



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

## Notice of Decision

Decision Date: April 12, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000027881

[REDACTED]

[REDACTED]

On April 3, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's December 5, 2017 determination and January 26, 2018 determination.

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  
Albany, NY 12211

## Decision

Decision Date: April 12, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000027881

[REDACTED]

## Issues

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

Did NY State of Health properly determine that your and your spouse's enrollment in a qualified health plan was effective December 1, 2017?

Did NY State of Health properly deny your request to retroactively disenroll from your and your spouse's qualified health plan from December 1, 2017 through December 31, 2017?

Did NY State of Health properly determine that no APTC was to be applied to your monthly premium for December 2017?

## Procedural History

On November 13, 2017, you updated your household's application for financial assistance with health insurance.

On November 14, 2017, NY State of Health (NYSOH) issued a notice of eligibility determination stating that you and your spouse were eligible for up to \$611.00 per month in advance payment of the premium tax credit (APTC) and cost-sharing reductions if you enrolled in a silver level qualified health plan, both effective December 1, 2017.

On November 16, 2017, you updated your household's application for financial assistance with health insurance.

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On November 17, 2017, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible for up to \$795.00 per month in APTC and cost-sharing reductions if you enrolled in a silver level qualified health plan, both effective January 1, 2018.

Also on November 17, 2017, NYSOH issued a notice of enrollment confirmation, based on your plan selection on November 16, 2017, stating that you and your spouse were enrolled in a qualified health plan with a plan enrollment start date of January 1, 2018 and that your and your spouse's APTC would be applied to your premium as of January 1, 2018.

On November 29, 2017, you contacted NYSOH's Account Review Unit and requested that your coverage in a qualified health plan and APTC be backdated to December 1, 2017. As a result, incident [REDACTED] was created. Notes within that incident reflect that on December 5, 2017, NYSOH granted your request for your qualified health plan start date to be backdated.

On January 18, 2018, you contacted NYSOH's Account Review Unit and requested to cancel your and your spouse's enrollment in your qualified health plan for December 1, 2017 through December 31, 2017. As a result, incident [REDACTED] was created. Notes within that incident reflect that on January 26, 2018, NYSOH denied your request to cancel your and your spouse's enrollment in your qualified health plan for December 1, 2017 through December 31, 2017.

On January 26, 2018, you spoke with NYSOH's Account Review Unit and appealed insofar as you and your spouse were enrolled in a qualified health plan from December 1, 2017 through December 31, 2017.

On April 3, 2018, 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 seeking either for your APTC of \$611.00 per month to be applied to your and your spouse's premium for the month of December 2017 or for your coverage for December 2017 to be cancelled.
- 2) Your NYSOH account reflects that on November 13, 2017 a certified application counselor updated your household's application for financial assistance. As a result of that update, you and your spouse were found eligible to enroll in a qualified health plan and to have up to \$611.00 per

month in APTC and cost-sharing reductions if you selected a silver level qualified health plan, effective December 1, 2017.

- 3) Your NYSOH account reflects that you did not select a qualified health plan for yourself and your spouse until November 16, 2017. Your and your spouse's enrollment in the plan became effective January 1, 2018.
- 4) On November 29, 2017, you contacted NYSOH and requested that your and your spouse's qualified health plan begin as of December 1, 2017.
- 5) On December 5, 2017, NYSOH granted your request for yourself and your spouse to be enrolled in a qualified health plan as of December 1, 2017.
- 6) You testified that you received a phone call from NYSOH on December 5, 2017 advising you that you and your spouse had been enrolled in a qualified health plan for December 2017. You testified that you were not provided any information at that time that your APTC would not be applied to your premium for that month.
- 7) You testified that you never requested that your APTC not be applied to your December 2017 premium.
- 8) The enrollment tab within your NYSOH account reflects that you and your spouse were enrolled in a qualified health plan from December 1, 2017 to December 31, 2017.
- 9) You testified that you did not know that your APTC had not been applied to your and your spouse's December 2017 premium until you received a bill from the plan in January 2018, which bill requested the full premium amount.
- 10) You testified that you made the full premium payment to your and your spouse's qualified health plan for your December 2017 premium.
- 11) You testified that you have filed your tax return for 2017. You went on to testify that you did not file a form 8962 claiming your premium tax credit for 2017 as your accountant told you that you had forfeited the premium tax credit for 2017.
- 12) You testified that you first requested that you and your spouse be disenrolled from your qualified health plan for the month of December 2017 on January 18, 2018.
- 13) You testified that you and your spouse did not use your qualified health plan in December 2017.

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.

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(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)).

#### Redetermination During a Benefit Year

When a redetermination is issued as a result of a change in an applicant's information, NYSOH must generally make that redetermination effective on the first day of the month following the date NYSOH is notified of the change (45 CFR § 155.330 (f)(1)(ii)). However, NYSOH may determine that its policy will be that any change made after the 15<sup>th</sup> of any month will not be effective until the first of the second following month (45 CFR § 155.330(f)(2)).

When an eligibility redetermination results in a change in the amount of advance payments of the premium tax credit (APTC) for the benefit year, NYSOH must recalculate the amount of APTC in such a manner as to account for any advance payments already made on behalf of the tax filer, such that the recalculated advance payment amount is projected to result in total advance payments for the benefit year that correspond to the tax filer's total projected premium tax credit for that benefit year (45 CFR § 155.330(g)).

Upon making an eligibility redetermination, NYSOH must notify the applicant and implement any changes in eligibility to APTC effective as of the first day of the month following the date of the notice (45 § 155.310(f), 45 CFR § 155.330(e), (f)(1)(i)).

#### Enrollment in a Qualified Health Plan

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)).

#### End of Tax Year Reconciliation

At the end of a tax year, a person who elects to take APTC to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income the person reported to NYSOH and their actual gross income for that year. A person who received less tax credit than their

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maximum entitlement, based on gross income, may receive an income tax refund, or owe less in taxes. A person who received more tax credit than their maximum entitlement, based on gross income, will owe the excess as an additional income tax liability (26 CFR § 1.36B-4).

“If you or a member of your family enrolled in health insurance coverage for 2017 through a Marketplace, you should have received Form 1095-A, Health Insurance Marketplace Statement, from the Marketplace. Form 1095-A shows the months of coverage purchased through the Marketplace and any APTC paid to your insurance company to help cover your monthly premium. If APTC was paid on your behalf or, if APTC was not paid on your behalf but you wish to take the PTC, you must file Form 8962 and attach it to your tax return” (Internal Revenue Service Instructions 8962 (2017), see also Internal Revenue Service Publication 974 (2017)).

## **Legal Analysis**

The first issue under review is whether properly determined that your and your spouse’s enrollment in a qualified health plan was effective December 1, 2017.

The record shows that November 13, 2017 you updated the information in your NYSOH account. As a result of this application, you and your spouse were found eligible for up to \$611.00 per month in APTC and cost-sharing reductions if you enrolled in a silver level qualified health plan, effective December 1, 2017. However, no request to enroll in a qualified health plan was submitted for yourself or your spouse at that time.

On November 16, 2017, you submitted a request to enroll yourself and your spouse in a qualified health plan. On November 17, 2017, NYSOH issued an enrollment confirmation notice stating that your and your spouse’s enrollment in your qualified health plan was effective January 1, 2018 and that APTC would be applied to your monthly premium effective January 1, 2018.

When an individual changes information in their application on or before the 15th of any month, NYSOH must make the redetermination that results from the change effective the first day of the following month. Additionally, the date on which a qualified health 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 fifteenth day of a month goes into effect on the first day of the following month.

When an individual changes information in their application after the 15th of any month, NYSOH will make the redetermination that results from the change effective the first day of the second following month. Additionally, the date on which a qualified health plan can take effect depends on the day a person selects



the plan for enrollment. A plan that is after the fifteenth day of a month goes into effect on the first day of the second following month.

On November 29, 2017, you contacted NYSOH and requested that your and your spouse's enrollment in your qualified health plan begin as of December 1, 2017. On December 5, 2017, NYSOH granted your request for you and your spouse to be enrolled in a qualified health plan as of December 1, 2017. Also on December 5, 2017, NYSOH informed you that you and your spouse had been enrolled in a qualified health plan as of December 1, 2017.

As NYSOH conceded that you and your spouse were enrolled in a qualified health plan as of December 1, 2017, the merits of that determination will not be addressed.

Therefore, NYSOH's December 5, 2017 determination that you and your spouse were enrolled in a qualified health plan as of December 1, 2017 is AFFIRMED.

The second issue under review is whether NYSOH properly denied your request to retroactively disenroll from your and your spouse's qualified health plan from December 1, 2017 to December 31, 2017.

You testified that you are seeking retroactive disenrollment from your and your spouse's qualified health plan, effective December 1, 2017.

NYSOH must permit an enrollee to be retroactively disenroll from their qualified health plan if the enrollee demonstrates that there was a technical error that should have allowed them to terminate coverage earlier, or if their 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 their knowledge or consent by a third party.

There is no indication in the record that your enrollment in a qualified health plan effective December 1, 2017 was unintentional, inadvertent, or erroneous, nor was your enrollment in a qualified health plan 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. Furthermore, there is no indication that your enrollment in a qualified health plan effective December 1, 2017 was without your knowledge or consent.

Therefore, there is no basis to find that NYSOH must permit you to retroactively terminate or cancel your enrollment in a qualified health plan.

The record reflects that on January 18, 2018 you contacted NYSOH and requested that you and your spouse be disenrolled from your qualified health plan from December 1, 2017 through December 31, 2017.

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.

Since you do not qualify to be retroactively disenrolled from your coverage and you did not provide reasonable notice to NYSOH, NYSOH properly denied your request to be disenrolled from your and your spouse's qualified health plan from December 1, 2017 through December 31, 2017.

Therefore, NYSOH's January 26, 2018 denial of your request to disenroll from your and your spouse's qualified health plan from December 1, 2017 to December 31, 2017 is AFFIRMED.

The third issue is whether NYSOH properly determined that no APTC was to be applied to your monthly premium for December 2017.

In the November 14, 2017 eligibility determination notice, you and your spouse were found eligible for up to \$611.00 per month in APTC.

Any changes in APTC are to be made effective the date following the eligibility redetermination notice.

You credibly testified that you did not request that your APTC not be applied to your and your spouse's premium payment for December 2017.

When NYSOH granted you and your spouse enrollment in your qualified health plan as of December 1, 2017, NYSOH should have applied your APTC of up to \$611.00 per month to your monthly premium.

However, as we are now in the 2018 enrollment period, the NYSOH Appeals Unit cannot direct NYSOH to apply APTC for your premiums in 2017. If APTC was paid on your behalf or, if APTC was not paid on your behalf but you wish to take the premium tax credit, you must file Form 8962 and attach it to your tax return. Your APTC, regardless of whether correctly or incorrectly determined by NYSOH, will be reconciled on your 2017 tax return by the IRS.

## **Decision**

The December 5, 2017 determination that you and your spouse were enrolled in a qualified health plan as of December 1, 2017 is AFFIRMED.

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).

The January 26, 2018 denial of your request to retroactively disenroll from your and your spouse's qualified health plan from December 1, 2017 to December 31, 2017 is AFFIRMED.

As we are now in the 2018 enrollment period, the NYSOH Appeals Unit cannot direct NYSOH to apply APTC for your premiums in 2017. If APTC was paid on your behalf or, if APTC was not paid on your behalf but you wish to take the premium tax credit, you must file Form 8962 and attach it to your tax return. Your APTC, regardless of whether correctly or incorrectly determined or applied by NYSOH, will be reconciled on your 2017 tax return by the IRS.

**Effective Date of this Decision:** April 12, 2018

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

This decision does not change your and your spouse's eligibility.

Your enrollment in your and your spouse's qualified health plan properly began as of December 1, 2017.

NYSOH properly denied your request to retroactively disenroll from your and your spouse's qualified health plan from December 1, 2017 through December 31, 2017.

If APTC was paid on your behalf or, if APTC was not paid on your behalf but you wish to take the premium tax credit, you must file Form 8962 and attach it to your tax return. Your APTC, regardless of whether correctly or incorrectly determined or applied by NYSOH, will be reconciled on your 2017 tax return by the IRS.

### **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

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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 December 5, 2017 determination that you and your spouse were enrolled in a qualified health plan as of December 1, 2017 is **AFFIRMED**.

Your enrollment in your and your spouse's qualified health plan properly began as of December 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).

The January 26, 2018 denial of your request to retroactively disenroll from your and your spouse's qualified health plan from December 1, 2017 to December 31, 2017 is AFFIRMED.

NYSOH properly denied your request to retroactively disenroll from your and your spouse's qualified health plan from December 1, 2017 through December 31, 2017.

As we are now in the 2018 enrollment period, the NYSOH Appeals Unit cannot direct NYSOH to apply APTC for your premiums in 2017. If APTC was paid on your behalf or, if APTC was not paid on your behalf but you wish to take the premium tax credit, you must file Form 8962 and attach it to your tax return. Your APTC, regardless of whether correctly or incorrectly determined or applied by NYSOH, will be reconciled on your 2017 tax return by the IRS.

### **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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