



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

## Notice of Decision

Decision Date: November 14, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000020501

[REDACTED]

On October 2, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's April 6, 2017 enrollment confirmation notice, the April 7, 2017 disenrollment notice, and the May 2, 2017 enrollment confirmation 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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P.O. Box 11729  
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## Decision

Decision Date: November 14, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000020501



## 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 the enrollment of you and your spouse in a gold level qualified health plan ended no earlier than May 31, 2017?

## Procedural History

On February 22, 2017, NYSOH issued an eligibility determination notice stating you and your spouse were eligible to enroll in a full cost qualified health plan (QHP), effective April 1, 2017. That notice stated you must confirm your health plan selection by April 21, 2017 or you would not be able to get coverage for 2017.

Also on February 22, 2017, NYSOH issued an enrollment notice, based on your February 21, 2017 plan selections, confirming the enrollment of you and your spouse in individual gold level QHPs with Fidelis Care and individual dental plans, all effective April 1, 2017.

On March 1, 2017, NYSOH backdated the QHP coverage for you and your spouse to March 1, 2017 as you had previously requested; however, no formal written notice was sent confirming this backdate.

On April 6, 2017, NYSOH unilaterally issued an enrollment notice confirming you and your spouse were enrolled in a couple's gold level QHP with Fidelis Care and a couple's dental plan, with coverage effective April 1, 2017.

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On April 7, 2017, NYSOH issued a disenrollment notice stating your spouse's individual coverage through her individual gold level QHP and dental plan would end on April 30, 2017, because on April 5, 2017 you requested to end her coverage.

On May 2, 2017, NYSOH issued an enrollment notice, confirming you and your spouse were enrolled in a couple's platinum level QHP with Fidelis Care and a couple's dental plan, effective April 1, 2017.

Also on May 2, 2017, NYSOH issued a disenrollment notice stating the coverage through the gold level couple's QHP you and your spouse were enrolled in would end on May 31, 2017, because on May 1, 2017 you requested to end that coverage.

On July 13, 2017, you contacted the NYSOH Account Review Unit and appealed the end date of the gold level QHP you and your spouse were enrolled in, requesting the disenrollment be made effective March 1, 2017.

On October 2, 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) According to your account, on February 21, 2017, NYSOH granted you and your spouse a special enrollment period to enroll into a QHP outside the open enrollment period for 2017. That special enrollment period ran from February 20, 2017 to April 21, 2017.
- 2) Your account confirms that you selected individual gold level QHPs with Fidelis Care and individual dental plans for you and your spouse on February 21, 2017. Coverage through those plans were effective on April 1, 2017.
- 3) You testified that you selected separate, individual gold level QHPs based on advice from a NYSOH representative indicating that you could save money by enrolling into the plans. You testified that you did not receive false information from that representative.
- 4) According to your account, incident [REDACTED] was created on February 21, 2017, relating to your requested to backdate coverage for you and your spouse through the gold level QHPs to March 1, 2017.

- 5) The request to backdate coverage was approved on March 1, 2017 and the individual gold level QHPs you and your spouse enrolled in were made effective March 1, 2017.
- 6) Notes in your account indicate that NYSOH called you on March 1, 2017 and March 2, 2017 to attempt to advise you that your backdate request had been approved. The notes indicate that voice messages were left.
- 7) A review of telephone call recordings associated with your account confirm that on March 24, 2017, you contacted NYSOH and requested, for the first time, to switch health plans for you and your spouse from the gold level plans with Fidelis Care to a platinum level plan. You were not permitted to change plans that day. An incident was created regarding your request for a special enrollment period to switch plans.
- 8) According to your account, on April 4, 2017, NYSOH reopened your initial special enrollment period to April 21, 2017.
- 9) According to your account, on April 5, 2017, your spouse's enrollments in her individual gold level QHP and dental plan were deleted. The same day you and your spouse were enrolled into a couple's gold level QHP with Fidelis Care and a couple's dental plan. According to your account, this enrollment was retroactively effective April 1, 2017.
- 10) Notes in your account indicate that due to a defect in your account, you were unable to select a new health plan during the special enrollment period that had already been granted, so an additional special enrollment period was granted until June 30, 2017.
- 11) According to your account, new plan selections were submitted to NYSOH on May 1, 2017 for enrollment of you and your spouse into a couple's platinum level QHP with Fidelis Care and a couple's dental plan.
- 12) The May 2, 2017 enrollment confirmation notice issued by NYSOH indicates that coverage through your couple's platinum level QHP was retroactively made effective April 1, 2017. Your account indicates that your coverage start date through this plan was subsequently updated, but there is no record of any written notice confirming any other updated coverage start dates.
- 13) According to your account, the coverage of you and your spouse in your couple's gold level QHP ended May 31, 2017.
- 14) You testified you are seeking retroactive disenrollment from the gold level QHPs you and your spouse were enrolled in for the months of April and May 2017.

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- 15) You testified that you paid the monthly premium for the gold level QHPs for the month of March, but you did not make any additional premium payments for that plan, because you did not want it. You testified that you and your spouse were eventually enrolled into a couple's platinum level QHP also with Fidelis Care, effective June 1, 2017, but that you were subsequently disenrolled from that plan for non-payment, because the premium payments you were making on the Platinum plan were being applied by the health plan to the outstanding premium payments owed on the gold plans. You testified that to be reinstated in your platinum plan for June 2017, you were required to pay all outstanding premium payments for enrollment in the gold and platinum plans.
- 16) You testified you are seeking retroactive disenrollment from the gold level plans for April and May 2017 and reimbursement for premium payments for those months.
- 17) You testified you are not seeking to backdate your platinum plan coverage.

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

## **Applicable Law and Regulations**

### Termination of a Qualified Health Plan

NYSOH must permit an enrollee to terminate his or her coverage with a qualified health plan coverage, with appropriate notice to the NYSOH or qualified health plan (45 CFR § 155.430(b)(1)(i)).

For enrollee-initiated terminations, the last day of coverage is either:

- 1) The termination date specified by the enrollee, if the enrollee provides reasonable notice (at least 14 days before the requested termination date);
- 2) Fourteen days after the enrollee requests the termination, if they do not provide reasonable notice; or
- 3) On a date on or after the date the enrollee requests the termination, if the enrollee's qualified health plan issuer and the enrollee agree to such a date

(45 CFR § 155.430(d)(2)(i)-(iii)).

NYSOH must permit an enrollee to retroactively terminate or cancel their enrollment in a qualified health plan if:

- 1) The enrollee demonstrates that they attempted to terminate their coverage and experienced a technical error that did not allow the coverage to be terminated, and requests retroactive termination within 60 days after they discovered the technical error.
- 2) The enrollment in the qualified health plan was unintentional, inadvertent, or erroneous and was the result of the error or misconduct of an officer, employee, or agent of NYSOH or HHS, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities. Such enrollee must request cancellation within 60 days of discovering the unintentional, inadvertent, or erroneous enrollment.
- 3) The enrollee was enrolled in a qualified health plan without their knowledge or consent by any third party, including third parties who have no connection with the Exchange, and requests cancellation within 60 days of discovering of the enrollment.

(45 CFR § 155.430(b)(2)(iv)(A-C)).

NYSOH permits a qualified health plan to terminate an individual's coverage if (1) the enrollee is no longer eligible for coverage or (2) non-payment of the premiums by the enrollee (45 CFR § 155.430(b)(2)(i)-(ii)).

#### 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)).

### **Legal Analysis**

The issue under review is whether NYSOH properly determined that the enrollment of you and your spouse in a gold level qualified health plan ended no earlier than May 31, 2017.

Your account confirms that you and your spouse were granted a special enrollment period, running from February 20, 2017 to April 21, 2017,

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to enroll into a QHP outside the open enrollment period for 2017. Your account further confirms that on February 21, 2017, you selected individual gold level QHPs with Fidelis Care and dental plans for you and your spouse. Although coverage through those plans was to begin on April 1, 2017, your account confirms that you requested to backdate that coverage. NYSOH approved this request on March 1, 2017, and the effective date of the enrollments of you and your spouse in your individual gold level QHPs was modified to March 1, 2017.

Telephone call recordings confirm that on March 24, 2017, you contacted NYSOH and requested, for the first time, to switch health plans for you and your spouse from the gold level plan with Fidelis Care to the platinum level plan. Although this request was within the 60-day special enrollment period you were previously granted, the record confirms you were not permitted to switch health plans that day. This was an error on the part of NYSOH.

According to your account, rather than allowing you and your spouse to disenroll from your individual gold level QHPs and enroll into a platinum level plan, on April 5, 2017, NYSOH inexplicably disenrolled only your spouse from her individual gold level QHP and dental plan, effective April 30, 2017, and enrolled both you and your spouse into a couple's gold level QHP, effective April 1, 2017. As it was clearly not your request or intention to be enrolled into a couple's gold level QHP with your spouse on April 5, 2017, nor is there any justification in the record for that systematic enrollment, it is concluded that this enrollment was improper.

Therefore, the April 6, 2017 enrollment notice confirming you and your spouse were enrolled in a couple's gold level QHP with Fidelis Care, effective April 1, 2017, must be RESCINDED.

Correspondingly, the subsequent May 2, 2017 disenrollment notice stating you and your spouse were disenrolled from your couple's gold level QHP, effective May 31, 2017, is also RESCINDED based on the rescission of the enrollment itself.

Pursuant to the regulations, NYSOH must permit an enrollee to be retroactively disenroll from his or her qualified health plan if the enrollee demonstrates that there was a technical error that should have allowed the coverage to terminate earlier, if the enrollment in the plan was unintentional, inadvertent, or erroneous and was the result of the error or misconduct of an officer, employee, or agent of NYSOH, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities or the enrollee was enrolled into a qualified health plan without his or her knowledge or consent by a third party.

Although, as discussed above, the evidence establishes that you and your spouse were erroneously enrolled into a couple's gold level QHP, effective April 1, 2017. Thus, the enrollment is rescinded, there is no indication in the record

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that the enrollment of you and your spouse in your individual gold level QHPs, effective March 1, 2017, was unintentional, inadvertent, or erroneous, nor was your enrollment in those plans the result of the error or misconduct of an officer, employee, or agent of NYSOH, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities. You testified that you selected the individual gold level plans upon the advice of a NYSOH representative to save money and you confirmed that you did not receive false information from that representative in selecting the plans. Furthermore, there is no indication that the enrollment of you and your spouse in your individual gold level QHPs was without your knowledge or consent.

Therefore, there is no basis to find that NYSOH must permit you to retroactively terminate or cancel your entire enrollment in the individual gold level QHPs you and your spouse enrolled in.

The record reflects that on March 24, 2017 you contacted NYSOH and requested, for the first time, that you and your spouse be switched from your gold level plans to a platinum plan. As discussed above, you should have been permitted to do so that day, because you were still in your previously awarded special enrollment period.

In accordance with the regulations, enrollees must be allowed to terminate their coverage with a qualified health plan at the date they specify if they provide reasonable notice to NYSOH or to their health plan. Reasonable notice is defined as at least 14 days prior to the requested termination date.

Although you have requested retroactive disenrollment from your individual gold level QHPs for you and your spouse, effective April 1, 2017, the record establishes that you did not provide reasonable notice of your election to terminate your coverage to be effective April 1, 2017.

You requested to end your coverage in your gold level QHPs on March 24, 2017, and this was reasonable notice, under the regulations, for an April 30, 2017 coverage end date. Although the record confirms that your spouse was disenrolled from her individual gold level QHP on April 30, 2017, as confirmed in the April 7, 2017 disenrollment notice, there was no notice issued by NYSOH confirming your disenrollment from your individual gold level QHP.

Therefore, the April 7, 2017 disenrollment notice stating that your spouse's coverage through her individual gold level QHP was terminated, effective April 30, 2017, is MODIFIED to reflect your individual gold level QHP coverage was also terminated on April 30, 2017.

It is noted that you were permitted to select a new health plan on May 1, 2017 and you selected a couple's platinum level QHP with Fidelis Care for you and your spouse the same day. However, the enrollment confirmation notice issued

by NYSOH on May 2, 2017 indicated that this new enrollment was effective April 1, 2017.

Given the April 30, 2017 end date of your prior coverage, it is concluded that this was not proper. Therefore, the May 2, 2017 enrollment confirmation notice is MODIFIED to reflect that the enrollment of you and your spouse in your couple's platinum level QHP with Fidelis Care and your couple's dental plan became effective on June 1, 2017, in accordance with the above cited regulations, because these plans were selected before the fifteenth day of the month.

Your case is RETURNED to NYSOH to correct the enrollment dates for you and your spouse in accordance with this decision.

## **Decision**

The April 6, 2017 enrollment notice is RESCINDED.

The May 2, 2017 disenrollment notice is RESCINDED.

The April 7, 2017 disenrollment notice is MODIFIED to add your individual gold level QHP coverage was also terminated on April 30, 2017, in addition to your spouse's.

The May 2, 2017 enrollment confirmation notice is MODIFIED to reflect that the enrollment of you and your spouse in your couple's platinum level QHP with Fidelis Care and your couple's dental plan became effective on June 1, 2017.

Your case is RETURNED to NYSOH to correct the enrollment dates for you and your spouse in accordance with this decision, and for NYSOH to assist you in addressing any remaining problem you might have with your plan.

**Effective Date of this Decision:** November 14, 2017

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

The coverage end date for the individual gold level QHPs you and your spouse enrolled in was April 30, 2017.

You and your spouse should not have been enrolled in a couple's gold level QHP and that enrollment is rescinded.

The couple's platinum level QHP you and your spouse enrolled in was effective June 1, 2017.

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).

Your case is being sent back to NYSOH to ensure the enrollment dates for you and your spouse are corrected in accordance with this decision.

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

## **Summary**

The April 6, 2017 enrollment notice is RESCINDED.

The May 2, 2017 disenrollment notice is RESCINDED.

The April 7, 2017 disenrollment notice is MODIFIED to add your individual gold level QHP coverage was also terminated on April 30, 2017, in addition to your spouse's.

The May 2, 2017 enrollment confirmation notice is MODIFIED to reflect that the enrollment of you and your spouse in your couple's platinum level QHP with Fidelis Care and your couple's dental plan became effective on June 1, 2017.

Your case is RETURNED to NYSOH to correct the enrollment dates for you and your spouse in accordance with this decision, and for NYSOH to assist you in addressing any remaining problem you might have with your plan.

The coverage end date for the individual gold level QHPs you and your spouse enrolled in was April 30, 2017, and you and your spouse should not have been enrolled in a couple's gold level QHP and that enrollment is rescinded.

The couple's platinum level QHP you and your spouse enrolled in was effective June 1, 2017.

Your case is being sent back to NYSOH to ensure the enrollment dates for you and your spouse are corrected in accordance with this decision.

## **Legal Authority**

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

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**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 مجانًا.

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### **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।

### **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 महत्त्वपूर्ण 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 εho nkyerεkyerεmu a, ye srε wo, frε 1-855-355-5777. yεbεtumi 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.