



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

## Notice of Decision

Decision Date: November 9, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000020594

[REDACTED]

[REDACTED]

On October 3, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's June 22, 2017 disenrollment notice and July 4, 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: November 9, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000020594



## Issues

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

Did NY State of Health (NYSOH) properly terminate your qualified health plan for non-payment of premium, effective May 1, 2017?

Did NYSOH properly determine that you did not qualify to enroll in a qualified health plan outside of the open enrollment period, effective August 1, 2017?

## Procedural History

On April 18, 2017, NYSOH received your application for health insurance.

On May 2, 2017, NYSOH issued an eligibility determination notice stating in relevant part, that for a limited time you were eligible to receive an advance premium tax credit (APTC) and eligible for cost sharing reductions if you enrolled in a silver-level qualified health plan (QHP), effective June 1, 2017.

On May 9, 2017, NYSOH issued a plan enrollment notice confirming in part that you were enrolled in a silver-level QHP with a monthly premium of \$231.34 after application of your \$173.00 APTC, effective May 1, 2017.

On June 15, 2017, you submitted an updated application for health insurance and attempted to enroll in a health plan but were unable to do so.

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On June 16, 2017, NYSOH issued an eligibility determination notice, based on your June 15, 2017 application, stating that you were eligible for APTC of \$127.00 per month and cost sharing reductions if you enrolled in a silver-level QHP, effective July 1, 2017. The notice stated that you might be able to enroll in coverage if you qualified for a special enrollment period and needed to access your account to see if you did.

On June 22, 2017, NYSOH issued a disenrollment notice stating that your enrollment in your silver-level QHP was terminated, effective May 1, 2017, because a premium payment had not been received by the health plan by the payment deadline.

On July 4, 2017, NYSOH issued an eligibility determination notice stating in relevant part you did not qualify to select a health plan outside of the open enrollment period for 2017.

On July 18, 2017, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On October 3, 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) You testified that you are appealing only your eligibility for health insurance coverage.
- 2) According to your April 18, 2017 application and your testimony, you lost employer sponsored health insurance as of April 30, 2017.
- 3) According to your NYSOH account and your testimony, your silver-level QHP was to start May 1, 2017, so there would be no gap in your health coverage.
- 4) You testified that you missed the date by which you were supposed to make the initial premium payment due for the month of May 2017.
- 5) You testified that you spoke to the health plan and asked to be reinstated, but the plan denied your request and referred you to NYSOH.
- 6) You were disenrolled from your silver-level QHP, effective May 1, 2017.

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- 7) On June 15, 2017, you contacted NYSOH, updated your application and attempted to re-enroll into a QHP.
- 8) You testified that you have been without health insurance since May 1, 2017.
- 9) You testified that since filing your application on April 18, 2017, there have been no major changes to your household.
- 10) You testified that you are concerned about a tax penalty for not having health insurance during 2017.

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

## **Applicable Law and Regulations**

### Appealable Issues

An applicant has the right to appeal to NYSOH's Appeals Unit: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (3) a failure by NYSOH to provide timely notice of an eligibility determination 45 CFR § 155.505; and (4) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

### Enrollment in a Qualified Health Plan

NYSOH must provide annual open enrollment periods during which time qualified individuals may enroll in a qualified health plan and enrollees may change qualified health plans (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)).

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,

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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)).

### 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 qualified health plan, 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 qualified health plan 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 qualified health plan 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 qualified health plan in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;

(6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions.

(7) The qualified individual or enrollee, or his or her dependent, gains access to new qualified health plan 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 qualified health plan 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 qualified health plan; 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. NYSOH has not elected to adopt this subsection at this time.

(45 CFR § 155.420(d)).

As a general rule, a qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP (45 CFR §155.420(c)(1)). A qualified individual or their dependent, who loses health insurance that is considered to be minimum essential coverage, has 60 days before or after the loss of coverage to select a QHP (45 CFR §155.420(c)(2)).

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 terminated your silver-level QHP for non-payment of premium effective, May 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).



On May 8, 2017, you were enrolled in a silver-level QHP with a monthly premium of \$231.34 after application of your \$173.00 APTC with cost sharing reductions, effective May 1, 2017. You testified that you missed the premium payment due for the month of May 2017.

On June 22 NYSOH issued a notice stating that you were disenrolled from your silver-level QHP for non-payment of the premium, effective May 1, 2017.

NYSOH Appeals Unit only has the authority to review issues related to the following: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) a failure to provide timely notice of an eligibility determination, and (4) a denial of a special enrollment period.

Since the Appeals Unit is not given the authority to review termination of enrollment due to non-payment of premiums, we cannot reach the merits as to whether you were properly terminated from your health plan for non-payment of premiums. Therefore, your appeal of the June 22, 2017 disenrollment notice is DISMISSED as a non-appealable issue.

The second issue under review is whether NYSOH properly determined that you do not qualify to enroll in a QHP outside of the open enrollment period as of June 15, 2017.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. As noted above, you lost employer sponsored health insurance on April 30, 2017. You were granted a special enrollment period due to the loss of employer sponsored health insurance and on May 8, 2017 were enrolled in a silver-level QHP with a plan start date of May 1, 2017, and there was to be no gap in health insurance coverage. You missed the payment for the first monthly premium payment due for May 2017, and were disenrolled as of May 1, 2017. You testified that you contacted the health plan and they would not allow you to reenroll due to the missed premium payment. The health plan told you to contact NYSOH.

On June 15, 2017, you submitted an updated application and requested to re-enroll in a QHP but were unable to do so.

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

The record reflects that your previous insurance coverage through your employer ended on April 30, 2017. Loss of insurance coverage outside of NYSOH is considered a triggering life event.

When a triggering life event occurs, the qualified individual has 60 days before and after the date of that event to select a qualified health plan.

Since 60 days from April 30, 2017 is June 29, 2017; you would have qualified to select a QHP plan outside of the open enrollment period until June 29, 2017.

The credible evidence of record indicates that your updated application for health insurance was submitted on June 15, 2017, prior to the expiration of the special enrollment period you were granted. Due to error on the part of NYSOH, you were not permitted to select a QHP on June 15, 2017, while still within the special enrollment period from your loss of employer sponsored health insurance.

The date on which a QHP can take effect depends on the day a person selects the plan for enrollment. A plan that is selected from the first day to and including fifteenth day of a month goes into effect on the first day of the following month. Had NYSOH properly processed your June 15, 2017 application, you would have been eligible to select a plan on that date. Had you selected a plan on June 15, 2017, it would have properly taken effect on the first day of the following month; that is, on July 1, 2017.

Therefore, NYSOH's July 4, 2017 eligibility determination notice stating that you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your June 15, 2017 application.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan as of July 1, 2017 because NYSOH failed to process your June 15, 2017 application, and had your application been processed that day, you would have been eligible for a special enrollment period due to your loss of employer sponsored health insurance. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

NYSOH's failure to honor your special enrollment period still in place as of June 15, 2017, resulted in you being without insurance coverage for part of the 2017 coverage year. During the hearing, you testified that you are concerned about receiving a tax penalty as a result of being without coverage.

Sometimes after an appeal decision, an appellant can claim an exemption from the requirement to have health insurance. You might qualify for a health coverage exemption in 2017 if you did not have health coverage while you were

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waiting for an appeal decision about coverage eligibility or savings and your appeal was eventually successful.

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

You will find the information you need to claim the exemption due to an appeal decision at <https://www.healthcare.gov/exemptions-tool/#/results/2016/details/eligible-based-on-appeal>. You can also call 1-800-318-2596.

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

## **Decision**

Your appeal of the June 22, 2017 disenrollment notice is DISMISSED as a non-appealable issue.

The July 4, 2017 eligibility determination notice stating that you did not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you were eligible for a special enrollment period as of the date of your June 15, 2017 application.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan as of July 1, 2017. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

**Effective Date of this Decision:** November 9, 2017

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

You were disenrolled from your silver-level QHP effective May 1, 2017 due to non-payment of premium.

NYSOH erred in not honoring your special enrollment period still in place as of your June 15, 2017 application.

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

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

## **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.

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## **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**

Your appeal of the June 22, 2017 disenrollment notice is **DISMISSED** as a non-appealable issue.

The July 4, 2017 eligibility determination notice stating that you did not qualify to select a health plan outside of the open enrollment period for 2017 is **MODIFIED** to reflect that you were eligible for a special enrollment period as of the date of your June 15, 2017 application.

Your case is **RETURNED** to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan as of July 1, 2017. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

You were disenrolled from your silver-level QHP effective May 1, 2017 due to non-payment of premium.

NYSOH erred in not honoring your special enrollment period still in place as of your June 15, 2017 application.

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

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

## **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 مجانًا.

### **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 דאלמענטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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