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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1086

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State of Washington

67th Legislature

2021 Regular Session

**By** House Appropriations (originally sponsored by Representatives Simmons, Caldier, Bateman, Ortiz-Self, Shewmake, Ryu, Chopp, Cody, Goodman, Fey, Stonier, Macri, Fitzgibbon, Frame, and Davis)

READ FIRST TIME 02/22/21.

1 AN ACT Relating to the creation of the state office of behavioral  
2 health consumer advocacy; amending RCW 71.24.045 and 71.24.380;  
3 adding a new chapter to Title 71 RCW; creating a new section;  
4 repealing RCW 71.24.350; and providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

7 (a) According to the federal substance abuse and mental health  
8 services administration's 2019 report, one in five adults in the  
9 United States will experience some form of mental illness this year  
10 and one in thirteen will need substance use disorder treatment;

11 (b) Fewer than half of all individuals needing behavioral health  
12 treatment receive those services;

13 (c) An untreated behavioral health need can have long-term  
14 negative impacts on an individual's health, well-being, and  
15 productivity;

16 (d) The state has made significant investments in the efficacy of  
17 the publicly funded behavioral health system and its providers;

18 (e) Behavioral health parity is required by both state and  
19 federal law;

20 (f) All patients deserve to be treated and cared for with dignity  
21 and respect;

1 (g) Patients often cross local and administrative boundaries when  
2 seeking effective behavioral health care;

3 (h) Individuals with behavioral health needs are  
4 disproportionately involved with the criminal justice system; and

5 (i) Providing robust community-based services can prevent  
6 expensive hospitalizations.

7 (2) The legislature intends to create the state office of the  
8 behavioral health consumer advocacy that shall:

9 (a) Advocate for all patients seeking privately and publicly  
10 funded behavioral health services;

11 (b) Advocate for all patients receiving inpatient behavioral  
12 health services from a behavioral health provider or facility;

13 (c) Assure that patients are afforded all of the rights given to  
14 them by state and federal laws;

15 (d) Maintain independence and be free from all conflicts of  
16 interest;

17 (e) Provide consistent quality services across the state; and

18 (f) Retain an office within the boundaries of the region served  
19 by each behavioral health administrative services organization.

20 NEW SECTION. **Sec. 2.** The definitions in this section apply  
21 throughout this chapter unless the context clearly requires  
22 otherwise.

23 (1) "Behavioral health provider or facility" means:

24 (a) A behavioral health provider, as defined in RCW 71.24.025, to  
25 the extent it provides behavioral health services;

26 (b) A licensed or certified behavioral health agency, as defined  
27 in RCW 71.24.025;

28 (c) A long-term care facility, as defined in RCW 43.190.020, in  
29 which adults or children with behavioral health conditions reside;

30 (d) A state hospital, as defined in RCW 72.23.010; or

31 (e) A facility or agency that receives funds from the state to  
32 provide behavioral health treatment services to adults or children  
33 with a behavioral health condition.

34 (2) "Contracting advocacy organization" means the organization  
35 selected by the office pursuant to section 3 of this act.

36 (3) "Department" means the department of commerce.

37 (4) "Office" means the state office of behavioral health consumer  
38 advocacy.

1        NEW SECTION.    **Sec. 3.**    (1) By July 1, 2022, the department shall  
2 establish the state office of behavioral health consumer advocacy to  
3 provide behavioral health consumer advocacy services to patients,  
4 residents, and clients of behavioral health providers or facilities.  
5 Prior to the establishment and operation of the office, the  
6 department shall solicit recommendations from members of the  
7 behavioral health community for options to rename the office and the  
8 certified behavioral health consumer advocates in a way that shows  
9 respect for the community that the office and the advocates serve.  
10 Prior to the office beginning operations, the department must rename  
11 the office and the certified behavioral health consumer advocates  
12 from the options proposed by the community. The department shall  
13 contract with a private nonprofit organization to provide behavioral  
14 health consumer advocacy services, according to the standards  
15 established by the office. The department shall assure all program  
16 and staff support necessary to enable the contracting advocacy  
17 organization to effectively protect the interests of persons with  
18 behavioral health needs in accordance with this chapter. The  
19 department shall select the organization through a competitive  
20 bidding process and shall assure that the selected organization (a)  
21 has demonstrated financial stability and meets the qualifications for  
22 the duties identified in this chapter, and (b) does not have any  
23 conflicts of interest that would interfere with the duties identified  
24 in this chapter.

25        (2) Following the selection of the organization to carry out the  
26 ministerial functions of the office, the department shall not  
27 initiate the procurement of a new contract except upon a showing of  
28 cause. Prior to ending the contract and conducting a new competitive  
29 bidding process, the department shall provide an opportunity for  
30 comment by the contracting advocacy organization and to appeal the  
31 reselection to the department.

32        (3) The office shall adopt rules to carry out the purposes of  
33 this chapter, including:

34        (a) Establishing standards for the contracting advocacy  
35 organization to use when certifying behavioral health consumer  
36 advocates;

37        (b) Establishing procedures consistent with this act for  
38 appropriate access by behavioral health consumer advocates to  
39 behavioral health providers or facilities; and

1 (c) Establishing procedures consistent with section 13 of this  
2 act to protect the confidentiality of the records of patients,  
3 residents, clients, providers, and complainants.

4 NEW SECTION. **Sec. 4.** The state office of behavioral health  
5 consumer advocacy shall assure performance of the following  
6 activities, as authorized in contract:

7 (1) Selection of a name for the contracting advocacy organization  
8 to use for the advocacy program that it operates pursuant to contract  
9 with the office. The name must be selected by the statewide advisory  
10 council established in this section and must be separate and  
11 distinguishable from that of the office;

12 (2) Certification and coordination of the activities of the  
13 behavioral health consumer advocates throughout the state according  
14 to standards adopted by the office;

15 (3) Provision of training regarding appropriate access by  
16 behavioral health consumer advocates to behavioral health providers  
17 or facilities according to standards adopted by the office;

18 (4) Establishment of a toll-free telephone number, website, and  
19 other appropriate technology to facilitate access to contracting  
20 advocacy organization services for patients, residents, and clients  
21 of behavioral health providers or facilities;

22 (5) Establishment of a statewide uniform reporting system to  
23 collect and analyze data relating to complaints and conditions  
24 provided by behavioral health providers or facilities for the purpose  
25 of identifying and resolving significant problems, with permission to  
26 submit the data to all appropriate state agencies on a regular basis;

27 (6) Establishment of procedures consistent with the standards  
28 adopted by the office to protect the confidentiality of the office's  
29 records, including the records of patients, residents, clients,  
30 providers, and complainants;

31 (7) Establishment of a statewide advisory council, a majority of  
32 which must be composed of people with lived experience, that shall  
33 include:

34 (a) Individuals with a history of mental illness including one or  
35 more members from the black community, the indigenous community, or a  
36 community of color;

37 (b) Individuals with a history of substance use disorder  
38 including one or more members from the black community, the  
39 indigenous community, or a community of color;

1 (c) Family members of individuals with behavioral health needs  
2 including one or more members from the black community, the  
3 indigenous community, or a community of color;

4 (d) One or more representatives of an organization representing  
5 consumers of behavioral health services;

6 (e) Representatives of behavioral health providers and  
7 facilities, including representatives of facilities offering  
8 inpatient and residential behavioral health services;

9 (f) One or more certified peer specialists;

10 (g) One or more medical clinicians serving individuals with  
11 behavioral health needs;

12 (h) One or more nonmedical providers serving individuals with  
13 behavioral health needs;

14 (i) One representative from a behavioral health administrative  
15 services organization;

16 (j) Other community representatives, as determined by the office;  
17 and

18 (k) One representative from a labor union representing workers  
19 who work in settings serving individuals with behavioral health  
20 conditions;

21 (8) Monitoring the development of and recommend improvements in  
22 the implementation of federal, state, and local laws, rules,  
23 regulations, and policies with respect to the provision of behavioral  
24 health services in the state and advocate for consumers;

25 (9) Development and delivery of educational programs and  
26 information statewide to patients, residents, and clients of  
27 behavioral health providers or facilities, and their families on  
28 topics including, but not limited to, the execution of mental health  
29 advance directives, wellness recovery action plans, crisis services  
30 and contacts, peer services and supports, family advocacy and rights,  
31 and involuntary treatment; and

32 (10) Reporting to the office, the legislature, and all  
33 appropriate public agencies regarding the quality of services,  
34 complaints, problems for individuals receiving services from  
35 behavioral health providers or facilities, and any recommendations  
36 for improved services for behavioral health consumers.

37 NEW SECTION. **Sec. 5.** (1) A certified behavioral health consumer  
38 advocate shall:

1 (a) Identify, investigate, and resolve complaints made by, or on  
2 behalf of, patients, residents, and clients of behavioral health  
3 providers or facilities relating to administrative action, inaction,  
4 or decisions that may adversely affect the health, safety, welfare,  
5 and rights of these individuals;

6 (b) Assist and advocate on behalf of patients, residents, and  
7 clients of behavioral health providers or facilities before  
8 government agencies and seek administrative, legal, and other  
9 remedies on their behalf, if appropriate;

10 (c) Inform patients, residents, and clients or their  
11 representatives about applicable patient and resident rights, and  
12 provide information, as appropriate, to patients, residents, clients,  
13 family members, guardians, resident representatives, and others  
14 regarding the rights of patients and residents;

15 (d) Make recommendations through the office and the contracting  
16 advocacy organization for improvements to the quality of services  
17 provided to patients, residents, and clients of behavioral health  
18 providers or facilities; and

19 (e) With the consent of the patient, resident, or client, involve  
20 family members, friends, or other designated individuals in the  
21 process of resolving complaints.

22 (2) Nothing in this section shall be construed to grant a  
23 certified behavioral health consumer advocate:

24 (a) Statutory or regulatory licensing or sanctioning authority;  
25 or

26 (b) Binding adjudicative authority.

27 NEW SECTION. **Sec. 6.** (1) The certified behavioral health  
28 consumer advocates shall have appropriate access to behavioral health  
29 providers or facilities to effectively carry out the provisions of  
30 this chapter, with provisions made for the privacy of patients,  
31 residents, and clients, according to the rules, policies, and  
32 procedures developed under section 3 of this act.

33 (2) Nothing in this chapter restricts, limits, or increases any  
34 existing right of any organizations or individuals not described in  
35 subsection (1) of this section to enter or provide assistance to  
36 patients, residents, and clients of behavioral health providers or  
37 facilities.

1 (3) Nothing in this chapter restricts any right or privilege of a  
2 patient, resident, or client of a behavioral health provider or  
3 facility to receive visitors of their choice.

4 NEW SECTION. **Sec. 7.** (1) Every behavioral health provider or  
5 facility shall post in a conspicuous location a notice providing the  
6 toll-free phone number and website of the contracting advocacy  
7 organization, as well as the name, address, and phone number of the  
8 office of the appropriate local behavioral health consumer advocate  
9 and a brief description of the services provided by the contracting  
10 advocacy organization. The form of the notice must be approved by the  
11 office. This information must also be distributed to the patients,  
12 residents, and clients of behavioral health providers or facilities,  
13 upon application for behavioral health services and upon admission to  
14 a behavioral health provider or facility. The information shall also  
15 be provided to the family members and legal guardians of the  
16 patients, residents, or clients of a behavioral health provider or  
17 facility, as allowed by state and federal privacy laws.

18 (2) Every behavioral health provider or facility must provide  
19 access to a free telephone for the express purpose of contacting the  
20 contracting advocacy organization.

21 NEW SECTION. **Sec. 8.** The contracting advocacy organization  
22 shall develop and submit, for approval by the office, a process to  
23 train and certify all behavioral health consumer advocates, whether  
24 paid or volunteer, authorized by this chapter as follows:

25 (1) Certified behavioral health consumer advocates must have  
26 training or experience in the following areas:

- 27 (a) Behavioral health and other related social services programs;
- 28 (b) The legal system, including differences in state or federal  
29 law between voluntary and involuntary patients, residents, or  
30 clients;
- 31 (c) Advocacy and supporting self-advocacy;
- 32 (d) Dispute or problem resolution techniques, including  
33 investigation, mediation, and negotiation; and
- 34 (e) All applicable patient, resident, and client rights  
35 established by either state or federal law.

36 (2) A certified behavioral health consumer advocate may not have  
37 been employed by any behavioral health provider or facility within  
38 the previous twelve months, except as a certified peer specialist or

1 where prior to the effective date of this section the person has been  
2 employed by a regional behavioral health consumer advocate.

3 (3) No certified behavioral health consumer advocate or any  
4 member of a certified behavioral health consumer advocate's family  
5 may have, or have had, within the previous twelve months, any  
6 significant ownership or financial interest in the provision of  
7 behavioral health services.

8 NEW SECTION. **Sec. 9.** (1) The contracting advocacy organization  
9 shall develop and submit for approval by the office referral  
10 procedures for the organization and all certified behavioral health  
11 consumer advocates to refer any complaint, in accordance with a  
12 mutually established working agreement, to an appropriate state or  
13 local government agency. The appropriate agency shall respond to any  
14 complaint referred to it by a certified behavioral health consumer  
15 advocate, in accordance with a mutually established working  
16 agreement.

17 (2) State agencies shall review a complaint against a behavioral  
18 health provider or facility which was referred to it by a certified  
19 behavioral health consumer advocate, in accordance with a mutually  
20 established working agreement, and shall forward to that certified  
21 behavioral health consumer advocate a summary of the results of the  
22 review or investigation and action proposed or taken.

23 (3) State agencies that regulate or contract with behavioral  
24 health providers or facilities shall adopt necessary rules to  
25 effectively work in coordination with the contracting advocacy  
26 organization.

27 NEW SECTION. **Sec. 10.** (1) The contracting advocacy organization  
28 shall develop and implement working agreements with the protection  
29 and advocacy agency, the long-term care ombuds, the developmental  
30 disabilities ombuds, the corrections ombuds, and the children and  
31 family ombuds, and work in cooperation to assure efficient,  
32 coordinated service.

33 (2) The contracting advocacy organization shall develop working  
34 agreements with each managed care organization, behavioral health  
35 administrative services organization, the state psychiatric  
36 hospitals, all appropriate state and local agencies, and other such  
37 entities as necessary to carry out their duties. Working agreements  
38 must include:



1 (a) The roles of the contracting advocacy organization and the  
2 agency or entity in complaint investigations, complaint referral  
3 criteria, and a process for sharing information regarding complaint  
4 review and investigation, as appropriate; and

5 (b) Processes and procedures to assure timely and seamless  
6 information sharing among all interested parties and that the  
7 contracting advocacy organization is responsive to all local  
8 information requests.

9 NEW SECTION. **Sec. 11.** (1) No certified behavioral health  
10 consumer advocate is liable for good faith performance of  
11 responsibilities under this chapter.

12 (2) No discriminatory, disciplinary, or retaliatory action may be  
13 taken against an employee or volunteer of a behavioral health  
14 provider or facility, or a patient, resident, or client of a  
15 behavioral health provider or facility, for any communication made,  
16 or information given or disclosed, to aid the certified behavioral  
17 health consumer advocate in carrying out duties and responsibilities  
18 under this chapter, unless the same was done maliciously or without  
19 good faith. This subsection is not intended to infringe on the rights  
20 of the employer to supervise, discipline, or terminate an employee or  
21 volunteer for other reasons, and shall serve as a defense to any  
22 action in libel or slander.

23 (3) All communications by a certified behavioral health consumer  
24 advocate, if reasonably related to the requirements of that  
25 individual's responsibilities under this chapter and done in good  
26 faith, are privileged and confidential, subject to the procedures  
27 established by the office.

28 (4) A representative of the contracting advocacy organization is  
29 exempt from being required to testify in court as to any confidential  
30 matters except upon the express consent of the client, resident, or  
31 patient that is subject to the court proceedings, or their  
32 representatives, as applicable.

33 NEW SECTION. **Sec. 12.** It is the intent of the legislature that:

34 (1) Regional behavioral health ombuds programs existing prior to  
35 this act be integrated into this new statewide program and the ombuds  
36 from those programs be assessed and certified by the contracting  
37 advocacy organization as behavioral health consumer advocates;

1 (2) There shall be a behavioral health consumer advocate office  
2 within the boundaries of the region served by each behavioral health  
3 administrative services organization;

4 (3) Federal medicaid requirements be complied with; and

5 (4) The department annually expend at least the amount expended  
6 on regional behavioral health ombuds services prior to the effective  
7 date of this section on the office and for the procurement of  
8 services from the contracting advocacy organization under this  
9 chapter.

10 NEW SECTION. **Sec. 13.** (1) All records and files of the office,  
11 the contracting advocacy organization, and any certified behavioral  
12 health consumer advocates related to any complaint or investigation  
13 made pursuant to carrying out their duties and the identities of  
14 complainants, witnesses, patients, residents, or clients and  
15 information that could reasonably identify any of these individuals  
16 shall remain confidential unless disclosure is authorized in writing  
17 by the subject of the information, or the subject's guardian or legal  
18 representative.

19 (2) No disclosures of records and files related to a complaint or  
20 investigation may be made to any organization or individual outside  
21 the office or the contracting advocacy organization without the  
22 written consent of any named witnesses, complainants, patients,  
23 residents, or clients unless the disclosure is made without the  
24 identity of any of these individuals and without information that  
25 could reasonably identify any of these individuals unless such  
26 disclosure is required in carrying out its duties under this chapter.

27 (3) Notwithstanding subsections (1) and (2) of this section,  
28 disclosures of records and files may be made pursuant to a court  
29 order.

30 (4) All disclosures must be compliant with state and federal  
31 privacy laws applicable to the type of information that is sought for  
32 disclosure.

33 **Sec. 14.** RCW 71.24.045 and 2019 c 325 s 1008 are each amended to  
34 read as follows:

35 (1) The behavioral health administrative services organization  
36 contracted with the authority pursuant to RCW 71.24.381 shall:

37 (a) Administer crisis services for the assigned regional service  
38 area. Such services must include:

- 1 (i) A behavioral health crisis hotline for its assigned regional  
2 service area;
- 3 (ii) Crisis response services twenty-four hours a day, seven days  
4 a week, three hundred sixty-five days a year;
- 5 (iii) Services related to involuntary commitments under chapters  
6 71.05 and 71.34 RCW;
- 7 (iv) Additional noncrisis behavioral health services, within  
8 available resources, to individuals who meet certain criteria set by  
9 the authority in its contracts with the behavioral health  
10 administrative services organization. These services may include  
11 services provided through federal grant funds, provisos, and general  
12 fund state appropriations;
- 13 (v) Care coordination, diversion services, and discharge planning  
14 for nonmedicaid individuals transitioning from state hospitals or  
15 inpatient settings to reduce rehospitalization and utilization of  
16 crisis services, as required by the authority in contract; and
- 17 (vi) Regional coordination, cross-system and cross-jurisdiction  
18 coordination with tribal governments, and capacity building efforts,  
19 such as supporting the behavioral health advisory board(~~(the~~  
20 ~~behavioral health ombuds,~~) and efforts to support access to services  
21 or to improve the behavioral health system;
- 22 (b) Administer and provide for the availability of an adequate  
23 network of evaluation and treatment services to ensure access to  
24 treatment, investigation, transportation, court-related, and other  
25 services provided as required under chapter 71.05 RCW;
- 26 (c) Coordinate services for individuals under RCW 71.05.365;
- 27 (d) Administer and provide for the availability of resource  
28 management services, residential services, and community support  
29 services as required under its contract with the authority;
- 30 (e) Contract with a sufficient number, as determined by the  
31 authority, of licensed or certified providers for crisis services and  
32 other behavioral health services required by the authority;
- 33 (f) Maintain adequate reserves or secure a bond as required by  
34 its contract with the authority;
- 35 (g) Establish and maintain quality assurance processes;
- 36 (h) Meet established limitations on administrative costs for  
37 agencies that contract with the behavioral health administrative  
38 services organization; and
- 39 (i) Maintain patient tracking information as required by the  
40 authority.

1 (2) The behavioral health administrative services organization  
2 must collaborate with the authority and its contracted managed care  
3 organizations to develop and implement strategies to coordinate care  
4 with tribes and community behavioral health providers for individuals  
5 with a history of frequent crisis system utilization.

6 (3) The behavioral health administrative services organization  
7 shall:

8 (a) Assure that the special needs of minorities, older adults,  
9 individuals with disabilities, children, and low-income persons are  
10 met;

11 (b) Collaborate with local government entities to ensure that  
12 policies do not result in an adverse shift of persons with mental  
13 illness into state and local correctional facilities; and

14 (c) Work with the authority to expedite the enrollment or  
15 reenrollment of eligible persons leaving state or local correctional  
16 facilities and institutions for mental diseases.

17 **Sec. 15.** RCW 71.24.380 and 2019 c 325 s 1022 are each amended to  
18 read as follows:

19 (1) The director shall purchase behavioral health services  
20 primarily through managed care contracting, but may continue to  
21 purchase behavioral health services directly from providers serving  
22 medicaid clients who are not enrolled in a managed care organization.

23 (2) The director shall require that contracted managed care  
24 organizations have a sufficient network of providers to provide  
25 adequate access to behavioral health services for residents of the  
26 regional service area that meet eligibility criteria for services,  
27 and for maintenance of quality assurance processes. Contracts with  
28 managed care organizations must comply with all federal medicaid and  
29 state law requirements related to managed health care contracting,  
30 including RCW 74.09.522.

31 (3) A managed care organization must contract with the  
32 authority's selected behavioral health administrative services  
33 organization for the assigned regional service area for the  
34 administration of crisis services. The contract shall require the  
35 managed care organization to reimburse the behavioral health  
36 administrative services organization for behavioral health crisis  
37 services delivered to individuals enrolled in the managed care  
38 organization.

1           (4) A managed care organization must contract with the  
2 contracting advocacy organization selected by the state office of  
3 behavioral health consumer advocacy established in section 3 of this  
4 act for the provision of behavioral health consumer advocacy services  
5 delivered to individuals enrolled in the managed care organization.  
6 The contract shall require the managed care organization to reimburse  
7 the office of behavioral health consumer advocacy for behavioral  
8 health consumer advocacy services delivered to individuals enrolled  
9 in the managed care organization.

10           (5) A managed care organization must collaborate with the  
11 authority and its contracted behavioral health administrative  
12 services organization to develop and implement strategies to  
13 coordinate care with tribes and community behavioral health providers  
14 for individuals with a history of frequent crisis system utilization.

15           ~~((5))~~ (6) A managed care organization must work closely with  
16 designated crisis responders, behavioral health administrative  
17 services organizations, and behavioral health providers to maximize  
18 appropriate placement of persons into community services, ensuring  
19 the client receives the least restrictive level of care appropriate  
20 for their condition. Additionally, the managed care organization  
21 shall work with the authority to expedite the enrollment or  
22 reenrollment of eligible persons leaving state or local correctional  
23 facilities and institutions for mental diseases.

24           ~~((6))~~ (7) As an incentive to county authorities to become early  
25 adopters of fully integrated purchasing of medical and behavioral  
26 health services, the standards adopted by the authority shall provide  
27 for an incentive payment to counties which elect to move to full  
28 integration by January 1, 2016. Subject to federal approval, the  
29 incentive payment shall be targeted at ten percent of savings  
30 realized by the state within the regional service area in which the  
31 fully integrated purchasing takes place. Savings shall be calculated  
32 in alignment with the outcome and performance measures established in  
33 RCW 71.24.435, 70.320.020, and 71.36.025, and incentive payments for  
34 early adopter counties shall be made available for up to a six-year  
35 period, or until full integration of medical and behavioral health  
36 services is accomplished statewide, whichever comes sooner, according  
37 to rules to be developed by the authority.

38           NEW SECTION.   **Sec. 16.**   RCW 71.24.350 (Behavioral health ombuds  
39 office) and 2019 c 325 s 1020, 2018 c 201 s 4019, 2016 sp.s. c 29 s

1 523, 2014 c 225 s 41, 2013 c 23 s 189, & 2005 c 504 s 803 are each  
2 repealed.

3 NEW SECTION. **Sec. 17.** Sections 1 through 13 of this act  
4 constitute a new chapter in Title 71 RCW.

5 NEW SECTION. **Sec. 18.** Sections 15 and 16 of this act take  
6 effect July 1, 2022.

7 NEW SECTION. **Sec. 19.** If specific funding for the purposes of  
8 this act, referencing this act by bill or chapter number, is not  
9 provided by June 30, 2021, in the omnibus appropriations act, this  
10 act is null and void.

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