



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

Notice of Decision

Decision Date: October 30, 2017

NY State of Health Account ID [REDACTED]
Appeal Identification Number: AP000000021224

[REDACTED]

Dear [REDACTED],

On October 20, 2017 you appeared by telephone at a hearing on your appeal of NY State of Health's May 9, 2017 eligibility determination notice and May 9, 2017 disenrollment 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.

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: October 30, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000021224



Issues

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

Was your appeal of NY State of Health's May 9, 2017 eligibility determination and May 9, 2017 disenrollment notice timely?

Did NY State of Health properly determine that you were eligible to receive up to \$49.00 per month in advance payments of the premium tax credit, effective June 1, 2017?

Procedural History

On April 7, 2017, you submitted an application for financial assistance.

Also on April 7, 2017, income documentation was uploaded to your NYSOH account.

On April 8, 2017, NY State of Health (NYSOH) issued a notice of eligibility determination stating that you were eligible to enroll in the Essential Plan for a limited time, effective May 1, 2017. This notice directed you to submit documentation of your income by July 6, 2017 in order to confirm your eligibility for financial assistance.

Also on April 8, 2017, NYSOH issued a notice of enrollment confirmation stating that you were enrolled in your Essential Plan with a plan enrollment start date of May 1, 2017.

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On April 13, 2017, NYSOH reviewed the income documentation you submitted and determined that this was insufficient to resolve the inconsistency in your account.

On April 14, 2017, NYSOH issued a notice advising you that the documentation you submitted did not confirm the information in your application. This notice directed you to submit additional documentation of your income by July 6, 2017.

On May 7, 2017, income documentation was uploaded to your NYSOH account.

On May 8, 2017, NYSOH reviewed the income documentation you submitted, recalculated your income based on this documentation, updated your application to reflect this recalculated income, and submitted an application on your behalf.

On May 9, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible to receive up to \$49.00 per month in advanced payments of the premium tax credit (APTC), effective May 9, 2017. This notice also stated that you were no longer eligible for the Essential Plan, effective May 31, 2017. This was because your income was over the allowable limit for this program.

Also on May 9, 2017, NYSOH issued a disenrollment notice stating that your coverage with the Essential Plan would end on May 31, 2017, this was because you were no longer eligible to enroll in the Essential Plan.

On June 6, 2017, you updated your application for financial assistance.

On June 7, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible to enroll in the Essential Plan for a limited time, effective July 1, 2017. This notice directed you to submit additional documentation of your income by September 4, 2017.

Also on June 7, 2017, NYSOH issued a notice of enrollment confirmation stating that you were enrolled in an Essential Plan with a plan enrollment start date of July 1, 2017.

On June 13, 2017, income documentation was uploaded to your NYSOH account.

Also on June 13, 2017, NYSOH reviewed the income documentation you submitted and determined that this was insufficient to resolve the inconsistency in your account.

On June 14, 2017, NYSOH issued a notice advising you that the documentation you submitted did not confirm the information in your application. This notice directed you to submit additional documentation of your income by September 4, 2017.

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On July 6, 2017, income documentation was uploaded to your NYSOH account.

Also on July 6, 2017, NYSOH reviewed the income documentation you submitted and determined that this was sufficient proof of your income. That day, NYSOH submitted an application on your behalf.

On July 7, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible to enroll in the Essential Plan, effective August 1, 2017.

Also on July 7, 2017, NYSOH issued a notice of enrollment confirmation stating that you were enrolled in an Essential Plan with a plan enrollment start date of July 1, 2017.

On August 7, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as your Essential Plan ended on May 31, 2017 and did not begin again until July 1, 2017.

On October 20, 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 expect to file your 2017 taxes with a tax filing status of single. You will claim no dependents on that tax return.
- 2) You are seeking insurance for yourself.
- 3) The application that was submitted on April 7, 2017 listed annual household income of \$19,680.00, consisting of wages you earn from your employment.
- 4) You testified that on April 7, 2017 you had only one employer, [REDACTED].
- 5) You explained that on May 8, 2017 you began working for a second employer, [REDACTED] but that you did not receive any pay from [REDACTED] for an additional three weeks.
- 6) On April 7, 2017, you uploaded one paystubs from [REDACTED] to your NYSOH account. This paystub was for pay period [REDACTED].

- March 18, 2017 to March 31, 2017 paid on April 7, 2017 for a gross pay amount of \$902.21.
- 7) On April 13, 2017, NYSOH determined the income document submitted on April 7, 2017 to be insufficient as two biweekly paystubs were required.
 - 8) On May 7, 2017, you uploaded two biweekly paystubs from [REDACTED] to your NYSOH account. The first is for pay date April 21, 2017 for a gross pay amount of \$973.83; the second is for pay date May 5, 2017 for a gross pay amount of \$930.85.
 - 9) On May 8, 2017, NYSOH reviewed the income documentation you submitted on May 7, 2017 and recalculated your income to be \$44,440.84 (\$19,680.00 reported from [REDACTED] and \$24,760.84 in other wages). That day, NYSOH updated the income information in your application and submitted an application on your behalf.
 - 10) As a result of the May 8, 2017 application, you were found ineligible for and disenrolled from the Essential Plan as of May 31, 2017.
 - 11) You testified that you realized that you had been disenrolled from your Essential Plan on June 6, 2017 or June 7, 2017.
 - 12) On June 6, 2017, you updated your application for financial assistance. The application that was submitted on June 6, 2017 listed annual household income of \$18,489.00 consisting of \$13,449.00 in wages from [REDACTED] and \$5,040.00 from [REDACTED].
 - 13) On June 7, 2017, you spoke to NYSOH's Account Review Unit. As a result of this contact, incident [REDACTED] was created. Notes within this incident reflect that you were seeking reinstatement into your Essential Plan as of June 1, 2017 as you believed you were improperly disenrolled as the income in your application had been doubled. The notes further indicate that no determination was made by NYSOH on this incident until August 7, 2017, at which time NYSOH determined that you did not qualify to be reinstated into your Essential Plan for June 1, 2017.
 - 14) On June 13, 2017, you uploaded a letter from [REDACTED] dated June 9, 2017 stating that you would be changing from a full-time status to a part time status as of June 12, 2017.
 - 15) Also on June 14, 2017, NYSOH determined that the June 13, 2017 income document submission was insufficient as the letter from your employer failed to state your income.

- 16) On July 6, 2017, you uploaded a letter from [REDACTED] [REDACTED] dated June 9, 2017 stating that your estimated income for 2017 is \$16,300.00. That day, you also uploaded a letter from [REDACTED] [REDACTED] dated July 5, 2017 stating that you are a [REDACTED], which means that you have zero scheduled hours, and to date, your gross earnings were \$665.46.
- 17) Also on July 6, 2017, NYSOH reviewed the income documentation you submitted and determined that this was sufficient proof of your income. That day, NYSOH submitted an application on your behalf.
- 18) The application that was submitted on your behalf by NYSOH on July 6, 2017 listed annual household income of \$18,489.00.
- 19) Your application states that you will not be taking any deductions on your 2017 tax return.
- 20) Your application states, and you confirmed, that you live in [REDACTED] [REDACTED].
- 21) You testified that you are seeking to be reinstated into your Essential Plan as of June 1, 2017. You explained that it is your position that NYSOH incorrectly calculated your income, doubling your income from [REDACTED] [REDACTED], which resulted in you being found ineligible for the Essential Plan and disenrolled on May 31, 2017.

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

Applicable Law and Regulations

Valid Appeal Requests

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) an eligibility determination for an exemption; (4) a failure by the Exchange to provide timely notice of an eligibility determination 45 CFR § 155.505; and (5) 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)).

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH (45 CFR §155.520(b)(2); 18 NYCRR 358-3.5(b)(1)).

However, where an appeal request is untimely, the appeal request may be considered valid if the applicant or enrollee sufficiently demonstrates within a reasonable timeframe as determined by NYSOH that failure to timely submit the appeal was due to exceptional circumstances and should not preclude the appeal (45 CFR §155.520(d)(2)(i)(D)).

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 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 \$11,880.00 for a one-person household (81 Federal Register 4036).

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on NYSOH

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application) with their actual income (stated on their federal income tax return). Those who take less tax credit in advance than they claim on the tax return may get the rest of it as an income tax refund or have their tax bill reduced. Those who take more tax credit in advance than they can claim on their tax return will owe the difference as additional income taxes (26 CFR § 1.36B-4).

Cost-Sharing Reductions

Cost-sharing reductions (CSR) are available to a person who (1) is eligible to enroll in a QHP through NYSOH, (2) meets the requirements to receive APTC, (3) is expected to have an annual household income that does not exceed 250% of the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested, and (4) is enrolled in a silver-level QHP (45 CFR § 155.300(a), 45 CFR § 155.305(g)(1)).

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).

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 \$11,880.00 for a one-person household (81 Fed. Reg. 4036).

A person who has a household income that is at or below 150% of the FPL has a \$0.00 premium contribution (New York's Basic Health Plan Blueprint, p. 21, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

A person who has a household income greater than 150% of the FPL or below 200% of the FPL has a \$20.00 per month premium contribution (New York's Basic Health Plan Blueprint, as approved January 2016).

The Essential Plan is considered minimum essential coverage therefore, a person who is eligible for the Essential Plan is not eligible for any premium tax

credit because they are eligible for minimum essential coverage through the individual market (see 26 CFR § 1.36B-2(c)(1), 26 USC § 5000A(f)(1)(C)).

Modified Adjusted Gross Income

NYSOH bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR § 155.300(a)). The term “modified adjusted gross income” means adjusted gross income increased by (1) any income that was excluded under 26 USC § 911 for United States citizens or residents living abroad, (2) tax-exempt interest received or accrued, and (3) Social Security benefits that were excluded from gross income under 26 USC § 86 (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

Legal Analysis

The first issue is whether your appeal of NYSOH's May 9, 2017 eligibility determination and May 9, 2017 disenrollment notice were timely.

On May 9, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible for up to \$49.00 per month in APTC, effective June 1, 2017, and ineligible for the Essential Plan, effective May 31, 2017. Also on May 9, 2017, NYSOH issued a disenrollment notice stating that your enrollment in your Essential Plan would end as of May 31, 2017.

The record reflects that you first contacted NYSOH to file a formal appeal regarding your May 31, 2017 disenrollment from your Essential Plan on August 7, 2017.

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH.

For an appeal to have been valid on the issue of your ineligibility for and disenrollment from your Essential Plan, an appeal should have been filed by July 8, 2017. The record reflects that you filed your appeal on August 7, 2017, which is beyond the 60-day deadline.

Although your appeal was untimely on its face, you contacted NYSOH on June 7, 2017 regarding your request for reinstatement into your Essential Plan as of June 1, 2017 and a complaint was created in response to your request, which was within the 60-day time frame to appeal. NYSOH did not make a determination with regard to this incident until August 7, 2017.

As you contacted NYSOH on June 7, 2017 seeking a June 1, 2017 reinstatement into your Essential Plan, which was within 60-days of the May 9, 2017 eligibility determination and May 9, 2017 disenrollment notice, and you filed your appeal

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on August 7, 2017, which was the same day the incident that was created in response to your June 7, 2017 contact was resolved, your appeal was timely and will be addressed.

The second issue is whether NYSOH properly determined that you were eligible for an APTC of up to \$49.00 per month, effective June 1, 2017.

You expect to file your 2017 tax return as single and will claim no dependents on that return. Therefore, you are in a one-person household.

On May 8, 2017, NYSOH validated the two biweekly paystubs you submitted which were for pay date April 21, 2017 for a gross pay amount of \$973.83 and pay date May 5, 2017 for a gross pay amount of \$930.85 and an application for financial assistance was submitted on your behalf by an NYSOH representative.

The NYSOH representative entered household income of \$44,440.84, consisting of the \$19,680.00 in wages you had previously reported from [REDACTED] and \$24,760.84 in other wages.

However, the paystubs that you submitted were from [REDACTED]. Therefore, NYSOH erroneously counted your income from [REDACTED] twice in determining your annual household income.

Although you testified that you began a new job on May 8, 2017, you explained that you did not receive pay from this second job until three weeks later and you updated your application to reflect this new income source on June 6, 2017.

Since the May 9, 2017 eligibility determination notice is not supported by the documentation you provided as well as your credible testimony during the hearing it is RESCINDED. The May 9, 2017 disenrollment notice is RESCINDED.

Your case is RETURNED to NYSOH to reinstate you into your Essential Plan as of June 1, 2017.

Decision

The May 9, 2017 eligibility determination notice is RESCINDED.

The May 9, 2017 disenrollment notice is RESCINDED.

Your case is RETURNED to NYSOH to reinstate you into your Essential Plan as of 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).

Effective Date of this Decision: October 30, 2017

How this Decision Affects Your Eligibility

NYSOH incorrectly calculated your annual income in the May 8, 2017 application.

You should have remained eligible for the Essential Plan.

Your case is being sent back to NYSOH to reinstate you into your Essential Plan as of June 1, 2017.

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

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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 May 9, 2017 eligibility determination notice is RESCINDED.

The May 9, 2017 disenrollment notice is RESCINDED.

NYSOH incorrectly calculated your annual income in the May 8, 2017 application.

You should have remained eligible for the Essential Plan.

Your case is returned to NYSOH to reinstate you into your Essential Plan as of June 1, 2017.

Legal Authority

We are sending you this notice 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&btumi 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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