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March 23, 2012

To the Honorable Speaker and Members,  
The House of Representatives of the State of Washington

Ladies and Gentlemen:

I have approved, except for Section 26, Engrossed Second Substitute House Bill 2319 entitled:

"AN ACT Relating to furthering state implementation of the health benefit exchange and related provisions of the affordable care act."

Section 26 requires the exchange to suspend operations if at any time it is not self-sustaining. There are other sections of the bill which require the exchange to be self-sustaining. Section 26 is redundant, and the phrase "at any time" adds an unnecessary element of uncertainty and creates risks of litigation that could interfere with exchange operations. For these reasons I have vetoed Section 26.

Although there are other sections of the bill about which concerns have been raised, I am approving them for the following reasons:

Section 6 imposes market rules essential to help health plans sold in the exchange remain affordable by protecting them against adverse selection, with great care taken not to inappropriately burden the general insurance market. Concern that this section would apply to other than individual or small group plans is misplaced. Such a reading is unsupported by the legislative history and makes no sense in light of the statutory purpose and the corresponding provisions of the federal Affordable Care Act.

Section 7 has also produced some confusion about the effective date when it becomes law and the later operative date when the Insurance Commissioner would implement its provisions. This section will become a statute in existing law on its effective date of June 7, 2012; however, it will not become operative and apply to any health plans until January 1, 2014. This is because the referenced Section 1302 of the Affordable Care Act does not become operative until that later date. The Insurance Commissioner has advised me his office will not apply or enforce the provisions of Section 7 until January 1, 2014.

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Section 25 effectively exempts “navigators” acting under the Affordable Care Act from the state licensing requirements applicable to insurance agents or brokers under chapter 48.17 RCW. These are individuals or organizations that will be charged with informing consumers about their new health insurance options – particularly low-income consumers who face language or cultural barriers. Section 25 conforms state law to recent rules issued by the United States Department of Health and Human Services which prohibit a state from requiring a navigator to hold an agent or broker license. These federal rules also call for the state to adopt separate consumer protection standards addressing the unique circumstances under which navigators will operate, which Section 25 does not preclude, and I expect our state will do.

With the exception of Section 26, Engrossed Second Substitute House Bill 2319 is approved.

Respectfully submitted,

/s/

Christine Gregoire  
Governor