing interests. Few members of Congress understand the intricacies of the law. Insurance companies, employers and Republican leaders strenuously oppose changes, saying that any new liability for H.M.O.'s would increase the cost of employee health benefits.

Senator Trent Lott of Mississippi, the Republican leader, said today that he had agreed to schedule floor debate on legislation to regulate managed care within the next two weeks. Senator Tom Daschle of South Dakota, the Democratic leader, who had been seeking such a debate, said Mr. Lott's commitment could be "a very consequential turning point" if Democrats have a true opportunity to offer their proposals.

But Senator Don Nickles of Oklahoma, the assistant Republican leader, said, "Republicans believe that health resources should be used for patient care, not to pay trial lawyers."

Proposals to regulate managed care have become an issue in this year's elections, and the hottest question of all is whether patients should be able to sue their H.M.O.'s. The denial of health benefits means something very different today from what it meant in 1974, when Erisa was passed. At that time, an insured worker would visit the doctor and then, if a claim was disallowed, haggle with the insurance company over who should pay. But now, in the era of managed care, treatment itself may be delayed or denied, and this "can lead to damages far beyond the out-of-pocket cost of the treatment at issue," Judge Young said.

H.M.O.'s have been successfully sued. A California lawyer, Mark O. Hiepler, won a multimillion-dollar jury verdict against an H.M.O. that denied a bone marrow transplant to his sister, Nelene Fox, who later died of breast cancer. But that case was unusual. Mrs. Fox was insured through a local school district, and such "governmental plans" are not generally covered by Erisa.

The primary goal of Erisa was to protect workers, and to that end the law established procedures for settling claim disputes.

Erisa supersedes any state laws that may "relate to" an employee benefit plan. Erisa does not allow damages for the improper denial or processing of claims, and judges have held that the Federal law, in effect, nullifies state laws that allow such damages.

Mrs. MURRAY addressed the Chair. The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Thank you Mr. President.

EDUCATION: RECENT SUCCESSES AND CHALLENGES

Mrs. MURRAY. Mr. President, I rise today to mention a few topics vital to the educational success and safety of American children.

Mr. President, last week we saw some real success for American families and students. The Higher Education Reauthorization Act made several improvements that can benefit from more attention; this bill is a major victory for students and teachers across America. My daughter enters college this fall. I now get to experience first-hand the challenges of entering higher education that millions of families each year, and our actions last week were helpful.

Throughout the Labor Committee's efforts on this bill, I worked to

strengthen our Nation's commitment to providing the strongest training possible for K-12 school teachers. I am most pleased with the bill's focus on teacher training, and in particular its emphasis on technology training.

The bill's provisions concerning student loans will make the dream of higher education that much closer to reality for many potential American college students. The campus safety and child care provisions will make a difference in all our communities.

I specifically thank Senator WELLSTONE for his work on the TANF amendment, so important for literacy instruction and lifelong learning. Since our debate on the welfare reform bill in 1996, I have worked with former Senator Simon, Senator WELLSTONE, and other Senators to point out the vital importance of education and literacy to a person's success in getting off of welfare. The passage of the Wellstone amendment is the right thing to do for low-income working Americans.

Under the Higher Education Reauthorization Act, I believe that the first generation of the new millennium will benefit immensely from the efforts put forth over this past year. From increases in financial aid, to campus security improvements, to technology instruction, S. 1882 will stand as a proud hallmark of this Congress.

Mr. President, on other education topics, we still have some large challenges ahead. The House Appropriations Committee is set to have full Committee mark-up of education appropriations this week. The Labor Subcommittee has cut education funding from the President's proposed levels by \$2 billion in discretionary spending, and ignored his proposals to improve school construction and class size reduction. This would be the week for House members to eliminate these egregious cuts.

Let me list a few things the House has put at risk through cuts or eliminations: improving children's literacy; opening school buildings up after hours to make them the hub of the community; getting extra help in reading and math to poor-achieving students; improving education technology, including technology teacher training; getting first-generation students ready for college; and many others. The House has ignored the priorities of the American people.

The American people care deeply about education. They are frustrated when their schools do not succeed, and they bristle at those who would make it harder for the schools to succeed. This is not about just bricks and mortar, or about throwing good money after bad. This is about priorities, common-sense solutions, and improving quality.

Do not try to fool the parents. The parents know that school improvement has a cost—in hard decisions, and in hard cash. They know that when Congress offers vouchers and expanded charter schools and bonuses for private schools and private businesses—the

Congress is turning its back on the public school.

They know that a cut is a cut, and that a block grant leads to a cut. They know that nearly the entire discussion this year on education from the other side of the aisle—and a time or two on this side of the aisle—amounts to the empty words of a snake-oil salesman.

Well, now we have a chance to turn this all around, like the public has forced the Congress to do in years past. Congress cuts the funding for schools, the public groans in disbelief, and the Congress wises up. Let us not wait until September to do it. The House has a chance this week to put back the money they've taken. The Senate will have its chance soon.

In America, you turn your back on the public school at your peril. What we need to do instead is meet the hard challenges head on.

The schools, in the inner cities, and in the rural areas, are crumbling. The Congress can do something about it.

The classes are overcrowded, which adds to the school construction problem. The Congress can take action.

The budgets have been cut and cut, and failing a local levy can mean disaster for a school. The Congress can keep its hands off the school budget, and restore these House cuts.

The Congress can increase national expenditures to more than the meager 2 percent of the national budget it now sets aside for schools. And the Congress can set the right tone.

Rather than generating empty air that has the effect of chipping away at support for the local public school—the very foundation of democracy, citizenship, and community in this nation—the Congress can speak the words that need to be said.

The responsibility of serving as a member of Congress, as a member of the United States Senate, is weighty indeed. By our words, our signature, and our actions, we can take steps to improve our nation's schools and our student's futures.

We can set an important tone, and say the hard things that the students, families, teachers, school officials, community leaders and others need to hear. We can also talk of success.

But if we act and speak only to tear the fabric of support for the public school—if the tone we set is only to chip, chip, chip at public confidence in an institution they know personally to have value—then we are abdicating part of our great responsibility as Senators.

Americans know that members of Congress can work together, and achieve results. They know we could take actions to improve their public schools. And that is why it is so disheartening to me when Republicans or Democrats put ideology or politics or mean-spiritedness in the way of success for our students. We must act together to do what is in the best interest of all children.

It is also important Mr. President that we conduct background checks

and adequately screen our teachers to make sure they are qualified, competent and capable of providing our children with the quality education they deserve.

THE CRIME IDENTIFICATION TECHNOLOGY ACT OF 1998

Mrs. MURRAY. Mr. President, I wish to speak for a moment as a cosponsor of the Crime Identification Technology Act of 1998. Mr. President, this is a bill that simply, but importantly, provides funding to states and local communities so they can conduct quality criminal background checks. This bill assures parents that dangerous adults will not be employed by their child's school or child care facility.

There is no doubt that most children today head off to school or are dropped off at child care and are supervised by competent, qualified, caring adults. But as our society becomes increasingly violent, parents need the assurance that when their child is under another adult's care, steps have been taken to assure that the care-giver is qualified and competent and safe to take care of their child.

Mr. President, we sit in outrage when television newscasters report yet another story of a child who has been abused or molested when parents thought they had found a safe place to take their child. Nothing frightens a parent more than a report of a child who has been abused by a predator—molesters, abusers or pedophiles.

We do not have to sit and wait, Mr. President. We can and must do more. We have the laws to better screen those who care for our children. Let us use them. We must protect our children and see to it that they grow up in a safe environment. No child should ever suffer these kinds of traumas. That is why Mr. President, I am cosponsoring the Crime Identification Technology Act of 1998. I believe this bill is a strong step to accomplish the type of protection that is needed.

We have a right to expect that those people to whom we entrust the care of our children are decent, upright, trustworthy individuals. Parents have a right to know that anyone who comes in contact with their children in an unsupervised environment has been appropriately screened. We have a right to know that anyone with a criminal history of child abuse, molestation and sexual crimes against children will be prevented from being in a position where they have access to our children.

In this highly mobile society we live in, we know that abusers move easily across state boundaries seeking jobs in places where they think their past will not catch up to them. If schools or child care providers only check in-state applicants for state criminal convictions—and do not require a fingerprint check which can be scanned against a national clearinghouse of convicted criminals—they have not adequately screened applicants before hiring them to oversee our children.

In fact, Mr. President, a case that prompted the passage of laws requiring national criminal background checks in my home State of Washington, involved the arrest of a social worker who possessed hundreds of photos and videotapes of young boys engaged in sexual activities. He was charged on 40 counts of possession of child pornography.

The investigation began after one of the adolescents under his supervision accused him of sexual abuse. When the social worker was hired, a background check of this man was "clean" and reported "no past problems." However, he was previously employed by a state agency far away, across state lines in Texas. Although the Washington state agency checked his references in Texas, they did not check to see if he had a criminal history in any other state.

The background check did not extend beyond the borders of Washington state. State officials at the time admitted they had no routine way of determining whether any state worker had ever run afoul of the law outside Washington's borders.

As a result of this incident, the Washington State Legislature closed this loophole by passing laws requiring national criminal background checks on workers and volunteers who deal with vulnerable populations such as children, the elderly and disabled.

More recently, at a Washington, D.C. day care center, a substitute security guard was filling in for the regular guard, who was sick that day. That afternoon, the substitute guard was arrested on the premises—allegedly an accessory to murder a few months earlier.

In this case, the security firm failed to screen the worker adequately. He was a resident of Maryland and the firm only checked state records which revealed no criminal record. However, the substitute guard had a long rap sheet in Washington D.C., which the security firm did not check. The failure of this security firm to conduct a background check of the neighboring state's jurisdiction put 70 children at tremendous risk.

It is imperative that we stop interstate movement and let abusers know that their backgrounds will be checked, their applications will be screened and national and state fingerprint checks will be conducted where appropriate. In addition, it is essential that we provide funds to the states so they can update their criminal history records and provide timely information when it is requested.

Unfortunately, Mr. President, we live in a time that requires us to protect our children by screening and checking the backgrounds of volunteers and other people who have access to our children. Statistics reveal that 46 percent of child molesters are non-family members who are known to their victims. These are "trusted" adults, such as teachers, scoutmasters, coaches,