

DAVITA INC
Form S-4/A
September 18, 2012
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As filed with the Securities and Exchange Commission on September 18 , 2012

Registration No. 333-182572

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 2
to
Form S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

DAVITA INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of

8090
(Primary Standard Industrial

51-0354549
(I.R.S. Employer

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incorporation or organization)

Classification Code Number)

Identification Number)

2000 16th Street

Denver, CO 80202

(888) 484-7505

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Kim M. Rivera

2000 16th Street

Denver, CO 80202

(888) 484-7505

(Name, address, including zip code, and telephone number, including area code, of agent for service)

with copies to:

Spencer D. Klein

Robert Margolis, M.D.

Robert E. Denham

David P. Slotkin

HealthCare Partners Holdings, LLC

Mark H. Kim

Morrison & Foerster LLP

19191 South Vermont Avenue, Suite 200

Munger, Tolles & Olson LLP

1290 Avenue of the Americas

Torrance, California 90502

355 South Grand Avenue, 35th Floor

New York, NY 10104-0050

(310) 354-4200

Los Angeles, CA 90071

(212) 468-8000

(213) 683-9100

Approximate date of commencement of proposed sale of the securities to the public: As soon as reasonably practicable after the effectiveness of this Registration Statement and the completion of the merger described in the enclosed prospectus.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. "

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

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Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered(1)	Amount Registered to be	Proposed Maximum Offering Price Per Unit	Proposed	Amount of
			Maximum Aggregate Offering Price(3)	
Common Stock, par value \$0.001 per share	9,380,312(2)	N/A	(3)	\$0
Common Stock, par value \$0.001 per share	9,139,610(5)	N/A	N/A	N/A(6)

- (1) This Registration Statement relates to securities of the registrant issuable to holders of membership units of HealthCare Partners Holdings, LLC, a California limited liability company (HCP), in the proposed merger of Seismic Acquisition LLC, a California limited liability company and a wholly-owned subsidiary of the registrant, with and into HCP.
- (2) Represents the estimated maximum number of shares of the registrant's common stock to be issued in connection with the merger described herein. 9,139,610 of the shares included in this number are also being registered for resale under this Registration Statement. In accordance with Rule 457(f)(5) of the Securities Act of 1933, as amended, no additional filing fee is payable in respect of such resale registration.
- (3) Estimated solely for purposes of calculation of the registration fee in accordance with Rule 457(f), based upon \$262.6 million, the aggregate book value of HCP securities that may be cancelled in the merger computed as of May 31, 2012, the latest practicable date prior to the date of filing of this registration statement. HCP is a private company and no market exists for its securities. As required by Rule 457(f)(3), the amount of cash consideration to be paid by the registrant in connection with the transaction, or \$3.66 billion, has been deducted from this amount. This results in a negative number which we have used to calculate the filing fee.
- (4) Determined in accordance with Section 6(b) of the Securities Act at a rate equal to \$114.60 per \$1,000,000 of the proposed maximum aggregate offering price.
- (5) Represents shares of the registrant's common stock being registered for resale under this Registration Statement. Such shares are also included in the number of shares to be issued in connection with the merger described herein. See Note (2) above.
- (6) In accordance with Rule 457(f)(5), no additional filing fee is payable in respect of the resale registration.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. DaVita may not distribute or issue the shares of DaVita Common Stock being registered pursuant to this registration statement until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to distribute these securities, and DaVita is not soliciting offers to receive these securities in any state where such offer or distribution is not permitted.

PRELIMINARY SUBJECT TO COMPLETION DATED SEPTEMBER 18, 2012

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 _____, on _____, 2012, at _____ a.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 \$ _____ per share of DaVita Common Stock on _____, 2012, the last trading 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 \$ _____. 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. 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.

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 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

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such HCP Common Unit issuable under such HCP Option.

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. 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

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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 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 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 9,139,610 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 , 2012, the last trading day before the date of this prospectus, the closing sale price of DaVita Common Stock was \$ per share.

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.

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.

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.

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

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 , 2012, and is first being mailed to HCP Members on or about , 2012.

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 , 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 _____, 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 _____, on _____, 2012, at _____ a.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 _____, 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 102.

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

_____, 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. 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.

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