



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

Notice of Decision

Decision Date: September 6, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000017585

[REDACTED]

Dear [REDACTED],

On July 13, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's February 26, 2017 enrollment confirmation notice and the May 27, 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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DEPARTMENT OF HEALTH
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Decision

Decision Date: September 6, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000017585

[REDACTED]

Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did NY State of Health properly determine your oldest child's enrollment in an individual QHP became effective on March 1, 2017?

Did NYSOH properly determine that your oldest child was not eligible to reenroll in a QHP outside the open enrollment period for 2017?

Procedural History

On January 8, 2017, NYSOH issued an eligibility determination notice stating you and your oldest child were eligible to receive up to \$197.00 per month in advance payments of the premium tax credit (APTC), effective February 1, 2017.

Also on January 8, 2017, NYSOH issued an enrollment notice confirming you and your oldest child were enrolled in a Fidelis Care bronze-level family QHP with a \$396.55 monthly premium, effective February 1, 2017.

On February 25, 2017, NYSOH received an updated application for financial assistance with health insurance submitted on behalf of you and your children, indicating you were no longer applying for insurance for yourself.

On February 26, 2017, NYSOH issued an eligibility determination notice stating your oldest child was eligible for \$0.00 per month in APTC, effective April 1, 2017.

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Also on February 26, 2017, NYSOH issued a disenrollment notice stating the enrollment of you and your oldest child in your family QHP would end March 31, 2017, because you were no longer eligible to enroll in that plan.

Additionally, on February 26, 2017, NYSOH issued an enrollment notice confirming your oldest child was enrolled in a Fidelis Care bronze-level full cost individual QHP, effective March 1, 2017, with a monthly premium of \$349.15.

On March 18, 2017, NYSOH issued a disenrollment notice stating your oldest child's enrollment in his individual QHP was terminated, effective March 1, 2017, because he did not pay his insurance bill by the payment deadline.

On March 30, 2017, NYSOH issued an eligibility determination, based on your March 29, 2017 updated application, stating your oldest child might be eligible to enroll in coverage if he qualified for a special enrollment period, effective May 1, 2017.

On March 31, 2017, you contacted NYSOH and appealed insofar as your oldest child was not able to reenroll into a QHP for 2017.

On May 27, 2017, NYSOH issued an eligibility determination notice, based on your May 26, 2017 updated application, stating your oldest child did not qualify to select a health plan outside the open enrollment period for 2017.

On July 13, 2017, you had a telephone hearing with a Hearing Officer from the NYSOH's Appeals Unit. The record was developed during the hearing and closed at the end of the proceeding.

Findings of Fact

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

- 1) You testified this appeal only involves the coverage of your oldest child.
- 2) According to your account, you and your oldest child enrolled in a family QHP with a monthly premium of \$396.55, after APTC was applied, effective February 1, 2017.
- 3) According to your account, you contacted NYSOH on February 18, 2017 and your mailing address was updated from a PO Box to your physical address.
- 4) You testified that you do not receive mail at your physical address so your mailing address was erroneously updated on February 18, 2017. You testified your correct mailing address is your [REDACTED].

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- 5) According to your account, you contacted NYSOH again on February 25, 2017 and an updated application was submitted on behalf of you and your children indicating that you were no longer applying for health insurance.
- 6) You and your oldest child were disenrolled from your family QHP, effective March 31, 2017.
- 7) Your oldest child was enrolled into a full cost individual QHP on February 25, 2017.
- 8) The enrollment notice issued on February 26, 2017 stated that your oldest child's enrollment in his individual QHP became effective March 1, 2017 and his monthly premium was \$349.15.
- 9) You testified you received the March 2017 invoice for your family plan, but that you sent payment in the lesser amount of \$360.00 to pay for the March 2017 premium for your oldest child's individual plan, because you were advised by the NYSOH representative on February 25, 2017 that your oldest child's enrollment in his individual plan would begin on March 1, 2017 and you only had to pay his premium for the month of March 2017.
- 10) You testified that the health plan subsequently contacted you in March 2017 to advise that you owed additional money for the month of March 2017. You testified the health plan said that your family plan enrollment did not end until March 31, 2017. You testified that you sent the health plan a check for the difference between the amount you paid for your child's individual plan and the premium amount owed for the March 2017 family plan premium.
- 11) You testified that the health plan later contacted you in March 2017 to advise that the March 2017 invoice for your oldest child's individual QHP was returned to the health plan as undeliverable. You testified you were advised by the health plan that the address on the invoice was your physical address. You testified the health plan advised you that NYSOH sent over the information for your child's enrollment in his individual QHP with your physical address listed as your mailing address.
- 12) According to your account, the health plan initiated termination of your child's enrollment in his individual QHP on March 17, 2017 for non-payment of the March 2017 premium. Your child's enrollment was retroactively terminated, effective March 1, 2017.
- 13) According to your account, your child was enrolled in both an individual QHP and a family QHP for the month of March 2017.

- 14) According to your account, an updated application was submitted on behalf of your child on March 29, 2017. According to the eligibility determination notice issued on March 30, 2017, your child was only eligible to enroll in a QHP if he qualified for a special enrollment period.
- 15) You appealed insofar as your child was unable to reenroll into a QHP.
- 16) On May 27, 2017, NYSOH issued an eligibility determination notice stating your oldest child did not qualify to select a health plan outside the special enrollment period for 2017.
- 17) You testified your oldest child has not had health coverage since March 31, 2017. You testified you are worried about incurring a tax penalty. You testified you are seeking a special enrollment to reenroll your child into a QHP.

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

Applicable Law and Regulations

Qualified Health Plan – Effective Dates of Coverage

The effective date of coverage by a qualified health plan is determined by the date on which an applicant selects a plan for enrollment. For individuals who are eligible for enrollment, NYSOH must generally ensure that coverage is effective the first day of the following month for selections received by NYSOH from the first to the fifteenth of any month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(i)). For selections received by NYSOH from the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(ii)).

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 APTC, or change in eligibility for cost-sharing reductions.

(7) The qualified individual or enrollee, or his or her dependent, gains access to a 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)).

However, a loss of health insurance coverage such as that referenced above does not include,

“voluntary termination of coverage or other loss due to—

(1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or

(2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128” such as failure to comply with other requirements (45 CFR § 147.128(b))

(45 CFR § 155.420(e)).

Legal Analysis

The first issue under review is whether NYSOH properly determined your oldest child's enrollment in an individual QHP became effective on March 1, 2017.

According to your account, you and your oldest child were enrolled into a family QHP, effective February 1, 2017. On February 25, 2017, you updated your application to indicate you were no longer applying for insurance. As a result, the enrollment of you and your son in your family QHP was terminated, effective March 31, 2017. The same day, your oldest child was enrolled in an individual QHP. According to your account, your child's enrollment in his individual QHP became effective on March 1, 2017.

Pursuant to the above cited regulations, the effective date of coverage by a QHP is determined by the date on which an applicant selects a plan for enrollment. For selections received by NYSOH from the first to the fifteenth of any month

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NYSOH must generally ensure that coverage is effective the first day of the following month. For selections received by NYSOH from the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month.

As discussed above, your child's individual QHP was selected on February 25, 2017. Since this was after the fifteenth day of the month, coverage through that plan should not have become effective until April 1, 2017.

Therefore, the February 26, 2017 enrollment confirmation notice stating your child was enrolled in an individual QHP, effective March 1, 2017, is MODIFIED to reflect your child's enrollment in his plan did not become effective until April 1, 2017.

The second issue is whether NYSOH properly determined that your oldest child was not eligible to reenroll in a QHP outside the open enrollment period for 2017.

According to your account, the health plan initiated termination of your oldest child's enrollment in his individual QHP for non-payment of the premium on March 17, 2017 and your child's enrollment in his individual plan was retroactively terminated back to March 1, 2017. However, as discussed above, your child's enrollment should not have become effective until April 1, 2017. Accordingly, your child's enrollment should not have been terminated prior to the effective date of that enrollment. It is concluded that your child's enrollment in his individual QHP for the month of March 2017 was the result of an error on the part of NYSOH.

It is further concluded that NYSOH compounded this error in enrolling your child into an individual QHP a month early, thus resulting in your child's simultaneous enrollment in two separate QHP's for the month of March 2017, by erroneously changing your mailing address in February 2017 to your physical mailing address. You credibly testified that you do not receive mail at your physical mailing address, only your PO Box, and you were advised by the health plan that when NYSOH sent over the information concerning your child's enrollment in his individual QHP that information included the incorrect mailing address. You credibly testified that due to this error by NYSOH, you did not receive an invoice from the health plan for your child's March 2017 premium payment for his individual health plan. Notwithstanding, you credibly testified that you made the March 2017 premium payment to the health plan for your child's individual health plan. However, due to the error by NYSOH in enrolling your child into two separate QHP's for the month of March 2017, your child was disenrolled from his individual plan for non-payment of the premium.

Your account confirms that you contacted NYSOH on March 29, 2017 to reenroll your child into a QHP, but NYSOH indicated he would have to qualify for a special enrollment period, because it was outside the open enrollment period for

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2017. On May 27, 2017, NYSOH issued an eligibility determination notice stating your child did not qualify for a special enrollment period for 2017.

Pursuant to the regulations, 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.

As discussed above, your child's March 2017 enrollment in an individual QHP and his subsequent disenrollment for non-payment were all the result of errors by NYSOH. These errors constituted a triggering event under the regulations, and your child was entitled to a special enrollment period of 60 days from March 1, 2017. Since you contacted NYSOH on March 29, 2017, within the special enrollment period to which your child was entitled, he should have been granted a special enrollment period in which to reenroll into a QHP.

Accordingly, the May 27, 2017 eligibility determination notice stating your oldest child did not qualify to select a QHP outside the open enrollment period for 2017 is not supported by the record, based on the foregoing, and, therefore, must be **RESCINDED**.

Your case is **RETURNED** to NYSOH to assist your oldest child in enrolling into a new QHP. He may choose to enroll into a new QHP, effective April 1, 2017, the date his coverage would have become effective had NYSOH properly enrolled him. In the alternative, he may elect to enroll into coverage from this point forward. In either case, he has 60 days from the date of this decision to make his selection.

Decision

The February 26, 2017 enrollment notice is **MODIFIED** to reflect your child's enrollment was not effective until April 1, 2017.

The May 27, 2017 eligibility determination notice is **RESCINDED**.

Your case is **RETURNED** to NYSOH to assist your oldest child in enrolling into a new QHP. He may choose to enroll into a new QHP, effective April 1, 2017, the date his coverage could have become effective had NYSOH properly enrolled him. In the alternative, he may elect to enroll into coverage from this point forward. In either case, he has 60 days from the date of this decision to make his selection.

Effective Date of this Decision: September 6, 2017

How this Decision Affects Your Eligibility

Your child's enrollment in his individual QHP should not have become effective prior to April 1, 2017.

NYSOH improperly denied your oldest child a special enrollment period.

Your case is being sent back to NYSOH to allow your oldest child to enroll into coverage effective April 1, 2017, if he so chooses. In the alternative, he may elect to enroll into coverage within 60 days from the date of this decision.

Your child will be responsible for any premium payments for any months he is enrolled into coverage.

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

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- 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):

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- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The February 26, 2017 enrollment notice is MODIFIED to reflect your child's enrollment was not effective until April 1, 2017.

The May 27, 2017 eligibility determination notice is RESCINDED.

Your case is RETURNED to NYSOH to assist your oldest child in enrolling into a new QHP. He may choose to enroll into a new QHP, effective April 1, 2017, the date his coverage could have become effective had NYSOH properly enrolled him. In the alternative, he may elect to enroll into coverage from this point forward. In either case, he has 60 days from the date of this decision to make his selection.

NYSOH improperly denied your oldest child a special enrollment period.

Your child will be responsible for any premium payments for any months he is enrolled into coverage.

Legal Authority

We are issuing this determination in accordance with 45 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).

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。我们可以为您免费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)

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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।

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 bɛtumi ama wo obi a okyerɛ 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)

דאס איז א וויכטיגער דאקומענט. אויב איר דארפט הילף עס צו פארשטיין, ביטע רופט 1-855-355-5777. מיר קענען אייך געבן א דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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