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Not a Reduction to the Absurd—Necessary Adjustments to Trump's Global Gag Rule Policy Contained in Six-Month Implementation Review

On February 7th, the Department of State released its [Protecting Life in U.S. Global Health Assistance Six-Month Review](#) detailing the implementation of the Trump-Pence administration's dramatic expansion of the [Global Gag Rule](#) to virtually all of the U.S. government's global health assistance. The seven-page report is a premature and an incomplete analysis of the true impact of the policy, conducted over such a short period of time—in reality, just during the first four-and-one-half months of the policy coming into force—as to render it largely meaningless. However, more significantly, the review adopts three programmatically sound adjustments to how the policy is to be interpreted and enforced in response to concerns and questions from the U.S. government's implementing partners and other stakeholders and to requests for greater clarity and guidance from USG health program staff.

With regard to impact to date, the review is misleading in stating that only four prime recipients refused to comply with the Global Gag Rule—three funded by the U.S. Agency for International Development (USAID) and one by the Department of Defense for activities in one country. In fact, it will take some time before the policy rolls down to the many hundreds of foreign nongovernmental organizations (NGOs) in the field who are prime recipients and sub-recipients of U.S. global health assistance when those NGOs receive new, additional, or incremental funding. Also unaccounted for in the review is the administrative burden inflicted on the organizations who do comply, forcing them to divert staff and financial resources away from health service delivery to monitor and ensure compliance with the policy by their staff and partners.

From past history—when the policy covered a minuscule fraction of the amount of funding it does now—it is clear that the cost is high for women and communities. Any future assessment, such as the one promised in the current review to be released by December 15th of this year—if truly a “more thorough examination of the benefits and challenges” of the policy—will begin to show grave and wide-ranging impacts on health services and outcomes.

The more positive and constructive sections of the review, however, call for revising three aspects of the [standard provisions](#) that are included in the grants and cooperative agreements of U.S. and foreign NGOs receiving U.S. global health assistance. These revisions will provide needed clarification and be helpful to NGOs, both U.S. and foreign, in better understanding the parameters and scope of the policy. **It is important to note that such modifications will not take effect until the implementation guidance is revised in the standard provisions by lawyers from affected government departments and agencies and is officially issued.** The revisions are as follows:

“Financial Support” to Other Foreign NGOs

The review provides much-needed clarification around the “financial support” clause in the standard provisions. The clarification narrows the interpretation and effectively answers the question of how far a foreign NGO has to “flow down” the policy restriction to other partners in order to retain its own eligibility to receive U.S. global health assistance. The proposed revision consequently limits the reach of the policy restriction’s tentacles.

The legal language of the policy requires foreign NGOs to agree that they will not, during the term of the U.S. global health assistance award, “perform or actively promote abortion as a method of family planning” or “provide financial support to any foreign non-governmental organization that conducts such activities.” The latter “financial support” clause has been included in previous iterations of the policy in prior Republican administrations. But with the expansion of the policy beyond family planning assistance to all global health assistance, its potential relevance, application, and impact is exponentially greater. The standard provisions currently detail the due diligence, contractual and monitoring requirements for sub-awarding USG health assistance to foreign NGOs. However, the standard provisions do not provide any explanation of how this language should be applied in other circumstances.

The review adopts the position of PAI and multiple implementing NGOs who understood and asserted that the “financial support” clause meant that a foreign NGO subject to the policy cannot fund another organization to perform activities that would violate the policy if undertaken by the foreign NGO itself.

A broader interpretation would effectively prohibit a foreign sub-recipient from using its non-U.S. government global health assistance to support any kind of health or development work of a foreign partner that receives no U.S. government global health assistance, if that partner separately engages in abortion-related work with its own funding, essentially blacklisting those organizations. Furthermore, this interpretation would effectively graft the policy onto partnerships with foreign NGOs that are funded by other bilateral donors that oppose the policy, potentially giving rise to or exacerbating tensions between the U.S. government and those donors.

Providing Discretion for Violations

Under the current version of the standard provisions, a health assistance award “must be terminated” if the policy is violated by the implementing partner, a far harsher penalty than

applied to other types of USG assistance awards. The review directs an update to the standard provisions to provide needed discretion to the U.S. government in the event of a violation. The review cites the manner in which USAID implements the Tiahrt amendment, which legislatively codified long-standing USAID policy on voluntarism and informed consent in family planning programs, as a potential model. The option to remediate and institute corrective action for an “honest mistake,” as opposed to immediately terminating the award, recognizes that the expanded policy is implicating a multitude of partners who have never had to deal with the policy and those partners could inadvertently or unintentionally violate the policy. Nevertheless, the review appropriately recommends that “immediate termination” remain the “presumptive sanction for egregious or recurrent violations” of the policy.

Clarifying Application to Training and Technical Assistance

Currently, provision of technical assistance is considered committing resources in the same way that providing funds to another organization is considered furnishing support. The review directs an update to the standard provisions to clarify that the policy applies to recipients and beneficiaries of training and technical assistance “only if they are [foreign NGOs] that receive an award or sub-award of U.S. global health assistance funds.”[Emphasis added.] For example, this clarification means that training to health care service providers (e.g., doctors, nurses, midwives, or pharmacists) at private-sector clinics or technical assistance provided to community-level private clinics, local pharmacies, private hospitals, or insurance companies is not implicated by the policy if there is no exchange of an actual award or sub-award and a transfer of financial resources. The recommended change seeks to ensure that USG efforts to reach those on the front lines of health care will not be undermined by the policy and to target USG policy compliance resources more efficiently.

The review also provides a helpful report on the direction of the interagency rule-making process currently underway to extend the same policy requirements currently contained only in global health grants and cooperative agreements to contracts for health supplies and services. The review notes that contractual clauses under development would not apply to the procurement of commercial products and service such as “pharmaceuticals, medical supplies, logistics support, data management, and freight-forwarding.” The policy restrictions will not apply to contracts until the conclusion of the interagency rule-making process, the duration of which, remains uncertain.

Bottom-line for the six-month review document—premature assessment of potential impact on health services at the field level, accompanied by pragmatic changes to policy implementation guidance that should be welcomed by recipients of U.S. global health assistance for providing greater clarity and assurance.