

Eli's Rehab Report

Compliance: Dive Into a New Pool Rental Option for Aquatic Therapy

But don't land in hot water with your lease terms

If you've experienced confusion in the past over using community pool space for aquatic therapy, the waters have recently become much clearer.

And good news for clinicians in private practice, physician offices, outpatient hospitals and outpatient SNF settings: You don't have to rent an entire pool; you can rent a specific portion of a pool if that's all the space you need, CMS recently said.

But that's not the end of the story. Make sure you follow these additional details found in CMS transmittal 88 (CR 5921), section 220 C -- and some important tips to go along with them.

- **Use only for your therapy sessions.** Whether you rent the entire pool or only a portion of it, that space "shall be restricted" to your patients only, CMS says. This of course clarifies liability, but it also shows who owns the cost of the pool at that time, says **Ken Maily, PT**, with Maily & Inglett Consulting in Wayne, N.J. "Aquatic therapy is typically reimbursed at a higher rate because in addition to the cost of providing therapy, there's an assumed cost of pool maintenance or rent."

So by designating exclusive space for your therapy sessions, you're showing CMS that you're likely paying some pool overhead costs, as opposed to unofficially squeezing into a corner and riding on the pool owner's dime -- which would not likely be reimbursed if your Medicare contractor knew about it.

- **Put it in writing.** For your pool space rental to be valid, you must have a written agreement. Make sure it's "available for review upon request" and describes both "the part of the pool that is used exclusively for patients" and "the times that exclusive use applies," CMS states. "Remember, documenting the treatment you render is only one type of documentation; your rental or lease agreement is just as important to have in writing," Maily says.

- **Structure your lease wisely.** If you want to stay out of the snares of Stark and Anti-Kickback law, be wary of any arrangement that shows variable cost or fee splitting. Sure, it may sound attractive -- and even legitimate -- for the pool owner to base your rent on the number of patients in your section of the pool, but this enters dangerous territory. As a rule of thumb, "if the lease terms are variable according to volume or variable period, watch out," Maily says. "Flat rates based on time you're using the pool or the amount of space you're using are your best bet."

- **Reference your state law and/or state operations manual.** The CMS manual language isn't the final say if your state throws stricter laws your way. So before you go any farther, see what your state practice act has to say about aquatic therapy and pool rentals. In fact, this CMS transmittal specifically instructs PT and SLP providers in OPTs and rehab agencies, as well as CORFs, to reference the requirements outlined in their state operations manuals, regarding rented or leased community pools.

- **Apply this logic elsewhere.** Yes, the above guidelines and rules are CMS-specific, but it certainly wouldn't hurt to exercise them for non-Medicare situations. You may find yourself in a much safer boat when it comes to both liability and even reimbursement issues.

Note: To read the text of Transmittal 88, scroll to page 14 of <http://www.cms.hhs.gov/Transmittals/downloads/R88BP.pdf>.