



STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: June 05, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000015878

[REDACTED]

Dear [REDACTED],

On May 24, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's February 16, 2017 eligibility determination notice.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification number and the Account ID at the top of this notice.

Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY - Spanish: 1-877-662-4886).

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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
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Decision

Decision Date: June 05, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000015878

[REDACTED]

Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NY State of Health (NYSOH) properly determine that you did not qualify to enroll in a qualified health plan (QHP) outside of the open enrollment period, effective March 1, 2017?

Procedural History

[REDACTED]

On October 17, 2016, an application for non-financial assistance was filed in this NYSOH account.

On October 18, 2016, NYSOH issued a notice of eligibility determination stating that you and your two children were eligible to purchase a QHP at full cost, effective December 1, 2016.

Also on October 18, 2016, NYSOH issued a notice of enrollment confirmation confirming that you and your two children were enrolled in a full cost bronze-level QHP, effective November 1, 2016.

On November 13, 2016, NYSOH issued a renewal notice stating that it was time to renew your coverage for 2017. The notice stated that you and your children were still qualified to purchase a QHP at full cost, and that if you wanted to keep your current health plan, you did not need to do anything further, as you and your

children were re-enrolled into the same full cost bronze-level plan beginning January 1, 2017.

On November 19, 2016, NYSOH issued a notice of enrollment confirmation, stating that you and your children were re-enrolled into your full cost bronze-level QHP, beginning January 1, 2017.

On December 16, 2016, your NYSOH account was updated.

On December 17, 2016, NYSOH issued a notice of eligibility determination stating that you and your two children were eligible to purchase a QHP at full cost, effective January 1, 2017.

Also on December 17, 2016, NYSOH issued a notice of enrollment confirmation, again confirming that you and your two children were enrolled in your bronze-level QHP, beginning January 1, 2017.

On January 17, 2017, your application was updated by NYSOH to state that no one in your household needed health insurance.

On January 18, 2017, NYSOH issued a notice stating that you, your spouse, and your two children were no longer eligible for health insurance through NYSOH because you no longer wanted to receive coverage. This eligibility was effective March 1, 2017.

Also on January 18, 2017, NYSOH issued a notice of disenrollment stating that you and your two children were disenrolled from your QHP as of February 28, 2017 because you were no longer eligible to enroll in coverage through NYSOH.



On February 15, 2017, NYSOH received your application for health insurance, which requested financial assistance. That same day, a preliminary eligibility determination was prepared stating that your children were eligible to enroll in Child Health Plus, effective March 1, 2017, and that you were eligible to receive \$0.00 in advance payments of the premium tax credit, effective March 1, 2017. You also attempted to enroll into a QHP, but were unable to select a plan for enrollment.

Also on February 15, 2017, you spoke to NYSOH's Account Review Unit and appealed your inability to enroll into a QHP for 2017 outside of the open enrollment period.

On February 16, 2017, NYSOH issued an eligibility determination notice, based on the February 15, 2017 application for financial assistance, stating that you were eligible to receive an advance premium tax credit of \$0.00 per month,

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effective March 1, 2017 It further stated that you did not qualify to select a health plan outside of the open enrollment period for 2017.

On May 24, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

Findings of Fact

A review of the record supports the following findings of fact:

- 1) On October 17, 2016, a non-financial application for health insurance was submitted under account number [REDACTED], which is in your spouse's name.
- 2) You testified that your spouse submitted this application, but did not indicate that you needed financial assistance with the cost of health insurance.
- 3) You testified that you and your children were enrolled in a full cost QHP as of November 2016.
- 4) You testified that you stopped working at the end of November, and the cost of the QHP in which you were enrolled was too high for your family to afford.
- 5) You testified that you contacted both your QHP and NYSOH to ask what to do, and were told to just let the QHP coverage "run out."
- 6) You testified that you tried to change your application to one for financial assistance, but were unable to do so because, when you tried to log in to your account, you needed to request a password change, and the emails were going to an old [REDACTED] email address that you no longer had access to.
- 7) You testified that you discovered at some point that you three accounts with NYSOH, which was preventing you from being able to log in to your NYSOH account.
- 8) NYSOH's system confirms that there are three accounts affiliated with your name as follows:
 - a. [REDACTED]: inactive, with no activity since 2014; however, this is the account with the [REDACTED] email address;
 - b. [REDACTED]: active, and the account is in your spouse's name;

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- c. [REDACTED]: active, and the account is in your name.
- 9) You testified that, after speaking to NYSOH many times to try to get the old account made inactive, you tried to update your application through the account in your spouse's name, but were unable to get past an employment verification screen. You testified that this was in December 2016.
 - 10) You testified that you received the notices stating that you were re-enrolled in your full cost QHP for January 2017, so you called NYSOH and informed them that you did not want that coverage because you could not afford it.
 - 11) You testified that it took NYSOH some time to straighten out the problem with your old account and email address, and that you had many phone calls with them in December and January regarding this situation, and regarding your wish to apply for financial assistance.
 - 12) You testified that you asked NYSOH what would happen if the issue was not resolved by January 31, 2017, when open enrollment ended, and that you were informed that it was not a problem, as there were many reasons that would allow you to enroll after open enrollment closed.
 - 13) You testified that you were also told that technical problems were one of the reasons that a person would be allowed to enroll outside of open enrollment.
 - 14) NYSOH's system indicates that an application for financial assistance was filed in account number [REDACTED] on February 15, 2017, which resulted in your children being found eligible for Child Health Plus.
 - 15) You testified that you tried to answer the questions that would allow you to select a health plan outside of open enrollment, but that there was no option for "technical problems" or anything similar in the list of reasons provided in the application.
 - 16) You testified that you filed this application with the assistance of an enrollment facilitator, who also could not find a relevant special enrollment reason in the application.
 - 17) You testified that you contacted NYSOH and were told that you could not enroll in coverage because it was outside of the open enrollment period, and that you would need to file an appeal.

18) You testified that you are appealing because you want to enroll in coverage for the remainder of 2017, and you do not want to incur a penalty when you file your 2017 tax return for being without coverage.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

Applicable Law and Regulations

Enrollment in a Qualified Health Plan

NYSOH must provide annual open enrollment periods during which time qualified individuals may enroll in a QHP and enrollees may change QHPs (45 CFR § 155.410(a)(1)).

For the benefit year beginning on January 1, 2017, the annual open enrollment period began on November 1, 2016, and extended through January 31, 2017 (45 CFR § 155.410(e)(2)).

Special Enrollment Periods

After each open enrollment period ends, NYSOH provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a QHP, and an enrollee may change their enrollment to another plan. This is generally permitted when one of the following triggering events occur:

(1) The qualified individual or his or her dependent either:

- (i) Loses minimum essential coverage.
- (ii) Is enrolled in any non-calendar year group health plan or individual health insurance coverage, even if the qualified individual or his or her dependent has the option to renew such coverage.
- (iii) Loses pregnancy-related coverage.
- (iv) Loses medically needy coverage as described under section 1902(a)(10)(C) of the Social Security Act only once per calendar year.

(2)(i) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care, or through a child support order or other court order.

- (ii) the enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation as defined by State law in the State in which the divorce or legal separation occurs, or if the enrollee, or his or her dependent, dies.
- (3) The qualified individual, or his or her dependent, becomes newly eligible for enrollment in a QHP because he or she gains citizenship, status as a national, or lawful present or is no longer incarcerated.
- (4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of NYSOH, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities.
- (5) The enrollee or, his or her dependent adequately demonstrates to NYSOH that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;
- (6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions.
- (7) The qualified individual or enrollee, or his or her dependent, gains access to new QHP as a result of a permanent move and either—
 - (i) Had minimum essential coverage for one or more days during the 60 days preceding the date of the permanent move, or
 - (ii) Was living outside of the United States or in a United States territory at the time of the permanent move;
- (8) The qualified individual or dependent who gains or maintains status as an Indian may enroll in a QHP or change from one plan to another, once per month.
- (9) The qualified individual or enrollee, or his or her dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide;
- (10) A qualified individual or enrollee—
 - (i) Is a victim of domestic abuse or spousal abandonment, including a dependent or unmarried victim within a household, is enrolled in

minimum essential coverage and seeks to enroll in coverage separate from the perpetrator of the abuse or abandonment; or

(ii) Is a dependent of a victim of domestic abuse or spousal abandonment, on the same application as the victim, may enroll in coverage at the same time as the victim;

(11) A qualified individual or dependent—

(i) Applies for coverage through NYSOH during the annual open enrollment period or due to a qualifying event, is assessed as potentially eligible for Medicaid or Child Health Plus and is determined ineligible for Medicaid or Child Health Plus either after open enrollment has ended or more than 60 days after the qualifying event; or

(ii) Applies for coverage at their Local Department of Social Services or Human Resources Administration during the annual open enrollment period, and is determined ineligible for Medicaid or Child Health Plus after open enrollment has ended;

(12) The qualified individual or enrollee, or his or her dependent, adequately demonstrates to NYSOH that a material error related to plan benefits, service area, or premium influenced the qualified individual's or enrollee's decision to purchase a QHP; or

(13) At the option of NYSOH, the qualified individual provides satisfactory documentary evidence to verify his or her eligibility for an insurance affordability program or enrollment following termination of enrollment due to a failure to verify such status within 90 days.

(45 CFR § 155.420(d)).

Generally, if a triggering life event occurs, the qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP (45 CFR § 155.420(c)(1)).

Legal Analysis

The issue under review is whether NYSOH properly determined that you did not qualify to enroll in a QHP outside of the open enrollment period, effective March 1, 2017.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. On December 17, 2016, NYSOH confirmed your enrollment in

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a full cost QHP, effective January 1, 2017. Therefore, you were enrolled into a QHP during the 2017 open enrollment period.

However, you testified that you wanted to file an application for financial assistance, and that you contacted NYSOH to notify them of this fact. You credibly testified that you had many phone calls with NYSOH in December 2016 and January 2017 trying to straighten out your account, as you discovered that you were listed on three accounts. The record confirms that you are listed on three separate NYSOH accounts. You credibly testified that you were unable to update your application for health insurance because you could not log into any of your accounts, as the password reset emails were going to an old email address affiliated with an old NYSOH account.

You testified that NYSOH was aware of these problems, and that you asked NYSOH what would happen if the issue was not resolved by January 31, 2017, when open enrollment ended. You credibly testified that you were informed by NYSOH representatives that you would be able to enroll outside of open enrollment because having technical problems with your account was good cause for late enrollment.

NYSOH account number [REDACTED] reflects that a NYSOH representative updated this account on January 17, 2017, and indicated that no one in the household needed health insurance. As a result, your eligibility for enrollment in your full cost QHP ended on February 28, 2017. However, no subsequent application for financial assistance was filed, and the account was left active. You testified that you were finally able to apply for financial assistance with the help of an enrollment facilitator, and your NYSOH account [REDACTED] reflects that this application was filed on February 15, 2017.

On February 16, 2017, NYSOH issued a notice stating that you do not qualify to enroll in a qualified health plan outside of the open enrollment period.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in or change to another health plan offered in NYSOH. To qualify for a special enrollment period, a person must experience a triggering event.

A special enrollment period can be granted if a qualified individual's enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of NYSOH, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities.

The fact that there were three accounts on which you were listed, at least two of which were active, gave rise to your inability to file an application for financial assistance. Since NYSOH's system should have prevented the creation of

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additional accounts, it was NYSOH's error that delayed your application for financial assistance. Moreover, you credibly testified that you were informed by NYSOH that it did not matter if your enrollment was completed by January 31, 2017, as the technical problems you were experiencing would provide good cause for late enrollment.

Since the record indicates that your non-enrollment into a QHP was the direct result of erroneous actions by NYSOH and statements made to you by representatives of NYSOH, you should have been granted a special enrollment period as of your February 15, 2017 application.

Therefore, NYSOH's February 16, 2017 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your February 15, 2017 application.

You are given a special enrollment period in which to enroll in coverage that will last for 60 days from the date of this decision. Your case is RETURNED to NYSOH to assist you in enrolling into a QHP. You may choose to enroll into a QHP as of March 1, 2017 (the date coverage could have begun had you been provided the special enrollment period as of your February 15, 2017 application), or, in the alternative, you may elect to begin your coverage from this point forward.

Additionally, NYSOH is directed to consolidate the two active accounts on which you are listed – [REDACTED] and [REDACTED] – so that there is only one active account for you and your household.

Lastly, NYSOH's failure to grant you a special enrollment period resulted in you being without insurance coverage for part of the 2017 coverage year. During the hearing, you testified that you are concerned about receiving a tax penalty as a result of being without coverage.

Sometimes after an appeal decision, an appellant can claim an exemption from the requirement to have health insurance. You might qualify for a health coverage exemption in 2017 if you did not have health coverage while you were waiting for an appeal decision about coverage eligibility or savings and your appeal was eventually successful.

You must claim this exemption through the United States Department of Health and Human Services (HHS). Currently, NYSOH does not accept hardship exemption applications.

You will find the information you need to claim the exemption due to an appeal decision at <https://www.healthcare.gov/exemptions->

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[tool/#/results/2017/details/eligible-based-on-appeal](#). You can also call 1-800-318-2596.

Important: If you do not get a response from HHS to your exemption application in time to file your tax return, write the word “pending” in column “c” and file your return. If HHS does not approve your exemption, you will need to file an amended return later.

Decision

The February 16, 2017 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your February 15, 2017 application.

You are given a special enrollment period in which to enroll in coverage that will last for 60 days from the date of this decision. Your case is RETURNED to NYSOH to assist you in enrolling into a QHP. You may choose to enroll into a QHP as of March 1, 2017 (the date coverage could have begun had you been provided the special enrollment period as of your February 15, 2017 application), or, in the alternative, you may elect to begin your coverage from this point forward.

Further, NYSOH is directed to consolidate the two active accounts on which you are listed – [REDACTED] and [REDACTED] – so that there is only one active account for your household.

Effective Date of this Decision: June 05, 2017

How this Decision Affects Your Eligibility

NYSOH improperly denied you a special enrollment period.

Your case is being sent back to NYSOH to allow you to enroll into coverage as of March 1, 2017, if you so choose. In the alternative, you may elect to enroll into coverage as of now.

You will be responsible for any premium payments for any months you are enrolled into coverage.

NYSOH will consolidate your household’s two active accounts, so that you and your family have only one active NYSOH account.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY – Spanish: 1-877-662-4886).

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to the Federal Marketplace or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the Federal Marketplace. This must be done within 30 days of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:
Health Insurance Marketplace
Attn: Appeals
465 Industrial Blvd.
London, KY 40750-0061
- By fax: 1-877-369-0129

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services.

If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
NY State of Health Appeals
P.O. Box 11729

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Albany, NY 12211

- By fax: 1-855-900-5557

Summary

The February 16, 2017 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your February 15, 2017 application.

You are given a special enrollment period in which to enroll in coverage that will last for 60 days from the date of this decision. Your case is RETURNED to NYSOH to assist you in enrolling into a QHP. You may choose to enroll into a QHP as of March 1, 2017 (the date coverage could have begun had you been provided the special enrollment period as of your February 15, 2017 application), or, in the alternative, you may elect to begin your coverage from this point forward.

Further, NYSOH is directed to consolidate the two active accounts on which you are listed – [REDACTED] and [REDACTED] – so that there is only one active account for your household.

NYSOH improperly denied you a special enrollment period.

Your case is being sent back to NYSOH to allow you to enroll into coverage as of March 1, 2017, if you so choose. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

You will be responsible for any premium payments for any months you are enrolled into coverage.

NYSOH will consolidate your household's two active accounts, so that you and your family have only one active NYSOH account.

Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:



Getting Help in a Language Other than English

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

Español (Spanish)

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

中文 (Traditional Chinese)

這是重要的文件。如果您需要獲得關於瞭解文件內容方面的協助，請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

Kreyòl Ayisyen (Haitian Creole)

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

中文 (Simplified Chinese)

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您提供相应语种的口译服务。

Italiano (Italian)

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

한국어 (Korean)

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777 번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

Русский (Russian)

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

العربية (Arabic)

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 1-855-355-5777. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجاناً.

বাংলা (Bengali)

এটি এক গুরুত্বপূর্ণ নথি। এটি বুঝতে আপনার যদি সাহায্যের প্রয়োজন হয় তাহলে, অনুগ্রহ করে 1-855-355-5777 নম্বরে কল করুন। আপনি যে ভাষায় কথা বলেন বিনামূল্যে আমরা আপনাকে একজন দোভাষী দিতে পারি।

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Français (French)

Ceci est un document important. Si vous avez besoin d'aide pour en comprendre le contenu, appelez le 1-855-355-5777. Nous pouvons mettre gratuitement à votre disposition un interprète dans votre langue.

हिंदी (Hindi)

यह एक महत्वपूर्ण दस्तावेज़ है। अगर आपको इसे समझने में सहायता चाहिए, तो कृपया 1-855-355-5777 पर कॉल करें। हम आपकी भाषा बोलने वाला एक दुभाषिया निःशुल्क उपलब्ध करवा सकते हैं।

日本語 (Japanese)

これは重要な書類です。理解するために支援が必要な場合は、1-855-355-5777 にお電話ください。通訳を無料で提供いたします。

नेपाली (Nepali)

यो एउटा महत्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

Polski (Polish)

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

Twi (Twi)

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. ye&btumi ama wo obi a okyerE kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu) اردو

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم 1-855-355-5777 پر کال کریں۔ ہم آپ کو آپ کی مادری زبان میں ایک مفت مترجم فراہم کر سکتے ہیں۔

Tiếng Việt (Vietnamese)

Đây là tài liệu quan trọng. Nếu quý vị cần trợ giúp để hiểu tài liệu này, vui lòng gọi 1-855-355-5777. Chúng tôi có thể cung cấp thông dịch viên miễn phí nói ngôn ngữ của quý vị.

אידיש (Yiddish)

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