



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

Notice of Decision

Decision Date: August 23, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000017877

[REDACTED]

Dear [REDACTED],

On August 10, 2017, your spouse, acting as your Authorized Representative, appeared by telephone at a hearing on your appeal of NY State of Health's March 12, 2017 eligibility determination and disenrollment notices.

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
Albany, NY 12211

Decision

Decision Date: August 23, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000017877



Issues

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

Did NY State of Health (NYSOH) properly determine that you and your spouse's eligibility for the Essential Plan ended effective March 31, 2017?

Did NYSOH properly determine that you and your spouse became eligible to receive up to \$398.00 per month in advance payments of the premium tax credit, and were not eligible for the Essential Plan, effective May 1, 2017?

Procedural History

On December 6, 2016, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible to enroll in the Essential Plan for a limited time, effective January 1, 2017. The notice further directed you to provide documentation confirming your household income by March 5, 2017.

Also on December 6, 2016, NYSOH issued a notice confirming the enrollment of you and your spouse in an Essential Plan, effective January 1, 2017.

On March 12, 2017, NYSOH issued an eligibility determination notice stating that you and your spouse were newly eligible to purchase a qualified health plan (QHP) at full cost. The notice stated that you and your spouse were not eligible to enroll in the Essential Plan because NYSOH did not receive the income

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documentation needed to verify the income listed in your application. This eligibility determination was effective April 1, 2017.

Also on March 12, 2017, NYSOH issued a disenrollment notice stating that the enrollment of you and your spouse in the Essential Plan would end as of March 31, 2017, because you were no longer eligible to remain in that plan.

On April 2, 2017, NYSOH received (1) two earnings statements issued to your spouse by her employer, [REDACTED], on March 13, 2017 and March 27, 2017, and (2) a letter issued to your spouse by [REDACTED], date August 12, 2016, stating that his offer of employment had been rescinded.

On April 7, 2017, NYSOH received (1) an undated letter issued to you by [REDACTED] reflecting an offer of employment, (2) a letter of resignation issued by you confirming that you would no longer be working as a [REDACTED] with the [REDACTED], effective March 23, 2017.

Also on April 7, 2017, you updated your application for financial assistance.

On April 8, 2017, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible for an advance premium tax credit (APTC) of up to \$398.00 per month, effective May 1, 2017.

On April 10, 2017, you spoke to NYSOH's Account Review Unit and appealed the termination of your Essential Plan.

Also on April 10, 2017, NYSOH received an earning statement issued to you by [REDACTED] on April 9, 2017.

On April 18, 2017, NYSOH received an earning statement issued to you by [REDACTED] on April 18, 2017.

On April 24, 2017, NYSOH received an earning statement issued to you by [REDACTED] on April 23, 2017.

On May 5, 2017, NYSOH received an earning statement issued to you by [REDACTED] on May 3, 2017.

On August 10, 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) Your spouse testified, and your NYSOH account confirms, that you receive your notices from NYSOH by electronic mail.
- 2) Your spouse testified that you did not receive any electronic alerts notifying you of any notice in your NYSOH account stating that your eligibility was only conditional and that you needed to provide documentation of your income.
- 3) You spouse testified that you did not know that you needed to submit documentation of your income until you and your spouse had become disenrolled from the Essential Plan.
- 4) Your NYSOH account indicates that on March 11, 2017, your eligibility was redetermined and you were found no longer eligible for the Essential Plan as of March 31, 2017.
- 5) You submitted income documentation to NYSOH between April 2, 2017 and April 7, 2017.
- 6) On April 2, 2017, you provided to NYSOH earning statements reflecting that your spouse received \$880.00 from her employer, [REDACTED], on March 13, 2017 and March 27, 2017.
- 7) On April 2, 2017, you provided a letter to NYSOH confirming that your employment with [REDACTED] ended effective August 12, 2016.
- 8) On April 7, 2017, you provided a letter to NYSOH confirming that a letter of resignation confirming that you would no longer be working as a [REDACTED] with the [REDACTED], effective March 23, 2017.
- 9) On April 7, 2017, you provided an undated letter issued to you by [REDACTED] reflecting an offer of employment with a projected annual salary of \$47,000.00 per year, based on a \$903.85 weekly gross income.
- 10) Your NYSOH account reflects that you expect to file your 2017 taxes with a tax filing status of married filing jointly. You will claim no dependents on that tax return.
- 11) You are seeking insurance for both you and your spouse.

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- 12) You updated the income information in your NYSOH account on April 7, 2017, which reflected (1) \$6,110.00 you received from your [REDACTED] work with [REDACTED] performed between January 1, 2017 and March 22, 2017, (2) \$47,000.00 you anticipated earning from [REDACTED] between March 3, 2017 and December 31, 2017, and (3) \$880.00 your spouse receives once every two weeks from [REDACTED].
- 13) Your April 7, 2017 application states that you and your spouse will each be taking a \$6,500.00 IRA deduction on 2017 tax return.
- 14) You live in [REDACTED], New York.
- 15) You and your spouse were found eligible to enroll in a QHP and received an APTC of up to \$398.00 per month, effective May 1, 2017.
- 16) You spouse testified that you are seeking reinstatement of the Essential Plan coverage for you and your spouse as of April 1, 2017, and to continue through the remainder of the 2017 plan year.

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

Applicable Law and Regulations

Verification of Eligibility for the Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

NYSOH must verify the eligibility of an applicant for the Essential Plan consistent with the standards set in 45 CFR § 155.315 and § 155.320 (New York's Basic Health Plan Blueprint, pgs. 16-17, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>; 42 CFR § 600.345(a)(2)).

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An applicant is required to attest to their household's projected annual income. (45 CFR § 155.320(c)(3)(ii)(B)). For all individuals, whose household income is needed, NYSOH must request tax return data from the Secretary of the Treasury and data regarding Social Security benefits from the Commissioner of Social Security in order to confirm that the information the applicant is attesting to is accurate (45 CFR § 155.320(c)(1)(i); 45 CFR § 155.320(c)(3)(ii)(A)).

If income data is unavailable, or if an applicant's attestation is not reasonably compatible with the income data NYSOH obtains, NYSOH must request additional information from the applicant to resolve the inconsistency (45 CFR §155.320 (c)(3)(iii), (iv)).

NYSOH must provide the applicant with notice of the inconsistency in their account and 90 days to provide satisfactory documentary evidence to resolve the inconsistency (45 CFR § 155.315 (f)(2)). If NYSOH remains unable to verify the attestation of the applicant, NYSOH must redetermine the applicant's eligibility based on the information available from the data sources unless the applicant demonstrates that they are unable to provide the required documentation (45 CFR § 155.315(f)(2), (g)).

Upon making an eligibility redetermination, NYSOH must notify the applicant and implement any updates in eligibility to the Essential Plan effective the first day of the following month for changes received by NYSOH from the first to the fifteenth of any month (45 CFR § 155.420(b)(1)(i); *see also* 42 CFR § 600.320(c)). For updates 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 § 155.420(b)(1)(ii); *see also* 42 CFR § 600.320(c)).

Electronic Notices

Applicants may choose to receive notices and information from NYSOH either by electronic alerts or by regular mail. If the applicant elects to receive electronic notices, NYSOH must send an email or other electronic communication alerting the individual that a notice has been posted to the applicant's account (42 CFR § 600.330(e); 42 CFR § 435.918(b)(4)).

Additionally, if an electronic alert regarding a notice in an individual's NYSOH account fails, NYSOH must send out the notice by regular mail within three days of the failed alert (42 CFR § 435.918(b)(5)).

Advance Payments of Premium Tax Credit

Advance payments of the premium tax credit (APTC) are generally available to a person who is eligible to enroll in a qualified health plan (QHP) and (1) expects to have a household income between 138% and 400% of the applicable federal poverty level (FPL), (2) expects to file a tax return and claim a personal

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exemption deduction for a person who meets the eligibility requirements to enroll in a QHP, and (3) is not otherwise eligible for minimum essential coverage except through the individual market (see 45 CFR § 155.305(f), 42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)).

The maximum amount of APTC that can be authorized equals:

- 1) the cost of the health insurance premium for the taxpayer's coverage family in the second lowest cost silver plan offered through NY State of Health in the county where the taxpayer resides

minus

- 2) the taxpayer's expected contribution amount

(see 26 USC § 36B, 26 CFR § 1.36B-3).

The taxpayer's expected contribution amount is the amount that the taxpayer is expected to spend on health insurance premiums. The expected contribution for 2017 is set by federal law at 2.04% to 9.69% of household income (26 USC § 36B(b)(3)(A), 26 CFR § 1.36B-3T(g)(1), IRS Rev. Proc.2016-24).

In an analysis of APTC eligibility, the determination is based on the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested (45 CFR §§ 155.300(a), 155.305(f)(1)(i)). On the date of your application, that was the 2016 FPL, which is \$16,020.00 for a two-person household (81 Federal Register 4036).

For annual household income in the range of at least 300% but less than 400% of the 2016 FPL, the expected contribution is 9.69% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2016-24).

Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

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In an analysis of Essential Plan eligibility, the determination is based on the FPL in effect on the first day of the benefit year for which coverage is requested (45 CFR § 155.300(a)). On the date of your application, that was the 2016 FPL, which is \$16,020.00 for a two-person household (81 Fed. Reg. 4036).

Legal Analysis

The first issue under review is whether NYSOH properly determined that your eligibility for the Essential Plan ended effective March 31, 2017.

An individual requesting financial assistance to help pay for the cost of coverage provided through NYSOH is required to attest to his or her household's projected annual income. For individuals seeking enrollment in the Essential Plan, NYSOH must request income data from federal data sources to verify an individual's income attestation.

If NYSOH cannot verify an individual's attestation, it must provide the individual with notice of the inconsistency and provide a period of 90 days from the date notice is received to resolve the inconsistency.

In the eligibility determination issued on December 6, 2016, you were advised that you and your spouse were eligible for the Essential Plan for a limited time, and that you needed to confirm your household's income by March 5, 2017.

The record reflects that NYSOH did not receive the requested income documentation before the deadline.

However, you spouse credibly testified that you elected to receive alerts regarding notices from NYSOH electronically. You spouse also credibly testified that you did not receive an electronic alert regarding the eligibility determination notice, which advised you that the eligibility of you and your spouse was only conditional and that you needed to submit documentation to confirm your income. There is also no evidence in your account documenting that any email alert was sent to you regarding the need to submit documentation, nor is there any evidence that the notice was sent to you by regular mail.

Therefore, it is concluded that NYSOH did not give you the proper notice that you needed to submit documentation of your income to confirm your eligibility for the Essential Plan.

Since you were not made aware of and did not receive proper notice that there was an inconsistency in your NYSOH account, the March 12, 2017 eligibility determination and disenrollment notices, stating that you are no longer eligible for the Essential Plan because you failed to submit documentation are **RESCINDED**.

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The second issue is whether NYSOH properly determined that you and your spouse became eligible to receive an APTC of up to \$398.00 per month, and were not eligible for the Essential Plan, effective May 1, 2017.

The application that was submitted on April 7, 2017 listed an annual household income of \$62,990.00, which was comprised, in part, of (1) \$6,110.00 you received from your [REDACTED] work with [REDACTED] performed between January 1, 2017 and March 22, 2017, (2) \$47,000.00 you anticipate earning from [REDACTED] between March 3, 2017 and December 31, 2017, and (3) \$22,880.00 (\$880.00 x 26 weeks) your spouse receives once every two weeks from [REDACTED]. This annual household income figure also factored in the anticipated \$6,500.00 IRA deduction both you and your spouse would be taking on your 2017 tax return. The eligibility determination relied upon that information.

You are in a two-person household. You expect to file your 2017 income taxes as married filing jointly and will claim no dependents on that tax return.

You reside in Suffolk County, where the second lowest cost silver plan available for a couple through NYSOH costs \$907.13 per month.

An annual income of \$62,990.00 is 393.20% of the 2016 FPL for a two-person household. At 393.20% of the FPL, the expected contribution to the cost of the health insurance premium is 9.69% of income, or \$508.64 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan available through NYSOH for a couple in your county (\$907.13 per month) minus your expected contribution (\$508.64 per month), which equals \$398.49 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined you and your spouse to be eligible for up to \$398.00 per month in APTC.

The Essential Plan is provided through NYSOH to individuals who meet the non-financial requirements and have a household modified adjusted gross income that is between 138% and 200% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$16,020.00 for a two-person household. Since an annual household income of \$62,990.00 is 393.20% of the 2016 FPL, NYSOH properly found you to be eligible for the Essential Plan.

Since the April 8, 2017 eligibility determination notice properly stated that, based on the information you provided, you were eligible for up to \$398.00 per month in APTC, and ineligible for the Essential Plan, it is correct and is AFFIRMED.

Your case is RETURNED to NYSOH to (1) reinstate your coverage in your Essential Plan for the month of April 2017, (2) facilitate your selection of a QHP for the coverage of you and your spouse for the remaining 2017 plan year.

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).

Decision

The March 12, 2017 eligibility determination notice is RESCINDED.

The March 12, 2017 disenrollment notice is RESCINDED.

The April 8, 2017 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to (1) reinstate your coverage in your Essential Plan for the month of April 2017, (2) facilitate your selection of a QHP for the coverage of you and your spouse for the remaining 2017 plan year.

Effective Date of this Decision: August 23, 2017

How this Decision Affects Your Eligibility

NYSOH erred in terminating you and your spouse's Essential Plan coverage effective March 31, 2017, without the proper notice.

NYSOH properly found you and your spouse to be eligible for an APTC of up to \$398.00 per month, effective May 1, 2017.

Your case is being sent back to NYSOH to (1) reinstate your coverage in your Essential Plan for the month of April 2017, (2) facilitate your selection of a QHP for the coverage of you and your spouse for the remaining 2017 plan year.

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)).

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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
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The March 12, 2017 eligibility determination notice is RESCINDED.

The March 12, 2017 disenrollment notice is RESCINDED.

The April 8, 2017 eligibility determination notice is AFFIRMED.

NYSOH erred in terminating you and your spouse's Essential Plan coverage effective March 31, 2017, without the proper notice.

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).

NYSOH properly found you and your spouse to be eligible for an APTC of up to \$398.00 per month, effective May 1, 2017.

Your case is being sent back to NYSOH to (1) reinstate your coverage in your Essential Plan for the month of April 2017, (2) facilitate your selection of a QHP for the coverage of you and your spouse for the remaining 2017 plan year.

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&etumi ama wo obi a okyerε 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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