



**Commonwealth of Massachusetts**  
**Executive Office of Health and Human Services**  
**Office of Medicaid**  
 600 Washington Street  
 Boston, MA 02111  
[www.mass.gov/masshealth](http://www.mass.gov/masshealth)



MassHealth  
 Eligibility Letter 195  
 February 1, 2010

**TO:** MassHealth Staff

**FROM:** Terence G. Dougherty, Medicaid Director

**RE: Revisions to Regulations about Estate Recovery: American Recovery and Reinvestment Act of 2009**

MassHealth is revising the regulations about estate recovery to meet the requirements of the American Recovery and Reinvestment Act (ARRA) of 2009.

The requirements of the ARRA exempt certain income and resources of American Indians and Alaska Natives from estate recovery. In addition, in certain circumstances, American Indians and Alaska Natives are exempt from cost sharing.

These emergency regulations are effective retroactive to July 1, 2009.

**MANUAL UPKEEP**

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(C) Waiver of Estate Recovery Due to Financial Hardship. For claims presented on or after November 15, 2003, recovery will be waived if

- (1) a sale of real property would be required to satisfy a claim against the member's estate; and
- (2) a person who was using the property as a principal place of residence on the date of the member's death meets all of the following conditions:
  - (a) the person lived in the property on a continual basis for at least one year immediately before the now-deceased member became eligible for MassHealth or other assistance from the MassHealth agency and continues to live in the property at the time the MassHealth agency first presented its claim for recovery against the deceased member's estate;
  - (b) the person has inherited or received an interest in the property from the deceased member's estate as defined in 130 CMR 501.013(A)(2) and 515.011(A)(2);
  - (c) the person is not being forced to sell the property by other devisees or heirs at law; and
  - (d) at the time the MassHealth agency first presented its claim for recovery against the deceased member's estate, the gross annual income of the person's family group, as defined in 130 CMR 501.001, was less than or equal to 133 percent of the applicable federal-poverty-level income standard for the appropriate family size.
- (3) The waiver will be conditional for a period of two years from the date the MassHealth agency mails notice that the waiver requirements have been met, or from the date that a court of competent jurisdiction determines that the waiver requirements have been met. If at the end of that period, all circumstances and conditions that must exist for the MassHealth agency to waive recovery still exist, including meeting the same income standards under 130 CMR 501.013(C)(2)(d), and the real property has not been sold or transferred, the waiver will become permanent and binding. If at any time during the two-year period, the circumstances and conditions for the waiver no longer exist, including meeting the same income standards under 130 CMR 501.013(C)(2)(d); the property is sold or transferred; or the person does not use the property as their primary residence, the MassHealth agency will be notified and its claim will be payable in full.

(D) Outstanding Claims.

- (1) For claims presented between April 1, 1995, and November 15, 2003, that are still outstanding, recovery will be waived if all requirements under the then-existing MassHealth regulations were met.
- (2) For claims presented before April 1, 1995, a waiver for hardship did not exist.

(E) Fair-Market Value and Equity Value. If there will be insufficient proceeds from the sale or transfer of the property to satisfy the MassHealth agency's claim in full, the fair-market value and equity value of all real property that is part of the deceased member's estate must be verified prior to the sale or transfer of said property.

(1) The executor or administrator of the probate estate, or in the case of real property that passes outside the probate estate, the person or entity to whom legal title or interest passed, must verify the fair-market value by sending to the MassHealth agency a copy of the most recent tax bill or the property tax assessment that was most recently issued by the taxing jurisdiction, provided that this assessment is not one of the following:

- (a) a special-purpose tax assessment;
- (b) based on a fixed-rate-per-acre method; or
- (c) based on an assessment ratio or providing only a range.

(2) The executor or administrator of the probate estate or, in the case of real property that passes outside the probate estate, the person or entity to whom legal title or interest passed, must also provide a comparable market analysis or a written appraisal of the property value from a knowledgeable source. A knowledgeable source includes one of the following: a licensed real-estate agent or broker, a real-estate appraiser, or an official of a bank, savings and loan association, or similar lending organization. The knowledgeable source must not have any real or apparent conflict-of-interest relationship with the estate.

(3) The MassHealth agency may also obtain an assessment from a knowledgeable source.

(F) Waiver of Estate Recovery Due to Hardship for American Indians and Alaska Natives.

(1) For claims presented on or after July 1, 2009, recovery from the following American Indian and Alaska Natives income, resources, and property will be waived:

(a) certain income and resources (such as interests in and income derived from tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and the U.S. Claims Court) that are exempt from Medicaid estate recovery by other laws and regulations;

(b) ownership interest in trust and non-trust property, including real property and improvements

(i) located on a reservation (any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act, and Indian allotments) or near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior; or

(ii) for any federally recognized tribe not described in 130 CMR 501.013(F)(2)(a), located within the most recent boundaries of a prior federal reservation.

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(c) income left as a remainder in an estate derived from property protected in 130 CMR 501.013(F)(2), that was either collected by an Indian or by a tribe or tribal organization and distributed to Indians, as long as the individual can clearly trace it as coming from protected property;

(d) ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources, including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, or fish products, resulting from the exercise of federally protected rights and income either collected by an Indian or by a tribe or tribal organization and distributed to Indians derived from these sources as long as the individual can clearly trace it as coming from protected sources; or

(e) ownership interests in or usage rights to items not covered by 130 CMR 501.013(F)(1) through (4) that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional life style according to applicable tribal law or custom.

(2) Protection of non-trust property described in 130 CMR 501.013(F)(2)(a) and (b) is limited to circumstances when it passes from an Indian, as defined in section 4 of the Indian Health Care Improvement Act, to one or more relatives (by blood, adoption, or marriage), including Indians not enrolled as members of a tribe and non-Indians, such as spouses or step-children, that their culture would nevertheless protect as family members, to a tribe or tribal organization, or to one or more Indians.

501.014: Voter Registration

(A) Voter registration forms are available through the MassHealth agency to applicants and members who are

(1) U.S. citizens; and

(2) aged 18 or older, or who will be aged 18 on or before the date of the next election, in accordance with the National Voter Registration Act of 1993.

(B) Applicants and members will be

(1) informed of the availability of voter registration forms at application, at the time of an eligibility review, and when there is an address change;

(2) offered assistance in completing the voter registration form unless such assistance is refused; and

(3) able to submit voter registration forms to the MassHealth agency for transmittal to the proper election offices.

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- (J) Monthly Family Assistance Premiums for the Purchase of Medical Benefits for Children. MassHealth Family Assistance members for whom the MassHealth agency purchases medical benefits under 130 CMR 505.005(B)(3) and (E) are assessed a monthly premium in accordance with the following premium schedule.

<b>FAMILY ASSISTANCE PREMIUM SCHEDULE</b>	
<b>% of Federal-Poverty Level (FPL)</b>	<b>Premium Cost</b>
Above 150% to 200%	\$12 per child (\$36 family group maximum)
Above 200% to 250%	\$20 per child (\$60 family group maximum)
Above 250% to 300%	\$28 per child (\$84 family group maximum)

- (K) Children’s Medical Security Plan (CMSP) Premiums.

<b>CMSP PREMIUM SCHEDULE</b>	
<b>% of Federal-Poverty Level (FPL)</b>	<b>Premium Cost</b>
Greater than or equal to 200%, but less than or equal to 300.9%	\$7.80 per child per month; family group maximum \$23.40 per month
Greater than or equal to 301.0%, but less than or equal to 400.0%	\$33.14 per family group per month
Greater than or equal to 400.1%	\$64.00 per child per month

- (L) Members Exempted from Premium Payment. The following members are exempt from premium payments:

- (1) MassHealth Family Assistance members under age 19 who are American Indians or Alaska Natives, as defined in 130 CMR 501.001;
- (2) MassHealth members with family group income at or below 150 percent of the federal-poverty level;
- (3) pregnant women and children under age one receiving MassHealth Standard; and
- (4) children when a parent or guardian in the family group is paying a premium for and is receiving Commonwealth Care. The premiums for children will be waived after the parent or guardian has enrolled in a Commonwealth Care health plan and is paying a Commonwealth Care health-plan premium, but the premiums for children will not be waived before the parent or guardian has enrolled in a Commonwealth Care health plan.

- (M) Members Exempted from Cost Sharing. American Indians or Alaska Natives who are furnished an item or service directly by the Indian Health Service, an Indian tribe, a tribal organization, or an urban Indian organization are exempt from cost sharing.

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515.001: Definition of Terms

The terms listed in 130 CMR 515.001 have the following meanings for purposes of MassHealth, as described in 130 CMR 515.000 through 522.000.

Activities of Daily Living (ADLs) — self-care activities including, but not limited to, bathing, grooming, dressing, eating, and toileting.

Affidavit — a written or printed statement of fact sworn to or affirmed before a person having legal authority to administer such an oath.

Annuity — a legal instrument that makes payments for a designated period of time or for life, regardless if the payments are principal, interest, or both.

Appeal — a written request, by an aggrieved applicant or member, for a fair hearing.

Appeal Representative — a person who

- (1) is sufficiently aware of the appellant's circumstances to assume responsibility for the accuracy of the statements made during the appeal process, and who has provided the Board of Hearings with written authorization from the appellant to act on the appellant's behalf during the appeal process;
- (2) has, under applicable law, authority to act on behalf of an appellant in making decisions related to health care or payment for health care. An appeal representative may include, but is not limited to, a guardian, conservator, executor, administrator, holder of power of attorney, or health-care proxy; or
- (3) is an eligibility representative meeting the requirements of (1) or (2) above.

Applicant — a person who completes and submits an application for MassHealth, and is awaiting the decision of eligibility.

Application — see “Senior Medical Benefit Request (SMBR).”

Asset Limit — the maximum dollar value of assets that can be owned by, or available to, the applicant, member, or the spouse, which if exceeded, results in ineligibility.

Assets — property including, but not limited to, real estate, personal property, and funds. This term has the same meaning as “resources” as defined in 42 U.S.C. 1396p(e)(5).

Available — a resource that is countable under Title XIX of the Social Security Act.

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515.011: Estate Recovery

(A) Introduction.

(1) The MassHealth agency will recover the amount of payment for medical benefits correctly paid from the estate of a deceased member. Recovery is limited to payment for all services that were provided

(a) while the member was 65 or older, except on or after October 1, 1993, while the member was aged 55 or older; or

(b) on or after March 22, 1991, while the member, regardless of age, was institutionalized, and the MassHealth agency determined that the member could not reasonably be expected to return home.

(2) The estate includes all real and personal property and other assets in the member's probate estate.

(B) Exception. No recovery for nursing facility or other long-term-care services may be made from the estate of any person who

(1) was institutionalized;

(2) notified the MassHealth agency that he or she had no intent of returning home; and

(3) on the date of admission to the long-term-care institution, had long-term-care insurance that met the requirements of 130 CMR 515.014 and the Division of Insurance regulations at 211 CMR 65.09(1)(e)(2).

(C) Deferral of Estate Recovery. Recovery will not be required until after the death of a surviving spouse, if any, or while there is a surviving child who is under 21 years of age, or a child of any age who is blind or permanently and totally disabled.

(D) Waiver of Estate Recovery Due to Financial Hardship.

(1) For claims presented on or after November 15, 2003, recovery will be waived if

(a) a sale of real property would be required to satisfy a claim against the member's probate estate; and

(b) an individual who was using the property as a principal place of residence on the date of the member's death meets all of the following conditions:

(i) the individual lived in the property on a continual basis for at least one year immediately before the now-deceased member became eligible for MassHealth or other assistance and continues to live in the property at the time the MassHealth agency first presented its claim for recovery against the deceased member's estate;

(ii) the individual has inherited or received an interest in the property from the deceased member's estate as defined in 130 CMR 501.013(A)(2) and 515.011(A)(2);

(iii) the individual is not being forced to sell the property by other devisees or heirs at law; and

(iv) at the time the MassHealth agency first presented its claim for recovery against the deceased member's estate, the gross annual income of the person's family group, as defined in 130 CMR 501.001, was less than or equal to 133 percent of the applicable federal-poverty-level income standard for the appropriate family size.

(2) The waiver will be conditional for a period of two years from the date the MassHealth agency mails notice that the waiver requirements have been met, or from the date that a court of competent jurisdiction determines that the waiver requirements have been met. If at the end of that period, all circumstances and conditions that must exist for the MassHealth agency to waive recovery still exist, including meeting the same income standards under 130 CMR 515.011(D)(1)(b)(iv), and the real property has not been sold or transferred, the waiver will become permanent and binding. If at any time during the two-year period, the circumstances and conditions for waiver no longer exist, including meeting the same income standards under 130 CMR 515.011(D)(1)(b)(iv), or the property is sold or transferred, or the individual does not use the property as their primary residence, the MassHealth agency will be notified and its claim will be payable in full.

(E) Outstanding Claims.

(1) For claims presented between April 1, 1995, and November 15, 2003, that are still outstanding, recovery will be waived if all requirements under the then-existing MassHealth regulations were met.

(2) For claims presented before April 1, 1995, a waiver for hardship did not exist.

(F) Fair-Market Value and Equity Value. If there will be insufficient proceeds from the sale or transfer of the property to satisfy the MassHealth agency's claim in full, the fair-market value and equity value of all real property that is part of the deceased member's estate must be verified prior to the sale or transfer of said property.

(1) The executor or administrator of the probate estate or, in the case of real property that passes outside the probate estate, the person or entity to whom legal title or interest passed, must verify the fair-market value by sending to the MassHealth agency a copy of the most recent tax bill or the property tax assessment that was most recently issued by the taxing jurisdiction, provided that this assessment is not one of the following:

- (a) a special-purpose assessment;
- (b) based on a fixed-rate-per-acre method; or
- (c) based on an assessment ratio or providing only a range.



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(2) The executor or administrator of the probate estate or, in the case of real property that passed outside the probate estate, the person or entity to whom legal title or interest passed, must also provide a comparable market analysis or a written appraisal of the property value from a knowledgeable source. A knowledgeable source includes one of the following: a licensed real-estate agent or broker, a real-estate appraiser, or an official from a bank, savings and loan association, or similar lending organization. The knowledgeable source must not have any real or apparent conflict-of-interest relationship with the estate.

(3) The MassHealth agency may also obtain an assessment from a knowledgeable source.

(G) Waiver of Estate Recovery Due to Hardship for American Indians and Alaska Natives.

(1) For claims presented on or after July 1, 2009, recovery from the following American Indian and Alaska Natives income, resources, and property will be waived:

(a) certain income and resources (such as interests in and income derived from tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and the U.S. Claims Court) that are exempt from Medicaid estate recovery by other laws and regulations;

(b) ownership interest in trust and nontrust property, including real property and improvements

(i) located on a reservation (any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act, and Indian allotments) or near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior; or

(ii) for any federally recognized tribe not described in 130 CMR 501.013(F)(2)(a), located within the most recent boundaries of a prior federal reservation.

(c) income left as a remainder in an estate derived from property protected in 130 CMR 501.013(F)(2), that was either collected by an Indian or by a tribe or tribal organization and distributed to Indians, as long as the individual can clearly trace it as coming from protected property;

(d) ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources, including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, or fish products, resulting from the exercise of federally protected rights and income either collected by an Indian or by a tribe or tribal organization and distributed to Indians derived from these sources as long as the individual can clearly trace it as coming from protected sources; or

(e) ownership interests in or usage rights to items not covered by 130 CMR 501.013(F)(1) through (4) that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional life style according to applicable tribal law or custom.

(2) Protection of non-trust property described in 130 CMR 501.013(F)(2)(a) and (b) is limited to circumstances when it passes from an Indian, as defined in section 4 of the Indian Health Care Improvement Act, to one or more relatives (by blood, adoption, or marriage), including Indians not enrolled as members of a tribe and non-Indians, such as spouses or stepchildren, that their culture would nevertheless protect as family members, to a tribe or tribal organization, or to one or more Indians.

515.012: Real Estate Liens

(A) Liens. A real estate lien enables the MassHealth agency to recover the cost of medical benefits paid or to be paid on behalf of a member. Before the death of a member, the MassHealth agency will place a lien against any property in which the member has a legal interest, subject to the following conditions:

- (1) per court order or judgement; or
- (2) without a court order or judgement, if all of the following requirements are met:
  - (a) the member is an inpatient receiving long-term or chronic care in a nursing facility or other medical institution;
  - (b) none of the following relatives lives in the property:
    - (i) a spouse;
    - (ii) a child under the age of 21, or a blind or permanently and totally disabled child;  
or
    - (iii) a sibling who has a legal interest in the property and has been living in the house for at least one year before the member's admission to the medical institution;
  - (c) the MassHealth agency determines that the member cannot reasonably be expected to be discharged from the medical institution and return home; and

(d) the member has received notice of the MassHealth determination that the above conditions have been met and that a lien will be placed. The notice includes the member's right to a fair hearing.

(B) Recovery. If property against which the MassHealth agency has placed a lien under 130 CMR 515.012(A) is sold during the member's lifetime, the MassHealth agency may recover all payment for services provided on or after April 1, 1995. This provision does not limit the MassHealth agency's ability to recover from the member's estate in accordance with 130 CMR 515.011.

(C) Exception. No recovery for nursing-facility or other long-term-care services may be made under 130 CMR 515.012(B) if the member

- (1) was institutionalized;
- (2) notified the MassHealth agency that he or she had no intention of returning home; and
- (3) on the date of admission to a long-term-care institution had long-term-care insurance whose coverage met the requirements of 130 CMR 515.014 and the Division of Insurance regulations at 211 CMR 65.09(1)(e)(2).

(D) Repayment Deferred.

(1) In the case of a lien on a member's home, repayment under 130 CMR 515.012 is not required while any of the following relatives are still lawfully living in the property:

(a) a sibling who has been living in the property for at least one year before the member's admission to the nursing facility or other medical institution; or

(b) a son or daughter who

(i) has been living in the property for at least two years immediately before the member was admitted to a nursing facility or other medical institution;

(ii) establishes to the satisfaction of the MassHealth agency that he or she provided care that permitted the parent to live at home during the two-year period before institutionalization; and

(iii) has lived lawfully in the property on a continual basis while the parent has been in the institution.

(2) Repayment from the estate of a member that would otherwise be recoverable under any regulation is still required even if the relatives described in 130 CMR 515.012(D) are still living in the property.

(E) Dissolution. The MassHealth agency will discharge a lien placed against property under 130 CMR 515.012(A) if the member is released from the medical institution and returns home.

(F) Verification. The applicant or member must cooperate in providing verification as to whether the conditions under 130 CMR 515.012(A) exist, and in providing any information necessary for the MassHealth agency to place a lien.

(G) Recording Fee. The MassHealth agency is not required to pay a recording fee for filing a notice of lien or encumbrance, or for a release or discharge of a lien or encumbrance under 130 CMR 515.012.

515.013: Voter Registration

(A) Voter registration forms are available through the MassHealth agency to applicants and members who are

- (1) U.S. citizens; and
- (2) aged 18 or older, or who will be aged 18 on or before the date of the next election, in accordance with the National Voter Registration Act of 1993.

(B) Applicants and members will be

- (1) informed of the availability of voter registration forms at application, at the time of an eligibility review, and when there is an address change;
- (2) offered assistance in completing the voter registration application form; and
- (3) able to submit voter registration application forms to the MassHealth agency for transmittal to the proper election offices.

(C) MassHealth agency staff will not

- (1) seek to influence an applicant's or member's political preference or party registration;
- (2) display any political preference or party allegiance to the applicant or member;
- (3) make any statement to an applicant or member or take any action intended to influence the applicant's or member's decision regarding voter registration; and
- (4) make any statement to an applicant or member or take any action intended to lead the applicant or member to believe that the decision to register or not has any bearing on the availability of services or benefits.

(D) Completed voter registration application forms that are submitted to the MassHealth agency will be transmitted to the proper local election office for processing within five days of receipt.

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520.035: Conclusion of the Deductible Process

When the total of submitted bills is equal to or greater than the deductible and all other eligibility requirements continue to be met, the MassHealth agency notifies the applicant that he or she is eligible. The member is eligible for payment of all covered medical expenses incurred during that deductible period, other than those submitted to meet the deductible, as long as the member continues to meet all other eligibility requirements during the balance of the deductible period.

520.036: Copayments Required by MassHealth

The MassHealth agency requires its members to make the copayments described in 130 CMR 520.038, up to the calendar-year maximum described in 130 CMR 520.040, except as excluded in 130 CMR 520.037. If the usual-and-customary fee for the service or product is less than the copayment amount, the member must pay the amount of the service or product.

520.037: Copayment and Cost Sharing Requirement Exclusions

(A) Excluded Individuals.

(1) The following individuals do not have to pay the copayments described in 130 CMR 520.038:

- (a) members under 19 years of age;
- (b) members who are pregnant or in the postpartum period that extends through the last day of the second calendar month following the month in which their pregnancy ends (for example, if the woman gave birth May 15, she is exempt from the copayment requirement until August 1);
- (c) MassHealth Limited members;
- (d) MassHealth Senior Buy-In members or MassHealth Standard members for drugs covered under Medicare Parts A and B only, when provided by a Medicare-certified provider;
- (e) members who are inpatients in nursing facilities, chronic-disease or rehabilitation hospitals, or intermediate-care facilities for the mentally retarded or who are admitted to a hospital from such a facility or hospital;
- (f) members receiving hospice services; and
- (g) persons receiving medical services through the Emergency Aid to the Elderly, Disabled and Children Program pursuant to 130 CMR 450.106, if they do not receive MassHealth Standard or MassHealth Essential.

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(2) Members who have accumulated copayment charges totaling the calendar-year maximum of \$200 on pharmacy services do not have to pay further MassHealth copayments on pharmacy services during the calendar year in which the member reached the MassHealth copayment maximum for pharmacy services.

(3) Members who have accumulated copayment charges totaling the calendar-year maximum of \$36 on nonpharmacy services do not have to pay further MassHealth copayments on nonpharmacy services during the calendar year in which the member reached the MassHealth copayment maximum for nonpharmacy services.

(4) Members who have other comprehensive medical insurance, including Medicare, do not have to pay MassHealth copayments on nonpharmacy services.

(5) Members who are inpatients in a hospital do not have to pay a separate copayment for pharmacy services provided as part of the hospital stay.

(6) American Indians or Alaska Natives who are furnished an item or service directly by the Indian Health Services, an Indian tribe, a tribal organization, or an urban Indian organization are exempt from cost sharing.

(B) Excluded Services. The following services are excluded from the copayment requirement described in 130 CMR 520.038:

- (1) family-planning services and supplies such as oral contraceptives, contraceptive devices such as diaphragms and condoms, and contraceptive jellies, creams, foams, and suppositories;
- (2) nonpharmacy behavioral health services; and
- (3) emergency services.

520.038: Services Subject to Copayments

MassHealth members are responsible for making the following copayments unless excluded in 130 CMR 520.037.

(A) Pharmacy Services. The copayment for pharmacy services is

- (1) \$1 for each prescription and refill for each generic drug and over-the-counter drug covered by MassHealth; and
- (2) \$3 for each prescription and refill for all other drugs covered by MassHealth.

(B) Nonpharmacy Services. The copayment for nonpharmacy services is \$3 for an acute inpatient hospital stay.