



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

Notice of Decision

Decision Date: January 11, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000023506

[REDACTED]

[REDACTED]

On December 14, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's verbal denial of a special enrollment period and October 20, 2017 plan enrollment 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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
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Decision

Decision Date: January 11, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000023506



Issues

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

Did NY State of Health (NYSOH) properly determine that you do not qualify to enroll in a qualified health plan outside of the open enrollment period?

Did NY State of Health properly determine that your enrollment in an Essential Plan was effective December 1, 2017?

Procedural History

On June 20, 2017 NY State of Health (NYSOH) issued an eligibility determination notice, based on your June 19, 2017 application, stating that you were eligible for up to \$325.00 per month in advance payments of the premium tax credit (APTC) as well as cost sharing reductions (CSR) if you enrolled in a silver level qualified health plan, effective August 1, 2017. The notice stated you had until August 18, 2017 to confirm your health plan selection.

No plan selections were made by August 18, 2017.

On October 19, 2017, NYSOH received your updated application for financial assistance. That day, a preliminary eligibility determination was prepared finding you eligible to enroll in the Essential Plan, with a \$20.00 per month premium, effective December 1, 2017.

You enrolled in an Essential Plan that day with an enrollment start date of December 1, 2017.

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On October 19, 2017, you spoke to NYSOH's Account Review Unit and appealed the start date of your enrollment in the Essential Plan insofar as it did not begin September 1, 2017.

On October 20, 2017, NYSOH issued an eligibility determination notice stating you were eligible to enroll in the Essential Plan with a \$20.00 premium per month, effective December 1, 2017.

On October 20, 2017, NYSOH issued a plan enrollment notice confirming your enrollment on October 19, 2017 in an Essential Plan, effective December 1, 2017.

On December 7, 2017, NYSOH issued an eligibility determination notice stating you were eligible for APTC up to \$343.00 per month, as well as CSR if you enrolled in a silver level qualified health plan, effective January 1, 2018.

On December 7, 2017, NYSOH issued a disenrollment notice stating your coverage in your Essential Plan would end December 31, 2017.

On December 7, 2017, NYSOH issued a notice stating your request for help paying medical bills from September 1, 2017 through November 30, 2017, was denied because the program you are eligible for cannot pay for any care you received in the past.

On December 14, 2017, NYSOH issued a plan enrollment notice confirming your enrollment in a bronze-level qualified health plan, effective January 1, 2018.

On December 14, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open 15 days for you to provide supporting income documentation. As of the close of the record on December 29, 2017 NYSOH's Appeals Unit did not receive the request information and no documentation was viewable in your account. The record was closed that day and this decision is based on the record as developed at hearing.

Findings of Fact

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

- 1) You testified that you are appealing being denied a special enrollment period to enroll into a health plan through NYSOH as of August 1, 2017.
- 2) You testified you are also seeking to have your Essential Plan enrollment start date backdated to September 1, 2017.

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- 3) On June 19, 2017, you submitted an application for financial assistance with your health insurance.
- 4) According to your NYSOH account, the June 20, 2017 eligibility determination notice granted a special enrollment period for you to enroll into a qualified health plan by August 18, 2017.
- 5) You testified you were unable to enroll into a health plan after multiple attempts online as you kept receiving a screen stating confirm and checkout, which you were unable to proceed past. You testified you then called NYSOH to report this issue.
- 6) According to your NYSOH account, an incident was filed on October 19, 2017, in which a NYSOH representative acknowledges a defect ([REDACTED]) was found on your account and filed on August 12, 2017. The defect was not resolved until August 18, 2017 [REDACTED]
- 7) Your NYSOH events tab shows a NYSOH representative verbally denied you a special enrollment period on September 2, 2017.
- 8) You submitted an updated application on October 19, 2017, and were redetermined eligible for the Essential Plan, effective December 1, 2017.
- 9) You enrolled in an Essential Plan on October 19, 2017, with a start date of December 1, 2017.
- 10) You testified that you are appealing because you do not want to be responsible for tax penalty when you file your 2017 tax return for being without health insurance coverage.
- 11) You also testified you incurred medical bills in the months of September 2017 and October 2017.
- 12) You reside in Kings County, NY.

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).

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)).

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)).

Generally, if a triggering life event occurs, the qualified individual or enrollee has 60 days from the date of a triggering event to select a qualified health plan (45 CFR § 155.420(c)(1)).

Essential Plan Effective Date

For individuals seeking enrollment in an Essential Plan, New York State has elected to follow the same rules that NYSOH uses in determining effective dates for individuals seeking enrollment in qualified health plans (NY Social Services

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Law § 369-gg(4)(c); New York's Basic Health Plan Blueprint, p. 16, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

The effective date of coverage by an Essential 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); see also 42 CFR § 600.320). 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 first issue under review is whether NYSOH properly determined that you did not qualify to enroll in a qualified health plan outside of the open enrollment period.

You testified that you are appealing the denial of a special enrollment period to enroll into a health plan through NYSOH. However, the record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period or its denial. The only determination issued on your eligibility for a special enrollment period was a June 20, 2017 notice granting you a special enrollment period to enroll in a plan by August 18, 2017. Your NYSOH account shows a NYSOH representative denied you a special enrollment period on September 2, 2017. No notice was issued confirming this denial.

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods 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 credible testimony, along with the September 2, 2017 event where a NYSOH representative denied you a special enrollment period, permits an inference that NYSOH did deny your special enrollment request.

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.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017.

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.

On June 19, 2017, you submitted an application for financial assistance for your health insurance and requested to enroll in a qualified health plan. The notice issued on June 20, 2017, granted you a special enrollment period to enroll in a plan by August 18, 2017.

During your telephone hearing, you testified you attempted to enroll in a plan online but were unable to proceed past the screen allowing you to confirm and checkout your plan selection. You notified NYSOH of this problem. The record further shows NYSOH representatives filed a defect on your behalf on August 12, 2017. The defect was not resolved in your account until August 18, 2017, the last day of your special enrollment period. There is no evidence in the record that NYSOH informed you of this resolution.

A special enrollment period can be granted if a qualified individual'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.

Since you were a qualified individual who had made efforts to attempt to select a qualified health plan and NYSOH's computer system would not allow you to proceed with your plan selection before the end of your special enrollment period, a special enrollment period should have been granted effective August 1, 2017.

Therefore, NYSOH's verbal determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is incorrect, you should have been eligible for a special enrollment period as of the date of your June 19, 2017 application.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan as of August 1, 2017, if you so desire.

NYSOH's failure to grant you a special enrollment period 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

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coverage exemption in 2017 if you did not have health coverage while you were 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.

The second issue under review is whether NYSOH properly determined that your enrollment in the Essential Plan was effective December 1, 2017.

You testified, and the record indicates, that you updated your NYSOH application on October 19, 2017. As a result, you were found eligible for the Essential Plan as of December 1, 2017, and enrolled into a plan that day.

The date on which enrollment in an Essential Plan 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 the fifteenth day of a month goes into effect on the first day of the following month. A plan that is selected from the sixteenth day of the month to the end of the month goes into effect on the first day of the second following month.

On October 19, 2017, you selected an Essential Plan, so your enrollment properly took effect on the first day of the second month following October; that is, on December 1, 2017.

Therefore, the October 20, 2017 plan enrollment notice stating that your enrollment in the Essential Plan was effective December 1, 2017, is correct and must be AFFIRMED.

Decision

NYSOH’s verbal determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is incorrect. You should have

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been eligible for a special enrollment period as of the date of your June 19, 2017 application.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan as of August 1, 2017, if you so choose. You will be responsible for premium payments for any months you are enrolled into coverage.

The October 20, 2017 plan enrollment notice is AFFIRMED.

This Decision has no effect on any subsequent eligibility determinations or plan enrollments made by NYSOH.

Effective Date of this Decision: January 11, 2018

How this Decision Affects Your Eligibility

NYSOH improperly denied you a special enrollment period.

Your case is being sent back to NYSOH to allow you to enroll into a qualified health plan as of August 1, 2017, if you so choose.

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

Your enrollment in your Essential Plan is effective December 1, 2017.

If You Disagree with this Decision (Appeal Rights)

If applicable, if you think a portion of your appeal should not be dismissed, you can ask us to vacate, or cancel, this dismissal. You must ask us in writing within 30 days after the date on this notice, showing good cause as to why the dismissal should be vacated. NYSOH's Appeals Unit will review your request. If your request is approved, another hearing will be scheduled for you. If your request is denied, NYSOH will tell you in writing. If you do not respond to the dismissed portion of your appeal within 30 days, your appeal will remain dismissed, and NYSOH will take no further action on your appeal.

Insofar as your case was decided, the 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

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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):

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- 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

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Summary

NYSOH's verbal determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is incorrect. You should have been eligible for a special enrollment period as of the date of your June 19, 2017 application.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan as of August 1, 2017, if you so choose. You will be responsible for premium payments for any months you are enrolled into coverage.

The October 20, 2017 plan enrollment notice is AFFIRMED.

This Decision has no effect on any subsequent eligibility determinations or plan enrollments made by NYSOH.

NYSOH improperly denied you a special enrollment period.

Your case is being sent back to NYSOH to allow you to enroll into a qualified health plan as of August 1, 2017, if you so choose.

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

Your enrollment in your Essential Plan is effective December 1, 2017.

Legal Authority

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

A Copy of this Decision Has Been Provided To:



Getting Help in a Language Other than English

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

Español (Spanish)

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

中文 (Traditional Chinese)

這是重要的文件。如果您需要獲得關於瞭解文件內容方面的協助，請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

Kreyòl Ayisyen (Haitian Creole)

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

中文 (Simplified Chinese)

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您提供相应语种的口译服务。

Italiano (Italian)

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

한국어 (Korean)

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777 번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

Русский (Russian)

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

العربية (Arabic)

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 1-855-355-5777. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجاناً.

বাংলা (Bengali)

এটি এক গুরুত্বপূর্ণ নথি। এটি বুঝতে আপনার যদি সাহায্যের প্রয়োজন হয় তাহলে, অনুগ্রহ করে 1-855-355-5777 নম্বরে কল করুন। আপনি যে ভাষায় কথা বলেন বিনামূল্যে আমরা আপনাকে একজন দোভাষী দিতে পারি।

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Français (French)

Ceci est un document important. Si vous avez besoin d'aide pour en comprendre le contenu, appelez le 1-855-355-5777. Nous pouvons mettre gratuitement à votre disposition un interprète dans votre langue.

हिंदी (Hindi)

यह एक महत्वपूर्ण दस्तावेज़ है। अगर आपको इसे समझने में सहायता चाहिए, तो कृपया 1-855-355-5777 पर कॉल करें। हम आपकी भाषा बोलने वाला एक दुभाषिया निःशुल्क उपलब्ध करवा सकते हैं।

日本語 (Japanese)

これは重要な書類です。理解するために支援が必要な場合は、1-855-355-5777 にお電話ください。通訳を無料で提供いたします。

नेपाली (Nepali)

यो एउटा महत्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

Polski (Polish)

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

Twi (Twi)

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. ye&etumi ama wo obi a okyerε kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu) اردو

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم 1-855-355-5777 پر کال کریں۔ ہم آپ کو آپ کی مادری زبان میں ایک مفت مترجم فراہم کر سکتے ہیں۔

Tiếng Việt (Vietnamese)

Đây là tài liệu quan trọng. Nếu quý vị cần trợ giúp để hiểu tài liệu này, vui lòng gọi 1-855-355-5777. Chúng tôi có thể cung cấp thông dịch viên miễn phí nói ngôn ngữ của quý vị.

אידיש (Yiddish)

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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