

DAVITA INC  
Form 424B3  
September 27, 2012  
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Filed Pursuant to Rule 424(b)(3)  
Registration No. 333-182572

## MERGER PROPOSED YOUR VOTE IS VERY IMPORTANT

Dear Members of HealthCare Partners Holdings, LLC:

You are cordially invited to attend a special meeting of members of HealthCare Partners Holdings, LLC, a California limited liability company ( HCP ), to be held at HCP 's headquarters at 19191 South Vermont Avenue, Suite 200, Torrance, California 90502, on October 30, 2012, at 6:00 p.m., local time.

As previously announced, DaVita Inc., a Delaware corporation ( DaVita ), and HCP have entered into an Agreement and Plan of Merger as amended by the Amendment to Agreement and Plan of Merger (the Merger Agreement ) that provides for the merger of a wholly owned subsidiary of DaVita with and into HCP (the Merger ), with HCP continuing as the surviving entity and as a wholly owned subsidiary of DaVita. DaVita is a leading provider of kidney care services for those diagnosed with chronic kidney disease. Following the Merger, DaVita will be renamed DaVita HealthCare Partners Inc.

Before we can complete the Merger, we must obtain the approval of the members of HCP (the HCP Members and, individually, an HCP Member ) holding a majority of the issued and outstanding Class B Common Units of HCP ( HCP Common Units ). Accordingly, at the special meeting, you will be asked to vote upon a proposal to approve the principal terms of the Merger and the Merger Agreement with DaVita. Only holders of record of HCP Common Units on the date of the special meeting are entitled to notice of and to vote at the special meeting. No vote of the DaVita stockholders is required to complete the Merger.

If the Merger is completed, the total merger consideration (not including any potential earn-out payment) to be paid to the holders of HCP Common Units and vested and unvested options to purchase HCP Common Units (the HCP Options ) is an aggregate of \$3,660,000,000 in cash and 9,380,312 shares of DaVita common stock, par value \$0.001 per share ( DaVita Common Stock ), subject to certain adjustments (including a potential reduction in the merger consideration as a result of an estimated shortfall in working capital, if any, at the time of closing and a post-closing final working capital adjustment). The value of merger consideration per fully diluted HCP Common Unit, based upon the closing price of \$100.30 per share of DaVita Common Stock on September 25, 2012, the last practicable day prior to the date of this prospectus, and assuming no reduction to the total merger consideration as a result of an estimated working capital adjustment at the time of closing, would be \$44.29. Each holder of HCP Common Units may elect to receive, in exchange for each HCP Common Unit held by such HCP Member, the merger consideration per fully diluted HCP Common Unit in the form of cash or stock, or a combination thereof, subject to adjustment and proration.

The Merger Agreement provides that, notwithstanding the election by an HCP Member to receive all cash or all stock, or a combination thereof, an HCP Member may receive a combination of cash or stock that is different from what such HCP Member may have elected, depending on the elections made by other HCP Members, in order to ensure that the aggregate merger consideration of \$3,660,000,000 in cash and 9,380,312 shares of DaVita Common Stock, subject to certain adjustments, is fully allocated and paid in the Merger. No fractional shares of DaVita Common Stock will be issued in the Merger.

Regardless of whether an HCP Member elects cash or stock, or a combination thereof, a portion of each HCP Member 's and optionholder 's pro rata portion of the total merger consideration will be withheld from payment and contributed to three escrow accounts that support a potential working capital adjustment to the merger consideration, certain indemnification obligations, certain contingent payments, and certain costs and expenses that may be incurred by the member representative. The withheld consideration will be comprised of cash and DaVita Common Stock having an aggregate value of \$574,375,000 as of the closing of the Merger, or approximately \$5.45 per fully diluted HCP Common Unit. Funds will be released from these escrow accounts in accordance with the terms and conditions set forth in the Merger Agreement.

In addition to the merger consideration payable at the closing of the Merger and amounts that may be released over time from the escrow accounts, HCP Members and holders of HCP Options may receive up to \$275,000,000 of additional cash consideration in the form of two separate earn-out payments that are based on the financial performance of HCP for fiscal years 2012 and 2013. The payment of the earn-out

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amounts is subject to the terms and conditions for such earn-outs set forth in the Merger Agreement. Assuming payment of the entire \$275,000,000 earn-out, each HCP Member and each holder of HCP Options would receive an additional approximately \$2.61 per fully diluted HCP Common Unit.

We may also permit certain individuals or entities who receive shares of DaVita Common Stock in connection with the Merger to use this prospectus to cover resale of up to 9,140,799 shares. If this happens, we will not receive any proceeds from such sales. See "Selling Security Holders" on page 210 for information relating to resale of our securities pursuant to this prospectus.

DaVita Common Stock is listed on the New York Stock Exchange under the symbol "DVA". On September 25, 2012, the last practicable day before the date of this prospectus, the closing sale price of DaVita Common Stock was \$100.30 per share.

The accompanying prospectus provides you with detailed information about the Merger and the special meeting. **We encourage you to read the entire prospectus and the Merger Agreement carefully, including the Risk Factors beginning on page 38.** A copy of the Merger Agreement and the Amendment to the Merger Agreement are attached as Annex A-1 and Annex A-2 to the accompanying prospectus.

**Neither the Securities and Exchange Commission nor any state securities regulator has approved or disapproved of the transactions described in this prospectus or the securities to be issued pursuant to the Merger or determined if the information contained in this prospectus is accurate or adequate. Any representation to the contrary is a criminal offense.**

**This prospectus is dated September 27, 2012, and is first being mailed to HCP Members on or about October 1, 2012.**

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**After careful consideration of the Merger and the terms of the Merger Agreement, the board of managers of HCP (the HCP Board ) has determined that the Merger is fair, advisable, and in the best interests of HCP and the HCP Members. Accordingly, the HCP Board unanimously recommends that the HCP Members approve the principal terms of the Merger and the Merger Agreement.**

In considering the recommendation of the HCP Board, you should be aware that some of the members of the HCP Board and HCP's executive officers have interests in the Merger that are different from, or in addition to, the interests of the HCP Members generally.

Dr. Robert Margolis, our Chairman and Chief Executive Officer, Matthew Mazdyasni, our Executive Vice President and Chief Financial and Administrative Officer, Dr. William Chin, our Executive Medical Director, and Dr. Thomas Paulsen, our Executive Medical Director, California, have each entered into a support agreement with DaVita and HCP, whereby they have agreed to elect to receive closing consideration in the form of stock in exchange for at least 33% of the HCP Common Units owned, whether directly or indirectly, by them.

You should also be aware that HealthCare Partners Medical Group, an HCP Member and a California general partnership, Drs. Margolis, Chin, and Paulsen, and Mr. Mazdyasni collectively own, directly or indirectly, 74,143,125.7 HCP Common Units, which represent approximately 74% of the outstanding HCP Common Units, and they have each entered into an agreement with DaVita pursuant to which they have agreed to vote all of the HCP Common Units owned or controlled by them in favor of the approval of the principal terms of the Merger and the Merger Agreement. Accordingly, the approval of the principal terms of the Merger and the Merger Agreement by the HCP Members is assured.

We are excited about the opportunities the Merger may bring to HCP and the HCP Members, and we look forward to the successful completion of the Merger.

Sincerely,

Robert Margolis, M.D.

Chairman and Chief Executive Officer

HealthCare Partners Holdings, LLC

This prospectus incorporates by reference important business and financial information about DaVita that is not included or delivered with this document. This information is available without charge to HCP Members upon written or oral request. You can obtain the documents incorporated by reference in this prospectus by requesting them in writing or by telephone at the following address and telephone number: HealthCare Partners Holdings, LLC, 19191 South Vermont Avenue, Suite 200, Torrance, California 90502, (310) 354-4200.

**To obtain timely delivery of requested documents prior to the special meeting, you must request them no later than October 23, 2012, which is five business days prior to the special meeting.**

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**HEALTHCARE PARTNERS HOLDINGS, LLC**

**19191 South Vermont Avenue, Suite 200**

**Torrance, California 90502**

**NOTICE OF SPECIAL MEETING OF THE HCP MEMBERS TO BE HELD ON OCTOBER 30, 2012**

To Members of HealthCare Partners Holdings, LLC:

HealthCare Partners Holdings, LLC, a California limited liability company ( **HCP** ), has entered into an Agreement and Plan of Merger, dated as of May 20, 2012 as amended by the Amendment to Agreement and Plan of Merger (the **Merger Agreement** ), by and among HCP, DaVita Inc., a Delaware corporation ( **DaVita** ), Seismic Acquisition LLC, a California limited liability company and a wholly owned subsidiary of DaVita ( **Merger Sub** ), and Robert D. Mosher, as the member representative (the **Member Representative** ), pursuant to which Merger Sub will be merged with and into HCP, and HCP will continue as the surviving entity and as a wholly owned subsidiary of DaVita.

A special meeting of the members of HCP (the **HCP Members** and, individually, an **HCP Member** ) will be held at HCP's headquarters at 19191 South Vermont Avenue, Suite 200, Torrance, California 90502, on Tuesday, October 30, 2012, at 6:00 p.m., local time, for the following purposes:

to approve the principal terms of the Merger and the Merger Agreement; and

to transact any other business that may properly come before the special meeting.

These proposals are more fully described in this prospectus, which we encourage you to read carefully, including the **Risk Factors** beginning on page 38. We have included a copy of the Merger Agreement and the Amendment to the Merger Agreement as Annex A-1 and Annex A-2 to this prospectus.

Approval of the principal terms of the Merger and the Merger Agreement requires the affirmative vote of the HCP Members holding a majority of the issued and outstanding Class B Common Units of HCP ( **HCP Common Units** ).

As of September 25, 2012, HealthCare Partners Medical Group, an HCP Member and a California general partnership, Drs. Margolis, Chin and Paulsen and Mr. Mazdyasni collectively owned, directly or indirectly, 74,143,125.7 HCP Common Units, which represented approximately 74% of the outstanding HCP Common Units, and they have each entered into an agreement with DaVita and HCP pursuant to which they have agreed to vote all of the HCP Common Units owned or controlled by them in favor of the approval of the principal terms of the Merger and the Merger Agreement. Accordingly, the approval of the principal terms of the Merger and the Merger Agreement by the HCP Members is assured.

Only holders of record of HCP Common Units on the date of the special meeting are entitled to notice of and to vote at the special meeting.

A summary of the dissenters' rights that may be available to you are described in **HCP Member Dissenters' Rights** on page 103.

**After careful consideration of the Merger and the terms of the Merger Agreement, the board of managers of HCP (the **HCP Board** ) has determined that the Merger is fair, advisable and in the best interests of HCP and the HCP Members. Accordingly, the HCP Board unanimously recommends that the HCP Members approve the principal terms of the Merger and the Merger Agreement.**

By Order of the Board of Managers,

Robert Margolis, M.D.

Chairman and Chief Executive Officer

October 1, 2012

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**ADDITIONAL INFORMATION**

This prospectus incorporates by reference important business and financial information about DaVita from documents that are not included in or delivered with this prospectus. For a more detailed description of the information incorporated by reference into this prospectus and how you may obtain it, see **Additional Information Where You Can Find More Information** beginning on page 236.

You can obtain any of the documents incorporated by reference into this prospectus without charge from DaVita, or from the United States Securities and Exchange Commission, which we refer to as the SEC, through the SEC's website at [www.sec.gov](http://www.sec.gov). You may request a copy of such documents in writing or by telephone by contacting:

DaVita Inc.

2000 16<sup>th</sup> Street

Denver, Colorado 80202

(888) 484-7505

Attention: Investor Relations

You may also consult DaVita's website for more information at [www.davita.com](http://www.davita.com).

We are providing the information about how you can obtain certain documents that are incorporated by reference into this prospectus at these websites only for your convenience. Information included on DaVita's website is not incorporated by reference in this prospectus.

**In order for you to receive timely delivery of the documents in advance of the special meeting of the HCP Members, DaVita must receive your request no later than five business days prior to the date of the special meeting.**

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**QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING OF THE HCP MEMBERS**

*The following are some questions that you, as an HCP Member, may have regarding the special meeting of the HCP Members, which we refer to as the special meeting, and brief answers to those questions. For more detailed information about the matters discussed in these questions and answers, see *The Special Meeting of the HCP Members* beginning on page 78. HCP and DaVita encourage you to read carefully the remainder of this prospectus because the information in this section does not provide all of the information that might be important to you with respect to the Merger and the other matters being considered at the special meeting. Additional important information is also contained in the Annexes to and in the documents incorporated by reference into this prospectus.*

**Q: Why am I receiving this prospectus?**

A: The HCP Board is using this prospectus to solicit votes of the HCP Members pursuant to the Merger Agreement. In addition, DaVita is using this document as a prospectus for DaVita because DaVita is offering, as a portion of the consideration to be paid by DaVita in the Merger, shares of DaVita common stock, par value \$0.001 per share ( DaVita Common Stock ), to be issued in exchange for HCP Common Units. In order to complete the Merger, the HCP Members holding a majority of the issued and outstanding HCP Common Units must vote to approve the principal terms of the Merger and the Merger Agreement.

HCP will hold a special meeting of the HCP Members to obtain this approval. This prospectus contains important information about the Merger Agreement, the Merger, and the special meeting of the HCP Members, and you should read it carefully. **Your vote is important.**

**Q: When and where will the special meeting of the HCP Members be held?**

A: The special meeting will take place at HCP's headquarters at 19191 South Vermont Avenue, Suite 200, Torrance, California 90502, on Tuesday, October 30, 2012, at 6:00 p.m., local time.

**Q: Who can attend and vote at the special meeting?**

A: Only holders of record of HCP Common Units on the date of the special meeting are entitled to notice of and to vote at the special meeting. As of September 25, 2012, there were 100,131,969.2 HCP Common Units outstanding and entitled to vote at the special meeting, held by approximately 36 holders of record. Each HCP Member is entitled to one vote for each unit owned of record.

**Q: What constitutes a quorum?**

A: The presence at the special meeting in person of the holders of a majority of the HCP Common Units outstanding on the date of the special meeting will constitute a quorum for the purpose of considering the proposals at the special meeting. In the event that a quorum is not present, or if there are insufficient votes to approve the principal terms of the Merger and the Merger Agreement at the time of the special meeting, it is expected that the special meeting will be adjourned or postponed.

**Q: What vote of the HCP Members is required to approve the proposal to approve the principal terms of the Merger and the Merger Agreement?**

A:

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The approval by the HCP Members of the proposal to approve the principal terms of the Merger and the Merger Agreement requires the affirmative vote of the holders of a majority of the issued and outstanding HCP Common Units entitled to vote at the special meeting. **If you abstain from voting or fail to vote, it will have the same effect as voting against the proposal to approve the principal terms of the Merger and the Merger Agreement.**

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**Q: How does the HCP Board recommend that the HCP Members vote?**

A: The HCP Board has unanimously determined that the Merger Agreement, the Merger, and the other transactions contemplated by the Merger Agreement are advisable, fair to, and in the best interests of HCP and the HCP Members. Accordingly, the HCP Board has unanimously approved the Merger Agreement and the completion of the transactions contemplated thereby, including the Merger. The HCP Board unanimously recommends that the HCP Members vote **FOR** the proposal to approve the principal terms of the Merger and the Merger Agreement.

**Q: What should the HCP Members do in order to vote on the proposals being considered at the special meeting?**

A: Holders of record of HCP Common Units on the date of the special meeting may vote in person by attending the special meeting, where they will be given a ballot to vote.

**Q: What will happen if I abstain from voting or fail to vote?**

A: An abstention or the failure of an HCP Member to vote will have the same effect as voting against the proposal to approve the principal terms of the Merger and the Merger Agreement.

**Q: Have any HCP Members already agreed to vote in favor of the Merger?**

A: Yes. HealthCare Partners Medical Group, an HCP Member and a California general partnership ( HCP Medical Group ), and Drs. Margolis, Chin, and Paulsen, and Mr. Mazdyasni (collectively, the Substantial Members ) collectively own, directly or indirectly, 74,143,125.7 HCP Common Units, which represent approximately 74% of the outstanding HCP Common Units, and they have each entered into an agreement with DaVita and HCP pursuant to which they have agreed to vote all of the HCP Common Units owned or controlled by them in favor of the approval of the principal terms of the Merger and the Merger Agreement. Accordingly, the approval of the principal terms of the Merger and the Merger Agreement by the HCP Members is assured.

**Q: Do any managers or executive officers of HCP have different interests?**

A: Some of HCP s managers and executive officers have interests in the Merger that are different from, or in addition to, your interests as an HCP Member, and that may present actual or potential conflicts of interests. These interests include, among others:

the appointment of Dr. Margolis to fill a newly created directorship as co-chairman of the board of directors of DaVita upon completion of the Merger for a minimum period of four consecutive annual meetings of stockholders of DaVita;

the entry into employment and noncompetition and nonsolicitation agreements with DaVita (for periods ranging from three years to seven years after the closing of the Merger) by Drs. Margolis and Chin, Mr. Mazdyasni, and Zan Calhoun, the Chief Operating Officer of HCP;

the beneficial ownership of approximately 74% of the outstanding HCP Common Units and a substantial number of HCP Options (all of which options, as with all HCP Options, will be cashed out at the completion of the Merger); and

the right to indemnification and coverage under directors and officers liability insurance for a six-year coverage period commencing at the effective time of the Merger.

The HCP Board was aware of these interests and considered them, among other matters, prior to making its determination to recommend the approval of the principal terms of the Merger and the Merger Agreement to the HCP Members. For a more complete discussion of the interests of the HCP managers and executive officers in the Merger, see The Merger Interests of HCP's Managers and Executive Officers in the Merger beginning on page 98.

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**Q: If the Merger is approved and consummated, what will I receive in the Merger?**

**A:** Each HCP Common Unit (whether or not subject to restriction) issued and outstanding immediately prior to the effective time (other than (1) HCP Common Units directly or indirectly owned by DaVita, Merger Sub, or HCP and (2) dissenting units) will be converted into the right to receive the merger consideration in the form of cash or stock, or a combination thereof, subject to proration and certain adjustments (including a potential reduction in the merger consideration as a result of an estimated shortfall in working capital, if any, at the time of closing and a post-closing final working capital adjustment). Each HCP Option that is outstanding immediately prior to the effective time will accelerate and become fully vested and exercisable as of immediately prior to the effective time and, to the extent unexercised, will be cancelled, extinguished and automatically converted into the right to receive a cash payment for each HCP Common Unit subject to such HCP Option equal to the excess of (a) the merger consideration per fully diluted HCP Common Unit over (b) the per unit exercise price payable in respect of such HCP Common Unit issuable under such HCP Option. The value of the merger consideration per fully diluted HCP Common Unit, based upon the closing price of \$100.30 per share of DaVita Common Stock on September 25, 2012, the last practicable day prior to the date of this prospectus, and assuming no reduction to the total merger consideration as a result of an estimated working capital adjustment at the time of closing, would be \$44.29. See The Merger Agreement The Merger Consideration; Conversion or Cancellation of Units beginning on page 117.

You will not receive the full amount of your merger consideration at the time of the consummation of the Merger. A portion of the merger consideration will be withheld from payment and contributed to three escrow accounts that support a potential working capital adjustment, certain indemnification obligations, certain contingent payments, and certain costs and expenses that may be incurred by the Member Representative. The withheld consideration will be comprised of cash and DaVita Common Stock having an aggregate value of \$574,375,000 as of the closing of the Merger, or approximately \$5.45 per fully diluted HCP Common Unit. Funds will be released from these escrow accounts in accordance with the terms and conditions set forth in the Merger Agreement. With respect to HCP Members who contribute shares of DaVita Common Stock to the escrow, such HCP Members should be aware that as a result of fluctuations in the market value of DaVita Common Stock, the value of such shares on the closing date may be greater than, or less than, their value on the date that such shares are released from escrow, if they are released at all. See The Merger Agreement Escrowed Merger Consideration beginning on page 120.

In addition to the merger consideration payable upon the consummation of the Merger and the amounts that may be released from the three escrow accounts over time, HCP Members and holders of HCP Options may receive up to \$275,000,000 of additional cash consideration in the form of two separate earn-out payments that are based on the financial performance of HCP for fiscal years 2012 and 2013. To the extent that any earn-out payment is made, you will be entitled to receive for each HCP Common Unit you held as of the consummation of the Merger, an amount equal to such earn-out payment divided by the number of fully diluted HCP Common Units. Assuming payment of the entire \$275,000,000 earn-out, each HCP Member and each holder of HCP Options would receive an additional approximately \$2.61 per fully diluted HCP Common Unit. See The Merger Agreement Earn-Out beginning on page 123.

**Q: How do I elect the form of consideration I receive in the Merger?**

**A:** An election form and other appropriate transmittal materials will be mailed not less than 30 days prior to the anticipated effective time of the Merger to each holder of HCP Common Units as of five days prior to the mailing date of such election form and transmittal materials. Each election form will permit such holder, subject to certain allocation, proration, and election procedures, (i) to elect to receive cash for all of the HCP Common Units held by such holder, (ii) to elect to receive DaVita Common Stock for all of such HCP Common Units, (iii) to elect to receive a combination of cash and DaVita Common Stock, or (iv) to indicate that such record holder has no preference as to the receipt of cash or DaVita Common Stock for such HCP Common Units. See Election and Exchange Procedures Election Procedures beginning on page 108.

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**Q: Can I dissent and require appraisal of my shares?**

A: Yes. Under California law, if the Merger is completed, you have the right to seek appraisal of the fair market value of your HCP Common Units as determined by a California court and receive such amount in cash, but only if (i) you do not vote in favor of approving the principal terms of the Merger and the Merger Agreement or you vote against the principal terms of the Merger and the Merger Agreement and (ii) you comply with the requirements of California law. See *The Merger HCP Member Dissenters Rights* beginning on page 103.

**Q: Is the Merger expected to be taxable to me?**

A: The Merger will be a taxable transaction to the HCP Members for U.S. federal income tax purposes. In general, an HCP Member who exchanges its HCP Common Units for cash and/or DaVita Common Stock pursuant to the Merger will recognize a gain or loss in an amount equal to the difference between (i) such HCP Member's amount realized, calculated as the sum of (A) the amount of any cash received, (B) the fair market value of any DaVita Common Stock received, and (C) such HCP Member's share, for U.S. federal income tax purposes, of HCP's liabilities immediately prior to the Merger and (ii) such HCP Member's adjusted tax basis in the HCP Common Units exchanged therefor. An HCP member's amount realized will include any earn-out payments received and any cash and DaVita Common Stock that is placed in escrow and actually or constructively received. If an HCP Member receives DaVita Common Stock and recognizes gain in the Merger, such HCP Member may incur a tax liability without a corresponding receipt of cash sufficient to pay such liability. For a more detailed description of the tax consequences of the exchange of HCP Common Units in the Merger, including the application of the installment method to any gain recognized by an HCP member, please see *Material United States Federal Income Tax Consequences* beginning on page 232. Tax matters can be complicated, and the tax consequences of the Merger to you will depend on your particular tax situation. HCP Members should consult their tax advisors for a full understanding of the Merger's tax consequences.

**Q: When can I expect to receive the merger consideration?**

A: Promptly following the effective time of the Merger, but in no event later than ten days thereafter, you will receive a letter of transmittal with instructions informing you how to effect the surrender of your HCP Common Units in exchange for the merger consideration.

**Q: Where can I find more information on DaVita?**

A: DaVita files annual, quarterly, and current reports, proxy statements, and other information with the SEC. DaVita's SEC filings are available to the public from the SEC's website at <http://www.sec.gov>. Information about DaVita, including its SEC filings, is also available through its website at <http://www.davita.com>.

**Q: Who can help answer my questions?**

A: If you have any questions about the Merger, or if you need additional copies of this prospectus or voting instructions, you should contact: Matthew Mazdyasni

Executive Vice President and Chief Financial and Administrative Officer

HealthCare Partners Holdings, LLC

19191 South Vermont Avenue, Suite 200

Torrance, California 90502

(310) 354-4200



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**SUMMARY**

*The following is a summary that highlights information contained in this prospectus. This summary does not contain all of the information that might be important to you. For a more complete description of the Merger Agreement and the transactions contemplated by the Merger Agreement, including the Merger and the issuance of shares of DaVita Common Stock to HCP Members, we encourage you to read carefully this entire prospectus, including the attached Annexes. In addition, we encourage you to read carefully the information incorporated by reference into this prospectus. You may obtain the information incorporated by reference into this prospectus without charge by following the instructions in the section entitled *Additional Information Where You Can Find More Information* beginning on page 236.*

**Information About the Companies**

*DaVita Inc.*

2000 16th Street

Denver, Colorado 80202

(888) 484-7505

DaVita Inc., which we refer to as DaVita, is a leading provider of kidney dialysis services in the United States for patients suffering from chronic kidney failure, also known as end stage renal disease, or ESRD. As of June 30, 2012, DaVita provided dialysis and other related services through a network of 1,884 outpatient dialysis centers located in the United States throughout 43 states and the District of Columbia, serving a total of approximately 149,000 patients. In addition, as of June 30, DaVita provided outpatient dialysis and administrative services to a total of 19 outpatient dialysis centers located in four countries outside of the United States. DaVita's centers offer outpatient hemodialysis treatments and other ESRD-related services, such as the administration of physician-prescribed pharmaceuticals, including erythropoietin, or EPO, vitamin D analogs, and iron supplements. DaVita also provides services for home dialysis patients, vascular access, disease management services, and laboratory services related to ESRD. As of June 30, DaVita also provided acute inpatient dialysis services in approximately 960 hospitals and related laboratory services throughout the United States. DaVita is a Delaware corporation, incorporated in the State of Delaware in 1994.

DaVita's U.S. dialysis and related lab services business accounts for approximately 92% of its consolidated net operating revenues for the twelve months ended June 30, 2012. Other ancillary services and strategic initiatives accounted for approximately 8% of its consolidated net operating revenues for the same period and relate primarily to its core business of providing kidney dialysis services. For the twelve months ended June 30, 2012, DaVita generated consolidated net operating revenues of \$7.365 billion, Adjusted EBITDA of \$1.585 billion, and net income attributable to DaVita of \$519 million. For an explanation of Adjusted EBITDA and a reconciliation of Adjusted EBITDA to Net Income, see *Selected Historical Financial and Other Data* beginning on page 178.

Additional information about DaVita is included in the documents incorporated by reference in this prospectus. See *Additional Information Where You Can Find More Information* beginning on page 236.

*Seismic Acquisition LLC*

2000 16th Street

Denver, Colorado 80202

(888) 484-7505

Seismic Acquisition LLC, which we refer to as Merger Sub, is a wholly-owned subsidiary of DaVita and was formed solely for the purpose of consummating the Merger. Merger Sub has not carried on any activities to date, except for activities incidental to its formation and activities undertaken in connection with the Merger.



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*HealthCare Partners Holdings, LLC*

19191 South Vermont Avenue, Suite 200

Torrance, California 90502

(310) 354-4200

HealthCare Partners Holdings, LLC, together with its subsidiaries and affiliated physician groups, which we refer to as HCP (unless the context indicates otherwise), is a patient- and physician-focused, integrated health care delivery and management company with nearly three decades of providing coordinated, outcomes-based medical care in a cost-effective manner. Through capitation contracts with some of the nation's leading health plans, as of June 30, 2012, HCP had approximately 669,400 current members under its care in southern California, central and south Florida and Las Vegas, Nevada. Of these, approximately 190,700 individuals represented patients enrolled in Medicare Advantage. The remaining approximately 478,700 individuals represented managed care members whose health coverage is provided through their employer or who have individually acquired health coverage directly from a health plan or as a result of their eligibility for Medicaid benefits. In addition, during 2011, HCP (through its affiliated physicians, physician groups and IPAs) provided care to over 412,000 fee-for-service patients.

The patients of HCP's affiliated physicians, physician groups, and IPAs benefit from an integrated approach to medical care that places the physician at the center of patient care. As of June 30, 2012, HCP delivered services to its members via a network of over 1,800 affiliated group and other network primary care physicians, 139 network hospitals, and several thousand affiliated group and network specialists. Together with hundreds of case managers, registered nurses and other care coordinators, these medical professionals utilize a comprehensive data analysis engine, sophisticated risk management techniques, and clinical protocols to provide high-quality, cost effective care to HCP's members. HCP is a California limited liability company, formed in the State of California in 2005 in connection with a reorganization of its subsidiaries.

HealthCare Partners Affiliates Medical Group, or HCPAMG, one of HCP's affiliated physician groups, was formed in 1994 and is organized as a California general partnership with 30 general partners. HCPAMG and its affiliates provide managed health care and related services through regional delivery systems and a joint venture to approximately 586,000 enrollees in southern California under contracts with various health plans and to privately insured individuals. Under a management services agreement, HCP earns a management fee from HCPAMG equal to a percentage of HCPAMG's revenues. HCPAMG provides professional medical services to the HCP-managed medical facilities that are located in California, and employs physicians or contracts with various other independent physicians, physician groups and independent practice associations, or IPAs, to provide the professional medical services in California. HCP obtains professional medical services from HCPAMG in California, rather than provide such services directly or through subsidiaries, in order to comply with California's prohibition against the corporate practice of medicine. Through the management services agreement, HCP has exclusive authority over all non-medical decision making related to the ongoing business operations of HCPAMG.

**The Merger (see page 80)**

DaVita and HCP have agreed to a business combination under the terms and conditions set forth in the Merger Agreement, which we describe in this prospectus. Pursuant to the Merger Agreement, Merger Sub will merge with and into HCP, with HCP continuing as the surviving entity and as a wholly-owned subsidiary of DaVita. We refer to this as the Merger. Following the Merger, DaVita will be renamed DaVita HealthCare Partners Inc. (DaVita Healthcare Partners). We have attached the Merger Agreement and the Amendment to the Merger Agreement as Annex A-1 and Annex A-2 to this prospectus. We encourage you to carefully read the Merger Agreement and the Amendment to the Merger Agreement in their entirety. We currently expect that the Merger will be completed during the fourth quarter of 2012. However, we cannot predict the actual timing of the completion of the Merger.

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**The Special Meeting of the HCP Members (see page 78)**

***Date, Time and Place***

The special meeting of the HCP Members will be held at HCP's headquarters at 19191 South Vermont Avenue, Suite 200, Torrance, California 90502, on October 30, 2012, at 6:00 p.m., local time. At the special meeting, you will be asked:

to approve the principal terms of the Merger and the Merger Agreement; and

to transact any other business that may properly come before the special meeting.

***Units Entitled to Vote***

You may vote at the special meeting if you own HCP Common Units on the date of the special meeting. You may cast one vote for each HCP Common Unit that you own as of that date.

As of the close of business on September 25, 2012, there were 100,131,969.2 HCP Common Units outstanding and entitled to vote.

***Vote Required***

Approval of the principal terms of the Merger and the Merger Agreement requires the affirmative vote of HCP Members holding a majority of the issued and outstanding HCP Common Units entitled to vote at the special meeting. As more fully described under "Other Agreements - Voting Agreement" and "Other Agreements - Support Agreements" beginning on page 155 and page 156, respectively, HCP Medical Group and the Substantial Members collectively owned, directly or indirectly, 74,143,125.7 HCP Common Units as of September 25, 2012, which represented approximately 74% of the outstanding HCP Common Units, and they have each entered into an agreement with DaVita pursuant to which they have agreed to vote all of the HCP Common Units owned or controlled by them in favor of the approval of the principal terms of the Merger and the Merger Agreement. Accordingly, the approval of the principal terms of the Merger and the Merger Agreement by the HCP Members is assured.

**Ownership of DaVita After the Merger (see page 94)**

Based on the number of outstanding HCP Common Units and the number of outstanding shares of DaVita Common Stock as of June 30, 2012, DaVita anticipates that HCP Members will own approximately 9.0% of the outstanding shares of DaVita Common Stock following the Merger.

**HCP's Reasons for the Merger; Recommendation of the HCP Board (see page 96)**

After careful consideration of the Merger and the terms of the Merger Agreement, the HCP Board has determined that the Merger is fair, advisable and in the best interests of HCP and the HCP Members. Accordingly, the HCP Board unanimously recommends that the HCP Members approve the principal terms of the Merger and the Merger Agreement. For a discussion of the material factors considered by the HCP Board in reaching its conclusions, see "The Merger - HCP's Reasons for the Merger; Recommendation of the HCP Board" beginning on page 96.

**The HCP Board recommends that you vote **FOR** the approval of the principal terms of the Merger and the Merger Agreement.**

***Fairness Opinion (see page 97)***

The HCP Board did not receive a fairness opinion regarding the fairness of the merger consideration to the HCP Members from a financial point of view, or with respect to projections, estimates and other forward-looking statements about the future earnings or other measures of the future performance of HCP.



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**Interests of HCP's Managers and Executive Officers in the Merger (see page 98)**

In considering the recommendations of the HCP Board, you should be aware that some of HCP's managers and executive officers have interests in the Merger that are different from, or in addition to, your interests as an HCP Member, and that may present actual or potential conflicts of interests. These interests include, among others:

the appointment of Dr. Margolis to fill a newly created directorship as co-chairman of the DaVita Board upon completion of the Merger for a minimum period of four consecutive annual meetings of stockholders of DaVita;

the entry into employment and noncompetition and nonsolicitation agreements with DaVita (for periods ranging from three years to seven years after the closing of the Merger) by Drs. Margolis and Chin and Messrs. Mazdyasni and Calhoun;

the beneficial ownership of approximately 74% of the outstanding HCP Common Units and a substantial number of HCP Options (all of such options, as with all HCP Options, will be cashed out at the completion of the Merger); and

the right to indemnification and coverage under directors' and officers' liability insurance for a six-year coverage period commencing at the effective time of the Merger.

The HCP Board was aware of these interests and considered them, among other matters, prior to making its determination to recommend the approval of the principal terms of the Merger and the Merger Agreement to the HCP Members. For a more complete discussion of the interests of the HCP managers and executive officers in the Merger, see "The Merger - Interests of HCP's Managers and Executive Officers in the Merger" beginning on page 98.

**Treatment of HCP Options in the Merger (see page 101)**

The Merger Agreement provides that each HCP Option that is outstanding immediately prior to the effective time of the Merger will accelerate and become fully vested and exercisable as of immediately prior to the effective time of the Merger and, to the extent unexercised, will be cancelled, extinguished, and automatically converted into the right to receive a cash payment for each HCP Common Unit subject to such HCP Option equal to the excess of (a) the merger consideration per fully diluted HCP Common Unit over (b) the per unit exercise price payable in respect of such HCP Common Unit issuable pursuant to such HCP Option.

A portion of the merger consideration will be withheld from payment and contributed to three escrow accounts that support a potential working capital adjustment, certain indemnification obligations, certain contingent payments, and certain costs and expenses that may be incurred by the Member Representative. Funds will be released from these escrow accounts in accordance with the terms and conditions set forth in the Merger Agreement. For further discussion of the escrowed merger consideration, see "The Merger Agreement - Escrowed Merger Consideration," "The Merger Agreement - Member Representative Escrow," and "The Merger Agreement - Nevada Escrow" beginning on pages 120, 124 and 125, respectively.

In addition to the closing merger consideration payable upon the consummation of the Merger and the amounts that may be released from the three escrow accounts over time, HCP Members and holders of HCP Options may receive additional cash consideration in the form of two separate earn-out payments that are based on the financial performance of HCP for fiscal years 2012 and 2013. To the extent that any earn-out payment is made, HCP Members and holders of HCP Options will be entitled to receive for each HCP Common Unit and each HCP Common Unit subject to an HCP Option held as of the consummation of the Merger, an amount equal to such earn-out payment divided by the number of fully diluted HCP Common Units. See "The Merger Agreement - Earn-Out" beginning on page 123.

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### **Accounting Treatment (see page 102)**

The Merger will be accounted for using the purchase method of accounting in accordance with the Financial Accounting Standards Board's, or FASB's, Accounting Standard Codification Topic 805, Business Combinations, and the resultant goodwill and other intangible assets will be accounted for under Accounting Standard Codification Topic 350, Intangibles—Goodwill and Other. The total purchase price has been preliminarily allocated based on information available to DaVita as of the date of this prospectus to the tangible and intangible assets acquired, liabilities assumed, and contingent earn-out consideration based on management's preliminary estimates of their current fair values. These estimates and assumptions of fair values of assets acquired and liabilities assumed and contingent earn-out consideration and related operating results are subject to change that could result in material differences between the actual amounts and those reported in the unaudited pro forma condensed consolidated financial statements.

### **HCP Member Dissenters' Rights (see page 103)**

Under Sections 17601-17605 of the California Corporations Code, record holders of HCP Common Units who do not vote for the approval of the principal terms of the Merger and the Merger Agreement, or who vote against approval of the principal terms of the Merger and the Merger Agreement, who properly demand and exercise their dissenters' rights and who comply with the terms of Sections 17601-17605 of the California Corporations Code will be entitled to obtain payment in cash for the judicially determined fair value of their HCP Common Units if the Merger is completed, in lieu of receiving the merger consideration. The relevant provisions of the California Corporations Code are included as Annex F to this prospectus. HCP Members are encouraged to read these provisions carefully and in their entirety. Moreover, due to the complexity of the procedures for exercising dissenters' rights, HCP Members who are considering exercising such rights are encouraged to seek the advice of legal counsel. Failure to strictly comply with the applicable California Corporations Code provisions will result in the loss of dissenters' rights. See The Merger—HCP Member Dissenters' Rights beginning on page 103. In addition, DaVita may terminate the Merger Agreement if at the time of termination holders of more than 5% of the outstanding HCP Common Units have validly exercised their dissenters' rights (and not withdrawn such exercise or otherwise become ineligible to effect such exercise) in respect of the Merger.

### **Board of Directors and Executive Officers of DaVita After the Merger (see page 107)**

The Merger Agreement provides that at the closing the DaVita Board will be increased in size by one member, and Dr. Margolis will be appointed to fill the newly created directorship as Co-Chairman. In addition, for a minimum period of four consecutive annual meetings of stockholders of DaVita, Dr. Margolis will hold the office of Co-Chairman until the expiration of his term of office or until his successor is duly elected and qualified, subject to his earlier death, resignation, disqualification, or removal in accordance with DaVita's bylaws and/or applicable law.

Information about the current DaVita directors and executive officers can be found in the documents listed under the heading Additional Information—Where You Can Find More Information beginning on page 236.

### **DaVita Financing (see page 106)**

DaVita expects to finance the cash portion of the merger consideration through a combination of borrowings under new senior secured facilities and new senior notes. DaVita and Merger Sub have agreed to use their reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary to arrange and obtain the financing required to consummate the transactions contemplated by the Merger Agreement as promptly as practicable after the date of the Merger Agreement. On August 28, 2012, DaVita issued \$1.25 billion of 5.75% senior notes due 2022. The proceeds of the senior notes were placed in escrow.

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pending the consummation of the Merger and the satisfaction of certain other conditions. On August 24, 2012, DaVita, its subsidiary guarantors and JPMorgan Chase Bank, N.A., as Administrative Agent, entered into an amendment of its senior secured credit agreement to permit or facilitate, among other things, \$3.0 billion of additional term loans under the senior secured facilities, the Merger and the new senior notes. The effectiveness of the amendment is subject to various conditions, including the commitments of lenders for the full \$3.0 billion of additional term loans. DaVita currently anticipates that the additional term loans will consist of a new five year term loan A-3 in the principal amount of \$1.35 billion and a new seven year term loan B-2 in the principal amount of \$1.65 billion. DaVita has obtained commitments for the new five year term loan A-3, which are subject to various conditions, including the receipt of commitments for the new seven year term loan B-2 which are not expected to be received until immediately prior to the closing of the Merger. No assurance can be given that unconditional binding commitments for the full amount of the new term loans will be obtained, that the amendment will become effective or that the conditions to the release of the proceeds of the 5.75% senior notes will be satisfied. In the event that neither DaVita nor Merger Sub can obtain all of the financing required for the Merger, each party to the Merger generally has the right to terminate the Merger Agreement and HCP may be entitled to a termination fee. For additional information, please see [The Merger Agreement Termination of the Merger Agreement](#) and [The Merger Agreement Termination Fee](#) beginning on page 151 and page 152, respectively.

### **The Merger Agreement (see page 116)**

Subject to the terms and conditions of the Merger Agreement and in accordance with California law, on the closing date, Merger Sub, a wholly owned subsidiary of DaVita and a party to the Merger Agreement, will merge with and into HCP. HCP will survive the Merger as a wholly owned subsidiary of DaVita, and the separate existence of Merger Sub will cease.

The closing of the Merger will occur at 10:00 a.m., New York City time, on a date to be specified by the parties to the Merger Agreement, which will be no later than the third business day after the satisfaction or waiver of all of the conditions to the closing provided in the Merger Agreement (other than conditions that by their nature are to be satisfied at the closing of the Merger, but subject to the satisfaction or waiver of such conditions at the closing), unless another time, date, or place is agreed to in writing by DaVita and HCP. For further discussion on the conditions to the Merger, see [Conditions to Completion of the Merger](#) below.

The description of the Merger Agreement and the Amendment to the Merger Agreement contained in this prospectus is qualified in its entirety by reference to the Merger Agreement, which are attached as Annex A-1 and Annex A-2 to this prospectus. We encourage you to read the Merger Agreement because it, and not any description of the Merger Agreement contained in this prospectus, is the principal document governing the Merger.

### **The Merger Consideration; Conversion or Cancellation of Units (see page 117)**

#### ***HCP Common Units***

The Merger Agreement provides that, upon the closing, each HCP Common Unit (whether or not subject to restriction) issued and outstanding immediately prior to the effective time (other than (1) HCP Common Units directly or indirectly owned by DaVita, Merger Sub, or HCP and (2) dissenting units) will be converted into the right to receive, at the election of the holder, the following consideration, subject to the portion of consideration being held back in the three escrow accounts and to any adjustment to the merger consideration (including a potential reduction in the merger consideration as a result of an estimated shortfall in working capital, if any, at the time of closing and a post-closing final working capital adjustment):

for each HCP Common Unit with respect to which a cash election has been effectively made and not revoked or lost, cash, without interest, in an amount equal to the amount obtained by dividing (a) the sum of (i) the product of 9,380,312 shares of DaVita Common Stock multiplied by the one day DaVita



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volume-weighted average stock price on the last trading day prior to the closing date (the aggregate closing stock consideration ), (ii) \$3,660,000,000 (the aggregate closing cash consideration), and (iii) the aggregate per unit exercise price of all HCP Options by (b) the Total Outstanding HCP Units (as defined in The Merger Agreement The Merger Consideration; Conversion or Cancellation of Units below) (the Per Unit Closing Consideration );

for each HCP Common Unit with respect to which a stock election has been effectively made and not revoked or lost, that number of shares of DaVita Common Stock (the Per Unit Closing Stock Consideration ) as is equal to the amount obtained by dividing (i) the Per Unit Closing Consideration by (ii) the one day DaVita volume-weighted average stock price on the last trading day prior to the closing date (the Exchange Ratio ); or

for each HCP Common Unit other than units as to which a cash election, a stock election, or a combination of stock and cash election has been effectively made and not revoked or lost, the Per Unit Closing Consideration or Per Unit Closing Stock Consideration as is determined in accordance with the Merger Agreement.

See The Merger Agreement Escrowed Merger Consideration, The Merger Agreement Member Representative Escrow, The Merger Agreement Nevada Escrow and The Merger Agreement Estimated Amounts Included in Closing Merger Consideration beginning on pages 120, 124, 125 and 119, respectively.

The per unit value of merger consideration to be received by HCP Members and holders of HCP Options will be based on the one day DaVita volume-weighted average stock price as of the trading day immediately prior to the closing date. Based upon the closing price of \$100.30 per share of DaVita Common Stock on, September 25, 2012, the last practicable day prior to the date of this prospectus, and assuming no estimated working capital adjustment at the time of closing, the consideration in the Merger would be \$44.29 per fully diluted HCP Common Unit.

An HCP Member may elect to receive the merger consideration represented by HCP Common Units in the form of cash or stock, or a combination thereof. However, notwithstanding any such election, an HCP Member may receive a combination of cash or stock that is different from what such HCP Member may have elected, depending on the elections made by other HCP Members, in order to ensure that the aggregate merger consideration of \$3.66 billion in cash and 9,380,312 shares of DaVita Common Stock, subject to certain adjustments, is fully allocated and paid in the Merger. No fractional shares of DaVita Common Stock will be issued in the Merger.

Drs. Margolis, Chin and Paulsen, and Mr. Mazdyasni have each entered into a support agreement with DaVita and HCP, whereby they have agreed to elect to receive merger consideration in the form of stock in exchange for at least 33% of the HCP Common Units owned, whether directly or indirectly, by them.

In addition, pursuant to the Merger Agreement, each HCP Common Unit may be entitled to the following consideration, to the extent that any such payments are made as described in The Merger Agreement Escrowed Merger Consideration, The Merger Agreement Post-Closing Merger Consideration Adjustment Determination, The Merger Agreement Earn-Out, The Merger Agreement Member Representative Escrow, and The Merger Agreement Nevada Escrow beginning on pages 120, 122, 123, 124 and 125, respectively:

payable upon the occurrence of those events specified in the Merger Agreement, an amount of cash (without interest) equal to the amount obtained by dividing (x) the post-closing adjustment amount by (y) the Total Outstanding HCP Units;

payable upon the occurrence of those events specified in the Merger Agreement, an amount of cash (without interest) equal to the amount obtained by dividing (x) each earn-out payment by (y) the Total Outstanding HCP Units;

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a non-transferable, contingent right to distributions of Escrow Payment (as defined in The Merger Agreement The Merger Consideration; Conversion or Cancellation of Units ) attributable to each HCP Common Unit, such distributions to be paid in accordance with the Merger Agreement;

a non-transferable, contingent right to distributions of MR Escrow Payment (as defined in The Merger Agreement The Merger Consideration; Conversion or Cancellation of Units ) attributable to each HCP Common Unit, such distributions to be paid in accordance with the Merger Agreement; and

a non-transferable, contingent right to distributions of Nevada Escrow Payment (as defined in The Merger Agreement The Merger Consideration; Conversion or Cancellation of Units ) attributable to each HCP Common Unit, such distributions to be paid in accordance with the Merger Agreement.

***HCP Options***

DaVita will not assume or otherwise replace any HCP Options in connection with the transactions. Upon the terms and subject to the conditions set forth in the Merger Agreement, each HCP Option that is outstanding immediately prior to the effective time will accelerate and become fully vested and exercisable as of immediately prior to the effective time and, to the extent unexercised, will be cancelled, extinguished, and automatically converted into the right to receive, for each HCP Common Unit subject to such HCP Option, in consideration of such cancellation, the following consideration, subject to the portion of the consideration being held back in the three escrow accounts described in The Merger Agreement Escrowed Merger Consideration, The Merger Agreement Member Representative Escrow, and The Merger Agreement Nevada Escrow beginning on pages 120, 124 and 125, respectively, and to any adjustment to the closing merger consideration described in The Merger Agreement Estimated Amounts Included in Closing Merger Consideration beginning on page 119:

payable upon the closing, an amount of cash (without interest) equal to the excess of the Per Unit Closing Consideration over the applicable per unit exercise price.

In addition, pursuant to the Merger Agreement, each HCP Common Unit subject to such HCP Option may be entitled to the following consideration, to the extent that any such payments are made as described in The Merger Agreement Escrowed Merger Consideration, The Merger Agreement Post-Closing Merger Consideration Adjustment Determination, The Merger Agreement Earn-Out, The Merger Agreement Member Representative Escrow, and The Merger Agreement Nevada Escrow beginning on pages 120, 122, 123, 124, and 125, respectively:

payable upon the occurrence of those events specified in the Merger Agreement, an amount of cash (without interest) equal to the amount obtained by dividing (x) the post-closing adjustment amount by (y) the Total Outstanding HCP Units;

payable upon the occurrence of those events specified in the Merger Agreement, an amount of cash (without interest) equal to the amount obtained by dividing (x) each earn-out payment by (y) the Total Outstanding HCP Units;

a non-transferable, contingent right to distributions of Escrow Payment attributable to each HCP Common Unit subject to such HCP Option, such distributions to be paid in accordance with the Merger Agreement;

a non-transferable, contingent right to distributions of MR Escrow Payment attributable to each HCP Common Unit subject to such HCP Option, such distributions to be paid in accordance with the Merger Agreement; and

a non-transferable, contingent right to distributions of Nevada Escrow Payment attributable to each HCP Common Unit subject to such HCP Option, such distributions to be paid in accordance with the Merger Agreement.



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The merger consideration may be subject to an estimated working capital adjustment at the time of closing. If the estimated net working capital minus the estimated indebtedness amount is less than negative \$149,000,000 (such deficiency stated as a positive number, the Estimated Shortfall Amount ), then the Closing Merger Consideration (as defined in the Merger Agreement) will be decreased by an amount equal to the deficiency, and the Per Unit Closing Consideration will be decreased by an amount equal to such deficiency divided by the Total Outstanding HCP Units.

### ***Post-Closing Merger Consideration Adjustment Determination***

The merger consideration also may be subject to a post-closing working capital adjustment that may cause the merger consideration to be more or less than what is described above. The amount of any final post-closing negative adjustment in the aggregate merger consideration will be satisfied from the Escrow Fund (as defined in The Merger Agreement Indemnification below) in cash and DaVita Common Stock. The amount of any final post-closing positive adjustment in the aggregate merger consideration will be paid by DaVita to the HCP Members and the holders of HCP Options, pro rata based on the fully diluted HCP Common Units held by such HCP Members or attributable to HCP Options held by such holders of HCP Options as of immediately prior to the closing relative to the Total Outstanding HCP Units, as soon as reasonably practicable after the determination of such adjustment and, in any event with respect to any such payment made to the HCP Members, within five business days thereafter; provided that any such payments made to the holders of HCP Options will be subject to certain withholding provisions set forth in the Merger Agreement. See The Merger Agreement Post-Closing Merger Consideration Adjustment Determination beginning on page 122.

### ***Earn-Out***

As additional merger consideration, a total of up to \$275,000,000, divided into two tranches, the first of which will consist of \$137,500,000 (the First Tranche ) and the second of which will consist of \$137,500,000 (the Second Tranche ), will be payable to the HCP Members, holders of HCP Options, and pursuant to the Nevada Settlement Agreements (as defined below) as set forth below:

If the Earn-Out EBITDA (as defined in The Merger Agreement Earn-Out below) for the fiscal year ended December 31, 2012 is equal to or greater than \$550,000,000, then DaVita will pay to the HCP Members and holders of HCP Options the First Tranche in cash, which will be allocated among the HCP Members and holders of HCP Options pro rata based on the fully diluted HCP Common Units held by such HCP Members or attributable to HCP Options held by such holders of HCP Options as of immediately prior to the closing relative to the Total Outstanding HCP Units; provided that any such payments made to the holders of HCP Options will be subject to certain withholding provisions set forth in the Merger Agreement.

If the Earn-Out EBITDA for the fiscal year ended December 31, 2013 is equal to or greater than \$600,000,000, then (x) DaVita will pay to the HCP Members and holders of HCP Options the Second Tranche (less the aggregate amount payable pursuant to clause (y) below) in cash, which will be allocated among the HCP Members and the holders of HCP Options pro rata based on the fully diluted HCP Common Units held by such HCP Members or attributable to HCP Options held by such holders of HCP Options as of immediately prior to the closing relative to the Total Outstanding HCP Units; provided that any such payments made to the holders of HCP Options will be subject to certain withholding provisions set forth in the Merger Agreement, and (y) DaVita will pay, or cause to be paid, any transaction settlement payment that is due and payable pursuant to each of the Nevada Settlement Agreements.

Assuming payment of the entire \$275,000,000 earn-out, each HCP Member would receive an additional approximately \$2.61 per fully diluted HCP Common Unit.

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DaVita's obligation to pay each of the per unit earn-out payments to the HCP Members and holders of HCP Options is an independent obligation of DaVita and is not otherwise conditioned or contingent upon the satisfaction of any conditions precedent to any preceding or subsequent per unit earn-out payment, and the obligation to pay a per unit earn-out payment to the HCP Members and holders of HCP Options will not obligate DaVita to pay any preceding or subsequent per unit earn-out payment. See *The Merger Agreement* "Earn-Out" beginning on page 123.

### ***Escrows***

***Escrowed Merger Consideration.*** A portion of the closing merger consideration equal to \$559,375,000 (collectively with any earnings or dividends thereon, if any, the *Escrowed Merger Consideration*), or approximately \$5.31 per fully diluted HCP Common Unit, will be withheld from the closing merger consideration otherwise deliverable to the HCP Members and holders of HCP Options on the closing date and contributed to escrow to serve as security for the benefit of DaVita (on behalf of itself or any other DaVita Indemnified Party (as defined in *The Merger Agreement* "Indemnification" below)) against (x) the indemnification afforded the DaVita Indemnified Parties in the Merger Agreement and (y) any reduction in the merger consideration payable to HCP Members and holders of HCP Options as a result of any post-closing adjustment to the merger consideration. The Escrowed Merger Consideration will consist of cash and DaVita Common Stock in the ratio of the number of HCP Common Units being converted to cash plus the number of HCP Options over the number of HCP Common Units being converted to DaVita Common Stock (the *Escrow Proportion*).

If any payment is required to be made to DaVita from the Escrowed Merger Consideration, such payment will be comprised of a mixture of cash and shares of DaVita Common Stock in the Escrow Proportion, with each share of DaVita Common Stock valued at the one day DaVita volume-weighted average stock price on the last trading day prior to such distribution date. Portions of the Escrowed Merger Consideration not subject to claims for indemnification by any DaVita Indemnified Party will be released, if available, to the HCP Members and holders of HCP Options periodically, with the first such release occurring on the second anniversary of the closing of the Merger and the last occurring in October 2017. On each release date, (i) the DaVita Common Stock being released, along with the aggregate amount of dividends or other distributions made on such stock or earnings on such dividends or other distributions, will be released to HCP Members who received DaVita Common Stock as merger consideration pro rata based on the number of shares of DaVita Common Stock contributed to escrow and (ii) the remaining cash being released, including all earnings on such cash, will be released to HCP Members and holders of HCP Options who received cash merger consideration pro rata based on the amount of cash contributed to escrow. You should be aware that as a result of fluctuations in the market value of DaVita Common Stock, the value of such shares on the closing date may be greater than, or less than, their value on the date that such shares are released from escrow, if they are released at all. For further information regarding the escrow distribution schedule, see *The Merger Agreement* "Escrowed Merger Consideration" beginning on page 120.

***Member Representative Escrow.*** A portion of the closing merger consideration equal to \$5,000,000, or approximately \$0.05 per fully diluted HCP Common Unit, consisting entirely of cash, will be withheld from the closing merger consideration otherwise deliverable to the HCP Members and holders of HCP Options on the closing date to fund, if necessary, (i) the HCP Members' share of the neutral accountant's fees and expenses; fees, costs, and expenses (other than taxes on any earnings) attributable to the establishment and maintenance of the Nevada escrow account; the HCP Members' share of the purchase price allocation accounting firm's fees and expenses; and any and all costs and expenses of the Member Representative, (ii) the expenses incurred by the Member Representative acting in such capacity, and (iii) any other expense described in the Merger Agreement as being paid from the Member Representative escrow account. See *The Merger Agreement* "Member Representative Escrow" beginning on page 124.

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***Nevada Escrow.*** A portion of the closing merger consideration equal to \$10,000,000, or approximately \$0.10 per fully diluted HCP Common Unit, consisting entirely of cash, will be withheld from the closing merger consideration otherwise deliverable to the HCP Members and holders of HCP Options on the closing date to fund, if applicable, certain transaction settlement payments that may become due and payable pursuant to (i) that certain Settlement Agreement, dated as of May 20, 2012, by and between JSA Healthcare Nevada, L.L.C. and Sherif W. Abdou, M.D. and (ii) that certain Settlement Agreement, dated as of May 20, 2012, by and between JSA Healthcare Nevada, L.L.C. and Amir Bacchus, M.D. (collectively, the Nevada Settlement Agreements ). See The Merger Agreement Nevada Escrow beginning on page 125.

**No Solicitation of or Discussions Relating to Competing Transaction (see page 130)**

The Merger Agreement contains provisions prohibiting HCP from seeking or discussing an alternative proposal to the transactions. Under these no solicitation provisions, HCP has agreed that it will not, and will cause each Business Entity and Related Consolidated Entity and its and their respective directors, officers, employees, agents, advisors, or other representatives not to, directly or indirectly, (a) initiate, solicit, or encourage any proposal or any inquiry that may reasonably be expected to lead to any proposal concerning a competing transaction, which includes the sale of any Business Entity or Related Consolidated Entity or any business thereof or a sale of any material assets of any Business Entity or Related Consolidated Entity, or (b) hold any discussions or enter into any contracts or other arrangements with, or provide any information or respond to, any third party concerning a proposed competing transaction or cooperate in any way with, agree to, assist or participate in, solicit, consider, entertain, facilitate, or encourage any effort or attempt by any third party to do or seek any of the foregoing.

HCP has also agreed in the Merger Agreement that if it or any of its affiliates is approached in any manner by a third party concerning a competing transaction, it will promptly, and in any event within 24 hours after contact, inform such third party of the restrictions relating to competing transactions set forth in the Merger Agreement and inform DaVita regarding such contact.

**Conditions to Completion of the Merger (see page 138)**

The obligations of HCP, DaVita, and Merger Sub to consummate the Merger are subject to the fulfillment or written waiver, at or prior to the closing, of each of the following conditions:

any waiting period and any extensions applicable to the Merger under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder (the HSR Act ) must have expired or have been terminated (effective July 3, 2012, early termination has been granted);

no governmental authority will have enacted, issued, promulgated, enforced, or entered any law (whether temporary, preliminary, or permanent) that has the effect of prohibiting or making illegal the transactions;

the registration statement (as amended or supplemented) of which this prospectus forms a part must have been declared effective and must be effective under the Securities Act of 1933, as amended (the Securities Act ), at the effective time, no stop order suspending effectiveness must have been issued, and there must be no action, suit, proceeding, or investigation seeking a stop order or to suspend the effectiveness of the registration statement pending before or threatened by the SEC; and

the principal terms of the Merger and the Merger Agreement must have been approved, authorized, and adopted by the affirmative vote of the HCP Members holding a majority of the issued and outstanding HCP Common Units.

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In addition to the conditions for all parties to the Merger Agreement, the obligations of DaVita and Merger Sub to consummate the Merger are subject to the fulfillment or written waiver, at or prior to the closing, of each of the following conditions:

the representations and warranties of HCP contained in Merger Agreement, after disregarding all qualifications relating to materiality or Material Adverse Effect (as defined in The Merger Agreement below), must be true and correct at and as of the date of the Merger Agreement and at and as of the closing, as though made at and as of the closing (or, if made as of a specific date, on and as of such date), except where the failure of all such representations and warranties to be so true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

HCP must have complied, in all material respects, with all covenants and agreements required to be complied with by it under the Merger Agreement on or before the closing;

the receipt of an officer's certificate, dated as of the closing date, executed by a duly authorized officer of HCP, certifying that the two preceding conditions have been satisfied;

each of the Substantial Members must have complied, in all material respects, with the covenants and agreements required to be complied with by them under their respective agreements with DaVita and HCP on or before the closing;

HCP Medical Group must have complied, in all material respects, with the covenants and agreements required to be complied with by it on or before the closing under the voting agreement that HCP Medical Group entered into with DaVita and HCP;

there shall not be threatened, instituted or pending any order, action or proceeding, before any court or other governmental authority with jurisdiction over material operations of HCP's business:

challenging or seeking to make illegal, or to delay, in any material respect, the consummation of the transactions or seeking to obtain material damages in connection with the transactions,

imposing or seeking to impose material limitations on the ability of DaVita or any of its affiliates to acquire or hold or to exercise full rights of ownership of any securities of HCP and its subsidiaries (the Business Entities ),

seeking to prohibit direct or indirect ownership or operation by DaVita or any of its affiliates of all or any material portion of the business or assets of the Business Entities, or to compel DaVita or any of its affiliates or the entities through which HCP conducts its business (other than the Business Entities) and that are consolidated with the Business Entities in the audited financial statements and The Magan Medical Group and California Medical Group Insurance Company, Risk Retention Group (collectively, the Related Entities ) to dispose of or to hold separately all or a material portion of the business or assets of DaVita and its affiliates or of the Business Entities, as a result of the transactions,

materially restricting or materially prohibiting the operations of the Related Entities' respective businesses after the closing in any geographic or product market or in any Program (as defined in The Merger Agreement Conditions to Completion of the Merger ), or

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seeking to invalidate or render unenforceable any material provision of the Merger Agreement or any of the other transaction documents;

the receipt by DaVita of documentation evidencing certain consents and authorizations;

each of HCP, the Member Representative, and an escrow agent must have executed and delivered to DaVita and Merger Sub the transaction documents to which it is a party and such other certificates, documents, and instruments as DaVita may reasonably request related to the transactions;



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the agreements and other documents related to HCPAMG, HealthCare Partners Medical Group, Inc., a California professional corporation ( HCPMGI ), and Seismic Medical Group, Inc., a California professional corporation ( SMG ), must be in full force and effect, valid and binding on the applicable Business Entities and any Related Entities that are parties thereto, and must not have been amended or otherwise modified since the date of the Merger Agreement; and

the receipt from HCP of one or more affidavits, as appropriate, allowable, and necessary under applicable law and under penalties of perjury, providing DaVita with written documentation that (i) no interest in any Business Entity either was or is a United States real property holding corporation either prior to or as of the closing date (in form and substance required under Treasury Regulation Section 1.897-2(h) or under Treasury Regulations issued pursuant to Section 1445 of the Code) or that (ii) no HCP Member is a foreign person (in form and substance required under Treasury Regulations issued pursuant to Section 1445 of the Code).

In addition to the conditions for all parties to the Merger Agreement, the obligations of HCP to consummate the Merger are subject to the fulfillment or written waiver, at or prior to the closing, of each of the following conditions:

the representations and warranties of DaVita and Merger Sub contained in Merger Agreement, after disregarding all qualifications relating to materiality or DaVita Material Adverse Effect (as defined in The Merger Agreement below), must be true and correct at and as of the date of the Merger Agreement and at and as of the closing, as though made at and as of the closing (or, if made as of a specific date, on and as of such date), except where the failure of all such representations and warranties to be so true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a DaVita Material Adverse Effect;

DaVita and Merger Sub must have complied, in all material respects, with all covenants and agreements required to be complied with by them under the Merger Agreement on or before the closing;

the receipt of an officer's certificate, dated as of the closing date, executed by a duly authorized officer of DaVita, certifying that the two preceding conditions have been satisfied;

there shall not be threatened, instituted, or pending any order, action, or proceeding, before any court or other governmental authority with jurisdiction over material operations of HCP's business:

challenging or seeking to make illegal, or to delay, in any material respect, the consummation of the transactions or seeking to obtain material damages in connection with the transactions,

imposing or seeking to impose material limitations on the ability of DaVita or any of its affiliates to acquire or hold or to exercise full rights of ownership of any securities of the Business Entities,

seeking to prohibit direct or indirect ownership or operation by DaVita or any of its affiliates of all or any material portion of the business or assets of the Business Entities, or to compel DaVita or any of its affiliates or the Related Entities to dispose of or to hold separately all or a material portion of the business or assets of DaVita and its affiliates or of the Business Entities, as a result of the transactions,

materially restricting or materially prohibiting the operations of the Related Entities' respective businesses after the closing in any geographic or product market or in any Program, or

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seeking to invalidate or render unenforceable any material provision of the Merger Agreement or any of the other transaction documents; and

each of DaVita, the Member Representative, and an escrow agent must have executed and delivered to DaVita and Merger Sub the transaction documents to which it is a party and such other certificates, documents, and instruments as HCP may reasonably request related to the transactions.

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For further discussion on the conditions to the Merger, see The Merger Agreement Conditions to Completion of the Merger beginning on page 138.

**Remedies; Specific Performance (see page 149)**

Following the closing, other than certain specific performance obligations (subject to certain limits on indemnification):

the indemnification provisions set forth in the Merger Agreement will be the sole and exclusive remedies of the parties for any breach of the representations and warranties contained in the Merger Agreement and for any failure to perform or comply with any covenant or agreement in the Merger Agreement or of the EQ Representations (as defined in The Merger Agreement Indemnification ); and

any and all claims arising out of or in connection with the transactions must be brought under and in accordance with the terms of the Merger Agreement.

In addition, in the event of a breach or a threatened breach by a party, any non-breaching party will be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance, and any other relief that may be available from a court of competent jurisdiction. For the avoidance of doubt, HCP and the Member Representative will not have the right to obtain a temporary restraining order, an injunction, specific performance, or any other equitable relief that may be available from a court of competent jurisdiction to cause the consummation of the closing if:

DaVita has complied with its financing covenants,

despite such compliance, the proceeds of the financing are not available to DaVita or Merger Sub, and

upon termination of the Merger Agreement, the termination fee is due and payable by DaVita to HCP in accordance with the Merger Agreement. See The Merger Agreement Remedies; Specific Performance beginning on page 149.

**Termination of the Merger Agreement (see page 151)**

***Termination by HCP or DaVita***

DaVita and HCP may terminate the Merger Agreement by mutual written consent. Either DaVita or HCP may terminate the Merger Agreement at any time prior to the closing:

if the closing has not occurred by November 30, 2012 (the Termination Date ); provided, however, that the right to terminate the Merger Agreement after the Termination Date will not be available to any party whose breach or failure to fulfill any obligation under the Merger Agreement was the cause of, or resulted in, the failure of the closing to occur on or prior to such date;

in the event that any governmental order enjoining or otherwise prohibiting the transactions becomes final and nonappealable;

upon written notice to the other party, if the approval of the principal terms of the Merger and the Merger Agreement by HCP Members holding a majority of the issued and outstanding HCP Common Units has not been obtained;

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in the event that one or more of the conditions to closing cannot be satisfied as of the closing date; provided, however, that the right to terminate the Merger Agreement for this reason will not be available to any party in breach of the Merger Agreement or whose failure to fulfill any obligation under the Merger Agreement was the cause of, or resulted in, such condition not to be satisfied as of the closing date; or

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in the event that neither DaVita nor Merger Sub has received the financing at any time following the satisfaction or waiver of all the conditions to DaVita and Merger Sub's obligations to consummate the transactions (other than those conditions that, by their nature, cannot be satisfied until the closing date, but which conditions could be satisfied if the closing date were the date of such termination); provided that the right to terminate the Merger Agreement for this reason will not be available to any party in breach of the Merger Agreement or whose failure to fulfill any obligation under the financing covenants of the Merger Agreement was the cause of, or resulted in, such failure of DaVita or Merger Sub to receive financing.

***Termination by DaVita***

DaVita may terminate the Merger Agreement if:

a breach of any representation, warranty, covenants or agreement on the part of HCP set forth in the Merger Agreement (including an obligation to consummate the transactions) has occurred that would, if occurring or continuing on the closing date, cause any of the conditions to DaVita and Merger Sub's obligations to consummate the transactions not to be satisfied, and such breach is not cured, or is incapable of being cured, within 30 days (but no later than the Termination Date) of receipt of written notice by DaVita to HCP of such breach; provided that DaVita is not then in breach of the Merger Agreement so as to cause any of the conditions to HCP's obligations to consummate the transactions not to be satisfied; or

upon written notice to HCP within five business days after obtaining the approval of the principal terms of the Merger and the Merger Agreement by HCP Members holding a majority of the issued and outstanding HCP Common Units, if at the time of termination holders of more than 5% of the outstanding HCP Common Units have validly exercised their dissenters' rights (and not withdrawn such exercise or otherwise become ineligible to effect such exercise) in respect of the transactions.

***Termination by HCP***

HCP may terminate the Merger Agreement if:

a breach of any representation, warranty, covenant, or agreement on the part of DaVita or Merger Sub set forth in the Merger Agreement (including an obligation to consummate the transactions) has occurred that would, if occurring or continuing on the closing date, cause any of the conditions to HCP's obligation to consummate the transactions not to be satisfied, and such breach is not cured, or is incapable of being cured, within 30 days (but no later than the Termination Date) of receipt of written notice by HCP to DaVita of such breach; provided that HCP is not then in breach of the Merger Agreement so as to cause any of the conditions to DaVita and Merger Sub's obligations to consummate the transactions not to be satisfied.

**Termination Fee (see page 152)**

The Merger Agreement provides that DaVita is required to pay HCP a \$125 million termination fee in the event that the Merger Agreement is terminated under certain circumstances. For a description of such circumstances, see The Merger Agreement Termination Fee beginning on page 152.

**Fees and Expenses (see page 153)**

Generally, all fees and expenses incurred in connection with the Merger Agreement and the transactions contemplated by the Merger Agreement will be paid by the party incurring those expenses, subject to the specific exceptions discussed in this prospectus.

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**Government Regulations (see page 173)**

DaVita's dialysis operations are subject to extensive federal, state and local, and foreign governmental regulations that require DaVita to meet various standards relating to, among other things, government payment programs, dialysis facilities and equipment, management of centers, personnel qualifications, maintenance of proper records, and quality assurance programs and patient care. Such regulations include licensure and certifications from the Centers for Medicare and Medicaid Services ( CMS ), the federal anti-kickback statute contained in the Social Security Act, the Ethics in Patient Referral Act, commonly known as the Stark Law, state laws governing fraud and abuse, The False Claims Act, and The Health Insurance Portability and Accountability Act of 1996. For a more detailed discussion of the governmental regulations that DaVita is subject to, see Information about HCP Government Regulations beginning on page 173.

In addition to those regulations described in relation to DaVita, HCP's business is subject to certain additional laws and regulations, including state laws with respect to the corporate practice of medicine and fee-splitting, the California Knox-Keene Health Care Service Plan Act of 1975 and other state laws regarding risk arrangements, Medicare and Medicaid regulations and the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010 (the Health Reform Acts ), as well as numerous federal, state and local licensing laws, and regulations, relating to, among other things, professional credentialing and professional ethics. For a more detailed discussion of the governmental regulations to which HCP is subject, see Information about HCP Government Regulations beginning on page 173.

**Risk Factors (see page 38)**

In evaluating the Merger, the Merger Agreement or the issuance of shares of DaVita Common Stock pursuant to the Merger Agreement, you should carefully read this prospectus and especially consider the factors discussed or referred to in the section entitled Risk Factors beginning on page 38. Such factors include, among other things:

the risk that average rates that commercial payors pay DaVita could decline significantly, which would have a material adverse effect on revenues, earnings and cash flows;

the fact that, if the number of patients with higher-paying commercial insurance declines, then DaVita's revenues, earnings and cash flows would be substantially reduced;

the risk that health care reform or changes in state Medicaid or other non-Medicare government-based programs or payment rates could substantially reduce DaVita's revenues, earnings and cash flows;

the fact that HCP will no longer be an independent company and that it will not have autonomy in its decision-making;

the risk that the Merger could compromise or diminish HCP's distinctive physician-owned, physician-led culture and business model, including the potential impact on current employees, affiliated physicians and physician group and IPA consolidation opportunities;

the fact that the number of shares of DaVita Common Stock offered as consideration is fixed and therefore the total merger consideration at the time of closing may have a greater or lesser value than at the time the Merger Agreement was signed;

the risk that, while the Merger is expected to be completed, there can be no assurance that all conditions to the parties' obligations to complete the Merger will be satisfied, and as a result, it is possible that the Merger may not be completed even if it is approved by the HCP Members;

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HCP's inability to seek specific performance to require DaVita to complete the Merger if (i) DaVita has complied with its financing covenants, (ii) despite such compliance, the proceeds of the financing are not available to DaVita or the Merger Sub, and (iii) upon termination of the Merger Agreement, the termination fee is due and payable by DaVita to HCP in accordance with the Merger Agreement, and

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the fact that HCP's sole remedy in connection with DaVita's failure to close under this circumstance would be limited to a termination fee of \$125 million;

the risks and costs to HCP if the Merger does not close, including the diversion of management and employee attention and the potential effect on HCP's business and its relationships with payors and physicians;

the restrictions on the conduct of HCP's business prior to the completion of the Merger, which may delay or prevent HCP from undertaking business opportunities that may arise and certain other actions it might otherwise take with respect to its operations pending completion of the Merger;

the risk that the cost of providing services under HCP's agreements will exceed its compensation;

the risk that laws regulating the corporate practice of medicine could restrict the manner in which HCP conducts its business;

the risk that reductions in reimbursement rates and future regulations may negatively impact HCP's business, revenue and profitability;

the risk that HCP may not be able to successfully establish a presence in new geographic regions;

the risk that reductions in the quality ratings of health maintenance organization plan customers of HCP could have an adverse effect on HCP's business;

the fact that HCP faces certain competitive threats that could reduce its profitability; and

the risk that a disruption in HCP's healthcare provider networks could have an adverse effect on HCP's operations and profitability.

**DaVita's Dividend Policy (see page 36)**

DaVita has never paid a cash dividend on DaVita Common Stock and has no present intention to commence the payment of cash dividends. It is possible that the DaVita board of directors (the DaVita Board) could determine in the future, based on DaVita's financial and other relevant circumstances at that time, to pay cash dividends. DaVita's senior secured credit agreement contains covenants that, among other things, limit DaVita's ability to pay dividends on its capital stock.

**Comparison of Rights of DaVita Stockholders and HCP Members (see page 221)**

HCP is a limited liability company organized under the laws of the State of California and, accordingly, the rights of HCP Members are governed by the California Limited Liability Company Act. DaVita is a corporation organized under the laws of the State of Delaware and, accordingly, the rights of the stockholders of DaVita are governed by the Delaware General Corporation Law (the DGCL). Therefore, upon completion of the Merger, the rights of the former HCP Members will be governed by the DGCL, the certificate of incorporation of DaVita, as amended, and the bylaws of DaVita, as amended. Certain differences between the current rights of the DaVita stockholders and the current rights of the HCP Members are described in detail under "Comparison of Rights of DaVita Stockholders and HCP Members" beginning on page 221.

**Material United States Federal Income Tax Consequences (see page 232)**



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The Merger will be a taxable transaction to the HCP Members for U.S. federal income tax purposes. In general, an HCP Member who exchanges its HCP Common Units for cash and/or DaVita Common Stock pursuant to the Merger will recognize a gain or loss in an amount equal to the difference between (i) such HCP Member's amount realized, calculated as the sum of (A) the amount of any cash received, (B) the fair market value of any DaVita Common Stock received, and (C) such HCP Member's share, for U.S. federal income tax purposes, of

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HCP's liabilities immediately prior to the Merger and (ii) such HCP Member's adjusted tax basis in the HCP Common Units exchanged therefor. An HCP member's amount realized will include any earn-out payments received and any cash and DaVita Common Stock that is placed in escrow and actually or constructively received. If an HCP Member receives DaVita Common Stock and recognizes gain in the Merger, such HCP Member may incur a tax liability without a corresponding receipt of cash sufficient to pay such liability. For a more detailed description of the tax consequences of the exchange of HCP Common Units in the Merger, including the application of the installment method to any gain recognized by an HCP member, please see "Material United States Federal Income Tax Consequences" beginning on page 232.

**Tax matters can be complicated, and the tax consequences of the Merger to you will depend on your particular tax situation. HCP Members should consult their tax advisors for a full understanding of the Merger's tax consequences.**

**Table of Contents****Summary Historical Financial and Operating Data for DaVita and HCP****DaVita**

The following summary historical financial information was derived from DaVita's audited historical financial statements for the years ended December 31, 2009, 2010, and 2011 and unaudited financial information for the six months ended June 30, 2011 and 2012 and the trailing twelve months ended June 30, 2012, incorporated by reference in this prospectus. Effective January 1, 2012, DaVita adopted FASB's ASU No 2011-07 *Health Care Entities - Presentation and Disclosure of Patient Service Revenue, Provision for Bad Debts, and the Allowance for Doubtful Accounts*. Upon adoption of this standard, DaVita was required to change the presentation of its provision for uncollectible accounts related to patient service revenue as a deduction from patient service operating revenues. These consolidated financial results have been revised for all prior periods presented to reflect the retrospective application of adopting these new presentation and disclosure requirements for the provision for uncollectible accounts. You should read the information set forth below in conjunction with DaVita's historical consolidated financial statements and related notes, incorporated herein by reference, and Selected Historical Financial and Other Data DaVita and Unaudited Pro Forma Condensed Consolidated Financial Information included in this prospectus beginning on pages 178 and 211, respectively.

	2009	Year ended December 31, 2010 (audited)	2011	Six months ended June 30, 2011	Six months ended June 30, 2012 (unaudited)	Twelve months ended June 30, 2012
(dollars in millions)						
<b>Statement of operations data:</b>						
Net dialysis patient service revenues, less provision for uncollectible accounts	\$ 5,601	\$ 5,877	\$ 6,273	\$ 2,992	\$ 3,465	\$ 6,745
Other revenue	343	395	519	232	332	620
Net operating revenues	5,944	6,272	6,792	3,224	3,797	7,365
<b>Operating expenses and charges:</b>						
Patient care costs	4,242	4,467	4,681	2,277	2,575	4,979
General and administrative	531	579	691	315	422	798
Depreciation and amortization	228	234	267	126	154	294
Provision for uncollectible accounts	5	4	7	3	4	8
Goodwill impairment charge <sup>(1)</sup>			24	24		
Legal proceeding contingency accrual and related expenses <sup>(2)</sup>					78	78
Equity investment income	(2)	(9)	(9)	(4)	(5)	(10)
Total operating expenses and charges	5,004	5,275	5,661	2,742	3,228	6,147
Operating income	940	997	1,131	482	569	1,218
Debt expense	(186)	(182)	(241)	(118)	(122)	(245)
Refinancing and debt redemption charges <sup>(3)</sup>		(74)				
Other income	4	3	3	1	2	3
Income from continuing operations before income taxes	758	744	893	365	449	976
Income tax expense	278	260	316	130	164	349
Income from continuing operations	480	484	577	235	285	627
Discontinued operations <sup>(4)</sup>			(4)	1		(4)
Net income	480	484	573	236	285	623
Less: Net income attributable to noncontrolling interests	(57)	(78)	(95)	(41)	(49)	(104)
Net income attributable to DaVita Inc.	\$ 423	\$ 406	\$ 478	\$ 195	\$ 236	\$ 519



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	Year ended December 31,			Six Months ended June 30,		Twelve months ended
	2009	2010	2011	2011	2012	June 30, 2012
	(dollars in millions, except per share data)					
<b>Earnings per share:<sup>(5)</sup></b>						
Basic income from continuing operations per share attributable to DaVita Inc.	\$ 4.07	\$ 3.99	\$ 5.09	\$ 2.03	\$ 2.51	5.58
Basic net income attributable to DaVita Inc.	\$ 4.08	\$ 4.00	\$ 5.05	\$ 2.03	\$ 2.51	5.54
Diluted income from continuing operations per share attributable to DaVita Inc.	\$ 4.05	\$ 3.93	\$ 4.99	\$ 1.98	\$ 2.46	5.48
Diluted net income attributable to DaVita Inc.	\$ 4.06	\$ 3.94	\$ 4.96	\$ 1.99	\$ 2.46	5.44
<b>Weighted average shares for earnings per share:<sup>(5)</sup></b>						
Basic	103,604,000	101,504,000	94,658,000	95,872,000	93,970,000	93,717,000
Diluted	104,168,000	103,059,000	96,532,000	98,014,000	95,866,000	95,468,000
<b>Amounts attributable to DaVita Inc.</b>						
Income from continuing operations	\$ 423	\$ 406	\$ 482	\$ 194	\$ 236	523
Discontinued operations			(4)	1		(4)
Net income	\$ 423	\$ 406	\$ 478	\$ 195	\$ 236	519
<b>Balance sheet data (at end of period):</b>						
Cash and cash equivalents	\$ 539	\$ 860	\$ 394	\$ 730	\$ 273	
Working capital	1,256	1,699	1,128	1,478	943	
Total assets	7,558	8,114	8,892	8,193	9,255	
Total debt	3,632	4,309	4,505	4,286	4,498	
Total shareholders' equity <sup>(5)</sup>	2,135	1,978	2,141	1,881	2,379	
<b>Other financial data:</b>						
Adjusted EBITDA <sup>(6)</sup>	\$ 1,225	\$ 1,288	\$ 1,534	\$ 660	\$ 740	1,585
Net debt <sup>(7)</sup>	3,142	3,503	4,171	3,610	4,281	
Ratio of net debt to Adjusted EBITDA (leverage ratio) <sup>(6)(8)</sup>	2.56x	2.72x	2.72x	2.69x	2.70x	2.70x
Ratio of Adjusted EBITDA to interest expense (interest coverage ratio) <sup>(6)(8)</sup>	6.59x	6.33x	6.78x	6.21x	6.92x	
Net cash provided by operating activities	667	840	1,180	534	534	1,180
Ratio of earnings to fixed charges <sup>(9)</sup>	3.58x	3.44x	3.31x	2.93x	3.20x	
<b>Operating data:</b>						
Maintenance capital expenditures <sup>(10)</sup>	114	159	224	88	122	259
Centers	1,530	1,612	1,820	1,669	1,903	1,903
Patients	118,000	125,000	143,000	131,000	150,000	150,000
U.S. Dialysis treatments	16,985,000	17,964,000	19,599,000	9,364,000	10,766,000	21,001,000

- (1) Operating expenses and charges in 2011 include \$24 million of a non-cash goodwill impairment charge related to our infusion therapy business.
- (2) Represents a legal proceeding contingency accrual and related expenses that resulted from an agreement we reached in principle to settle the Woodard private civil suit regarding allegations relating to DaVita's Epogen practices for the period from 1992 through 2010.
- (3) In 2010, we incurred \$74 million of refinancing and debt redemption charges in conjunction with the extinguishment of our prior senior secured credit facilities and the redemption of \$200 million of our previously outstanding 6<sup>5</sup>/<sub>8</sub>% senior notes.

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- (4) During 2011, we divested a total of 28 outpatient dialysis centers in conjunction with a consent order issued by the Federal Trade Commission on September 30, 2011 in order for us to complete the acquisition of DSI Renal, Inc. ( DSI ). In addition, we also completed the sale of two additional centers that were previously pending state regulatory approval in conjunction with the acquisition of DSI on October 31, 2011. The operating results of the historical DaVita divested centers are reflected as discontinued operations in our consolidated financial statements for all periods presented. In addition, the operating results for the DSI divested centers are reflected as discontinued operation in our consolidated financial statements beginning September 1, 2011.

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- (5) Share repurchases consisted of 3,794,686 shares of DaVita Common Stock for \$323 million in 2011, 8,918,760 shares of DaVita Common Stock for \$618 million in 2010, 2,902,619 shares of DaVita Common Stock for \$153 million in 2009, and 3,710,086 shares of DaVita Common Stock for \$316 million in the first six months of 2011. Shares issued in connection with stock awards amounted to 1,260,259 in 2011, 1,771,384 in 2010 and 2,104,304 in 2009.
- (6) We present Adjusted EBITDA because it is one of the components used in the calculations of the leverage ratio that is included in the covenants contained in our existing senior secured credit agreement, and we expect similar covenants to be included in our amended senior secured credit agreement; however, the terms of the amended senior secured credit agreement have not yet been finalized. Adjusted EBITDA is defined as net income attributable to DaVita Inc. before income taxes, debt expense, depreciation and amortization, noncontrolling interests, and equity investment income, net, and we further adjust for non-cash charges, stock-based compensation, pro forma amounts for acquisitions and assets sales as if they had been consummated on the first day of each period, and non-cash gains and credits. Management uses Adjusted EBITDA and similar calculations as measures to assess operating and financial performance including compliance with the financial covenants contained in our indentures and our senior secured credit agreement. Adjusted EBITDA is not a measure of financial performance computed in accordance with GAAP and should not be considered in isolation or as a substitute for operating income, net income, cash flows from operations, or other statement of operations or cash flow data prepared in conformity with GAAP, or as measures of profitability or liquidity. In addition the calculation of Adjusted EBITDA is susceptible to varying interpretations and calculation, and the amounts presented may not be comparable to similarly titled measures of other companies. Adjusted EBITDA may not be indicative of historical operating results, and we do not intend for it to be predictive of future results of operations or cash flows. For a reconciliation of Adjusted EBITDA to net income attributable to DaVita, see Selected Historical Financial and Other Data DaVita beginning on page 178.
- (7) Net debt is defined as total debt, plus outstanding letters of credit, excluding debt discounts, or premiums and less cash and cash equivalents.
- (8) For the six months ended June 30, 2012 and 2011, the leverage ratio, and interest coverage ratio are calculated using the trailing twelve months of Adjusted EBITDA. See Selected Historical Financial and Other Data DaVita beginning on page 178.
- (9) The ratio of earnings to fixed charges was computed by dividing earnings by fixed charges. Earnings for this purpose is defined as pretax income from continuing operations adjusted by adding back fixed charges expensed during the period. Fixed charges include debt expense (interest expense and the write-off and amortization of deferred financing costs), the estimated interest component of rental expense on operating leases, and capitalized interest.
- (10) Maintenance capital expenditures represent routine capital expenditures to maintain the current operations of the business and include such expenditures for system development, information technology equipment, and dialysis machines.

**Table of Contents****HCP Summary Historical Financial and Operating Data**

The following summary historical financial information was derived from HCP's audited historical financial statements for the years ended December 31, 2009, 2010, and 2011, unaudited financial information for the six months ended June 30, 2011 and 2012, and the unaudited financial information for the twelve months ended June 30, 2012. You should read the information set forth below in conjunction with HCP's historical financial statements and related notes thereto included in this prospectus and the discussion under "Management's Discussion and Analysis of Financial Conditions and Results of Operations" included in this prospectus beginning on page 184. The combined statement of operations and balance sheet data presented below are derived from the consolidated financial statements of HCP.

	2009	Year ended December 31, 2010 (audited)	2011	Six months ended June 30, 2011	2012 (unaudited)	Twelve Months ended June 30, 2012
(dollars in millions, except operating data)						
<b>Statement of operations data:</b>						
Medical revenues	\$ 1,731	\$ 2,049	\$ 2,375	\$ 1,158	\$ 1,294	\$ 2,511
Other operating revenues	46	40	47	22	28	53
Total operating revenues	1,777	2,089	2,422	1,180	1,322	2,564
<b>Operating expenses and charges:</b>						
Medical expenses	930	1,034	1,165	569	620	1,216
Hospital expenses	212	222	248	121	155	282
Clinic support and other operating costs	226	263	308	148	165	325
General and administrative expenses	136	178	207	101	110	216
Depreciation and amortization	26	29	31	16	16	31
Total operating expenses	1,530	1,726	1,959	955	1,066	2,070
Equity earnings of unconsolidated joint ventures	12	15	25	9	12	28
Operating income	259	378	488	234	268	522
Interest income	6	6	7	3	4	8
Interest expense	(6)	(5)	(16)	(9)	(6)	(13)
Gain on sale of investments	2		1	1		
Total other income (expense)	2	1	(8)	(5)	(2)	(5)
Income before income taxes	261	379	480	229	266	517
Provision for income taxes	41	49	71	37	33	67
Net income	\$ 220	\$ 330	\$ 409	\$ 192	\$ 233	\$ 450
<b>Balance sheet data (end of period):</b>						
Cash and cash equivalents	358	361	395	183	355	
Working capital	179	360	304	192	341	
Total assets	911	1,286	1,366	1,188	1,415	
Total debt	220	218	556	571	542	
Members' equity	340	566	188	29	248	
<b>Other financial data:</b>						
Total care dollars under management <sup>(1)</sup>	2,388	2,792	3,212	1,582	1,752	3,382
Adjusted EBITDA <sup>(2)</sup>	293	414	527	255	288	561
Capital expenditures	12	21	23	11	10	22
Net cash provided by operating activities	286	343	509	181	184	512
<b>Operating data:</b>						
Managed care members	589,900	658,000	667,700	659,200	669,400	
Medical clinic locations	99	129	152	138	157	



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Full time physicians	570	715	794	734	818	
IPA Primary care physicians	1,268	1,291	1,458	1,414	1,454	
Ratio of operating income to total care dollars under management	10.8%	13.5%	15.2%	14.8%	15.3%	15.4%

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- (1) In California, as a result of its managed care administrative services agreement with hospitals, HCP does not assume the direct financial risk for institutional (hospital) services, but is responsible for managing the care dollars associated with both the professional (physician) and institutional services being provided for the per-member per-month, or PMPM, fee attributable to both professional and institutional services. In those cases, HCP recognizes the surplus of institutional revenue less institutional expense as HCP revenue. In addition to revenues recognized for financial reporting purposes, HCP measures its total care dollars under management, which includes the PMPM fee payable to third parties for institutional (hospital) services where HCP manages the care provided to its members by the hospitals and other institutions, which are not included in GAAP revenues. HCP uses total care dollars under management as a supplement to GAAP revenues as it allows HCP to measure profit margins on a comparable basis across both the global capitation model (where HCP assumes the full financial risk for all services, including institutional services) and the risk sharing models (where HCP operates under managed care administrative services agreements where HCP does not assume the full risk). HCP believes that presenting amounts in this manner is useful because it presents its operations on a unified basis without the complication caused by models that HCP has adopted in its California market as a result of various regulations related to the assumption of institutional risk. Total care dollars under management is not a measure of financial performance computed in accordance with GAAP and should not be considered in isolation or as a substitute for revenues calculated in accordance with GAAP. Total care dollars under management includes PMPM payments to third parties that are not recorded in HCP's accounting records and have not been reviewed and are not otherwise subject to procedures by HCP's independent auditors. For a reconciliation of total care dollars under management to HCP's medical revenues, see Management's Discussion and Analysis of Financial Conditions and Results of Operations Total Care Dollars Under Management.
- (2) HCP uses Adjusted EBITDA and similar calculations as measures to assess operating and financial performance, including compliance with the financial covenants contained in its senior secured credit agreement. Adjusted EBITDA is defined as net income attributable to HCP before income taxes, net debt expense, depreciation and amortization, stock-based compensation, and any impairment charges. Adjusted EBITDA is not a measure of financial performance computed in accordance with GAAP and should not be considered in isolation or as a substitute for operating income, net income, cash flows from operations, or other statement of operations or cash flow data prepared in conformity with GAAP, or as measures of profitability or liquidity. In addition, the calculation of Adjusted EBITDA is susceptible to varying interpretations and calculation, and the amounts presented may not be comparable to similarly titled measures of other companies. Adjusted EBITDA may not be indicative of historical operating results, and HCP does not mean for it to be predictive of future results of operations or cash flows. For a reconciliation of Adjusted EBITDA to net income for HCP, see Selected Historical Financial and Other Data HCP beginning on page 182.

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**Summary Unaudited Pro Forma Condensed Consolidated Financial Information**

The following summary unaudited pro forma condensed consolidated statements of income and balance sheet data were derived from DaVita's unaudited pro forma condensed consolidated financial information included elsewhere in this prospectus. The pro forma other financial data and operating data were derived from historical operating data of each of DaVita and HCP. The unaudited pro forma condensed consolidated statements of income and balance sheet data are based on the audited financial statements for the year ended December 31, 2011 of each of DaVita and HCP and unaudited financial information for the six months ended June 30, 2012 of DaVita and HCP included elsewhere and/or incorporated by reference in this prospectus, and the unaudited financial information for trailing twelve months ended June 30, 2012. The unaudited pro forma condensed consolidated financial information gives effect to the Merger and related borrowings as if each had occurred on January 1, 2011, in the case of income statement data and other financial data derived therefrom, and gives effect to the Merger and related borrowings on June 30, 2012, in the case of balance sheet data and other financial data derived therefrom. The unaudited financial data has been prepared on a basis consistent with DaVita's and HCP's historical annual audited financial statements. In the opinion of management, such unaudited financial data reflects all necessary adjustments, consisting only of normal and recurring adjustments, necessary for a fair presentation of the results for those periods.

The summary unaudited pro forma condensed consolidated financial information has been derived from estimates and financial data that may change materially between the date of this prospectus supplement and the consummation of the Merger. The summary unaudited pro forma financial information below does not purport to represent what DaVita's results of operations or financial data would actually have been had the Merger and related borrowings in fact occurred on the dates specified, nor does it purport to project our results of operations or financial position for any future period or at any future date. Because the information below is a summary, you should read the following information in conjunction with the other information contained under the captions "DaVita Inc. and HealthCare Partners Holdings, LLC Unaudited Pro Forma Condensed Consolidated Financial Statements," "DaVita's and HCP's historical financial statements and the accompanying notes thereto, and other financial and statistical data included elsewhere or incorporated by reference in this prospectus. For information regarding the pro forma adjustments in the following summary unaudited pro forma condensed consolidated financial information, see "Selected Historical Financial and Other Data" and "DaVita Inc. and HealthCare Partners Holdings, LLC Unaudited Pro Forma Condensed Consolidated Financial Statements" beginning on page 178 and page 211, respectively.

**Table of Contents****Unaudited Pro Forma Condensed Consolidated Statement of Income Year ended December 31, 2011**

	Historical DaVita	Historical HCP	Pro forma adjustment Merger and related financing	Pro forma consolidated
	(dollars in millions, except per share data)			
Net dialysis patient service revenues, less provision for uncollectable accounts of \$190	\$ 6,273	\$		\$ 6,273
Integrated care revenue		2,375		2,375
Other revenues <sup>(1)</sup>	519	47		566
Net operating revenues	6,792	2,422		9,214
Operating expenses and charges:				
Patient care costs	4,681	1,721		6,402
General and administrative	691	207	(2)	896
Depreciation and amortization	267	31	143	425
			(16)	
Provision for uncollectible accounts	7			7
Equity investment income	(9)	(25)		(34)
Goodwill impairment charge	24			24
Total operating expenses and charges	5,661	1,934		7,720
Operating income	1,131	488		1,494
Debt expense	(241)	(16)	(181)	(446)
			(12)	
			17	
			(13)	
Other income	3	8		11
Income from continuing operations before income taxes	893	480		1,059
Income tax expense	316	71	(1)	386
Income from continuing operations	577	409		673
Discontinued operations:				
Income from operations of discontinued operations, net of tax	1			1
Loss on disposal of discontinued operations, net of tax	(5)			(5)
Net income	573	409		669
Less: Net income attributable to noncontrolling interests	(95)			(95)
Net income attributable to DaVita Inc.	\$ 478	\$ 409		\$ 574
<b>Earnings per share:</b>				
Basic income from continuing operations per share attributable to DaVita Inc.	\$ 5.09			\$ 5.56
Basic net income per share attributable to DaVita Inc.	\$ 5.05			\$ 5.52
Diluted income from continuing operations per share attributable to DaVita Inc.	\$ 4.99			\$ 5.46

Diluted net income per share attributable to DaVita Inc.	\$ 4.96	\$ 5.42
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	Historical DaVita	Historical HCP (dollars in millions, except per share data)	Pro forma adjustment Merger and related financing	Pro forma consolidated
<b>Weighted average shares for earnings per share:</b>				
Basic	94,658,027		9,380,312	104,038,339
Diluted	96,532,110		9,380,312	105,912,422
<b>Amounts attributable to DaVita Inc.:</b>				
Income from continuing operations	\$ 482			\$ 578
Discontinued operations	(4)			(4)
Net income	\$ 478			\$ 574
<b>Other financial data and ratios:</b>				
Adjusted EBITDA <sup>(2)</sup>	1,534	527	2	2,063
Net debt	4,171	167	3,728	8,066
Ratio of net debt to Adjusted EBITDA (leverage ratio) <sup>(2)(3)</sup>	2.72x			3.91x
Ratio of Adjusted EBITDA to interest expense (interest coverage ratio) <sup>(2)(4)</sup>	6.78x			4.97x
Ratio of earnings to fixed charges	3.31x			2.71x

- (1) Other revenues for DaVita include revenues from our ancillary services and strategic initiatives and fees for providing management and administrative services. Other revenues for HCP include revenues primarily from consulting services and fees from management and administrative services.
- (2) Adjusted EBITDA is one of the components used in the calculations of the leverage ratio that is included in the covenants contained in DaVita's existing senior secured credit agreement, and DaVita expects similar covenants to be included in its amended senior secured credit agreement; however, the terms of the amended senior secured credit agreement have not yet been finalized. Management uses Adjusted EBITDA and similar calculations as measures to assess operating and financial performance including compliance with the financial covenants contained in its indentures and its senior secured credit agreement. Adjusted EBITDA is not a measure of financial performance computed in accordance with GAAP and should not be considered in isolation or as a substitute for operating income, net income, cash flows from operations, or other statement of operations or cash flow data prepared in conformity with GAAP, or as measures of profitability or liquidity. In addition the calculation of Adjusted EBITDA is susceptible to varying interpretations and calculation, and the amounts presented may not be comparable to similarly titled measures of other companies. Adjusted EBITDA may not be indicative of historical operating results, and we do not mean for it to be predictive of future results of operations or cash flows. For a reconciliation of Adjusted EBITDA to net income attributable to DaVita and to net income for HCP, see Selected Historical Financial and Other Data and DaVita Inc. and HealthCare Partners Holdings, LLC Unaudited Pro Forma Condensed Consolidated Financial Statements included in this prospectus beginning on page 178 and page 211, respectively.
- (3) Leverage ratio under the existing senior secured credit agreement is defined as all funded debt plus the face amount of all letters of credit issued, minus cash and cash equivalents, divided by Adjusted EBITDA. The leverage ratio determines the interest rate payable by us for all loans other than the Term Loan B under the existing credit agreement by establishing the margin over the base interest rate (LIBOR) that is applicable.

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	December 31, 2011			
	Historical DaVita	Historical HealthCare Partners	Pro forma adjustments	Pro forma consolidated
(dollars in millions)				
Net debt per the existing senior secured credit agreement:				
Total debt (excluding debt discount of \$8 million and an additional \$27 million for the pro forma adjustments)	\$ 4,513	\$ 556	\$ 3,495	\$ 8,564
Letters of credit issued	52	6		58
	4,565	562	3,495	8,622
Less cash and cash equivalents	(394)	(395)	233	(556)
	\$ 4,171	\$ 167	\$ 3,728	\$ 8,066
Adjusted EBITDA	\$ 1,534	\$ 527	\$ 2	\$ 2,063
Leverage ratio	2.72x			3.91x

- (4) The Consolidated Interest Coverage Ratio is the ratio of Consolidated EBITDA as defined in DaVita's existing senior secured credit agreement, which we also refer to as Adjusted EBITDA, to Consolidated Interest (debt expense) and is calculated under DaVita's existing senior secured credit agreement as follows:

	Year ended December 31, 2011			
	Historical DaVita	Historical HCP	Pro forma adjustments	Pro forma consolidated
(dollars in millions)				
Net income	\$ 478	\$ 409	\$ (313)	\$ 574
Debt expense <sup>(a)</sup>	241	16	189	446
Income taxes	316	71	(1)	386
Depreciation and amortization	267	31	127	425
Stock compensation expense	49	7		56
Goodwill impairment	24			24
Noncontrolling interests and equity income, net	95			95
Other items <sup>(b)</sup>	64	(7)		57
Adjusted EBITDA	\$ 1,534	\$ 527	\$ 2	\$ 2,063
Interest expense	\$ 226	\$ 9	\$ 180	\$ 415
Consolidated Interest Coverage Ratio as defined in the senior secured credit agreement	6.78x			4.97x

(a) Debt expense includes interest expense, amortization of deferred financing costs and the amortization of debt discount.

(b) Represents pro forma acquisition EBITDA, non-cash gains or losses, other valuation adjustments and interest income.

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six months ended June 30, 2012

	Historical DaVita	Historical HCP (dollars in millions, except per share data)	Pro forma adjustment Merger and related financing	Pro forma consolidated
Dialysis patient service operating revenue, less provision for uncollectable accounts of \$107	\$ 3,465	\$		\$ 3,465
Integrated care revenue		1,294		1,294
Other revenues <sup>(1)</sup>	332	28		360
Net operating revenues	3,797	1,322		5,119
<b>Operating expenses and charges:</b>				
Patient care costs	2,575	940		3,515
General and administrative	422	110	(19)	513
Depreciation and amortization	154	16	72	234
			(8)	
Provision for uncollectible accounts	4			4
Equity investment income	(5)	(12)		(17)
Legal proceeding contingency accrual and related expenses	78			78
Total operating expenses	3,228	1,054		4,327
Operating income	569	268		792
Debt expense	(122)	(6)	(89)	(218)
			(6)	
			11	
			(6)	
Other income, net	2	4		6
Income before income taxes	449	266		580
Income tax expense	164	33	21	218
Net income	285	233		362
Less: Net income attributable to noncontrolling interests	(49)			(49)
Net income	\$ 236	\$ 233		\$ 313
<b>Earnings per share:</b>				
Basic	\$ 2.51			\$ 3.03
Diluted	\$ 2.46			\$ 2.97
<b>Weighted average shares for earnings per share:</b>				
Basic	93,970,295		9,380,312	103,350,607



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Diluted	95,865,605		9,380,312	105,245,917
<b>Balance sheet data (at end of period):</b>				
Cash and cash equivalents	\$ 273	\$ 355	\$ (176)	\$ 452
Working capital	943	341	(373)	911
Total assets	9,255	1,415	4,523	15,193
Total debt	4,498	542	3,484	8,524
Total shareholders' equity attributable to DaVita Inc. and members equity	2,379	248	648	3,275
<b>Other financial data and ratios:</b>				
Adjusted EBITDA <sup>(2)</sup>	740	288	19	1,047
Net debt	4,281	204	3,686	8,171
Ratio of net debt to Adjusted EBITDA (leverage ratio) <sup>(2)(4)</sup>	2.70x			3.77x
Ratio of Adjusted EBITDA to interest expense (interest coverage ratio) <sup>(3)(4)</sup>	6.92x			5.23x
Ratio of earnings to fixed charges	3.20x			2.86x

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- (1) Other revenues for DaVita include revenues from our ancillary services and strategic initiatives and fees for providing management and administrative services and the other revenues for HCP include revenues primarily from consulting services and fees from management and administrative services.
- (2) We present Adjusted EBITDA because it is one of the components used in the calculations of the leverage ratio that is included in the covenants contained in our existing senior secured credit agreement, and we expect similar covenants to be included in our amended senior secured credit agreement; however, the terms of the amended senior secured credit agreement have not yet been finalized. Adjusted EBITDA is defined as net income attributable to DaVita before income taxes, debt expense, depreciation and amortization, noncontrolling interests, and equity investment income, net, and we further adjust for non-cash charges, stock-based compensation, pro forma amounts for acquisitions and assets sales as if they had been consummated on the first day of each period, and non-cash gains and credits. Management uses Adjusted EBITDA and similar calculations as measures to assess operating and financial performance including compliance with the financial covenants contained in our indentures and our senior secured credit agreement. Adjusted EBITDA is not a measure of financial performance computed in accordance with GAAP and should not be considered in isolation or as a substitute for operating income, net income, cash flows from operations, or other statement of operations or cash flow data prepared in conformity with GAAP, or as measures of profitability or liquidity. In addition the calculation of Adjusted EBITDA is susceptible to varying interpretations and calculation, and the amounts presented may not be comparable to similarly titled measures of other companies. Adjusted EBITDA may not be indicative of historical operating results, and we do not intend for it to be predictive of future results of operations or cash flows. For a reconciliation of Adjusted EBITDA to net income attributable to DaVita, see Selected Historical Financial and Other Data DaVita beginning on page 178.
- (3) The interest coverage ratio is the ratio of Consolidated EBITDA as defined in DaVita's existing senior secured credit agreement, which also refer to as Adjusted EBITDA, to Consolidated Interest Expense (debt expense) and is calculated under DaVita's existing senior secured credit agreement as follows:

	Rolling twelve months ended June 30, 2012			
	Historical DaVita	Historical HCP	Pro forma adjustments	Pro forma consolidated
	(dollars in millions)			
Net income	\$ 519	\$ 450	\$ (315)	\$ 654
Debt expense <sup>(a)</sup>	245	13	185	443
Income taxes	349	67	23	439
Depreciation and amortization :	294	31	128	453
Stock compensation expense	50	8	(1)	57
Noncontrolling interest less equity income, net	104			104
Other items <sup>(b)</sup>	24	(8)	1	17
 Adjusted EBITDA	 \$ 1,585	 \$ 561	 \$ 21	 \$ 2,167
 Interest expense	 \$ 229	 \$ 5	 \$ 180	 \$ 414
 Consolidated interest coverage ratio as defined in the secured credit agreement	 6.92x			 5.23x

(a) Debt expense includes interest expense, amortization of deferred financing costs, the amortization of debt discount.

(b) Represents pro forma acquisition EBITDA, non-cash gains or losses and other valuation adjustments and interest income.

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- (4) Leverage ratio under DaVita's existing senior secured credit agreement is defined as all funded debt plus the face amount of all letters of credit issued, minus cash and cash equivalents, divided by Adjusted EBITDA. The leverage ratio determines the interest rate payable by DaVita for all loans other than the Term Loan B under the existing credit agreement by establishing the margin over the base interest rate (LIBOR) that is applicable.

	Historical DaVita	Historical HCP	June 30, 2012 Pro forma adjustments (dollars in millions)	Pro forma consolidated
Net debt per the existing senior secured credit agreement:				
Total debt (excluding debt discount of \$7 million and an additional \$27 million for the pro forma adjustments)	\$ 4,505	\$ 542	\$ 3,510	8,557
Letters of credit issued	49	17		66
	\$ 4,554	\$ 559	\$ 3,510	\$ 8,623
Less cash and cash equivalents	(273)	(355)	176	(452)
	\$ 4,281	\$ 204	\$ 3,686	8,171
Adjusted EBITDA	\$ 1,585	\$ 561	\$ 21	2,167
Leverage ratio	2.70x			3.77x

**Table of Contents****UNAUDITED PRO FORMA COMBINED PER SHARE/UNIT INFORMATION**

The following table sets forth for the periods presented certain historical per share data of DaVita Common Stock and per unit data of HCP Common Units on a historical basis and on unaudited pro forma and pro forma equivalent bases after giving effect to the Merger under the purchase method of accounting. The historical per share data of DaVita and per unit data of HCP has been derived from, and should be read in conjunction with, the historical financial statements of DaVita and HCP incorporated by reference or included in this prospectus. See *Additional Information Where You Can Find More Information*, *Selected Historical Financial and Other Data DaVita*, and *Selected Historical Financial and Other Data HCP* beginning on page 236, 178 and 182 respectively. The unaudited pro forma per share data and per unit data has been derived from, and should be read in conjunction with, the unaudited pro forma condensed consolidated financial information provided in the section titled *DaVita Inc. and HealthCare Partners Holdings, LLC Unaudited Pro Forma Condensed Consolidated Financial Statements* beginning on page 211.

The DaVita unaudited pro forma data shows how each share of DaVita Common Stock, including the 9,380,312 shares to be issued in the Merger, would have participated in net income and book value of DaVita if the companies had always been consolidated for accounting and financial reporting purposes for all periods presented. These amounts, however, are not intended to reflect future per share levels of net income and book value of DaVita Common Stock.

	<b>For the Six Months Ended June 30, 2012</b>	<b>For the Year Ended December 31, 2011</b>
<b>DAVITA HISTORICAL PER COMMON SHARE DATA</b>		
Net income per common share attributable to DaVita:		
Basic	2.51	\$ 5.05
Diluted	2.46	\$ 4.96
Cash dividends paid per common share		
<b>Book value per common share</b>	<b>25.17</b>	<b>\$ 22.86</b>
<b>HCP HISTORICAL PER UNIT DATA</b>		
Net income per unit:		
Basic	\$ 2.32	\$ 4.08
Diluted	\$ 2.20	\$ 3.87
Cash dividends paid per unit		
<b>Book value per unit</b>	<b>\$ 2.47</b>	<b>\$ 1.88</b>
<b>DAVITA UNAUDITED PRO FORMA PER COMMON SHARE DATA</b>		
Net income per common share attributable to DaVita:		
Basic	\$ 3.03	\$ 5.52
Diluted	\$ 2.97	\$ 5.42
Cash dividends paid per common share		
<b>Book value per common share</b>	<b>\$ 31.53</b>	<b>\$ 27.58</b>

**Table of Contents****PER SHARE MARKET PRICE DATA AND DIVIDEND INFORMATION**

DaVita Common Stock trades on the New York Stock Exchange under the symbol **DVA**. The table below sets forth, for the periods indicated, the range of high and low per share sales prices for DaVita Common Stock as reported on the New York Stock Exchange. For current price information, you should consult publicly available sources. DaVita has never paid a cash dividend on DaVita Common Stock and has no present intention to commence the payment of cash dividends. HCP is not a public company and, accordingly, there is no market price for the HCP Common Units.

	<b>High</b>	<b>Low</b>
For the quarterly period ended:		
March 31, 2009	\$ 53.32	\$ 41.21
June 30, 2009	\$ 49.79	\$ 42.21
September 30, 2009	\$ 57.03	\$ 47.24
December 31, 2009	\$ 61.97	\$ 52.71
For the quarterly period ended:		
March 31, 2010	\$ 64.55	\$ 58.51
June 30, 2010	\$ 67.05	\$ 58.95
September 30, 2010	\$ 69.42	\$ 56.58
December 31, 2010	\$ 74.61	\$ 66.68
For the quarterly period ended:		
March 31, 2011	\$ 85.89	\$ 68.14
June 30, 2011	\$ 89.58	\$ 82.51
September 30, 2011	\$ 89.76	\$ 59.61
December 31, 2011	\$ 78.14	\$ 59.14
For the quarterly period ended:		
March 31, 2012	\$ 90.42	\$ 76.60
June 30, 2012	\$ 98.21	\$ 77.81
September 30, 2012 (through September 25, 2012)	\$ 103.97	\$ 94.21

It is possible that the DaVita Board could determine in the future, based on DaVita's financial and other relevant circumstances at that time, to pay cash dividends. The terms of DaVita's credit facility contains covenants that, among other things, limit DaVita's ability to pay dividends on its capital stock.

The following table presents the last reported sale price of a share of DaVita Common Stock, as reported on the New York Stock Exchange, and the equivalent value of an HCP Common Unit, in each case, on May 18, 2012, the last full trading day prior to the public announcement of the proposed merger, and on September 25, 2012, the last practicable day prior to the printing of this prospectus for which it was practicable to include this information.

<b>Date</b>	<b>DaVita Common Stock</b>	<b>HCP Common Unit Equivalent Per Share Value<sup>(1)</sup></b>
May 18, 2012	\$ 80.81	\$ 42.56
September 25, 2012	\$ 100.30	\$ 44.29

(1) Represents the per HCP Common Unit merger consideration, assuming no post-closing working capital adjustment and no earn-out payments, based upon the closing price of DaVita Common Stock on the applicable date.

The market value of the shares of DaVita Common Stock to be issued in exchange for HCP Common Units upon the completion of the Merger, if applicable, will not be known at the time HCP Members vote on the proposal to approve the principal terms of the Merger and the Merger Agreement. The Exchange Ratio will be adjusted for changes in the stock price of DaVita before the Merger is completed.



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Because the market price of DaVita Common Stock will likely fluctuate prior to the Merger, these comparisons may not provide meaningful information to HCP Members in determining whether to approve the proposal to approve the principal terms of the Merger and the Merger Agreement. HCP Members are encouraged to obtain current market quotations for DaVita Common Stock and to review carefully the other information contained in this prospectus or incorporated by reference into this prospectus in considering whether to approve the proposal before them. See [Additional Information Where You Can Find More Information](#) beginning on page 236.

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**RISK FACTORS**

*In addition to the other information included in this prospectus, including the matters addressed in **Cautionary Statement Concerning Forward-Looking Statements** beginning on page 74, HCP Members should carefully consider the following risks before deciding whether to vote for approval of the proposal to approve the principal terms of the Merger and the Merger Agreement.*

**Risks Related to the Merger**

***Because of fluctuations in the market price of DaVita Common Stock, HCP Members cannot be sure of the market value of the DaVita Common Stock that they will receive in the Merger.***

At the time the Merger is completed, each issued and outstanding HCP Common Unit (other than HCP Common Units owned by DaVita or HCP and HCP Common Units in respect of which dissenters' rights have been properly exercised and perfected) will be converted into the right to receive consideration in the form of DaVita Common Stock and/or cash, depending upon the HCP Member's election, subject to adjustment and proration. The exchange ratio for the DaVita Common Stock, as calculated in accordance with the formula set forth in the Merger Agreement, may fluctuate depending on the market price of DaVita Common Stock.

There will be time lapses between each of the dates on which HCP Members vote to approve the principal terms of the Merger and the Merger Agreement at the special meeting, the date on which HCP Members make their election regarding the form of consideration, the date on which the exchange ratio is determined, and the date on which HCP Members entitled to receive shares of DaVita Common Stock actually receive such shares (whether in connection with the closing of the Merger, or at a later date or dates in connection with the release of shares of DaVita Common Stock that are withheld from distribution to HCP Members at the time of closing as part of the Escrowed Merger Consideration). The market value of DaVita Common Stock may fluctuate during these periods and, with respect to shares of DaVita Common Stock subject to escrow, these periods may last more than five years. Stock price fluctuations may result from a variety of factors (many of which are beyond DaVita's control), including the following:

changes in DaVita's business, operations, and prospects or market assessments thereof;

market assessments of the likelihood that the Merger will be completed, including related considerations regarding litigation and regulatory approvals of the Merger;

market assessments about the prospects of post-merger operations; and

general business, market, industry, and economic conditions and other factors generally affecting the price of DaVita Common Stock.

Consequently, at the time HCP Members must decide whether to approve the principal terms of the Merger and the Merger Agreement, they will not know the actual market value of the shares of DaVita Common Stock they will receive when the Merger is completed and if and when the Escrowed Merger Consideration is released. The actual value of the shares of DaVita Common Stock received by the HCP Members will depend on the market value of shares of DaVita Common Stock on the date such shares are received. This market value may be less than the value used to determine the exchange ratio, as that determination will be made with respect to a period occurring prior to the consummation of the Merger.

HCP Members are urged to obtain current market quotations for shares of DaVita Common Stock.

***Because there is no public market for the HCP Common Units, it is difficult to determine how the fair value of HCP Common Units compares with the merger consideration.***

The outstanding HCP Common Units are privately held and are not traded in any public market. This lack of a public market makes it difficult to determine the fair value of HCP. Because the merger consideration was determined based on negotiations between the parties, it may not be indicative of the fair value of the HCP Common Units.





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***HCP must obtain approval of the HCP Members to consummate the Merger, which, if delayed or not obtained, may jeopardize or delay the consummation of the Merger.***

The Merger is conditioned on the HCP Members approving the proposal to approve the principal terms of the Merger and the Merger Agreement at the special meeting. If the HCP Members do not approve the principal terms of the Merger and the Merger Agreement, then DaVita and HCP cannot consummate the Merger. HCP Medical Group has entered into a Voting Agreement with DaVita and HCP pursuant to which it has agreed to vote all of the HCP Common Units owned or controlled by it in favor of the approval of the principal terms of the Merger and the Merger Agreement which represented 72.62% of the outstanding HCP Common Units as of September 25, 2012. The consummation of the Merger may be jeopardized or delayed if HCP Medical Group breaches its obligations under the Voting Agreement and does not vote all of the HCP Common Units controlled by it in favor of the approval of the principal terms of the Merger and the Merger Agreement.

***HCP Members may not receive the contingent cash consideration payments provided for in the Merger Agreement.***

In addition to the merger consideration payable at the closing of the Merger and amounts that may be released over time from the escrow accounts, HCP Members and holders of HCP Options may receive up to an aggregate of \$275,000,000 of additional cash consideration, or approximately \$2.61 per fully diluted HCP Common Unit, in the form of two separate earn-out payments that are based on the financial performance of HCP for fiscal years 2012 and 2013 and subject to the terms and conditions for such earn-out payments set forth in the Merger Agreement. Because this portion of the merger consideration is contingent upon HCP's performance following the closing of the Merger, there are no assurances of the amount of cash, if any, beyond the merger consideration payable at the closing that HCP Members will receive for their HCP Common Units. As a result, HCP Members will not know, prior to the date of the special meeting, the amount of contingent cash consideration, if any, that may be payable to HCP Members. For additional information on HCP's business, see Information about HCP's Business beginning on page 162.

***Under the accounting rules applicable to the contingent consideration, DaVita must determine the fair value of the contingent consideration on a quarterly basis, which could result in DaVita recording changes in the fair value as an expense in its financial statements, and any such expense may have an adverse impact on DaVita's earnings and DaVita's ability to predict the amount of earnings.***

A portion of the merger consideration is contingent upon HCP's performance following the closing of the Merger. The accounting rules applicable to the contingent consideration require that DaVita determine the fair value of the contingent consideration on a quarterly basis. To the extent that the fair value in any quarter exceeds the prior quarter's determination, DaVita will be required to record the increase in fair value as an expense in its financial statements. Any such expense will reduce DaVita's net income in the quarter in which it is recognized. These requirements will also limit DaVita's ability to predict its earnings in the quarters in which it must assess the fair value of the contingent consideration, and have not been included in any of DaVita's existing earnings guidance.

***The Merger will be a taxable transaction for HCP Members for U.S. federal income tax purposes.***

The Merger will be a taxable transaction to HCP Members for U.S. federal income tax purposes. In general, an HCP Member who exchanges its HCP Common Units for cash and/or DaVita Common Stock pursuant to the Merger will recognize a gain or loss in an amount equal to the difference between (i) such HCP Member's amount realized, calculated as the sum of (A) the amount of any cash received, (B) the fair market value of any DaVita Common Stock received, and (C) such HCP Member's share, for U.S. federal income tax purposes, of HCP's liabilities immediately prior to the Merger and (ii) such HCP Member's adjusted tax basis in the HCP Common Units exchanged therefor. An HCP member's amount realized will include any earn-out payments received and any cash and DaVita Common Stock that is placed in escrow and actually or constructively received. If an HCP Member receives DaVita Common Stock and recognizes gain in the Merger, such HCP Member may incur a tax liability without a corresponding receipt of cash sufficient to pay such liability. For a more detailed description of

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the tax consequences of the exchange of HCP Common Units in the Merger, including the application of the installment method to any gain recognized by an HCP member, please see *Material United States Federal Income Tax Consequences* beginning on page 232. Tax matters can be complicated, and the tax consequences of the Merger to you will depend on your particular tax situation. HCP Members should consult their tax advisors for a full understanding of the Merger's tax consequences.

***The U.S. federal income tax treatment of owning DaVita Common Stock received in the Merger will be different than the treatment of owning HCP Common Units.***

For U.S. federal income tax purposes, HCP is classified as a partnership, which is not a taxable entity and, thus, is not subject to tax on its income. Instead, each HCP Member is required to take into account such HCP Member's share of items of income, gain, loss and deduction of HCP in computing its U.S. federal income tax liability. A distribution of cash by HCP to an HCP Member generally is not taxable unless the amount of cash distributed exceeds such HCP Member's adjusted tax basis in its HCP Common Units. In contrast, for U.S. federal income tax purposes, DaVita is classified as a corporation, is a taxable entity and, thus, is subject to tax on its taxable income (and its stockholders are not subject to tax on such income). A distribution of cash by DaVita to a stockholder generally is taxable to such stockholder to the extent distributed out of DaVita's current and accumulated earnings and profits. Cash distributions in excess of DaVita's current and accumulated earnings and profits are treated as a non-taxable return of capital, which reduce such stockholder's adjusted tax basis in such stockholder's DaVita Common Stock, and, to the extent such cash distributions exceed such stockholder's adjusted tax basis, as capital gain from the sale or exchange of such shares. For a more detailed description of the tax consequences of owning and disposing of DaVita Common Stock, please see *Material United States Federal Income Tax Consequences* beginning on page 232. Tax matters can be complicated, and the tax consequences of owning and disposing of such stock to you will depend on your particular tax situation. HCP Members should consult their tax advisors for a full understanding of such tax consequences.

***Managers and officers of HCP have interests in the Merger that are in addition to or different from the interests of HCP Members.***

When considering the recommendation of the HCP Board, HCP Members should be aware that some managers and executive officers of HCP have interests in the Merger that are different from, or in addition to, the interests of HCP Members generally, which may create potential conflicts of interest. These interests may cause some of HCP's managers and executive officers to view the proposed transaction differently than HCP Members. See *The Merger Interests of HCP's Managers and Executive Officers in the Merger* beginning on page 98. These interests include, among others:

the appointment of Dr. Margolis to fill a newly created directorship as co-chairman of the DaVita Board upon completion of the Merger for a minimum period of four consecutive annual meetings of stockholders of DaVita;

the entry into employment and noncompetition and nonsolicitation agreements with DaVita (for periods ranging from three years to seven years after the closing of the Merger) by Drs. Margolis and Chin and Messrs. Mazdyasni and Calhoun;

the beneficial ownership of approximately 74% of the outstanding HCP Common Units and a substantial number of HCP Options (all of such options, as with all HCP Options, will be cashed out at the completion of the Merger); and

the right to indemnification and coverage under directors' and officers' liability insurance for a six-year period commencing at the effective time of the Merger.

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***The market price of DaVita Common Stock after the Merger may be affected by factors different from those affecting the shares of DaVita Common Stock and HCP Common Units currently.***

Upon completion of the Merger, HCP Members will become holders of DaVita Common Stock. DaVita's business differs from that of HCP, and, accordingly, the results of operations of the combined company and the market price of DaVita Common Stock after the completion of the Merger may be affected by factors different from those currently affecting the independent results of operations of each of DaVita and HCP.

***The Merger is subject to the receipt of approvals, waivers or consents from regulatory authorities and third parties that may impose conditions that could have an adverse effect on DaVita, and DaVita may terminate the Merger Agreement if holders of more than 5% of the outstanding HCP Common Units validly exercise dissenters' rights.***

Before the Merger can be completed, various approvals, waivers or consents must be obtained from regulatory authorities. These authorities may impose conditions on the completion of the Merger or require changes to the terms of the Merger. Although DaVita and HCP do not currently expect that any such conditions or changes will be imposed, there can be no assurance that they will not be, and such conditions or changes could have the effect of delaying completion and closing of the Merger or imposing additional costs on or limiting the revenues of DaVita following the Merger. See "Information about HCP Government Regulations" beginning on page 173. In addition, HCP must obtain the consent of third parties to assign certain contracts, including contracts with health plans. In addition, DaVita may terminate the Merger Agreement if, at the time of termination, holders of more than 5% of the outstanding HCP Common Units have validly exercised their dissenters' rights (and not withdrawn such exercise or otherwise become ineligible to effect such exercise) in respect of the transactions.

***HCP will be subject to business uncertainties and contractual restrictions while the Merger is pending.***

Uncertainty about the effect of the Merger may have an adverse effect on HCP and consequently on DaVita. These uncertainties may impair HCP's ability to attract, retain and motivate key personnel and physicians until the Merger is completed, and could cause customers and others that deal with HCP to seek to change existing business relationships with HCP. Retention of certain employees may be challenging while the Merger is pending, as certain employees may experience uncertainty about their future roles with DaVita. If key employees depart, HCP's business following the Merger could be harmed. In addition, the Merger Agreement restricts HCP from making certain acquisitions and taking other specified actions without the consent of DaVita until after the Merger occurs. These restrictions may prevent HCP from pursuing attractive business opportunities that may arise prior to the completion of the Merger. See the section entitled "The Merger Agreement Additional Agreements" beginning on page 154 of this prospectus for a description of the restrictive covenants to which HCP is subject.

***HCP's business may be negatively affected if the Merger is not consummated.***

If the Merger is not completed for any reason, the consequences could adversely affect the HCP's business and results of operations, including the following:

HCP would not realize the benefits expected from becoming part of DaVita, including the ability to pursue additional growth opportunities;

some costs related to the transaction, such as legal, accounting, and advisor fees, must be paid even if the Merger is not completed;

activities relating to the transaction and related uncertainties may divert HCP's management attention from the day-to-day business and may cause substantial disruptions among its employees and its existing relationships with health plans, which could result in a loss of revenue and market position; and

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HCP may be unable to locate another entity to merge with or be acquired by, or under terms as favorable as those in the Merger Agreement, and HCP Members would not have an opportunity to monetize their investment in HCP.

***The condition of the financial markets, including volatility and weakness in the capital and credit markets, could limit the availability and terms of debt financing necessary for DaVita to consummate the Merger and could make the financing more costly or burdensome than DaVita currently anticipates.***

DaVita expects to fund the cash consideration to HCP Members through debt financing. Without this financing, it is unlikely that DaVita will have sufficient funds to consummate the Merger, and each of DaVita and HCP has the right, under certain circumstances, to terminate the Merger Agreement if neither DaVita nor Merger Sub can obtain the financing. DaVita has issued \$1.25 billion of senior notes, the proceeds of which have been placed in escrow pending the consummation of the Merger and the satisfaction of certain other conditions. DaVita expects to have in place an additional \$3.0 billion of new term loans under its senior secured facilities at the closing of the Merger; however, neither DaVita nor Merger Sub has obtained unconditional binding commitments for these new term loans. As a result, DaVita may not be able to complete the planned financing of the Merger on the terms and the timetable that DaVita and HCP anticipate or at all. Market contractions may limit the ability of DaVita to obtain financing or cause DaVita to obtain financing on terms that are more costly or burdensome than DaVita currently anticipates, resulting in a material adverse effect on DaVita's business, financial position, results of operations and liquidity. In addition, DaVita generally would be required to pay HCP a \$125 million termination fee if the Merger Agreement was terminated due to the fact that the proceeds of the financing were not obtained. See The Merger Agreement Termination of the Merger Agreement and The Merger Agreement Termination Fee beginning on pages 151 and 152, respectively, of this prospectus.

***DaVita expects to incur substantial additional indebtedness to finance the Merger and may not be able to meet its substantial debt service requirements.***

DaVita intends to incur substantial additional indebtedness in connection with the Merger. If DaVita is unable to generate sufficient funds to meet its obligations or the new debt financing entered into to consummate the Merger otherwise becomes due and payable, DaVita may be required to refinance, restructure, or otherwise amend some or all of such obligations, sell assets, or raise additional cash through the sale of its equity. DaVita cannot make any assurances that it would be able to obtain such refinancing on terms as favorable as its current anticipated financing or that such restructuring activities, sales of assets, or issuances of equity can be accomplished or, if accomplished, would raise sufficient funds to meet these obligations.

***HCP operates in a different line of business from DaVita's historical business, and the Merger is significantly larger than any other acquisition DaVita has made to date. DaVita may face challenges managing HCP as a new business and may not realize anticipated benefits.***

The Merger is the largest acquisition DaVita has attempted to date and will result in DaVita being significantly engaged in a new line of business. Upon entering into a new line of business, DaVita may not have the expertise, experience, and resources to pursue all of its businesses at once, and it may be unable to successfully operate the businesses. The administration of the businesses will require implementation of appropriate operations, management, and financial reporting systems and controls. DaVita may experience difficulties in effectively implementing these and other systems. The management of HCP will require the focused attention of DaVita's management team, including a significant commitment of its time and resources. The need for management to focus on these matters could have a material and adverse impact on DaVita's revenues and operating results. If the HCP operations are less profitable than DaVita currently anticipates or if DaVita does not have the experience, the appropriate expertise, or the resources to pursue all businesses in the combined company, the results of operations and financial condition may be materially and adversely affected.

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***HCP will become a subsidiary of DaVita following the Merger. If HCP's liabilities are greater than expected, or if there are unknown HCP obligations, DaVita's business could be materially and adversely affected.***

As a result of the Merger, HCP will become a subsidiary of DaVita and HCP's liabilities, including contingent liabilities, will be consolidated with DaVita's. DaVita may learn additional information about HCP's business that adversely affects DaVita, such as unknown liabilities, issues relating to internal controls over financial reporting or issues that could affect DaVita's ability to comply with other applicable laws, including healthcare laws and regulations. As a result, DaVita cannot assure you that the Merger will be successful or will not, in fact, harm its business. Among other things, if HCP's liabilities are greater than expected, or if there are obligations of HCP of which DaVita is not aware at the time of completion of the Merger, DaVita's business could be materially and adversely affected.

DaVita has limited indemnification rights in connection with matters affecting HCP. HCP may also have other unknown liabilities which DaVita will be responsible for after the Merger. If DaVita is responsible for liabilities not covered by indemnification rights or substantially in excess of amounts covered through any indemnification rights, DaVita could suffer severe consequences that would substantially reduce its revenues, earnings and cash flows.

***If DaVita fails to successfully integrate HCP into our internal control over financial reporting or if the current internal control of HCP over financial reporting were found to be ineffective, the integrity of DaVita's and/or HCP's financial reporting could be compromised which could result in a material adverse effect on our reported financial results.***

As a private company, HCP has not been subject to the requirements of the Securities Exchange Act of 1934, as amended, with respect to internal control over financial reporting, and for a period of time after the consummation of the Merger our management evaluation and auditor attestation regarding the effectiveness of our internal control over financial reporting will be permitted to exclude the operations of HCP. The integration of HCP into our internal control over financial reporting will require significant time and resources from our management and other personnel and will increase our compliance costs. If we fail to successfully integrate these operations into our internal control over financial reporting, our internal control over financial reporting may not be effective. Failure to achieve and maintain an effective internal control environment could have a material adverse effect on our ability to accurately report our financial results and the market's perception of our business and our stock price. In addition, if HCP's internal control over financial reporting were found to be ineffective, the integrity of HCP's past financial reporting could be adversely impacted.

**Risks Related to DaVita**

***If the average rates that commercial payors pay us decline significantly, it would have a material adverse effect on our revenues, earnings and cash flows.***

Approximately 34% of our dialysis and related lab services revenues for the six months ended June 30, 2012 were generated from patients who have commercial payors as the primary payor. The majority of these patients have insurance policies that pay us on terms and at rates that are generally significantly higher than Medicare rates. The payments we receive from commercial payors generate nearly all of our profit and all of our nonacute dialysis profits come from commercial payors. We continue to experience downward pressure on some of our commercial payment rates and it is possible that commercial payment rates could be materially lower in the future. The downward pressure on commercial payment rates is a result of general conditions in the market, recent and future consolidations among commercial payors, increased focus on dialysis services and other factors.

We are continuously in the process of negotiating our existing or potentially new agreements with commercial payors who tend to be aggressive in their negotiations with us. Sometimes many significant agreements are up for renewal or being renegotiated at the same time. In the event that our continual negotiations

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result in overall commercial rate reductions in excess of overall commercial rate increases, the cumulative effect could have a material adverse effect on our financial results. Consolidations have significantly increased the negotiating leverage of commercial payors. Our negotiations with payors are also influenced by competitive pressures. Some of our contracted rates with commercial payors may decrease or we may experience decreases in patient volume as our negotiations with commercial payors continue. In addition to downward pressure on contracted commercial payor rates, payors have been attempting to impose restrictions and limitations on non-contracted or out-of-network providers. In some circumstances for some commercial payors, our centers are designated as out-of-network providers. Rates for out-of-network providers are on average higher than rates for in-network providers. We believe commercial payors have or will begin to restructure their benefits to create disincentives for patients to select or remain with out-of-network providers and to decrease payment rates for out-of-network providers. Decreases in out-of-network rates and restrictions on out-of-network access, our turning away new patients in instances where we are unable to come to agreement on rates, or decreases in contracted rates could result in a significant decrease in our overall revenues derived from commercial payors. If the average rates that commercial payors pay us decline significantly, or if we see a decline in commercial patients, it would have a material adverse effect on our revenues, earnings and cash flows.

***If the number of patients with higher-paying commercial insurance declines, then our revenues, earnings and cash flows would be substantially reduced.***

Our revenue levels are sensitive to the percentage of our patients with higher-paying commercial insurance coverage. A patient's insurance coverage may change for a number of reasons, including changes in the patient's or a family member's employment status. Currently, for a patient covered by an employer group health plan, Medicare generally becomes the primary payor after 33 months, or earlier, if the patient's employer group health plan coverage terminates. When Medicare becomes the primary payor, the payment rate we receive for that patient shifts from the employer group health plan rate to the lower Medicare payment rate. We have seen an increase in the number of patients who have government-based programs as their primary payors which we believe is largely a result of improved mortality and recent economic conditions which have a negative impact on the percentage of patients covered under commercial insurance plans. To the extent there are sustained or increased job losses in the U.S., independent of whether general economic conditions might be improving, we could experience a continued decrease in the number of patients covered under commercial plans. We could also experience a further decrease if changes to the healthcare regulatory system result in fewer patients covered under commercial plans or an increase of patients covered under more restrictive commercial plans with lower reimbursement rates. In addition, our continuous process of negotiations with commercial payors under existing or potentially new agreements could result in a decrease in the number of patients under commercial plans to the extent that we cannot reach agreement with commercial payors on rates and other terms, resulting in termination or non-renewals of existing agreements or our inability to enter into new ones. If there is a significant reduction in the number of patients under higher-paying commercial plans relative to government-based programs that pay at lower rates, it would have a material adverse effect on our revenues, earnings and cash flows.

***Changes in the structure of, and payment rates under the Medicare ESRD program, including the Budget Control Act of 2011 and other healthcare reform initiatives, could substantially reduce our revenues, earnings and cash flows.***

Approximately 49% of our dialysis and related lab services revenues for the six months ended June 30, 2012 was generated from patients who have Medicare as their primary payor. Prior to January 1, 2011, the Medicare ESRD program paid us for dialysis treatment services at a fixed composite rate. The Medicare composite rate was the payment rate for a dialysis treatment including the supplies used in those treatments, specified laboratory tests and certain pharmaceuticals. Certain other pharmaceuticals, including EPO, vitamin D analogs and iron supplements, as well as certain specialized laboratory tests, were separately billed.

In July 2008, the Medicare Improvements for Patients and Providers Act of 2008 was passed by Congress. This legislation introduced a new payment system for dialysis services beginning in January 2011 whereby payment for dialysis treatment and related services is now made under a bundled payment rate which provides a

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fixed rate to encompass all goods and services provided during the dialysis treatment, including pharmaceuticals that were historically separately reimbursed to the dialysis providers, such as EPO, vitamin D analogs and iron supplements, as well as laboratory testing. In August 2010, CMS published the final rule implementing the bundled payment in the Federal Register. The initial 2011 bundled rate included reductions of 2% from the prior reimbursement and further reduced overall rates by 5.94% tied to an expanded list of case-mix adjustors which can be earned back based upon the presence of certain patient characteristics and co-morbidities at the time of treatment. There are also other provisions which may impact payment including an outlier pool and a low volume facility adjustment.

Another important provision in the law is an annual adjustment, or market basket update, to the base ESRD Prospective Payment Rate, or PPS. Absent action by Congress the PPS base rate will be automatically updated by a formulaic inflation adjustment.

On November 1, 2011, CMS issued the final ESRD PPS rule for 2012, which increased the base rate by 2.1%, representing a market base of increase of 3.0% less a productivity adjustment of 0.9%. The increase in the final base rate for 2012 (2.1%) is slightly greater than the increase of 1.8% stated in the proposed 2012 ESRD PPS rule published in July 2011, and was made irrespective of the Medicare Payment Advisory Commission, or MedPAC, recommendation for a reduced increase. The MedPAC focus on such a reduction indicates further scrutiny of the annual update is possible.

On July 11, 2012, CMS issued the proposed ESRD PPS rule for 2013. As currently proposed, the base rate will increase by 2.5%, resulting from a market basket increase of 3.2% less a productivity adjustment of 0.7%. This increase in the ESRD PPS base rate will be further reduced by the Budget Control Act of 2011 sequestration, discussed below. The proposed rule implements the reduction in bad debt payments to dialysis facilities (as well as to all other providers eligible for bad debt payments) mandated under the Middle Class Tax Relief and Job Creation Act of 2012 and adds new quality reporting measures.

The new payment system presents operating, clinical and financial risks. For example, with regard to the expanded list of case-mix adjustors, there is a risk that our dialysis centers or billing and other systems may not accurately document and track the appropriate patient-specific characteristics, resulting in a reduction or overpayment in the amounts of the payments that we would otherwise be entitled to receive.

Beginning January 1, 2014, certain oral-only ESRD drugs (currently paid separately to pharmacies under Medicare Part D) will be included in the ESRD bundled payment to dialysis facilities. CMS delayed the inclusion of these oral only ESRD drugs until 2014 in order to assess how to reimburse for these oral drugs and services. It is currently unclear how CMS will price the oral-only drugs for inclusion in the ESRD bundle in 2014. Inadequate pricing could have a significant negative financial impact on our dialysis facilities given the volume and value of these drugs.

We expect to continue experiencing increases in operating costs that are subject to inflation, such as labor and supply costs, regardless of whether there is a compensating inflation-based increase in Medicare payment rates or in payments under the new bundled payment rate system.

On August 2, 2011, President Obama signed into law the Budget Control Act of 2011 (Public Law 112-25), which raised the debt ceiling and put into effect a series of actions to reduce the federal budget deficit over ten years. The law created a Joint Congressional Committee charged with producing legislation reducing federal spending by at least \$1.2 trillion. As a result of the committee's failure to act, the federal government is facing a \$1.2 trillion sequester (across-the-board cuts in discretionary programs). However, Medicare providers face a maximum of no more than a 2% reduction in reimbursements in fiscal year 2013.

We also cannot predict whether we will be able to comply with the CMS rules related to the bundled payment system as processes and systems are modified substantially to capture all required data. To the extent we are not able to adequately bill and collect for certain payment adjustors and are not able to offset the



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mandated reductions in reimbursement or if we face regulatory enforcement actions and penalties as a result of alleged improper billing of governmental programs, it could have a material adverse effect on our revenues, earnings and cash flows. For additional details regarding the risks we face for failing to adhere to our Medicare and Medicaid regulatory compliance obligations, see the risk factor below under the heading

If we fail to adhere to all of the complex government regulations that apply to our business, we could suffer severe consequences that would substantially reduce our revenues, earnings and cash flows .

***Health care reform could substantially reduce our revenues, earnings and cash flows.***

In March 2010, broad health care reform legislation was enacted in the U.S. Although many of the provisions of the new legislation do not take effect immediately, and may be modified before they are implemented, the reforms could have an impact on our business in a number of ways. We cannot predict how employers, private payors or persons buying insurance might react to these changes or what form many of these regulations will take before implementation. In March 2012, the Department of Health and Human Services, or HHS, issued two final proposed rules related to the establishment of health care insurance exchanges due to be operating by 2014 that will provide a marketplace for eligible individuals to purchase health care insurance. The first relates to the standards and requirements applicable to the exchanges, employers and qualified health plans that are marketed in the exchange. The second rule finalizes the provisions governing the risk adjustment program that includes reinsurance, risk corridors and risk adjustment. The final exchange rules clarify the requirements related to implementation of such exchanges, outline areas of state flexibility in their implementation of such exchanges and provide standards for certain risk adjustment mechanisms. We believe the establishment of health care insurance exchanges could result in a reduction in patients covered by commercial insurance or an increase of patients covered through the exchanges under more restrictive commercial plans with lower reimbursement rates. To the extent that the implementation of such exchanges results in a reduction in patients covered by commercial insurance or a reduction in reimbursement rates for our services from commercial and/or government payors, our revenues, earnings and cash flows could be adversely affected.

In October 2011, CMS issued a final rule concerning the Medicare Shared Savings Program established by the health care reform legislation, which under the statute was required to be implemented no later than January 1, 2012. The Medicare Shared Savings Program, which is now operational provides financial incentives to health care providers and suppliers that work together to furnish coordinated, high-quality care to Medicare beneficiaries through accountable care organizations, or ACOs.

The CMS Center for Innovation (Innovation Center) is in various stages of development in working with various healthcare providers to implement ACOs and other innovative models of care for Medicare and Medicaid beneficiaries. We are currently uncertain of the extent to which these models of care including ACOs, Bundled Payments for Care Improvement Initiative, the Comprehensive Primary Care Initiative, the Duals Demonstration, or other models, will impact the health care market. As a provider of dialysis services, we may choose to participate in one or several of these models either as a partner with other providers or independently. We are currently seeking a renal specific coordinated care pilot with the Innovation Center. Even if we do not participate in these programs, some of our patients may be assigned to a pilot, in which case the quality and cost of care that we furnish will be included in an ACO s or other program s calculations regardless of our participation in the program. As new models of care emerge, we may be at risk for losing our Medicare patient base, which would have a materially adverse effect on our revenues, earnings and cash flow. Furthermore, further initiatives in the government or private sector may arise, including the development of models similar to ACOs, independent practice associations and integrated delivery systems or evolutions of those concepts which could adversely impact our business.

In addition, the Health Reform Acts introduced severe penalties for the knowing and improper retention of overpayments collected from government payors. As a result, we made initial significant investments in additional resources to accelerate the time it takes to identify and process overpayments and we may be required to make additional investments in the future. Acceleration in our ability to identify and process overpayments

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could result in us refunding overpayments to government or other payors sooner than we have in the past, which could have a material adverse effect on our operating cash flows. The failure to return identified overpayments within the specified time frame is now a violation of the federal False Claims Act, or FCA.

The Health Reform Acts also reduced the timeline to file Medicare claims, which now must be filed with the government within one calendar year after the date of service. To comply with this reduced timeline, we must deploy significant resources and may change our claims processing methods to ensure that our Medicare claims are filed in a timely fashion. Failure to file a claim within the one year window could result in payment denials, adversely affecting our revenues, earnings and cash flows.

Effective March 2011, CMS instituted new screening procedures and a new \$500 enrollment fee for providers enrolling and re-enrolling in government health care programs. A provider is subject to screening upon initial enrollment and each time the provider re-validates its enrollment application. Screening includes verification of enrollment information and review of various federal databases to ensure the provider has valid tax identification NPI numbers and is not excluded from participation in federal and state healthcare programs. We expect this screening process to delay the Medicare contractor approval process, potentially causing a delay in reimbursement. The enrollment fee is also applicable upon initial enrollment, re-validation, and each time an existing provider adds a new facility location. This fee is an additional expense that must be paid for each center every three years and could be more significant if other government and commercial payors follow this trend. Ultimately, we anticipate the new screening and enrollment requirements will require additional personnel and financial resources and will potentially delay the enrollment and revalidation of our centers which in turn will delay payment.

Other reform measures allow CMS to place a moratorium on new enrollment of providers and to suspend payment to providers upon a credible allegation of fraud from any source. These types of reform measures, or others, depending upon the scope and breadth of the implementing regulations, could adversely impact our revenues, earnings and cash flows.

There are numerous steps required to implement the broad healthcare reform legislation adopted by Congress, and Congress may seek to alter or eliminate some of the provisions described above. Numerous legal challenges have also been raised to the healthcare reform legislation that could alter or eliminate certain provisions. The United States Supreme Court reviewed state actions challenging the constitutionality of the health insurance mandate and the Medicaid expansion program. The Court upheld the mandate under Congress' taxing power and upheld the Medicaid expansion program. However, the Court found that the federal government cannot withhold all of a state's Medicaid funding for the state's failure or refusal to expand its Medicaid program as contemplated by the reform legislation, effectively leaving the Medicaid expansion decision up to the individual states. Several states have announced they do not intend to expand their Medicaid programs. Further, various health insurance reform proposals are also emerging at the state level. There is a considerable amount of uncertainty as to the prospective implementation of the federal healthcare reform legislation and what similar measures might be enacted at the state level. The enacted reforms as well as future legislative changes could have a material adverse effect on our results of operations, including lowering our reimbursement rates and increasing our expenses. The Healthcare Reform Acts added several new tax provisions that, among other things, impose various fees and excise taxes, and limit compensation deductions for health insurance providers and their affiliates. To date, the IRS has not issued regulations for many of these provisions. In the event that we, or any of our current or future subsidiaries, were to become subject to these rules, our cash flow and tax liabilities could be negatively impacted.

***Changes in state Medicaid or other non-Medicare government-based programs or payment rates could reduce our revenues, earnings and cash flows.***

Approximately 16% of our dialysis and related lab services revenues for the six months ended June 30, 2012 was generated from patients who have state Medicaid or other non-Medicare government-based programs, such as Medicare-assigned plans or the VA, as their primary coverage. As state governments and governmental

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organizations face increasing budgetary pressure, we may in turn face reductions in payment rates, delays in the timing of payments, limitations on eligibility or other changes to the applicable programs. For example, some programs, such as certain state Medicaid programs and the VA, have recently considered, proposed or implemented rate reductions.

On December 17, 2010, the Department of Veterans Affairs published a final rule in which it materially changed the payment methodology and ultimately the amount paid for dialysis services furnished to veterans in non-VA centers such as ours. In the final rule, the VA adopted the bundled payment system implemented by Medicare and estimated a reduction of 39% in payments for dialysis services to veterans at non-VA centers. Approximately 2% of our dialysis and related lab services revenues for the six months ended June 30, 2012 was generated by the VA. The new VA payment methodology will have a significant negative impact on our revenues, earnings and cash flows as a result of the reduction in rates or as a result of the decrease in the number of VA patients we serve. We recently executed contractual agreements with the VA and there is some uncertainty as to when this rule will take effect for the patients covered by these contracts. While at this time the contracts remain in force, these agreements provide for the right of the VA to terminate the agreement without cause on short notice. Further, patients who are not covered by the contractual arrangements will likely be reimbursed at Medicare rates beginning with the date of implementation of the rule. If the VA proceeds with payment rate reductions or fails to renew our existing contracts, we might have to cease accepting patients under this program and could even be forced to close centers.

State Medicaid programs are increasingly adopting Medicare-like bundled payment systems, but sometimes these new payment systems are poorly defined and could include all drugs (even those oral-only drugs that Medicare will not include in the bundled payment until 2014) and are implemented without any claims processing infrastructure, or patient or facility adjusters. If these new payment systems are implemented without any adjusters and claims processing changes, Medicaid payments will be substantially reduced and the costs to submit such claims may increase. In addition, some state Medicaid program eligibility requirements mandate that citizen enrollees in such programs provide documented proof of citizenship. If our patients cannot meet these proof of citizenship documentation requirements, they may be denied coverage under these programs. These Medicaid payment and enrollment changes, along with similar changes to other non-Medicare government programs could reduce the rates paid by these programs for dialysis and related services, delay the timing of payment for services provided, and further limit eligibility for coverage which could adversely affect our revenues, earnings and cash flows.

***Changes in clinical practices, payment rates or regulations impacting EPO and other pharmaceuticals could reduce our revenues, earnings and cash flows.***

Historically, Medicare and most Medicaid programs paid for EPO outside of the composite rate. This separate payment has long been the subject of discussions regarding appropriate dosing and payment in an effort to reduce escalating expenditures for EPO. Since January 1, 2011, Medicare has bundled EPO into the prospective payment system such that dosing variations will not change the amount paid to a dialysis facility. Although some Medicaid programs and other payors suggest movement towards a bundled payment system inclusive of EPO, some non-Medicare payors continue to pay for EPO separately from the treatment rate. The administration of EPO and other pharmaceuticals that are separately billable accounted for approximately 5% of our dialysis and related lab services revenues for the six months ended June 30, 2012, with EPO alone accounting for approximately 3% of our dialysis and related lab services revenues for the same period. Changes in physician clinical practices that result in further decreased utilization of prescribed pharmaceuticals or changes in payment rates for those pharmaceuticals could reduce our revenues, earnings and cash flows.

Since late 2006, there has been significant media discussion and government scrutiny regarding anemia management practices in the U.S. which has created confusion and concern in the nephrology community. In late 2006, the U.S. House of Representatives Ways and Means Committee held a hearing on the issue of the utilization of ESAs, which include EPO, and in 2007, the FDA required changes to the labeling of EPO and

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Aranesp® to include a black box warning, the FDA's strongest form of warning label. An FDA advisory panel on ESA use met in October 2010, which meeting was similar to the prior meeting held in 2007 in that there was significant discussion and concern about the safety of ESAs. The panel concluded it would not recommend a change in ESA labeling. However, the FDA is not bound by the panel's recommendation. In June 2011, the FDA required that the black box warning be slightly revised and also include more conservative dosing recommendations for patients with chronic kidney disease. In addition, in June 2011, CMS opened a National Coverage Analysis, or NCA, for ESAs. Further in January 2011, CMS convened a meeting of the Medicare Evidence Development and Coverage Advisory Committee, or MEDCAC, to evaluate evidence for the pending NCA. In June 2011, CMS determined not to issue a national coverage determination for ESAs due to a lack of available evidence to establish coverage criteria or limitations.

The forgoing congressional and agency activities and related actions could result in further restrictions on the utilization and reimbursement for ESAs. Commercial payors have also increasingly examined their administration policies for EPO and, in some cases, have modified those policies. Further changes in labeling of EPO and other pharmaceuticals in a manner that alters physician practice patterns or accepted clinical practices, changes in private and governmental payment criteria, including the introduction of EPO administration policies or the conversion to alternate types of administration of EPO or other pharmaceuticals that result in further decreases in utilization of EPO for patients covered by commercial payors or increased utilization of EPO for patients for whom the cost of EPO is included in a bundled reimbursement rate, or further decreases in reimbursement for EPO and other pharmaceuticals that are not included in a bundled reimbursement rate, could have a material adverse effect on our revenues, earnings and cash flows.

***Changes in EPO pricing could materially reduce our earnings and cash flows and affect our ability to care for our patients.***

In November 2011, we entered into a seven year Sourcing and Supply Agreement with Amgen USA Inc. Under the agreement we committed to purchase EPO in amounts necessary to meet no less than 90% of our requirements for erythropoiesis stimulating agents. The agreement replaces in its entirety the prior one-year supply agreement between us and Amgen that expired on December 31, 2011. As long as certain conditions are met by us, the agreement limits Amgen's ability to unilaterally decide to increase the price for EPO. Future increases in the cost of EPO without corresponding increases in payment rates for EPO from commercial payors and without corresponding increases in the Medicare bundled rate could have a material adverse effect on our earnings and cash flows and ultimately reduce our income. Our agreement with Amgen for EPO provides for discounted pricing and rebates for EPO. Some of the rebates are subject to various conditions including but not limited to future pricing levels of EPO by Amgen and data submission by us. In addition, the rebates are subject to certain limitations. We cannot predict whether, over the seven year term of the agreement, we will continue to receive the rebates for EPO that we have received in the past, or whether we will continue to achieve the same levels of rebates within that structure as we have historically achieved. In the initial years of the agreement, however, the total rebate opportunity is less than what was provided in the agreement that expired at the end of 2011, however, the opportunity for us to earn discounts and rebates increases over the term of the agreement. Factors that could impact our ability to qualify for rebates provided for in our agreement with Amgen in the future include, but are not limited to, our ability to track certain data elements. We cannot predict whether we will be able to meet the applicable qualification requirements for receiving rebates. Failure to meet certain targets and earn the specified rebates could have a material adverse effect on our earnings and cash flows.

***We are the subject of a number of inquiries by the federal government and two private civil suits, any of which could result in substantial penalties or awards against us, imposition of certain obligations on our practices and procedures, exclusion from future participation in the Medicare and Medicaid programs and, in certain cases, criminal penalties.***

We are the subject of a number of inquiries by the federal government. We have received subpoenas or other requests for documents from the federal government in connection with the 2005 U.S. Attorney investigation, the Woodard private civil suit, the Vainer private civil suit, the 2010 U.S. Attorney physician

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relationship investigation, the 2011 U.S. Attorney physician relationship investigation and the 2011 U.S. Attorney Medicaid investigation. Certain current and former members of the Board and executives have been subpoenaed to testify before the grand jury in Colorado, and other Company representatives may also receive subpoenas for testimony related to the 2011 U.S. Attorney physician relationship investigation. After investigation, the government did not intervene and is not actively pursuing either the Woodard or the Vainer private civil suits mentioned above. In each of these private civil suits, a relator has filed a complaint against us in federal court under the *qui tam* provisions of the FCA and is pursuing the claims independently. The parties are engaged in active litigation in the Vainer private civil suit. In the Woodward private civil suit, though we have reached an agreement in principle to settle all allegations relating to claims arising out of this suit, it is still subject to the parties being able to enter into a mutually acceptable settlement agreement and receive the requisite approval of the federal government and the court to fully and finally resolve this matter. We are cooperating with the OIG and those offices of the U.S. Attorney still actively pursuing the matters mentioned above and are producing the requested records. Although we cannot predict whether or when proceedings might be initiated by the federal government, the scope of such proceedings or when these matters may be resolved, it is not unusual for investigations such as these to continue for a considerable period of time through the various phases of document and witness requests and on-going discussions with regulators. Responding to the subpoenas or investigations and defending ourselves in the private civil suits will continue to require management's attention and significant legal expense. Any negative findings could result in substantial financial penalties or awards against us, imposition of certain obligations on our practices and procedures, exclusion from future participation in the Medicare and Medicaid programs and, in certain cases, criminal penalties. To our knowledge, no proceedings have been initiated by the federal government against us at this time.

***Continued inquiries from various governmental bodies with respect to our utilization of EPO and other pharmaceuticals will require management's attention, cause us to incur significant legal expense and could result in substantial financial penalties against us, repayment obligations or exclusion from future participation in the Medicare and Medicaid programs, and could have a material adverse effect on our revenues, earnings and cash flows.***

In response to clinical studies which identified risks in certain patient populations related to the utilization of EPO and other ESAs, i.e., Aranesp®, and in response to changes in the labeling of EPO and Aranesp®, there has been substantial media attention and government scrutiny resulting in hearings and legislation regarding pharmaceutical utilization and reimbursement. Although we believe our anemia management practices and other pharmaceutical administration practices have been compliant with existing laws and regulations, as a result of the current high level of scrutiny and controversy, we may be subject to increased inquiries from a variety of governmental bodies and claims by third parties. Additional inquiries from or audits by various agencies and claims by third parties with respect to these issues would continue to require management's attention and significant legal expense and any negative findings could result in substantial financial penalties or repayments, imposition of certain obligations on our practices and procedures and the attendant financial burden on us to comply, or exclusion from future participation in the Medicare and Medicaid programs, and could have a material adverse effect on our revenues, earnings and cash flows.

***If we fail to adhere to all of the complex government regulations that apply to our business, we could suffer severe consequences that would substantially reduce our revenues, earnings, cash flows and stock price.***

Our dialysis operations are subject to extensive federal, state and local government regulations, including Medicare and Medicaid payment rules and regulations, federal and state anti-kickback laws, the Stark Law physician self-referral prohibition and analogous state referral statutes, Federal Acquisition Regulations, the FCA and federal and state laws regarding the collection, use and disclosure of patient health information and the storage, handling and administration of pharmaceuticals. The Medicare and Medicaid reimbursement rules related to claims submission, enrollment and licensing requirements, cost reporting, and payment processes impose complex and extensive requirements upon dialysis providers. A violation or departure from any of these

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requirements may result in government audits, lower reimbursements, significant fines and penalties, the potential loss of certification and recoupments or voluntary repayments.

The regulatory scrutiny of healthcare providers, including dialysis providers continues to increase. For example, CMS has indicated that after implementation of the Medicare bundled payment system, it will monitor the use of EPO and other pharmaceuticals. In addition, Medicare has increased the frequency and intensity of its certification inspections of dialysis centers. For example, we are required to provide substantial documentation related to the administration of pharmaceuticals, including EPO, and, to the extent that any such documentation is found insufficient, we may be required to refund to government or commercial payors any amounts received for such administration, and be subject to substantial penalties under applicable laws or regulations. In addition, Medicare contractors have increased their prepayment and post-payment reviews.

We endeavor to comply with all of the requirements for receiving Medicare and Medicaid payments, to structure all of our relationships with referring physicians to comply with state and federal anti-kickback laws and physician self-referral law (Stark Law), and for storing, handling and administering pharmaceuticals. However, the laws and regulations in these areas are complex, require considerable resources to monitor and implement and are subject to varying interpretations. For example, if an enforcement agency were to challenge the level of compensation that we pay our medical directors or the number of medical directors whom we engage, we could be required to change our practices, face criminal or civil penalties, pay substantial fines or otherwise experience a material adverse effect as a result of a challenge to these arrangements. In addition, amendments to the FCA impose severe penalties for the knowing and improper retention of overpayments collected from government payors. These amendments could subject our procedures for identifying and processing overpayments to greater scrutiny. We have made significant investments in additional resources to decrease the time it takes to identify and process overpayments and we may be required to make additional investments in the future. An acceleration in our ability to identify and process overpayments could result in us refunding overpayments to government or other payors sooner than we have in the past. A significant acceleration of these refunds could have a material adverse effect on our operating cash flows. Additionally, amendments to the federal anti-kickback statute in the health reform law make anti-kickback violations subject to FCA prosecution, including *qui tam* or whistleblower suits.

If any of our operations are found to violate these or other government regulations, we could suffer severe consequences that would have a material adverse effect on our revenues, earnings, cash flows and stock price, including:

Suspension or termination of our participation in government payment programs;

Refunds of amounts received in violation of law or applicable payment program requirements;

Loss of required government certifications or exclusion from government payment programs;

Loss of licenses required to operate health care facilities or administer pharmaceuticals in some of the states in which we operate;

Reductions in payment rates or coverage for dialysis and ancillary services and related pharmaceuticals;

Fines, damages or monetary penalties for anti-kickback law violations, Stark Law violations, FCA violations, civil or criminal liability based on violations of law, or other failures to meet regulatory requirements;

Enforcement actions by governmental agencies and/or claims for monetary damages by patients who believe protected health information has been used or disclosed in violation of federal or state patient privacy laws, including the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA);

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Mandated changes to our practices or procedures that significantly increase operating expenses;

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Imposition of and compliance with Corporate Integrity Agreements that could subject us to ongoing audits, reporting, increased scrutiny of our billing and business practices and potential additional fines;

Termination of relationships with medical directors; and

Harm to our reputation, which could impact our business relationships, ability to obtain financing and access to new opportunities.  
***Delays in state Medicare and Medicaid certification of our dialysis centers could adversely affect our revenues, earnings and cash flows.***

Before we can begin billing for patients treated in our outpatient dialysis centers who are enrolled in government-based programs, we are required to obtain state and federal certification for participation in the Medicare and Medicaid programs. As state agencies responsible for surveying dialysis centers on behalf of the state and Medicare program face increasing budgetary pressure, certain states are having difficulty keeping up with certifying dialysis centers in the normal course resulting in significant delays in certification. If state governments continue to have difficulty keeping up with certifying new centers in the normal course and we continue to experience significant delays in our ability to treat and bill for services provided to patients covered under government programs, it could cause us to incur write-offs of investments or accelerate the recognition of lease obligations in the event we have to close centers or our centers' operating performance deteriorates, and it could have an adverse effect on our revenues, earnings and cash flows.

***If our joint ventures were found to violate the law, we could suffer severe consequences that would have a material adverse effect on our revenues, earnings and cash flows.***

As of June 30, 2012, we owned a controlling interest in numerous dialysis-related joint ventures, which represented approximately 19% of our dialysis and related lab services revenues for the six months ended June 30, 2012. In addition, we also owned minority equity investments in several other dialysis related joint ventures. We anticipate that we will continue to increase the number of our joint ventures. Many of our joint ventures with physicians or physician groups also have the physician owners providing medical director services to those centers or other centers we own and operate. Because our relationships with physicians are governed by the federal anti-kickback statute, we have sought to structure our joint venture arrangements to satisfy as many safe harbor requirements as we believe are reasonably possible. However, our joint venture arrangements do not satisfy all elements of any safe harbor under the federal anti-kickback statute (and possibly the Stark Law). The subpoena and related requests for documents we received from the U.S. Attorney's Office for the Eastern District of Missouri in the 2005 U.S. Attorney investigation, the OIG's Office in Dallas in the 2010 U.S. Attorney physician relationship investigation and the U.S. Attorney's Office for the District of Colorado in the 2011 U.S. Attorney physician relationship investigation, included requests for documents related to our joint ventures. We were advised by the U.S. Department of Justice that it is conducting civil and grand jury investigations into our financial relationships with physicians.

If our joint ventures are found to be in violation of the anti-kickback statute or the Stark Law provisions, we could be required to restructure the joint ventures or refuse to accept referrals for designated health services from the physicians with whom the joint venture centers have a financial relationship.

We also could be required to repay amounts received by the joint ventures from Medicare and certain other payors to the extent that these arrangements are found to give rise to prohibited referrals, and we could be subject to monetary penalties, exclusion from government healthcare programs and, if criminal proceedings are brought against us, criminal penalties. If our joint venture centers are subject to any of these penalties, we could suffer severe consequences that would have a material adverse effect on our revenues, earnings and cash flows.



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***There are significant estimating risks associated with the amount of dialysis revenues and related refund liabilities that we recognize and if we are unable to accurately estimate our revenues and related refund liabilities, it could impact the timing and the amount of our revenues recognition or have a significant impact on our operating results.***

There are significant estimating risks associated with the amount of dialysis and related lab services revenues and related refund liabilities that we recognize in a reporting period. The billing and collection process is complex due to ongoing insurance coverage changes, geographic coverage differences, differing interpretations of contract coverage, and other payor issues. Determining applicable primary and secondary coverage for approximately 149,000 U.S. patients at any point in time, together with the changes in patient coverage that occur each month, requires complex, resource-intensive processes. Errors in determining the correct coordination of benefits may result in refunds to payors. Revenues associated with Medicare and Medicaid programs are also subject to estimating risk related to the amounts not paid by the primary government payor that will ultimately be collectible from other government programs paying secondary coverage, the patient's commercial health plan secondary coverage or the patient. Collections, refunds and payor retractions typically continue to occur for up to three years and longer after services are provided. We generally expect our range of dialysis and related lab services revenues estimating risk to be within 1% of revenues for the segment, which can represent as much as 6% of consolidated operating income. If our estimates of dialysis and related lab services revenues and related refund liabilities are materially inaccurate, it could impact the timing and the amount of our revenues recognition and have a significant impact on our operating results.

***The ancillary services we provide or the strategic initiatives, including our international dialysis operations, that we invest in now or in the future may generate losses and may ultimately be unsuccessful. In the event that one or more of these activities is unsuccessful, we may have to write off our investment and incur other exit costs.***

Our ancillary services and strategic initiatives currently include pharmacy services, infusion therapy services, disease management services, vascular access services, ESRD clinical research programs, physician services and our international dialysis operations. We expect to add additional service offerings and pursue additional strategic initiatives in the future as circumstances warrant, which could include healthcare services not related to dialysis. Many of these initiatives require or would require investments of both management and financial resources and can generate significant losses for a substantial period of time and may not become profitable. There can be no assurance that any such strategic initiative will ultimately be successful. Any significant change in market conditions, or business performance, or in the political, legislative or regulatory environment, may impact the economic viability of any of these strategic initiatives. For example, during 2011 and 2010, several of our strategic initiatives generated net operating losses and some are expected to generate net operating losses in 2012. If any of our ancillary services or strategic initiatives, including our international dialysis operations, do not perform as planned, we may incur a material write-off or an impairment of our investment, including goodwill, in one or more of these activities or we could incur significant termination costs if we were to exit a certain line of business. As an example, during the second quarter of 2011 we recorded a goodwill impairment charge of \$24 million related to a decrease in the implied fair value of goodwill below its carrying amount associated with our infusion therapy business.

***If a significant number of physicians were to cease referring patients to our dialysis centers, whether due to regulatory or other reasons, it would have a material adverse effect on our revenues, earnings and cash flows.***

We believe that physicians prefer to have their patients treated at dialysis centers where they or other members of their practice supervise the overall care provided as medical director of the center. As a result, the primary referral source for most of our centers is often the physician or physician group providing medical director services to the center. Neither our current nor former medical directors have an obligation to refer their patients to our centers. If a medical director agreement terminates, whether before or at the end of its term, and a new medical director is appointed, it may negatively impact the former medical director's decision to treat his or her patients at our center. If we are unable to enforce noncompetition provisions contained in the terminated

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medical director agreements, former medical directors may choose to provide medical director services for competing providers or establish their own dialysis centers in competition with ours. Also, if the quality of service levels at our centers deteriorates, it may negatively impact patient referrals and treatment volumes.

Our medical director contracts are for fixed periods, generally three to ten years, and at any given time a large number of them could be up for renewal at the same time. Medical directors have no obligation to extend their agreements with us, and there are a number of factors, including opportunities presented by our competitors or different affiliation models in the changing healthcare environment, such as an increase in the number of physicians becoming employed by hospitals, that could negatively impact their decisions to extend their agreements with us. In addition, we may take actions to restructure existing relationships or take positions in negotiating extensions of relationships to assure compliance with the anti-kickback statute, Stark Law and other similar laws. These actions also could negatively impact the decision of physicians to extend their medical director agreements with us or to refer their patients to us. If the terms of any existing agreement are found to violate applicable laws, we may not be successful in restructuring the relationship which could lead to the early termination of the agreement, or cause the physician to stop referring patients to our dialysis centers. If a significant number of physicians were to cease referring patients to our dialysis centers, whether due to regulatory or other reasons, then our revenues, earnings and cash flows would be substantially reduced.

***Current economic conditions as well as further disruptions in the financial markets could have a material adverse effect on our revenues, earnings and cash flows and otherwise adversely affect our financial condition.***

Current economic conditions could adversely affect our business and our profitability. Among other things, the potential decline in federal and state revenues that may result from such conditions may create additional pressures to contain or reduce reimbursements for our services from Medicare, Medicaid and other government sponsored programs. Increasing job losses or slow improvement in the unemployment rate in the U.S. as a result of current or recent economic conditions has and may continue to result in a smaller percentage of our patients being covered by an employer group health plan and a larger percentage being covered by lower paying Medicare and Medicaid programs. Employers may also begin to select more restrictive commercial plans with lower reimbursement rates. To the extent that payors are negatively impacted by a decline in the economy, we may experience further pressure on commercial rates, a further slowdown in collections and a reduction in the amounts we expect to collect. In addition, uncertainty in the financial markets could adversely affect the variable interest rates payable under our credit facilities or could make it more difficult to obtain or renew such facilities or to obtain other forms of financing in the future, if at all. Any or all of these factors, as well as other consequences of the current economic conditions which cannot currently be anticipated, could have a material adverse effect on our revenues, earnings and cash flows and otherwise adversely affect our financial condition.

***We may engage in acquisitions, mergers or dispositions, including the Merger, which may affect our results of operations, debt-to-capital ratio, capital expenditures or other aspects of our business.***

We may engage in acquisitions, mergers or dispositions, including the Merger, which may affect our results of operations, debt-to-capital ratio, capital expenditures, or other aspects of our business. There can be no assurance that we will be able to identify suitable acquisition targets or merger partners or that, if identified, we will be able to acquire these targets on acceptable terms or agree to terms with merger partners. There can also be no assurance that we will be successful in completing any acquisitions, mergers or dispositions that we might be considering or announce, or integrating any acquired business into our overall operations or operate them successfully as stand-alone businesses, or that any such acquired business will operate profitably or will not otherwise adversely impact our results of operations. Further, we cannot be certain that key talented individuals at the business being acquired will continue to work for us after the acquisition or that they will be able to continue to successfully manage or have adequate resources to successfully operate any acquired business.

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*If we are not able to continue to make acquisitions, or maintain an acceptable level of non-acquired growth, or if we face significant patient attrition to our competitors or a reduction in the number of our medical directors, it could adversely affect our business.*

The dialysis industry is highly competitive, particularly in terms of acquiring existing dialysis centers. We continue to face increased competition in the U.S. dialysis industry from large and medium-sized providers which compete directly with us for acquisition targets as well as for individual patients and medical directors. In addition, as we continue our international dialysis expansion into various international markets, we will face competition from large and medium-sized providers for these acquisition targets as well. Acquisitions, patient retention and medical director retention are an important part of our growth strategy. Because of the ease of entry into the dialysis business and the ability of physicians to be medical directors for their own centers, competition for growth in existing and expanding markets is not limited to large competitors with substantial financial resources. Occasionally, we have experienced competition from former medical directors or referring physicians who have opened their own dialysis centers. In addition, Fresenius, our largest competitor, manufactures a full line of dialysis supplies and equipment in addition to owning and operating dialysis centers. This may give it cost advantages over us because of its ability to manufacture its own products. If we are not able to continue to make acquisitions, continue to maintain acceptable levels of non-acquired growth, or if we face significant patient attrition to our competitors or a reduction in the number of our medical directors, it could adversely affect our business.

*If businesses we acquire have liabilities that we are not aware of, we could suffer severe consequences that would substantially reduce our earnings and cash flows.*

Our business strategy includes the acquisition of dialysis centers and businesses that own and operate dialysis centers, as well as other ancillary and non-dialysis services and strategic initiatives, including the Merger. Businesses we acquire may have unknown or contingent liabilities or liabilities that are in excess of the amounts that we originally estimated. Although we generally seek indemnification from the sellers of businesses we acquire for matters that are not properly disclosed to us, we are not always successful. In addition, even in cases where we are able to obtain indemnification, we may discover liabilities greater than the contractual limits or the financial resources of the indemnifying party. In the event that we are responsible for liabilities substantially in excess of any amounts recovered through rights to indemnification, we could suffer severe consequences that would substantially reduce our earnings and cash flows.

*Expansion of our operations to and offering our services in markets outside of the U.S. subjects us to political, legal, operational and other risks that could adversely affect our business, results of operations and cash flows.*

We are undertaking an expansion of our operations and beginning to offer our services outside of the U.S., which increases our exposure to the inherent risks of doing business in international markets. Depending on the market, these risks include, without limitation, those relating to:

changes in the local economic environment;

political instability, armed conflicts or terrorism;

social changes;

intellectual property legal protections and remedies;

trade regulations;

procedures and actions affecting approval, production, pricing, reimbursement and marketing of products and services;

foreign currency;



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repatriating or moving to other countries cash generated or held abroad, including considerations relating to tax-efficiencies and changes in tax laws;

export controls;

lack of reliable legal systems which may affect our ability to enforce contractual rights;

changes in local laws or regulations;

potentially longer payment and collection cycles;

financial and operational, and information technology systems integration; and

failure to comply with U.S. or local laws that prohibit us or our intermediaries from making improper payments to foreign officials for the purpose of obtaining or retaining business.

Additionally, some factors that will be critical to the success of our international business and operations will be different than those affecting our domestic business and operations. For example, conducting international operations requires us to devote significant management resources to implement our controls and systems in new markets, to comply with local laws and regulations and to overcome the numerous new challenges inherent in managing international operations, including those based on differing languages, cultures and regulatory environments, and those related to the timely hiring, integration and retention of a sufficient number of skilled personnel in an environment with which we are not familiar to carry out operations.

We anticipate expanding our international operations through acquisitions of varying sizes or through organic growth, which could increase these risks. Additionally, though we might invest material amounts of capital and incur significant costs in connection with the growth and development of our international operations, there is no assurance that we will be able to operate them profitably anytime soon, if at all. As a result, we would expect these costs to be dilutive to our earnings over the next several years as we start-up or acquire new operations.

These risks could have a material adverse effect on our financial condition, results of operations and cash flows.

***The level of our current and future debt could have an adverse impact on our business, and our ability to generate cash to service our indebtedness depends on many factors beyond our control.***

We have substantial debt outstanding and we may incur additional indebtedness in the future. The high level of our indebtedness, among other things, could:

make it difficult for us to make payments on our debt securities;

increase our vulnerability to general adverse economic and industry conditions;

require us to dedicate a substantial portion of our cash flow from operations to payments on our indebtedness, thereby reducing the availability of our cash flow to fund working capital, capital expenditures, acquisitions and investments and other general corporate purposes;

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limit our flexibility in planning for, or reacting to, changes in our business and the markets in which we operate;

place us at a competitive disadvantage compared to our competitors that have less debt; and

limit our ability to borrow additional funds.

Our ability to make payments on our indebtedness and to fund planned capital expenditures and expansion efforts, including any strategic acquisitions we may make in the future, will depend on our ability to generate cash. This, to a certain extent, is subject to general economic, financial, competitive, regulatory and other factors that are beyond our control.

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We cannot provide assurance that our business will generate sufficient cash flow from operations in the future or that future borrowings will be available to us in an amount sufficient to enable us to service our indebtedness or to fund other liquidity needs. The borrowings under our amended senior secured credit facilities are guaranteed by a substantial portion of our direct and indirect wholly owned domestic subsidiaries and are secured by a substantial portion of DaVita's and its guarantors' assets.

***Increases in interest rates may increase our interest expense and adversely affect our earnings and cash flow and our ability to service our indebtedness.***

A portion of our outstanding debt bears interest at variable rates. We are subject to LIBOR-based interest rate volatility from a floor of 1.50% to a cap of 4.00% on \$1.25 billion notional amounts of our Term Loan B outstanding debt as a result of several interest rate cap agreements that were entered into in January 2011. The remaining \$474 million of outstanding debt on the Term Loan B is subject to LIBOR-based interest rate volatility above a floor of 1.50%. At June 30, 2012, we were also subject to LIBOR-based interest rate volatility above a floor of 1.00% on \$199 million of outstanding debt associated with our Term Loan A-2.

We also have approximately \$350 million of additional borrowings available of which approximately \$49 million was committed for outstanding letters of credit, under our amended senior secured credit facilities that are subject to LIBOR-based interest rate volatility. We may also incur additional variable rate debt in the future. Increases in interest rates would increase our interest expense of the variable portion of our indebtedness, which could negatively impact our earnings and cash flow and our ability to service our indebtedness which would be particularly significant in the event of rapid and substantial increases in interest rates.

At June 30, 2012, if interest rates were to hypothetically increase by 100 basis points it would increase our interest expense by approximately \$0.5 million, which increase solely relates to our Term Loan A-2 that is subject to LIBOR-based interest rate volatility above a floor of 1.00%.

However, interest expense would not be impacted by any LIBOR-based interest rate volatility associated with our other Term Loans since all of our Term Loan A is economically fixed and our Term Loan B is subject to LIBOR-based interest rate volatility above a floor of 1.50%, as described above. The current LIBOR rate in effect, plus a hypothetical increase of 100 basis points, is currently less than our Term Loan B floor of 1.50%. Therefore, LIBOR-based interest rates would have to increase above a floor of 1.50% for the Term Loan B to have a negative impact on our financial results.

***If there are shortages of skilled clinical personnel or if we experience a higher than normal turnover rate, we may experience disruptions in our business operations and increases in operating expenses.***

We are experiencing increased labor costs and difficulties in hiring nurses due to a nationwide shortage of skilled clinical personnel. We compete for nurses with hospitals and other health care providers. This nursing shortage may limit our ability to expand our operations. In addition, changes in certification requirements or increases in the required staffing levels for skilled clinical personnel can impact our ability to maintain sufficient staff levels to the extent our teammates are not able to meet new requirements or competition for qualified individuals increases. If we are unable to hire skilled clinical personnel when needed, or if we experience a higher than normal turnover rate for our skilled clinical personnel, our operations and treatment growth will be negatively impacted, which would result in reduced revenues, earnings and cash flows.

***Our business is labor intensive and could be adversely affected if we were unable to maintain satisfactory relations with our employees or if union organizing activities were to result in significant increases in our operating costs or decreases in productivity.***

Our business is labor intensive, and our results are subject to variations in labor-related costs, productivity and the number of pending or potential claims against us related to labor and employment practices. If political

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efforts at the national and local level result in actions or proposals that increase the likelihood of union organizing activities at our facilities or if union organizing activities increase for other reasons, or if labor and employment claims, including the filing of class action suits, trend upwards, our operating costs could increase and our employee relations, productivity, earnings and cash flows could be adversely affected.

***Upgrades to our billing and collections systems and complications associated with upgrades and other improvements to our billing and collections systems could have a material adverse effect on our revenues, cash flows and operating results.***

We are continuously performing upgrades to our billing systems and expect to continue to do so in the near term. In addition, we continuously work to improve our billing and collections performance through process upgrades, organizational changes and other improvements. We may experience difficulties in our ability to successfully bill and collect for services rendered as a result of these changes, including a slow-down of collections, a reduction in the amounts we expect to collect, increased risk of retractions from and refunds to commercial and government payors, an increase in our provision for uncollectible accounts receivable and noncompliance with reimbursement regulations. The failure to successfully implement the upgrades to the billing and collection systems and other improvements could have a material adverse effect on our revenues, cash flows and operating results.

***Our ability to effectively provide the services we offer could be negatively impacted if certain of our suppliers are unable to meet our needs or if we are unable to effectively access new technology, which could substantially reduce our revenues, earnings and cash flows.***

We have significant suppliers that are either the sole or primary source of products critical to the services we provide, including Amgen, Baxter Healthcare Corporation, NxStage Medical, Inc. and others or to which we have committed obligations to make purchases including Gambro Renal Products and Fresenius. If any of these suppliers are unable to meet our needs for the products they supply, including in the event of a product recall, or shortage, and we are not able to find adequate alternative sources, or if some of the drugs that we purchase are not reimbursed or not adequately reimbursed by commercial payors or through the bundled payment rate by Medicare, our revenues, earnings and cash flows could be substantially reduced. In addition, the technology related to the products critical to the services we provide is subject to new developments and may result in superior products. If we are not able to access superior products on a cost-effective basis or if suppliers are not able to fulfill our requirements for such products, we could face patient attrition which could substantially reduce our revenues, earnings and cash flows.

***We may be subject to liability claims for damages and other expenses not covered by insurance that could reduce our earnings and cash flows.***

The administration of dialysis and related services to patients may subject us to litigation and liability for damages. Our business, profitability and growth prospects could suffer if we face negative publicity or we pay damages or defense costs in connection with a claim that is outside the scope of any applicable insurance coverage, including claims related to adverse patient events, contractual disputes and professional and general liability claims. In addition, we have received several notices of claims from commercial payors and other third parties related to our historical billing practices and the historical billing practices of the centers acquired from Gambro Healthcare and other matters related to their settlement agreement with the Department of Justice. Although the ultimate outcome of these claims cannot be predicted, an adverse result with respect to one or more of these claims could have a material adverse effect on our financial condition, results of operations, and cash flows. We currently maintain programs of general and professional liability insurance. However, a successful claim, including a professional liability, malpractice or negligence claim which is in excess of our insurance coverage could have a material adverse effect on our earnings and cash flows.



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In addition, if our costs of insurance and claims increase, then our earnings could decline. Market rates for insurance premiums and deductibles have been steadily increasing. Our earnings and cash flows could be materially and adversely affected by any of the following:

the collapse or insolvency of our insurance carriers;

further increases in premiums and deductibles;

increases in the number of liability claims against us or the cost of settling or trying cases related to those claims; and

an inability to obtain one or more types of insurance on acceptable terms.

***Provisions in our charter documents, compensation programs and Delaware law may deter a change of control that our stockholders would otherwise determine to be in their best interests.***

Our charter documents include provisions that may deter hostile takeovers, delay or prevent changes of control or changes in our management, or limit the ability of our stockholders to approve transactions that they may otherwise determine to be in their best interests. These include provisions prohibiting our stockholders from acting by written consent; requiring 90 days advance notice of stockholder proposals or nominations to our Board of Directors; and granting our Board of Directors the authority to issue preferred stock and to determine the rights and preferences of the preferred stock without the need for further stockholder approval.

Most of our outstanding employee stock options include a provision accelerating the vesting of the options in the event of a change of control. We also maintain a change of control protection program for our employees who do not have a significant number of stock awards, which has been in place since 2001, and which provides for cash bonuses to the employees in the event of a change of control. Based on the market price of our common stock and shares outstanding on June 30, 2012, these cash bonuses would total approximately \$364 million if a change of control transaction occurred at that price and our Board of Directors did not modify this program. These change of control provisions may affect the price an acquirer would be willing to pay for our Company.

We are also subject to Section 203 of the Delaware General Corporation Law that, subject to exceptions, would prohibit us from engaging in any business combinations with any interested stockholder, as defined in that section, for a period of three years following the date on which that stockholder became an interested stockholder.

These provisions may discourage, delay or prevent an acquisition of our Company at a price that our stockholders may find attractive. These provisions could also make it more difficult for our stockholders to elect directors and take other corporate actions and could limit the price that investors might be willing to pay for shares of our common stock.

### **Risks Related to HCP**

***As a healthcare company, HCP is subject to many of the same risks to which DaVita is subject.***

As a participant in the healthcare industry, HCP is subject to many of the same risks that DaVita is subject to as described in the DaVita risk factors, included elsewhere in or incorporated by reference into this prospectus, any of which could materially and adversely affect HCP's revenues, earnings or cash flows. Among these risks are the following:

the healthcare business is heavily regulated and changes in laws, regulations, or government programs could have a material impact on HCP's business;

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failure to comply with complex governmental regulations could have severe consequences to HCP, including, without limitation, exclusion from governmental payor programs like Medicare and Medicaid;

HCP could become the subject of governmental investigations, claims, and litigation;

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HCP may be unable to continue to make acquisitions or to successfully integrate such acquisitions into its business, and such acquisitions may include liabilities of which HCP was not aware; and

as a result of the broad scope of HCP's medical practice, including its affiliated physician groups in California and Nevada, HCP is exposed to medical malpractice claims, as well as claims for damages and other expenses, that may not be covered by insurance.

*Under most of HCP's agreements with health plans, HCP assumes some or all of the risk that the cost of providing services will exceed its compensation.*

Substantially all of HCP's revenue is derived from PMPM fees, paid by health plans under capitation agreements with HCP or its affiliated physician groups. In Florida, HCP contracts directly with health plans under global capitation arrangements to assume financial responsibility for both professional and institutional services. In Nevada, HCP contracts directly with health plans under capitation arrangements to assume financial responsibility for professional services, but does not generally assume institutional risk. Under such contracts, the health plan establishes pools for both professional services and institutional services based on a contractual PMPM fee, and the health plan then pays both professional and institutional expenses and remits the residual amounts to HCP. In California, HCP utilizes a capitation model in several different forms. While there are variations specific to each arrangement, HealthCare Partners Affiliates Medical Group, or HCPAMG, generally contracts with health plans to receive a PMPM fee for professional services and assumes the financial responsibility for professional services only. In some cases, the health plans separately enter into capitation contracts with third parties (typically hospitals) who receive directly a portion of the PMPM fee and assume contractual financial responsibility for hospital services. In other cases, the health plan does not pay any portion of the PMPM fee to the hospital, but rather administers claims for hospital expenses itself. In both scenarios, HCP enters into managed care-related administrative services agreements or similar arrangements with those third parties (hospitals) under which HCP agrees to be responsible for utilization review, quality assurance, and other managed care-related administrative functions. As compensation for such administrative services, HCP is entitled to share up to 100% of the amount by which the hospital capitation revenue exceeds hospital expenses; any such risk-share amount to which HCP is entitled is recorded as medical revenues.

To the extent that members require more care than is anticipated, aggregate PMPM payments may be insufficient to cover the costs associated with treatment. If medical expenses exceed estimates, except in very limited circumstances, HCP will not be able to increase the PMPM fee received under these risk agreements during their then-current terms.

If HCP or its affiliated physician groups enter into capitation contracts with unfavorable economic terms, or a capitation contract is amended to include unfavorable terms, HCP could, directly or indirectly through its contracts with HCPAMG, suffer losses with respect to such contract. Since HCP does not negotiate with CMS or any health plan regarding the benefits to be provided under their Medicare Advantage or other managed care plans, HCP often has just a few months to familiarize itself with each new annual package of benefits it is expected to offer.

Relatively small changes in HCP's or HCPAMG's ratio of medical expense to revenue can create significant changes in HCP's financial results. Accordingly, the failure to adequately predict and control medical expenses and to make reasonable estimates and maintain adequate accruals for incurred but not reported claims, may have a material adverse effect on HCP's financial condition, results of operations or cash flows.

Historically, HCP's and HCPAMG's medical expenses as a percentage of revenue have fluctuated. Factors that may cause medical expenses to exceed estimates include:

the health status of members;

higher than expected utilization of new or existing healthcare services or technologies;

an increase in the cost of healthcare services and supplies, including pharmaceuticals, whether as a result of inflation or otherwise;

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changes to mandated benefits or other changes in healthcare laws, regulations, and practices;

periodic renegotiation of provider contracts with specialist physicians, hospitals, and ancillary providers;

periodic renegotiation of contracts with HCP's affiliated primary care physicians;

changes in the demographics of the participating members and medical trends;

contractual or claims disputes with providers, hospitals, or other service providers within a health plan's network; and

the occurrence of catastrophes, major epidemics, or acts of terrorism.

***Risk-sharing arrangements that HCP-affiliated physician groups (including HCPAMG) have with health plans and hospitals could result in their costs exceeding the corresponding revenues, which could reduce or eliminate any shared risk profitability.***

Most of the agreements between health plans and HCP and its affiliated physician groups, including HCPAMG, contain risk-sharing arrangements under which the physician groups can earn additional compensation from the health plans by coordinating the provision of quality, cost-effective healthcare to members. However, such arrangements may require the physician group to assume a portion of any loss sustained from these arrangements, thereby reducing HCP's net income. Under these risk-sharing arrangements, HCP and its affiliated physician groups are responsible for a portion of the cost of hospital services or other services that are not capitated. The terms of the particular risk-sharing arrangement allocate responsibility to the respective parties when the cost of services exceeds the related revenue, which results in a deficit, or permit the parties to share in any surplus amounts when actual costs are less than the related revenue. The amount of non-capitated and hospital costs in any period could be affected by factors beyond the control of HCP, such as changes in treatment protocols, new technologies, longer lengths of stay by the patient, and inflation. To the extent that such non-capitated and hospital costs are higher than anticipated, revenue may not be sufficient to cover the risk-sharing deficits the health plans and HCP are responsible for, which could reduce HCP's revenues and profitability. Certain of HCP's agreements with health plans stipulate that risk-sharing pool deficit amounts are carried forward to offset any future years surplus amounts HCP would otherwise be entitled to receive. HCP accrues for any such risk-sharing deficits.

Health plans often insist on withholding negotiated amounts from professional PMPM payments, which the health plans are permitted to retain, in order to cover HCP's share of any risk-sharing deficits. Whenever possible, HCP seeks to contractually reduce or eliminate its liability for risk-sharing deficits. Notwithstanding the foregoing, risk-sharing deficits could have a significant impact on future profitability.

***Renegotiation, renewal, or termination of capitation agreements with health plans could have a significant impact on HCP's future profitability.***

Under most of HCP's and its affiliated physician groups', including HCPAMG's, capitation agreements with health plans, the health plan is generally permitted to modify the benefit and risk obligations and compensation rights from time to time during the terms of the agreements. If a health plan exercises its right to amend its benefit and risk obligations and compensation rights, HCP and its affiliated physician groups, including HCPAMG, are generally allowed a period of time to object to such amendment. If HCP or its affiliated physician group so objects, under some of the risk agreements, the relevant health plan may terminate the applicable agreement upon 60 to 90 days written notice. In addition, in connection with the Merger, HCP must obtain the consent of certain health plans to assign certain capitation agreements, which could result in health plans attempting to renegotiate or threatening to cancel such contracts. Depending on the health plan at issue and the amount of revenue associated with the health plan's risk agreement, the renegotiated terms or termination may have a material adverse effect on HCP's and DaVita's future revenues and profitability.

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***Laws regulating the corporate practice of medicine could restrict the manner in which HCP is permitted to conduct its business and the failure to comply with such laws could subject HCP to penalties or require a restructuring of HCP.***

Some states have laws that prohibit business entities, such as HCP, from practicing medicine, employing physicians to practice medicine, exercising control over medical decisions by physicians (also known collectively as the corporate practice of medicine) or engaging in certain arrangements, such as fee-splitting, with physicians. In some states these prohibitions are expressly stated in a statute or regulation, while in other states the prohibition is a matter of judicial or regulatory interpretation. Of the three states in which HCP currently operates, California and Nevada prohibit the corporate practice of medicine.

In California and Nevada, HCP operates by maintaining long-term contracts with its affiliated physician groups, including HCPAMG, which are each owned and operated by physicians and which employ or contract with additional physicians to provide physician services. Under these arrangements, HCP provides management services, receives a management fee for providing non-medical management services, does not represent that it offers medical services, and does not exercise influence or control over the practice of medicine by the physicians or the affiliated physician groups.

In addition to the above management arrangements, HCP has certain contractual rights relating to the orderly transfer of equity interests in certain of its California and Nevada affiliated physician groups through succession agreements and other arrangements with their physician equityholders. However, such equity interests cannot be transferred to or held by HCP or by any non-professional organization. Accordingly, neither HCP nor HCP's subsidiaries directly own any equity interests in any physician groups in California and Nevada. In the event that any of these affiliated physician groups fails to comply with the management arrangement or any management arrangement is terminated and/or HCP is unable to enforce its contractual rights over the orderly transfer of equity interests in its affiliated physician groups, such events could have a material adverse effect on HCP's business, financial condition or results of operations.

***HCP may be required to restructure its relationship with its affiliated physician groups if HCP's management services agreements with such affiliated physician groups or HCP's succession agreements and other related arrangements with equityholders of any such affiliated physician groups are deemed invalid under prohibitions against the corporate practice of medicine in California and Nevada.***

Some of the relevant laws, regulations, and agency interpretations relating to the corporate practice of medicine have been subject to limited judicial and regulatory interpretation. Moreover, state laws are subject to change and regulatory authorities and other parties, including HCP's group physicians, may assert that, despite these arrangements, HCP is engaged in the prohibited corporate practice of medicine.

In light of the above, it is possible that a state regulatory agency or a court could determine that HCP's agreements with physician equityholders of certain managed California and Nevada affiliated physician groups as described above, either independently or coupled with the management services agreements with such affiliated physician groups, confer impermissible control over the business and/or medical operations of such affiliated physician groups, that the management fee payable under such arrangements results in profit sharing or that HCP is the beneficial owner of the affiliated physician groups' equity interests in violation of the corporate practice of medicine doctrine. If there were a determination that a corporate practice of medicine violation existed or exists, these arrangements could be deemed invalid, potentially resulting in a loss of revenues and results of operations derived from such affiliated physician groups. In addition, HCP's California and Nevada affiliated physician groups and HCP, as well as those physician equityholders of affiliated physician groups who are subject to succession agreements with HCP, could be subject to criminal or civil penalties or an injunction for practicing medicine without a license or aiding and abetting the unlicensed practice of medicine.

A determination that a corporate practice of medicine violation existed could also force a restructuring of HCP's management arrangements with affiliated physician groups in California and/or Nevada. Such a

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restructuring might include revisions of the management services agreements, which might include a modification of the management fee, and/or establishing an alternative structure, such as obtaining a California Knox-Keene license (a managed care plan license issued pursuant to the California Knox-Keene Health Care Service Plan Act of 1975, or Knox-Keene Act) or its Nevada equivalent, which would permit HCP to contract with a physician network without violating the corporate practice of medicine prohibition. There can be no assurance that such a restructuring would be feasible, or that it could be accomplished within a reasonable time frame without a material adverse effect on HCP's operations and financial results.

***If HCP's agreements or arrangements with any physician equityholder(s) of affiliated physicians, physician groups, or IPAs are deemed invalid under state law, including laws against the corporate practice of medicine, or Federal Law, or are terminated as a result of changes in state law, or if there is a change in accounting principles or the interpretation thereof by the Financial Accounting Standards Board, or FASB, affecting consolidation of entities, it could impact HCP's consolidation of total revenues derived from such affiliated physician groups.***

HCP's financial statements are consolidated and include the accounts of its majority-owned subsidiaries and certain non-owned HCP-affiliated physician groups, which consolidation is effectuated in accordance with applicable accounting rules. In the event of a change in accounting principles promulgated by FASB or in FASB's interpretation of its principles, or if there were an adverse determination by a regulatory agency or a court or if there were a change in state or federal law relating to the ability to maintain present agreements or arrangements with such physician groups, HCP may not be permitted to continue to consolidate the total revenues of such organizations. A change in accounting for consolidation with respect to HCP's present agreement or arrangements would diminish HCP's reported revenues but would not adversely affect its results of operations, while regulatory or legal rulings or changes in law interfering with HCP's ability to maintain its present agreements or arrangements could diminish both revenues and results of operations.

***If HCPAMG and HCP's affiliated physician groups are not able to satisfy the California Department of Managed Health Care's financial solvency requirements, HCP could become subject to sanctions and its ability to do business in California could be limited or terminated.***

The California Department of Managed Health Care, or DMHC, has instituted financial solvency regulations. The regulations are intended to provide a formal mechanism for monitoring the financial solvency of capitated physician groups. Under the regulations, HCPAMG and HCP's affiliated physician groups are required to, among other things:

Maintain, at all times, a minimum cash-to-claims ratio (where cash-to-claims ratio means the organization's cash, marketable securities, and certain qualified receivables, divided by the organization's total unpaid claims liability). The regulations currently require a cash-to-claims ratio of 0.75.

Submit periodic reports to the DMHC containing various data and attestations regarding performance and financial solvency, including incurred but not reported calculations and documentation, and attestations as to whether or not the organization was in compliance with the Knox-Keene Act requirements related to claims payment timeliness, had maintained positive tangible net equity (i.e., at least \$1.00), and had maintained positive working capital (i.e., at least \$1.00).

In the event that a physician organization is not in compliance with any of the above criteria, the organization would be required to describe in a report submitted to the DMHC the reasons for non-compliance and actions to be taken to bring the organization into compliance. Further, under these regulations, the DMHC can make public some of the information contained in the reports, including, but not limited to, whether or not a particular physician organization met each of the criteria. In the event HCP or its affiliated physician groups are not able to meet certain of the financial solvency requirements, and fail to meet subsequent corrective action plans, HCP could be subject to sanctions, or limitations on, or removal of, its ability to do business in California.

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***Reductions in Medicare Advantage health plan reimbursement rates stemming from recent healthcare reforms and any future related regulations may negatively impact HCP's business, revenue and profitability.***

A significant portion of HCP's revenue is directly or indirectly derived from the monthly premium payments paid by CMS to health plans for medical services provided to Medicare Advantage enrollees. As a result, HCP's business and results of operations are, in part, dependent on government funding levels for Medicare Advantage programs. Any changes that limit or reduce Medicare Advantage reimbursement levels, such as reductions in or limitations of reimbursement amounts or rates under programs, reductions in funding of programs, expansion of benefits without adequate funding, elimination of coverage for certain benefits, or elimination of coverage for certain individuals or treatments under programs, could have a material adverse effect on HCP's business.

The Health Reform Acts contain a number of provisions that negatively impact Medicare Advantage plans, including the following:

Medicare Advantage benchmarks for 2011 were frozen at 2010 levels. Beginning in 2012, Medicare Advantage benchmark rates are being phased down from current levels to levels that are between 95% and 115% of fee-for-service costs, depending on a plan's geographic area. Medicare Advantage plans receiving certain quality ratings by CMS will be eligible for bonus rate increases.

Rebates received by Medicare Advantage plans that underbid based on payment benchmarks will be reduced, with larger reductions for plans failing to receive certain quality ratings.

The Secretary of the Department of Health and Human Services, or HHS, is granted explicit authority to deny Medicare Advantage plan bids that propose significant increases in cost sharing or decreases in benefits.

Beginning in 2014, Medicare Advantage plans with medical loss ratios below 85% will be required to pay a rebate to the Secretary of HHS. The Secretary of HHS will halt enrollment in any plan failing to meet this ratio for three consecutive years, and terminate any plan failing to meet the ratio for five consecutive years. If an HCP-contracting Medicare Advantage plan experiences a limitation on enrollment or is otherwise terminated from the Medicare Advantage program, HCP may suffer materially adverse consequences to its business or financial condition.

Since January 1, 2011, cost-sharing for certain services (such as chemotherapy and skilled nursing care) has been limited to the cost-sharing permitted under the original fee-for-service Medicare program.

Prescription drug plans are now required to cover all drugs on a list developed by the Secretary of HHS, and the Medicare Part D premium subsidy for high-income beneficiaries has been reduced by 25%.

Beginning in 2014, CMS is required to increase coding intensity adjustments for Medicare Advantage plans, which is expected to reduce CMS payments to Medicare Advantage plans, which in turn will likely reduce the amounts payable to HCP and its affiliated physicians, physician groups, and IPAs under its capitation agreements.

In addition to the above, the Health Reform Acts establish a new Independent Payment Advisory Board, or IPAB, to recommend ways to reduce Medicare spending if the increase in Medicare costs per capita exceeds certain targets, which will be implemented unless Congress passes alternative legislation that achieves the same savings. The Health Reform Acts mandate that if targets are not met, the IPAB's recommendations are to include ways to reduce payments to Medicare Advantage plans and Medicare Part D prescription drug plans related to administrative expenses (including profits) and performance bonuses. Also, the Budget Control Act of 2011, or BCA, mandates a 2% decrease in Medicare Advantage spending in order to bring Medicare spending for Medicare Advantage beneficiaries more in line with Medicare fee-for-service spending. Additional steps could be taken by government agencies and plan providers to further restrict, directly or indirectly, the reimbursements available to plan service providers like HCP.





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Finally, it is possible that the impact of the Health Reform Acts could cause a reduction in enrollment in Medicare Advantage plans, which, in turn, would reduce HCP's revenues and net income. For example, the Congressional Budget Office, or CBO, expects that, after reaching a high of 25% participation in Medicare Advantage plans in 2012, such participation will decline to 17% in 2020. The CBO predicts that this, together with other changes under the Reform Act, will result in reductions in Medicare Advantage spending by CMS of up to an aggregate of \$131.9 billion over 10 years.

Although the Health Reform Acts provide for reductions in payments to Medicare Advantage plans, the Health Reform Acts also provide for bonus payments to Medicare Advantage plans rated four or five stars based on quality measures. In November 2011, CMS announced a three-year demonstration project with an alternative bonus structure that awards bonuses to plans with three or more stars. The Government Accountability Office and MedPAC have criticized the demonstration project. If Congress acts to curb the CMS initiated bonus structure, HCP's revenues would decrease.

***HCP's operations are dependent on competing health plans and, at times, their and HCP's economic interests may diverge.***

For the year ended December 31, 2011, 70% of HCP's consolidated medical revenues was earned through contracts with three health plans.

HCP expects that, going forward, substantially all of its revenue will continue to be derived from these and other health plans. Each health plan may immediately terminate any of HCP's contracts and/or any individual credentialed physician upon the occurrence of certain events. They may also amend the material terms of the contracts under certain circumstances. Failure to maintain the contracts on favorable terms, for any reason, would materially and adversely affect HCP's results of operations and financial condition. A material decline in the number of members could also have a material adverse effect on HCP's results of operations.

Notwithstanding each health plan's and HCP's current shared interest in providing service to HCP's members who are enrolled in the subject health plans, the health plans may have different and, at times, opposing economic interests from those of HCP. The health plans provide a wide range of health insurance services across a wide range of geographic regions, utilizing a vast network of providers. As a result, they and HCP may have different views regarding the proper pricing of services and/or the proper pricing of the various service providers in their provider networks, the cost of which HCP bears to the extent that the services of such service providers are utilized. These health plans may also have different views than HCP regarding the efforts and expenditures that they, HCP, and/or other service providers should make to achieve and/or maintain various quality ratings. In addition, several health plans have purchased or announced their intent to purchase IPAs or HMOs. If health plans with which HCP contracts make significant purchases, they may not continue to contract with HCP or contract on less favorable terms. Similarly, as a result of changes in laws, regulations, consumer preferences, or other factors, the health plans may find it in their best interest to provide health insurance services pursuant to another payment or reimbursement structure. In the event HCP's interests diverge from the interests of the health plans, HCP may have limited recourse or alternative options in light of its dependence on these health plans. There can be no assurances that HCP will continue to find it mutually beneficial to work with the health plans. As a result of various restrictive provisions that appear in some of the managed care agreements with health plans, HCP may, at times, have limitations on its ability to cancel an agreement with a particular health plan and immediately thereafter contract with a competing health plan with respect to the same service area.

***HCP and its affiliated physicians, physician groups, including HCPAMG, and IPAs and other physicians may be required to continue providing services following termination or renegotiation of certain agreements with health plans.***

There are circumstances under federal and state law pursuant to which HCP and its affiliated physician groups, including HCPAMG, IPAs, and other physicians could be obligated to continue to provide medical

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services to HCP members in their care following a termination of their applicable risk agreement with health plans and termination of the receipt of payments thereunder. In certain cases, this obligation could require the physician group or IPA to provide care to such member following the bankruptcy or insolvency of a health plan. Accordingly, the obligations to provide medical services to HCP members (and the associated costs) may not terminate at the time the applicable agreement with the health plan terminates, and HCP may not be able to recover its cost of providing those services from the health plan, which could have a material adverse effect on HCP's financial condition, results of operations, and/or cash flows.

***HCP operates only in Florida, California, and Nevada. HCP may not be able to successfully establish a presence in new geographic regions.***

HCP derives substantially all of its revenue from operations exclusively in California, Nevada, and Florida (California, Nevada, and Florida are hereinafter referred to as, the Existing Geographic Regions). As a result, HCP's exposure to many of the risks described herein are not mitigated by a greater diversification of geographic focus. Furthermore, due to the concentration of HCP's operations in the Existing Geographic Regions, HCP's business may be adversely affected by economic conditions, natural disasters (such as earthquakes or hurricanes), or acts of war or terrorism that disproportionately affect the Existing Geographic Regions as compared to other states and geographic markets.

To expand the operations of its network outside of the Existing Geographic Regions, HCP must devote resources to identifying and exploring such perceived opportunities. Thereafter, HCP must, among other things, recruit and retain qualified personnel, develop new offices, establish potentially new relationships with one or more health plans, and establish new relationships with physicians and other healthcare providers. The ability to establish such new relationships may be significantly inhibited by competition for such relationships and personnel in the health care marketplace in the targeted new geographic regions. In addition, if HCP were to seek expansion outside of the Existing Geographic Regions, HCP would be required to comply with laws and regulations of states that may differ from the ones in which it currently operates, and could face competitors with greater knowledge of such local markets. HCP anticipates that any geographic expansion may require it to make a substantial investment of management time, capital, and/or other resources. There can be no assurance that HCP will be able to establish profitable operations or relationships in any new geographic markets.

***Reductions in the quality ratings of the health plans HCP serves could have an adverse effect on its results of operations, financial condition, and/or cash flow.***

As a result of the Health Reform Acts, HCP anticipates that the level of reimbursement each health plan receives from CMS will be dependent, in part, upon the quality rating of the Medicare plan that such health plan serves. Such ratings are expected to impact the percentage of any cost savings rebate and any bonuses earned by such health plan. Since a significant portion of HCP's revenue for 2012 is expected to be calculated as a percentage of CMS reimbursements received by these health plans with respect to HCP members, reductions in the quality ratings of a health plan that HCP serves could have an adverse effect on its results of operations, financial condition, and/or cash flows. In addition, CMS has announced its intention to terminate any plan that has a rating of less than three stars for three consecutive years. Medicare Advantage plans with five stars are permitted to conduct enrollment throughout the year and enrollees in plans with 4.5 or fewer stars are permitted to change plans during the year. None of the plans with which HCP contracts are five-star plans. Given each health plan's control of its plans and the many other providers that serve such plans, HCP believes that it will have limited ability to influence the overall quality rating of any such plan. Accordingly, since low quality ratings can potentially lead to the termination of a plan that HCP serves, HCP may not be able to prevent the potential termination of a contracting plan or a shift of patients to other plans based upon quality issues which could, in turn, have an adverse effect on HCP's results of operations, financial condition, and/or cash flows.

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***HCP's records and submissions to a health plan may contain inaccurate or unsupported information regarding risk adjustment scores of members, which could cause HCP to overstate or understate its revenue and subject it to various penalties.***

HCP, on behalf of itself and its affiliated physicians, physician groups, including HCPAMG, and IPAs, submits to health plans claims and encounter data that support the risk adjustment factor, or RAF, scores attributable to members. These RAF scores determine, in part, the revenue to which the health plan and, in turn, HCP is entitled for the provision of medical care to such members. The data submitted to CMS by each health plan is based on medical charts and diagnosis codes prepared and submitted by HCP. Each health plan generally relies on HCP to appropriately document and support such RAF data in HCP's medical records. Each health plan also relies on HCP to appropriately code claims for medical services provided to members. HCP may periodically review medical records and may find inaccurate or unsupported coding or otherwise inaccurate records. Erroneous claims and erroneous encounter records and submissions could result in inaccurate PMPM fee revenue and risk adjustment payments, which may be subject to correction or retroactive adjustment in later periods. This corrected or adjusted information may be reflected in financial statements for periods subsequent to the period in which the revenue was recorded. HCP might also need to refund a portion of the revenue that it received, which refund, depending on its magnitude, could damage its relationship with the applicable health plan and could have a material adverse effect on HCP's results of operations, financial condition or cash flows.

CMS audits Medicare Advantage plans for documentation to support RAF-related payments for members chosen at random. The Medicare Advantage plans ask providers to submit the underlying documentation for members that they serve. It is possible that claims associated with members with higher RAF scores could be subject to more scrutiny in a CMS audit. HCP has experienced increases in RAF scores attributable to its members, and thus there is a possibility that a Medicare Advantage plan may seek repayment from HCP as a result of CMS payment adjustments to the Medicare Advantage plan. The plans also may hold HCP liable for any penalties owed to CMS for inaccurate or unsupported RAF scores provided by HCP.

CMS has indicated that, starting with payment year 2011, payment adjustments will not be limited to RAF scores for the specific Medicare Advantage enrollees for which errors are found but may also be extrapolated to the entire Medicare Advantage plan subject to a particular CMS contract. Although CMS has described its audit process as plan-year specific and has stated that it will not extrapolate audit results for plan years prior to 2011, CMS has not specifically stated that payment adjustments as a result of one plan year's audit will not be extrapolated to prior plan years. There can be no assurance that a health plan will not be randomly selected or targeted for review by CMS or that the outcome of such a review will not result in a material adjustment in HCP's revenue and profitability, even if the information HCP submitted to the plan is accurate and supportable. Since the CMS rules, regulations, and statements regarding this audit program are still not well defined and, in some cases, have not been published in final form, there is also a risk that CMS may adopt new rules and regulations that are inconsistent with their existing rules, regulations, and statements.

***A failure to estimate incurred but not reported medical benefits expense accurately could adversely affect HCP's profitability.***

Medical claims expense includes estimates of future medical claims that have been incurred by the patient but for which the provider has not yet billed HCP. These claim estimates are made utilizing actuarial methods and are continually evaluated and adjusted by management, based upon HCP's historical claims experience and other factors. Adjustments, if necessary, are made to medical claims expense when the assumptions used to determine HCP's claims liability changes and when actual claim costs are ultimately determined.

Due to the inherent uncertainties associated with the factors used in these estimates and changes in the patterns and rates of medical utilization, materially different amounts could be reported in HCP's financial statements for a particular period under different conditions or using different, but still reasonable, assumptions. It is possible that HCP's estimates of this type of claim may be inadequate in the future. In such event, HCP's

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results of operations could be adversely impacted. Further, the inability to estimate these claims accurately may also affect HCP's ability to take timely corrective actions, further exacerbating the extent of any adverse effect on HCP's results.

*HCP faces certain competitive threats which could reduce HCP's profitability and increase competition for patients.*

HCP faces certain competitive threats based on certain features of the Medicare programs, including the following:

As a result of the direct and indirect impacts of the Health Reform Acts, many Medicare beneficiaries may decide that an original fee-for-service Medicare program is more attractive than a Medicare Advantage plan. As a result, enrollment in the health plans HCP serves may decrease.

Managed care companies offer alternative products such as regional preferred provider organizations, or PPOs, and private fee-for-service plans. Medicare PPOs and private fee-for-service plans allow their patients more flexibility in selecting physicians than Medicare Advantage health plans, which typically require patients to coordinate care with a primary care physician. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 has encouraged the creation of regional PPOs through various incentives, including certain risk corridors, or cost-reimbursement provisions, a stabilization fund for incentive payments, and special payments to hospitals not otherwise contracted with a Medicare Advantage plan that treat regional plan enrollees. The formation of regional Medicare PPOs and private fee-for-service plans may affect HCP's relative attractiveness to existing and potential Medicare patients in their service areas.

The payments for the local and regional Medicare Advantage plans are based on a competitive bidding process that may indirectly cause a decrease in the amount of the PMPM fee or result in an increase in benefits offered.

The annual enrollment process and subsequent lock-in provisions of the Health Reform Acts may adversely affect HCP's level of revenue growth as it will limit the ability of a health plan to market to and enroll new Medicare beneficiaries in its established service areas outside of the annual enrollment period.

Commencing in 2012, CMS will allow Medicare beneficiaries who are enrolled in a Medicare Advantage plan with a quality rating of 4.5 stars or less to enroll in a five-star rated Medicare Advantage plan at any time during the benefit year. None of the plans HCP serves are five-star rated. Therefore, HCP may face a competitive disadvantage in recruiting and retaining Medicare beneficiaries.

In addition to the competitive threats intrinsic to the Medicare programs, competition among health plans and among healthcare providers may also have a negative impact on HCP's profitability. For example, California, Nevada, and Florida have become increasingly attractive to health plans that may compete with HCP, including the health plans with which HCP and its affiliated physicians, physician groups, and IPAs currently compete. HCP may not be able to continue to compete profitably in the healthcare industry if additional competitors enter the same market. If HCP cannot compete profitably, the ability of HCP to compete with other service providers that contract with competing health plans may be substantially impaired. Similarly, California, Nevada, and Florida have also become increasingly attractive to HCP's competitors due to the large populations of Medicare beneficiaries. HCP may not be able to continue to compete effectively if additional competitors enter the same regions.

HCP competes directly with various regional and local companies that provide similar services in HCP's Existing Geographic Regions. HCP's competitors vary in size and scope and in terms of products and services offered. HCP believes that some of its competitors and potential competitors may be significantly larger than HCP and have greater financial, sales, marketing, and other resources. Furthermore, it is HCP's belief that some of its competitors may make strategic acquisitions or establish cooperative relationships among themselves.

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***A disruption in HCP's healthcare provider networks could have an adverse effect on HCP's operations and profitability.***

In any particular service area, healthcare providers or provider networks could refuse to contract with HCP, demand higher payments, or take other actions that could result in higher healthcare costs, disruption of benefits to HCP's members, or difficulty in meeting applicable regulatory or accreditation requirements. In some service areas, healthcare providers or provider networks may have significant market positions. If healthcare providers or provider networks refuse to contract with HCP, use their market position to negotiate favorable contracts, or place HCP at a competitive disadvantage, then HCP's ability to market products or to be profitable in those service areas could be adversely affected. HCP's provider networks could also be disrupted by the financial insolvency of a large provider group. Any disruption in HCP's provider networks could result in a loss of members or higher healthcare costs.

***HCP's revenues and profits could be diminished if HCP fails to retain and attract the services of key primary care physicians.***

Key primary care physicians with large patient enrollment could retire, become disabled, terminate their provider contracts, get lured away by a competing independent physician association or medical group, or otherwise become unable or unwilling to continue practicing medicine or contracting with HCP or its affiliated physicians, physician groups, or IPAs. In addition, HCP's affiliated physicians, physician groups and IPA's could view the Merger as compromising or diminishing HCP's distinctive physician-owned, physician-led culture and business model, which could cause such affiliated physicians, physician groups or IPAs to terminate their relationships with HCP. Moreover, given limitations relating to the enforcement of post-termination noncompetition covenants in California, it would be difficult to restrict a primary care physician from competing with HCP's affiliated physicians, physician groups, or IPAs. As a result, members who have been served by such physicians could choose to enroll with competitors' physician organizations or could seek medical care elsewhere, which could reduce HCP's revenues and profits. Moreover, HCP may not be able to attract new physicians to replace the services of terminating physicians or to service its growing membership.

***HCP regularly explores potential acquisitions, which if consummated could affect its financial condition, results of operations or other aspects of its business.***

HCP regularly explores potential acquisitions, which if consummated could affect its financial condition, results of operations or other aspects of its business. There can be no assurance that HCP will be able to identify suitable acquisition candidates or that, if identified, HCP would be able to consummate an acquisition on acceptable terms. There can also be no assurance that HCP will be successful in completing any acquisitions that it might be considering, or integrating any acquired business into its overall operations, or that any such acquired business will operate profitably or will not otherwise adversely impact HCP's results of operations.

***Participation in Accountable Care Organization programs is subject to federal regulation, is new and subject to evolving regulatory development, and supervision and may result in financial liability.***

The Health Reform Acts establish a Medicare shared savings program for ACOs, which took effect in January 2012. Participating ACOs that meet specified quality performance standards will be eligible to share in any savings below a specified benchmark amount. The Secretary of HHS is also authorized, but not required, to use capitation payment models with ACOs. The continued development and expansion of ACOs will have an uncertain impact on HCP's business, revenue, and profitability.

As an initial step in the formation and development of ACOs, CMS has issued contracts for participation in a Pioneer ACO program. HCP, through certain of its subsidiaries, was awarded contracts to participate as a Pioneer ACO in California, Nevada, and Florida. HCP is in the process of implementing such operations. The Pioneer ACO program provides for a three-year participation with opportunities for upside incentives and downside risk liability for an assigned population of Medicare fee-for-service patients. It is the responsibility of

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HCP's subsidiary ACOs to provide care to, and manage the health of, a patient population in California, Nevada, and Florida drawn from the traditional Medicare fee-for-service program, using a panel of specified physicians and healthcare facilities. The Pioneer ACO program requires participants to report on ACO operations, utilize healthcare information technology, and attempt to improve the quality of patient care.

The ACO programs are new and therefore operational and regulatory guidance is limited. It is possible that the operations of HCP's subsidiary ACOs may not fully comply with current or future regulations and guidelines applicable to ACOs, may not achieve quality targets or cost savings, or may not attract or retain sufficient physicians or patients to allow HCP to meet its objectives. Additionally, poor performance could put the HCP ACOs at financial risk and obligation to CMS. Traditionally, other than fee-for-service billing by the medical clinics and healthcare facilities operated by HCP, HCP has not directly contracted with CMS and has not operated any health plans or provider sponsored networks. Therefore, HCP may not have the necessary experience, systems, or compliance to successfully achieve a positive return on its ACOs investment or to avoid financial or regulatory liability. To date, demonstration projects using healthcare delivery models substantially similar to an ACO have not resulted in savings. HCP believes that its historical experience with fully delegated managed care will be applicable to operation of its subsidiary ACOs, but there can be no such assurance.

***California hospitals may terminate their agreements with HCPAMG or reduce the fees they pay to HCP.***

In California, HCPAMG maintains significant hospital arrangements designed to facilitate the provision of coordinated hospital care with those services provided to members by HCPAMG and its affiliated physicians, physician groups, and IPAs. Through contractual arrangements with certain key hospitals, HCPAMG provides utilization review, quality assurance, and other management services related to the provision of patient care services to members by the contracted hospitals and downstream hospital contractors. In the event that any one of these key hospital agreements is amended in a financially unfavorable manner or is otherwise terminated, such events could have a material adverse effect on HCP's business, financial condition, and results of operations.

***HCP's professional liability and other insurance coverages may not be adequate to cover HCP's potential liabilities.***

HCP maintains professional liability insurance and other insurance coverage through California Medical Group Insurance Company, Risk Retention Group, an Arizona corporation in which HCP is a part owner. HCP believes such insurance is adequate based on industry standards. Nonetheless, potential liabilities may not be covered by insurance, insurers may dispute coverage or may be unable to meet their obligations, or the amount of insurance coverage and/or related reserves may be inadequate. There can be no assurances that HCP will be able to obtain insurance coverage in the future, or that insurance will continue to be available on a cost-effective basis, if at all. Moreover, even if claims brought against HCP are unsuccessful or without merit, HCP would have to defend itself against such claims. The defense of any such actions may be time-consuming and costly and may distract HCP management's attention. As a result, HCP may incur significant expenses and may be unable to effectively operate HCP's business.

***Changes in the rates or methods of third-party reimbursements may adversely affect HCP operations.***

HCP derives a substantial portion of its revenue from direct billings to governmental healthcare programs, such as Medicare and Medicaid, and private health insurance companies and/or health plans, including but not limited to those participating in the Medicare Advantage program. As a result, any negative changes in governmental capitation or fee-for-service rates or methods of reimbursement for the services HCP provides could have a significant adverse impact on HCP's revenue and financial results.

Medicare program reimbursements for physician services as well as other services to Medicare beneficiaries who are not enrolled in Medicare Advantage plans are based upon the fee-for-service rates set forth in the Medicare Physician Fee Schedule, which relies, in part, on a target-setting formula system called the Sustainable

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Growth Rate, or SGR. Each year, on January 1st, the Medicare program updates the Medicare Physician Fee Schedule reimbursement rates. Many private payors use the Medicare Physician Fee Schedule to determine their own reimbursement rates. Based on the SGR, the annual fee schedule update is adjusted to reflect the comparison of actual expenditures to target expenditures. Because one of the factors for calculating the SGR is linked to the growth in the U.S. gross domestic product, or GDP, the SGR formula may result in a negative payment update if growth in Medicare beneficiaries' use of services exceeds GDP growth, a situation which has occurred every year since 2002 and the reoccurrence of which HCP cannot predict.

CMS determined that, effective January 1, 2012, the SGR formula results in a payment cut of approximately 27 percent. Congress, however, enacted the Temporary Payroll Tax Cut Continuation Act of 2011, which blocked this cut through the end of February 2012. In February 2012, Congress passed the Middle Class Tax Relief and Job Creation Act of 2012, or Tax Relief Act, which blocks the cut through the end of 2012. While Congress has repeatedly intervened to mitigate the negative reimbursement impact associated with the SGR formula, there is no guarantee that Congress will continue to do so in the future. Moreover, the existing methodology may result in significant yearly fluctuations in the Medicare Physician Fee Schedule amounts, which may be unrelated to changes in the actual costs of providing physician services. Unless Congress enacts a change to the SGR methodology, the uncertainty regarding reimbursement rates and fluctuation will continue to exist. Moreover, if Congress does change the SGR methodology or substitute a new system for physician fee-for-service payments, it may require reductions in other Medicare programs including Medicare Advantage to offset such additional costs.

Another provision that affects physician payments under the Medicare Physician Fee Schedule is an adjustment under the Medicare statute to reflect the geographic variation in the cost of delivering physician services, by comparing those costs to the national average. Medicare payments to physicians under the Medicare Physician Fee Schedule are geographically adjusted to reflect the varying cost of delivering physician services across areas. The adjustments are made by indices, known as the Geographic Practice Cost Indices, or GPCI, that reflect how each geographic area compares to the national average. In 2003, Congress established that for three years there would be a floor of 1.0 on the work component of the Medicare Physician Fee Schedule formula used to determine physician payments, which meant that physician payments would not be reduced in a geographic area just because the relative cost of physician work in that area fell below the national average. Congress extended the GPCI work floor several times since its enactment in 2003. The Tax Relief Act provides another extension through 2012. Although Congress has extended the GPCI work floor several times, there is no guarantee that Congress will block the adjustment in the future, which could result in a decrease in payments HCP receives for physician services.

Congress has a strong interest in reducing the federal debt, which may lead to new proposals designed to achieve savings by altering payment policies. The BCA established a Joint Select Committee on Deficit Reduction, which had the goal of achieving a reduction in the federal debt level of at least \$1.2 trillion. As a result of the Joint Select Committee's failure to draft a proposal by the BCA's deadline, automatic cuts in various federal programs will commence in January 2013. Although the Medicaid program is exempt from these cuts, Medicare payments to providers are not exempt. The BCA does, however, provide that the Medicare cuts to providers may not exceed 2%. At this time it is unclear how this automatic reduction may be applied to various Medicare healthcare programs, including physician reimbursement. Therefore it is not possible at this time to estimate what impact, if any, the BCA will have on HCP's business or results of operations.

As noted, the cuts described above will occur automatically as a matter of law. Certain members of Congress, however, want to achieve even greater reductions in the federal debt, and they want to change entitlement programs, such as Medicare. It is difficult to assess whether and to what extent Congress will alter Medicare payment policies.

Because governmental healthcare programs generally reimburse on a fee schedule basis rather than on a charge-related basis, HCP generally cannot increase its revenues from these programs by increasing the amount it charges for its services. Moreover, if HCP's costs increase, HCP may not be able to recover its increased costs.

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from these programs. Government and private payors have taken and may continue to take steps to control the cost, eligibility for, use, and delivery of healthcare services as a result of budgetary constraints, cost containment pressures and other reasons. HCP believes that these trends in cost containment will continue. These cost containment measures, and other market changes in non-governmental insurance plans have generally restricted HCP's ability to recover, or shift to non-governmental payors, any increased costs that HCP experiences. HCP's business and financial operations may be materially affected by these developments.

***HCP's business model depends on numerous complex management information systems, and any failure to successfully maintain these systems or implement new systems could materially harm HCP's operations and result in potential violations of healthcare laws and regulations.***

HCP depends on a complex, specialized, and integrated management information system and standardized procedures for operational and financial information, as well as for HCP's billing operations. HCP may be unable to enhance its existing management information systems or implement new management information systems where necessary. Additionally, HCP may experience unanticipated delays, complications, or expenses in implementing, integrating, and operating its systems. HCP's management information systems may require modifications, improvements, or replacements that may require both substantial expenditures as well as interruptions in operations. HCP's ability to implement these systems is subject to the availability of information technology and skilled personnel to assist HCP in creating and implementing these systems.

HCP's failure to successfully implement and maintain all of its systems could have a material adverse effect on its business, financial condition, and results of operations. For example, HCP's failure to successfully operate its billing systems could lead to potential violations of healthcare laws and regulations. If HCP is unable to handle its claims volume, or if HCP is unable to pay claims timely, HCP may become subject to a health plan's corrective action plan or de-delegation until the problem is corrected, and/or termination of the health plan's agreement with HCP. This could have a material adverse effect on HCP's operations and profitability. In addition, if HCP's claims processing system is unable to process claims accurately, the data HCP uses for its IBNR estimates could be incomplete and HCP's ability to accurately estimate claims liabilities and establish adequate reserves could be adversely affected. Finally, if HCP's management information systems are unable to function in compliance with applicable state or federal rules and regulations, including, without limitation, medical information confidentiality laws such as the Health Insurance Portability and Accountability Act of 1996, or HIPAA, possible penalties and fines as a result of this lack of compliance could have a material adverse effect on HCP's business, financial condition, and results of operations.

***Federal and state privacy and information security laws are complex, and HCP may be subject to government or private actions due to privacy and security breaches.***

HCP must comply with numerous federal and state laws and regulations governing the collection, dissemination, access, use, security and privacy of protected health information, including HIPAA and its implementing privacy and security regulations, as amended by the federal Health Information Technology for Economic and Clinical Health Act. In the event that HCP's non-compliance with existing or new laws and regulations related to protected health information results in privacy or security breaches, HCP could be subject to monetary fines, civil suits, civil penalties or criminal sanctions and requirements to disclose the breach publicly.

***HCP may be impacted by eligibility changes to government and private insurance programs.***

Due to potential decreased availability of healthcare through private employers, the number of patients who are uninsured or participate in governmental programs may increase. The Health Reform Acts will increase the participation of individuals in the Medicaid program in states that elect to participate in the expanded Medicaid coverage. A shift in payor mix from managed care and other private payors to government payors or the uninsured may result in a reduction in the rates of reimbursement or an increase in uncollectible receivables or



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uncompensated care, with a corresponding decrease in net revenue. Changes in the eligibility requirements for governmental programs such as the Medicaid program under the Health Reform Acts and state decisions on whether to participate in the expansion of such programs also could increase the number of patients who participate in such programs or the number of uninsured patients. Even for those patients who remain with private insurance, changes in those programs could increase patient responsibility amounts, resulting in a greater risk for uncollectible receivables. These factors and events could have a material adverse effect on HCP's business, financial condition, and results of operations.

***Negative publicity regarding the managed healthcare industry generally or HCP in particular could adversely affect HCP's results of operations or business.***

Negative publicity regarding the managed healthcare industry generally, or the Medicare Advantage program or HCP in particular, may result in increased regulation and legislative review of industry practices that further increase HCP's costs of doing business and adversely affect HCP's results of operations or business by:

requiring HCP to change its products and services;

increasing the regulatory, including compliance, burdens under which HCP operates, which, in turn, may negatively impact the manner in which HCP provides services and increase HCP's costs of providing services;

adversely affecting HCP's ability to market its products or services through the imposition of further regulatory restrictions regarding the manner in which plans and providers market to Medicare Advantage enrollees; or

adversely affecting HCP's ability to attract and retain members.

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**CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS**

This prospectus includes forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended. Such statements may include, but are not limited to, statements about the benefits of the proposed transaction, including future financial and operating results, and the combined company's plans, objectives, expectations, and intentions. These statements are subject to a number of risks, uncertainties and other factors that could cause our actual results, performance, prospects, or opportunities, as well as those of the markets we serve or intend to serve, to differ materially from those expressed in, or implied by, these statements. You can identify these statements by the fact that they do not relate to matters of a strictly factual or historical nature and generally discuss or relate to forecasts, estimates or other expectations regarding future events. Generally, the words believe, expect, intend, estimate, anticipate, project, may, can, could, might, will, and similar expressions identify forward-looking statements, including statements relating to expected operating and performing results, planned transactions, planned objectives of management, future developments or conditions in the industries in which we participate, and other trends, developments, and uncertainties that may affect our business in the future.

Such risks, uncertainties and other factors include, among other things:

the ability to obtain governmental approvals of the Merger on the proposed terms and schedule contemplated by the parties;

the failure of HCP Members to approve the proposal to approve the principal terms of the Merger and the Merger Agreement;

the loss of key HCP employees following the Merger;

disruption from the proposed transaction making it more difficult to maintain business and operational relationships with customers, partners, and others;

the possibility that the proposed transaction does not close, including, but not limited to, due to the failure to satisfy the closing conditions;

adverse developments in general market, business, economic, labor, regulatory, and political conditions;

rating agency actions that could affect DaVita's ability to borrow funds;

the impact of, and potential challenges in, complying with legislation and regulation in the jurisdictions in which HCP and DaVita operate;

the risk that the cost of providing services under HCP's agreements will exceed HCP's compensation under such agreements;

the risk that laws regulating the corporate practice of medicine could restrict the manner in which HCP conducts its business;

the risk that reductions in reimbursement rates and future regulations may negatively impact HCP's business, revenue, and profitability;

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the risk that HCP may not be able to successfully establish a presence in new geographic regions;

the risk that reductions in the quality ratings of health plan customers of HCP could have an adverse effect on HCP's business;

the fact that HCP faces certain competitive threats that could reduce its profitability;

the risk that a disruption in HCP's healthcare provider networks could have an adverse effect on HCP's operations and profitability;

competition;

risks arising from the use of accounting estimates in our financial statements;

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variability of DaVita's cash flows;

the concentration of profits generated from commercial payor plans;

continued downward pressure on average realized payment rates from commercial payors, which may result in the loss of revenue or patients;

a reduction in the number of patients under higher-paying commercial plans;

a reduction in government payment rates under the Medicare ESRD program or other government-based programs;

the impact of health care reform legislation that was enacted in the U.S. in March 2010;

changes in pharmaceutical or anemia management practice patterns, payment policies, or pharmaceutical pricing;

DaVita's ability to maintain contracts with physician medical directors;

legal compliance risks, including DaVita's continued compliance with complex government regulations;

current or potential investigations by various governmental entities and related government or private-party proceedings;

continued increased competition from large and medium-sized dialysis providers that compete directly with DaVita;

the emergence of new models of care introduced by the government or private sector, such as accountable care organizations, IPAs, and integrated delivery systems, and changing affiliation models for physician plans, such as employment by hospitals, that may erode our patient base and reimbursement rates;

DaVita's ability to complete any acquisitions or mergers, including the consummation of the Merger, or dispositions that DaVita might be considering or announce, or to integrate and successfully operate any business DaVita may acquire, including the HCP business, or to expand DaVita's operations and services to markets outside the U.S., or to businesses outside of dialysis; and

the risk that the Merger could compromise or diminish HCP's distinctive physician-owned, physician-led culture and business model, including the potential impact on current employees, affiliated physicians and physician groups and IPA consolidation opportunities. Additional factors that could impact DaVita's ability to achieve the results described in any forward-looking statements may be included, if appropriate in DaVita's subsequent Quarterly Reports on Form 10-Q, to be filed with the SEC. Additional factors that could impact HCP's ability to achieve the results described in any forward-looking statements are described above under "Risk Factors—Risks Related to HCP."

Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this prospectus, or if such statement is included in another document incorporated in this prospectus, as of the date of such other document. Readers also should

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understand that it is not possible to predict or identify all such factors and that this list should not be considered a complete statement of all potential risks and uncertainties. HCP and DaVita undertake no obligation to update any forward-looking statements, whether as a result of new information, changes in beliefs, changes in circumstances, future events or developments, or otherwise.

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**INFORMATION ABOUT THE COMPANIES**

**DaVita**

*DaVita Inc.*

2000 16<sup>th</sup> Street

Denver, Colorado 80202

(888) 484-7505

DaVita Inc., which we refer to as DaVita, is a leading provider of kidney dialysis services in the United States for patients suffering from chronic kidney failure, also known as end stage renal disease, or ESRD. As of June 30, 2012, DaVita provided dialysis and other related services through a network of 1,884 outpatient dialysis centers located in the United States throughout 43 states and the District of Columbia, serving a total of approximately 149,000 patients. In addition, as of June 30, 2012, DaVita provided outpatient dialysis and administrative services to a total of 19 outpatient dialysis centers located in four countries outside of the United States. DaVita's centers offer outpatient hemodialysis treatments and other ESRD-related services, such as the administration of physician-prescribed pharmaceuticals, including erythropoietin, or EPO, vitamin D analogs, and iron supplements. DaVita also provides services for home dialysis patients, vascular access, disease management services, and laboratory services related to ESRD. As of June 30, 2012, DaVita also provides acute inpatient dialysis services in approximately 960 hospitals and related laboratory services throughout the United States. DaVita is a Delaware corporation, incorporated in the State of Delaware in 1994.

DaVita's U.S. dialysis and related lab services business accounts for approximately 92% of its consolidated net operating revenues for the twelve months ended June 30, 2012. Other ancillary services and strategic initiatives accounted for approximately 8% of its consolidated net operating revenues for the same period and relate primarily to its core business of providing kidney dialysis services. For the twelve months ended June 30, 2012, DaVita generated consolidated net operating revenues of \$7.365 billion, Adjusted EBITDA of \$1.585 billion, and net income attributable to DaVita of \$519 million.

Additional information about DaVita is included in the documents incorporated by reference in this prospectus. See [Additional Information Where You Can Find More Information](#) beginning on page 236.

**Merger Sub**

*Seismic Acquisition LLC*

2000 16<sup>th</sup> Street

Denver, Colorado 80202

(888) 484-7505

Seismic Acquisition LLC, which we refer to as Merger Sub, is a wholly-owned subsidiary of DaVita and was formed solely for the purpose of consummating the Merger. Merger Sub has not carried on any activities to date, except for activities incidental to its formation and activities undertaken in connection with the Merger.

**HCP**

*HealthCare Partners Holdings, LLC*

19191 South Vermont Avenue, Suite 200

Torrance, California 90502

(310) 354-4200

HealthCare Partners Holdings, LLC, together with its subsidiaries and affiliated physician groups, which we refer to as HCP (unless the context indicates otherwise), is a patient- and physician-focused, integrated health

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care delivery and management company with nearly three decades of providing coordinated, outcomes-based medical care in a cost-effective manner. Through capitation contracts with some of the nation's leading health plans, as of June 30, 2012, HCP had approximately 669,400 current members under its care in southern California, central and south Florida and Las Vegas, Nevada. Of these, approximately 190,700 individuals represented patients enrolled in Medicare Advantage. The remaining approximately 478,700 individuals represented managed care members whose health coverage is provided through their employer or who have individually acquired health coverage directly from a health plan or as a result of their eligibility for Medicaid benefits. In addition, during 2011, HCP (through its affiliated physicians, physician groups, and IPAs) provided care to over 412,000 fee-for-service patients.

The patients of HCP's affiliated physicians, physician groups and IPAs benefit from an integrated approach to medical care that places the physician at the center of patient care. As of June 30, 2012, HCP delivered services to its members via a network of over 1,800 affiliated group and network primary care physicians, 139 network hospitals, and several thousand affiliated group and network specialists. Together with hundreds of case managers, registered nurses and other care coordinators, these medical professionals utilize a comprehensive data analysis engine, sophisticated risk management techniques and clinical protocols to provide high-quality, cost effective care to HCP's members. HCP is a California limited liability company, formed in the State of California in 2005 in connection with a reorganization of its subsidiaries.

HealthCare Partners Affiliates Medical Group, or HCPAMG, one of HCP's affiliated physician groups, was formed in 1994 and is organized as a California general partnership with 30 general partners. HCPAMG and its affiliates provide managed health care and related services through regional delivery systems and a joint venture to approximately 586,000 enrollees in southern California under contracts with various health plans and to privately insured individuals. Under a management services agreement, HCP earns a management fee from HCPAMG equal to a percentage of HCPAMG's revenues. HCPAMG provides professional medical services to the HCP-managed medical facilities that are located in California, and employs physicians or contracts with various other independent physicians, physician groups and IPAs to provide professional medical services in California. HCP obtains professional medical services from HCPAMG in California, rather than provide such services directly or through subsidiaries, in order to comply with California's prohibition against the corporate practice of medicine. Through the management agreement, HCP has exclusive authority over all non-medical decision making related to the ongoing business operations of HCPAMG.



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**THE SPECIAL MEETING OF THE HCP MEMBERS**

**General**

This prospectus is being provided to HCP Members as part of a solicitation of votes by the HCP Board for use at the special meeting. This prospectus provides HCP Members with important information they need to know to be able to vote at the special meeting.

**Date, Time, Place and Purpose of the Special Meeting**

The special meeting is scheduled to be held at HCP's headquarters at 19191 South Vermont Avenue, Suite 200, Torrance, California 90502, on October 30, 2012, at 6:00 p.m., local time. The special meeting is being held for the following purposes:

to approve the principal terms of the Merger and the Merger Agreement; and

to transact any other business that may properly come before the special meeting.

**Recommendation of the HCP Board**

After careful consideration of the Merger and the terms of the Merger Agreement, the HCP Board has determined that the Merger is fair, advisable and in the best interests of HCP and the HCP Members. Accordingly, the HCP Board unanimously recommends that the HCP Members approve the principal terms of the Merger and the Merger Agreement. For a discussion of the material factors considered by the HCP Board in reaching its conclusions, see "The Merger - HCP's Reasons for the Merger; Recommendation of the HCP Board" beginning on page 96.

**The HCP Board recommends that the HCP Members vote FOR the approval of the principal terms of the Merger and the Merger Agreement.**

**Units Entitled to Vote**

Only holders of record of HCP Common Units on the date of the special meeting are entitled to vote at the special meeting. On September 25, 2012, there were 100,131,969.2 HCP Common Units entitled to vote at the special meeting. Each HCP Common Unit entitles an HCP Member to one vote.

**Quorum and Vote Required**

The presence at the special meeting in person of the holders of a majority of the HCP Common Units outstanding on the date of the special meeting will constitute a quorum for the purpose of considering the proposals at the special meeting. In the event that a quorum is not present, or if there are insufficient votes to approve the principal terms of the Merger and the Merger Agreement at the time of the special meeting, it is expected that the special meeting will be adjourned or postponed to solicit additional votes.

Approval of the principal terms of the Merger and the Merger Agreement requires the affirmative vote of HCP Members holding a majority of the issued and outstanding HCP Common Units entitled to vote at the special meeting.

**Voting by HCP Members, Managers and Executive Officers**

As more fully described under "Other Agreements - Voting Agreement" and "Other Agreements - Support Agreements" beginning on page 155 and page 156, respectively, HCP Medical Group, Drs. Margolis, Chin, and Paulsen and Mr. Mazdyasni collectively owned, directly or indirectly, 74,143,125.7 HCP Common Units as of September 25, 2012, which represented approximately 74% of the outstanding HCP Common Units, and they

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have each entered into an agreement with DaVita pursuant to which they have agreed to vote all of the HCP Common Units owned or controlled by them in favor of the approval of the principal terms of the Merger and the Merger Agreement. Accordingly, the approval of the principal terms of the Merger and the Merger Agreement by the HCP Members is assured.

As of September 25, 2012, all of the members of the HCP Board and HCP's executive officers collectively owned, directly or indirectly, 73,843,750 HCP Common Units, which represented approximately 73.7% of the outstanding HCP Common Units. HCP currently expects that all managers and executive officers will vote their HCP Common Units in favor of the approval of the principal terms of the Merger and the Merger Agreement.

**Abstentions**

For the proposal to approve the principal terms of the Merger and the Merger Agreement, you may vote FOR or AGAINST or ABSTAIN. Abstentions will not count as votes cast on the proposal to approve the principal terms of the Merger and the Merger Agreement, but they will count for the purpose of determining whether a quorum is present. **If you abstain, it will have the same effect as a vote AGAINST the approval of the principal terms of the Merger and the Merger Agreement.**

**Other Business**

The HCP Board is not currently aware of any business to be acted upon at the special meeting other than the proposal to approve the principal terms of the Merger and the Merger Agreement described in this prospectus.

Any adjournment or postponement of the special meeting may be made from time to time by approval of the holders of a majority of the HCP Common Units present in person at the special meeting, whether or not a quorum exists, without further notice other than by an announcement made at the special meeting.

**Assistance**

If you have more questions about the Merger or need additional copies of this prospectus, you should contact the Company at:

Matthew Mazdyasni

Executive Vice President and Chief Financial and Administrative Officer

HealthCare Partners Holdings, LLC

19191 South Vermont Avenue, Suite 200

Torrance, California 90502

Telephone: (310) 354-4200

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**THE MERGER**

*The following is a description of the material aspects of the Merger. While we believe that the following description covers the material terms of the Merger, the description may not contain all of the information that is important to you. We encourage you to read carefully this entire prospectus, including the Merger Agreement and the Amendment to the Merger Agreement attached to this prospectus as Annex A-1 and Annex A-2, for a more complete understanding of the Merger.*

**General**

The DaVita Board and the HCP Board have each approved the Merger Agreement and the transactions contemplated by the Merger Agreement, including the Merger. Following the Merger of Merger Sub, a wholly-owned subsidiary of DaVita, with and into HCP, with HCP continuing as the surviving entity, DaVita will be renamed DaVita HealthCare Partners Inc. Each HCP Common Unit will be converted into the right to receive the merger consideration, upon the terms provided in the Merger Agreement and as described below under The Merger Agreement Merger Consideration beginning on page 117.

**Background of the Merger**

Kent J. Thiry, prior to his appointment as chairman and chief executive officer of DaVita, and Robert J. Margolis, M.D., the chairman and chief executive officer of HCP, have known each other since the mid 1990 s. Over the years, Mr. Thiry and Dr. Margolis would periodically talk to each other, either in person or over the phone, about market conditions and trends in the health care industry and, in broad terms, about their respective companies. In those conversations, both CEOs expressed admiration for the capabilities and reputation of the other company.

Recognizing the increasing importance of integrated care as well as the long-term dynamics and uncertainties relating to the delivery and costs of healthcare and ongoing governmental and employer group efforts to address these issues, DaVita continuously evaluates opportunities for strategic transactions both within its core dialysis business and in other sectors of the healthcare services industry.

On April 28, 2011, Mr. Thiry met for lunch at a conference with Dr. Margolis. They discussed a variety of topics, including the healthcare industry and certain strategies their respective organizations were pursuing. Towards the end of the meeting, both of the executives recognized some potential opportunities to work together. The discussion of these potential opportunities led to a discussion of a full combination of their respective companies to create the nation s leading clinically led delivery system.

Between May 15, 2011 and June 8, 2011, Mr. Thiry and Dr. Margolis discussed the appropriateness of entering into a confidentiality agreement. On June 8, 2011, DaVita and HCP entered into a mutual non-disclosure agreement to permit the parties to exchange information.

On June 23, 2011, Dr. Margolis, Matthew Mazdyasni, HCP s Executive Vice President and Chief Financial and Administrative Officer, and William J. Goss, HCP S long time strategic and financial advisor, met with Mr. Thiry and senior executives of DaVita so that each company could better understand the other company s business model, markets, and organizational structure.

On July 12, 2011, Mr. Thiry, Luis Borgen, DaVita s then Chief Financial Officer, Dennis L. Kogod, DaVita s Chief Operating Officer, and Rich Whitney, Special Advisor to the Chief Executive Officer of DaVita and former Chief Financial Officer of DaVita, met with Dr. Margolis and Messrs. Mazdyasni and Goss, to discuss the possibility of pursuing a business combination between the two companies. The parties present discussed the potential benefits of such a transaction, and Dr. Margolis presented an overview of HCP, its financial results, and certain financial projections. Mr. Thiry kept DaVita s lead independent director, Peter T. Grauer, as well as the other members of the DaVita Board, informed of the discussions with HCP through

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periodic telephone conferences and communications, and sought guidance and direction from members of the DaVita Board.

Beginning in July 2011, DaVita began an extensive review of HCP and the benefits of a combination with HCP. Senior executives of DaVita had telephone conferences with Messrs. Mazdyasni and Goss and were provided with certain financial projections of HCP.

Also in early July 2011, without disclosing the preliminary overture from DaVita, HCP requested a high level assessment of HCP's potential for a liquidity event in 2012, including its value, from certain investment banks. On July 22, 2011, a leading, global investment bank presented its preliminary assessment of the potential for HCP to complete a successful initial public offering and an initial estimate of potential valuation ranges for such an offering. In addition, historically, HCP had periodically received analytic presentations from various investment banking firms that included a discussion of potential values and such presentations were also reviewed by HCP.

On July 27 and 28, 2011, at a regularly-scheduled meeting of the DaVita Board, senior executives of DaVita provided an update on a potential transaction with HCP, during which they reviewed, among other things, HCP's business model and financials and the impact of regulatory developments and healthcare reform on HCP's business. Members of the board asked questions and there was an extended discussion covering various aspects of the potential transaction. At the conclusion of the meeting, the board authorized senior executives of DaVita to move forward with discussions regarding a potential transaction with HCP and to conduct additional due diligence regarding HCP.

On August 5, 2011, at a special telephonic meeting of the DaVita Board, Mr. Thiry updated the board with respect to the continuing discussions with HCP. The board discussed, among other matters, the potential benefits from diversification of its traditional business model, the potential impact of healthcare reform and changes to Medicare and Medicare Advantage on HCP's business, and preliminary thoughts on senior management of a combined company. The board also discussed potential valuation and the potential for inclusion of an earn-out in the transaction terms. During its presentation of the strategic fit and potential benefits of a potential business combination with HCP, DaVita senior executives noted that a business combination with HCP, one of the country's leading integrated care providers, could enhance DaVita's growth prospects by entering a new line of business based on shared core competencies and vision, which new line of business is larger and more fragmented than the U.S. dialysis business, and could enhance DaVita's ability to provide integrated and comprehensive care to DaVita's existing dialysis population. Accordingly, a potential business combination with HCP represented a potentially attractive opportunity to create stockholder value. At the conclusion of the meeting, the board authorized senior executives of DaVita to continue to analyze the potential transaction and to meet with HCP's key operating officers and authorized various members of the board to meet with Dr. Margolis. The board also authorized senior executives to engage an investment bank for the purposes of evaluating HCP and its industry, evaluating the strategic merits of a combination, and discussing financing matters.

Shortly after this DaVita Board call, DaVita had a series of telephone calls with representatives of J.P. Morgan Securities LLC, or JPMorgan, to discuss the limited engagement authorized by the board.

During August 2011, senior executives of DaVita continued to have discussions and meetings with Messrs. Mazdyasni and Goss with respect to HCP's business activities, historical financial results and future business prospects.

On August 16, 2011, DaVita met preliminarily with representatives of Morrison & Foerster LLP ( Morrison & Foerster ) to discuss a potential business combination between DaVita and HCP.

On August 18, 2011, DaVita formally engaged JPMorgan to act as its financial advisor in connection with the engagement authorized by the DaVita Board. DaVita selected JPMorgan to act as DaVita's financial advisor

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for the potential transaction because of its expertise in advising clients in merger and acquisition transactions and, in particular, because of its knowledge of the healthcare market and involvement in comparable transactions. In this regard, DaVita had previously worked with JPMorgan representatives on reviewing the healthcare market and identifying and considering various potential merger or acquisition candidates, including representing DaVita in its 2005 acquisition of Gambro Healthcare, Inc. In addition, DaVita had previously worked with JPMorgan in other investment banking areas, including bank financing and capital market transactions and believed that JPMorgan had a strong team capable of providing DaVita valuable advice in the context of the potential transaction discussions, as well as the related financing transactions.

On August 22, 2011, at a regularly scheduled meeting of the HCP Board, Dr. Margolis informed the board of the transaction overture from DaVita. At that meeting, Dr. Margolis provided background of the potential transaction and information on DaVita prepared by Mr. Goss and discussed the strategic issues surrounding a potential liquidity event for HCP as well as the July 2011 preliminary report from a leading, global investment bank summarizing the opportunity for an HCP initial public offering in 2012. At this meeting, Dr. Margolis sought and received the board's approval to continue preliminary discussions of a potential transaction with DaVita.

On August 26, 2011, at a special telephonic meeting of the DaVita Board, DaVita senior executives presented a review of HCP and the strategic fit and potential benefits of a business combination with HCP. At the meeting, representatives from JPMorgan also presented an overview of a potential transaction with HCP and general trends in the integrated care and related industries. Representatives of JPMorgan provided a preliminary presentation to the board regarding the potential financial terms of a potential transaction. JPMorgan's presentation was based, in part, on certain preliminary financial forecasts relating to HCP prepared by management of HCP. At the conclusion of the meeting, after extensive questions from and discussions by the board, the board authorized DaVita senior executives to continue to analyze the potential transaction and to meet with HCP's key operating officers.

From August 26 through September 14, 2011, Mr. Thiry, Dr. Margolis and senior executives of each of DaVita and HCP participated in multiple telephone conferences regarding HCP's business and the financial projections prepared by HCP.

During this same period, Dr. Margolis and Mr. Mazdyasni kept the HCP Board apprised of the status of the discussions with DaVita through both individual discussions with members of the board as well as telephone conferences with the entire board. During these discussions with the members of the board, Dr. Margolis was directed to ensure that DaVita understood the importance of HCP preserving its longstanding physician-centric operating model and that any potential transaction would need to include various structural terms that would allow HCP to continue as a uniquely physician-focused company.

On September 14, 2011, at a special telephonic meeting of the DaVita Board, the board received an extensive review of HCP and a potential transaction with HCP and Mr. Thiry advised the board concerning the key terms of a potential business combination transaction between the companies. DaVita management summarized its findings from the business and legal due diligence that it had completed to date, covering such areas as its assessment of the attractiveness of the HCP business as well as the risks in operating in this industry. Legal due diligence topics included an assessment of the regulatory requirements of HCP's business. The board also discussed the role of HCP's CEO in the combined company. Extensive discussion of and questions regarding the potential transaction ensued.

Following a discussion by the DaVita Board at the September 14 meeting, the board authorized DaVita's senior executives to deliver to HCP a preliminary non-binding proposal regarding an acquisition by DaVita of all the equity interests in HCP. The proposal contemplated a purchase price of \$4.25 billion, with the merger consideration payable to HCP's interest holders consisting of \$2.85 billion in cash and shares of DaVita Common Stock representing a nominal value of approximately \$1.4 billion based on the then-current trading price of

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DaVita Common Stock. The proposal further contemplated that certain key HCP Members would elect to receive 35% of their consideration in the form of DaVita Common Stock and that those HCP Members would be subject to a two year lock-up on 50% of the shares of DaVita Common Stock to be received by them in the transaction and a four year lock-up on the remaining 50% of the shares to be received by them. The proposal also contemplated that the name of the combined company would be DaVita HealthCare Partners Inc. and that Mr. Thiry would remain CEO and that Mr. Thiry and Dr. Margolis would serve as co-chairmen of the board of directors of the combined company.

From September 14 to September 22, 2011, senior executives of DaVita had various conversations and meetings with Mr. Goss in anticipation of DaVita making a non-binding proposal to acquire HCP.

On September 19, 2011, DaVita engaged Morrison & Foerster to provide legal advice in connection with the potential transaction. DaVita selected Morrison & Foerster to act as DaVita's legal advisor for the potential transaction because of its expertise in advising clients in merger and acquisition transactions. In addition, DaVita had been represented by a partner of Morrison & Foerster in its 2005 acquisition of Gambro Healthcare, Inc.

On September 22, 2011, Mr. Thiry presented Dr. Margolis the key terms of DaVita's non-binding proposal and an overview of the potential transaction. Mr. Thiry added that DaVita considered it important that HCP management, including Dr. Margolis, continue with the combined company. Dr. Margolis indicated that the non-binding proposal was not adequate and sought a higher acquisition price for HCP's equity interests. Dr. Margolis also emphasized the importance of preserving HCP's physician-centric culture and organizational model in any potential transaction and identified several ways DaVita could address these requirements in its proposal. Mr. Thiry and Dr. Margolis also discussed, among other matters, the possibility of an earn-out, a tax basis step-up for DaVita, and exclusivity regarding a potential business combination. Mr. Thiry indicated that senior executives of DaVita and representatives of JPMorgan would continue dialogue with senior executives of HCP and Mr. Goss to try to bridge the value gap between DaVita's proposal and HCP's valuation expectations. After receiving HCP's response to DaVita's September 22 proposal, Mr. Thiry had several conversations with members of the DaVita Board and DaVita's senior executives to share HCP's response, and the board authorized management to continue to meet with HCP's key operating officers regarding a potential transaction.

On September 23, 2011, Dr. Margolis advised the HCP Board by e-mail of the terms of DaVita's September 22 proposal. Through e-mail correspondence, the board directed Dr. Margolis and Mr. Mazdyasni, along with Mr. Goss, to work to improve the proposal. Through subsequent e-mail correspondence and discussions with the board, Dr. Margolis was also directed to begin to explore other strategic alternatives for HCP, and specific transaction options, other than a potential initial public offering, were discussed.

On September 27, 2011, Mr. Goss made a counterproposal to JPMorgan that contemplated a closing purchase price of \$4.4 billion plus up to a \$300 million cash dividend, with the merger consideration payable to HCP's interest holders consisting of cash and up to a maximum of \$1.54 billion in shares of DaVita Common Stock, subject to adjustment for any deterioration in the market price of DaVita Common Stock between signing of a definitive agreement and closing of a potential transaction between the parties. The counterproposal further included (1) a contingent value right of up to \$200 million payable to HCP interest holders tied to DaVita's closing stock price not reaching \$106.40 per share between execution of a definitive agreement and the three year anniversary of the closing, (2) an earn-out payable to HCP interest holders of \$100 million in cash if HCP's EBITDA for 2012 met or exceeded \$550 million and \$100 million in cash if HCP's EBITDA for 2013 met or exceeded \$600 million, and (3) a tax basis step-up for DaVita to the extent no adverse tax or other financial consequences resulted to HCP. All vested HCP options would be cashed out. All unvested HCP options would be converted to DaVita stock options. The counterproposal also contemplated that each owner of 0.5% or more of HCP's membership interests would be required to elect to receive at least 33% of his or her consideration in the form of DaVita Common Stock and be subject to a one year lock-up on all the shares of DaVita Common Stock to be received in the transaction, a two year lock-up on 67% of the shares of DaVita Common Stock to be received in the transaction, and a three year lock up on 33% of the shares of DaVita Common Stock to be

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received in the transaction. Furthermore, each HCP executive leader would be required to elect to receive 33% of his consideration in the form of DaVita Common Stock and those leaders would be subject to a two year lock-up on all the shares of DaVita Common Stock to be received by them in the transaction, a three year lock-up on 67% of the shares of DaVita Common Stock to be received by them in the transaction, and a four year lock up on 33% of the shares of DaVita Common Stock to be received by them in the transaction. The counterproposal also provided that Dr. Margolis would serve as co-chairman of the board of directors of the combined company for five years after closing. The counterproposal included a 45 day exclusivity period from execution of a letter of intent.

On October 6 to 7, 2011, at a regularly scheduled meeting of the DaVita Board, the board evaluated the status of discussions between the respective senior executives of DaVita and HCP. During the meeting, the board received a report from Mr. Thiry regarding HCP's response to DaVita's September 22 proposal, including the proposed earn-out. During the presentation, DaVita management reviewed the expected financial impact on DaVita of a potential transaction with HCP. The review included, among other things, an analysis of the expected accretion to DaVita's earnings per share, DaVita's post-merger capital structure, future growth expectations, and tax matters. DaVita management summarized its findings from the initial business diligence that it had completed to date, covering such areas as its assessment of the attractiveness of the HCP business as well as the risks in operating in this industry. Following a discussion by the board, the board authorized DaVita's senior executives to deliver to HCP a revised non-binding proposal regarding a potential transaction between DaVita and HCP. The board also authorized Mr. Thiry to conduct further discussions with senior executives of HCP regarding the financial and other terms of a potential business combination, including anticipated modifications to the amount and composition of the merger consideration, subject to approval by the board of the final terms of a potential transaction.

In early October 2011, Dr. Margolis, at the suggestion of one of the members of the HCP Board, reached out to a financial advisor (the Financial Advisor) with experience working with a certain company to explore whether the financial Advisor believed that such company would be interested in engaging in a potential business combination with HCP. On October 25, 2011, after signing a confidentiality agreement, Dr. Margolis and Mr. Goss met with the Financial Advisor to preliminarily discuss the features and structure of a potential business combination with this other potential buyer. At this meeting with the Financial Advisor, Dr. Margolis and Mr. Goss shared HCP's valuation expectations and explained the importance of preserving HCP's physician-centric structure and operating model. Dr. Margolis and Mr. Goss also informed the Financial Advisor that HCP was in active discussions with another strategic buyer regarding a potential transaction, but they did not reveal DaVita's name. Shortly thereafter, HCP formally engaged the Financial Advisor to conduct a narrow, short term assessment of the financial and structural features that might apply in a potential transaction with the other potential buyer. The Financial Advisor was asked not to identify HCP to the other potential buyer unless and until instructed to do so by HCP.

By October 2011, DaVita's stock price had fallen approximately 30% from its July 2011 levels. Accordingly, senior executives of DaVita revisited the advisability of issuing DaVita stock at its then-current price.

On October 28, 2011, at a special telephonic meeting of the DaVita Board, Mr. Thiry provided the board with a detailed update regarding the discussions with HCP regarding a potential transaction, as well as the consequences of issuing DaVita stock at its then-current price. After extensive discussion regarding the potential transaction, the board authorized senior executives of DaVita to continue discussions with HCP regarding a potential transaction, and to consider reducing the stock component of the consideration.

On November 2, 2011, Mr. Thiry met with Dr. Margolis and made a proposal to acquire 100% of the equity of HCP for \$4.4 billion at closing, in a combination of cash and stock, and a \$200 million earn-out. The proposal also contemplated lock-ups on the stock portion of the consideration for timeframes ranging from 6 months to 4 years. After further discussion, both Mr. Thiry and Dr. Margolis tentatively agreed on the following non-binding proposal: \$4.475 billion at closing, consisting of \$3.66 billion in cash and \$815 million in DaVita stock based on a 20-day volume-weighted average price prior to announcement of the proposed transaction, plus up to \$275 million in earn-outs.

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On November 7, 2011, representatives of JPMorgan delivered to Mr. Goss a draft non-binding term sheet regarding the proposal that had been tentatively agreed to on November 2, 2011 between Mr. Thiry and Dr. Margolis, which draft term sheet also included certain other matters.

During November 2011 and into early December 2011, senior executives of each of DaVita and HCP, and advisors to both companies engaged in multiple telephone conferences to discuss the draft non-binding term sheet.

During this same period, Dr. Margolis and Messrs. Mazdyasni and Goss had numerous telephone conferences with the Financial Advisor. HCP also provided extensive financial and non-financial information about HCP to the Financial Advisor to facilitate its consideration of the terms that might apply in a potential transaction with the other potential buyer. On November 17 and 18, 2011, members of HCP senior management and Mr. Goss met in-person with the Financial Advisor to further discuss the potential features, structure and valuation of a potential transaction with the other potential buyer. The Financial Advisor was asked to prepare by December 2, 2011 its final description of the financial and structural features of a transaction that it thought would be attractive to the other potential buyer and to be prepared to make a presentation on this possible alternative transaction at the HCP Board meeting on December 6, 2011.

On December 2, 2011, at a special telephonic meeting of the HCP Board, Mr. Goss presented a review of HCP's potential strategic alternatives, including a potential initial public offering as previously summarized by a leading, global investment bank, a potential transaction with Company A and a potential business combination with DaVita. This review included structural and economic features of the various potential alternatives. After extensive discussion, Dr. Margolis and Messrs. Mazdyasni and Goss were instructed to proceed with inviting DaVita and the Financial Advisor to the HCP Board meeting on December 6, 2011.

On December 6, 2011, Mr. Thiry, along with two members of the DaVita Board, William L. Roper, M.D. and John M. Nehra, met with the HCP Board at HCP's headquarters in Torrance, California. At that meeting, Mr. Thiry gave a presentation outlining in detail the strong clinical orientation and results of DaVita, the successes of clinical innovation at DaVita, historical financial results of DaVita, the mission and values orientation of DaVita, DaVita's vision for integrated kidney care, and a vision of the combined company. Messrs. Thiry and Nehra and Dr. Roper left the HCP Board meeting following Mr. Thiry's presentation. At that same December 6 HCP Board meeting, after Messrs. Thiry and Nehra and Dr. Roper had left, the Financial Advisor, who, consistent with HCP's instructions, had not discussed such an HCP transaction with the other potential buyer, gave a presentation describing the structural and financial features of a transaction that it thought the other potential buyer would find attractive. Following Mr. Thiry's and the Financial Advisor's presentations, the board deliberated on the strategic and financial merits of the two potential transactions as well as the possibility of pursuing an initial public offering in early 2012. After extensive discussion with Dr. Margolis and Messrs. Mazdyasni and Goss, the board unanimously approved proceeding with a potential transaction with DaVita based on both the financial features of the proposed transaction as well as DaVita's willingness to take steps in the transaction to preserve HCP's physician-centric organizational model, culture and business practices. Such steps included DaVita's willingness to nominate Dr. Margolis to join the board of directors of the combined company as co-chairman and to rename the combined company DaVita HealthCare Partners to reflect DaVita's commitment to HCP's business. Shortly after the December 6th HCP Board meeting, Dr. Margolis advised both DaVita and the Financial Advisor that the HCP Board had decided to pursue a letter of intent with DaVita.

On December 7, 2011, DaVita engaged Sidley Austin LLP to provide financing advice.

On December 8 to 9, 2011, at a regularly scheduled meeting of the DaVita Board, Mr. Thiry provided the board with an update regarding a potential transaction with HCP, including Dr. Margolis' potential role with the combined company post-closing and the status of the ongoing discussions. The board authorized senior executives of DaVita to continue discussions with HCP regarding a potential transaction.

Over the next two weeks, discussions continued between senior executives of each of DaVita and HCP, and their respective advisors regarding the draft non-binding term sheet.



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On December 22, 2011, senior executives of each of DaVita and HCP and advisors to both companies met to finalize the draft non-binding term sheet. Subsequent to final negotiation of terms, DaVita and HCP entered into a non-binding letter of intent containing an exclusivity provision through the earlier of the execution of a definitive agreement regarding a transaction between the parties or the termination of the letter of intent. The letter of intent was terminable (a) by mutual written consent of DaVita and HCP or (b) by HCP or DaVita if a definitive agreement was not executed and delivered on or prior to March 15, 2012. The letter of intent included a non-binding term sheet that specified, among other items, that (1) the closing consideration, based on a debt-free/cash-free balance sheet and net working capital of -\$110 million, would be \$4.475 billion, less the in-the-money value of all vested and unvested HCP options, comprised of \$3.66 billion in cash and \$815 million in shares of DaVita Common Stock, (2) DaVita would pay an additional \$137.5 million in cash to HCP if HCP's EBITDA for 2012 meets or exceeds \$550 million and an additional \$137.5 million in cash if HCP's EBITDA for 2013 meets or exceeds \$600 million, (3) Dr. Margolis, William Chin, M.D., HCP's Executive Medical Director, Mr. Mazdyasni, and Zan Calhoun, HCP's Chief Operating Officer, would enter into DaVita employment agreements effective at the closing of the potential transaction and be subject to a two year lock-up on the shares of DaVita Common Stock to be received by them in the transaction, a three year lock-up on 67% of the shares of DaVita Common Stock to be received by them in the transaction, and a four year lock up on 33% of the shares of DaVita Common Stock to be received by them in the transaction, and they would agree to elect a certain percentage (to be agreed upon) of their consideration in DaVita Common Stock, (4) Dr. Margolis would remain as chief executive officer of HCP for at least two years after closing and would be appointed to serve on the DaVita Board as co-chairman, (5) each owner of 0.5% or more of HCP's membership interests would be subject to a one year lock-up on the shares of DaVita Common Stock to be received by him in the transaction, a two year lock-up on 67% of the shares of DaVita Common Stock to be received by him in the transaction, and a three year lock up on 33% of the shares of DaVita Common Stock to be received by him in the transaction, (6) all other HCP interest holders would be subject to a six month lock-up on shares of DaVita Common Stock to be received in the transaction, (7) DaVita would be liable to pay a reverse termination fee to HCP if there is a failure to obtain financing for the transaction and all conditions to closing the transaction have been satisfied, and (8) DaVita would receive a tax basis step-up in the transaction. The letter of intent and accompanying term sheet were non-binding and subject to due diligence and negotiation of a mutually acceptable definitive agreement.

On December 27, 2011, senior executives of each of DaVita and HCP began a mutual confirmatory business, financial, and legal due diligence review of the other company. The management teams subsequently coordinated numerous follow-on discussions supported by information and document exchanges from January 2 through May 19, 2012.

On January 3, 2012, HCP met with representatives of Munger, Tolles & Olson LLP (Munger Tolles) to discuss a potential business combination between DaVita and HCP. HCP subsequently engaged Munger Tolles to provide legal advice in connection with the potential transaction. HCP selected Munger Tolles to act as its legal advisory because of its experience in advising clients in sophisticated merger and acquisition transactions.

On January 16 and January 23, 2012, senior executives of DaVita and representatives of JPMorgan, Morrison & Foerster, Sidley and Sheppard Mullin Richter & Hampton LLP, regulatory counsel to DaVita (Sheppard Mullin), participated in telephone conferences with senior executives of HCP and Mr. Goss and representatives of Munger Tolles and Nossaman LLP, HCP's regulatory counsel, to discuss structural matters regarding the potential transaction, including the treatment of HCPAMG. HCP requested to receive tax deferral on the stock portion of the consideration; however, DaVita rejected this proposal as it would impact DaVita's previously agreed upon tax basis step up.

On January 17, 2012, Mr. Goss provided senior executives of DaVita with a draft non-binding letter regarding, among other items, use of the name of the combined company, Dr. Margolis' role in the combined company, and certain governance matters.

On January 21, 2012, representatives of DaVita and its advisors were granted access to an electronic data room organized by HCP.

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On January 25, 2012, representatives of DaVita together with representatives of its advisors JPMorgan, Morrison & Foerster, Sheppard Mullin, and Sidley Austin, as well as other advisors and consultants, met with representatives of HCP and Mr. Goss and representatives of Nossaman in Los Angeles, California to begin detailed due diligence on HCP and its affiliates, including with respect to healthcare regulatory matters.

Subsequent to the meeting in Los Angeles on January 25, 2012, representatives of DaVita and its advisors conducted extensive due diligence across multiple disciplines, including financial, clinical, payer contracting, regulatory, legal, accounting, information technology, human resources, and tax. Representatives of DaVita also met with various members of HCP management who had oversight of various corporate functions, as well as regional operating and clinical leadership. Representatives of DaVita and its advisors supplemented their direct due diligence of HCP with physician surveys and discussions with representatives of managed care payors, industry experts on the Medicare and Medicare Advantage programs, including individuals formerly involved in policy making, and executives and former executives of companies operating businesses similar to that of HCP.

In conducting due diligence, DaVita and its advisors placed particular emphasis, among other matters, on measures of success of HCP's clinical programs, expectations of changes to the Medicare Advantage program and reimbursement thereunder and the financial benefit of a step-up in tax basis in the transaction.

As part of its clinical due diligence, DaVita considered HCP's inpatient acute bed days per 1,000 Medicare Advantage patients and 30-day all cause readmission rates for Medicare Advantage patients, as compared to a benchmark for Medicare fee-for-service patients.

In evaluating expectations of changes to the Medicare Advantage program and reimbursement thereunder, DaVita considered the government's projections that suggest that the rate of participation in Medicare Advantage could decline and that this decline, coupled with changes to the Medicare Advantage Program, may result in reductions in Medicare Advantage spending. However, as a result of its diligence efforts, DaVita concluded that even though Medicare Advantage reimbursement rates may not grow as quickly as fee-for-service rates, the Medicare Advantage program provides significant benefits for many seniors, suggesting it should continue to grow, and health plans and providers should have the ability to mitigate some of the projected slowdown in the growth of reimbursement rates.

In evaluating the potential benefit of a step-up in tax basis, DaVita considered that the step-up is expected to result in approximately \$900 million in reduced cash taxes over 15 years, or approximately \$600 million on a present value basis.

HCP's advisors also conducted due diligence on DaVita in the areas of legal, regulatory, business development, financial, and capital resources/capital deployment strategies.

On March 8 to 9, 2012, at a regularly scheduled meeting of the DaVita Board, senior executives of DaVita presented a detailed update regarding a potential transaction with HCP, including an update regarding business and financial due diligence and a review of the financial and operational upsides and downsides of the potential transaction. Representatives of Sheppard Mullin reviewed with the board a presentation regarding healthcare regulatory and compliance matters with respect to HCP and its affiliates.

On March 22 to 23, 2012, senior executives of each of DaVita and HCP and Mr. Goss met in Denver, Colorado to discuss several specific features of the potential transaction between DaVita and HCP. The parties discussed, among other items, incentive compensation, the earn-out, interim operating covenants, indemnification, tax (including the treatment of Blocker Corporation), and healthcare regulatory matters. Senior executives of DaVita offered the following proposal: (1) \$9.5 million per year in long-term incentive compensation, subject to \$8 million of long-term incentive compensation expense being added back to EBITDA for purposes of determining the earn-out, (2) EBITDA targets of \$550 million for 2012 and \$600 million for

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2013, with earnings from up to \$83 million of acquisitions by HCP counting towards EBITDA in 2012 and earnings from up to \$181 million of cumulative acquisitions in 2012 and 2013 counting towards EBITDA in 2013, (3) a 15% of purchase price escrow for indemnification and net working capital adjustments, (4) a two year survival period for indemnification, and (5) a \$10 million indemnification threshold. HCP offered the following counter-proposal: (x) 10% of purchase price escrow for indemnification and a separate net working capital escrow, (y) an 18 month survival period for indemnification, and (z) a 1% indemnification deductible.

On March 23, 2012, senior executives of DaVita and representatives of Morrison & Foerster became aware of a complaint filed by two officers in HCP's Nevada market in the District Court, Clark County, Nevada against HCP and HealthCare Partners Nevada, LLC, a subsidiary of HCP, seeking declaratory relief under various warrant agreements and non-competition agreements entered into between those officers and HCP (the Nevada litigation).

On March 24, 2012, senior executives of DaVita and representatives of Morrison & Foerster had a telephone conference with Mr. Goss during which they discussed the complaint filed in connection with the Nevada litigation and the potential settlement of the related matters.

On March 27, 2012, Morrison & Foerster delivered to Mr. Goss and Munger Tolles a preliminary draft of a merger agreement between DaVita and HCP that included, among other things, proposals on behalf of DaVita with respect to (1) a 15% escrow, (2) a negative \$110 million net working capital target, (3) a two year indemnification survival period, (4) a \$10 million indemnification threshold, (5) a \$50 million reverse termination fee, and (6) proposals regarding financing provisions, including a financing condition to closing.

On March 29, 2012, senior executives of DaVita and representatives of Morrison & Foerster had a telephone conference with representatives of Nossaman during which they discussed recent developments regarding the Nevada litigation and the potential settlement of the related matters.

On March 30, 2012, senior executives of HCP met with the complainants in the Nevada litigation to discuss the Nevada litigation and the potential settlement of the related matters.

On April 3, 2012, Munger Tolles sent Morrison & Foerster a revised draft of the Merger Agreement that included, among other proposed changes and comments, proposals on behalf of HCP with respect to (1) a 12.5% escrow, (2) an 18 month survival period for indemnification, (3) a \$44.75 million indemnification deductible, (4) fully committed financing, (5) a hell-or-high water anti-trust provision, and (6) a proposed reverse termination fee equal to \$180 million.

From April 4 through April 6, 2012, senior executives of DaVita and representatives of JPMorgan, Morrison & Foerster, and Sheppard Mullin and senior executives of HCP, Mr. Goss, and representatives of Munger Tolles, and Nossaman met in Los Angeles, California to negotiate the terms of the Merger Agreement.

On April 11, 2012, at a regularly scheduled meeting of the HCP Board, Dr. Margolis and Messrs. Mazdyasni and Goss updated the board on the status of the negotiations with DaVita, including the status of mutual due diligence, discussions surrounding structural terms, including representations and warranties, and indemnification, and the various financial terms of the proposed transaction. The board authorized Dr. Margolis and Messrs. Mazdyasni and Goss to proceed with negotiations with DaVita and gave them specific instructions regarding certain features and requirements of the potential merger agreement with DaVita.

On April 11, 2012, following a review of the April 3 draft with DaVita's senior executives, Morrison & Foerster delivered to Munger Tolles a revised draft of the merger agreement that included, among other proposed changes and comments, proposals on behalf of DaVita with respect to (1) changes relating to the mechanism for the conversion of HCP stock options and other equity awards in the potential transaction, (2) changes relating to earn-out and the definition of earn-out EBITDA, (3) changes to certain preclosing covenants and closing conditions, including pre-closing operating covenants and covenants and conditions relating to compliance with competition law notification and approval requirements in connection with the potential transaction, (4) changes

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to certain termination and termination fee provisions in the merger agreement, including a 12.5% escrow, a 24 month indemnification survival period, and a \$25 million indemnification threshold, (5) a \$100 million reverse termination fee, (6) changes relating to net working capital and indebtedness, (7) no hell-or-high water anti-trust provision (8) uncommitted financing, including that DaVita take all action necessary to consummate the financing if the financing was available to DaVita at a weighted average interest rate no greater than 150 basis points higher than the indicative weighted average interest rate contained in the financing letter, (9) changes to the termination provisions, including as a result of a failure to receive the proceeds of the financing, and (10) specific performance limited to DaVita closing the financing if the financing was available at a weighted average interest rate no greater than 150 basis points higher than the indicative weighted average interest rate contained in the financing letter.

On April 13, 2012, Mr. Thiry and Dr. Margolis discussed certain open items in the draft definitive agreement, including long-term incentive compensation, tax (including Blocker Corporation), reverse termination fee, indemnification, tail insurance, net working capital, and healthcare regulatory matters. The parties also discussed the terms on which DaVita would be required to close the financing versus the opportunity for DaVita to terminate the agreement and pay a reverse termination fee. The parties further discussed a potential increase in the cash payable to HCP Members in light of certain tax and accrued expense items. With respect to indemnification, Dr. Margolis proposed a \$30 million threshold for indemnification claims.

On April 16, 2012, Munger Tolles sent Morrison & Foerster a revised draft of the merger agreement that included, among other proposed changes and comments, a proposal on behalf of HCP with respect to a \$125 million reverse termination fee, a proposed increase in the cash purchase price to \$3.675 billion to take into account the treatment of Blocker Corporation, a reduction to \$117.5 million in cash of the earn-out attributable to HCP's EBITDA for 2013 meeting or exceeding \$600 million to account for the Nevada settlement matters, and a requirement that DaVita consummate the financing if available at an annual interest rate no greater than 250 basis points above the weighted average annual interest rate. Among other proposed changes and comments, the revised draft also included proposals on behalf of HCP with respect to net working capital and indebtedness, financing (including specific performance with respect to all DaVita's financing covenants), employment and benefit, long-term incentive compensation, and indemnification matters.

On April 17, 2012 at a special telephonic meeting of the DaVita Board, senior executives of DaVita presented a financial review of a potential transaction with HCP, including certain financial projections of HCP post-closing and factors that could impact those projections. Senior executives also updated the board regarding healthcare regulatory matters with respect to HCP. Following extensive discussion by the board, the board authorized DaVita's senior executives to continue discussions with senior executives of HCP regarding a potential transaction.

On April 19, 2012, Mr. Thiry and Dr. Margolis discussed certain open items in the draft definitive agreement, including long-term incentive compensation, tax (including Blocker Corporation), indemnification, net working capital, earn-out EBITDA, financing, and healthcare regulatory matters. Mr. Thiry proposed that DaVita be required to consummate the financing if available within 200 basis points of the weighted average annual interest rate.

On April 24, 2012, Morrison & Foerster sent Munger Tolles a revised draft of the merger agreement including, among other proposed changes and comments, proposals on behalf of DaVita with respect to a \$27.5 million indemnification threshold, earn-out and earn-out EBITDA, net working capital and indebtedness, financing (including the 200 basis point proposal made by Mr. Thiry on April 19 and specific performance thereof), intellectual property, employment and benefit, and long-term incentive compensation matters.

On April 26 and April 27, 2012, Mr. Thiry and Dr. Margolis discussed certain open items in the draft merger agreement, including healthcare regulatory matters and the need for a longer escrow period to provide indemnification for any negative consequences of certain healthcare related matters.

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From April 25 through April 27, 2012, DaVita held its annual conference for its approximately 2500 leaders in Nashville, Tennessee. Senior executives of HCP attended DaVita's annual conference. During the conference, Dr. Margolis met with members of the DaVita Board. In addition, senior executives of DaVita held extensive discussions with senior executives of HCP and Mr. Goss regarding financial projections of HCP.

At the regularly scheduled meeting of the DaVita Board on April 26, 2012, senior executives of DaVita provided the board with an update regarding a potential transaction with HCP including an update regarding business and financial due diligence and reviewed with the board the financial and operational upsides and downsides of the potential transaction. JPMorgan reviewed with the board a presentation regarding potential financial terms of a potential transaction. The board was also provided a detailed summary of the current draft of the merger agreement by Morrison & Foerster, including an overview regarding the fiduciary duties of the board in connection with a potential business combination involving HCP. The board was also provided with a presentation from Sheppard Mullin of healthcare regulatory and compliance aspects of HCP and its affiliates. After extensive discussion regarding the potential transaction, the board authorized senior executives of DaVita to continue discussions with HCP regarding a potential transaction.

During this period of late April 2012, Dr. Margolis kept the HCP Board apprised of developments in the ongoing negotiations with DaVita via telephone calls and e-mails.

On April 30, 2012, senior executives of each of DaVita and HCP met in Torrance, California to review projections of HCP, including the work that had been done by Messrs. Mazdyasni and Goss the prior week. At this meeting, senior executives of DaVita concluded that its financial diligence and other diligence investigations were substantially complete, and moved forward towards finalizing the merger agreement. Towards that end, Mr. Thiry made a revised proposal regarding an extended escrow for healthcare and tax matters and regarding the Nevada litigation matter.

On May 2, 2012, Munger Tolles sent Morrison & Foerster a revised draft of the merger agreement that included, among other proposed changes and comments, proposals on behalf of HCP with respect to a proposed reversion of the cash purchase price to \$3,660,000,000, as the treatment of Blocker Corporation and other accounting matters was to be dealt with in the net working capital target, the liquidation of Blocker Corporation, and a MR Escrow Account to fund, if necessary, the costs and expenses of the Member Representative acting in such capacity. Among other proposed changes and comments, the revised draft also included proposals on behalf of HCP with respect to the earn-out and earn-out EBITDA, net working capital and indebtedness, financing (including specific performance of all of DaVita's financing covenants), tax, employment and employee benefits, long-term incentive compensation, and indemnification matters.

On May 2, 2012, Nossaman sent senior executives of DaVita draft settlement documents with respect to the Nevada litigation matter.

From May 3 through May 13, 2012, representatives of Morrison & Foerster and Nossaman, together with senior executives of each of DaVita and HCP and Mr. Goss, conducted numerous telephone conferences to finalize the Nevada settlement documents and exchanged multiple drafts of the settlement agreements and related documents. During this period, the parties reached agreement on all of the material terms of the settlement agreements and related documents.

On May 3, 2012, at a special telephonic meeting of the DaVita Board, senior executives of DaVita provided an update regarding the continuing discussions with senior executives of HCP. Representatives of Morrison & Foerster reviewed with the board an updated summary of the merger agreement and the employment agreements with key employees of HCP. Representatives of JPMorgan reviewed a presentation regarding potential financial terms of a potential transaction. After extensive discussion regarding the potential transaction, the board authorized senior executives of DaVita to continue discussions with HCP regarding a potential transaction.

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On May 6, 2012, Morrison & Foerster sent Munger Tolles a revised draft of the merger agreement that included, among other proposed changes and comments, proposals on behalf of DaVita with respect to a -\$147.5 million net working capital target to take into account the treatment of Blocker Corporation and certain other accounting items and entry into employment agreements by certain key employees of HCP. Among other proposed changes and comments, the revised draft also included proposals on behalf of DaVita with respect to tax (including the liquidation of Blocker Corporation), earn-out and earn-out EBITDA, net working capital and indebtedness, financing, long-term incentive compensation, treatment of HCPAMG, and healthcare regulatory indemnification matters.

On May 9 and May 11, 2012, Munger Tolles sent Morrison & Foerster a revised draft of the merger agreement that included, among other proposed changes and comments, proposals on behalf of HCP with respect to (1) a \$5 million MR Escrow Account, (2) an extended healthcare escrow account comprised of \$300 million for the third year after closing, decreasing to \$150 million for the fourth year after closing, (3) an extended tax escrow account comprised of \$52.5 million until December 31, 2015, decreasing to \$25 million until December 31, 2016, (4) a negative \$149 million net working capital target, and (5) changes to certain provisions in the merger agreement relating to employee and employee benefit transition matters.

On May 11, 2012, at a special telephonic meeting of the HCP Board, Dr. Margolis and Messrs. Mazdyasni and Goss reviewed, in detail, the status of the negotiations with DaVita and its advisors and counsel. Dr. Margolis reviewed the various financial aspects of the transaction, including the consideration and process for HCP unit holders receiving such consideration, the earn-out, incentive equity, and features of DaVita's debt financing. Dr. Margolis also reviewed other aspects of the transaction, including representations and warranties and, in particular, HCP's indemnification of DaVita, including the various escrow components and timing. Dr. Margolis also reviewed HCP's covenants to DaVita and DaVita's covenants to HCP as well as the respective parties' closing conditions and termination rights. Dr. Margolis and Mr. Goss also reviewed the various HCPAMG agreements that would also be components of the overall transaction. HCP senior executives and Mr. Goss then proceeded to describe the various issues that were still open in both the draft merger agreement and the draft HCPAMG agreements. After extensive discussion, the board authorized HCP senior executives and Mr. Goss to attempt to finalize the transaction in a manner consistent with the discussions during the meeting and, subject to the successful resolution of all open issues, authorized Dr. Margolis to execute and deliver the merger agreement on behalf of HCP. One member of the board was not able to attend this telephonic board meeting, but he called Dr. Margolis prior to the telephonic meeting to register his support for consummating the transaction with DaVita.

From May 9 through May 20, 2012, representatives of Morrison & Foerster and Munger Tolles, together with senior executives of each of DaVita and HCP, conducted numerous phone conferences and in-person meetings to finalize open issues in the merger agreement and the ancillary agreements and exchanged multiple drafts of the merger agreement and ancillary agreements. During this period, the parties reached agreement on all of the material terms of the merger agreement and ancillary agreements.

On May 14, 2012, at a special telephonic meeting of the DaVita Board, senior executives provided an update regarding the continuing discussions with senior executives of HCP. Prior to the meeting, DaVita's directors had been provided with a set of meeting materials, including a copy of a proposed merger agreement and ancillary agreements, a detailed summary of the terms and conditions of the proposed merger agreement and ancillary agreements, a review of the consideration proposed to be paid in the merger and a set of draft board resolutions. Representatives of Morrison & Foerster reviewed with the board an update of the merger agreement and the ancillary agreements to the potential transaction. After extensive discussion regarding the potential transaction, the board authorized senior executives of DaVita to continue discussions with HCP regarding a potential transaction.

The DaVita Board met telephonically on May 18, 2012. Prior to the meeting, DaVita's directors had been provided with a set of meeting materials, including a copy of a proposed definitive merger agreement and ancillary agreements, a revised detailed summary of the terms and conditions of the proposed merger agreement

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and ancillary agreements, a review of the consideration proposed to be paid in the merger and a set of draft board resolutions. DaVita's senior executives, together with representatives of JPMorgan, Morrison & Foerster, and Sheppard Mullin, were present at the meeting. Mr. Thiry provided an overview of further developments relating to a potential transaction with HCP and informed the DaVita Board that due diligence had been largely completed and negotiations regarding a definitive merger agreement were largely finalized. Senior executives of DaVita provided the board with a summary of the legal and regulatory due diligence conducted with respect to HCP, summarizing an assessment of various risk areas, including litigation/general liability, regulatory, and compliance. Morrison & Foerster presented the board with an overview of the material terms and conditions of the proposed merger agreement. Sheppard Mullin reviewed with the board a summary of documents related to HCPAMG, HealthCare Partners Medical Group, Inc., and Seismic Medical Group. Following a discussion of the foregoing matters by the directors, the board unanimously approved the merger agreement, declared it advisable, approved the issuance of shares of DaVita Common Stock to HCP interest holders pursuant to the merger, and determined that the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of DaVita Common Stock to HCP interest holders pursuant to the merger, are in the best interests of DaVita and its stockholders. The board authorized the appropriate DaVita officers to execute and deliver the merger agreement and the ancillary agreements on behalf of DaVita.

The Merger Agreement, the Voting Agreement, the Support Agreements, the Non-Competition and Non-Solicitation Agreements, the Nevada settlement agreements, and the non-binding letter were executed on May 20, 2012. DaVita and HCP announced the transaction through a joint press release issued prior to the open of the U.S. financial markets on May 21, 2012.

**Recommendation of DaVita's Board of Directors and Reasons for the Transactions**

At its meeting on May 18, 2012, the DaVita Board approved the Merger Agreement, declared it advisable, approved the issuance of DaVita Common Stock to HCP Members pursuant to the Merger, and determined that the Merger Agreement and the transactions contemplated thereby were advisable and in the best interests of DaVita and its stockholders. In making this determination, the DaVita Board consulted with DaVita's senior management and with its financial and legal advisors, and considered a number of factors. The decision of the DaVita Board was based upon a number of potential benefits of the transactions and other factors that it believed could contribute to the success of the combined company, and thus benefit the DaVita stockholders, including the following factors, the order of which does not necessarily reflect their relative significance:

the Merger would potentially create an industry leading company that may be well positioned to capitalize on anticipated trends in U.S. healthcare, including growth in managed healthcare services, especially to the Medicare-eligible population;

HCP's industry leadership provides it substantial credibility with the government, physician groups, large hospital systems, and payors across the U.S.;

the success of HealthCare Partners' integrated care model, which has high quality clinical outcomes, as measured by, among other things, inpatient acute care bed days per 1,000 patients and 30-day all cause readmission rates and has been able to effectively manage its costs under capitated arrangements, could potentially help DaVita achieve attractive reimbursement for globally capitated kidney care, improving DaVita's core ERSD market;

the Merger would open a large new market for DaVita—the integrated healthcare services market that HCP serves—offering DaVita considerable growth opportunities beyond domestic dialysis, which is a smaller, more mature and more consolidated sector of healthcare;

the Merger would result in a step-up in tax basis, which, measured on a present value basis, is expected to result in an effective reduction in the purchase price for HCP paid by DaVita;

the return implied by the forecasted cash flows of the HCP business, relative to the total transaction value, is anticipated to exceed DaVita's cost of capital;





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there are many similarities in the cultures of DaVita and HCP, including a strong common culture of putting the patient first;

the Merger is anticipated to be neutral to modestly accretive to DaVita's earnings per share beginning in 2013;

the HCP management team will continue post-closing and will be committed to the success of HCP and the combined company;

HCP's physician-centric culture, which its physicians value, will be preserved; and

the foregoing benefits would potentially result in enhanced stockholder value for DaVita stockholders.

In addition, the DaVita Board also identified and considered several potentially negative factors to be balanced against the positive factors listed above, including the following, the order of which does not necessarily reflect their relative significance:

that the pendency of the transaction for an extended period of time following the announcement of the execution of the Merger Agreement could have an adverse impact on DaVita or HCP;

the potential for diversion of management and employee attention during the period prior to completion of the Merger, and the potential negative effect on DaVita's and HCP's businesses;

the risk that potential benefits sought in the transactions may not be realized, or may not be realized within the expected time period;

the potential that the acquisition of HCP is at the peak of the market, given the Medicare Advantage and commercial enrollment rate pressures;

the risks inherent in completing approximately \$4 billion in new financing necessary to consummate the transactions, given the recent volatility in the U.S. debt markets;

the risk that DaVita may have to pay HCP a termination fee of \$125 million if, among other things, it is unable to obtain the financing necessary to consummate the transactions;

the potential negative consequences that could result from the combined company's amount of indebtedness following the closing of the transactions;

the risk that, despite the efforts of DaVita and HCP prior to the consummation of the transactions, the combined company may lose key personnel;

the potential that the combined company might not achieve its projected financial results;

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the uncertainty surrounding the viability of recent healthcare reform legislation and its potential impact on the HCP's business model;

the possibility that future budget cuts by the federal government will cause reduced spending on Medicare and Medicare-related programs; and

the risk inherent in the fact that HCP's leadership is concentrated among a small number of individuals, with Dr. Margolis having been principally responsible for HCP's past growth and success.

In view of the variety of factors and the quality and amount of information considered, the DaVita Board as a whole did not find it practicable to and did not quantify or otherwise assign relative weights to the specific factors considered in reaching its determination but conducted an overall analysis of the transaction. Individual members of the DaVita Board may have given different relative considerations to different factors.

The explanation of the reasoning of the DaVita Board and certain information presented in this section are forward-looking in nature and, therefore, the information should be read in light of the factors discussed in the sections entitled "Cautionary Statement Concerning Forward-Looking Statements" and "Risk Factors" beginning on pages 74 and 38, respectively.

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### **Ownership of DaVita After the Merger**

Based on the number of outstanding HCP Common Units and the number of outstanding shares of DaVita Common Stock as of June 30, 2012, DaVita anticipates that HCP Members will own approximately 9.0% of the outstanding shares of DaVita Common Stock following the Merger.

### **HCP Financial Forecasts**

As described above under "The Merger" Background of the Merger" beginning on page 80, during the course of negotiations between DaVita and HCP and DaVita's due diligence, HCP provided DaVita with certain unaudited financial forecasts prepared by HCP's management. A summary of HCP financial forecasts provided to DaVita in September 2011 is provided below. The September 2011 forecasts represent the last full financial forecasts provided by HCP to DaVita prior to execution of the letter of intent and Merger Agreement. However, as described in footnote 3 to the table below, prior to execution of the letter of intent and Merger Agreement, in December 2011, management of HCP informed management of DaVita that 2011 Adjusted EBITDA was then expected to be higher than originally estimated in the September forecasts. In addition, prior to execution of the Merger Agreement, HCP provided DaVita with 2011 actual results, which are included in HCP financial statements included elsewhere in this prospectus.

HCP does not publicly disclose internal management forecasts of the type provided to DaVita, and such forecasts were not prepared with a view toward public disclosure. Rather these forecasts are being included in this prospectus because they were provided to DaVita in connection with its financial analyses of HCP. In addition, the forecasts were not prepared with a view toward compliance with the published guidelines of the SEC or in accordance with generally accepted accounting principles, or GAAP, international financial reporting standards, or IFRS, or the guidelines established by the American Institute of Certified Public Accountants for the preparation and presentation of prospective financial information.

DaVita management and the DaVita Board recognized that these forecasts are only estimates of future operating results, rather than guarantees of future performance. None of DaVita or HCP or any of their respective affiliates, advisors or representatives has made or makes any representation to any person that they considered, or now consider, the forecasts to be, and you should not consider the forecasts to be, a reliable prediction of actual future events or results. Actual results may differ materially from these forecasts. In addition, none of DaVita or HCP or any of their respective affiliates, advisors or representatives has made or makes any representation regarding HCP's ultimate performance compared to the information contained in the forecasts, and none of them intends to update or otherwise revise the forecasts to reflect circumstances existing after the date such forecasts were prepared or to reflect the occurrence of future events, even in the event that any or all of the assumptions underlying the forecasts are shown to be in error. DaVita does not intend to make publicly available any update or other revision to the forecasts.

These forecasts were based on certain variables and assumptions that are inherently uncertain and may be beyond the control of DaVita, HCP or the combined company following closing. DaVita gives no assurance that these forecasts and the underlying assumptions are reasonable or that, if HCP had prepared them either as of the date of the Merger Agreement or as of the date of this prospectus, similar assumptions would be used. At the time HCP prepared the forecasts, HCP was not soliciting a buyer nor was it preparing itself for a potential sale. As a result, it did not develop detailed, analytically rigorous financial forecasts. Rather, these forecasts were high level estimates subject to significant uncertainty. HCP based the forecasts on annualized year-to-date July 2011 operating results less a 2.5% uncertainty discount to create a year-end forecast for 2011. Forecasted 2011 results were then adjusted to increase revenue each year by 14% to reflect possible future acquisitions and growth in the expected Medicare Advantage patient population and to decrease EBITDA margin by 1% in 2012 and 0.50% for each subsequent year through 2016 in order to take into account expected downward pressure on Medicare Advantage reimbursement rates as described elsewhere in this prospectus. In addition, HCP used historically based assumptions with respect to certain balance sheet and cash flow forecasts, including with respect to the percentage of revenue in accounts receivable and medical claims and capital expenditures. The forecasts did not attempt to take into account a variety of detailed assumptions, or other matters that have changed since the preparation of the forecasts in 2011 or otherwise changed with the passage of time, including HCP's actual 2011

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financial results, any 2011 year-end adjustments for incurred but not reported claims which are analyzed and made during the first quarter of the subsequent year, contributions from any specific acquisitions completed by HCP in the second half of 2011, detailed market or line of business specific projections, any positive or negative impact to HCP from potential regulatory changes to the calculation methodology of Medicare Advantage reimbursement rates or effects from possible legal or regulatory challenges to the Health Reform Acts, or the positive or negative effects of any new market entries by HCP. The actual results of HCP could differ materially from the forecasts. Among the factors that could cause the actual results to differ materially from the forecasts are the factors discussed under Risk Factors beginning on page 38. See also Cautionary Statement Regarding Forward-Looking Statements. You are strongly cautioned not to place unwarranted reliance on the forecasts.

DaVita's review of the forecasts was only part of a larger, preliminary, due diligence process and such forecasts did not play a significant role in the DaVita Board's deliberations for several reasons, including, most notably, the time elapsed between the preparation of the forecasts and the execution of the Merger Agreement and the fact that the DaVita Board's deliberations focused on the growth opportunities in HCP's industry and the potential for capitalizing on complementary models following the Merger. The forecasts do not take into account any circumstances or events occurring after the date they were prepared, including the announcement of the potential transaction. Furthermore, the forecasts do not take into account the Merger or the financial and other effects of the Merger, and do not attempt to predict or suggest future results of the combined company.

**HCP Income Statement Projection**

	2011	2012	2013	2014	2015	2016
	(dollars in millions)					
Total Revenues	\$ 2,345.4	\$ 2,673.8	\$ 3,048.1	\$ 3,474.8	\$ 3,961.3	\$ 4,515.9
Total Expenses	1,907.0	2,170.1	2,512.2	2,889.3	3,322.0	3,799.4
Earnings of JV	9.4	10.3	11.3	12.4	13.7	15.1
Operating Income	447.8	503.7	535.9	585.5	639.3	716.5
Tax Expense <sup>(1)</sup>	(52.5)	(59.0)	(62.8)	(68.6)	(74.9)	(83.9)
Net Income (unadjusted)	386.7	431.0	461.3	506.5	553.8	635.5
Adjusted EBITDA <sup>(2)</sup>	\$ 488.9 <sup>(3)</sup>	\$ 530.6	\$ 574.4	\$ 637.5	\$ 706.9	\$ 783.3

**HCP Cash Flow Projection**

	2011	2012	2013	2014	2015	2016
	(dollars in millions)					
<b>Operating Activities:</b>						
Net Income	386.7	431.0	461.3	506.5	553.8	635.5
Depreciation & Amortization	32.5	26.9	38.5	52.0	67.6	66.8
Changes in Operating Assets/Liabilities	11.7	23.0	26.2	29.9	34.1	38.8
Operating Cash Flow	430.9	480.9	526.0	588.3	655.5	741.2
<b>Investing Activities:</b>						
Capital Expenditures	(22.1)	(33.0)	(36.3)	(39.9)	(43.9)	(48.3)
Acquisitions	(40.0)	(75.7)	(79.5)	(114.4)	(126.0)	(138.6)
Other (e.g., purchase or sale of securities)	4.7					
Investing Activities	(57.4)	(108.7)	(115.8)	(154.4)	(170.0)	(187.0)
<b>Financing Activities:</b>						
Debt/Capital Lease Payments	353.0	(29.3)	(29.3)	(43.9)	(453.4)	(0.0)
Change in Long Term Liabilities and Other Assets	0.0	15.2	17.4	19.8	22.6	25.7
Tax Distributions/Repurchase of Units	(696.8) <sup>(4)</sup>	(231.7)	(246.5)	(269.3)	(294.1)	(329.6)

Financing Activities	(343.8)	(245.7)	(258.4)	(293.4)	(724.9)	(303.8)
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- (1) Includes taxes paid at subsidiary level. HCP is taxed as a partnership, for which HCP makes partnership distributions.
- (2) Adjusted EBITDA is defined as net income attributable to HCP before income taxes, net debt expense, depreciation and amortization, stock-based compensation, and any impairment charges. Adjusted EBITDA is not a measure of operating performance computed in accordance with GAAP and should not be considered in isolation or as a substitute for operating income, net income, cash flows from operation, or other statement of operations or cash flow data prepared in conformity with GAAP, or as measures of profitability or liquidity.
- (3) In December 2011, HCP management informed members of DaVita management that, based in part on results through October 2011, Adjusted EBITDA for 2011 was then forecasted to be approximately \$509.0 million.
- (4) Includes \$587.0 million relating to the January 2011 repurchase of Class A Preferred Units from investment funds affiliated with Summit Partners, LP.

**HCP's Reasons for the Merger; Recommendation of the HCP Board**

The HCP Board, acting with the advice and assistance of Mr. Goss and management, evaluated the proposed merger, including the terms and conditions of the Merger Agreement. At a telephonic meeting of the HCP Board on May 11, 2012, the HCP Board unanimously (a) determined that the Merger is fair, advisable and in the best interests of HCP and the HCP Members and (b) recommended that the HCP Members approve the principal terms of the Merger and the Merger Agreement.

In the course of reaching its determination and recommendation, the HCP Board considered the following material factors that it believed supported its determination and recommendation:

the Merger will allow HCP Members to monetize their investment in HCP, providing the HCP Members with the ability to obtain liquidity in the form of cash or registered shares of DaVita Common Stock, or a combination thereof, subject to the restrictions set forth in the Merger Agreement;

the inclusion of DaVita Common Stock in the merger consideration provides HCP Members the ability to participate in the future results of DaVita HealthCare Partners, while the ability, subject to restrictions set forth in the Merger Agreement, to make an election between cash and DaVita Common Stock in exchange for HCP Common Units provides some flexibility for HCP Members;

the expectation that DaVita HealthCare Partners will provide additional and significant growth capital essential to execute HCP's vision of transforming the national healthcare delivery system;

the potential for significant tax benefits for HCP Members if the Merger is consummated in 2012 as U.S. federal income tax rates may increase in 2013;

as a subsidiary of DaVita HealthCare Partners, HCP will be able to pursue growth opportunities more quickly and easily than it could as a private company, including: (1) market and geographic expansion and (2) enhanced business development capabilities;

the Merger presents an opportunity to partner with a mission and values driven organization that can augment HCP's values and culture;

the possible strategic alternatives to the Merger, including continuing as a standalone company, an initial public offering, private equity financing, or a sale or merger with other parties, were evaluated by the HCP Board with the assistance of Mr. Goss and management, and the HCP Board determined such alternatives were less favorable to HCP and the HCP Members than the Merger given the potential risks, rewards, and uncertainties associated with those alternatives;

HCP management will stay in place following the consummation of the Merger;

the belief that DaVita HealthCare Partners will have an increased ability to attract and retain management and medical professionals;

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the expectation that DaVita HealthCare Partners will (1) have a greater opportunity to impact healthcare public policy than HCP has on a standalone basis and (2) be better able to adapt to, or take advantage of, regulatory developments and healthcare reform, including changes to Medicare and Medicare Advantage programs; and

the likelihood that the Merger would be completed, based on, among other things:

the absence of significant required regulatory approvals, other than those relating to the HSR Act;

DaVita's obligation to pay HCP a \$125 million termination fee if the Merger Agreement is terminated under certain circumstances; and

the reputation and financial capacity of DaVita.

In the course of its deliberations, the HCP Board also considered a variety of risks and other countervailing factors related to entering into the Merger Agreement, including, without limitation, the following:

the fact that HCP will no longer be an independent company and the concern that it will not have autonomy in its decision-making;

the risk that the Merger could compromise or diminish HCP's distinctive physician-owned, physician-led culture and business model, including the potential impact on current employees, affiliated physicians, and physician group and IPA consolidation opportunities;

the potential negative consequences that could result from public visibility into HCP's financial statements;

the fact that the number of shares of DaVita Common Stock offered as consideration is fixed and therefore the total merger consideration at the time of closing may have a greater or lesser value than at the time the Merger Agreement was signed;

the risk that the Merger might not be completed in a timely manner or at all, including the risk that the proposed merger will not occur if DaVita is unable to obtain sufficient financing for the Merger;

HCP's inability to seek specific performance to require DaVita to complete the Merger if financing is not available and the fact that HCP's sole remedy in connection with DaVita's failure to close under this circumstance would be limited to a termination fee of \$125 million;

the risks and costs to HCP if the Merger does not close, including the diversion of management and employee attention and the potential effect on HCP's business and its relationships with payors and physicians;

the restrictions on the conduct of HCP's business prior to the completion of the Merger, which may delay or prevent HCP from undertaking business opportunities that may arise and certain other actions it might otherwise take with respect to its operations pending completion of the Merger; and



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the risk that, while the Merger is expected to be completed, there can be no assurance that all conditions to the parties' obligations to complete the Merger will be satisfied, and as a result, it is possible that the Merger may not be completed even if it is approved by the HCP Members.

In addition, the HCP Board was aware of and considered the interests that certain members of the HCP Board and executive officers have in the Merger that are different from, or in addition to, the interests of HCP Members generally, as described in "Interests of HCP's Managers and Executive Officers in the Merger" beginning on page 98.

The foregoing discussion of the information and factors considered by the HCP Board is not intended to be exhaustive, but includes material factors considered by the HCP Board. In view of the wide variety of factors they considered, the HCP Board did not find it practicable, and did not attempt, to quantify, rank, or otherwise assign relative weights to the foregoing factors in reaching its determination and recommendation. In addition, the HCP Board did not receive a fairness opinion regarding the fairness of the merger consideration to the HCP

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Members from a financial point of view, or with respect to projections, estimates, and other forward-looking statements about the future earnings or other measures of the future performance of HCP. Individual members of the HCP Board may have given different weights to different factors and may have viewed some factors more positively or negatively than others. **Based upon the totality of the information considered, the HCP Board has determined that the Merger is fair, advisable, and in the best interests of HCP and the HCP Members and recommends that the HCP Members of HCP approve the principal terms of the Merger and the Merger Agreement.**

**Interests of HCP's Managers and Executive Officers in the Merger**

In considering the recommendations of the HCP Board, you should be aware that some of HCP's managers and executive officers have interests in the Merger that are different from, or in addition to, the interests of HCP Members generally. The HCP Board was aware of these interests and considered them, among other matters, prior to making its determination to recommend the approval of the principal terms of the Merger and the Merger Agreement to the HCP Members.

***Appointment of Dr. Margolis to the DaVita Board***

The Merger Agreement provides that at the closing, the DaVita Board will be increased in size by one member and Dr. Margolis will be appointed to fill the newly created directorship as Co-Chairman. Pursuant to the terms of the Merger Agreement, for a minimum period of four consecutive annual meetings of stockholders of DaVita after his initial appointment to the DaVita Board, Dr. Margolis's re-nomination for election to the DaVita Board will be assessed in the same manner as every other incumbent director on the DaVita Board, whereby the Nominating and Governance Committee of the DaVita Board determines each year which directors it will select as nominees or recommend to the DaVita HealthCare Partners Board for nomination for election to the DaVita Board at DaVita's annual meeting of stockholders. In addition, upon his appointment and subsequent re-election to the DaVita Board, for a minimum period of four consecutive annual meetings of stockholders of DaVita, Dr. Margolis will hold the office of Co-Chairman until the expiration of his term of office or until his successor is duly elected and qualified, subject to his earlier death, resignation, disqualification, or removal in accordance with DaVita's bylaws and/or applicable law.

***Employment Arrangement with Dr. Margolis***

Concurrently with the execution of the Merger Agreement, Dr. Margolis entered into an employment agreement with DaVita and HCP that will become effective at the effective time of the Merger. The employment agreement will supersede his current employment with HCP and will have a two-year term of employment. Under the terms of the employment agreement, Dr. Margolis will continue to serve as Chief Executive Officer of HCP. He will receive an annual base salary of \$600,000, subject to review for increases at the discretion of HCP and with the approval of DaVita. Dr. Margolis is eligible to receive annual performance bonuses for calendar years 2012, 2013 and 2014 equal to 40% of his base salary, with an additional bonus of up to 170% of such bonus amount. Dr. Margolis will be entitled to participate in all employee benefits that are generally made available to most executives at HCP with similar levels of compensation and responsibility.

Further, in the event that Dr. Margolis is terminated without cause (as defined in the employment agreement) by DaVita, he will be entitled to receive (i) an amount equal to two times his annual base salary in effect at the time such termination, plus (ii) an amount equal to the performance bonus paid in the year prior to his termination of employment, pro-rated for the number of months served in the year his employment is terminated. These severance payments will be paid in equal installments over 24 months, subject to HCP's payroll practices and procedures, and are conditioned upon Dr. Margolis's execution of a general release. Dr. Margolis is also entitled to the severance payments described above if he resigns due to a material breach of the terms of the employment agreement by DaVita or HCP and HCP fails to cure such breach.

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It is anticipated that DaVita and Dr. Margolis will enter into an amended and restated employment agreement prior to the closing of the Merger that will be effective at the effective time of the Merger.

In conjunction with the execution of his employment agreement, Dr. Margolis entered into an employee non-competition and non-solicitation agreement with DaVita and HCP that will become effective at the effective time of the Merger. The employee non-competition and non-solicitation agreement restricts Dr. Margolis for a period of two years from the date of the termination of his employment from engaging in certain types of business activities in Nevada, Florida, New Mexico and California.

Also in connection with the execution of the Merger Agreement, Dr. Margolis entered into a separate non-competition and non-solicitation agreement with DaVita that will become effective at the effective time of the Merger. Pursuant to the terms of the non-competition and non-solicitation agreement, Dr. Margolis will be restricted for a period of seven years following the closing date of the Merger from engaging in certain types of business activities in Nevada, Florida, New Mexico and California.

***Employment Arrangement with Mr. Mazdyasni***

Concurrently with the execution of the Merger Agreement, Mr. Mazdyasni entered into an employment agreement with DaVita and HCP that will become effective at the effective time of the Merger. The employment agreement will supersede his current employment with HCP. Under the terms of the employment agreement, Mr. Mazdyasni will continue to serve as Executive Vice President and Chief Financial and Administrative Officer of HCP. He will receive an annual base salary of \$500,000, subject to review for increases at the discretion of HCP and with the approval of DaVita. Mr. Mazdyasni is eligible to receive annual performance bonuses for calendar years 2012, 2013 and 2014 equal to 40% of his base salary, with an additional bonus of up to 170% of such bonus amount. Mr. Mazdyasni will be entitled to participate in the stock-based awards and the long-term incentive plan awards set forth in the Merger Agreement as further described under *The Merger Agreement Equity and Other Long-Term Incentive Compensation* beginning on page 138. He will also be entitled to participate in all employee benefits that are generally made available to most executives at HCP with similar levels of compensation and responsibility.

Further, in the event that Mr. Mazdyasni is terminated without cause (as defined in the employment agreement) by DaVita, he will be entitled to receive (i) an amount equal to two times his annual base salary in effect at the time such termination, plus (ii) an amount equal to the performance bonus paid in the year prior to his termination of employment, pro-rated for the number of months served in the year his employment is terminated. These severance payments will be paid in equal installments over 24 months, subject to HCP's payroll practices and procedures, and are conditioned upon Mr. Mazdyasni's execution of a general release; provided, however, that any severance payments will be reduced by any amount of compensation received by Mr. Mazdyasni from another employer (as an employee, consultant, or independent contractor) during the 24-month salary continuation period. Mr. Mazdyasni is also entitled to the severance payments described above if he resigns due to a material breach of the terms of the employment agreement by DaVita or HCP and HCP fails to cure such breach.

In conjunction with the execution of his employment agreement, Mr. Mazdyasni entered into an employee non-competition and non-solicitation agreement with DaVita and HCP that will become effective at the effective time of the Merger. The employee non-competition and non-solicitation agreement restricts Mr. Mazdyasni for a period of two years from the date of the termination of his employment from engaging in certain types of business activities in Nevada, Florida, New Mexico and California.

Also in connection with the execution of the Merger Agreement, Mr. Mazdyasni entered into a separate non-competition and non-solicitation agreement with DaVita that will become effective at the effective time of the Merger. Pursuant to the terms of the non-competition and non-solicitation agreement, Mazdyasni will be restricted for a period of five years following the closing date of the Merger from engaging in certain types of business activities in Nevada, Florida, New Mexico and California.

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***Employment Arrangement with Dr. Chin***

Concurrently with the execution of the Merger Agreement, Dr. Chin entered into an employment agreement with DaVita and HCP that will become effective at the effective time of the Merger. Under the terms of the employment agreement, Dr. Chin will continue to serve as Chief Medical Officer of HCP. He will receive an annual base salary of \$450,000, subject to review for increases at the discretion of HCP and with the approval of DaVita. Dr. Chin is eligible to receive annual performance bonuses for calendar years 2012, 2013 and 2014 equal to 40% of his base salary, with an additional bonus of up to 170% of such bonus amount. Dr. Chin will be entitled to participate in the stock-based awards and the long-term incentive plan awards set forth in the Merger Agreement as further described under *The Merger Agreement Equity and Other Long-Term Incentive Compensation* beginning on page 138. He will also be entitled to participate in all employee benefits that are generally made available to most executives at HCP with similar levels of compensation and responsibility.

Further, in the event that Dr. Chin is terminated without cause (as defined in the employment agreement) by DaVita, he will be entitled to receive (i) an amount equal to two times his annual base salary in effect at the time such termination, plus (ii) an amount equal to the performance bonus paid in the year prior to his termination of employment, pro-rated for the number of months served in the year his employment is terminated. These severance payments will be paid in equal installments over 24 months, subject to HCP's payroll practices and procedures, and are conditioned upon Dr. Chin's execution of a general release; provided, however, that any severance payments will be reduced by any amount of compensation received by Dr. Chin from another employer (as an employee, consultant, or independent contractor) during the 24-month salary continuation period. Dr. Chin is also entitled to the severance payments described above if he resigns due to a material breach of the terms of the employment agreement by DaVita or HCP and HCP fails to cure such breach.

In conjunction with the execution of his employment agreement, Dr. Chin entered into an employee non-competition and non-solicitation agreement with DaVita and HCP that will become effective at the effective time of the Merger. The employee non-competition and non-solicitation agreement restricts Dr. Chin for a period of two years from the date of the termination of his employment from engaging in certain types of business activities in Nevada, Florida, New Mexico and California.

Also in connection with the execution of the Merger Agreement, Dr. Chin entered into a separate non-competition and non-solicitation agreement with DaVita that will become effective at the effective time of the Merger. Pursuant to the terms of the non-competition and non-solicitation agreement, Dr. Chin will be restricted for a period of seven years following the closing date of the Merger from engaging in certain types of business activities in Nevada, Florida, New Mexico and California.

***Employment Arrangement with Mr. Calhoun***

Concurrently with the execution of the Merger Agreement, Mr. Calhoun entered into an employment agreement with DaVita and HCP that will become effective at the effective time of the Merger. Under the terms of the employment agreement, Mr. Calhoun will continue to serve as Chief Operating Officer of HCP. He will receive an annual base salary of \$400,000, subject to review for increases at the discretion of HCP and with the approval of DaVita. Mr. Calhoun is eligible to receive annual performance bonuses for calendar years 2012, 2013 and 2014 equal to 40% of his base salary, with an additional bonus of up to 170% of such bonus amount. Mr. Calhoun will be entitled to participate in the stock-based awards and the long-term incentive plan awards set forth in the Merger Agreement as further described under *The Merger Agreement Equity and Other Long-Term Incentive Compensation* beginning on page 138. He will also be entitled to participate in all employee benefits that are generally made available to most executives at HCP with similar levels of compensation and responsibility.

Further, in the event that Mr. Calhoun is terminated without cause (as defined in the employment agreement) by DaVita, he will be entitled to receive (i) an amount equal to two times his annual base salary in effect at the time such termination, plus (ii) an amount equal to the performance bonus paid in the year prior to his termination of

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employment, pro-rated for the number of months served in the year his employment is terminated. These severance payments will be paid in equal installments over 24 months, subject to HCP's payroll practices and procedures, and are conditioned upon Mr. Calhoun's execution of a general release; provided, however, that any severance payments will be reduced by any amount of compensation received by Mr. Calhoun from another employer (as an employee, consultant, or independent contractor) during the 24-month salary continuation period. Mr. Calhoun is also entitled to the severance payments described above if he resigns due to a material breach of the terms of the employment agreement by DaVita or HCP and HCP fails to cure such breach.

In conjunction with the execution of his employment agreement, Mr. Calhoun entered into an employee non-competition and non-solicitation agreement with DaVita and HCP that will become effective at the effective time of the Merger. The employee non-competition and non-solicitation agreement restricts Mr. Calhoun for a period of two years from the date of the termination of his employment from engaging in certain types of business activities in Nevada, Florida, New Mexico and California.

Also in connection with the execution of the Merger Agreement, Mr. Calhoun entered into a separate non-competition and non-solicitation agreement with DaVita that will become effective at the effective time of the Merger. Pursuant to the terms of the non-competition and non-solicitation agreement, Mr. Calhoun will be restricted for a period of three years following the closing date of the Merger from engaging in certain types of business activities in Nevada, Florida, New Mexico and California.

***Non-Competition and Non-Solicitation Agreement with Dr. Paulsen***

In connection with the execution of the Merger Agreement, Dr. Paulsen, Executive Medical Director, California of HCP, entered into a separate non-competition and non-solicitation agreement with DaVita that will become effective at the effective time of the Merger. Pursuant to the terms of the non-competition and non-solicitation agreement, Dr. Paulsen will be restricted for a period of seven years following the closing date of the Merger from engaging in certain types of business activities in Nevada, Florida, New Mexico and California.

***Treatment of HCP Options***

As of September 25, 2012, there were approximately 5,304,900 HCP Common Units issuable pursuant to HCP Options granted under HCP's equity plans to its managers and executive officers. The Merger Agreement provides that each HCP Option that is outstanding immediately prior to the effective time of the Merger will accelerate and become fully vested and exercisable as of immediately prior to the effective time of the Merger and, to the extent unexercised, will be cancelled, extinguished and automatically converted into the right to receive a cash payment for each HCP Common Unit subject to such HCP Option, equal to the excess of (a) the merger consideration per fully diluted unit of HCP over (b) the per unit exercise price payable in respect of such HCP Common Unit issuable under such HCP Option. As described in *The Merger Agreement Escrowed Merger Consideration*, *The Merger Agreement Member Representative Escrow*, and *The Merger Agreement Nevada Escrow* beginning on pages 120, 124 and 125, respectively, a portion of the closing merger consideration paid to HCP Members and holders of HCP Options will be withheld from payment and contributed to three escrow accounts. Also, as described in *The Merger Agreement Earn-Out* beginning on page 123, HCP Members and holders of HCP Options may receive earn-out payments that are based on the financial performance of HCP for fiscal years 2012 and 2013.

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The following table sets forth, for each of HCP's managers and executive officers holding HCP Options as of September 25, 2012, (a) the number of vested HCP Options, (b) the number of unvested HCP Options that will vest as of the effective time of the Merger, assuming the manager or executive officer remains employed by HCP at that date and such option is not exercised prior to such vesting, and (c) the per unit exercise price payable in respect of such HCP Common Unit issuable under each HCP Option.

<b>Name</b>	<b>Vested HCP Options</b>	<b>Unvested HCP Options that Will Vest as a Result of the Merger</b>	<b>Per unit price exercise</b>
Robert Margolis, M.D.	950,000	50,000	\$ 12.94
Matthew Mazdyasni	213,750	11,250	\$ 12.94
William Chin, M.D.	285,000	15,000	\$ 12.94
Zan Calhoun	58,575	3,925	\$ 12.94
Craig Frances, M.D.			
Ralph Mendez, M.D.			
Steve Valentine	47,500	2,500	\$ 12.94

**Employee Benefits**

From and after the effective time of the Merger until December 31, 2013, DaVita will not decrease, or cause to be decreased, the base salary, target annual bonus opportunity, and target commission opportunity in effect as of immediately prior to closing of each employee of HCP or its subsidiaries who continues his or her employment with DaVita, the surviving entity or any of their affiliates after the effective time of the Merger. In addition, DaVita will maintain, or cause to maintain, the severance practices and policies of HCP and the entities through which the business is conducted and that are consolidated with HCP and its subsidiaries from and after the effective time until December 31, 2013. DaVita has agreed to maintain, or to cause the surviving entity to maintain, employee benefit plans, including any vacation, sick, or personal time off plans, that are in effect immediately prior to the effective time of the Merger until December 31, 2013. As of January 1, 2014, DaVita will, or will cause its affiliates to, continue the employee benefit plans, adopt new plans, or allow the employees of DaVita, the surviving entity or their affiliates to participate in DaVita's or its affiliates' plans, provided that, among other things, DaVita will, or will cause its affiliates to, waive any pre-exiting conditions or limitations and eligibility waiting periods under such plans. For a more detailed description of the employee benefit matters in the Merger Agreement, see the section entitled "The Merger Agreement Employment and Employee Benefit Matters; Other Plans" beginning on page 134.

**Directors and Officers Insurance**

The Merger Agreement provides that DaVita, on behalf of HCP, will obtain directors' and officers' liability insurance policies with a coverage period that commences at the effective time of the Merger and ends on a date that is six years after the effective time of the Merger. The premiums for the insurance policies will be prepaid and borne equally by DaVita and HCP, subject to the restrictions described under "The Merger Agreement Tail Insurance Policies" beginning on page 133.

**Accounting Treatment**

The Merger will be accounted for using the purchase method of accounting in accordance with FASB's Accounting Standard Codification Topic 805, Business Combinations, and the resultant goodwill and other intangible assets will be accounted for under Accounting Standard Codification Topic 350, Intangibles—Goodwill and Other. The total purchase price has been preliminarily allocated based on information available to DaVita as of the date of this prospectus to the tangible and intangible assets acquired, liabilities assumed and contingent earn-out consideration based on management's preliminary estimates of their current fair values.

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These estimates and assumptions of fair values of assets acquired and liabilities assumed and contingent earn-out consideration and related operating results are subject to change that could result in material differences between the actual amounts and those reported in the unaudited pro forma condensed consolidated financial statements.

**HCP Member Dissenters' Rights**

In connection with the Merger, record holders of HCP Common Units who (i) hold HCP Common Units outstanding on the date of approval of the Merger, (ii) do not vote for approval of the principal terms of the Merger and the Merger Agreement or else vote against the principal terms of the Merger and the Merger Agreement at a meeting for HCP Members, (iii) make a written demand for purchase at fair market value within 30 days of the mailing of notice of approval of the Merger and (iv) otherwise comply with the applicable statutory procedures of Sections 17601-17605 of the California Corporations Code, summarized herein, may be entitled to dissenters' rights under California Corporations Code Sections 17601-17605 if the Merger is completed.

**California Corporations Code Sections 17601-17605 are reprinted in their entirety as Annex F to this prospectus. Set forth below is a summary description of California Corporations Code Sections 17601-17605, which describes the material aspects of California Corporations Code Sections 17601-17605 and the law relating to dissenters' rights and is qualified in its entirety by reference to Annex F. All references in California Corporations Code Sections 17601-17605 and this summary to member are to the record holder of HCP Common Units who is a dissenting member immediately prior to the effective time of the Merger as to which dissenters' rights are demanded. Failure to comply strictly with the procedures set forth in California Corporations Code Sections 17601-17605 may result in your inability to have your HCP Common Units purchased for cash at fair market value.**

Under the California Corporations Code, members who follow the procedures set forth in California Corporations Code Sections 17601-17605 will, if they cannot come to agreement with the limited liability company as to fair market value, be entitled to have their membership interests appraised by the superior court of the proper county or by a court-appointed appraiser and to receive payment in cash for the fair market value of those membership interests, exclusive of any element of value arising from the accomplishment or expectation of the Merger, unless such exclusion would be inequitable, in lieu of receiving the merger consideration.

Under California Corporations Code Sections 17104(c)(1), unless the operating agreement of the limited liability company provides for a different notice period, when a merger agreement relating to a proposed merger is to be submitted for adoption at a meeting of members, as in the case of the special meeting, the limited liability company, not less than 10 days and not more than 60 days prior to such meeting, must notify each member in writing of the place, date, and hour of the meeting, the means of electronic transmission by and to the limited liability company or electronic video screen communication, if any, and the general nature of the business to be transacted, such as that a merger agreement is to be voted on for approval. HCP's operating agreement provides that, in the case of a special meeting, such written notice is required not less than 10 days and not more than 30 days prior to such meeting. This prospectus serves as such notice.

In addition, under California Corporations Code Sections 17551(a) and 17602, when a merger has been approved by the vote of a majority in interest of the members of each constituent limited liability company (i.e., unless otherwise provided in the operating agreement of the limited liability company, more than 50% of the interest of members in current profits of the limited liability company), whether by a meeting or by written consent, the limited liability company, within 10 days after such approval is obtained, must notify each of its members who was a member of record on the record date for notice of such approval of the following: the price determined by the limited liability company to represent the fair market value of its outstanding interests and the method of valuation employed. Such notice must also include the latest available balance sheet of the limited liability company, the latest available income statement of the limited liability company, a copy of California Corporations Code Sections 17601-17605, and a brief description of the procedure to be followed if the member desires to exercise the member's dissenters' rights under those sections. California Corporations Code Sections

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17601-17605 are attached to this prospectus as Annex F and incorporated herein by reference. Subsequent to the approval of the Merger, such required notice will be provided to each record holder of HCP Common Units. Any member who wishes to exercise such dissenters' rights or who wishes to preserve the right to do so should review the following discussion and Annex F carefully, because failure to timely and properly comply with the procedures specified in California Corporations Code Sections 17601-17605 will result in the inability under the California Corporations Code to require the limited liability company to purchase such dissenting interests for cash at fair market value.

If you wish to exercise dissenters' rights you must either (i) not vote for the approval of the principal terms of the Merger and the Merger Agreement or (ii) vote not to approve the principal terms of the Merger and the Merger Agreement and, in either case, must deliver to HCP, within 30 days after the notice of the approval of the principal terms of the Merger and the Merger Agreement was mailed to you, a written demand for purchase at fair market value of your HCP Common Units.

A demand for purchase at fair market value will be sufficient if it states the number of HCP Common Units and contains a statement of what you claim to be the fair market value of your HCP Common Units on the day before the announcement of the proposed merger. If you wish to exercise your dissenters' rights, you or your assignee of record must be the record holder of such HCP Common Units on the date the written demand for purchase at fair market value is made, and you or your assignee of record must continue to hold such interest through the time that it is submitted for endorsement, as described below.

Only a member who is a record holder of HCP Common Units or that member's assignee of record is entitled to assert dissenters' rights for such HCP Common Units registered in that member's name. A demand for purchase at fair market value should be executed by or on behalf of the member or that member's assignee of record by submitting written notice of the number of HCP Common Units that the member demands that the limited liability company purchase. If the HCP Common Units are owned of record in a fiduciary capacity, such as by a trust or other nominee, execution of the demand for purchase at fair market value should be made in that capacity, and if the HCP Common Units are owned of record by more than one person, as in a joint tenancy or tenancy in common, the demand should be executed by or on behalf of all joint owners. An authorized agent, including one for two or more joint owners, may execute the demand for appraisal on behalf of a holder of record; however, the agent must identify the record owner or owners and expressly disclose the fact that, in executing the demand, it, he or she is acting as agent for such owner or owners. Upon subsequent transfers of the dissenting interest on the books of the limited liability company, the new certificates or other written statement issued therefor shall bear a statement that the interest is a dissenting interest, together with the name of the original holder of the dissenting interest.

A record holder such as a trust or other nominee who holds HCP Common Units as nominee for several beneficial owners may exercise dissenters' rights with respect to the HCP Common Units held for one or more beneficial owners while not exercising such rights with respect to the HCP Common Units held for other beneficial owners; in such case, the written demand should set forth the number of HCP Common Units as to which demand for purchase at fair market value is sought. If the number of HCP Common Units is not expressly stated, the demand will be presumed to cover all HCP Common Units held in the name of the record owner. If you hold your HCP Common Units in an account with a trust or other nominee and wish to exercise your dissenters' rights, you are urged to consult with your trust or other nominee to determine the appropriate procedures for the making of a demand for purchase at fair market value.

**All written demands for purchase at fair market value of HCP Common Units must be timely mailed or delivered to: HealthCare Partners Holdings, LLC, 19191 South Vermont Avenue, Suite 200, Torrance, California 90502.**

If the limited liability company and the member agree that the interest is a dissenting interest, and agree on the price to be paid for it, the member is entitled to the agreed price, complete with interest at the legal rate on



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judgments, from the date of consummation of the Merger. The limited liability company is not under any obligation, and has no present intention, to file a petition with respect to appraisal of the value of your interest. Accordingly, if you wish to exercise your dissenters' rights, you should regard it as your obligation to take all steps necessary to exercise your dissenters' rights in the manner prescribed in California Corporations Code Sections 17601-17605. Agreements as to value of dissenting interests must be in writing and kept with the records of the limited liability company. The limited liability company must pay for a dissenting interest within 30 days after the amount of the interest has been agreed on, or within 30 days after conditions to the Merger are satisfied, whichever is later, unless the payment would be an improper distribution under California Corporations Code Section 17254 or would be a fraudulent conveyance under the Uniform Fraudulent Transfer Act, in which case the payment shall not be made and the members become creditors of the limited liability company for the amount not paid, with interest on that amount at the legal rate on judgments, until paid. In the latter case, members' claims are subordinate to all other creditors in any proceeding relating to the winding up and dissolution of the limited liability company. Unless otherwise agreed, if the dissenting interest is evidenced by a certificate of interest, payment is subject to surrender to the limited liability company of that certificate.

If the limited liability company denies that an interest is a dissenting interest, or the limited liability company and the member cannot agree on the value of a dissenting interest, either the limited liability company or the member may bring an action in the superior court of the proper county within six months after the date the notice of approval of the Merger was mailed to the HCP Member. The court will first determine whether the interest is a dissenting interest, if that is an issue, and then its value, if that is an issue. As to the latter issue, the court may appoint an appraiser to determine the value. California Corporations Code Section 17606 provides for the conduct of the appraisal and for entry of judgment pursuant to it and for payment after the judgment is entered. If litigation is instituted to test the sufficiency or procedural compliance of the vote of members in authorizing the Merger, any proceedings underway as just described will be suspended until final determination of the litigation to test the sufficiency or procedural compliance of the vote.

If you are considering exercising your dissenters' rights, you should be aware that the fair market value of your HCP Common Units as determined under California Corporations Code Sections 17601-17605 could be more than, the same as, or less than the merger consideration you are entitled to receive pursuant to the Merger Agreement if you did not seek to exercise your dissenters' rights.

The superior court of the proper county will direct the purchase at the fair market value of the dissenting interests by the limited liability company of each member who is a party, or has intervened, and is entitled to require the limited liability company to purchase his, her, or its membership interest, with interest. Interest from the date of consummation of the Merger through the date of payment of the judgment is fixed at the legal rate on judgments from the date of consummation of the Merger. The costs of the action, including reasonable compensation for the appraisers, shall be determined by the superior court of the proper county and assessed upon or apportioned among the parties as court deems equitable. If the appraisal exceeds the price offered by the limited liability company, the limited liability company shall pay the costs. If the value awarded by the superior court of the proper county for the dissenting interest is more than 125% of the price offered by the limited liability company, the court may cause the limited liability company to pay attorneys' fees and fees of expert witnesses.

Any member who has properly demanded purchase of his, her, or its membership interest at fair market value in compliance with California Corporations Code Sections 17601-17605, except as expressly limited by Chapter 13 of Title 2.5 of the California Corporations Code, shall continue to have all the rights and privileges incident to his, her, or its interest immediately prior to the Merger, including limited liability, until payment by the limited liability company for his, her, or its dissenting interests. A member may not withdraw a demand for payment unless the limited liability company consents to withdrawal. Cash distributions made by a limited liability company to a member after the date of consummation of the Merger, but before any payment by the limited liability company for the member's interest, are to be credited against the total amount to be paid by the limited liability company for that interest.

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At any time beyond six months after the notice of the approval of the Merger was mailed to the member, any member who has not had a complaint filed against him, her, or it, or filed a complaint against the limited liability company, in the superior court of the proper county, and has not intervened in a pending action for purchase of the dissenting interest at fair market value, shall lose his, her, or its status as a member and cease to be entitled to require the limited liability company to purchase that interest, which shall lose its status as a dissenting interest. At any time that the dissenting interest is transferred prior to its endorsement under California Corporations Code Section 17603 or that the member, with consent of the limited liability company, withdraws his, her, or its demand for purchase of the dissenting interest, that interest and that member shall lose their status as a dissenting interest and a member. At any time that the limited liability company abandons the Merger, the limited liability company shall pay, on demand, to any member who has initiated proceedings in good faith under Chapter 13 of Title 2.5 of the California Corporations Code, all reasonable expenses incurred in those proceedings and reasonable attorneys' fees, and that member and his, her, or its membership interest shall lose their status as a member and a dissenting interest.

If you properly demand payment at fair market value for your HCP Common Units under California Corporations Code Sections 17601-17605 but you lose your status as a dissenting member as provided in the California Corporations Code, your HCP Common Units will be converted into the right to receive the per HCP Common Unit merger consideration. You will lose your status as a dissenting member if, among other things, you and the limited liability company do not agree on the fair market value of your HCP Common Units and a complaint is not filed within six months after the notice of the approval of the Merger was mailed to you or if you, with the consent of the limited liability company, withdraw your demand for the purchase of your dissenting interest by the limited liability company.

**If you desire to exercise your dissenters' rights, you must either (i) not vote to approve principal terms of the Merger and the Merger Agreement or (ii) vote against approving the principal terms of the Merger and the Merger Agreement and, in either case, must strictly comply with the procedures set forth in California Corporations Code Sections 17601-17605.**

Failure to take any required step in connection with the exercise of dissenters' rights may result in your inability to have your HCP Common Units purchased for cash at fair market value.

**In view of the complexity of California Corporations Code Sections 17601-17605, members who may wish to dissent from the Merger and pursue dissenters' rights should consult their legal advisors.**

### **Board of Directors and Executive Officers of DaVita After the Merger**

The Merger Agreement provides that at the closing the DaVita Board will be increased in size by one member, and Dr. Margolis will be appointed to fill the newly created directorship as Co-Chairman. In addition, for a minimum period of four consecutive annual meetings of stockholders of DaVita, Dr. Margolis will hold the office of Co-Chairman until the expiration of his term of office or until his successor is duly elected and qualified, subject to his earlier death, resignation, disqualification, or removal in accordance with DaVita's bylaws and/or applicable law.

Information about the current DaVita directors and executive officers can be found in the documents listed under the heading **Additional Information Where You Can Find More Information** beginning on page 236.

Dr. Margolis, age 66, has been the Chairman and Chief Executive Officer of HCP since 1982 and the managing partner of HCP Medical Group since he founded its predecessor entity in 1975. Upon the closing of the Merger, Dr. Margolis will be appointed to the DaVita Board and will serve as the Co-Chairman of the DaVita Board. Dr. Margolis serves on the boards of directors of the Martin Luther King Hospital, the National Committee for Quality Assurance, the California Association of Physician Groups, and the California Hospital Medical Center, Los Angeles. Dr. Margolis also serves as a member of the Executive Management Advisory

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Board at UCLA's School of Public Health, a member of HealthCare Policy Advisory Council for Harvard Medical School, and a member of the advisory board of the USC Schaeffer Center for Health Policy and Economics. Dr. Margolis previously served as the chairman of the boards of directors of the American Medical Group Association, the National Committee for Quality Assurance, and the Unified Medical Group Association. Dr. Margolis has a national reputation in the managed care industry with over 40 years of industry experience. He works extensively on issues of quality improvement, pay for performance and access to care issues.

## **DaVita Financing**

DaVita expects to finance the cash portion of the merger consideration through a combination of borrowings under new senior secured facilities and new senior notes. DaVita and Merger Sub have agreed to use their reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary to arrange and obtain the financing required to consummate the transactions contemplated by the Merger Agreement as promptly as practicable after the date of the Merger Agreement. On August 28, 2012, DaVita issued \$1.25 billion of 5.75% senior notes due 2022. The proceeds of the senior notes were placed in escrow pending the consummation of the Merger and the satisfaction of certain other conditions. On August 24, 2012, DaVita, its subsidiary guarantors and JPMorgan Chase Bank, N.A., as Administrative Agent, entered into an amendment of its senior secured credit agreement to permit or facilitate, among other things, \$3.0 billion of additional term loans under the senior secured facilities, the Merger and the new senior notes. The effectiveness of the amendment is subject to various conditions, including the commitments of lenders for the full \$3.0 billion of additional term loans. DaVita currently anticipates that the additional term loans will consist of a new five year term loan A-3 in the principal amount of \$1.35 billion and a new seven year term loan B-2 in the principal amount of \$1.65 billion. DaVita has obtained commitments for the new five year term loan A-3, which are subject to various conditions, including the receipt of commitments for the new seven year term loan B-2 which are not expected to be received until immediately prior to the closing of the Merger. No assurance can be given that unconditional binding commitments for the full amount of the new term loans will be obtained, that the amendment will become effective or that the conditions to the release of the proceeds of the 5.75% senior notes will be satisfied. In the event that neither DaVita nor Merger Sub can obtain all of the financing required for the Merger, each party to the Merger generally has the right to terminate the Merger Agreement and HCP may be entitled to a termination fee. For additional information, please see [The Merger Agreement Termination of the Merger Agreement](#) and [The Merger Agreement Termination Fee](#) beginning on page 151 and page 152, respectively.

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**ELECTION AND EXCHANGE PROCEDURES**

**Election Procedures**

An election form and other appropriate and customary transmittal materials will be mailed not less than 30 days prior to the anticipated effective time of the Merger to each holder of record of HCP Common Units as of five business days prior to the mailing date of such election form and transmittal materials. HCP will use its commercially reasonable efforts to make available as many election forms as may be reasonably requested by all persons who are holders (or beneficial owners) of HCP Common Units or who become holders (or beneficial owners) of HCP Common Units prior to the close of business on the business day immediately prior to the election deadline. HCP will provide to the exchange agent agreed upon by DaVita and HCP (the Exchange Agent) all information reasonably necessary for it to perform as specified in the Merger Agreement.

The election form will permit a holder of HCP Common Units to elect to receive cash for all of such holder's units (cash election units), to elect to receive DaVita Common Stock for all units (stock election units), to elect to receive a mix of DaVita Common Stock and cash for such holder's units, or to indicate that such holder has no preference as to the receipt of cash or DaVita Common Stock (non-election units).

A holder of record of HCP Common Units may submit multiple election forms; provided that each such election form covers all the HCP Common Units held by such holder for a particular beneficial owner. Such holder of record will permit the holders of its equity securities to direct it to make an election in accordance with the terms of its governing documents and will make an election that reflects such election by the holders of its equity securities.

Any HCP Common Units with respect to which the holder thereof has not, as of the election deadline, made an election by submitting to the Exchange Agent an effective, properly completed election form will be treated as non-election units. All dissenting units will be deemed units subject to a cash election and, only for purposes of making the proration calculations discussed in this section, dissenting units as existing at the effective time will be deemed cash election units.

A properly completed election form must be submitted to the Exchange Agent on or before 5:00 p.m., New York City time, on the second business day prior to the effective time (or such other time and date as DaVita and HCP may mutually agree) to be effective. An election will have been properly made only if the Exchange Agent has actually received a properly completed election form by the election deadline. An election form will be deemed properly completed only if accompanied by duly executed transmittal materials included with the election form. Any election form may be revoked or changed by the person submitting such election form to the Exchange Agent by written notice to the Exchange Agent only if such notice of revocation or change is actually received by the Exchange Agent at or prior to the election deadline.

The Exchange Agent will have reasonable discretion to determine whether any election, modification, or revocation has been properly or timely made and to disregard immaterial defects in the election forms, and any good faith decisions of the Exchange Agent regarding such matters will be binding and conclusive. None of DaVita, HCP, or the Exchange Agent will be under any obligation to notify any person of any defect in an election form.

HCP Members are limited in the amount of DaVita Common Stock they may elect to receive for their units. If an HCP Member makes a stock election for a number of HCP Common Units in excess of such member's limit, then such member will be deemed to have made a stock election with respect to a number of HCP Common Units equal to such member's limit and a cash election with respect to all other of such member's HCP Common Units.

The total number of HCP Common Units to be converted into the right to receive the Per Unit Closing Stock Consideration (the Unit Conversion Number) will be equal to the amount obtained by dividing (x) 9,380,312

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shares of DaVita Common Stock by (y) the Exchange Ratio. Each other HCP Common Unit (other than dissenting units) will be converted into an amount of cash equal to the Per Unit Closing Consideration.

If the aggregate number of HCP Common Units with respect to which stock elections will have been validly made (the Stock Election Number ) exceeds the Unit Conversion Number, then all cash election units and all non-election units of each holder thereof will be converted into the right to receive cash, and stock election units of each holder thereof will be reduced proportionately, with each of such holder s remaining stock election units being converted into the right to receive cash.

If the Stock Election Number is less than the Unit Conversion Number (the amount by which the Unit Conversion Number exceeds the Stock Election Number being referred to herein as the Shortfall Number ), then all stock election units will be converted into the right to receive the Per Unit Closing Stock Consideration as follows:

If the Shortfall Number is less than or equal to the number of non-election units: (1) All cash election units will be converted into the right to receive an amount of cash equal to the Per Unit Closing Consideration, and (2) the non-election units of each holder thereof will be converted into the right to receive the Per Unit Closing Stock Consideration in respect of that number of non-election units equal to the product obtained by multiplying (A) the number of non-election units held by such holder by (B) a fraction, the numerator of which is the Shortfall Number and the denominator of which is the total number of non-election units, with each of such holder s remaining non-election units being converted into the right to receive an amount of cash equal to the Per Unit Closing Consideration; or

If the Shortfall Number exceeds the number of non-election units: (1) All non-election units will be converted into the right to receive the Per Unit Closing Stock Consideration, and (2) the cash election units of each holder thereof will be converted into the right to receive the Per Unit Closing Stock Consideration in respect of that number of cash election units equal to the product obtained by multiplying (A) the number of cash election units held by such holder by (B) a fraction, the numerator of which is the amount by which (x) the Shortfall Number exceeds (y) the total number of non-election units and the denominator of which is the total number of cash election units, with each of such holder s remaining cash election units being converted into the right to receive an amount of cash equal to the Per Unit Closing Consideration.

However, if as a result of the application of the two immediately preceding paragraphs, any HCP Member will be making a stock election for a number of HCP Common Units in excess of such HCP Member s Maximum Stock Election Eligible Units (as defined in the Merger Agreement), then such HCP Member will instead be deemed to have made a stock election with respect to a number of HCP Common Units equal to such HCP Member s Maximum Stock Election Eligible Units and a cash election with respect to the rest of such HCP Member s HCP Common Units, and the resulting Shortfall Number will be reallocated to the other HCP Members non-election units and cash election units in the manner set forth in the two immediately preceding paragraphs, with references to non-election units and cash election units in such paragraphs being deemed for purposes of this reallocation to exclude non-election units and cash election units held by any HCP Member that has made, or has been deemed to have made, a stock election equal to such HCP Member s Maximum Stock Election Eligible Units.

The following table illustrates the election procedures described above and provides examples of the amount of cash and/or stock (not including any potential earn-out payment) a hypothetical holder of HCP Common Units ( Holder A ) would receive under different election scenarios. In each of the examples, we have assumed that Holder A holds 10,000 HCP Common Units and that Holder A does not hold any HCP Options.

For purposes of the hypothetical election scenarios presented in the table, we have also assumed that:

Based upon the closing price of DaVita Common Stock of \$100.30 on September 25, 2012, the Per Unit Closing Consideration is approximately \$44.29 and the Exchange Ratio is approximately .4416x.

Stock elections must be made such that exactly 9,380,312 shares of DaVita Common Stock are issued as merger consideration.



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The cash portion of the merger consideration is \$3,660,000,000, and the aggregate per unit exercise prices of all HCP Options are \$69,456,964.

There are 105,436,869.2 fully diluted HCP Common Units.

Drs. Margolis, Chin and Paulsen and Mr. Mazdyasni make aggregate stock elections of 5,995,942.47 HCP Common Units (the minimum amount required pursuant to their respective support agreements), but with respect to their remaining HCP Common Units they each make the same elections as all other holders of HCP Common Units indicated below. Thus, All Other Members as used in the columns of the table refers to the actions of all HCP Members other than Holder A and the actions of Drs. Margolis, Chin and Paulsen and Mr. Mazdyasni for their units for which they have made their minimum mandatory stock elections.

There is no reduction in the total merger consideration as a result of an estimated shortfall in working capital at the time of closing. We note that the Per Unit Closing Consideration that will be determined at closing will be calculated based on the one day volume-weighted average stock price of DaVita common stock on the trading day immediately prior to the closing date rather than the closing price of DaVita Common Stock on September 25, 2012 and the Per Unit Closing Price may vary if any holders of HCP Options exercise any HCP Options prior to the closing date.

All HCP Members and holders of HCP Options are required to fund their proportionate shares of each of the Escrowed Merger Consideration (which consists of \$559,375,000 in cash and DaVita common stock), the Nevada Escrow (which consists of \$10,000,000 in cash) and the MR Escrow (which consists of \$5,000,000 in cash). The Escrowed Merger Consideration will consist of cash and DaVita Common Stock in the ratio of the number of HCP Common Units (including the number of HCP Options) being converted to cash over the number of HCP Common Units being converted to DaVita Common Stock. Each HCP Member is subject to a Maximum Stock Election to ensure that each HCP Member has made a cash election for a number of HCP Common Units sufficient to meet such HCP Member's obligation to fund the Nevada Escrow and the MR Escrow. Based on the assumption set forth above, Holder A's Maximum Stock Election Eligible Units are 9,968 of his HCP Common Units. If Holder A makes a stock election with respect to more than 9,968 HCP Common Units, his Maximum Stock Election Eligible Units, he will be deemed to have made a stock election with respect to 9,968 HCP Common Units and a cash election with respect to his remaining 32 HCP Common Units.

We note that the examples in the table below reflect the maximum merger consideration that Holder A would receive at closing in the election scenarios described below prior to the funding of escrows by holding back cash and stock to fund Holder A's escrow obligations. The total merger consideration that Holder A would ultimately receive after all post-closing events may be negatively affected by certain post-closing events, including the final working capital adjustment, indemnification claims successfully asserted against the HCP Members, or costs funded by the escrows. The total merger consideration that Holder A would ultimately receive in the described scenarios could also be positively affected by the receipt of earn-out consideration, with such earn-out consideration being paid post-closing, if at all. In addition, amounts of consideration described in the table are before tax. The scenarios described in the table below are intended to be illustrative only, do not purport to be realistic predictions of the election decisions that will be made and, because these scenarios are highly dependent on a number of assumptions and variables, are not intended to reflect the actual results of election decisions made by any particular HCP Member.

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**ILLUSTRATIVE EXAMPLES OF ELECTION ADJUSTMENTS**

(approximate numbers)

<b>Scenario 1:</b>	<b>All Other Members Elect 100% Cash</b>	<b>All Other Members Elect Maximum Stock Election (and Elect Cash for Remaining Units)</b>	<b>All Other Members Fail to Make a Proper Election</b>
<b>Holder A Elects 100% Cash</b>	<u>Effect:</u> Total stock elections fall short of the mandatory 9,380,312 shares of DaVita Common Stock.	<u>Effect:</u> Total stock elections exceed the mandatory 9,380,312 shares of DaVita Common Stock.	<u>Effect:</u> Total stock elections fall short of the mandatory 9,380,312 shares of DaVita Common Stock.
	<u>Adjustment:</u> To adjust for the shortfall in stock elections, cash election units of all Members (including Holder A) are proportionately reduced and converted to stock election units.	<u>Adjustment:</u> No adjustment to Holder A's cash election. To adjust for the excess in stock elections, stock election units of other Members are proportionately reduced and converted to cash election units.	<u>Adjustment:</u> No adjustment to Holder A's cash election. To adjust for the shortfall in stock elections, non-election units of other Members are proportionately converted to stock election units (with remaining non-election units converted to cash election units).
	<u>Result:</u> Instead of receiving \$442,948 in cash (subject to escrow withholding), Holder A receives \$375,036 in cash and 677 shares of DaVita Common Stock (valued at \$67,903), of which \$9,049 in cash and 65 shares of DaVita Common Stock (valued at \$6,520) will be held back at closing to fund Holder A's escrow obligations.	<u>Result:</u> Holder A receives \$442,948 in cash, of which \$10,688 in cash will be held back at closing to fund Holder A's escrow obligations.	<u>Result:</u> Holder A receives \$442,948 in cash, of which \$10,688 in cash will be held back at closing to fund Holder A's escrow obligations.



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	<b>All Other Members Elect 100% Cash</b>	<b>All Other Members Elect Maximum Stock Election (and Elect Cash for Remaining Units)</b>	<b>All Other Members Fail to Make a Proper Election</b>
<b>Scenario 2:</b>			
<b>Holder A Elects Maximum Stock Election (and Elects Cash for Remaining Units)</b>	<p><b>Effect:</b> Total stock elections fall short of the mandatory 9,380,312 shares of DaVita Common Stock.</p> <p><b>Adjustment:</b> No adjustment to Holder A's stock and cash elections. To adjust for the shortfall in stock elections, cash election units of other Members are proportionately reduced and converted to stock election units.</p> <p><b>Result:</b> Holder A receives \$1,417 in cash and 4,402 shares of DaVita Common Stock (valued at \$441,521), of which \$34 in cash and 421 shares of DaVita Common Stock (valued at \$42,226) will be held back at closing to fund Holder A's escrow obligations.</p>	<p><b>Effect:</b> Total stock elections exceed the mandatory 9,380,312 shares of DaVita Common Stock.</p> <p><b>Adjustment:</b> To adjust for the excess in stock elections, stock election units of all Members (including Holder A) are proportionately reduced and converted to cash election units.</p> <p><b>Result:</b> Instead of receiving \$1,417 in cash and 4,402 shares of DaVita Common Stock (valued at \$441,521) (subject to escrow withholding), Holder A receives \$353,715 in cash and 890 shares of DaVita Common Stock (valued at \$89,267), of which \$8,535 in cash and 85 shares of DaVita Common Stock (valued at \$8,526) will be held back at closing to fund Holder A's escrow obligations.</p>	<p><b>Effect:</b> Total stock elections fall short of the mandatory 9,380,312 shares of DaVita Common Stock.</p> <p><b>Adjustment:</b> No adjustment to Holder A's stock and cash elections. To adjust for the shortfall in stock elections, non-election units of other Members are proportionately converted to stock election units (with remaining non-election units converted to cash election units).</p> <p><b>Result:</b> Holder A receives \$1,417 in cash and 4,402 shares of DaVita Common Stock (valued at \$441,521), of which \$34 in cash and 421 shares of DaVita Common Stock (valued at \$42,226) will be held back at closing to fund Holder A's escrow obligations.</p>

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	<b>All Other Members Elect 100% Cash</b>	<b>All Other Members Elect Maximum Stock Election (and Elect Cash for Remaining Units)</b>	<b>All Other Members Fail to Make a Proper Election</b>
<b>Scenario 3:  Holder A Elects 50% Cash and 50% Stock</b>	<p><u>Effect:</u> Total stock elections fall short of the mandatory 9,380,312 shares of DaVita Common Stock.</p> <p><u>Adjustment:</u> To adjust for the shortfall in stock elections, cash election units of all Members (including Holder A) are proportionately reduced and converted to stock election units.</p> <p><u>Result:</u> Instead of receiving \$221,474 in cash and 2,208 shares of DaVita Common Stock (valued at \$221,462) (subject to escrow withholding), Holder A receives \$187,529 in cash and 2,547 shares of DaVita Common Stock (valued at \$255,464), of which \$4,525 in cash and 244 shares of DaVita Common Stock (valued at \$24,473) will be held back at closing to fund Holder A's escrow obligations.</p>	<p><u>Effect:</u> Total stock elections exceed the mandatory 9,380,312 shares of DaVita Common Stock.</p> <p><u>Adjustment:</u> To adjust for the excess in stock elections, stock election units of all Members (including Holder A) are proportionately reduced and converted to cash election units.</p> <p><u>Result:</u> Instead of receiving \$221,474 in cash and 2,208 shares of DaVita Common Stock (valued at \$221,462) (subject to escrow withholding), Holder A receives \$398,329 in cash and 445 shares of DaVita Common Stock (valued at \$44,634), of which \$9,611 in cash and 43 shares of DaVita Common Stock (valued at \$4,313) will be held back at closing to fund Holder A's escrow obligations.</p>	<p><u>Effect:</u> Total stock elections fall short of the mandatory 9,380,312 shares of DaVita Common Stock.</p> <p><u>Adjustment:</u> No adjustment to Holder A's cash and stock elections. To adjust for the shortfall in stock elections, non-election units of other Members are proportionately converted to stock election units (with remaining non-election units converted to cash election units).</p> <p><u>Result:</u> Holder A receives \$221,474 in cash and 2,208 shares of DaVita Common Stock (valued at \$221,462), of which \$5,344 in cash and 211 shares of DaVita Common Stock (valued at \$21,163) will be held back at closing to fund Holder A's escrow obligations.</p>

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	<b>All Other Members Elect 100% Cash</b>	<b>All Other Members Elect Maximum Stock Election (and Elect Cash for Remaining Units)</b>	<b>All Other Members Fail to Make a Proper Election</b>
<b>Scenario 4:  Holder A Fails to Make a Proper Election</b>	<p><u>Effect:</u> Total stock elections fall short of the mandatory 9,380,312 shares of DaVita Common Stock.</p> <p><u>Adjustment:</u> To adjust for the shortfall in stock elections, all of Holder A's non-election units are converted to stock election units up to Holder A's Maximum Stock Election (with the remaining units converted to cash election units), and then cash election units of other Members are proportionately reduced and converted to stock election units.</p> <p><u>Result:</u> Holder A receives \$1,417 in cash and 4,402 shares of DaVita Common Stock (valued at \$441,521), of which \$34 in cash and 421 shares of DaVita Common Stock (valued at \$42,226) will be held back at closing to fund Holder A's escrow obligations.</p>	<p><u>Effect:</u> Total stock elections exceed the mandatory 9,380,312 shares of DaVita Common Stock.</p> <p><u>Adjustment:</u> To adjust for the excess in stock elections, all of Holder A's non-election units are converted to cash election units and stock election units of other Members are proportionately reduced and converted to cash election units.</p> <p><u>Result:</u> Holder A receives \$442,948 in cash, of which \$10,688 in cash will be held back at closing to fund Holder A's escrow obligations.</p>	<p><u>Effect:</u> Total stock elections fall short of the mandatory 9,380,312 shares of DaVita Common Stock.</p> <p><u>Adjustment:</u> To adjust for the shortfall in stock elections, non-election units of all Members (including Holder A) are proportionately converted to stock election units (with the remaining non-election units converted to cash election units).</p> <p><u>Result:</u> Holder A receives \$375,036 in cash and 677 shares of DaVita Common Stock (valued at \$67,903), of which \$9,049 in cash and 65 shares of DaVita Common Stock (valued at \$6,520) will be held back at closing to fund Holder A's escrow obligations.</p>
 <b>Exchange Procedures</b>			

After the election deadline and no later than the closing date and until 180 days after the effective time, DaVita will deposit, or cause to be deposited, with the Exchange Agent (i) cash in an amount sufficient to allow the Exchange Agent to make all payments that may be required under the Merger Agreement, other than cash delivered by DaVita to the Escrow Agent and delivered to HCP for payment to holders of HCP Options, and (ii) certificates, or at DaVita's option, evidence of shares in book entry form, representing the 9,380,312 shares of DaVita Common Stock, to be given to the holders of HCP Common Units in exchange for their units, other than the shares delivered to the Escrow Agent.

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Any such cash or new certificates remaining in the possession of the Exchange Agent 180 days after the effective time (together with any earnings in respect thereof) will be delivered to (or as directed by) DaVita. Any holder of HCP Common Units who has not theretofore exchanged his, her, or its HCP Common Units will thereafter be entitled to look exclusively to DaVita for the consideration to which he, she, or it may be entitled upon exchange of such HCP Common Units. Irrespective of the foregoing, neither the Exchange Agent nor any party to the Merger Agreement will be liable to any holder of HCP Common Units for any amount properly delivered to a public official pursuant to applicable abandoned property, escheat, or similar laws.

Promptly after the effective time, but in no event later than ten days thereafter, the surviving entity will cause the Exchange Agent to mail or deliver to each person who was, immediately prior to the effective time, a holder of record of HCP Common Units a form of letter of transmittal containing instructions for use in effecting exchange for the consideration to which such person may be entitled. Upon surrender to the Exchange Agent of a letter of transmittal duly executed and completed in accordance its instructions, the holder of such HCP Common Units will promptly be provided in exchange, but in no event later than 10 business days after due surrender, a new certificate representing shares of DaVita Common Stock and a check, ACH payment, or a wire transfer in the amount to which such holder is entitled, and the HCP Common Units so surrendered will forthwith be canceled. No interest will accrue or be paid with respect to any cash or other property to be delivered upon surrender of any HCP Common Units. Each of DaVita and the surviving entity will be entitled to deduct and withhold, or cause the Exchange Agent to deduct and withhold, from the consideration otherwise payable pursuant to the Merger Agreement to any holder of HCP Common Units such amounts as it may be required to deduct and withhold with respect to the making of such payment under the Code or any provision of state, local, or foreign tax law.

If any cash payment is to be made in a name other than that in which the HCP Common Units surrendered in exchange therefor is registered, it will be a condition of such exchange that the person requesting such exchange will pay any transfer or other taxes required solely by reason of the making of such payment in a name other than that of the registered holder of the HCP Common Units surrendered, or required for any other reason relating to such holder or requesting person, or will establish to the reasonable satisfaction of the Exchange Agent that such tax has been paid or is not payable. If any new certificate representing shares of DaVita Common Stock is to be issued in a name other than that of the registered holder of the HCP Common Units surrendered in exchange therefor, it will be a condition of such issuance that the HCP Common Units so surrendered must be properly endorsed (or accompanied by an appropriate instrument of transfer) and otherwise in proper form for transfer, and that the person requesting such exchange will pay to the Exchange Agent in advance any transfer or other taxes required solely by reason of the issuance of a certificate representing HCP Common Units in a name other than that of the registered holder of the HCP Common Units surrendered, or required for any other reason relating to such holder or requesting person, or will establish to the reasonable satisfaction of the Exchange Agent that such tax has been paid or is not payable.

No dividends or other distributions with a record date after the effective time of the Merger with respect to DaVita Common Stock will be paid to the holder of an unsurrendered HCP Common Unit until the holder thereof has surrendered such HCP Common Unit. After the surrender of the HCP Common Units, the record holder of such HCP Common Units will be entitled to receive any dividends or other distributions, without any interest thereon, that become payable with respect to the DaVita Common Stock represented by the new certificates.

If any certificate evidencing a HCP Common Unit or HCP Option has been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming such certificate to be lost, stolen, or destroyed and, if required by DaVita or the Exchange Agent, the posting by such person of a bond in such reasonable amount as DaVita or the Exchange Agent may direct as indemnity against any claim that may be made against it with respect to such certificate, DaVita or the Exchange Agent will, in exchange for such lost, stolen, or destroyed certificate, pay or cause to be paid the consideration deliverable in respect of the HCP Common Units or HCP Options formerly represented by such certificate.

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**THE MERGER AGREEMENT**

*The following describes the material provisions of the Merger Agreement. The description in this section and elsewhere in this prospectus is qualified in its entirety by reference to the Merger Agreement and the Amendment to the Merger Agreement, which are included as Annex A-1 and Annex A-2 to this prospectus and incorporated by reference. This summary does not purport to be complete and may not contain all of the information about the Merger Agreement that is important to you. DaVita and HCP encourage you to read carefully the Merger Agreement and the Amendment to the Merger Agreement in their entirety before making any decisions regarding the transactions as it is the principal legal document governing the Merger.*

*The Merger Agreement and this summary of its terms have been included to provide you with information regarding the terms of the Merger Agreement. Factual disclosures about DaVita or HCP contained in this prospectus or DaVita's public reports filed with the SEC may supplement, update, or modify the factual disclosures about DaVita contained in the Merger Agreement and described in this summary. The representations, warranties, and covenants made in the Merger Agreement by DaVita, HCP and Merger Sub were qualified and subject to important limitations agreed to by DaVita, HCP, Merger Sub, and the Member Representative in connection with negotiating the terms of the Merger Agreement. In particular, in your review of the representations and warranties contained in the Merger Agreement and described in this summary, it is important to bear in mind that the representations and warranties were made solely for the benefit of the parties to the Merger Agreement, and were negotiated with the principal purposes of allocating risk between the parties to the Merger Agreement, rather than establishing matters as facts. The representations and warranties may also be subject to a contractual standard of materiality different from those generally applicable to stockholders and reports and documents filed with the SEC and in some cases were qualified by confidential disclosures that were made by each party to the other, which disclosures are not reflected in the Merger Agreement or otherwise publicly disclosed. Moreover, information concerning the subject matter of the representations and warranties may have changed since the date of the Merger Agreement and subsequent developments or new information qualifying a representation or warranty may have been included in this prospectus. For the foregoing reasons, the representations, warranties, and covenants or any descriptions of those provisions should not be read alone.*

**The Transaction**

On the closing date, Merger Sub, a wholly owned subsidiary of DaVita and a party to the Merger Agreement, will merge with and into HCP, subject to the terms and conditions of the Merger Agreement and in accordance with California law. HCP will survive the Merger as a wholly owned subsidiary of DaVita, and the separate existence of Merger Sub will cease.

**Closing; Effective Time**

The closing of the Merger will occur at 10:00 a.m., New York City time, on a date specified by the parties to the Merger Agreement, to be no later than the third business day after the satisfaction or waiver of all of the conditions to the closing provided in the Merger Agreement, other than those conditions that by their nature are to be satisfied at the closing of the Merger, unless DaVita and HCP mutually agree in writing. For further discussion on the conditions to the Merger, see [Conditions to Completion of the Merger](#) below.

The Merger will become effective upon the filing of the certificate of merger with the Secretary of State of the State of California (at the time specified in the certificate of merger or, if no such time is specified, as of the close of business on the date so filed), or at a subsequent date or time as DaVita and HCP will agree and specify in the certificate of merger or, if not specified therein, as specified by the California Limited Liability Company Act.

DaVita and HCP currently expect to complete the Merger during the fourth calendar quarter of 2012, subject to receipt of required HCP Member and regulatory approvals and to the satisfaction or waiver of the other conditions to the transactions described below.

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### **Organizational Documents of the Surviving Entity**

At the effective time, the articles of organization of HCP will be amended and restated in their entirety as set forth in an exhibit to the Merger Agreement, and such amended and restated articles of organization will be the articles of organization of the surviving entity until thereafter changed or amended. The operating agreement of HCP will be amended and restated as set forth in an exhibit to the Merger Agreement and will be the operating agreement of the surviving entity until thereafter changed or amended.

### **Managers and Officers of the Surviving Entity**

The managers of Merger Sub immediately prior to the effective time will be the managers of the surviving entity until the earlier of their resignation or removal or until their respective successors are duly elected and qualified. The officers of HCP immediately prior to the effective time will be the initial officers of the surviving entity until the earlier of their resignation or removal or until their respective successors are duly designated.

### **The Merger Consideration; Conversion or Cancellation of Units**

#### ***HCP Common Units***

The Merger Agreement provides that at the closing each HCP Common Unit, whether or not subject to restriction, issued and outstanding immediately prior to the effective time (other than (1) HCP Common Units directly or indirectly owned by DaVita, Merger Sub, or HCP and (2) dissenting units) will be converted into and constitute the right to receive, at the election of the holder and as adjusted pursuant to the Merger Agreement, and as described below, the following consideration, subject to withholdings for the three escrow accounts described in Escrowed Merger Consideration, Member Representative Escrow, and Nevada Escrow and to any potential downward adjustment to the closing merger consideration described in Estimated Amounts Included in Closing Merger Consideration :

#### ***Closing Date Payment***

for each HCP Common Unit for which a cash election has been effectively made and not revoked or lost, cash, without interest, in an amount (the Per Unit Closing Consideration ) equal to the amount obtained by dividing (a) the sum of (i) the product of 9,380,312 shares of DaVita Common Stock multiplied by the one day DaVita volume-weighted average stock price on the last trading day prior to the closing date (the aggregate closing stock consideration), (ii) \$3,660,000,000 (the aggregate closing cash consideration), and (iii) the aggregate per unit exercise price of all HCP Options by (b) the Total Outstanding HCP Units (as defined below);

for each HCP Common Unit for which a stock election has been effectively made and not revoked or lost, that number of shares of DaVita Common Stock (the Per Unit Closing Stock Consideration ) as is equal to the amount obtained by dividing (i) the Per Unit Closing Consideration by (ii) the one day DaVita volume-weighted average stock price on the last trading day prior to the closing date (the Exchange Ratio ); or

for each HCP Common Unit other than units as to which a cash election, a stock election, or a combination of stock and cash election has been effectively made and not revoked or lost, the Per Unit Closing Consideration or Per Unit Closing Stock Consideration as is determined in accordance with the Merger Agreement and described below in Election Procedures.

Total Outstanding HCP Units means the aggregate number of HCP Common Units (not held by HCP in its treasury) issued and outstanding as of immediately prior to the closing plus the maximum aggregate number of HCP Common Units issuable upon full exercise of all HCP Options issued and outstanding as of immediately prior to the closing, whether vested or unvested, and whether or not exercised. Notwithstanding the foregoing, Total Outstanding HCP Units will not include any HCP Common Units issuable upon the exercise of HCP Options that are cancelled (other than pursuant to the Merger Agreement) or otherwise expire prior to the closing to the extent not exercised.

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The per unit value of merger consideration that HCP Members will receive for each of their HCP Common Units is calculated by dividing the total amount of merger consideration by the total number of fully diluted HCP Common Units. The total amount of merger consideration is the sum of the cash consideration of \$3,660,000, the value of 9,380,312 shares of DaVita Common Stock based on the one-day volume-weighted average stock price of such stock on the trading day immediately prior to the closing date, and the aggregate per unit exercise prices of all HCP Options (approximately \$69.5 million as of the date of this prospectus). As of the date of this prospectus, the total number of fully diluted HCP Common Units is 105,436,869.2, which includes all issued and outstanding HCP Common Units and all HCP Common Units issuable upon full exercise of all HCP Options issued and outstanding, whether vested or unvested, and whether exercised or not exercised. Based upon the closing price of \$100.30 per share of DaVita Common Stock on September 25, 2012, the last practicable day prior to the date of this prospectus, and assuming no reduction to the total merger consideration as a result of an estimated working capital adjustment at the time of closing, the merger consideration would be \$44.29 per fully diluted HCP Common Unit.

An HCP Member may elect to receive the merger consideration represented by HCP Common Units in the form of cash or stock, or a combination thereof. However, notwithstanding any such election, an HCP Member may receive a combination of cash or stock that is different from what such HCP Member may have elected, depending on the elections made by other HCP Members, in order to ensure that the merger consideration of \$3.66 billion in cash and 9,380,312 shares of DaVita Common Stock, subject to certain adjustments (including a potential reduction in the merger consideration as a result of an estimated shortfall in working capital, if any, at the time of closing and a post-closing final working capital adjustment), is fully allocated and paid in the Merger. No fractional shares of DaVita Common Stock will be issued in the Merger.

**Post-Closing Adjustment.** Payable upon the occurrence of those events specified in the Merger Agreement, an amount of cash (without interest) equal to the amount obtained by dividing (x) the post-closing adjustment amount by (y) the Total Outstanding HCP Units (see Post-Closing Merger Consideration Adjustment Determination below).

**Earn-Out Payment.** Payable upon the occurrence of those events specified in the Merger Agreement, an amount of cash (without interest) equal to the amount obtained by dividing (x) the Total Cash Earn-Out Consideration (as defined in Earn-Out below), by (y) the Total Outstanding HCP Units (see Earn-Out below).

**Escrow Payment.** A non-transferable, contingent right to distributions of funds (together with earnings thereon) to be held in one or more escrow accounts pursuant to the Escrow Agreement from and after the effective time, to secure purchase price adjustment obligations to DaVita and indemnification obligations to the DaVita Indemnified Parties (as defined in Indemnification below) attributable to such HCP Common Units, such distributions to be paid in accordance with the Merger Agreement (the Escrow Payment) (see Escrowed Merger Consideration below).

**MR Escrow Payment.** A non-transferable, contingent right to distributions of funds (together with earnings thereon) to be held in an escrow account pursuant to the MR Escrow Agreement from and after the effective time, to fund, if necessary, the costs and expenses of the Member Representative acting in such capacity attributable to such HCP Common Units, such distributions to be paid in accordance with the Merger Agreement (the MR Escrow Payment) (see Member Representative Escrow below).

**Nevada Escrow Payment.** A non-transferable, contingent right to distributions of funds (together with earnings thereon) to be held in an escrow account pursuant to the Nevada Escrow Agreement from and after the effective time, to fund, if applicable, certain transaction settlement payments that may become due and payable pursuant to the Nevada Settlement Agreements, such distributions to be paid in accordance with the Merger Agreement (the Nevada Escrow Payment) (see Nevada Escrow below).

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***HCP Options***

DaVita will not assume or otherwise replace any HCP Options in connection with the transactions. Upon the terms and subject to the conditions set forth in the Merger Agreement, each HCP Option that is outstanding immediately prior to the effective time will accelerate and become fully vested and exercisable as of immediately prior to the effective time and, to the extent unexercised, will be cancelled, extinguished, and automatically converted into the right to receive, for each HCP Common Unit subject to such HCP Option immediately prior to the effective time, in consideration of such cancellation, the following consideration:

***Closing Date Payment.*** Payable upon the closing, subject to withholdings for the three escrow accounts described in Escrowed Merger Consideration, Member Representative Escrow, and Nevada Escrow and to any potential downward adjustment to the closing merger consideration described in Estimated Amounts Included in Closing Merger Consideration, an amount of cash (without interest) equal to the excess of the Per Unit Closing Consideration over the applicable per unit exercise price (the Per Option Closing Consideration ).

***Post-Closing Adjustment.*** Payable upon the occurrence of those events specified in the Merger Agreement, an amount of cash (without interest) equal to the amount obtained by dividing (x) the post-closing adjustment amount by (y) the Total Outstanding HCP Units (see Post-Closing Merger Consideration Adjustment Determination below).

***Earn-Out Payment.*** Payable upon the occurrence of those events specified in the Merger Agreement, an amount of cash (without interest) equal to the per unit earn-out payment (see Earn-Out below).

***Escrow Payment.*** A non-transferable, contingent right to distributions of Escrow Payment attributable to each HCP Common Unit subject to such HCP Option, such distributions to be paid in accordance with the Merger Agreement (see Escrowed Merger Consideration below).

***MR Escrow Payment.*** A non-transferable, contingent right to distributions of MR Escrow Payment attributable to each HCP Common Unit subject to such HCP Option, such distributions to be paid in accordance with the Merger Agreement (see Member Representative Escrow below).

***Nevada Escrow Payment.*** A non-transferable, contingent right to distributions of Nevada Escrow Payment attributable to each HCP Common Unit subject to such HCP Option, such distributions to be paid in accordance with the Merger Agreement (see Nevada Escrow below).

***Withholding***

Payments of the merger consideration will be reduced by any applicable tax withholding required under the Code or any provision of applicable state, local, or foreign tax law. For example, payments of consideration to holders of HCP Options received as compensation generally will be subject to income and employment tax withholding. To the extent that amounts are so withheld, such withheld amounts must be timely paid to the applicable taxing authority and treated for all purposes of the Merger Agreement as having been paid to such holder of HCP Options.

***Estimated Amounts Included In Closing Merger Consideration***

No later than five business days prior to the closing date, HCP will prepare and deliver to DaVita (i) an estimated consolidated balance sheet of the Business Entities and the entities through which the business is conducted (other than the Business Entities) and that are consolidated with the Business Entities in the audited financial statements, including HCPAMG and its subsidiaries, HealthCare Partners Medical Group (Bacchus), Ltd., JSA Professional Association, and HCPMGI (the Related Consolidated Entities ) as of immediately prior



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to the effective time and (ii) a statement setting forth HCP's good faith estimates of the net working capital of the Related Consolidated Entities and the indebtedness amount, in each case as of immediately prior to the effective time. The estimated closing balance sheet and the estimated adjustment statement will be prepared in accordance with generally accepted accounting principles ( GAAP ) applied on a basis consistent with HCP's audited financial statements for fiscal years ended December 31, 2011, 2010 and 2009, and include reasonable detail with respect to the calculation of each component of the estimated net working capital and the estimated indebtedness amount. HCP and DaVita will use good faith efforts to resolve prior to the closing any disagreements between them concerning the computation of any of the items on the estimated closing balance sheet or the estimated adjustment statement. If the estimated net working capital minus the estimated indebtedness amount is less than negative \$149,000,000 (such deficiency stated as a positive number, the Estimated Shortfall Amount ), then the closing merger consideration will be decreased by an amount equal to the Estimated Shortfall Amount and the Per Unit Closing Consideration will be decreased by an amount equal to the Estimated Shortfall Amount divided by the Total Outstanding HCP Units.

### **Adjustments to Prevent Dilution**

If DaVita changes (or the DaVita Board sets a related record date that will occur before the effective time for a change in) the number or kind of shares of the common stock of DaVita outstanding by way of a stock split, stock dividend, recapitalization, reclassification, reorganization, or similar transaction, then 9,380,312 shares of DaVita Common Stock, the Closing Price (as defined below), and the Exchange Ratio (and any other dependent items) will be adjusted proportionately to account for such change. If HCP changes (or the HCP Board sets a related record date that will occur before the effective time for a change in) the number or kind of HCP Common Units (or rights thereto) outstanding by way of a stock split, stock dividend, recapitalization, reclassification, reorganization, or similar transaction, then the aggregate per unit exercise price of all HCP Options (and any other dependent items) will be adjusted proportionately to account for such change.

### **Fractional Shares**

No fractional shares of the common stock of DaVita will be issued in the Merger. Instead, DaVita will pay to each holder of HCP Common Units who would otherwise be entitled to a fractional share of the DaVita Common Stock an amount in cash (without interest) determined by multiplying such fraction of a share of the DaVita Common Stock, subject to certain anti-dilution adjustments as set forth in the Merger Agreement, by the arithmetic average of the closing price per share of DaVita Common Stock as reported on the NYSE for the five consecutive trading days ending on (and including) the second trading day prior to the closing date (the Closing Price ).

### **Escrowed Merger Consideration**

A portion of the closing merger consideration equal to \$559,375,000 in the aggregate, or approximately \$5.31 per fully diluted HCP Common Unit, (collectively with any earnings or dividends or other distributions thereon, if any, the Escrowed Merger Consideration ) will be withheld from the closing merger consideration otherwise deliverable to HCP Members and holders of HCP Options on the closing date to serve as security for the benefit of DaVita against the indemnification afforded the DaVita Indemnified Parties in the Merger Agreement and any reduction in the merger consideration as a result of any post-closing adjustment to the merger consideration. The Escrowed Merger Consideration will consist of cash and DaVita Common Stock in the Escrow Proportion.

If any payment is required to be made to DaVita from the Escrowed Merger Consideration, such payment will be comprised of a mixture of cash and shares of DaVita Common Stock in the Escrow Proportion, with each share of DaVita Common Stock valued at the one day DaVita volume-weighted average stock price on the last trading day prior to such distribution date. Portions of the Escrowed Merger Consideration not subject to claims for indemnification by any DaVita Indemnified Party will be released, if available, to the HCP Members and

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holders of HCP Options periodically, with the first such release occurring on the second anniversary of the closing of the Merger and the last occurring in October 2017. On each release date, (i) the DaVita Common Stock being released, along with the aggregate amount of dividends or other distributions made on such stock or earnings on such dividends or other distributions, will be released to HCP Members who received DaVita Common Stock as merger consideration pro rata based on the number of shares of DaVita Common Stock contributed to escrow and (ii) the remaining cash being released, including all earnings on such cash, will be released to HCP Members who received cash merger consideration and holders of HCP Options pro rata based on the amount of cash contributed to escrow.

With respect to the stock portion of the Escrowed Merger Consideration, losses and gains due, respectively, to declines or increases in the value of DaVita Common Stock will generally be to the detriment or benefit, respectively, of HCP Members who contributed stock to escrow. However, when the stock value decline is great enough and indemnified claims are large enough, the portion of indemnified claims that cannot be allocated to the stock portion of the Escrowed Merger Consideration will be allocated to the cash portion, and the HCP Members who contributed cash to escrow and holders of HCP Options could bear some of the loss from the decline of DaVita Common Stock. On the other hand, when stock value gain is great enough and the indemnity claims are large enough, the portion of indemnified claims that cannot be allocated to the cash portion of the Escrowed Merger Consideration will be allocated to the stock portion and the HCP Members who contributed stock to escrow could fail to realize a portion of the benefit of the increase in DaVita Common Stock's value.

The Escrowed Merger Consideration will consist of cash and DaVita Common Stock in the ratio of the value of cash to be received in the transaction over the value of the DaVita Common Stock to be received in the transaction (the Escrow Proportion). Each share of DaVita Common Stock will be valued for these purposes at the one day DaVita volume-weighted average stock price on the last trading day prior to the closing date. On the closing date, the Escrowed Merger Consideration will be deposited by DaVita with the escrow agent in an escrow account (the Escrow Account) established in accordance with the Escrow Agreement. If any payment is required to be made to DaVita from the Escrow Account, DaVita and the Member Representative will promptly provide written instructions to the escrow agent, an institution mutually selected by DaVita and HCP, pursuant to the terms of the Escrow Agreement, to deliver to DaVita out of the Escrow Fund an amount of cash and DaVita Common Stock, in the Escrow Proportion, that in the aggregate is equal in value to such required payment, with each share of DaVita Common Stock valued for these purposes at the one day DaVita volume-weighted average stock price on the last trading day prior to the date of such distribution.

On the second anniversary of the closing date (the First Escrow Distribution Date), the escrow agent will create two additional separate escrow accounts. The escrow agent will deposit from the Escrow Account into the first additional account (the Healthcare Indemnity Account) \$300,000,000 and will deposit from the Escrow Account into the second additional account (the Tax Indemnity Account) \$50,000,000, with each escrow account consisting of cash and DaVita Common Stock in the Escrow Proportion (as defined in the Merger Agreement). In addition, no later than the second business day following the First Escrow Distribution Date, DaVita and the Member Representative will provide written instructions to the escrow agent to deliver to the HCP Members and to HCP for proper payment to the holders of HCP Options as of the closing, no later than five business days following the First Escrow Distribution Date, any Escrowed Merger Consideration remaining in the Escrow Account other than the amounts deposited in the Healthcare Indemnity Account and the Tax Indemnity Account, pro rata to HCP Members and holders of HCP Options, except for amounts subject to claims for indemnification by any DaVita Indemnified Party.

No later than the second business day following the third anniversary of the closing date (the Second Escrow Distribution Date), DaVita and the Member Representative will provide written instructions to the escrow agent, pursuant to the terms of the Escrow Agreement, to deliver to the HCP Members and to HCP for payment to the holders of HCP Options as of the closing, no later than five business days following the Second Escrow Distribution Date, any Escrowed Merger Consideration in the Healthcare Indemnity Account in excess of \$150,000,000, except for amounts subject to claims for indemnification by any DaVita Indemnified Party.

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No later than the second business day following October 15, 2016 (the Third Escrow Distribution Date ), DaVita and the Member Representative will provide written instructions to the escrow agent to deliver to the HCP Members and to HCP for payment to the holders of HCP Options as of the closing, within five business days following the Third Escrow Distribution Date, any Escrowed Merger Consideration in the Tax Indemnity Account in excess of \$25,000,000, except for amounts subject to claims for indemnification by any DaVita Indemnified Party.

No later than the second business day following the fourth anniversary of the closing date (the Fourth Escrow Distribution Date ), DaVita and the Member Representative will provide written instructions to the escrow agent, to deliver to the HCP Members and to HCP for payment to the holders of HCP Options as of the closing, within five business days following the Fourth Escrow Distribution Date, the aggregate amount of remaining Escrowed Merger Consideration in the Healthcare Indemnity Account, except for amounts subject to claims for indemnification by any DaVita Indemnified Party.

No later than the second business day following October 15, 2017 (the Fifth Escrow Distribution Date ), DaVita and the Member Representative will provide written instructions to the escrow agent to deliver to the HCP Members and to HCP for payment to the holders of HCP Options as of the closing, within five business days following the Fifth Escrow Distribution Date, the aggregate amount of remaining Escrowed Merger Consideration in the Tax Indemnity Account, except for amounts subject to claims for indemnification by any DaVita Indemnified Party.

Holders of HCP Options, in their capacity solely as holders of HCP Options, will bear responsibility for a portion of the indemnification obligations, if any, of the HCP Members solely and exclusively through distributions from the Escrow Account, the Healthcare Indemnity Account, and the Tax Indemnity Account, and following the distribution of all Escrowed Merger Consideration from the Escrow Account, the Healthcare Indemnity Account, and the Tax Indemnity Account, will bear no further indemnification obligations pursuant to the Merger Agreement.

### **Post-Closing Merger Consideration Adjustment Determination**

As soon as practicable, but in no event later than 90 days after the closing date, DaVita will prepare and deliver to the Member Representative the following:

an unaudited consolidated balance sheet of the Business Entities and Related Consolidated Entities as of immediately prior to the effective time, prepared by DaVita in accordance with GAAP, applied on a basis consistent with HCP's audited financial statements for the fiscal years ended December 31, 2011, 2010, and 2009; and

a statement setting forth reasonably detailed calculations by DaVita of the net working capital and the indebtedness amount, in each case as of immediately prior to the effective time based on the preliminary closing balance sheet and prepared in a manner consistent with the Merger Agreement and in accordance with GAAP, applied on a basis consistent with HCP's audited financial statements for the fiscal years ended December 31, 2011, 2010, and 2009; provided that net working capital and indebtedness amount will be calculated in accordance with the definitions of the terms in the Merger Agreement.

After all disputes have been resolved, if any, in accordance with the terms of the Merger Agreement, if the net working capital minus the indebtedness amount plus \$149,000,000, plus the deficiency (stated as a positive number) resulting from the estimated closing adjustments (see Estimated Amounts Included In Closing Merger Consideration ) (x) is a positive number, then the aggregate merger consideration will be increased by such excess or (y) is a negative number, then the aggregate merger consideration will be decreased by such shortfall. The amount of any final post-closing negative adjustment in the aggregate merger consideration will be satisfied from the Escrow Fund in cash and DaVita Common Stock.

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The amount of any final post-closing positive adjustment in the aggregate merger consideration to be made will be paid by DaVita to the HCP Members and the holders of HCP Options, pro rata based on the fully diluted HCP Common Units held by such HCP Member or attributable to HCP Options held by such holders of HCP Options as of immediately prior to the closing, relative to the total outstanding HCP Common Units, as soon as reasonably practicable after the determination of the final adjustment amounts and, in any event with respect to any such payment made to the HCP Members, within five business days thereafter; provided that any such payments made to the holders of HCP Options will be subject to certain withholding provisions set forth in the Merger Agreement.

**Earn-Out**

As additional merger consideration, a total of up to \$275,000,000, divided into two tranches, each of which will consist of \$137,500,000, will be payable to the HCP Members, holders of HCP Options, and pursuant to the Nevada Settlement Agreements. Such payments are conditioned on the achievement of certain milestones based on the EBITDA of HCP (calculated in accordance with the definition of Earn-Out EBITDA set forth in the Merger Agreement) (the "Earn-Out EBITDA"), as set forth below:

If the Earn-Out EBITDA for the fiscal year ended December 31, 2012 is equal to or greater than \$550,000,000, then DaVita will pay to the HCP Members and holders of HCP Options the First Tranche in cash, which will be allocated among the HCP Members and holders of HCP Options pro rata based on the fully diluted HCP Common Units held by such HCP Members or attributable to HCP Options held by such holders of HCP Options as of immediately prior to the closing relative to the Total Outstanding HCP Units; provided that any such payments made to the holders of HCP Options will be subject to certain withholding provisions set forth in the Merger Agreement.

If the Earn-Out EBITDA for the fiscal year ended December 31, 2013 is equal to or greater than \$600,000,000, then DaVita will pay to the HCP Members and holders of HCP Options the Second Tranche (less the aggregate amount payable pursuant to each of the Nevada Settlement Agreements) in cash, which will be allocated among the HCP Members and the holders of HCP Options pro rata based on the fully diluted HCP Common Units held by such HCP Members or attributable to HCP Options held by such holders of HCP Options as of immediately prior to the closing relative to the Total Outstanding HCP Units; provided that any such payments made to the holders of HCP Options will be subject to certain withholding provisions set forth in the Merger Agreement, and DaVita will pay, or cause to be paid, any transaction settlement payment that is due and payable pursuant to each of the Nevada Settlement Agreements.

On or prior to 10 business days after DaVita has filed its Annual Report on Form 10-K for each calculation period, DaVita will prepare and deliver to the Member Representative a written statement setting forth in reasonable detail its determination of Earn-Out EBITDA for the applicable calculation period and its calculation of the resulting per unit earn-out payment. The Merger Agreement governs certain actions that may impact the calculation of Earn-Out EBITDA. The calculation of EBITDA for this purpose includes corporate expense allocations for expenses in substitution or enhancement of services currently performed by a Business Entity or any Related Consolidated Entity. If such expenses exceed the expenses previously incurred by HCP for such services and Dr. Margolis is opposed to the DaVita recommendation or decision to substitute or enhance such services, Dr. Margolis has the right to request that the DaVita Board decide the issue, in which case the matter will be determined by the DaVita Board (and no such expenses shall be included in the calculation of EBITDA for this purpose until such time as the DaVita Board approves such expenses after considering in good faith the objections of Dr. Margolis). The Member Representative will be entitled to review the written statement in accordance with the terms set forth in the Merger Agreement.

DaVita's obligation to pay each of the per unit earn-out payments to the HCP Members and holders of HCP Options is an independent obligation of DaVita and is not otherwise conditioned or contingent upon the satisfaction of any conditions precedent to any preceding or subsequent per unit earn-out payment and the

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obligation to pay a per unit earn-out payment to the HCP Members and holders of HCP Options will not obligate DaVita to pay any preceding or subsequent per unit earn-out payment. Assuming payment of the entire \$275,000,000 earn-out, each HCP Member and each holder of HCP Options would receive an additional approximately \$2.61 per fully diluted HCP Common Unit.

Subject to certain withholding provisions set forth in the Merger Agreement, any per unit earn-out payment that DaVita is required to pay will be paid in full no later than the later of (i) April 30 following the applicable calculation period and (ii) five business days following the date upon which the determination of Earn-Out EBITDA for the applicable calculation period becomes final and binding upon the parties.

At any time after the closing date, DaVita may, in its sole discretion, elect to make either or both of the following payments to the HCP Members and the holders of HCP Options: (i) a payment equal in amount to the First Tranche, discounted from April 30, 2013 back to the date of actual payment at a rate of 5% per annum, and (ii) a payment equal in amount to the Second Tranche, discounted from April 30, 2014 back to the date of actual payment at a rate of 5% per annum, it being understood that from the discounted Second Tranche amount, DaVita will pay, or cause to be paid, any transaction settlement payment that is due and payable pursuant to each of the Nevada Settlement Agreements. Any such payment will be made in cash, allocated among the HCP Members and holders of HCP Options pro rata based on the fully diluted HCP Common Units held by such HCP Member or attributable to HCP Options held by such holders of HCP Options as of immediately prior to the closing, relative to the total outstanding HCP Common Units; provided that any such payments made to the holders of HCP Options will be subject to certain withholding provisions set forth in the Merger Agreement and that any payment made pursuant to the Nevada Settlement Agreements will be paid in accordance with such provision.

Subsequent to the closing and through December 31, 2013, Dr. Margolis and the management of HCP will operate the business of the Business Entities and Related Entities on an autonomous basis in a manner substantially consistent with their current operations. Dr. Margolis, the chief executive officer of HCP, and Kent J. Thiry, the chief executive officer of DaVita, will collaborate on major decisions, consistent with appropriate corporate governance, including DaVita's corporate policy on acquisitions. Mr. Thiry and the DaVita Board will retain ultimate decision-making authority as it relates to the business. Notwithstanding the above, to the extent DaVita recommends taking or opposing any action or decision with respect to the business that would reasonably be expected to adversely impact any earn-out payment and Dr. Margolis is opposed to such DaVita recommendation or decision, Dr. Margolis has the right to request that the DaVita Board decide the issue, in which case the matter will be determined by the DaVita Board (and no such taking or opposing such action or decision shall be acted upon until such time as the DaVita Board approves such taking or opposing such action or decision after considering in good faith the objections of Dr. Margolis). In every event, DaVita and HCP acknowledge that all decisions will be made in compliance with applicable law and in the best interests of the combined company consistent with the fiduciary duties of the officers and directors of the combined company. Further, in no event may DaVita take any action, or fail to take any action, in bad faith with the intent of reducing or avoiding any of the earn-out payments under the Merger Agreement. Similarly, in no event may the management of HCP take any action not in the best interests of the combined company with the intent to ensure any of the earn-out payments under the Merger Agreement. See the risk factor entitled "HCP's revenues and profits could be diminished if HCP fails to retain and attract the services of key primary care physicians" on page 69.

**Member Representative Escrow**

A portion of the closing merger consideration equal to \$5,000,000, or approximately \$0.05 per fully diluted HCP Common Unit, consisting entirely of cash, will be withheld from the closing merger consideration otherwise deliverable to the HCP members and holders of HCP Options on the closing date to fund, if necessary, (i) the HCP Members' share of the neutral accountant's fees and expenses; fees, costs, and expenses attributable to the establishment and maintenance of the Nevada Escrow Account; the HCP Members' share of the purchase price allocation accounting firm's fees and expenses; any and all costs and expenses of the Member Representative, and the amounts described in this paragraph as being paid from the MR Escrow Account, (ii) the

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expenses incurred by the Member Representative acting in such capacity, and (iii) any other expense described in the Merger Agreement as being paid from the MR Escrow Account.

On the closing date, such cash will be deposited by DaVita with the escrow agent in an escrow account (the MR Escrow Account) established in accordance with an escrow agreement to be entered into between the Member Representative and the escrow agent, consistent with the terms set forth in the Merger Agreement and other customary terms and conditions for similar agreements (the MR Escrow Agreement). All remaining funds in the MR Escrow Account (less any amounts required to be pay outstanding and anticipated expenses) will be distributed pro rata to the Members and the holders of HCP Options no later than the fifth business day following the distribution of all remaining funds in the Escrow Account, the Healthcare Indemnity Account, and the Tax Indemnity Account. The Member Representative will provide HCP Medical Group with a written statement setting forth all distributions and payments made from the MR Escrow Account for each month in which the MR Escrow Account is active, no later than 20 business days following the end of such month. The Member Representative will provide all HCP Members with a written report for each year in which the MR Escrow Account is active, no later than 90 days following the end of such year, setting forth (i) the amount of distributions and payments made from the MR Escrow Account during such year by category (specifically identifying payments made to the Member Representative or the Member Representative's affiliated or related entities), (ii) the total amount of distributions and payments made from the MR Escrow Account during such year, (iii) the total earnings received on the funds in the MR Escrow Account during such year, and (iv) the funds remaining in the MR Escrow Account as of such year's end, and attaching a copy of any annual statement received by the Member Representative from the escrow agent with respect to the MR Escrow Account.

### **Nevada Escrow**

A portion of the closing merger consideration equal to \$10,000,000, or approximately \$0.10 per fully diluted HCP Common Unit, consisting entirely of cash will be withheld from the closing merger consideration otherwise deliverable to the HCP Members and holders of HCP Options on the closing date to fund, if applicable, certain transaction settlement payments that may become due and payable pursuant to the Nevada Settlement Agreements.

On the closing date, such cash will be deposited by DaVita with the escrow agent in an escrow account (the Nevada Escrow Account) established in accordance with an escrow agreement to be entered into among HCP, the Member Representative, and the escrow agent, consistent with the terms set forth in the Merger Agreement and other customary terms and conditions for similar agreements (the Nevada Escrow Agreement). If, pursuant to either Nevada Settlement Agreement, any transaction settlement payment will not be made because a condition precedent is not met (after giving effect to the shortfall provision contained therein), then HCP and the Member Representative will promptly provide written instructions to the escrow agent, pursuant to the terms of the Nevada Escrow Agreement, to deliver the amount of such unpaid transaction settlement payment to the HCP Members and to HCP for proper payment to the holders of HCP Options as of the closing pro rata based on the fully diluted HCP Common Units held by such HCP Member or attributable to HCP Options held by such holders of HCP Options as of immediately prior to the closing, relative to the total outstanding HCP Common Units, it being understood that any such payments made to the holders of HCP Options will be subject to certain withholding provisions set forth in the Merger Agreement.

### **Representations and Warranties**

The Merger Agreement contains representations and warranties by HCP, DaVita, and Merger Sub. These representations and warranties have been made solely for the benefit of the other parties to the Merger Agreement and:

may be intended not as statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate;

have been qualified by disclosures that were made to the other parties in connection with the negotiation of the Merger Agreement, which disclosures may not be reflected in the Merger Agreement;

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may apply standards of materiality in a way that is different from what may be viewed as material to you or other investors; and

were made only as of the date of the Merger Agreement or such other date or dates as may be specified in the Merger Agreement and are subject to more recent developments.

The representations and warranties made by DaVita, Merger Sub and HCP relate to, among other things:

organization and authority;

no conflict;

governmental consents and approvals;

financial information;

capitalization;

information provided;

absence of undisclosed liabilities;

conduct in the ordinary course;

healthcare regulatory compliance;

government contracts;

litigation;

brokers;

no reliance; and

disclaimer.

Additional representations and warranties made only by HCP relate to, among other things:

qualification of HCP;

organization, authority, and qualification of the Business Entities and Related Entities;

ownership of equity interests;

approval of the board of managers of HCP;

vote required;

accounting records; internal controls;

governmental orders;

compliance with laws;

environmental matters;

intellectual property;

real property;

employee benefits;

labor matters;

taxes;

material contracts;



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information technology;

intercompany transactions;

certain interests;

insurance; and

payors and vendors.

Additional representations and warranties made only by DaVita relate to, among other things:

SEC filings;

financing; and

ownership of Merger Sub; no prior activities of Merger Sub.

**Conduct of Business Prior to Closing**

Subject to applicable law and certain exceptions set forth in the Merger Agreement and the disclosure schedules delivered by HCP to DaVita in connection with the Merger Agreement, prior to the closing HCP will and will cause each Business Entity and Related Consolidated Entity to (1) conduct its business in the ordinary course in all material respects, (2) use its commercially reasonable efforts to preserve intact in all material respects the business organization and operations of such Business Entity or Related Consolidated Entity, and (3) use its commercially reasonable efforts to keep available the services of key employees and to preserve the relationships with payors, providers, and others having business dealings with such Business Entity or Related Consolidated Entity.

Subject to applicable law and certain exceptions set forth in the Merger Agreement and the disclosure schedules delivered by HCP to DaVita in connection with the Merger Agreement, unless DaVita consents in writing (which consent cannot be unreasonably withheld, conditioned or delayed), prior to the closing none of the Business Entities or Related Consolidated Entities will, and HCP will cause each Business Entity and Related Consolidated Entity not to:

amend or restate the governing documents of any Business Entity or Related Consolidated Entity;

make or pay any dividend or other distribution in cash with respect to any of its equity interests if, as a result of such dividend or other distribution, the net working capital minus the indebtedness amount would reasonably be expected to be less than negative \$149,000,000, other than quarterly tax distributions in the ordinary course of business and consistent with past practice;

issue, sell, transfer, pledge, or otherwise dispose of any equity interests, notes, bonds, or other securities of any Business Entity or Related Consolidated Entity (or any option, warrant, or other right to acquire the same) or redeem or repurchase any of the equity interests of any Business Entity or Related Consolidated Entity, other than, in each case, transactions between or among Business Entities and Related Consolidated Entities and exercises of HCP Options and issuance of HCP Common Units in connection therewith, and subject to the intent of the parties to the Merger Agreement that the aggregate magnitude of the long-term incentive

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awards, whether in stock-based or cash-based form, will result in aggregate compensation expense (excluding any compensation expense attributable to any stock-based or cash-based awards granted to Dr. Margolis) of approximately \$40,000,000, to be expensed over the applicable vesting period(s);

effect any recapitalization, reclassification, stock split, or like change in the capitalization of any Business Entity or Related Consolidated Entity;

make any change in any method of accounting or accounting practice or policy used by any Business Entity or Related Consolidated Entity, other than such changes as are required by GAAP or a governmental authority;

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make, or enter into any new commitment for, any individual capital expenditures in excess of \$750,000 or \$15,000,000 in the aggregate;

acquire (i) by merger or consolidation, by the purchase of all or a substantial portion of its assets or equity interests, or by any other manner any business or any business entity or (ii) any assets in excess of \$1,000,000;

transfer, sell, lease, license, subject to any encumbrance (other than permitted encumbrances), or otherwise dispose of any properties or assets that are material, in the aggregate, to any Business Entity or Related Consolidated Entity, other than in the ordinary course of business and consistent with past practice and other than obsolete properties or assets;

incur or assume any liabilities, obligations, or indebtedness for borrowed money or guarantee or otherwise provide credit support in respect of any such liabilities, obligations, or indebtedness, other than in the ordinary course of business and consistent with past practice;

except as required to comply with plans existing on the date of the Merger Agreement that have been disclosed to DaVita, (i) increase the compensation payable or to become payable (including bonus grants and retention payments) or increase or accelerate the vesting of any benefits provided, or pay or award any payment or benefit not required as of the date of the Merger Agreement by a plan, to its current and former managers, directors, partners, officers, or employees, (ii) grant any severance or termination pay or retention payments or benefits to, or enter into or amend or terminate any employment, severance, retention, change in control, consulting, or termination contract with, any current or former manager, director, partner, officer or other employee of the Business Entities or Related Consolidated Entities, (iii) establish, adopt, enter into, amend or terminate any bonus, profit-sharing, thrift, compensation, unit option, pension, retirement, deferred compensation, employment, termination, severance or other plan, contract, trust, fund or policy for the benefit of any current or former manager, director, partner, officer or employee, (iv) pay or make, or agree to pay or make, any accrual or other arrangement for, or take, or agree to take, any action to fund or secure payment of, any severance pension, indemnification, retirement allowance, or other benefit, or (v) terminate the employment (other than for cause), change the title, office, or position, or materially reduce the responsibilities of any key employee or any other officer or other key personnel of the Business Entities or Related Consolidated Entities;

grant or announce any increase or decrease in the salaries, bonuses, or other benefits payable by any Business Entity or Related Consolidated Entity to any employee of any Business Entity or Related Consolidated Entity, other than in the ordinary course of business and consistent with past practice;

establish, adopt, or enter into any collective bargaining agreement or other labor union contract;

enter into or materially modify any contract with any of its officers or members of the board of managers (or equivalent body) (or, to HCP's knowledge, with any relative, spouse, beneficiary, or affiliate of such persons), other than obligations incidental to the employment (or former employment) of any such individual by such Business Entity or Related Consolidated Entity or such individual's service (or former service) on such board of managers (or equivalent body);

other than in the ordinary course of business and consistent with past practice, fail to exercise any rights of renewal with respect to any leased real property that by its terms would otherwise expire;

commence any suit, arbitration, or other proceeding or amend, terminate, settle, or compromise any claim by or against any Business Entity or Related Consolidated Entity, other than in the ordinary course of business, and other than to enforce the rights of HCP under the Merger Agreement, in each case involving an amount in excess of \$750,000 or involving injunctive or other equitable

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relief or a finding or admission of any violation of applicable law or violation of the rights of any person;

enter into, extend, materially amend, waive any material provision of, cancel, or terminate any material contract, employment, bonus, or other compensation contract, or any contract that if entered into prior

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to the date of the Merger Agreement would be a material contract, other than in the ordinary course of business and consistent with past practice;

fail to keep in force insurance policies or replacement or revised provisions providing insurance coverage consistent in all material respects with respect to the assets, operations, and activities of the Business Entities or Related Consolidated Entities as are currently in effect or fail to report any claim to the applicable insurance carriers, including all risk retention group carriers;

adopt a plan or resolutions providing for a complete or partial liquidation, dissolution, or other reorganization of any Business Entity or Related Consolidated Entity;

make or change any tax election, change any annual accounting period, adopt or change any accounting method for tax purposes, file any amended tax return, enter into any closing agreement, settle any tax claim or assessment, surrender any right to claim a refund of taxes, or consent to any extension or waiver of the limitation period applicable to any tax claim or assessment, if such election, adoption, change, amendment, agreement, settlement, surrender, or consent would have the effect of increasing the tax liability of any Business Entity or a Related Consolidated Entity for any period ending after the closing date or decreasing any tax attribute of any Business Entity or a Related Consolidated Entity existing on the closing date;

agree to take any of the above listed actions.

**HCP Member Approval**

HCP has agreed to cause a meeting of the HCP Members to be duly called and held as soon as reasonably practicable after the SEC declares effective under the Securities Act the registration statement of which this prospectus forms a part, for the purpose of such HCP Members voting on the approval of the principal terms of the Merger and the Merger Agreement and to obtain HCP Member approval of the principal terms of the Merger and the Merger Agreement. The HCP Board has unanimously approved the Merger Agreement and the transactions contemplated thereby, authorized the Merger Agreement to be submitted to the HCP Members for their consideration and agreed to use its commercially reasonable efforts to recommend to the HCP Members that they vote to approve the principal terms of the Merger and the Merger Agreement. Pursuant to the Voting Agreement, the approval of the principal terms of the Merger and the Merger Agreement and the transactions by the HCP Members is assured (see Voting Agreement below).

**DaVita Board of Directors Approval; 280G Approval**

The DaVita Board has unanimously approved the principal terms of the Merger and the Merger Agreement.

In addition, HCP will use its commercially reasonable efforts to obtain and deliver to DaVita, prior to mailing or delivering the stockholder solicitation proposals described below to the stockholders of DNH Medical Management, Inc. and JSA Holdings, Inc., each an indirect, wholly owned subsidiary of HCP, a parachute payment waiver from each person who is or reasonably could be a disqualified individual, as determined immediately prior to the initiation of the stockholder solicitation, and who reasonably might otherwise receive a parachute payment under Section 280G of the Code.

With respect to each of DNH Medical Management, Inc. and JSA Holdings, Inc., no later than 30 days prior to the closing, HCP will mail or deliver a stockholder solicitation proposal to be voted on by the stockholders of the respective entity in accordance with the terms of Section 280G(b)(5)(B) of the Code so as to render the parachute payment provisions of Section 280G of the Code inapplicable to any and all payments and/or benefits provided pursuant to contracts or arrangements of each individual who executes a parachute payment waiver that, in the absence of the executed parachute payment waivers by the affected persons, might otherwise reasonably result, separately or in the aggregate, in the payment of any amount and/or the provision of any benefit that would not be deductible by reason of Section 280G of the Code (which determination will be made by HCP and

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will be subject to review and approval by DaVita which will not be unreasonably withheld, conditioned, or delayed), with such stockholder approval to be solicited in a manner which satisfies all applicable requirements of Section 280G(b)(5)(B) of the Code and the Treasury Regulations thereunder.

### **No Solicitation of or Discussions Relating to Competing Transaction**

The Merger Agreement contains provisions prohibiting HCP from seeking or discussing an alternative proposal to the transactions. Under these no solicitation provisions, HCP has agreed that it will not, and will cause each Business Entity and Related Consolidated Entity and its and their respective directors, officers, employees, agents, advisors, or other representatives (the Representatives) not to, directly or indirectly:

initiate, solicit, or encourage any proposal or any inquiry that may reasonably be expected to lead to any proposal concerning a competing transaction, which includes the sale of any Business Entity or Related Consolidated Entity or any business thereof or a sale of any material assets of any Business Entity or Related Consolidated Entity; or

hold any discussions or enter into any contracts or other arrangements with, or provide any information or respond to, any third party concerning a proposed competing transaction or cooperate in any way with, agree to, assist or participate in, solicit, consider, entertain, facilitate, or encourage any effort or attempt by any third party to do or seek any of the foregoing.

HCP has also agreed in the Merger Agreement that if it or any of its affiliates is approached in any manner by a third party concerning a competing transaction, it will promptly, and in any event within 24 hours after contact, inform such third party of the restrictions relating to competing transactions set forth in the Merger Agreement and inform DaVita of such contact.

Competing transaction means the sale of any Business Entity or any Related Consolidated Entities or any business thereof or a sale of any material assets of any Business Entity or Related Consolidated Entity or any transaction that would be inconsistent with or interfere with or prevent or delay the consummation of the transactions.

### **Regulatory and Other Authorizations; Notices and Consents**

Pursuant to the terms of the Merger Agreement, DaVita and HCP have agreed to, and to cause their respective affiliates to, use their commercially reasonable efforts to:

promptly obtain all consents of all governmental authorities that may be or become necessary for its execution and delivery of, and the performance of its obligations pursuant to, the Merger Agreement;

cooperate fully with the other party in promptly seeking to obtain all such consents; and

provide such other information to any governmental authority as such governmental authority may reasonably request in connection therewith.

Each party to the Merger Agreement has agreed to, and to cause its respective affiliates to, (a) make its respective filing, if necessary, pursuant to the HSR Act with respect to the transactions as promptly as reasonably practicable after the date of the Merger Agreement and to supply as promptly as practicable to the appropriate governmental authorities any additional information and documentary material that may be requested pursuant to the HSR Act and (b) make as promptly as practicable its respective filings and notifications, if any, and cooperate with the other parties to the Merger Agreement if required for making such filings under any other applicable antitrust, competition, or trade regulation law (together with the HSR Act, the Antitrust Laws) and to supply as promptly as practicable to the appropriate governmental authorities any additional information and documentary material that may be requested pursuant to the applicable Antitrust Law. DaVita has agreed to pay the filing fees required under the HSR Act and all other filing fees required by any governmental authority in connection with such consents.



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The parties to the Merger Agreement have agreed, and each party will cause its affiliates, not to enter into any transaction, or any agreement to effect any transaction (including any merger or acquisition), that might reasonably be expected to make it more difficult, or to increase the time required, to (1) obtain the expiration or termination of the waiting period under the HSR Act or any other applicable Antitrust Law applicable to the transactions or (2) obtain all other authorizations, consents, orders, and approvals of governmental authorities necessary for the consummation of the transactions.

Effective July 3, 2012, the Federal Trade Commission granted the parties request for early termination of the waiting period under the HSR Act.

Prior to closing, HCP will, and will cause the Related Consolidated Entities to, use commercially reasonable efforts to obtain the consent of one or more third parties to assign certain contracts to a professional corporation designated by DaVita. Any such assignment will only become effective at the effective time.

**Financing Covenant; HCP Cooperation**

Each of DaVita and Merger Sub acknowledged and agreed that its obligations under the Merger Agreement are not conditioned in any manner upon DaVita or Merger Sub obtaining any financing. However, the foregoing does not limit the ability of HCP or DaVita to terminate the Merger Agreement under the circumstances described below under Termination, the sole remedy, except in the case of an intentional breach of the Merger Agreement by DaVita or Merger Sub, for any such termination being the payment by DaVita of a termination fee of \$125 million (the DaVita Termination Fee) as described below under Termination Fee, plus the amounts described below under Expenses beginning on page 153.

DaVita and Merger Sub have agreed to use their reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary to arrange and obtain the financing contemplated by the Merger Agreement in the form of secured bank loans (the Senior Secured Financing) and unsecured debt financing (the Unsecured Financing), and together with the Senior Secured Financing, the Financing) as promptly as practicable after the date of the Merger Agreement, including using their reasonable best efforts to:

maintain in effect, and comply on a timely basis with their obligations under, the letter agreements among DaVita, JPMorgan Chase Bank, N.A. (the Lender) and J.P. Morgan Securities LLC (JPMorgan Securities) and together with the Lender, JPMorgan) contemplated by the Merger Agreement (the Financing Letter) (none of which includes a binding financing commitment on the part of JPMorgan);

negotiate and enter into, keep in effect, and comply on a timely basis with their obligations under definitive agreements with respect to the Financing (the Financing Agreement); and

satisfy on a timely basis all terms and conditions (including conditions precedent) in the Financing Letter or the Financing Agreement, other than obligations of parties to the Financing Letter or the Financing Agreement other than DaVita, Merger Sub, or any of their respective affiliates controlled by either of them.

DaVita and Merger Sub will take, or cause to be taken, and do or cause to be done, all things necessary to consummate the Financing, at or prior to the closing, if the Financing is available, including that all conditions precedent for the Senior Secured Financing and the Unsecured Financing, other than execution and delivery of the applicable Financing Agreement, and consummation of the Merger, have been met or concurrently with the consummation of the Senior Secured Financing or Unsecured Financing, as applicable, will be met and no facts or circumstances exist that violate the terms of the Financing Agreement with respect to the Senior Secured Financing and would entitle the lenders to accelerate obligations thereunder) to DaVita or Merger Sub on the Anticipated Financing Terms (as defined in the Merger Agreement). DaVita has agreed to (1) promptly provide HCP with a fully executed copy of any amendment, supplement, modification, or waiver to the Financing Letter



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as promptly as practicable following the execution thereof, (2) furnish to HCP copies of the Financing Agreement promptly upon its execution (except that any arranger or agent fees payable solely to JPMorgan may be redacted) and drafts of such documents posted to a lender group and (3) otherwise keep HCP reasonably informed of the status of the efforts of DaVita and Merger Sub to arrange the Financing. Each of DaVita and Merger Sub has agreed it will not permit or suffer to exist any express restriction, in the Financing Agreement or otherwise, on DaVita's ability to make any earn-out payment required under the Merger Agreement or enter into any agreement that it knows will be breached by the making of any such earn-out payments.

Pursuant to the Merger Agreement, DaVita has agreed to give HCP prompt notice (1) of any breach or default by any party to the Financing Letter or any Financing Agreement of which DaVita becomes aware, or (2) of the receipt of any written notice from any party to the Financing Letter or any Financing Agreement or any other lender, initial purchaser, underwriter, holder or trustee with respect to (a) any breach, default, termination, or repudiation by any party to the Financing Letter or the Financing Agreement or any provisions of the Financing Letter or the Financing Agreement or (b) any event, including any dispute or disagreement between or among any parties to the Financing Letter or the Financing Agreement, that would reasonably be expected to prevent or delay the consummation of the transactions. DaVita and Merger Sub have agreed to provide as soon as reasonably practicable any information reasonably requested by HCP relating to any circumstance referred to in clause (1) or (2) of the immediately preceding sentence.

Pursuant to the Merger Agreement, HCP has agreed to use its commercially reasonable efforts to, and to cause each of the Business Entities and the Related Consolidated Entities to use its commercially reasonable efforts to (and to cause their respective Representatives to use their commercially reasonable efforts to), among other things, cooperate in connection with the Financing as may be reasonably requested by DaVita (so long as such requested cooperation does not unreasonably interfere with the ongoing operations of the Business Entities or the Related Consolidated Entities or involve the payment of any out of pocket expenses (other than the fees of Ernst & Young LLP with respect to the preparation of certain financial information required under the Merger Agreement and the fees of Munger, Tolles & Olson LLP, counsel to HCP) by the Business Entities, the Related Consolidated Entities, or such Representatives that is not advanced by DaVita). None of HCP, any Business Entity, or any Related Consolidated Entity is required to pay any commitment or similar fee or incur any other liability or obligation in connection with the Financing prior to the closing. Each of DaVita and Merger Sub agreed to indemnify and hold harmless each HCP Member and its affiliates, Representatives, and equityholders from and against any and all Losses suffered or incurred by them in connection with the arrangement or offering of the Financing and any information utilized in connection therewith (except to the extent that such Losses arise as a result of disclosure by any of the Business Entities or any Related Consolidated Entities supplied to DaVita or its Representatives in writing for use in the Financing that is determined to have contained an untrue statement of material fact or omitted a material fact necessary in order to make the statements made therein not misleading).

**Further Action**

Pursuant to the Merger Agreement, the parties to the Merger Agreement will, and will cause their respective affiliates to:

use commercially reasonable efforts to take, or cause to be taken, all appropriate action, to do or cause to be done all things necessary, proper, or advisable under applicable law, and to execute and deliver such documents and other papers as may be required to carry out the provisions of the Merger Agreement and the other transaction documents to which it is a party and consummate and make effective the transactions;

use commercially reasonable efforts to obtain all necessary consents required to be obtained by it from third parties (other than governmental authorities) in connection with the transactions; and

provide reasonable assistance to the other party in obtaining such consents.

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### **Intercompany Indebtedness**

In connection with the closing and the Merger, HCP will take, or will cause its affiliates to take, all actions necessary, so that, as of immediately following the closing, there will be no intercompany indebtedness. Elimination of intercompany indebtedness will not be required to the extent there is insufficient cash maintained on the balance sheet of any Business Entity or Related Consolidated Entity to pay down any intercompany indebtedness, or any such intercompany indebtedness is required for any Business Entity or Related Consolidated Entity to remain in compliance with applicable financial solvency ratios, including those established by the DMHC, or any such intercompany indebtedness is required to ensure that a Business Entity or a Related Consolidated Entity maintains sufficient working capital and cash-on-hand to fund its ongoing business operations.

### **Name**

Immediately following the effective time, DaVita will cause its corporate name to be changed to DaVita HealthCare Partners Inc. by filing a Certificate of Ownership and Merger with the Secretary of State of the State of Delaware to effect a merger of a newly formed, wholly owned subsidiary of DaVita with and into DaVita, and to change DaVita's legal name to DaVita HealthCare Partners Inc., in accordance with Section 253 of the Delaware General Corporation Law.

### **Board Representation**

At closing, and in accordance with Article IV of the Amended and Restated Bylaws of DaVita (the DaVita Bylaws), the DaVita Board will increase the DaVita Board's size by one member and will appoint Dr. Margolis to fill the newly created directorship. Dr. Margolis's title will be Co-Chairman.

For a minimum period of four consecutive annual meetings of stockholders of DaVita after his initial appointment to the DaVita Board, Dr. Margolis's prospective re-nomination for election to the DaVita Board will be assessed in the same manner as is each other DaVita incumbent director's re-nomination when the Nominating and Governance Committee of the DaVita Board determines each year, in accordance with the Nominating and Governance Committee's charter and the Corporate Governance Guidelines of DaVita, which directors it will select as nominees or recommend to the DaVita Board for nomination for election to the DaVita Board at the annual meeting.

Upon his appointment or election to the DaVita Board, for a minimum period of four consecutive annual meetings of stockholders of DaVita, Dr. Margolis will hold the office of Co-Chairman until the expiration of his term of office or until his successor is duly elected and qualified, subject to his earlier death, resignation, disqualification, or removal in accordance with the DaVita Bylaws and/or applicable law.

### **Tail Insurance Policies**

Prior to the closing, DaVita, on behalf of HCP, will secure (1) a combined directors' and officers' liability and employment practices liability run-off insurance policy package and (2) run-off fiduciary liability insurance policies, each of (1) and (2) having an effective date on the effective time and ending on a date that is six years after the effective time. One-half of the premiums for each of these policies will be prepaid by each of HCP and DaVita for the full six-year term of such policies, subject to the limitations described below. DaVita will provide HCP with an opportunity to review a proposal regarding such policies, and any amendment or supplement thereto, prior to securing such policies.

In no event will the aggregate amount of premiums payable by HCP for the tail policies described above exceed \$275,000, and if the aggregate amount of premiums payable exceeds \$550,000, then HCP has agreed to bear \$275,000 of such premiums and DaVita will solely bear the remainder of such premiums. In addition, any

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premiums paid by HCP on or prior to the closing for the tail policies described above will be excluded from the calculations of Earn-Out EBITDA, indebtedness amount, and net working capital.

**Employment and Employee Benefits Matters; Other Plans**

HCP will, and will cause the Business Entities and Related Consolidated Entities to, help DaVita identify employees of HCPMGI who provide non-medical services to the Business Entities or Related Entities and whose employment will be transferred to the surviving entity, DaVita, or any of their subsidiaries (the Affected Employees ). Such transfer of the Affected Employees will occur effective as of the closing date, unless DaVita gives written notice to HCP at least 60 days prior to the closing date that such transfer of Affected Employees will instead occur as of January 1, 2013 (either such transfer date referred to as the Employee Transfer Date ).

With respect to the Affected Employees, HCP will, and will cause the Business Entities and Related Consolidated Entities to, assist DaVita in its efforts to enter into, or have HCP or any of their subsidiaries enter into, an offer letter or such other service arrangement as DaVita deems appropriate with such employee as soon as practicable after the date of the Merger Agreement and in any event prior to the Employee Transfer Date, which offer or arrangement will be effective immediately following the Employee Transfer Date. None of DaVita, HCP, the surviving entity, or any of their respective affiliates will have any obligation to make an offer of employment or provide such other service arrangement to, or otherwise transfer the employment of, any employee of HCPMGI who solely provides medical services to the Business Entities or Related Entities. Effective immediately following the Employee Transfer Date, HCP will, and will cause the Business Entities and Related Consolidated Entities to, take all action necessary to cause HCPMGI to terminate the employment of each of the Affected Employees who has received, but not accepted, an offer of employment or such other service arrangement as DaVita deems appropriate with DaVita, HCP, the surviving entity, or any of their subsidiaries effective immediately following the Employee Transfer Date. Affected Employees who accept offers of employment from, or whose employment will otherwise be transferred to, DaVita, HCP, the surviving entity, or any of their subsidiaries will be referred to as Transferred Employees. DaVita will promptly reimburse the Business Entities and the Related Consolidated Entities for their reasonable, out-of-pocket costs incurred as a result of complying with their obligations with respect to the Affected Employees, other than any such costs that result from the Business Entities or the Related Consolidated Entities violation of applicable law, unless such violation of law occurred as a result of the Business Entities or the Related Consolidated Entities compliance with such obligations. Any and all expenses arising from or related to any action taken pursuant to these obligations will be excluded from the calculations of Earn-Out EBITDA. Any and all liabilities arising from or related to any action taken pursuant to these obligations will be excluded from the calculations of indebtedness amount and net working capital. Any and all cash expended in the compliance with these obligations (net of any reimbursement received by any Business Entity or Related Consolidated Entity from DaVita pursuant to these obligations) that would otherwise have reduced net working capital will be added back to net working capital.

Without limiting any additional rights that current employees of the Business Entities who continue employment with DaVita, the surviving entity, or any of their affiliates following the closing date (such employees, with the Transferred Employees, referred to as Continuing Employees ) may have under any plan, from and after the effective time and until December 31, 2013, DaVita will cause the surviving entity and each of the Related Entities to maintain the severance practices and policies of HCP and certain Related Entities in accordance with the terms and conditions set forth therein and provide the severance benefits set forth therein to any Continuing Employee whose employment is involuntarily terminated by DaVita, the surviving entity, or any of their affiliates following the effective time (or following the Employee Transfer Date in the case of Transferred Employees) but on or before December 31, 2013, under circumstances that would otherwise entitle such individual to severance benefits in accordance with the terms and conditions of such severance arrangements, provided that the provision of such severance benefits would be consistent with past practice.

From and after the effective time (or from and after the Employee Transfer Date in the case of Transferred Employees) and until December 31, 2013, the base salary, target annual bonus opportunity, and target

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commission opportunity in effect as of immediately prior to the closing date will not be decreased for the Continuing Employees that remain employed during that period.

From and after the effective time and until December 31, 2013, with respect to Continuing Employees other than the Transferred Employees, DaVita will cause the surviving entity (or its subsidiaries) to maintain for such Continuing Employees each plan that is an employee welfare benefit plan within the meaning of Section 3(1) of ERISA (other than the severance arrangements) and each other plan that provides vacation, sick, or personal time off pursuant to its terms in effect immediately prior to the effective time, except to the extent any such plan must be amended to comply with applicable law. Effective as of January 1, 2014, DaVita will, or will cause the surviving entity (or its subsidiaries) to, either:

continue the welfare plans or adopt new employee welfare plans, programs, or arrangements;

permit such Continuing Employees to participate in the employee welfare plans, programs, or policies (including any severance, vacation, sick, or personal time off plans or programs) of DaVita or its affiliates; or

a combination of the above.

From and after January 1, 2014, DaVita will, or will cause its affiliates to:

cause any pre-existing conditions or limitations and eligibility waiting periods under any group health plans of DaVita or its affiliates to be waived with respect to Continuing Employees (other than the Transferred Employees) to the extent such Continuing Employees were not subject to such preexisting conditions and limitations and eligibility waiting periods under the comparable welfare plan as of immediately prior to January 1, 2014; and

with respect to a welfare plan that provides for group health plan benefits and has a plan year that is other than the calendar year, provide each such Continuing Employee with credit for any deductibles or out of pocket expenses paid under such plan in the plan year in effect as of January 1, 2014, in satisfying any applicable deductible or out of pocket requirements under any group health plans of DaVita or its affiliates that such employees are eligible to participate in as of January 1, 2014, to the same extent that such expenses were recognized under the comparable welfare plan

From and after the Employee Transfer Date and until December 31, 2013, with respect to the Transferred Employees, DaVita will, or will cause the surviving entity (or its subsidiaries) to, either:

continue or commence participation in the welfare plans or other employee welfare plans, programs, or arrangements of a Related Entity in which such Transferred Employees participated immediately prior to the effective time or adopt new employee welfare plans, programs, or arrangements that are substantially identical to or more favorable than such plans, programs, or arrangements;

permit such Transferred Employees to participate in the employee welfare plans, programs, or policies (including any severance, vacation, sick, or personal time off plans or programs) of DaVita or its affiliates; or

a combination of the above;

provided, however, that the benefits provided to the Transferred Employees are substantially identical to or more favorable than the benefits provided to such Transferred Employees pursuant to the welfare plans or other employee welfare plans, programs, or arrangements of a Related Entity in which they participated immediately prior to the effective time.

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Effective as of January 1, 2014, DaVita will, or will cause the surviving entity (or its subsidiaries) to, either:

continue participation in the welfare plans or other employee welfare plans, programs, or arrangements of a Related Entity, continue the new plans or adopt new employee welfare plans, programs, or arrangements;

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permit the Transferred Employees to participate in the employee welfare plans, programs, or policies (including any severance, vacation, sick, or personal time off plans or programs) of DaVita or its affiliates; or

a combination of the above.

From and after the Employee Transfer Date, DaVita will, or will cause its affiliates to, (i) cause any pre-existing conditions or limitations and eligibility waiting periods under any new plan or the group health plans of DaVita or its affiliates in which a Transferred Employee will participate to be waived with respect to such Transferred Employee to the extent such Transferred Employee was not subject to such preexisting conditions and limitations and eligibility waiting periods under the comparable employee welfare plans, programs, or arrangements of the surviving entity or a Related Entity in which such Transferred Employee participated as of immediately prior to the date the Transferred Employee's participation