§ 268-e. Appeals and appeal hearings; judicial review. 1. Any applicant or enrollee, or any individual authorized to act on behalf of any such applicant or enrollee, may appeal to the department from determinations of department officials or failures to make determinations upon grounds specified in subdivision four of this section. The department must review the appeal de novo and give such person an opportunity for an appeal hearing. The department may also, on its own motion, review any decision made or any case in which a decision has not been made by the Marketplace or a social services official within the time specified by law or regulations of the department. The department may make such additional investigation as it may deem necessary, and the commissioner must make such determination as is justified and in accordance with applicable law.

2. Regarding any appeal pursuant to this section, with or without an appeal hearing, the commissioner may designate and authorize one or more appropriate members of his staff to consider and decide such appeals. Any staff member so designated and authorized will have authority to decide such appeals on behalf of the commissioner with the same force and effect as if the commissioner had made the decisions. Appeal hearings must be held on behalf of the commissioner by members of his staff who are employed for such purposes or who have been designated and authorized by the commissioner.

3. Persons entitled to appeal to the department pursuant to this section must include:

(a) applicants for or enrollees in insurance affordability programs and qualified health plans; and

(b) other persons entitled to an opportunity for an appeal hearing as directed by the commissioner.

4. An applicant or enrollee has the right to appeal at least the following issues:

(a) An eligibility determination made in accordance with this article and applicable law, including:

(i) An initial determination of eligibility, including:

(A) eligibility to enroll in a qualified health plan;

(B) eligibility for Medicaid;

(C) eligibility for Child Health Plus;

(D) eligibility for the Basic Health Program;

(E) eligibility for the 1332 state innovation program;

(F) the amount of advance payments of the premium tax credit and level of cost-sharing reductions;

(G) the amount of any other subsidy that may be available under law; and

(H) eligibility for such other health insurance programs as determined by the commissioner; and

(ii) a re-determination of eligibility of the programs under this subdivision.

(b) An eligibility determination for an exemption for any mandate to purchase health insurance.

(c) A failure by NY State of Health to provide timely written notice of an eligibility determination made in accordance with applicable law.

5. The department may, subject to the discretion of the commissioner, promulgate such regulations, consistent with federal or state law, as may be necessary to implement the provisions of this section.

6. Regarding every decision of an appeal pursuant to this section, the department must inform every party, and his or her representative, if any, of the availability of judicial review and the time limitation to pursue future review.

7. Applicants and enrollees of qualified health plans, with or without advance payments of the premium tax credit and cost-sharing reductions, also have the right to appeal to the United States Department of Health and Human Services appeal entity:

(a) appeals decisions issued by NY State of Health upon the exhaustion of the NY State of Health appeals process; and

(b) a denial of a request to vacate a dismissal made by the NY State of Health appeals entity.

8. The department must include notice of the right to appeal as provided by subdivision four of this section and instructions regarding

how to file an appeal in any eligibility determination issued to the applicant or enrollee in accordance with applicable law. Such notice shall include:

(a) an explanation of the applicant or enrollee's appeal rights;

(b) a description of the procedures by which the applicant or enrollee may request an appeal;

(c) information on the applicant or enrollee's right to represent himself or herself, or to be represented by legal counsel or another representative;

(d) an explanation of the circumstances under which the appellant's eligibility may be maintained or reinstated pending an appeal decision; and

(e) an explanation that an appeal decision for one household member may result in a change in eligibility for other household members and that such a change will be handled as a redetermination of eligibility for all household members in accordance with the standards specified in applicable law.