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DO YOU REALLY KNOW THE GLOBAL GAG RULE?

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On January 23, 2017, in one of his first actions as president, Donald Trump reinstated and expanded the Global Gag Rule—a policy that risks women's health and lives by forcing foreign nongovernmental organizations (NGOs) to choose between receiving U.S. global health assistance and providing comprehensive sexual and reproductive health care. In order to comply with the Global Gag Rule, providers must agree not to provide information, referrals or services for legal abortion or to advocate for the legalization of abortion in their country with their own, non-U.S. funds.

For decades, PAI has documented the impact of the Global Gag Rule in our research series Access Denied and works with in-country partners as well as champions on Capitol Hill to mitigate its harmful effects.[1] Here, we address common questions and persistent misconceptions about the Global Gag Rule.

THE HISTORY

Where did the Global Gag Rule come from?

The Global Gag Rule, also known as the Mexico City Policy, was first announced by the Reagan administration at the International Conference on Population in 1984. The policy remained in place for eight years under the Reagan and George H.W. Bush administrations. Ten years later, in response to President Clinton rescinding the Global Gag Rule, congressional Republicans made yearly efforts to restore the policy—often blocking the release of family planning funding as a means to punish the program and force President Clinton to negotiate its return.

When President George W. Bush entered the White House, he reinstated the Global Gag Rule. In 2003, he expanded the policy's scope to not only include U.S. Agency for International Development (USAID) family planning and reproductive health assistance programs, but also U.S. State Department "voluntary population planning" activities under the Bureau of Population, Refugees and Migration—including those provided as part of humanitarian relief—while specifically exempting HIV/AIDS assistance.

The election of President Obama brought an end to the Global Gag Rule, but much like during the Clinton administration, congressional Republicans were unwilling to accept the policy's removal. After regaining control of the U.S. House in early 2011, they renewed but failed at their efforts to legislatively reimpose the Global Gag Rule.

The back and forth of the policy reinstatement has created confusion and had a chilling effect on family planning programs around the world. Even when the Global Gag Rule was not in place, some organizations have been reluctant to take U.S. funding or partner with U.S. organizations for fear that support could be subsequently cut off at the whims of politicians in Washington, D.C.

THE BASICS

Does the Global Gag Rule prevent tax dollars from being spent on abortion?

The Global Gag Rule is not—and has never been—about U.S. taxpayer funding for abortion. Although unsafe abortion is a leading cause of maternal morbidity and mortality in the developing world, the Helms Amendment has restricted the use of U.S. foreign assistance for abortion as a method of family planning since 1973.[2] The Global Gag Rule denies foreign NGOs receiving U.S. assistance the right to use their own, non-U.S. funds to provide information, referrals or services for legal abortion or to advocate for the legalization of abortion in their country.

But isn't that money fungible and don't U.S. taxpayer dollars indirectly support abortion?

No. Whether they center on misuse or subsidy, fungibility arguments are arbitrary and nonfactual rationales for the Global Gag Rule.

The fungibility-as-subsidy argument claims that taxpayer funds that go to organizations performing abortions or abortion-related services free up other financial resources for such work, thereby acting as a subsidy. However, this argument is discriminatory and selectively applied. For example, under Trump's Global Gag Rule, foreign NGOs are rendered ineligible to receive U.S. global health assistance if the organization uses funding from any other source to perform abortion, counsel or refer for abortion, or advocate to make abortion legal or more available in their own countries. In contrast, USAID allows funding for faith-based organizations, that need only separate their proscribed religious activities from agency-funded development and health programs to remain eligible.

The fungibility-as-fraud argument implies that a foreign NGO receiving U.S. global health assistance funds could use those funds inappropriately for abortion services, counseling and referral or advocacy in support of abortion law reform. Not only is this claim incorrect, but it also undermines the integrity of the U.S. aid system and its implementing partners. The U.S. government has a complicated vetting process, coupled with very strict compliance requirements for recipients of foreign aid. Furthermore, all U.S. foreign aid is ultimately overseen by Congress. If a foreign aid recipient misuses funds for any purpose, there are immediate actions taken to protect the integrity of U.S. global health assistance, including reporting the violations to the congressional committees with jurisdiction over foreign assistance in a timely and complete manner.

Do Americans support the Global Gag Rule?

A bipartisan survey conducted by Lake Research Partners and American Viewpoint, commissioned by PAI and the Center for Health and Gender Equity (CHANGE), revealed that across age, education level, gender, race, political party and even abortion stance, nearly 60% of American voters oppose the Global Gag Rule.[3] Not only do most voters oppose the U.S. government's efforts to restrict NGOs' abortion-related efforts in other countries, a solid majority also believes that the United States should actively help improve the health of women and girls around the world.

THE DETAILS

How is the Global Gag Rule different under the Trump-Pence administration?

Previous iterations of the Global Gag Rule only applied to family planning assistance from the Department of State and USAID. On May 15, 2017, the Trump-Pence administration approved a plan to expand the policy's scope, titled "Protecting Life in Global Health Assistance," which now impacts global health assistance from the State Department, USAID, Department of Health and Human Services and Department of Defense. PAI has detailed the specific restrictions imposed by the expanded Global Gag Rule in order to protect and preserve critical lifesaving health care services to the maximum extent allowable under the policy.[4]

Foreign NGOs working on U.S.-funded programs to address issues including maternal and child health, nutrition, HIV, malaria, tuberculosis and other infectious diseases, as well as family planning, are now forced to comply with the Global Gag Rule if they want to remain eligible to receive U.S. assistance. Even though most of these newly impacted organizations do not directly work on abortion or family planning issues, their work will be impacted by the expanded policy—whether they choose to comply or not. The expansion means that about 15 times the amount of funding is implicated compared to when the policy only applied to bilateral family planning assistance. That's nearly half of all bilateral economic assistance from the United States.[5]

In March 2019, Secretary of State Mike Pompeo announced a new interpretation of language included in the standard provisions implementing the Global Gag Rule.[6] Two months later, updated standard provisions were released. Under this new interpretation of the "financial support" provision, a foreign NGO that agrees to comply with the policy as either a direct recipient of U.S. global health assistance or as a subrecipient of U.S. global health assistance is prohibited from providing any financial support to any other foreign NGO that conducts activities prohibited under the Global Gag Rule.

How does the Global Gag Rule take effect?

Foreign NGOs receiving U.S. global health assistance must ensure compliance with the Global Gag Rule when they accept the new provision in their agreements to obtain U.S. funds. This occurs in the form of an award of a new grant or cooperative agreement following May 15, 2017, or when existing grants and cooperative agreements are amended "to add incremental funding" or "to add new funding."

U.S.-based NGOs are responsible for enforcing Trump's Global Gag Rule on behalf of the U.S. government. A set of standard provisions are inserted in new grants and cooperative agreements, certifying that a U.S. NGO will not furnish assistance for family planning to a foreign NGO that is ineligible for U.S. assistance because of its non-U.S. funded abortion-related activities. This responsibility for monitoring and compliance placed on U.S. NGOs has been expanded to "global health assistance furnished by all departments or agencies."

The expanded interpretation with respect to "financial support" released in 2019 is expected to be implemented in the same way.[7]

Unlike past iterations of the Global Gag Rule, the policy will also apply to contracts once an executive branch rule-making process is complete.

Are there any exceptions for abortion-related services under the Global Gag Rule?

Based on the family planning standard provisions, post-abortion care is exempt from Trump's Global Gag Rule as it was under the 2001 standard provision. Similarly, abortion services or counseling and referral for abortion "not as a method of family planning"—that is, in the cases of life endangerment, rape and incest—are permitted. However, the Trump-Pence administration has added "abortions performed for fetal abnormalities" to the prohibited list.

What if an NGO does not engage in any of the activities prohibited under the Global Gag Rule?

Each foreign NGO receiving U.S. global health assistance, either directly or as a subgrant, demonstrates their compliance by agreeing to the policy in their grant agreement. This is the case even if a U.S. NGO working on maternal and child health, HIV/AIDS or infectious disease does not believe that any of its foreign NGO partners "perform or actively promote abortion as a method of family planning." A severe administrative burden is placed on U.S. NGOs, now responsible for ensuring compliance on behalf of those foreign NGOs to which they subgrant.

With respect to other non-U.S. global health assistance that flows through organizations that comply with the Global Gag Rule, the March 2019 interpretation will have enormous implications for a variety of donors, ranging from other non-U.S. bilateral donor governments to private foundations, even to other U.S. government funding streams outside of global health. This interpretation will also place an enormous administrative burden on Global Gag Rule-compliant foreign NGOs that will be required to conduct due diligence on subrecipients of any financial support they provide—regardless of source of funding or activity to be funded.

What are the consequences of the Global Gag Rule?

When the Global Gag Rule was in place during the George W. Bush administration, PAI found that established family planning organizations were forced to close clinics and cut services, clients were deprived of contraceptives, efforts to increase contraceptive method mix and counteract reliance on abortion as the sole method of family planning were hindered, rural and youth community-based distribution programs were cut, HIV/AIDS prevention efforts were weakened and services for screening sexually transmitted infections and treatment were reduced, among other crippling impacts.

These historical impacts emerged when the Global Gag Rule was only applied to family planning assistance among select U.S. government agencies, not all of U.S. global health assistance. While it may take years to fully comprehend the impact of the policy's expansion under the Trump-Pence administration, harmful effects have begun to take shape.

PAI's documentation across several countries shows that the expanded Global Gag Rule is already disrupting services and referral networks, damaging integrated health programs and diverting resources away from direct service delivery. It has threatened to stall progress on national sexual and reproductive health and rights policies and forced closures of projects serving vulnerable communities including youth, people living with HIV/AIDS and rural populations, among others. The Global Gag Rule has also created contraceptive commodity insecurity and undermined European-funded projects. To learn more, read PAI's summary of the Global Gag Rule's wide-ranging impacts.[8]

Is the U.S. government tracking the Global Gag Rule's impact?

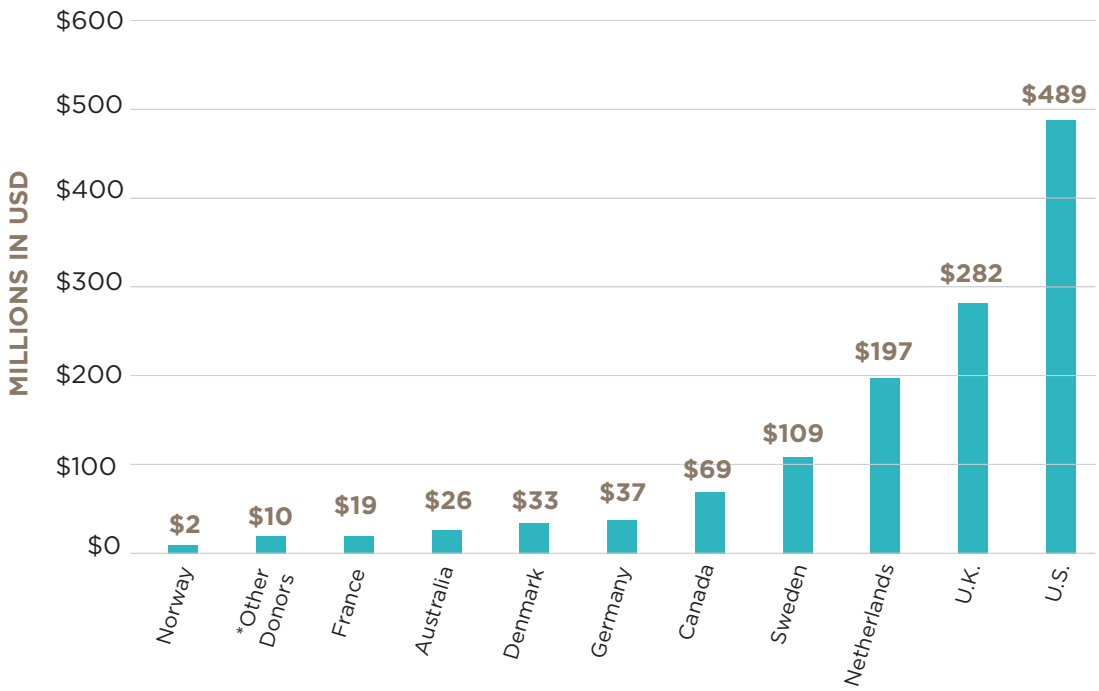
In February 2018, the U.S. State Department released its six-month review of the Global Gag Rule, a premature and incomplete analysis of the policy's effects.[9] In response to concerns and questions from the U.S. government's implementing partners and other stakeholders, the review adopted three programmatically sound adjustments to how the policy should be interpreted and enforced. However, only two of those technical fixes were adopted and included as updates to the standards provisions released in May 2019.[10] These include:

- Providing discretion to the U.S. government in the event of a violation.
- Clarifying that application of the policy extends to recipients and beneficiaries of training and technical assistance only if they are foreign NGOs that receive an award or subaward of U.S. global health assistance funds.

Although the Trump-Pence administration had indicated the second review of the Global Gag Rule would be released by the end of 2018, it has been indefinitely delayed.

THE NUMBERS

DONOR GOVERNMENT BILATERAL DISBURSEMENTS FOR FAMILY PLANNING, 2017[11]



*Austria, Belgium, Czech Republic, European Union, Finland, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, New Zealand, Poland, Portugal, the Slovak Republic, Slovenia, Spain and Switzerland.

Source: Kaiser Family Foundation

The Global Gag Rule is insidious because it takes money away from recipients of U.S. global health assistance, originally awarded the funding because they were the most qualified providers, who refuse to deny women their sexual and reproductive rights. It does not cut any funding contained in the U.S. foreign aid budget. In effect, the Global Gag Rule shifts funding away from some of the most effective—and sometimes the only—providers trusted by women in communities around the world to those willing to deny women and girls their rights to comprehensive sexual and reproductive health services.

The Global Gag Rule does not change the amount of U.S. spending on global health assistance, it just makes those investments less effective. Foreign NGOs that refuse to sign the Global Gag Rule will have organizational budget shortfalls. International Planned Parenthood Federation has reported it will lose about $100 million over the next three years from the U.S. government as a result of their unwillingness to be bound by the policy, and Marie Stopes International estimates a $80 million funding loss.[12,13]

Does the Global Gag Rule cut U.S. funding levels?

No. Any changes to international family planning and global health assistance budgets result separately from the Congressional appropriations process.

As of fiscal year (FY) 2019, the United States provides $607.5 million for international family planning and reproductive health programs.[14] This funding has been maintained in spite of the Trump-Pence administration, which proposed zeroing out assistance in its first budget and cutting more than 50% in its two subsequent budget requests. Funding cuts for international family planning would be felt by the women and girls who are least able to find alternative ways of protecting themselves against unplanned pregnancies and unsafe abortions.

Additionally, U.S. global health assistance funding has stagnated since 2010 and any future reductions would further compound the Global Gag Rule's deadly effects. Despite ever-increasing global health needs, the Trump-Pence administration proposed a 24% decrease in global health spending for FY 2020.[15] However, Congress has the ultimate say regarding funding levels, and in 2019, approved a spending package of $11 billion for U.S. global health assistance.[16]

How does the Global Gag Rule impact multilaterals?

The Global Gag Rule does not apply to multilaterals or public international organizations such as The Global Fund to Fight AIDS, Tuberculosis and Malaria or The Joint United Nations Programme on HIV/AIDS (UNAIDS).

Aren't other countries and private donors working to "fill the gap"?

Immediately following Trump's reinstatement and expansion of the Global Gag Rule, donor countries and coalitions committed to blunt the policy's impact through sexual and reproductive health funding. One such initiative, SheDecides, raised $450 million for noncompliant organizations during its first year. The funds collected by private and government donors have been managed by Rutgers, an NGO based in the Netherlands, which chose Reproductive Health Network Kenya as the first SheDecides beneficiary.[17]

While this effort is an important show of support for women's rights globally, pledged contributions by donors do not come close to replacing the money that qualified providers will lose by rejecting the Global Gag Rule and are unsustainable in the long term. Questions have also been raised as to whether this is "new" funding or merely assistance directed to sexual and reproductive health and rights from other funding streams.

THE SOLUTIONS

On February 7, 2019, family planning champions in the U.S. House and Senate reintroduced the Global Health, Empowerment and Rights (HER) Act. This piece of legislation would permanently repeal the expanded Global Gag Rule and prevent future administrations from inserting their political ideologies between patients and healthcare providers in other countries.[18] While this is a significant first step to undo the policy's harm, the bill will not be codified into law until both a majority of the U.S. Congress and a future president support the sexual and reproductive health and rights of women and girls around the world.

Until legislation like the Global HER Act is incorporated into U.S. law, the Global Gag Rule will be a looming threat to in-country health systems around the world. Globally, family planning advocates are mobilizing to assist national governments in finding ways to mitigate the impact of the policy in each of their countries. This can be accomplished by mobilizing domestic resources and pushing for progressive sexual and reproductive health policies. As long as countries remain heavily reliant on donor funding to meet their health needs, they will be subject to the shifting policies of those donors. The return of the Global Gag Rule provides a strong example of how those shifting policies adversely impact country health priorities.

CONCLUSION

The Global Gag Rule is an inhumane policy that undermines women's health and threatens their lives. The human costs of Trump's Global Gag Rule are far beyond that of any previous administration. The policy will decimate health systems by undermining the most effective and experienced health care providers and putting their services out of reach. Any cuts to international family planning assistance will further punish women in already-challenging circumstances. Other donors can make important contributions to defend women's sexual and reproductive rights, but none will fill the funding gap in the short term. To prevent the Global Gag Rule from serving as a political football with each administration, the U.S. Congress must present the Global HER Act to a president who is a champion for women and girls and will sign the bill into law.

Endnotes

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