



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

## Notice of Decision

Decision Date: September 05, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000017928

[REDACTED]

[REDACTED]

Dear [REDACTED] and [REDACTED],

On July 27, 2017, your authorized representative, [REDACTED] appeared on your behalf by telephone at a hearing on your appeal of NY State of Health's February 17, 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 NY State of Health Account ID at the top of this 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).

## **Legal Authority**

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

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## Decision

Decision Date: September 05, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000017928

[REDACTED]

[REDACTED]

## Issues

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

Did NY State of Health (NYSOH) provide a timely determination of your eligibility in response to your December 6, 2016 application for financial assistance?

Did NYSOH properly determine that your Medicaid eligibility began no earlier than February 1, 2017?

Did NYSOH properly determine that you were not eligible for Medicaid from September 1, 2016 through October 31, 2016?

## Procedural History

On December 6, 2016, you submitted your initial application for health insurance with NYSOH. However, a system defect prevented you from completing your application and selecting a health plan. On December 12, 2016, a defect on the account was created by NYSOH on your behalf [REDACTED] in an attempt to correct the error message.

On February 4, 2017, NYSOH issued a notice stating that the documentation you submitted was reviewed and did not confirm the information in your application. The notice instructed you to submit additional income documentation by February 18, 2017, so that your eligibility could be confirmed.

On February 6, 2017, a Department of Health Form 5018 Self Declaration of Income was uploaded to your account. On February 16 2017, based on that document, NYSOH updated your application to reflect you earn \$1,000 a month with an expected yearly income of \$12,000.00.

On February 17, 2017, NYSOH issued an eligibility determination notice stating that you were eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective February 1, 2017. The notice stated this was because you are not a citizen, qualified alien, or permanently residing in the United States under the color of law.

On February 21, 2017, your Certified Application Counselor (CAC) spoke with a NYSOH representative and requested retroactive coverage for September 2016 and October 2016, because you were not able to apply for retroactive Medicaid coverage in December 2016 due to a defect on your NYSOH account.

On March 6, 2017, a NYSOH representative verbally advised your CAC that the request for retroactive Medicaid coverage for the months of September 2016 and October 2016 was denied.

On April 12, 2017, NYSOH issued a notice acknowledging your authorized representative's April 6, 2017 written request for an appeal on the denial of your request for retroactive Medicaid. The written appeal specifically requested Medicaid coverage for the months of September 2016 and October 2016.

On July 27, 2017, a telephone hearing was conducted by a Hearing Officer from NYSOH's Appeals Unit. Through sworn testimony and acting on your behalf, your authorized representative attorney agreed to waive your right to be present for the hearing. The record was developed during the hearing closed at the end of the hearing.

## **Findings of Fact**

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

- 1) According to your NYSOH account and your authorized representative's testimony, you are an undocumented immigrant and do not expect to file taxes in 2017.

- 2) According to your NYSOH account, your citizenship/immigration status is “Other” and that you are not eligible for a social security number due to your immigration status.
- 3) According to your NYSOH account and your authorized representative’s testimony, on December 6, 2016, your initial application for health insurance was submitted with the assistance of a CAC with their law office. That application could not be completed due to a message indicating there was a system error.
- 4) According to your NYSOH account, an incident was filed on December 12, 2016, in which a NYSOH representative indicated a system defect would not allow you to complete your application. A defect was filed that day as [REDACTED].
- 5) Your authorized representative testified that the CAC attempted to submit a completed application for health insurance on your behalf on December 9, 12, 19, 27 and 31, 2016 and on January 7, 10, 13, 16, 23, 24 and 30, 2017, but was unable to complete any of the applications due to the defect.
- 6) On February 6, 2017, your CAC uploaded a Department of Health Form 5018 Self Declaration of Income in Spanish which was sent for translation. On February 16 2017, NYSOH verified your income based on that document and updated your application to reflect you earn \$1,000 a month with an expected yearly income of \$12,000.00.
- 7) According to your NYSOH account, the defect was resolved on February 13, 2017, your account was updated on February 17, 2017, and you were determined eligible for emergency Medicaid only, effective February 1, 2017.
- 8) According to your NYSOH account and your authorized representative’s testimony, on February 21, 2017, your CAC contacted NYSOH and requested retroactive coverage for September 2016 and October 2016 because of not being able to apply for the retroactive Medicaid coverage earlier due to the defect on your account.
- 9) According to your NYSOH account, on March 3, 2017, a representative from NYSOH spoke with your CAC and advised that NYSOH recognized a system defect that prevented your eligibility from being determined and your enrollment into a health plan in December 2016; however, the Medicaid program rules only allowed retroactive Medicaid to go back three months prior to the determination date of February 17, 2017.

- 10) According to your authorized representative's testimony, you were hospitalized in the months of September 2016 and October 2016 and need retroactive Medicaid coverage for those months.

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

## **Applicable Law and Regulations**

### De Novo Review

NYSOH Appeals Unit must review each appeal de novo and "consider all relevant facts and evidence adduced during the appeals process" (45 CFR § 155.535(f)). "De novo review means a review of an appeal without deference to prior decisions in the case" (45 CFR § 155.500).

### Medicaid for Adults between the Ages of 19 and 65

Medicaid through NYSOH can be provided to adults who: (1) are age 19 or older and under age 65, (2) are not pregnant, (3) are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act, (4) are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part, and (5) have a household modified adjusted gross income (MAGI) that is at or below 138% of the federal poverty level (FPL) for the applicable family size (42 CFR §§ 435.119(b), 435.911(b)(1), 435.603(d)(4); N.Y. Soc. Serv. Law § 366(1)(b)).

In an analysis of Medicaid eligibility, the determination is based on the FPL "for the applicable budget period used to determine an individual's eligibility" (42 CFR § 435.4). On the date of your application, that was the 2016 FPL, which is \$11,880.00 for a one-person household (81 Fed. Reg. 4036).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size (42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

### Timely Notice of Medicaid Eligibility

When an individual applies for insurance through NYSOH, NYSOH must determine that person's eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 CFR § 435.1200(b)(3)(iii)).

To assess whether an eligibility determination was untimely, NYSOH must base the time period from the date of application to the date NYSOH notifies the

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applicant of its decision (45 CFR § 155.310(e)(2)). However, if the applicant submits an incomplete application or there is not sufficient information for NYSOH to make an eligibility determination, then NYSOH must notify that applicant that more information is needed to complete the application (45 CFR § 155.310(k)(1)).

NYSOH must provide Medicaid applicants notice of their eligibility determination within 45 days from the date of the application (42 CFR § 435.912).

### Emergency Medicaid

In some cases, Medicaid will pay for emergency medical treatment for a person who does not have evidence of citizenship or immigration status, even if the person cannot get full Medicaid coverage (NY Soc. Serv. Law § 122(1)(e); 18 NYCRR § 360-3.2(j)(3)(ii)(a)).

The term “emergency medical condition” means:

A medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (a) Placing the patient’s health in serious jeopardy;
- (b) Serious impairment of bodily functions; or
- (c) Serious dysfunction of any bodily organ or part

(42 CFR § 435.930(c)).

To get treatment for an emergency medical condition, an undocumented alien who is not a temporary non-immigrant must meet all of the other Medicaid eligibility requirements, including proof of identity, income, and State residence (GIS 13 MA/09: Changes to Medicaid Coverage for the Treatment of an Emergency Medical Condition, (2/25/2013)).

### Retroactive Medicaid

The Department of Health must make Medicaid coverage start retroactively for up to three months prior to the month of an initial application if the individual received medical services that would have been covered under Medicaid and the individual would have been eligible for Medicaid at the time he received the services if he had applied (42 USCA § 1396A(34); 42 CFR § 435.915(a)). The Department of Health may make eligibility effective for fee-for-service Medicaid on the first day of the month if an individual was eligible any time during that month (42 CFR § 435.915(b)).



## Legal Analysis

Initially, it is noted that you are appealing the denial of a retroactive Medicaid for September 2016 and October 2016. However, the record does not contain a notice of eligibility determination or redetermination on the issue of retroactive coverage for those months.

Here, the lack of a notice of eligibility determination on the issue of retroactive Medicaid coverage for September 2016 and October 2016 does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal NYSOH failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination.

Your authorized representative's testimony, along with the April 12, 2017 appeal confirmation notice stating that the reason for your appeal was "eligibility determination," permits an inference that NYSOH did deny your request for retroactive Medicaid coverage for the months of September 2016 and October 2016.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to the eligibility determination notice had it been issued.

The first issue under review is whether NYSOH's provided you with a timely determination of your eligibility in response to your December 6, 2016 application.

NYSOH must provide Medicaid applicants notice of their eligibility determination within 45 days from the date of the completed application. To assess whether an eligibility determination was untimely, NYSOH must base the time period from the date of the completed application to the date NYSOH notifies the applicant of its decision.

The record reflects that NYSOH received your initial application for health insurance on December 6, 2016. The record further reflects that you were unable to complete your application on that date due to system defect. A defect was filed by NYSOH on your behalf on December 12, 2016, as ( [REDACTED] ) in an attempt to correct the error message.

Your authorized representative credibly testified that the CAC in her office attempted to submit an application on your behalf on December 9, 12, 19, 27 and 31, 2016 and on January 7, 10, 13, 16, 23, 24 and 30, 2017 but was unable to complete the application due to the defect.

The record further reflects that the system defect was resolved on February 13, 2017, your account was updated and on February 17, 2017, and you were determined eligible for Emergency Medicaid only, effective February 1, 2017.

Therefore, the credible evidence of the record indicates you attempted to submit a completed application to NYSOH on December 6, 2016 and your eligibility was not determined until February 17, 2017, after the defect on your account was cleared and your account was updated. On February 17, 2017, issued an eligibility determination notice stating you were eligible for Emergency Medicaid only, effective February 1, 2017.

As such, it is reasonable to conclude that NYSOH did not provide you with an eligibility determination until 73 days after your initial application was completed on December 6, 2016, rendering its February 17, 2017 eligibility determination notice untimely.

The analysis next turns to what your eligibility should have been as of your December 6, 2016 application had NYSOH timely issued an eligibility determination.

According to your NYSOH account and your authorized representative's testimony, you want to be found eligible for Medicaid as of your December 6, 2016 application.

As such, the second issue under review is whether you would have been eligible for Medicaid as of your December 6, 2016 application.

According to your NYSOH account, you are in a one-person household with no dependents and do not intend to file an income tax return.

According to your NYSOH account your citizenship/immigration status is "Other" and that you are not eligible for a social security number due to your immigration status.

The record reflects that you submitted a Department of Health Form 5018 Self Declaration of Income in Spanish which NYSOH sent for translation. On February 16 2017, NYSOH verified your income based on that document, and NYSOH updated your application to reflect you earn \$1,000 a month with an expected yearly income of \$12,000.00.

In an analysis of Medicaid eligibility, the determination is based on the FPL "for the applicable budget period used to determine an individual's eligibility" (42 CFR § 435.4). On the date of your December 6, 2016 application, that was the 2016 FPL, which is \$11,880.00 for a one-person household (81 Fed. Reg. 4036).

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Medicaid can be provided through NYSOH to adults between the ages of 19 and 65 who meet the non-financial requirements and have a household modified adjusted gross income that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$11,880.00 for a one-person household. Since \$12,000.00 is 101.01% of the relevant 2016 FPL, you would have been eligible for Medicaid on an expected annual income basis in 2016, using the information provided to NYSOH.

In order to be eligible for full Medicaid benefits, an individual must meet the financial and non-financial requirements of that program. Based on the documents you submitted, you would be eligible for Medicaid on the financial requirements. However, due to your citizenship/immigration status as “other”, you would be ineligible for full Medicaid based on the non-financial requirements of the program such that you would be eligible for Emergency Medicaid only.

Therefore, the February 17, 2017, eligibility determination notice finding you eligible for the treatment of emergency medical conditions only, effective February 1, 2017 is MODIFIED to state that you were eligible for treatment of emergency medical conditions effective December 1, 2016.

Your case is RETURNED to NYSOH to change the effective date of your Emergency Medicaid eligibility from February 1, 2017 to December 1, 2016, to ensure you have coverage as of December 1, 2016, and to notify you and your authorized representative accordingly.

The third issue under review is did NYSOH properly determine that you were not eligible for Medicaid from September 1, 2016 through October 31, 2016.

As previously noted in this decision, you are in a one-person household and will not be filing income tax return. Your citizenship/immigration status is “other”. Further, you initially filed an application for health insurance on December 6, 2016, but due to a system defect, you were not determined eligible for Emergency Medicaid until February 17, 2017, effective February 1, 2017. The system defect prevented you from requesting retroactive Medicaid for the months of September 2016 and October 2016. Based on this decision, your Emergency Medicaid is being made effective December 1, 2016.

When an individual files an initial application for Medicaid, his or her eligibility for retroactive Medicaid depends on the date of application. To this end, it does not matter whether or not that initial application resulted in Medicaid going forward. Instead, an individual, who has filed an initial application for Medicaid through NYSOH, has the right to be evaluated for Medicaid for the three months before the month of his or her application.

Medicaid coverage can be made effective retroactively for up to three months prior to an individual’s application if the individual received medical services that

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would have been covered under Medicaid and if they would have been eligible for Medicaid in those three months had they applied.

Your authorized representative testified that you are seeking to have your Medicaid coverage retroactively applied for the months of September 2016 and October 2016 because you were hospitalized during those months.

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size. To be eligible for Medicaid in September 2016 and October 2016, you would have needed to meet the non-financial criteria and have an income no greater than 138% of the FPL, which is \$1,367.00 per month. As noted earlier in this decision, due to your citizenship/immigration status as "other", you would be ineligible for full Medicaid based on the non-financial requirements of the program and as such would be eligible for Emergency Medicaid only

The record reflects that NYSOH has verified your monthly income as \$1,000.00 a month based on your Form 5018 Self Declaration of Income. Had you been allowed to submit documentation of income for the months of September 2016 and October 2016, you would have submitted the same documentation to reflect that your income for the months of September 2016 and October 2016 was \$1,000.00 in each of those months.

Since the record now contains a more accurate representation of what your income was for the months of September 2016 and October 2016, your case is RETURNED to NYSOH to consider your request for retroactive Medicaid coverage for those months based on a household size of one-person and household monthly income of \$1,000.00 for the months of September 2016 and October 2016.

## **Decision**

The February 17, 2017 eligibility determination notice was untimely.

The February 17, 2017, eligibility determination notice finding you eligible for the treatment of emergency medical conditions only, effective February 1, 2017, is MODIFIED to state that you were eligible for treatment of emergency medical conditions effective December 1, 2016.

Your case is RETURNED to NYSOH to change the effective date of your Emergency Medicaid eligibility from February 1, 2017 to December 1, 2016, and to notify you and your authorized representative accordingly.

Your case is RETURNED to NYSOH to consider your request for retroactive coverage for the months of September 2016 and October 2016 based on a

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household size of one-person and household monthly income of \$1,000.00 for the months of September 2016 and October 2016.

**Effective Date of this Decision:** September 05, 2017

### **How this Decision Affects Your Eligibility**

You were eligible for Emergency Medicaid effective December 1, 2016.

This is not a final determination of your eligibility. Your case is sent back to NYSOH to redetermine your eligibility for emergency Medicaid for the months of September 2016 and October 2016 based on the evidence in the record.

### **If You Disagree with this Decision (Appeal Rights)**

This Decision is final unless you submit an appeal request to U.S. Department of Health and Human Services 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 U.S. Department of Health and Human Services. 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 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

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- By mail at:  
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- By fax: 1-855-900-5557

## **Summary**

The February 17, 2017 eligibility determination notice was untimely.

The February 17, 2017, eligibility determination notice finding you eligible for the treatment of emergency medical conditions only, effective February 1, 2017, is MODIFIED to state that you were eligible for treatment of emergency medical conditions effective December 1, 2016.

Your case is RETURNED to NYSOH to change the effective date of your Emergency Medicaid eligibility from February 1, 2017 to December 1, 2016, and to notify you and your authorized representative accordingly.

Your case is RETURNED to NYSOH to consider your request for retroactive coverage for the months of September 2016 and October 2016 based on a household size of one-person and household monthly income of \$1,000.00 for the months of September 2016 and October 2016.

You were eligible for Emergency Medicaid effective December 1, 2016.

This is not a final determination of your eligibility. Your case is sent back to NYSOH to redetermine your eligibility for Emergency Medicaid for the months of September 2016 and October 2016 based on the evidence in the record.

## **Legal Authority**

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

**A Copy of this Decision Has Been Provided To:**

[REDACTED]

[REDACTED]

## 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)**

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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