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The doctor is in: How medical leases differ from retail and office spaces - by Brian Cafferty

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As healthcare facilities, often referred to as “Doc in a Box” clinics, increasingly move into traditional retail spaces, landlords are more frequently leasing to medical tenants. Unlike standard retail or office leases, medical facilities come with a unique set of considerations that must be carefully addressed to ensure a successful tenancy. From specific tenant improvements to handling medical waste and regulatory compliance, medical leases require special attention to detail. This article outlines key issues landlords and tenants should consider.

Tenant Improvements: Medical tenants often require significant improvements and extensive build-outs of the premises, including additional plumbing, sinks, and examination rooms. These modifications may not be useful for future tenants once the lease ends. It’s crucial for both parties to address upfront whether these improvements can remain or must be removed at the end of the lease term. Furthermore, the lease should specify who decides what stays and what goes and who is responsible for the costs associated with removal.

Parking: Medical facilities generally need more parking than typical retail or office spaces, sometimes requiring additional parking spaces under local zoning laws. Therefore, it is essential to assess whether enough parking is available to accommodate these needs (consult parking manuals for precise requirements). The design of the parking area should also consider the need for ambulances and other vehicles to drop off less ambulatory patients at the main entrance. In larger facilities, landlords may reserve the right to require medical tenants to provide staff to manage the flow of traffic effectively.

Medical Waste: Medical facilities generate special and potentially infectious waste, necessitating strict rules for the collection, storage, and removal of such materials. The lease should require the tenant to ensure that all waste is handled according to applicable laws and regulations and disposed of by licensed companies qualified to manage medical waste. Additionally, tenants should indemnify the landlord against any costs or damages resulting from improper handling of medical waste. In buildings with multiple medical users, landlords might consider arranging for collective waste disposal services, with costs shared among tenants.

Insurance: Michael McShane, senior vice president of Cleary Insurance, recommends that medical tenants carry at least \$1 million in coverage per incident, with \$2 million in aggregate coverage and a \$5 million umbrella policy. Given the potential risks associated with medical waste and hazardous materials, landlords should also require insurance for environmental contamination, with a minimum coverage of \$1 million.

Regulatory Matters: The medical industry is heavily regulated, particularly regarding Medicare and Medicaid, which have led to important regulations such as the Medicare/Medicaid Anti-Kickback Statute and Section 1877 of the Social Security Act (the Stark Law). As a best practice, lease agreements should include explicit language affirming compliance with both the Anti-Kickback Law and the Stark Law to avoid legal complications.

Confidentiality of Medical Records: Medical facilities must manage confidential health information, which is protected under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). A well-written lease will acknowledge the potential for protected health information to be disclosed inadvertently to landlords, their employees, contractors, or agents. The lease should place the responsibility for safeguarding this information on the tenant, who must agree to implement appropriate administrative, technical, and physical safeguards to minimize incidental disclosures. Additionally, access to certain areas of the premises may require additional safeguards and training for landlord employees.

Imaging Trailers: In larger medical office facilities, tenants may seek to expand their footprint by installing or using an imaging trailer on site. This trailer might be a permanent addition or used periodically, such as on certain days each week. To prepare for this possibility, landlords should ensure the lease grants them control over the grounds, even if there is only a single medical tenant in the building. While landlords may permit the installation of a permanent or semi-permanent imaging trailer, retaining control allows them to determine the trailer's placement, ensure the parking area can accommodate the increased number of patients, and potentially negotiate a share of the revenue generated by the imaging trailer.

Conclusion: Addressing these factors in a medical lease agreement is essential for a smooth and successful tenancy. While these issues should not deter landlords from leasing to medical office users, proactively incorporating these considerations into the lease can help ensure a beneficial relationship for landlords, tenants, and patients alike. By preparing for the unique needs of medical facilities, all parties can enjoy a productive and hassle-free leasing experience.

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