The politics of pregnancy:
Is parenthood destiny or choice in America?

Dispatcher: 911, what's your emergency?

Caller: America's healthcare system is broken and people are dying! (ambulance siren)

Welcome to **Code WACK!**, where we shine a light on America's callous healthcare system, how it hurts us and what we can do about it. I'm your host, **Brenda Gazzar**. This time on Code WACK! The Supreme Court recently ended the consitutional right to an abortion by overturning Roe vs. Wade but why is inequality in reproductive health care nothing new? What can be done to address these longstanding inequalities? To find out, we spoke to **Cat Duffy**, a policy analyst in the **National Health Law Program's** Washington, DC office. She holds a doctorate and works on reproductive and sexual healthcare access and services with a particular focus on abortion coverage and access.

(5-second music stinger)

Hi Cat. Welcome back to Code WACK!

(00:51):

Duffy: Thanks. I'm really excited to be here.

(01:01):

Q: It seems like in the past decade or so healthcare matters, even the Affordable Care Act, are being decided in Congress and in courts of law, rather than by patients and their doctors. This seems like it would have huge implications. Do you agree? And what does this say about the United States in terms of how we're addressing critical health policies?

(01:23):

Duffy: Yeah, abortion has been systematically stigmatized and turned into a political issue as opposed to the basic healthcare service that it is by the anti-abortion movement. Prior to Roe versus Wade, abortion was just treated as what it is, which is health care. It wasn't until Roe galvanized the religious right that abortion became this like deeply stigmatized taboo issue.

Here at NHeLP, we believe that abortion is health care and that every person deserves the right to determine when or if to become a parent and how to raise that child and if they choose to have a child to raise it in a safe and healthy environment. The government should be involved insofar as they have an obligation to ensure that everyone has access to health care. The government should not be in the business of denying people health care and we've seen at the state level in particular ideological legislators stripping away certain services because they've decided personally that it's wrong.

(02:26):

Q: Hmmm. Right. So now the right to reproductive care is going to be left up to the states and their hodgepodge of laws and regulations. Isn't that like built-in inequality depending upon where you live, like voting rights?

(02:40):

Duffy: Absolutely right. But to be honest where you live has determined your access to abortion for years. While Roe protected the legal right to abortion, a court case called Planned Parenthood vs. Casey opened the door to allowing states to restrict access so long as it didn't impose unreasonable burdens on people who are seeking an abortion. This led to the proliferation of state restrictions, like TRAP laws, that's targeted regulation of abortion providers that forced health centers to close in many states and a lot of the other obstacles I talked about earlier.

It is deeply problematic that people will be denied access to care just because of where they live, or how much money they make. It will exacerbate the existing, like pre-existing deep, deep inequities in the healthcare system and disproportionately harm people of color, people with low incomes, young people, people living in rural areas who already have restricted access to healthcare and others.

(03:49):

Q: Uhhuh. When was that unreasonable burden ruling?

(03:52):

Duffy: 1992.

(03:53):

Q: Wow. Was that the beginning of restrictions on abortion since Roe vs. Wade?

(03:58):

Duffy: Restrictions obviously predated the Casey decision because it was a Pennsylvania law that was being challenged in that lawsuit so there were attempts by states. A key inflection point for state restrictions is historically viewed as 2011. Like that was a moment where like 89 restrictions were passed in one year, which was the previous record until 2021 smashed that record and so we've seen

restrictions for a very long time, but it's in the past like decade, decade and a half that we've really seen this like massive increase in attacks on abortion access.

(04:35):

Q: Such a good point. What is the National Health Law Program doing in light of the Dobbs decision?

(04:41):

Duffy: Yeah, so for many years, NHeLP has done federal advocacy around eliminating the Hyde Amendment, which is a restriction on the use of federal funds for abortion coverage in programs like Medicaid and (Children's Health Insurance Program) and it limits the use of federal funding to only cases of rape, incest, and life endangerment and so the Hyde Amendment functions as a defacto abortion ban for Medicaid beneficiaries and sort of sets up a two-tier system of abortion access and so we're continuing to do advocacy around Hyde.

Hyde is a budget rider so appropriation season is really big. Last year for the first time ever the House (of Representatives) passed a Hyde-free budget, which is an amazing win and is the work of reproductive justice organizations who have been doing this work for years and years and years, and NHelP is just a small help towards that advocacy.

We also do a lot of advocacy around the Equal Access to Abortion Coverage and Health Insurance Act, the EACH Act, which would ensure comprehensive abortion coverage for all people because we know that insurance coverage in particular is a crucial part of establishing an equitable abortion landscape so that people don't have to pay out of pocket or be subject to cost-sharing requirements that makes it impossible for them to actually access these covered services.

(06:13):

But we also recognize that so much of the important policy making – both good and bad – happens at the state level and so we are working with state advocates in a variety of states providing technical assistance and helping them who are pushing proactive bills to protect and expand (abortion) access in states all over the U.S.

One pretty good example, NHeLP is a founding member of the California Future of Abortion Coalition, which at the request of Governor Gavin Newsom put together a report of over 40 recommendations of policies that California could enact to really become a reproductive freedom state. Several of those recommendations have already become law and we expect that more are on the way.

And the last thing I'll say is that as we're doing this work, a lot of the immediate proactive work does focus in states that are friendly to abortion access, but it is essential as advocates are moving forward to ensure that we are not leaving folks in the South and the Midwest behind and so that's looked like things like there's a bill in California that would create a gap coverage program for people who are in self-insured plans that don't have abortion coverage, people who have coverage through a religious employer that doesn't provide abortion coverage, but it also provides coverage for out-of-state individuals who travel to California for abortion services if they would qualify for Medi-Cal, the state's Medicaid program, if not for the residency requirement and so ensuring that we're thinking about people in all states is really important as we move forward.

(07:55):

Q: Yeah, I was wondering what percentage of people with insurance would not have abortion care covered. So it sounds like those who are self-insured – who else did you say?

(08:05):

A: *Yeah, there's anyone who's on self-insured plans, people who have coverage through religious employers and also anyone who gets their coverage through a federal program*

because it's subject to the Hyde Amendment. So there's essentially no coverage outside of the like very narrow exceptions that Hyde outlines.

(08:24):

Q: So that means if someone is on Medicaid, their abortion would not be covered by it?

(08:30):

Duffy: Yeah, so there are 16 states that have set up programs where they use state funding to cover abortion in all instances for Medicaid beneficiaries so they're going beyond the federal standard because the Hyde Amendment does allow states to use their state funding for that.

(08:48):

Q: Got it. Is California one of those states?

(08:52):

Duffy: Yes, it is.

(08:52):

Q: And New York, I imagine?

(08:54):

Duffy: Yes.

(08:55):

Q: So in the other states where state funds do not pay for abortions, are people forced to pay out of pocket?

(09:02):

Duffy: Yeah, those people are forced to pay out of pocket and as we know, folks who are on Medicaid are largely people with low income, people with disabilities, pregnant people who are often the people who are least equipped to pay for these services out of pocket.

(09:20):

Q: And that was since the Hyde Amendment went into effect?

(09:22):

Duffy: Mm-Hmm <affirmative>.

(09:23):

Q: And what year was that?

(09:24):

Duffy: 1977, I think. It's either 77 or 76.

(09:30):

Q: Wow. So that really lays it out. In most of the United States, those on Medicaid do not have abortion coverage of any kind. So the situation has gone from bad to worse.

(09:41):

Duffy: Yeah. I mean, for people who are on Medicaid, like the abortion access crisis has been their lived experience for years and years and years because they essentially do not have coverage because Hyde just functions as a defacto ban for them and so they have to pay out of pocket.

(09:56):

Q: And the average cost for an abortion is around $500?

(10:00):

Duffy: Yeah. So it depends on how far into a pregnancy you are, but it can range from like $500 to over $2,000.

(10:09):

Q: Yeah, that's a lot of money for most Americans.

(10:12):

Duffy: Yeah, and it also doesn't cover like any of the travel costs or childcare or time you have to take off work, especially for folks who are on Medicaid in like the Midwest or the South, which are where a lot of the states that have banned abortion are centralized so they're going to have to travel even further.

(10:33):

Q: So what policies are needed to address the concerns that you're laying out?

(10:37):

Duffy: Yeah. I think a lot of the immediate response to Dobbs has focused on efforts to codify Roe and that totally makes sense, like the Supreme Court just overturned 50 years of precedent protecting the legal right to abortion. But in moving forward, we need a holistic approach to sexual and reproductive healthcare services that centers abortion as a healthcare service and so that includes things like robust insurance coverage of abortion without cost sharing so people don't have to pay really high deductibles or onerous copays in order to access these services. It looks like adequate reimbursement for abortion providers, particularly for providers who are participating in Medicaid. So these providers can literally afford to continue providing these services. It looks like closing the coverage gap in states that haven't expanded Medicaid and a variety of different cross sectional

things to shore up the healthcare system that really recognizes that like comprehensive access to sexual and reproductive health care and the whole suite of services is essential to establishing comprehensive insurance coverage.

(11:53):

Q: Wow. Thank you. Let's talk about our favorite policy solution – single-payer, Medicare for All. How could such a system at the state level affect reproductive care equity?

(12:04):

Duffy: Yeah, so as I think is true for like any healthcare policy, it really depends on the details of how it's written, how it's interpreted and how it's implemented. We at NHeLP would hope that any state that's considering establishing a universal healthcare program would recognize that abortion is health care and would establish comprehensive coverage for it and assuming a world in which abortion and the full suite of sexual and reproductive healthcare services is included in covered benefits without cost sharing in a state universal coverage program, this would be huge for access.

But the one thing I'll flag is that historically we've seen abortion get horse-traded away in broader healthcare negotiations. You saw this during the Affordable Care Act and so it would be very important to make sure that sexual and reproductive healthcare is being centered in those negotiations and I think there are like a couple really important questions, like how to deal with the Hyde Amendment.

(13:04):

Anything that uses federal funds is still going to be subject to the Hyde Amendment, but states could use their state funding to cover abortion services. I mentioned cost sharing. I think it would be really important in a universal program to ensure that there aren't high deductibles or onerous copays that people would need to cover for abortion services and I think it's also a question of like, who does

it cover? Like does universal mean universal? Are we including immigrants regardless of immigration status? How do minors get access to care in this system? I think there's a lot of really important details that would be crucial to pay a lot of attention to – to ensure that like reproductive freedom is actualized in the design.

(13:51):

Q: Good to know. So in light of all this, where do we go from here?

(13:56):

Duffy: Yeah, I think at the individual level, it looks like donating to abortion funds, donating to independent clinics. There are some really great websites that you should familiarize yourself with where organizations are sort of doing the work to connect people to care. Those are things like abortionfunds.org that has like a state by state directory of abortion funds and then there's the websites like abortionfinder.org, or INeedAnA.com that help people who are seeking an abortion figure out where the nearest clinic is and what regulations apply to them.

In thinking through policies, I really think that we have to prioritize building an equitable access landscape and moving beyond sort of the historically narrow focus on the legal right to abortion. I think historically the movement has sort of focused on establishing the legal right, and then dealing with access questions as the second stage and access has to come first. It has to be an essential part of the discussions from the beginning and I would just encourage people to get involved. This fight is going to be very long and sustained. Like we're not going to win abortion access overnight and I think it's very easy to get discouraged and I think getting involved and feeling like you're doing something is really helpful to fight against that sort of discouragement.

(5-second music stinger)

(15:32):

Thank you, Cat Duffy. Do you have a personal story you'd like to share about our 'wack' healthcare system? Contact us through our website at heal-ca.org.

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