

DAVITA INC
Form 424B3
September 27, 2012
Table of Contents

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

Edgar Filing: DAVITA INC - Form 424B3

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.

Table of Contents

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.

Table of Contents

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

Table of Contents

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. You may request a copy of such documents in writing or by telephone by contacting:

DaVita Inc.

2000 16th Street

Denver, Colorado 80202

(888) 484-7505

Attention: Investor Relations

You may also consult DaVita's website for more information at 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.

Table of Contents

TABLE OF CONTENTS

<u>QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING OF THE HCP MEMBERS</u>	1
<u>SUMMARY</u>	5
<u>INFORMATION ABOUT THE COMPANIES</u>	5
<u>THE MERGER</u>	6
<u>THE SPECIAL MEETING OF THE HCP MEMBERS</u>	7
<u>OWNERSHIP OF DAVITA AFTER THE MERGER</u>	7
<u>HCP S REASON FOR THE MERGER; RECOMMENDATION OF THE HCP BOARD</u>	7
<u>FAIRNESS OPINION</u>	7
<u>INTERESTS OF HCP S MANAGERS AND EXECUTIVE OFFICERS IN THE MERGER</u>	8
<u>TREATMENT OF HCP OPTIONS IN THE MERGER</u>	8
<u>ACCOUNTING TREATMENT</u>	9
<u>HCP MEMBER DISSENTERS RIGHTS</u>	9
<u>BOARD OF DIRECTORS AND EXECUTIVE OFFICERS OF DAVITA AFTER THE MERGER</u>	9
<u>DAVITA FINANCING</u>	9
<u>THE MERGER AGREEMENT</u>	10
<u>THE MERGER CONSIDERATION; CONVERSION OR CANCELLATION OF UNITS</u>	10
<u>NO SOLICITATION OF OR DISCUSSIONS RELATING TO COMPETING TRANSACTION</u>	15
<u>CONDITIONS TO COMPLETION OF THE MERGER</u>	15
<u>REMEDIES; SPECIFIC PERFORMANCE</u>	18
<u>TERMINATION OF THE MERGER AGREEMENT</u>	18
<u>TERMINATION FEE</u>	19
<u>FEES AND EXPENSES</u>	19
<u>GOVERNMENT REGULATIONS</u>	20
<u>RISK FACTORS</u>	20
<u>DAVITA S DIVIDEND POLICY</u>	21
<u>COMPARISON OF RIGHTS OF DAVITA STOCKHOLDERS AND HCP MEMBERS</u>	21
<u>MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES</u>	21
<u>SUMMARY HISTORICAL FINANCIAL DATA FOR DA VITA AND HCP</u>	23
<u>SUMMARY UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL INFORMATION</u>	28
<u>UNAUDITED PRO FORMA COMBINED PER SHARE/UNIT INFORMATION</u>	35
<u>PER SHARE MARKET PRICE DATA AND DIVIDEND INFORMATION</u>	36
<u>RISK FACTORS</u>	38
<u>RISKS RELATED TO THE MERGER</u>	38
<u>RISKS RELATED TO DAVITA</u>	43
<u>RISKS RELATED TO HCP</u>	59
<u>CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS</u>	74
<u>INFORMATION ABOUT THE COMPANIES</u>	76
<u>THE SPECIAL MEETING OF THE HCP MEMBERS</u>	78
<u>GENERAL</u>	78
<u>DATE, TIME, PLACE AND PURPOSE OF THE SPECIAL MEETING</u>	78
<u>RECOMMENDATION OF THE HCP BOARD</u>	78
<u>UNITS ENTITLED TO VOTE</u>	78
<u>QUORUM AND VOTE REQUIRED</u>	78
<u>VOTING BY HCP MEMBERS, MANAGERS AND EXECUTIVE OFFICERS</u>	78
<u>ABSTENTIONS</u>	79
<u>OTHER BUSINESS</u>	79
<u>ASSISTANCE</u>	79

Table of Contents

<u>THE MERGER</u>	80
<u>GENERAL</u>	80
<u>BACKGROUND OF THE MERGER</u>	80
<u>RECOMMENDATION OF DAVITA S BOARD OF DIRECTORS AND REASONS FOR THE TRANSACTIONS</u>	92
<u>OWNERSHIP OF DAVITA AFTER THE MERGER</u>	94
<u>HCP S REASON FOR THE MERGER; RECOMMENDATION OF THE HCP BOARD</u>	96
<u>INTERESTS OF HCP S MANAGERS AND EXECUTIVE OFFICERS IN THE MERGER</u>	98
<u>ACCOUNTING TREATMENT</u>	102
<u>HCP MEMBER DISSENTERS RIGHTS</u>	103
<u>BOARD OF DIRECTORS AND EXECUTIVE OFFICERS OF DAVITA AFTER THE MERGER</u>	106
<u>DAVITA FINANCING</u>	107
<u>ELECTION AND EXCHANGE PROCEDURES</u>	108
<u>ELECTION PROCEDURES</u>	108
<u>EXCHANGE PROCEDURES</u>	114
<u>THE MERGER AGREEMENT</u>	116
<u>THE TRANSACTION</u>	116
<u>CLOSING; EFFECTIVE TIME</u>	116
<u>ORGANIZATIONAL DOCUMENTS OF THE SURVIVING ENTITY</u>	117
<u>MANAGERS AND OFFICERS OF THE SURVIVING ENTITY</u>	117
<u>THE MERGER CONSIDERATION; CONVERSION OR CANCELLATION OF UNITS</u>	117
<u>WITHOLDING</u>	119
<u>ESTIMATED AMOUNTS INCLUDED IN CLOSING MERGER CONSIDERATION</u>	119
<u>ADJUSTMENTS TO PREVENT DILUTION</u>	120
<u>FRACTIONAL SHARES</u>	120
<u>ESCROWED MERGER CONSIDERATION</u>	120
<u>POST-CLOSING MERGER CONSIDERATION ADJUSTMENT DETERMINATION</u>	122
<u>EARN-OUT</u>	123
<u>MEMBER REPRESENTATIVE ESCROW</u>	124
<u>NEVADA ESCROW</u>	125
<u>REPRESENTATIONS AND WARRANTIES</u>	125
<u>CONDUCT OF BUSINESS PRIOR TO CLOSING</u>	127
<u>HCP MEMBER APPROVAL</u>	129
<u>DAVITA BOARD OF DIRECTORS APPROVAL ; 280G APPROVAL</u>	129
<u>NO SOLICITATION OF OR DISCUSSIONS RELATING TO COMPETING TRANSACTION</u>	130
<u>REGULATORY AND OTHER AUTHORIZATIONS; NOTICES AND CONSENTS</u>	130
<u>FINANCING COVENANT; HCP COOPERATION</u>	131
<u>FURTHER ACTION</u>	132
<u>INTERCOMPANY INDEBTEDNESS</u>	133
<u>NAME</u>	133
<u>BOARD REPRESENTATION</u>	133
<u>TAIL INSURANCE POLICIES</u>	133
<u>EMPLOYMENT AND EMPLOYEE BENEFITS MATTERS ; OTHER PLANS</u>	134
<u>EQUITY AND OTHER LONG-TERM INCENTIVE COMPENSATION</u>	138
<u>EARN-OUT EBITDA LTIP</u>	138
<u>CONDITIONS TO COMPLETION OF THE MERGER</u>	138
<u>INDEMNIFICATION</u>	141
<u>NOTICE OF LOSS; THIRD-PARTY CLAIMS</u>	148
<u>REMEDIES; SPECIFIC PERFORMANCE</u>	149
<u>MEMBER REPRESENTATIVE</u>	149
<u>TERMINATION OF THE MERGER AGREEMENT</u>	151
<u>TERMINATION FEE</u>	152
<u>EXPENSES</u>	153

Table of Contents

<u>AMENDMENT AND WAIVER</u>	153
<u>ADDITIONAL AGREEMENTS</u>	154
<u>OTHER AGREEMENTS</u>	155
<u>VOTING AGREEMENT</u>	155
<u>SUPPORT AGREEMENTS</u>	156
<u>NONCOMPETITION AND NONSOLICITATION AGREEMENTS</u>	157
<u>MEMBER REPRESENTATIVE AGREEMENT</u>	159
<u>INFORMATION ABOUT DAVITA</u>	161
<u>INFORMATION ABOUT HCP</u>	162
<u>MARKET PRICE AND DISTRIBUTIONS</u>	177
<u>SELECTED HISTORICAL FINANCIAL AND OTHER DATA</u>	178
<u>DAVITA</u>	178
<u>HCP</u>	182
<u>MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITIONS AND RESULTS OF OPERATIONS</u>	184
<u>QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK</u>	208
<u>SECURITIES OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT OF HCP</u>	209
<u>SELLING SECURITY HOLDERS</u>	210
<u>DAVITA INC. AND HEALTHCARE PARTNERS HOLDINGS, LLC UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS</u>	211
<u>DESCRIPTION OF DAVITA FINANCING</u>	219
<u>DESCRIPTION OF DAVITA CAPITAL STOCK</u>	220
<u>COMPARISON OF RIGHTS OF DAVITA STOCKHOLDERS AND HCP MEMBERS</u>	221
<u>MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES</u>	232
<u>ADDITIONAL INFORMATION</u>	236
<u>INDEX TO FINANCIAL STATEMENTS OF HEALTHCARE PARTNERS HOLDINGS, LLC AND AFFILIATES</u>	F-1
<u>Annex A-1 Merger Agreement</u>	A1-1
<u>Annex A-2 Amendment to Merger Agreement</u>	A2-1
<u>Annex B Voting Agreement</u>	B-1
<u>Annex C Support Agreements</u>	C1-1
<u>Annex D Form of Noncompetition and Nonsolicitation Agreements</u>	D1-1
<u>Annex E-1 Member Representative Agreement</u>	E1-1
<u>Annex E-2 Amendment to Member Representative Agreement</u>	E2-1
<u>Annex F Provisions of the California Corporations Code Relating to HCP Member Dissenters' Rights</u>	F1-1

Table of Contents

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:

Edgar Filing: DAVITA INC - Form 424B3

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.**

Table of Contents

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.

Table of Contents

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 c