



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

Notice of Decision

Decision Date: May 15, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000028814

[REDACTED]

[REDACTED]

Dear [REDACTED]

On April 23, 2018 you and your authorized representative appeared by telephone at a hearing on your appeal of NY State of Health's December 15, 2017 notice of plan disenrollment and February 21, 2018 verbal denial of a special enrollment period.

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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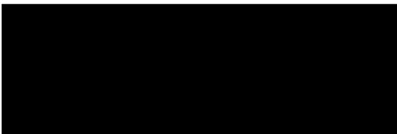
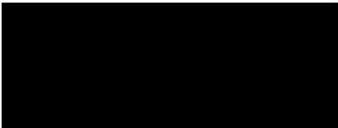


STATE OF NEW YORK
DEPARTMENT OF HEALTH
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Decision

Decision Date: May 15, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000028814



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, January 1, 2018?

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

Procedural History

On March 16, 2017, NYSOH issued an eligibility determination notice stating that you do not qualify to select a health plan outside of the open enrollment period for 2017 but that if you did, you would be eligible to purchase a qualified health plan at full cost.

On March 30, 2017, your plan initiated reinstatement of your enrollment into a qualified health plan.

On March 31, 2017, NYSOH issued an enrollment confirmation notice stating that you were enrolled in a platinum-level qualified health plan, based on your plan's March 30, 2017 reinstatement, effective January 1, 2017. Your monthly premium amount was \$640.05 per month.

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On October 17, 2017, NYSOH issued a notice to renew your health insurance stating that you are eligible for a qualified health plan at full cost, effective January 1, 2018. This notice further stated that no action was required by you and that you would be enrolled in the same platinum-level plan you were currently enrolled in.

On November 18, 2017, NYSOH issued an enrollment confirmation notice stating that you were automatically enrolled in your platinum-level qualified health plan with a monthly premium of \$719.66, beginning January 1, 2018.

On December 15, 2017, NYSOH issued a notice of plan disenrollment stating that you are no longer eligible to enroll in your qualified health plan, effective January 1, 2018, because you did not pay your insurance bill by the payment deadline.

On February 12, 2018, you contacted the NYSOH to appeal your disenrollment for nonpayment. You filed Complaint [REDACTED] requesting reinstatement. Your matter was referred to a supervisor and you were advised that your request was denied.

Also on February 12, 2018, you were transferred to NYSOH's Account Review Unit and requested an appeal.

On February 21, 2018, you contacted the NYSOH and submitted an application for health insurance. That day a preliminary determination was made that you were eligible for a qualified health at full cost, effective April 1, 2018; however, you were advised that you could not enroll in a plan because you were outside of the open enrollment period and did not have a qualifying event. Your appeal was updated to reflect that you were disputing the inability to enroll in coverage for the remainder of 2018.

On February 22, 2018, NYSOH issued an eligibility determination notice stating that you were eligible for a qualified health plan at full cost, effective April 1, 2018. It further stated that you may be eligible to enroll in coverage if you qualify for a Special Enrollment period.

On March 22, 2018, NYSOH uploaded an evidence packet to your NYSOH account dated March 21, 2018. The appeal summary stated that the reason for your appeal was "Denial of Special Enrollment Period (SEP)".

On April 23, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing, you appointed your personal assistant, [REDACTED], to assist you with your testimony. The record was developed during the hearing and held open up to April 30, 2018, to allow you time to submit supporting documents.

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On April 26, 2018, NYSOH received your supporting documents by fax. The documents were incorporated into the record as Appellant's [REDACTED] and the record was closed.

Findings of Fact

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

- 1) You were enrolled in a qualified health plan for the 2017 coverage year with a monthly premium of \$640.05, effective January 1, 2017.
- 2) You and your personal assistant testified that you paid your monthly premiums through automatic withdrawal from your bank account every month.
- 3) You and your personal assistant testified that you had issues with payment sometime after your plan changed the method by which they accept electronic payments. You were unsure what month the plan claimed that there was no payment.
- 4) You testified that the issues with payment happened through no fault of your own and were due to a "glitch" in your plan's automatic payment system.
- 5) You testified that this "glitch" with automatic withdrawal occurred in the past and your plan reinstated your coverage.
- 6) You were disenrolled from your qualified health plan, effective January 1, 2018.
- 7) On February 21, 2018 you contacted NYSOH to reenroll into a qualified health plan.
- 8) You testified that you were without health insurance for 2018.
- 9) You testified that since filing your application on February 21, 2018 there have been no other major changes to your household.
- 10) On April 26, 2018 you faxed a 17-page document (excluding the cover letters) consisting of the following:
 - a. A letter from you explaining the timeline of events regarding this matter;

- b. An email from your plan dated August 10, 2017 stating that your premium payment schedule has been cancelled and that you are required to log in and make a payment each month;
- c. An email from your plan dated September 1, 2017 setting up scheduled premium payments in the amount of \$640.05 beginning September 11, 2017;
- d. A confirmation email from your plan dated September 11, 2017 stating that your premium payment was sent to your plan in the amount of \$640.05 on September 11, 2017;
- e. A copy of the letter you sent to your plan's member services department regarding being disenrolled from your plan including your plan's transaction history which shows that a payment of \$560.45 was received on December 5, 2017 and returned to your account on December 6, 2017, another payment of \$560.45 received on December 14, 2017 and returned on December 15, 2017, and a payment received on December 19, 2017 for \$719.66;
- f. Your plan statement dated October 3, 2017 showing \$640.05 due for November coverage;
- g. Your plan statement dated November 3, 2017 showing \$1,280.00 due for December coverage;
- h. Your plan statement dated December 3, 2017 showing \$719.66 due for January coverage;
- i. Your plan statement dated December 15, 2017 showing \$0.00 due for October coverage.

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)).

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 §

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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, 2018, the national annual open enrollment period began on November 1, 2017 and extended through December 15, 2017 (45 CFR § 155.410(e)(3)). NY State extended this enrollment period through January 31, 2018 for applications processed through NYSOH (https://www.health.ny.gov/press/releases/2017/2017-09-07_open_enrollment_dates.htm).

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)).

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 qualified health plan for non-payment of premium effective, January 1, 2018.

On March 30, 2017 you were enrolled in a qualified health plan for the 2017 coverage year with a monthly premium of \$640.05, effective January 1, 2017.

You testified that you paid your premiums by automatic withdrawal to your qualified health plan for 2017. However, you had issues with payment sometime after August or September due to a glitch in your plan’s system.

On December 15, 2017 NYSOH issued a notice stating that you were disenrolled from your health plan for non-payment of the premium, effective January 1, 2018.

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 December 15, 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 qualified health plan outside of the open enrollment period, effective April 1, 2018.

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 qualifying for a special enrollment period.

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

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the case or constitute material error. 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 March 21, 2018 appeal summary stating that the reason for your appeal was “Denial of Special Enrollment Period (SEP)”, 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, 2017 until January 31, 2018. On February 21, 2018 you applied for health insurance and requested to reenroll in a qualified health plan. On that day a preliminary determination was made that you are eligible to purchase a qualified health plan at full cost, effective April 1, 2018; however, you were advised that you could not enroll in a plan because you were outside of the open enrollment period and did not have a qualifying event.

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.

In the present case, there is no evidence in the record to establish grounds for a special enrollment period. You testified that there have been no changes to your household in 2018.

Though you did lose health coverage as a result of the December 15, 2017 disenrollment, the loss of health insurance coverage in this case cannot be considered a triggering event for a special enrollment period, because it was a result of non-payment of your premiums which NYSOH considers a voluntary action causing the termination of your coverage.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2018, you did not experience a triggering event that would qualify you for a special enrollment period as of the date of the hearing.

Therefore, NYSOH's verbal denial of a special enrollment period to select a health plan outside of the open enrollment period for 2018 is **AFFIRMED**.

However, you and your personal assistant credibly testified and submitted proof that you were enrolled in an automatic withdrawal plan to pay your premiums to your plan every month. In particular, you submitted an email from your plan dated September 1, 2017 setting up scheduled premium payments in the amount of \$640.05 per month beginning September 11, 2017. At some point between

August and December 2017, for some reason unknown to you, there was an issue with your automatic payments where a different amount of \$560.45 was withdrawn, causing you to be disenrolled from your plan for nonpayment. You credibly testified and the record reflects, that this issue happened before and that your plan reinstated you on March 30, 2017.

Therefore, your case is RETURNED to NYSOH Plan Management to contact your qualified health plan to see if they would be willing to voluntarily reinstate your coverage to January 1, 2018 based on the information you submitted at this hearing.

Decision

Your appeal of the December 15, 2017 disenrollment notice is DISMISSED.

NYSOH's verbal denial of a special enrollment period to select a health plan outside of the open enrollment period for 2018 is AFFIRMED.

Your case is RETURNED to NYSOH Plan Management to contact your qualified health plan to see if they would be willing to voluntarily reinstate your coverage to January 1, 2018 based on the information you submitted at this hearing.

Effective Date of this Decision: May 15, 2018

How this Decision Affects Your Eligibility

You do not qualify for a special enrollment period at this time.

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.

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).

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the Federal Marketplace. This must be done within 30 days of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:
Health Insurance Marketplace
Attn: Appeals
465 Industrial Blvd.
London, KY 40750-0061
- By fax: 1-877-369-0129

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services.

If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

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Summary

Your appeal of the December 15, 2017 disenrollment notice is **DISMISSED**.

NYSOH's verbal denial of a special enrollment period to select a health plan outside of the open enrollment period for 2018 is **AFFIRMED**.

You do not qualify for a special enrollment period at this time.

Your case is **RETURNED** to NYSOH Plan Management to contact your qualified health plan to see if they would be willing to voluntarily reinstate your coverage to January 1, 2018 based on the information you submitted at this hearing.

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 مجانًا.

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 मदद 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. y&b&tumi ama wo obi a okyer& 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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