

# Renting an Office-Based Lab

Current and expected changes to reimbursement, regulation, and practice models all provide for an unstable fiscal environment in which committing significant sums of money to fixed assets may not bring a return on investment.

**BY DEEPAK G. NAIR, MD, MS, MHA, RVT, FACS**

In the current health care milieu, the decision of whether to rent or buy an office-based lab (OBL) can make a huge difference in your company's performance and cash flow. Although it is tempting to begin scanning vendor brochures, there are better ways to approach this decision as the OBL becomes more prevalent. It is more practical to simply focus on your practice's business needs and how they would be served with an OBL.

## INDEPENDENT PRIVATE PRACTICES

Those in a single-specialty private practice must decide if they want to take the risk of burdening themselves with a large purchase. Renting may make sense for smaller or newer practices, as this strategy provides room to grow naturally. It takes away the pressure of trying to obtain financing until the practice is ready to do so. When you consider the high sums of money it costs per square foot for a fully furnished OBL, leasing is a very understandable strategy for creating stability. Besides financing costs, a large down payment is saved in a rental agreement. The amount you need to move in is significantly less than you would need when owning, and in many cases, it is a turnkey situation. Even if a rental deposit equal to the amount of 1 month's rent is required, a down payment is usually much higher. For example, with a 5% deposit on an OBL that has a market value of \$1 million, your move-in costs start at \$50,000, which is much more than the average 1-month rent rate. Also, those who buy will want to save up much more than 5% for their initial down payment, because the bigger the down payment, the better. By renting, you can avoid high initial down payment costs.

Licensing and regulatory requirements may also prove burdensome. Owning an OBL means you will have to obtain all necessary licenses, permits, certifications, and approvals that may be required by the city, state, and federal government agencies. This process is complicated and will require a significant amount of time and effort. Legal counsel is often necessary to navigate this process.

Although many experts claim that the health care market is stabilizing, others aren't so sure. As reimbursement continues to decline, many vascular specialists are now scared off from buying an OBL altogether. Margins are decreasing in private practice; therefore, a return on investment for any major purchase is taking longer. By renting, vascular specialists are potentially avoiding a mortgage that is more than the OBL's worth.

Renting also provides flexibility in terms of finding an ideal location for the OBL. Despite the most thorough research, a practice might develop in quite unexpected ways, some of which will be beyond your control. Even for longer-established practices, market trends can change considerably over the years. Renting allows the flexibility to relocate when you need to.

In our previous lease arrangement, we saw very few dialysis access cases and mostly serviced patients within a 10-mile radius of the OBL. After several years, we began renting an OBL closer to the interstate and central to many more dialysis units; this resulted in an increase in our main catchment area to more than 20 miles and a tremendous influx in dialysis cases. Although we initially thought we had found the ideal location, our procedural activities developed in ways

even the most thorough business planning could not have anticipated. Renting allowed us to stay fluid. As we became clearer about our future needs, we were able to adapt to them without the headache of having to enter the buying and selling cycle all over again. Large nonmedical companies often choose to rent because they can keep their options open in case a more attractive commercial property becomes available or if they begin to have financial issues.

### WILL THE OBL BECOME OBSOLETE?

Reimbursement forces may make the OBL obsolete in the future. This would not be unprecedented. In 2007 to 2008, there were severe reimbursement cuts to the practice expense component of the relative value units assigned to procedures performed in OBLs. Although this unexpected change in the formula had an impact on all procedures covered in the Medicare physician fee schedule, the impact on OBL procedures was more severe because of the difference in cost basis (original cost of property, adjusted for factors such as depreciation), both direct and indirect. In contrast, hospital-based outpatient angiographic cath lab reimbursement actually increased, as it falls under a different reimbursement system through the Centers for Medicare & Medicaid Services (CMS) known as the *ambulatory payment classification*. These reimbursement changes often did not even cover the cost of solely performing cardiac catheterization procedures in an OBL, forcing many facilities to close.

There is now a movement to improve reimbursement. Under CMS reimbursement policies, OBL services are treated similar to office visits, despite having much higher practice expenses. CMS is required by law to base payment rates for physicians' services on the resources used to provide them and, except as specifically authorized by statute, cannot take into account payment rates for similar services under the required payment methodology applied to services in hospital outpatient departments. This may be the impetus to increase reimbursement in the future. The American Medical Association's Relative Value Update Committee will be the middleman in an opportunity to review the direct practice expense inputs for these OBL peripheral vascular catheterization procedures.

### LEASING ARRANGEMENTS WITH HOSPITALS

The comanagement of an OBL with a hospital is a unique rental-agreement relationship. Lease agreements and purchased-services agreements (PSAs) provide an alternative for physicians to tap into additional revenue sources without requiring the capital investment of building a new facility. Hospitals, in choosing to lease their facilities, can benefit from this by means of increased utilization

and a fixed and reliable rental revenue stream. Under a leasing arrangement, a hospital leases an OBL facility, including the equipment and supporting employees, to a physician group for a fair market value rental rate. The physician group will bill the appropriate payor for the professional fees and will also bill for the technical fees related to the leased OBL facility. The OBL will not have access to technical fees when treating an established inpatient from the leasing hospital.

Once an OBL lease agreement is created between a hospital and a physician group, the parties should consider entering into a PSA. A PSA is an arrangement in which a hospital agrees to "purchase" certain services at fair market value prices from a physician group. The PSA can provide a contractual arrangement in which the hospital's inpatients can receive immediate services during the time that the hospital's OBL is being leased to the physician group. In addition to providing inpatients with access to the leased OBL, the PSA also provides a means of increased utilization of the OBL. The hospital, however, bills for all technical fees. The PSA essentially provides a mechanism for the physician group to treat an inpatient.

These hospital and physician relationships will be more common with increased permeation of "pay-for-performance" programs. A comanagement arrangement in which the hospital pays the physician group a fixed base fee for its services, plus a potential performance-based fee tied to both quality measures and cost savings, was looked upon as "favorable" by the Office of the Inspector General.<sup>1</sup> Although the Office of the Inspector General concluded that it would not impose sanctions under either the Anti-Kickback Statute or the Civil Monetary Penalties Law, the advisory opinion reflects the challenges that vascular specialists face in implementing value-based compensation arrangements with referral sources in light of existing regulations that have not fully adapted to quality or cost-saving incentives.

### STARK LAW CONSIDERATIONS

The Stark Law, also known as the *Ethics in Patient Referrals Act*, prohibits physicians from making referrals of a Medicare or Medicaid patient to an entity that provides "designated health services" and with which the physician or a member of the physician's immediate family has a financial relationship. The best way that you can protect yourself from potential Stark Law violations when renting an OBL is to have a written lease, signed by both parties, for a clearly defined location, with rent consistent with fair market value and independent of the value or number of referrals. The key issue in negotiating the lease will be to limit the landlord-tenant relationship to market standards

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TABLE 1. SURVEY OF HOURLY RATES FOR OBLs IN FLORIDA (N = 7)	
OBL Ownership	Hourly Rental Amount
Hospital 1	\$750
Hospital 2	\$800
Interventional Radiology 1	\$1,000
Interventional Radiology 2	\$850
Interventional Radiology 3	\$750
Cardiology 1	\$750
Cardiology 2	\$800

and to avoid inducements that could raise the suspicion of a referral relationship. “On-demand” rental agreements are prohibited under this rule. Thus, time-based leasing arrangements with minimum requirements that are too limited and/or flexible are not allowed. Block time leases are allowed, as CMS believes that they may meet the requirements of the space and equipment lease exceptions. However, CMS specifically cautions that certain time-based leasing, such as leasing space or equipment in small blocks of time (eg, once a week for 4 hours), raises significant concerns. Table 1 shows a sample of hourly rates for OBLs in Florida.

## CONCLUSION

Renting an OBL is an ideal strategy when making the initial foray into peripheral vascular intervention outside of a hospital. It allows a practice to “try before you buy,” as performing procedures in an OBL is not for everyone. Renting avoids financial risk in this unpredictable health care economy milieu. Decreasing margins in reimbursement for peripheral vascular intervention may not provide for an adequate return on investment (if any) for taking on this fiscal burden. Regulatory changes may also preclude the existence of OBLs; renters of OBLs will have the ability to walk away, whereas owners (the majority of OBLs are independent or run by various companies without a leasing agreement) may owe more than the value of their purchase. Tread carefully. ■

*Deepak G. Nair, MD, MS, MHA, RVT, FACS, is with Sarasota Vascular Specialists in Sarasota, Florida. He stated that he has no financial interests related to this article. Dr. Nair may be reached at [dnair@veinsandarteries.com](mailto:dnair@veinsandarteries.com).*

1. The Office of the Inspector General. The OIG Advisory Opinion No. 12-22. Available at [www.oig.hhs.gov](http://www.oig.hhs.gov). Accessed November 5, 2013.