
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 10-K

For the Fiscal Year Ended

December 31, 2008

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Commission File Number: 1-14106

DAVITA INC.

601 Hawaii Street

El Segundo, California 90245

Telephone number (310) 536-2400

Delaware
(State of incorporation)

51-0354549
(I.R.S. Employer
Identification No.)

Securities registered pursuant to Section 12(b) of the Act:

Class of Security:	Registered on:
Common Stock, \$0.001 par value	New York Stock Exchange
Common Stock Purchase Rights	New York Stock Exchange

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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):

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of June 30, 2008, the number of shares of the Registrant's common stock outstanding was approximately 104.2 million shares and the aggregate market value of the common stock outstanding held by non-affiliates based upon the closing price of these shares on the New York Stock Exchange was approximately \$5.5 billion.

As of January 30, 2009, the number of shares of the Registrant's common stock outstanding was approximately 103.9 million shares and the aggregate market value of the common stock outstanding held by non-affiliates based upon the closing price of these shares on the New York Stock Exchange was approximately \$4.9 billion.

Documents incorporated by reference

Portions of the Registrant's proxy statement for its 2009 annual meeting of stockholders are incorporated by reference in Part III of this Form 10-K.

PART I

Item 1. Business

We were incorporated as a Delaware corporation in 1994. Our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to section 13(a) or 15(d) of the Exchange Act are made available free of charge through our website, located at <http://www.davita.com>, as soon as reasonably practicable after the reports are filed with or furnished to the Securities and Exchange Commission, or SEC. The SEC also maintains a website at <http://www.sec.gov> where these reports and other information about us can be obtained. The contents of our website are not incorporated by reference into this report.

Overview

DaVita is a leading provider of dialysis services in the United States for patients suffering from chronic kidney failure, also known as end stage renal disease, or ESRD. As of December 31, 2008, we operated or provided administrative services to 1,449 outpatient dialysis centers located in 43 states and the District of Columbia, serving approximately 112,000 patients. We also provide acute inpatient dialysis services in approximately 700 hospitals and related laboratory services. Our dialysis and related lab services business accounts for approximately 96% of our consolidated revenues. Other ancillary services and strategic initiatives businesses currently account for approximately 4% of our consolidated revenues and relate primarily to our core business of providing renal care services.

The dialysis industry

The loss of kidney function is normally irreversible. ESRD is the stage of advanced kidney impairment that requires continued dialysis treatments or a kidney transplant to sustain life. Dialysis is the removal of toxins, fluids and salt from the blood of ESRD patients by artificial means. Patients suffering from ESRD generally require dialysis at least three times per week for the rest of their lives.

Since 1972, the federal government has provided universal payment coverage for dialysis treatments under the Medicare ESRD program regardless of age or financial circumstances. Under this system, Congress establishes Medicare rates for dialysis treatments, related supplies, lab tests and medications. Approximately 87% of our total patients are under government-based programs, with approximately 80% of our patients under Medicare and Medicare-assigned HMO plans.

ESRD patient base

There are more than 345,000 ESRD dialysis patients in the United States. The recent historical compound annual growth rate in the number of ESRD dialysis patients has been approximately 3%-4%. The growth rate is attributable to the aging of the population, increased incidence rates for diseases that cause kidney failure such as diabetes and hypertension, lower mortality rates for dialysis patients and growth rates of minority populations with higher than average incidence rates of ESRD.

Treatment options for ESRD

Treatment options for ESRD are dialysis and kidney transplantation.

Dialysis Options

- *Hemodialysis*

Hemodialysis, the most common form of ESRD treatment, is usually performed in outpatient dialysis centers. It may also be done while a patient is at home or while hospitalized. The hemodialysis machine uses an artificial kidney, called a dialyzer, to remove toxins, fluids and salt from the patient's blood. The dialysis process

occurs across a semi-permeable membrane that divides the dialyzer into two distinct chambers. While blood is circulated through one chamber, a pre-mixed fluid is circulated through the other chamber. The toxins, salt and excess fluids from the blood cross the membrane into the fluid, allowing cleansed blood to return into the patient's body. Each hemodialysis treatment that occurs in the outpatient dialysis centers typically lasts approximately three and one-half hours and is usually performed three times per week.

Some ESRD patients may perform home-based hemodialysis in their home or residence through the use of a hemodialysis machine designed for home therapy that is portable, smaller and easier to use. Patients receive training, support and monitoring from registered nurses, in some cases in our outpatient dialysis centers, in connection with treatments. Home-based hemodialysis is typically performed with greater frequency than in-center dialysis treatments and on varying schedules.

Hospital inpatient hemodialysis services are required for patients with acute kidney failure resulting from trauma, patients in early stages of ESRD, and ESRD patients who require hospitalization for other reasons. Hospital inpatient hemodialysis is generally performed at the patient's bedside or in a dedicated treatment room in the hospital, as needed.

- *Peritoneal dialysis*

Peritoneal dialysis uses the patient's peritoneal, or abdominal, cavity to eliminate fluid and toxins. The most common methods of peritoneal dialysis are continuous ambulatory peritoneal dialysis, or CAPD, and continuous cycling peritoneal dialysis, or CCPD. A patient generally performs peritoneal dialysis at home. Because it does not involve going to a center three times a week for treatment, peritoneal dialysis is an alternative to hemodialysis for patients who desire more freedom and flexibility in their lifestyle. However, peritoneal dialysis is not a suitable method of treatment for many patients, including patients who are unable to perform the necessary procedures and those at greater risk of peritoneal infection.

CAPD introduces dialysis solution into the patient's peritoneal cavity through a surgically placed catheter. Toxins in the blood continuously cross the peritoneal membrane into the dialysis solution. After several hours, the patient drains the used dialysis solution and replaces it with fresh solution. This procedure is usually repeated four times per day.

CCPD is performed in a manner similar to CAPD, but uses a mechanical device to cycle dialysis solution through the patient's peritoneal cavity while the patient is sleeping or at rest.

- *Transplantation*

Although transplantation, when successful, is generally the most desirable form of therapeutic intervention, the shortage of suitable donors, side effects of immunosuppressive pharmaceuticals given to transplant recipients and dangers associated with transplant surgery for some patient populations limit the use of this treatment option.

Services we provide

Dialysis and Related Lab Services

Outpatient dialysis services

As of December 31, 2008, we operated or provided administrative services to 1,449 outpatient dialysis centers in the United States that are designed specifically for outpatient hemodialysis. In 2008, we added a net total of 90 outpatient dialysis centers as a result of acquisitions and the opening of new centers, net of center closures and divestitures.

As required by law, we contract with a nephrologist or a group of affiliated nephrologists to provide medical director services at each of our centers. In addition, other nephrologists may apply for practice privileges to treat

their patients at our centers. Each center has an administrator, typically a registered nurse, who supervises the day-to-day operations of the center and its staff. The staff of each center typically consists of registered nurses, licensed practical or vocational nurses, patient care technicians, a social worker, a registered dietician, biomedical technician support and other administrative and support personnel.

Many of our outpatient dialysis centers offer services for home dialysis patients, primarily CAPD and CCPD. Home-based dialysis services consist of providing equipment and supplies, training, patient monitoring, on-call support services and follow-up assistance to patients who prefer and are able to receive either peritoneal dialysis or hemodialysis treatments in their homes. Registered nurses train patients and their families or other caregivers to perform either peritoneal dialysis or hemodialysis at home.

Under Medicare regulations, we cannot promote, develop or maintain any kind of contractual relationship with our patients which would directly or indirectly obligate a patient to use or continue to use our dialysis services, or which would give us any preferential rights other than those related to collecting payments for our services. Total patient turnover averages approximately 30% per year. However, in 2008 the overall number of patients that we treated increased by approximately 5%.

Hospital inpatient dialysis services

We provide hospital inpatient hemodialysis services, excluding physician services, to patients in approximately 700 hospitals. We render these services for a contracted per-treatment fee that is individually negotiated with each hospital. When a hospital requests our services, we typically administer the dialysis treatment at the patient's bedside or in a dedicated treatment room in the hospital, as needed. Hospital inpatient hemodialysis services are required for patients with acute kidney failure resulting from trauma, patients in the early stages of ESRD, and ESRD patients who require hospitalization for other reasons. In 2008, hospital inpatient hemodialysis services accounted for approximately 5% of our total dialysis treatments.

ESRD laboratory services

We own two separately incorporated, licensed, clinical laboratories, both located in Florida, specializing in ESRD patient testing. These specialized laboratories provide routine laboratory tests covered by the Medicare composite payment rate for dialysis and other physician-prescribed laboratory tests for ESRD patients. Our laboratories provide these tests predominantly for our own ESRD patients throughout the United States. These tests are performed to monitor a patient's ESRD condition, including the adequacy of dialysis, as well as other diseases a patient may have. Our laboratories utilize information systems which provide information to our dialysis centers regarding critical outcome indicators.

Management fee income

We currently operate or provide management and administrative services to 23 outpatient dialysis centers, in which we either own a noncontrolling interest, or are wholly-owned by third parties, under management and administrative services agreements. Management fees are established by contract and are recognized as earned typically based on a percentage of revenues or cash collections generated by the centers.

Ancillary services and strategic initiatives

Ancillary services and strategic initiatives, which currently account for approximately 4% of our total consolidated revenues, consist of the following:

- *Infusion therapy services.* HomeChoice Partners provides personalized infusion therapy services to patients typically in their own homes as a cost-effective alternative to inpatient hospitalization. Intravenous and nutritional support therapies are typically managed by registered and/or board-certified

professionals including pharmacists, nurses and dieticians in collaboration with the patient's physician in support of the patient's ongoing healthcare needs. Revenues are recognized in the period when infusion therapy services are provided.

- *Pharmacy services.* DaVita Rx is a pharmacy that provides oral medications to DaVita's patients with ESRD. The main objectives of the pharmacy are to improve clinical outcomes, patient compliance and to provide our patients a convenient way to fill their prescription needs. Revenues are recognized as prescriptions are filled and shipped to patients.
- *Vascular access services.* Lifeline provides management and administrative services to physician-owned vascular access clinics that provide surgical and interventional radiology services for dialysis patients. Lifeline also is the majority-owner of one vascular access clinic. Management fees generated from providing management and administrative services are recognized as earned typically based on a percentage of revenues or cash collections generated by the clinics. Revenues associated with the vascular access clinic that is majority-owned are recognized in the period when physician services are provided.
- *Disease management services and special needs plans.* VillageHealth provides advanced care management services to health plans and government agencies for employees/members diagnosed with CKD or ESRD. Through a combination of clinical coordination, medical claims analysis and information technology, we endeavor to assist our customers and patients in obtaining superior renal health care and improved clinical outcomes, as well as helping to reduce overall medical costs. Revenues are typically based upon an established contract fee and are recognized as earned over the contract period and can include additional fees for cost savings recognized by certain customers. VillageHealth also offers full service health care plans for ESRD and CKD patients. The health care business is part of a Medicare Advantage Special Needs Plan that works with the Centers for Medicare and Medicaid Services, or CMS, to provide ESRD patients full service health care. Revenues are recognized as earned and are based on capitated rates as determined by CMS for each patient enrolled in the plan.
- *Physician services.* DaVita Nephrology Partners offers practice management and administrative services to physicians who specialize in nephrology under physician employment and management and administrative services agreements. Practice management and administrative services typically include operations management, IT support, billing and collections, credentialing and coding, and other support functions. Management fees generated from providing practice management and administrative services to physician practices are recognized as earned typically based upon cash collections generated by the practices.
- *ESRD clinical research programs.* DaVita Clinical Research conducts research trials principally with dialysis patients and provides administrative support for research conducted by DaVita-affiliated nephrology practices. Revenues are based upon an established fee per study, as determined by contract with drug companies and other sponsors and are recognized as earned according to the contract terms.

Quality care

We believe our reputation for providing quality care is a key factor in attracting patients and physicians and in securing contracts with healthcare plans. We engage in organized and systematic efforts through our quality management programs to monitor and improve the quality of services we deliver. These efforts include the development and implementation of patient care policies and procedures, clinical education and training programs, education and mentoring related to our clinical guidelines and protocols and audits of the quality of services rendered at each of our centers.

We employ over 160 clinical service specialists. The primary focus of this group is assuring and facilitating processes that aim to achieve superior clinical outcomes at our facilities. Our Physician Council is an advisory body to senior management, composed of 15 physicians with extensive experience in clinical practice. It represents both private and academic centers. The Physician Council advises on clinical priorities and reviews

policies and procedures affecting patient care. The Physician Laboratory Advisory Committee, or PLAC, composed of 10 physicians provides physician input and oversight in the operations of our laboratory facilities. The DaVita Quality Council, consisting of the senior directors of clinical service as well as representatives of operations and the office of the Chief Medical Officer, coordinates certain clinical activities and integrates input from the physician and the PLACs into clinical practice.

Sources of revenue—concentrations and risks

Our dialysis and related lab services business revenues represent 96% of our total consolidated net operating revenues with the balance of our revenues from ancillary services and strategic initiatives. Dialysis and related lab services revenues are derived from providing dialysis treatments, the administration of pharmaceuticals, related laboratory services and management fees generated from providing management and administrative services to certain outpatient dialysis centers.

The sources of our dialysis and related lab services revenues are principally from government-based programs, including Medicare, Medicaid and Medicare-assigned HMO plans and commercial insurance plans.

The following table summarizes our dialysis and related lab services revenues for the year ended December 31, 2008:

	<u>Revenues</u>
Medicare and Medicare-assigned HMO plans	59%
Medicaid	4%
Other government-based programs	<u>2%</u>
Total government-based programs	65%
Commercial (including hospital inpatient dialysis services)	<u>35%</u>
Total dialysis and related lab services revenues	<u><u>100%</u></u>

The following table summarizes our dialysis and related lab services revenues by source for the year ended December 31, 2008:

	<u>Revenue Percentages</u>
Outpatient hemodialysis centers	82%
Peritoneal dialysis and home-based hemodialysis	10%
Hospital inpatient hemodialysis	5%
Laboratory services	<u>3%</u>
Total dialysis and related lab services revenues	<u><u>100%</u></u>

Medicare revenue

Under the Medicare ESRD program, payment rates for dialysis are established by Congress. The Medicare composite rate currently set by CMS, pays freestanding dialysis facilities for services provided to Medicare beneficiaries under two methods: (1) the composite payment which includes a base payment, adjusted for case-mix that links payments more closely with illness severity and regional geography differences, and a drug add-on payment, which is updated annually to account for changes in drug prices and utilization and (2) separately billable drug reimbursement. Thus, facilities receive a composite payment rate per treatment to cover routine dialysis services, certain pharmaceuticals, routine lab work, and other supplies, as well as a separate payment for pharmaceuticals, which include Epogen®, or EPO (a pharmaceutical used to treat anemia, a common complication associated with ESRD), vitamin D analogs and iron supplements that are not included in

the composite payment rate. Pharmaceuticals are generally paid at average sale price, or ASP, plus 6% based upon prices set by Medicare. The Medicare payment rates, including separately billable drugs, are not sufficient to cover our average cost of providing a dialysis treatment.

ESRD patients receiving dialysis become eligible for primary Medicare coverage at various times, depending on their age or disability status, as well as whether they are covered by an employer group health plan. Generally, for a patient not covered by an employer group health plan, Medicare becomes the primary payor either immediately or after a three-month waiting period. For a patient covered by an employer group health plan, Medicare generally becomes the primary payor after 33 months, which includes the waiting period, 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 Medicare payment rate.

For each covered treatment, Medicare pays 80% of the amount set by the Medicare system. The patient is responsible for the remaining 20%. In most cases, a secondary payor, such as Medicare supplemental insurance, a state Medicaid program or a commercial health plan, covers all or part of these balances. Some patients, who do not qualify for Medicaid but otherwise cannot afford secondary insurance, can apply for premium payment assistance from charitable organizations through a program offered by the American Kidney Fund. We and other dialysis providers support the American Kidney Fund and similar programs through voluntary contributions. If a patient does not have secondary insurance coverage, we are generally unsuccessful in our efforts to collect from the patient the 20% portion of the ESRD composite rate that Medicare does not pay.

The Medicare composite payment rates set by Congress for dialysis treatments that were in effect for 2008 were between \$149 and \$165 per treatment, with an average rate of \$157 per treatment. Unlike Medicare payment rates for most other medical services, Medicare composite payment rates for dialysis services, historically, have not been routinely increased to compensate for the impact of inflation, which negatively impacts our margins as patient care costs continue to rise. However, Congress and CMS have addressed the impact of inflation more consistently since 2000, with several increases in the composite rate having occurred through April 2007. In addition, in July 2008, the Medicare Improvements for Patients and Providers Act for 2008 was passed by Congress. This legislation provides for an increase in the composite rate of 1% in 2009 and in 2010. In addition, this legislation introduces a new payment system for dialysis services beginning in January 2011 whereby ESRD payments will be made under a bundled payment rate which will provide for a fixed rate for all goods and services provided during the dialysis treatment, including laboratory services and the administration of pharmaceuticals. The initial 2011 bundled rate will be set 2% below the payment rate that providers would have received under the historical fee for service payment methodology. Beginning in 2012, a new single bundled payment base rate will be adjusted annually for inflation based upon a market basket index, less 1% of such index. The bundled payment rate will be determined by the Secretary of Health and Human Services, who will have discretion to determine the base payment rate based on the goods and services included in the bundled rate. Dialysis providers will have the option to move fully to the bundled payment system in 2011 or to phase in the payment system over three years.

We participate in two Medicare demonstration programs through a contract with CMS—an ESRD demonstration project and a CKD/ESRD demonstration project. The ESRD demonstration project is for four years and became effective January 2006. The CKD/ESRD project was originally a CKD project scheduled to expire in late 2008, but is currently in the process of being renewed for an additional three years and is also being expanded to include ESRD patients. Under the ESRD demonstration project, our revenue is capitated for all medical services required by enrollees in the program. We are at risk for all medical costs of the program in excess of the capitation payments. Under the CKD/ESRD demonstration project, we are paid a management fee for program enrollees relating to CKD patients, but are also paid a capitated rate for all ESRD patients. Management fee revenues are subject to retraction if medical cost savings targets are not met.

Medicaid revenue

Medicaid programs are state-administered programs partially funded by the federal government. These programs are intended to provide health coverage for patients whose income and assets fall below state-defined levels and who are otherwise uninsured. These programs also serve as supplemental insurance programs for co-insurance payments due from Medicaid-eligible patients with primary coverage under Medicare. Some Medicaid programs also pay for additional services, including some oral medications that are not covered by Medicare. We are an authorized Medicaid provider in the states in which we conduct our business.

Commercial revenues

Before Medicare becomes the primary payor, a patient's employer group health plan or private insurance plan, if any, is responsible for payment. Although commercial payment rates vary significantly, average commercial payment rates are generally significantly higher than Medicare rates. The payments we receive from commercial payors generate nearly all of our profits. Commercial payment rates are the result of negotiations between us and insurers or third-party administrators. We are continuously in the process of negotiating agreements with our commercial payors and if our negotiations result in overall commercial rate reductions in excess of our commercial rate increases, our revenues and operating results could be negatively impacted. Payment methods include a single lump-sum per treatment, referred to as bundled rates and separate payments for treatments and pharmaceuticals, if used as part of the treatment, referred to as fee for service rates.

Approximately 35% of our dialysis and related lab services revenues and 13% of our patients are associated with commercial payors for the year ended December 31, 2008. Less than 1% of our dialysis and related lab services payments are due directly from patients. No single commercial payor accounted for more than 5% of total dialysis and related lab services revenues for the year ended December 31, 2008.

Revenue from EPO and other pharmaceuticals

Approximately 30% of our total dialysis and related lab services revenues for the year ended December 31, 2008 are associated with the administration of physician-prescribed pharmaceuticals that improve clinical outcomes when included with the dialysis treatment. These pharmaceuticals include EPO, vitamin D analogs and iron supplements.

EPO is a genetically engineered form of a naturally occurring protein that stimulates the production of red blood cells. EPO is used in connection with all forms of dialysis to treat anemia, a medical complication most ESRD patients experience. The administration of EPO, which is separately billable under the Medicare payment program, accounted for approximately 20% of our dialysis and related lab services revenues for the year ended December 31, 2008. Changes in the levels of physician-prescribed EPO and commercial and government payment rates related to EPO can significantly influence our revenues and operating income.

CMS over the past several years has changed its reimbursement and payment coverage policies for EPO, which has primarily resulted in overall decreases in the amount of reimbursement payments that we have received from CMS. In addition, effective January 1, 2008, CMS implemented changes to the existing EPO monitoring policy that further limited reimbursement payments and required changes to the prescribing habits of our physicians.

Furthermore, EPO is produced by a single manufacturer, Amgen, and any interruption of supply or product cost increases could adversely affect our operations. We have entered into an agreement with Amgen that provides for specific rebates based on a combination of factors, including process improvement and data submission.

Amgen has also developed and obtained U.S. Food and Drug Administration, or FDA, approval for Aranesp[®], a pharmaceutical used to treat anemia, that may replace EPO or reduce its use with dialysis patients.

Unlike EPO, which is generally administered in conjunction with each dialysis treatment, Aranesp® can be administered less frequently. In the event that alternatives to EPO are marketed for treatment of dialysis patients, we may realize lower margins on the administration of such pharmaceuticals than are currently realized on EPO. A significant increase in the development and use of other or similar alternatives to EPO, or a change in administration practices, could have a material impact on our operating results.

Over the past few years there has been significant media discussion and government scrutiny regarding anemia management practices for ESRD patients in the United States, mainly as a result of clinical studies that identified risks in certain patient populations related to the utilization of EPO and similar pharmaceuticals. As a result, the FDA required warning labels for EPO and Aranesp® and changes were made to EPO reimbursement and payment coverage policies. As new information is obtained from research and clinical trials, practice guidelines may change over the next several years. Even though we believe our anemia management practices have been compliant with existing laws and regulations, we may be subject to further inquiries from a variety of government bodies as these payment policies and practicing guidelines evolve.

Physician relationships

An ESRD patient generally seeks treatment at an outpatient dialysis center near his or her home and at which his or her treating nephrologist has practice privileges. Our relationships with local nephrologists and our ability to meet their needs and the needs of their patients are key factors in the success of a dialysis center. Over 3,200 nephrologists currently refer patients to our centers. As is typical in the dialysis industry, one or a few physicians, including the center's medical director, usually account for all or a significant portion of a dialysis center's patient referral base. Our medical directors provide a substantial portion of our patient referrals. If a significant number of physicians were to cease referring patients to our dialysis centers, our business could be adversely affected.

Participation in the Medicare ESRD program requires that treatment at an outpatient dialysis center be under the general supervision of a medical director who is a physician. We have engaged physicians or groups of physicians to serve as medical directors for each of our centers. At some centers, we also separately contract with one or more physicians to serve as assistant or associate medical directors or to direct specific programs, such as home dialysis training programs. We have contracts with approximately 1,200 individual physicians and physician groups to provide medical director services.

Medical directors enter into written contracts with us that specify their duties and fix their compensation generally for periods of ten years. The compensation of our medical directors is the result of arm's length negotiations and generally depends upon an analysis of various factors such as the physician's duties, responsibilities, professional qualifications and experience, among others.

Our medical director agreements generally include covenants not to compete. Also, when we acquire a center from one or more physicians or where one or more physicians own interests in centers as co-owners with us, these physicians have agreed to refrain from owning interests in competing centers within a defined geographic area for various time periods. These agreements not to compete restrict the physicians from owning or providing medical director services to other dialysis centers, but do not prohibit the physicians from referring patients to any dialysis center, including competing centers. Many of these agreements not to compete expire at the same time as the corresponding medical director agreements, although some continue for a period of time beyond expiration. Occasionally, we experience competition from a new dialysis center established by a former medical director following the termination of his or her relationship with us.

Government regulation

Our dialysis operations are subject to extensive federal, state and local governmental regulations. These regulations require us 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.

Because we are subject to a number of governmental regulations, our business could be adversely impacted by:

- Loss or suspension of federal certifications;
- Loss or suspension of licenses under the laws of any state or governmental authority from which we generate substantial revenues;
- Exclusion from government healthcare programs including Medicare and Medicaid;
- Significant reductions or lack of inflation-adjusted increases in payment rates or reduction of coverage for dialysis and ancillary services and related pharmaceuticals;
- Fines, damages and monetary penalties for anti-kickback law violations, Stark II violations, submission of false claims, civil or criminal liability based on violations of law or other failures to meet regulatory requirements;
- Claims for monetary damages from patients who believe their protected health information has been used or disclosed in violation of federal and state patient privacy laws;
- Government mandated practice changes that significantly increase operating expenses; or
- Refunds of payments received from government payors and government health care program beneficiaries because of any failures to meet applicable requirements.

We expect that our industry will continue to be subject to substantial regulation, the scope and effect of which are difficult to predict. Our activities could be reviewed or challenged by regulatory authorities at any time in the future. This regulation and scrutiny could materially adversely impact us.

Licensure and Certification

Our dialysis centers are certified by CMS, as is required for the receipt of Medicare payments. In some states, our dialysis centers also are required to secure additional state licenses and permits. Governmental authorities, primarily state departments of health, periodically inspect our centers to determine if we satisfy applicable federal and state standards and requirements, including the conditions of participation in the Medicare ESRD program.

To date, we have not experienced significant difficulty in maintaining our licenses or our Medicare and Medicaid authorizations. However, we have experienced delays in obtaining certifications from CMS.

CMS continues to study the regulations applicable to Medicare certification to provide dialysis services. On April 15, 2008, CMS issued new regulations for Medicare certified ESRD facilities to provide dialysis services (“Conditions for Coverage”). The Conditions for Coverage were effective October 14, 2008, with some provisions having a phased in implementation date of February 1, 2009. The new regulations are patient, quality and outcomes focused. Among other things, they establish performance expectations for facilities and staff, eliminate certain procedural requirements, and promote continuous quality improvement and patient safety measures. We have established an interdisciplinary work group to facilitate implementation of the Conditions of Coverage and have developed comprehensive auditing processes to monitor ongoing compliance. We continue to assess the impact these changes will have on our operating results.

Federal anti-kickback statute

The “anti-kickback” statute contained in the Social Security Act imposes criminal and civil sanctions on persons who receive, make, offer or solicit payments in return for:

- The referral of a Medicare or Medicaid patient for treatment;
- The ordering or purchasing of items or services that are paid for in whole or in part by Medicare, Medicaid or similar federal and state programs; or
- Arranging for or recommending the ordering or purchasing of such items.

Federal criminal penalties for the violation of these laws include imprisonment, fines and exclusion of the provider from future participation in the Medicare and Medicaid programs. Violations of the anti-kickback statute are punishable by imprisonment for up to five years and fines of up to \$250,000 or both. Larger fines can

be imposed upon corporations under the provisions of the U.S. Sentencing Guidelines and the Alternate Fines Statute. Individuals and entities convicted of violating the anti-kickback statute are subject to mandatory exclusion from participation in Medicare, Medicaid and other federal healthcare programs for a minimum of five years. Civil penalties for violation of these laws include up to \$50,000 in monetary penalties per violation, repayments of up to three times the total payments between the parties and suspension from future participation in Medicare and Medicaid. Some state anti-kickback statutes also include criminal penalties. The federal statute expressly prohibits traditionally criminal transactions, such as kickbacks, rebates or bribes for patient referrals. Court decisions have also held that the statute is violated whenever one of the purposes of remuneration is to induce referrals.

The Department of Health and Human Services regulations create exceptions or “safe harbors” for some business transactions and arrangements. Transactions and arrangements structured within these safe harbors are deemed to not violate the anti-kickback statute. A business transaction or arrangement must satisfy every element of a safe harbor to be protected by that safe harbor. Transactions and arrangements that do not satisfy all elements of a relevant safe harbor do not necessarily violate the statute, but can be subject to greater scrutiny by enforcement agencies.

Our medical directors refer patients to our centers and these arrangements, by which we pay them for their medical director services, must be in compliance with the federal anti-kickback statute. Among the available safe harbors is one for personal services furnished for fair market value. However, most of our agreements with our medical directors do not satisfy all seven of the requirements of the personal services safe harbor. We believe that because of the nature of our medical directors’ duties, it is impossible to satisfy the anti-kickback safe-harbor requirement that if the services provided under the agreement are on a part-time basis, as they are with our medical directors, the agreement must specify the schedule of intervals of service, their precise length and the exact charge for such intervals. Accordingly, while we believe that our agreements with our medical directors satisfy as many of the elements of this safe harbor as we believe is reasonably possible, our arrangements do not qualify for safe harbor protection. We also note that there is little guidance available as to what constitutes fair market value for medical director services. We believe, however, that our agreements do not violate the federal anti-kickback statute; however, since the arrangements do not satisfy all of the requirements for safe harbor protection, these arrangements could be challenged.

We own a controlling interest in numerous dialysis related joint ventures, which represented approximately 15% of our dialysis and related lab services revenues. In addition we also own a noncontrolling interest in several other dialysis related joint ventures. Our relationships with physicians and other referral sources relating to these joint ventures are required to comply with the anti-kickback statute. Although there is a safe harbor for certain investment interests in “small entities,” it is not clear if any of our joint ventures satisfies all of the requirements for protection by this safe harbor. Under current law, physician joint ventures are not prohibited but instead require a case by case evaluation under the anti-kickback statute. We have structured our joint ventures to satisfy as many safe harbor requirements as we believe are reasonably possible and we believe that these investments are offered on a fair market value basis and provide returns to the physician investors only in proportion to their actual investment in the venture. We believe that our agreements do not violate the federal anti-kickback statute; however, since the arrangements do not satisfy all of the requirements for safe harbor protection, these arrangements could be challenged.

We lease space for approximately 420 of our centers from entities in which physicians hold ownership interests and we sublease space to referring physicians at approximately 165 of our dialysis centers. These arrangements must be in compliance with the anti-kickback statute. We believe that we meet the elements of the safe harbor for space rentals in all material respects.

Some medical directors and other referring physicians may own our common stock. We believe that these interests materially satisfy the requirements of the safe harbor for investments in large publicly traded companies for the anti-kickback statute.

Because we are purchasing and selling items and services in the operation of our centers that may be paid for, in whole or in part, by Medicare or a state healthcare program and because we acquire certain items and services at a discount, we must structure these arrangements in compliance with the federal anti-kickback statute. Subject to certain requirements and limitations, discounts representing reductions in the amounts we are charged for items or services based on arm's-length transactions can qualify for safe harbor protection if we fully and accurately report the discounts in the applicable Medicare cost reports. While some of the safe harbor criteria are subject to interpretation, we believe that our vendor contracts with discount provisions are in compliance with the anti-kickback statute.

Stark Law

Another federal law (known as the "Stark Law") prohibits a physician who has a financial relationship, or who has an immediate family member who has a financial relationship, with entities (including hospitals) providing "designated health services", from referring Medicare patients to such entities for the furnishing of such services, with limited exceptions. Stark Law designated health services include equipment and supplies, home health services, outpatient prescription drugs, inpatient and outpatient hospital services and clinical laboratory services. The Stark Law also prohibits the entity receiving a prohibited referral from filing a claim or billing for the services arising out of the prohibited referral. The prohibition applies regardless of the reasons for the financial relationship and the referral; and therefore, unlike the federal anti-kickback statute, intent to violate the law is not required. Sanctions for violation of the Stark Law include denial of payment for the services provided in violation of the prohibition, refunds of amounts collected in violation, a civil penalty of up to \$15,000 for each service arising out of the prohibited referral, exclusion from the federal healthcare programs, including Medicare and Medicaid and a civil penalty of up to \$100,000 against parties that enter into a scheme to circumvent the Stark Law prohibition. Stark Law violations can form the basis for False Claims Act liability; such liability can only be triggered if a person acts with the requisite intent under the False Claims Act. The types of financial arrangements between a physician and an entity that trigger the self-referral prohibitions of the Stark Law are broad and include ownership and investment interests and compensation arrangements.

CMS has adopted regulations under the Stark Law applicable to clinical laboratory services ("Stark I") and implementing the Stark Law's application to all designated health services (sometimes referred to as "Stark II" or the "Stark II Regulations"). CMS anticipates issuing additional regulations regarding Medicaid enforcement.

Under Stark II, "financial relationship" is defined as an ownership or investment interest in, or a compensation arrangement with, an entity providing designated health services and includes certain indirect financial relationships. We have entered into several types of financial relationships with referring physicians, including compensation arrangements. We believe that the compensation arrangements under our medical director agreements materially satisfy the personal services compensation arrangement exception to the Stark II prohibition. While we believe that compensation under our medical director agreements, which is the result of arm's length negotiations, results in fair market value payments for medical director services, an enforcement agency could nevertheless challenge the level of compensation that we pay our medical directors. Accordingly, we could in the future be required to change our practices, face criminal or civil penalties, pay substantial fines, return certain payments received from governmental payors and beneficiaries or otherwise experience a material adverse effect as a result of a challenge to these arrangements. For example, relationships with the medical directors of the centers we acquired from Gambro Healthcare were reviewed in connection with the investigation of Gambro Healthcare by the United States Attorney's office for the Eastern District of Missouri that was resolved in December 2004 and may be subject to ongoing review by the Office of Inspector General, or OIG, under a corporate integrity agreement (see description on page 13).

Some of our dialysis centers are leased from entities in which referring physicians hold interests and we sublease space to referring physicians at some of our dialysis centers. The Stark Law provides an exception for lease arrangements if specific requirements are met. We believe that our leases and subleases with referring physicians materially satisfy the requirements for this exception.

Some medical directors and other referring physicians may own our common stock. We believe that these interests materially satisfy the requirements of the safe harbor for investments in large publicly traded companies for the anti-kickback statute.

Some of our medical directors also own equity interests in entities that operate our dialysis centers. The Stark II exception applicable to physician ownership interests in entities to which they make referrals does not encompass the kinds of ownership arrangements that referring physicians hold in several of our subsidiaries that operate dialysis centers. Accordingly, it is possible that CMS could require us to restructure some of these arrangements or could seek to impose substantial fines or additional penalties on us, prohibit us from accepting referrals from those physician owners and/or force us to return certain amounts paid by CMS and program beneficiaries.

We do not believe that the Stark II regulations cover the following parts of our operations:

- dialysis services and services and items provided incident to dialysis services as part of designated health services;
- referrals for clinical laboratory services that are included in the ESRD composite rate;
- EPO and certain other dialysis-related outpatient prescription drugs furnished in (or by, in the case of EPO) an ESRD facility;
- provision of home dialysis supplies; and
- our arrangements with hospitals for the provision of dialysis services to hospital inpatients and outpatients.

However, it is possible that CMS could interpret Stark II to apply to these parts of our operations. If that were the case, CMS could determine that Stark II requires us to restructure existing compensation agreements with our medical directors and to repurchase or to request the sale of ownership interests in subsidiaries and partnerships held by referring physicians or, alternatively, to refuse to accept referrals for designated health services from these physicians. If CMS were to interpret Stark II to apply to aspects of our operations and we were not able to achieve compliance with Stark II, it would have a material adverse effect on our operations.

If any of our business transactions or arrangements including those described above were found to violate the federal anti-kickback statute or Stark Law, we could face criminal, civil and administrative sanctions, including possible exclusion from participation in Medicare, Medicaid and other state and federal healthcare programs. Any findings that we have violated these laws could have a material adverse impact on our earnings.

Fraud and abuse under state law

Many states in which we operate dialysis centers, have statutes prohibiting physicians from holding financial interests in various types of medical facilities to which they refer patients. Some of these statutes could be interpreted as prohibiting physicians who hold shares of our publicly traded stock from referring patients to our dialysis centers if the centers use our laboratory subsidiary to perform laboratory services for their patients. Some states also have laws similar to the federal anti-kickback statute that may affect our ability to receive referrals from physicians with whom we have financial relationships, such as our medical directors. Some of these statutes include exemptions applicable to our medical directors and other physician relationships or for financial interests limited to shares of publicly traded stock. Some, however, include no explicit exemption for medical director services or other services for which we contract with and compensate referring physicians or for joint ownership interests of the type held by some of our referring physicians or for financial interests limited to shares of publicly traded stock. If these statutes are interpreted to apply to referring physicians with whom we contract for medical director and similar services, to referring physicians with whom we hold joint ownership interests or to physicians who hold interests in DaVita limited solely to publicly traded stock, we may be required to terminate or restructure some or all of our relationships with or refuse referrals from these referring physicians and could be subject to civil and administrative sanctions, refund requirements and exclusions from government healthcare programs, including Medicare and Medicaid. Such events could negatively affect the decision of referring physicians to refer patients to our centers.

The False Claims Act

The federal False Claims Act, or FCA, is a means of policing false bills or false requests for payment in the healthcare delivery system. In part, the FCA authorizes the imposition of civil penalties on any person who:

- Knowingly presents or causes to be presented to the federal government, a false or fraudulent claim for payment or approval;
- Knowingly makes, uses or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the federal government;
- Conspires to defraud the federal government by getting a false or fraudulent claim allowed or paid; or
- Knowingly makes, uses or causes to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the federal government.

The penalties for a violation of the FCA range from \$5,500 to \$11,000 for each false claim plus three times the amount of damages caused by each such claim. The federal government has used the FCA to prosecute a wide variety of alleged false claims and fraud allegedly perpetrated against Medicare and state healthcare programs, including coding errors, billing for services not rendered, the submission of false cost reports, billing for services at a higher payment rate than appropriate, billing under a comprehensive code as well as under one or more component codes included in the comprehensive code and billing for care that is not considered medically necessary. Although still subject to dispute, several courts have also determined that a violation of the federal anti-kickback statute or the Stark Law can form the basis for liability under the FCA. In addition to the provisions of the FCA, which provide for civil enforcement, the federal government can use several criminal statutes to prosecute persons who are alleged to have submitted false or fraudulent claims for payment to the federal government.

The Health Insurance Portability and Accountability Act of 1996

The Health Insurance Portability and Accountability Act of 1996, or HIPAA, among other things, allows individuals who lose or change jobs to transfer their insurance, limits exclusions for preexisting conditions and establishes a pilot program for medical savings accounts. In addition, HIPAA also expanded federal attempts to combat healthcare fraud and abuse by amending the Social Security Act and the federal criminal code. Among other things, HIPAA created a “Health Care Fraud Abuse Control Account,” under which advisory opinions are issued by the OIG regarding the application of the anti-kickback statute; criminal penalties for Medicare and Medicaid fraud were extended to other federal healthcare programs; the exclusion authority of the OIG was expanded; Medicare and Medicaid civil monetary penalty provisions were extended to other federal healthcare programs; the amounts of civil monetary penalties were increased; and a criminal healthcare fraud statute was established.

HIPAA also includes provisions relating to the privacy of medical information. These provisions require us to maintain extensive policies and procedures, and to implement administrative safeguards with respect to private health information in our possession. HIPAA also includes provisions relating to standards for security of electronic protected health information, electronic transactions and electronic signatures. We believe we are in substantial compliance with these requirements.

Other regulations

Our operations are subject to various state hazardous waste and non-hazardous medical waste disposal laws. These laws do not classify as hazardous most of the waste produced from dialysis services. Occupational Safety and Health Administration regulations require employers to provide workers who are occupationally subject to blood or other potentially infectious materials with prescribed protections. These regulatory requirements apply to all healthcare facilities, including dialysis centers, and require employers to make a determination as to which employees may be exposed to blood or other potentially infectious materials and to have in effect a written exposure control plan. In addition, employers are required to provide or employ hepatitis B vaccinations,

personal protective equipment and other safety devices, infection control training, post-exposure evaluation and follow-up, waste disposal techniques and procedures and work practice controls. Employers are also required to comply with various record-keeping requirements. We believe that we are in material compliance with these laws and regulations.

We currently own substantially all of the assets, including the fixed assets, of our affiliated New York dialysis centers, but, because of the requirements of New York law, the operating licenses for these centers are currently held by privately-owned companies with which we have agreements to provide a broad range of administrative services, including billing and collecting. In 2007, changes to the New York law were adopted that will permit us to hold these licenses directly and the New York Department of Health is currently in the process of adopting implementing regulations. We intend to have these operating licenses transferred to us as soon as approval of such transfers can be obtained from the New York Department of Health.

A few states have certificate of need programs regulating the establishment or expansion of healthcare facilities, including dialysis centers. We believe that we are in material compliance with all applicable state certificate of need laws.

Corporate compliance program

We have implemented a company-wide corporate compliance program as part of our commitment to comply with all applicable laws, regulations and the corporate integrity agreement, or CIA, applicable to the dialysis centers acquired from Gambro Healthcare and assumed in connection with such acquisition and to maintain the high standards of conduct we expect from all of our teammates. We continuously review this program and enhance it as necessary. The primary purposes of the program include:

- Increasing, through training and education, the awareness of our teammates and affiliated professionals of the necessity of complying with all applicable laws and regulations in an increasingly complicated regulatory environment;
- Auditing and monitoring the activities of our dialysis centers, laboratories and billing offices on a regular basis to identify potential instances of noncompliance in a timely manner; and
- Ensuring that we take steps to resolve instances of noncompliance or to address areas of potential noncompliance as promptly as we become aware of them.

When evaluating the effectiveness of our corporate compliance program, we take into consideration a number of factors, including favorable results under various government inquiries and adherence to the requirements of our CIA measured in part by the favorable outcome of audits by the independent review organization.

We have a code of conduct that each of our teammates and affiliated professionals must follow and we have a confidential toll-free hotline (888-458-5848) for teammates and patients to report potential instances of noncompliance. Our Chief Compliance Officer administers the compliance program. The Chief Compliance Officer reports directly to our Chief Executive Officer, our Chief Operating Officer and to the Compliance Committee of our Board of Directors.

Corporate Integrity Agreement

On December 1, 2004, Gambro Healthcare, Inc, which we acquired in October 2005, entered into a settlement agreement with the Department of Justice and other agencies of the United States government relating to the Department of Justice's investigation of Gambro Healthcare's Medicare and Medicaid billing practices and its relationships with physicians and pharmaceutical manufacturers. In connection with the settlement agreement, Gambro Healthcare, without admitting liability, made a one-time payment of approximately \$310 million and entered into a five-year corporate integrity agreement with OIG. The centers we acquired from Gambro Healthcare continue to be subject to the corporate integrity agreement. The corporate integrity agreement

requires, among other things, that a compliance liaison be designated for each dialysis center owned or operated by the entity acquired from Gambro Healthcare, now known as DVA Renal Healthcare, or any of its subsidiaries and provide compliance training for each of its employees and credentialed physicians. DVA Renal Healthcare has a compliance officer and a separate compliance committee made up of members of senior management, consistent with the requirements of the corporate integrity agreement. Certain types of employees are also required to complete additional specialized training in areas such as billing and reimbursement issues. Furthermore, DVA Renal Healthcare is required to review all of its arrangements or transactions with any actual or potential source of healthcare business to ensure compliance with federal anti-kickback statute. It has also engaged an independent review organization to conduct an annual review of a sample of DVA Renal Healthcare's claims for reimbursement from federal healthcare programs to verify compliance with applicable laws and regulations. DVA Renal Healthcare must submit to the OIG an annual report with respect to the status of, and findings regarding, its compliance activities, including a copy of all reports prepared by the independent review organization. In addition, DVA Renal Healthcare must notify the OIG of any ongoing government investigations or legal proceedings and report to the OIG any substantial overpayment or any probable violations of the laws applicable to any federal healthcare program.

Insurance

We maintain insurance for property and general liability, professional liability, directors' and officers' liability, workers compensation and other coverage in amounts and on terms deemed adequate by management based on our claims experience and expectations for future claims. Future claims could, however, exceed our applicable insurance coverage. Physicians practicing at our dialysis centers are required to maintain their own malpractice insurance and our medical directors are required to maintain coverage for their individual private medical practices. Our liability policies cover our medical directors for the performance of their duties as medical directors.

Capacity and location of our centers

We are able to increase our capacity by extending hours at our existing centers, expanding our existing centers, relocating our centers, developing new centers and by acquiring centers. The development of a typical outpatient center by us generally requires approximately \$1.8 million for leasehold improvements, equipment and first-year working capital. Based on our experience, a new center typically opens within a year after the property lease is signed, normally achieves operating profitability in the second year of operation and normally reaches maturity within three to five years. Acquiring an existing center requires a substantially greater initial investment, but profitability and cash flow are initially more predictable. To a limited extent, we enter into agreements to provide management and administrative services to dialysis centers in which we either own a noncontrolling interest, or are wholly-owned by third parties in return for management fees, which are typically based on a percentage of revenues or cash collections of the managed operations, or upon a percentage of operating income.

The table below shows the growth of our Company by number of dialysis centers.

	<u>2008</u>	<u>2007</u>	<u>2006</u>	<u>2005</u>	<u>2004</u>
Number of centers at beginning of year	1,359	1,300	1,233	658	566
Acquired centers	20	16	26	609(1)	51
Developed centers	87	64	55	46	44
Net change in centers with management and administrative services agreements*	—	(15)(3)	—	4(1)	5
Divested, closed or sold centers	(9)	(4)	(5)(2)	(72)(1)	(2)
Merged into existing centers**	(8)	(2)	(9)	(12)	(6)
Number of centers at end of year	<u>1,449</u>	<u>1,359</u>	<u>1,300</u>	<u>1,233</u>	<u>658</u>

- (1) 566 centers were added, including 11 centers under management and administrative services agreements, as a result of the DVA Renal Healthcare acquisition and 74 centers were divested in connection with this acquisition, including three centers under management and administrative services agreements.
- (2) Three centers were divested in connection with the acquisition of DVA Renal Healthcare.
- (3) In November 2007, one of our management and administration service agreements was terminated, in which we provided management and administrative services to 20 dialysis centers.

* Represents dialysis centers in which we either own a noncontrolling interest, or are wholly-owned by third parties.

** Represents centers that were closed and the majority of patients were retained and transferred to other existing centers.

As of December 31, 2008, we operated or provided administrative services to 1,449 outpatient dialysis centers, of which 1,426 are consolidated in our financial statements. Of the remaining 23 centers, we own noncontrolling interests in nine centers, which are accounted for as equity investments and provide administrative services to 14 centers in which we have no ownership interest. The locations of the 1,426 centers included in our consolidated financial statements at December 31, 2008 were as follows:

<u>State</u>	<u>Centers</u>	<u>State</u>	<u>Centers</u>	<u>State</u>	<u>Centers</u>
California	175	New York	32	Wisconsin	13
Florida	120	Indiana	30	Massachusetts	12
Texas	118	Oklahoma	30	Oregon	12
Georgia	93	Louisiana	28	Arkansas	8
Pennsylvania	60	Colorado	27	District of Columbia	8
North Carolina	56	Arizona	24	Idaho	6
Ohio	55	Kentucky	23	Utah	4
Virginia	54	New Jersey	23	Mississippi	3
Michigan	52	South Carolina	22	South Dakota	3
Maryland	48	Connecticut	19	West Virginia	3
Illinois	45	Kansas	17	Delaware	2
Minnesota	38	Nevada	15	New Mexico	2
Alabama	35	Washington	14	North Dakota	2
Missouri	35	Iowa	13	New Hampshire	1
Tennessee	33	Nebraska	13		

Competition

The dialysis industry is highly competitive, particularly in terms of acquiring existing dialysis centers. We continue to face increased competition in the dialysis industry from large and medium-sized providers which compete directly with us for acquisition targets as well as for individual patients. Acquisitions and patient retention are an important part of our growth strategy and our business could be adversely affected if we are not able to continue to make acquisitions on reasonable terms or if we face significant patient attrition to our competitors. Competition for qualified physicians to act as medical directors and for inpatient dialysis services agreements with hospitals is also intense. Occasionally we have also experienced competition from former medical directors or referring physicians who have opened their own dialysis centers. In addition, we experience competitive pressures in connection with negotiating contracts with commercial healthcare payors.

The two largest dialysis companies, Fresenius Medical Care, or Fresenius, and our company, account for slightly over 60% of outpatient dialysis patients in the United States. Slightly more than 40% of the centers not owned by us or Fresenius are owned or controlled by hospitals or non-profit organizations. Hospital-based and non-profit dialysis units typically are more difficult to acquire than physician-owned centers. 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.

Fresenius also manufactures a full line of dialysis supplies and equipment in addition to owning and operating dialysis centers. This may give them cost advantages over us because of their ability to manufacture their own products. Fresenius has been one of our largest suppliers of dialysis products. However, in 2005, we entered into an alliance and product supply agreement with Gambro Renal Products which was subsequently amended in 2006. The amended product supply agreement requires us to purchase a significant majority of our hemodialysis non-equipment product supplies, such as dialyzers, at fixed prices through 2015. Our purchases of products in the categories generally offered by Fresenius and Gambro Renal Products represent approximately 4% of our total operating expenses. During 2008, we purchased hemodialysis products and supplies from Gambro Renal Products representing approximately 2% of our total operating expenses.

Teammates

As of December 31, 2008, we had approximately 32,500 teammates:

• Licensed professional staff (nurses, dieticians and social workers)	13,600
• Other patient care and center support staff and laboratory personnel	14,500
• Corporate, billing and regional administrative staff	4,400

Our dialysis business requires nurses with specialized training for patients with complex care needs. Recruitment and retention of nurses are continuing concerns for healthcare providers generally because of the disparity between the supply and demand for nurses, which has led to a nursing shortage. We have an active program of investing in our professional healthcare teammates to help ensure we meet our recruitment and retention targets, including expanded training opportunities, tuition reimbursements and other incentives.

Item 1A. Risk Factors.

This Annual Report on Form 10-K contains statements that are forward-looking statements within the meaning of the federal securities laws. These statements involve known and unknown risks and uncertainties including the risks discussed below. The risks discussed below are not the only ones facing our business. Please read the cautionary notice regarding forward-looking statements in Item 7 under the heading “Management’s Discussion and Analysis of Financial Condition and Results of Operation”.

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 35% of our dialysis and related lab services revenues for the year ended December 31, 2008 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. We are experiencing a decrease in 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 agreements with our commercial payors, and payors are increasingly aggressive in their negotiations with us. In the event that our continued negotiations 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. We expect that some of our contracted rates with commercial payors may decrease or that we may experience decreases in patient volume as our negotiations with commercial payors continue. In addition to increasing downward pressure on contracted commercial payor rates, payors have been attempting to impose restrictions and limitations on non-contracted or out-of-network providers. We, along with others in the kidney care community, are resisting such activity through regulatory, legislative and legal means. Decreases in out-of-network rates and restrictions on out-of-network access combined with decreases in contracted rates could result in a significant decrease in our overall revenue derived from commercial payors. 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.

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 as a result of 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. In addition, our continued negotiations with commercial payors could result in a decrease in the number of patients under commercial plans. 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 could substantially reduce our revenues, earnings and cash flows.

Approximately one-half of our dialysis and related lab services revenues for the year ended December 31, 2008 was generated from patients who have Medicare as their primary payor. Currently the Medicare ESRD

program pays us for dialysis treatment services at a fixed composite rate. The Medicare composite rate is the payment rate for a dialysis treatment including the supplies used in those treatments, specified laboratory tests and certain pharmaceuticals. Other services and certain pharmaceuticals, including EPO, vitamin D analogs and iron supplements, are separately billed.

In July 2008, the Medicare Improvements for Patients and Providers Act for 2008 was passed by Congress. This legislation provides for an increase in the composite rate of 1% in 2009 and in 2010. In addition this legislation introduces a new payment system for dialysis services beginning in January 2011 whereby ESRD payments will be made under a bundled payment rate which will provide for a fixed rate for all goods and services provided during the dialysis treatment, including laboratory services and the administration of pharmaceuticals. The initial 2011 bundled rate will be set 2% below the payment rate that providers would have received under the historical fee for service payment methodology. Beginning in 2012, a new single bundled payment base rate will be adjusted annually for inflation based upon a market basket index, less 1% of such index. The bundled payment rate will be determined by the Secretary of Health and Human Services, who will have discretion to determine the base payment rate based on the goods and services included in the bundled rate. Dialysis providers will have the option to move fully to the bundled payment system in 2011 or to phase in the payment system over three years.

We experience 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. The composite rate adjustment provided for in 2009 and 2010 will not be sufficient to compensate for the increases that we are likely to experience in operating costs that are subject to inflation. Because the bundled rates that will take effect in 2011 have not been set, we cannot predict whether the established rates, combined with the proposed negative adjustments, will be sufficient to compensate for increases in our operating costs that are subject to inflation. To the extent the Medicare bundled rates are established at levels that result in lower overall reimbursement for services we provide to Medicare patients, it could have a material adverse effect on our revenues, earnings and cash flows.

Changes in state Medicaid programs or payment rates could reduce our revenues, earnings and cash flows.

Approximately 4% of our dialysis and related lab services revenues for the year ended December 31, 2008, was generated from patients who have Medicaid as their primary coverage. As state governments face increasing budgetary pressure, they may propose reductions in payment rates, delays in the timing of payments, limitations on eligibility or other changes to Medicaid programs. Some states have already taken steps to reduce or delay payments. In addition, Medicaid eligibility requirements mandate that citizen enrollees in Medicaid programs provide documented proof of citizenship. Our revenues, earnings and cash flows could be negatively impacted to the extent that we are not paid by Medicaid or other state programs for services provided to patients that are unable to satisfy the eligibility requirements, including undocumented patients living in the U.S. If state governments reduce the rates paid by Medicaid programs for dialysis and related services, delay the timing of payment for services provided, further limit eligibility for Medicaid coverage or adopt changes to the Medicaid payment structure which reduces our overall payments from Medicaid, then our revenues, earnings and cash flows could be adversely affected.

Changes in clinical practices and payment rates or rules for EPO and other pharmaceuticals could substantially reduce our revenues, earnings and cash flows.

The administration of EPO and other pharmaceuticals accounted for approximately 30% of our dialysis and related lab services revenues for the year ended December 31, 2008, with EPO accounting for approximately 20% of our dialysis and related lab services revenues. Changes in clinical practices that result in decreased utilization of prescribed pharmaceuticals or changes in payment rates for those pharmaceuticals could substantially 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 United States which has created confusion and concern in the nephrology community. In late 2006, the House Ways and Means Committee held a hearing on the issue of EPO utilization and in 2007, the FDA required changes to the labeling of EPO and Aranesp[®] to include a black box warning, the FDA's strongest form of warning label. The FDA has held additional hearings to revisit these label changes as they apply to ESRD and continues to examine the issue. CMS also reviewed its EPO reimbursement policies and in January 2008, changes to the EPO monitoring policy went into effect which further limit reimbursement and which have impacted the prescribing habits of our physicians resulting in lower pharmaceutical intensities. Commercial payors have also increasingly examined their administration policies for EPO and, in some cases have modified those policies. Further changes in labeling of 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 or reimbursement for EPO could have a material adverse effect on our revenues, earnings and cash flows.

Changes in EPO pricing and the use and marketing of alternatives to EPO could materially reduce our revenues, earnings and cash flows and affect our ability to care for our patients.

Amgen Inc. is the sole supplier of EPO and may unilaterally decide to increase its price for EPO at any time during the term of our contract. Future changes in the cost of EPO could have a material adverse effect on our earnings and cash flows and ultimately reduce our income. Although our agreement with Amgen for EPO includes potential rebates which depend upon the achievement of certain criteria, we cannot predict whether we will continue to receive the rebates for EPO that we currently receive, or whether we will continue to achieve the same levels of rebates within that structure as we have historically achieved. Our agreement with Amgen provides for specific rebates off of list price based on a combination of factors, including process improvement and data submission. Factors that could impact our ability to qualify for rebates provided for in our agreement with Amgen in the future include our ability to develop and implement certain process improvements and track certain data elements. Failure to meet certain targets and earn the specified rebates could have a material adverse effect on our earnings and cash flows.

Amgen has developed and obtained FDA approval for Aranesp[®], a pharmaceutical used to treat anemia that may replace EPO or reduce its use with dialysis patients. Unlike EPO, which is generally administered in conjunction with each dialysis treatment, Aranesp[®] is administered less frequently. In the event that Aranesp[®] or any future alternatives to EPO are marketed for the treatment of dialysis patients, we may realize lower margins on the administration of such pharmaceuticals than are currently realized with EPO. A significant increase in the development and use of similar alternatives to EPO, or a change in administration practices, could have a material adverse impact on our revenues, earnings and cash flows.

We are the subject of a number of inquiries by the federal government, any of which could result in substantial penalties against us.

We are the subject of a number of inquiries by the federal government. We have received subpoenas from the U.S. Attorney's Office for the Northern District of Georgia, the U.S. Attorney's Office for the Eastern District of Missouri, the U.S. Attorney's Office for the Eastern District of New York and the U.S. Attorney's Office for the Eastern District of Texas. We are cooperating with the U.S. Attorney's Offices with respect to each of the subpoenas and producing the requested records. Any negative findings could result in substantial financial penalties against us, exclusion from future participation in the Medicare and Medicaid programs and, in certain cases, criminal penalties. To our knowledge, no proceedings have been initiated against us at this time. Although we cannot predict whether or when proceedings might be initiated or when these matters may be resolved, it is not unusual for investigations such as these to continue for a considerable period of time. Responding to the subpoenas will continue to require management's attention and significant legal expense. See "Item 3—Legal Proceedings" for additional information regarding these inquiries and subpoenas.

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 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 erythropoiesis-stimulating agents, 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 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. For example, the subpoena from the U.S. Attorney's Office for the Northern District of Georgia relates to the pharmaceutical products Zemplar, Hecetrol, Venofer, Ferrlecit, EPO and other related matters. The subpoena from the U.S. Attorney's Office in the Eastern District of Missouri includes requests for documents regarding the administration of, and billing for, EPO. The subpoena from the Office of Inspector General in Houston, Texas requests records relating to EPO claims submitted to Medicare. In addition, in February 2008 the Attorney General's Office for the State of Nevada notified us that Nevada Medicaid intends to conduct audits of ESRD providers in Nevada relating to the billing of pharmaceuticals, including EPO, and in 2007, a complaint was filed against us, Amgen and Fresenius Medical Care Holdings by Sheet Metal Workers National Health Fund and Glenn Randle alleging claims related to the administration and use of EPO. Additional inquiries from various agencies and claims by third parties with respect to this issue would continue to require management's attention and significant legal expense and any negative findings could result in substantial financial penalties against us 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. See "Item 3—Legal Proceedings" for additional information regarding these inquiries and subpoenas.

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.

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 II physician self-referral prohibition and analogous state referral statutes, and federal and state laws regarding the collection, use and disclosure of patient health information. The Medicare and Medicaid reimbursement rules related to claims submission, licensing requirements, cost reporting, and payment processes impose complex and extensive requirements upon dialysis providers, and a violation or departure from such requirements may result in government audits, lower reimbursements, recoupments or voluntary repayments, and the potential loss of certification.

The regulatory scrutiny of healthcare providers, including dialysis providers continues to increase. 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 any amounts received from such administration by government or commercial payors, and be subject to substantial penalties under applicable laws or regulations. In addition, fiscal intermediaries have increased their prepayment and post-payment reviews.

We endeavor to comply with all of the requirements for receiving Medicare and Medicaid payments and to structure all of our relationships with referring physicians to comply with state and federal anti-kickback laws and the Stark II physician self-referral law. However, the laws and regulations in this area are complex and subject to varying interpretations. For example, if an enforcement agency were to challenge the level of compensation that we pay our medical directors, 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.

Because of regulatory considerations unique to New York, all of our dialysis operations in New York are conducted by privately-owned companies to which we provide a broad range of administrative services. These operations accounted for approximately 3% of our dialysis and related lab services revenues for the year ended December 31, 2008. In 2007, changes to New York law were adopted that will permit us to hold licenses to conduct dialysis business directly, but until these changes are implemented and these operating licenses are transferred to us, we can give no assurances that these arrangements will not be challenged.

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 and cash flows 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 healthcare facilities 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, submission of false claims, civil or criminal liability based on violations of law, or other failures to meet regulatory requirements;
- Claims for monetary damages from patients who believe their protected health information has been used or disclosed in violation of federal or state patient privacy laws;
- Mandated practice changes that significantly increase operating expenses; and
- Termination of relationships with medical directors.

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 December 31, 2008, we owned a controlling interest in numerous dialysis related joint ventures, which represented approximately 15% of our dialysis and related lab services revenues. In addition, we also owned a noncontrolling interest 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. The subpoena and related requests for documents we received from the United States Attorney's Office for the Eastern District of Missouri included requests for documents related to our joint ventures.

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 and exclusion from government healthcare programs. 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.

There are significant estimating risks associated with the amount of dialysis revenue that we recognize and if we are unable to accurately estimate our revenue, it could impact the timing of our revenue 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 that we recognize in a reporting period. Ongoing insurance coverage changes, geographic coverage

differences, differing interpretations of contract coverage, and other payor issues complicate the billing and collection process. Determining applicable primary and secondary coverage for approximately 112,000 patients at any point in time, together with the changes in patient coverage that occur each month, requires complex, resource-intensive processes and 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 its revenue, which can represent as much as 6% of operating income. If our estimates of dialysis and related lab services revenues are materially inaccurate, it could impact the timing of our revenue recognition and have a significant impact on our operating results.

The ancillary services we provide or the strategic initiatives we invest in 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 include infusion therapy services, pharmacy services, vascular access services, disease management services, physician services, ESRD clinical research programs and ESRD special needs plans. Many of these initiatives 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. For example, during 2008 and 2007, our VillageHealth and pharmacy initiatives generated net operating losses and are expected to generate net operating losses into 2009. If any of our ancillary services or strategic initiatives do not perform as planned, we may incur a material write-off of our investment in one or more of these activities.

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.

Many 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 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. Medical directors have no obligation to extend their agreements with us. We may take actions to restructure existing relationships or take positions in negotiating extensions of relationships to assure compliance with the safe harbor provisions of the anti-kickback statute, Stark Law and other similar laws. These actions 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.

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 governments face increasing budgetary pressure, certain states are having difficulty certifying dialysis centers in the normal course resulting in significant delays in certification. For example, the state of Texas has stopped certifying dialysis centers and has communicated that it will not certify dialysis centers in 2009 and the state of California is experiencing significant delays. If state governments continue to have difficulty 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.

Current economic conditions, including the current recession in the United States and the worldwide economic slowdown, as well as further disruptions in the financial markets could result in substantial declines in our revenues, earnings, cash flows and financial condition.

The current economic recession in the United States and worldwide economic slowdown, 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. The potential increase in job losses in the United States which may occur in the near future if the economy continues to decline could 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, slow down in collections and a reduction in the amounts we expect to collect. In addition, if the current turmoil in the financial markets continues, the variable interest rates payable under our credit facilities could be adversely affected or it could be more difficult to obtain or renew such facilities in the future. 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.

If we are not able to continue to make acquisitions on reasonable terms, or maintain an acceptable level of non-acquired growth, or if we face significant patient attrition to our competitors, it could adversely affect our business.

We are facing increased competition in the 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. Acquisitions, patient retention and medical director retention are an important part of our growth strategy. If we are not able to continue to make acquisitions on reasonable terms, continue to maintain acceptable levels of non-acquired growth, or if we face significant patient attrition to our competitors, it could adversely affect our business.

The level of our current and future debt could have an adverse impact on our business.

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;
- expose us to interest rate fluctuations to the extent we have variable rate debt;
- 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.

If additional debt financing is not available when required or is not available on acceptable terms, we may be unable to grow our business, take advantage of business opportunities, respond to competitive pressures or refinance maturing debt, any of which could have a material adverse effect on our operating results and financial condition.

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

We are subject to interest rate volatility associated with the portions of our borrowings that bear interest at variable rates. As of December 31, 2008, we had approximately \$1.9 billion outstanding borrowings under the Senior Secured Credit Facilities, which bears interest at a variable rate. Approximately \$0.8 billion of our outstanding debt is subject to interest rate swaps which have the economic effect of fixing the interest rate on an equivalent portion of our debt. The remaining variable rate debt outstanding under our Senior Secured Credit Facilities had a weighted average interest rate of 1.97% at December 31, 2008. In addition, we have approximately \$199 million of available borrowings under our Senior Secured Credit Facilities that would bear interest at the LIBOR-based variable rate plus an interest rate margin of 1.50%. We may also incur additional variable rate debt in the future.

Increases in interest rates would increase our interest expense for the variable portion of our indebtedness, which could negatively impact our earnings and cash flow. For example, it is estimated that a hypothetical increase in interest rates of 100 basis points across all variable rate maturities would have reduced net income by approximately \$7.1 million, \$5.5 million and \$6.8 million for the years ended December 31, 2008, 2007 and 2006, respectively. See “Item 7A—Quantitative and Qualitative Disclosures about Market Risk” for more information. In addition, if we seek to refinance our existing indebtedness under our Senior Secured Credit Facilities, we may not be able to do so on acceptable terms and conditions, which could increase our interest expense or impair our ability to service our indebtedness and fund our operations.

We will require a significant amount of cash to service our indebtedness. Our ability to generate cash depends on many factors beyond our control.

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.

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, including the senior and senior subordinated notes, or to fund other liquidity needs. We may need to refinance all or a portion of our indebtedness on or before maturity. Our Senior Secured Credit Facilities are secured by substantially all of our and our subsidiaries’ assets. As such, our ability to refinance our debt or seek additional financing could be limited by such security interest. We cannot assure you that we will be able to refinance our indebtedness on commercially reasonable terms or at all.

If the current shortage of skilled clinical personnel continues 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. 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 and productivity. If the recent national and local elections result in actions or proposals that increase the likelihood of union organizing activities at our facilities, our operating costs could increase and our employee relations, productivity, earnings and cash flows could be adversely affected.

Our alliance and product supply agreement with Gambro Renal Products Inc. may limit our ability to achieve cost savings with respect to products and equipment we are required to purchase under this agreement.

Our obligations under our alliance and product supply agreement with Gambro Renal Products to purchase dialyzers and certain other products, may limit our ability to realize future cost savings in regard to certain products. For the year ended December 31, 2008, our total spending on hemodialysis products, supplies and equipment with Gambro Renal Products was approximately 2% of our total operating costs.

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 on our billing systems and expect to continue to do so in 2009. 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. These changes could also have an adverse impact on the claims review required by the corporate integrity agreement applicable to the centers acquired from Gambro Healthcare, described below. 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.

If DVA Renal Healthcare does not comply with the corporate integrity agreement applicable to the centers acquired from Gambro Healthcare, or DVA Renal Healthcare otherwise has failed or fails to comply with government regulations applicable to its operations, we could be subject to additional penalties and otherwise may be materially harmed.

In 2004, Gambro Healthcare entered into a settlement agreement with the Department of Justice and certain agencies of the United States government relating to the Department of Justice's investigation of Gambro Healthcare's Medicare and Medicaid billing practices and its relationships with physicians and pharmaceutical manufacturers. If DVA Renal Healthcare (formerly Gambro Healthcare) does not comply with the terms of the corporate integrity agreement applicable to the centers acquired from Gambro Healthcare, or otherwise has failed

or fails to comply with the extensive federal, state and local government regulations applicable to its operations, we could be subject to additional penalties, including monetary penalties or exclusion from participation in government programs, and otherwise may be materially harmed. The costs associated with compliance with the corporate integrity agreement and cooperation with the government are substantial and may increase. In addition, as a result of the settlement agreement, some commercial payors and other third parties have initiated legal proceedings against DVA Renal Healthcare related to the billing practices and other matters covered by the settlement agreement and we could receive similar claims in the future.

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 or to which we have committed obligations to make purchases, including Amgen, Fresenius Medical Care, Gambro Renal Products, Baxter Healthcare Corporation, NxStage, as well as others. If any of these suppliers are unable to meet our needs for the products they supply, including in the event of a product recall, and we are not able to find adequate alternative sources, our revenues, earnings and cash flows could be substantially reduced. For example, in February 2008, Baxter Healthcare Corporation proceeded with a recall of heparin, a pharmaceutical used in the treatment of dialysis patients and ceased further sales. As a result of the recall, there is only one remaining supplier of heparin and the cost to purchase heparin has significantly increased. It is possible that our heparin costs may continue to increase and since there is no separate reimbursement for this drug under Medicare, cost increases have a direct impact on our profitability. An affiliate of Fresenius Medical Care acquired this sole remaining provider of heparin for the U.S. dialysis market. This could negatively impact our access to and pricing for this critical product. 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 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.

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.

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

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. In addition, we have in place a shareholder rights plan that would substantially dilute the interest sought by an acquirer that our Board of Directors does not approve.

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 December 31, 2008, these cash bonuses would total approximately \$198 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.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

We own the land and buildings for 24 of our dialysis centers. We also own the buildings for six other dialysis centers and the building at one of our Florida labs and we own two separate land parcels and sublease a total of six properties to third party tenants. Our remaining dialysis centers are located on premises that we lease.

Our leases generally cover periods from five to ten years and typically contain renewal options of five to ten years at the fair rental value at the time of renewal, or at rates subject to periodic consumer price index increases, or contain fixed escalation clauses. Our outpatient dialysis centers range in size from approximately 500 to 44,000 square feet, with an average size of approximately 6,800 square feet.

The following is a summary of our business, administrative offices, laboratories and pharmacies:

<u>Office</u>	<u>Location</u>	<u>Square Feet</u>	<u>Expiration</u>
Corporate Headquarters	El Segundo, CA	61,000	2013
Business Office	Tacoma, WA	149,000	2009 through 2011
Business Office	Berwyn, PA	57,000	2012
Administrative Office	Exton, PA	8,000	2009
Administrative Office	Vernon Hills, IL	29,000	2013
Administrative Office	Burlingame, CA	7,000	2009
Administrative Office	Norfolk, VA	20,000	2015
Administrative Office	Washington, DC	5,000	2013
Administrative Office	Tempe, AZ	11,000	2016
Business Office	Lakewood, CO	82,000	2010
Business Office	Brentwood, TN	95,000	2011
Business Office	Irvine, CA	65,000	2015
Laboratory	DeLand, FL	40,000	owned
Laboratory	DeLand, FL	20,000	2013
Laboratory Administrative Office	DeLand, FL	23,000	2011
Laboratory	Ft. Lauderdale, FL	43,000	2013
DaVita Rx	Orlando, FL	17,000	2013
DaVita Rx	Coppell, TX	53,000	2013
DaVita Rx	San Bruno, CA	7,000	2015
Lab Warehouse	DeLand, FL	11,000	2015

Some of our dialysis centers are operating at or near capacity. However, we believe that we have adequate capacity within most of our existing dialysis centers to accommodate additional patient volume through increased hours and/or days of operation, or, if additional space is available within an existing facility, by adding dialysis stations. We can usually relocate existing centers to larger facilities or open new centers if existing centers reach capacity. With respect to relocating centers or building new centers, we believe that we can generally lease space at economically reasonable rates in the areas planned for each of these centers. Expansion of existing centers or relocation of our dialysis centers is subject to review for compliance with conditions relating to participation in the Medicare ESRD program. In states that require a certificate of need or center license, additional approvals would generally be necessary for expansion or relocation.

Item 3. Legal Proceedings.

Inquiries by the Federal Government

In December 2008, we received a subpoena for documents from the Office of Inspector General, U.S. Department of Health and Human Services, or OIG, relating to the pharmaceutical products Zemplar, Hecitorol, Venofer, Ferrlicit and Epogen®, or EPO, as well as other related matters. The subpoena covers the period from January 2003 to the present. We have been in contact with the United States Attorney’s Office, or U.S. Attorney’s Office, for the Northern District of Georgia and the U.S. Department of Justice in Washington, DC, since November 2008 relating to this matter, and have been advised that this is a civil inquiry. We are cooperating with the inquiry and are producing the requested records. To our knowledge, no proceedings have been initiated against us at this time. Although we cannot predict whether or when proceedings might be initiated, or when these matters may be resolved, it is not unusual for investigations such as these to continue for

a considerable period of time. Responding to the subpoena will continue to require management's attention and significant legal expense. Any negative findings could result in substantial financial penalties against us and exclusion from future participation in the Medicare and Medicaid programs.

In February 2007, we received a request for information from the OIG for records relating to EPO claims submitted to Medicare. In August 2007, we received a subpoena from the OIG seeking similar documents. The requested documents relate to services provided from 2001 to 2004 by a number of our centers. The request and subpoena were sent from the OIG's offices in Houston and Dallas, Texas. We are cooperating with the inquiry and are producing the requested records. We have been in contact with the U.S. Attorney's Office for the Eastern District of Texas, which has stated that this is a civil inquiry related to EPO claims. There appears to be substantial overlap between this issue and the ongoing review of EPO utilization and claims by the U.S. Attorney's Office, for the Eastern District of Missouri in St. Louis described below. To our knowledge, no proceedings have been initiated against us at this time. Although we cannot predict whether or when proceedings might be initiated or when these matters may be resolved, it is not unusual for investigations such as these to continue for a considerable period of time. Responding to these inquiries will continue to require management's attention and significant legal expense. Any negative findings could result in substantial financial penalties against us and exclusion from future participation in the Medicare and Medicaid programs.

In March 2005, we received a subpoena from the U.S. Attorney's Office for the Eastern District of Missouri in St. Louis. The subpoena requires production of a wide range of documents relating to our operations, including documents related to, among other things, pharmaceutical and other services provided to patients, relationships with pharmaceutical companies, and financial relationships with physicians and joint ventures. The subpoena covers the period from December 1, 1996 through the present. In October 2005, we received a follow-up request for additional documents related to specific medical director and joint venture arrangements. In February 2006, we received an additional subpoena for documents, including certain patient records relating to the administration and billing of EPO. In May 2007, we received a request for documents related to durable medical equipment and supply companies owned and operated by us. We are cooperating with the inquiry and are producing the requested records. The subpoenas have been issued in connection with a joint civil and criminal investigation. It is possible that criminal proceedings may be initiated against us in connection with this inquiry. Any negative findings could result in substantial financial penalties against us, exclusion from future participation in the Medicare and Medicaid programs and criminal penalties. To our knowledge, no proceedings have been initiated against us at this time. Although we cannot predict whether or when proceedings might be initiated or when these matters may be resolved, it is not unusual for investigations such as this to continue for a considerable period of time. Responding to the subpoenas will continue to require management's attention and significant legal expense.

In October 2004, we received a subpoena from the U.S. Attorney's Office for the Eastern District of New York in Brooklyn. The subpoena covers the period from 1996 to present and requires the production of a wide range of documents relating to our operations, including DaVita Laboratory Services. Gambro Healthcare received a similar subpoena in November 2004. The subpoena also includes specific requests for documents relating to testing for parathyroid hormone levels, or PTH, and to products relating to vitamin D therapies. The subpoena has been issued in connection with a joint civil and criminal investigation. It is possible that criminal proceedings may be initiated against us in connection with this inquiry. Any negative findings could result in substantial financial penalties against us, exclusion from future participation in the Medicare and Medicaid programs and criminal penalties. Other participants in the dialysis industry received a similar subpoena, including Fresenius Medical Group. To our knowledge, no proceedings have been initiated against us at this time. Although we cannot predict whether or when proceedings might be initiated or when these matters may be resolved, it is not unusual for investigations such as these to continue for a considerable period of time. Responding to the subpoena will continue to require management's attention and significant legal expense.

Other

We have received several notices of claims from commercial payors and other third parties related to historical billing practices and claims against DVA Renal Healthcare (formerly known as Gambro Healthcare)

related to historical Gambro Healthcare billing practices and other matters covered by their 2004 settlement agreement with the Department of Justice and certain agencies of the U.S. government. At least one commercial payor has filed an arbitration demand against us, as described below, and additional commercial payors have threatened litigation. We intend to defend against these claims vigorously; however, we may not be successful and these claims may lead to litigation and any such litigation may be resolved unfavorably.

Several wage and hour claims have been filed against us in the Superior Court of California, each of which has been styled as a class action. In February 2007, June 2008, October 2008 and December 2008, we were served with separate complaints by various former employees, each of which alleges, among other things, that we failed to provide rest and meal periods, failed to pay compensation in lieu of providing such rest or meal periods, and failed to comply with certain other California labor code requirements. In October 2008, we were served with a complaint which alleges, among other things, that we failed to pay the rate on the “wage statement,” and failed to comply with other California labor code requirements. We intend to vigorously defend against these claims. We also intend to vigorously oppose the certification of these matters as class actions.

In October 2007, we were contacted by the Attorney General’s Office for the State of Nevada. The Attorney General’s Office informed us that it was conducting a civil and criminal investigation of our operations in Nevada and that the investigation related to the billing of pharmaceuticals, including EPO. In February 2008, the Attorney General’s Office informed us that the civil and criminal investigation has been discontinued. The Attorney General’s Office further advised us that Nevada Medicaid intends to conduct audits of ESRD providers in Nevada, including us, and that such audits will relate to the issues that were the subjects of the investigation. Any negative findings could result in substantial financial penalties against us and exclusion from future participation in the Medicare and Medicaid programs. To our knowledge, no proceedings have been initiated against us at this time.

In August 2007, Sheet Metal Workers National Health Fund and Glenn Randle filed a complaint in the United States District Court for the Central District of California against us. The complaint also names as defendants Amgen Inc. and Fresenius Medical Care Holdings, Inc. The complaint is styled as a class action and alleges four claims against us, including violations of the federal RICO statute, California’s unfair competition law, California’s false advertising law and for unjust enrichment. The complaint’s principal allegations against us are that the defendants engaged in a scheme to unlawfully promote the administration of EPO to hemodialysis patients intravenously, as opposed to subcutaneously, and to over-utilize EPO. On December 17, 2008, the Court dismissed the complaint and allegations in their entirety with permission of plaintiffs to amend the complaint. We were not named as a defendant in plaintiff’s amended complaint. As a result, we are no longer a defendant in this action.

In August 2005, Blue Cross/Blue Shield of Louisiana filed a complaint in the United States District Court for the Western District of Louisiana against Gambro AB, DVA Renal Healthcare (formerly known as Gambro Healthcare) and related entities. The plaintiff sought to bring its claims as a class action on behalf of itself and all entities that paid any of the defendants for health care goods and services from on or about January 1991 through at least December 2004. The complaint alleged, among other things, damages resulting from facts and circumstances underlying Gambro Healthcare’s December 2004 settlement agreement with the Department of Justice and certain agencies of the United States Government. In March 2006, the case was dismissed and the plaintiff was compelled to seek arbitration to resolve the matter. In November 2006, the plaintiff filed a demand for class arbitration against us and DVA Renal Healthcare. We intend to vigorously defend against these claims. We also intend to vigorously oppose the certification of this matter as a class action. At this time, we cannot predict the ultimate outcome of this matter or the potential range of damages, if any.

In June 2004, Gambro Healthcare was served with a complaint filed in the Superior Court of California by one of its former employees who worked for its California acute services program. The complaint, which is styled as a class action, alleges, among other things, that DVA Renal Healthcare (formerly known as Gambro Healthcare) failed to provide overtime wages, defined rest periods and meal periods, or compensation in lieu of

such provisions and failed to comply with certain other California labor code requirements. We intend to vigorously defend against these claims. We also intend to vigorously oppose the certification of this matter as a class action. At this time, we cannot predict the ultimate outcome of this matter or the potential range of damages, if any.

In addition to the foregoing, we are subject to claims and suits, including from time to time, contractual disputes and professional and general liability claims, as well as audits and investigations by various government entities, in the ordinary course of business. We believe that the ultimate resolution of any such pending proceedings, whether the underlying claims are covered by insurance or not, will not have a material adverse effect on our financial condition, results of operations or cash flows.

Item 4. Submission of Matters to a Vote of Securities Holders.

No matters were submitted to a vote of security holders during the fourth quarter of 2008.

PART II

Item 5. Market for the Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Our common stock is traded on the New York Stock Exchange under the symbol “DVA”. The following table sets forth, for the periods indicated, the high and low closing prices for our common stock as reported by the New York Stock Exchange.

	High	Low
Year ended December 31, 2008:		
1st quarter	\$59.23	\$42.48
2nd quarter	53.86	47.79
3rd quarter	60.01	52.64
4th quarter	56.75	42.66
Year ended December 31, 2007:		
1st quarter	\$58.54	\$51.54
2nd quarter	57.48	52.56
3rd quarter	63.18	52.78
4th quarter	66.53	55.63

The closing price of our common stock on January 30, 2009 was \$47.00 per share. According to The Bank of New York, our registrar and transfer agent, as of January 30, 2009, there were 6,913 holders of record of our common stock. We have not declared or paid cash dividends to holders of our common stock since 1994. We have no current plans to pay cash dividends and we are restricted from paying dividends under the terms of our Senior Secured Credit Facilities and the indentures governing our senior and senior subordinated notes. Also, see the heading “Liquidity and capital resources” under “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” and the notes to our consolidated financial statements.

Stock Repurchases

The following table summarizes our repurchases of our common stock during 2008:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs(1)	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs (in millions)
March 1—31, 2008	682,500	\$47.66	682,500	\$210.3
April 1—30, 2008	2,120,977	48.90	2,120,977	106.5
May 1—31, 2008	383,133	51.49	383,133	230.3
June 1—30, 2008	274,743	49.92	274,743	216.6
October 1—31, 2008	1,027,502	48.66	1,027,502	166.6
November 1—30, 2008	278,900	43.35	278,900	154.5
December 1—31, 2008	21,126	45.01	21,126	153.5
Total	4,788,881	\$48.59	4,788,881	

- (1) On September 11, 2003, we announced that the Board of Directors authorized the repurchase of up to \$200 million of our common stock, with no expiration date. On November 2, 2004, we announced that the Board of Directors approved an increase in our authorization to repurchase shares of our common stock by an additional \$200 million. On May 1, 2008, our Board of Directors authorized an increase of an additional \$143.5 million of share repurchases of our common stock.

This stock repurchase program has no expiration date. We are authorized to make purchases from time to time in the open market or in privately negotiated transactions, depending upon market conditions and other considerations. However, we are subject to share repurchase limitations under the terms of the Senior Secured Credit Facilities and the indentures governing our senior and senior subordinated notes.

Item 6. Selected Financial Data.

The following financial and operating data should be read in conjunction with “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operation” and our consolidated financial statements filed as part of this report. The following table presents selected consolidated financial and operating data for the periods indicated. The operating results of DVA Renal Healthcare are included in our operating results from October 1, 2005, and the operating results of the historical DaVita divested centers are reflected as discontinued operations in our consolidated statements of income for 2005 and prior.

	Year ended December 31,				
	2008	2007	2006	2005	2004
	(in thousands, except share data)				
Income statement data:					
Net operating revenues(1)	\$ 5,660,173	\$ 5,264,151	\$ 4,880,662	\$ 2,973,918	\$ 2,177,330
Operating expenses and charges(2)	4,838,408	4,401,942	4,141,230	2,508,547	1,796,204
Operating income	821,765	862,209	739,432	465,371	381,126
Debt expense(3)	(224,716)	(257,147)	(276,706)	(139,586)	(52,411)
Swap valuations gain, net(4)	—	—	—	4,548	—
Refinancing charges(5)	—	—	—	(8,170)	—
Other income, net(6)	12,411	22,460	13,033	8,934	4,125
Income from continuing operations before income taxes	609,460	627,522	475,759	331,097	332,840
Income tax expense	235,300	245,744	186,430	123,675	128,332
Income from continuing operations	374,160	381,778	289,329	207,422	204,508
Income from discontinued operations, net of tax(7)	—	—	—	13,157	17,746
Gain on disposal of discontinued operations, net of tax(7)	—	—	362	8,064	—
Net income	<u>\$ 374,160</u>	<u>\$ 381,778</u>	<u>\$ 289,691</u>	<u>\$ 228,643</u>	<u>\$ 222,254</u>
Basic earnings per common share from continuing operations(7)(8)	<u>\$ 3.56</u>	<u>\$ 3.61</u>	<u>\$ 2.79</u>	<u>\$ 2.06</u>	<u>\$ 2.07</u>
Diluted earnings per common share from continuing operations(7)(8)	<u>\$ 3.53</u>	<u>\$ 3.55</u>	<u>\$ 2.73</u>	<u>\$ 1.99</u>	<u>\$ 1.99</u>
Weighted average shares outstanding:(8)(10)					
Basic	<u>105,149,000</u>	<u>105,893,000</u>	<u>103,520,000</u>	<u>100,762,000</u>	<u>98,727,000</u>
Diluted	<u>105,940,000</u>	<u>107,418,000</u>	<u>105,793,000</u>	<u>104,068,000</u>	<u>102,861,000</u>
Ratio of earnings to fixed charges(9)	3.01:1	2.92:1	2.38:1	2.86:1	5.26:1
Balance sheet data:					
Working capital	\$ 965,241	\$ 889,754	\$ 597,324	\$ 664,675	\$ 426,985
Total assets	7,286,091	6,943,960	6,491,816	6,279,762	2,511,959
Long-term debt	3,622,421	3,683,887	3,730,380	4,085,435	1,322,468
Shareholders’ equity(10)	1,952,458	1,732,250	1,245,924	850,609	523,134

(1) Net operating revenues include \$3,771 in 2005, and \$8,293 in 2004 of Medicare lab recoveries relating to prior years’ services.

(2) Operating expenses and charges include \$55,275 in 2007 and \$37,968 in 2006 of valuation gains on the alliance and product supply agreement with Gambro Renal Products, Inc. Operating expenses and charges in 2007 also includes \$6,779 of gains from insurance settlements related to Hurricane Katrina and a fire that destroyed one center.

- (3) Debt expense in 2007 and 2006 includes the write-off of approximately \$4.4 million and \$3.3 million of deferred financing costs associated with our principal prepayments on our term loans.
- (4) The swap valuation net gains of \$4,548 in 2005 represented the accumulated fair value on several swap instruments that were ineffective as cash flow hedges, as a result of the repayment of our Senior Secured Credit Facilities, as well as changes in the fair values of these swaps until they were redesignated as hedges, and represent changes in the fair value of the swaps during periods in which there was no matching variable rate LIBOR-based interest payments.
- (5) Refinancing charges of \$8,170 in 2005 represented the write-off of deferred financing costs associated with the extinguishment of our prior Senior Secured Credit Facilities.
- (6) Other income, net, includes \$5,868 in 2007 of gains from the sale of investment securities.
- (7) During 2005, we divested a total of 71 outpatient dialysis centers in conjunction with a consent order issued by the Federal Trade Commission on October 4, 2005 in order for us to complete the acquisition of DVA Renal Healthcare. In addition, we completed the sale of three additional centers that were previously pending state regulatory approval in January 2006. The operating results of the historical DaVita divested and held for sale centers were reflected as discontinued operations in our consolidated financial statements for 2005 and prior.
- (8) All share and per-share data for all periods presented prior to 2005 have been adjusted to retroactively reflect the effects of a 3-for-2 stock split that occurred in the second quarter of 2004.
- (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) Share repurchases consisted of 4,788,881 shares of common stock for \$232,715 in 2008, 111,300 shares of common stock for \$6,350 in 2007 and 3,350,100 shares of common stock for \$96,540 in 2004. Shares issued in connection with stock awards amounted to 1,314,074 in 2008, 2,480,899 in 2007, 2,620,125 in 2006, 3,303,451 in 2005, and 5,106,783 in 2004.

Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operation.

Forward-looking statements

This Annual Report on Form 10-K contains statements that are forward-looking statements within the meaning of the federal securities laws. All statements that do not concern historical facts are forward-looking statements and include, among other things, statements about our expectations, beliefs, intentions and/or strategies for the future. These forward-looking statements include statements regarding our future operations, financial condition and prospects, expectations for treatment growth rates, revenue per treatment, expense growth, levels of the provision for uncollectible accounts receivable, operating income, cash flow, operating cash flow, estimated tax rates, capital expenditures, the development of new centers and center acquisitions, government and commercial payment rates, revenue estimating risk and the impact of our related level of indebtedness on our financial performance, including earnings per share. These statements involve substantial known and unknown risks and uncertainties that could cause our actual results to differ materially from those described in the forward-looking statements, including, but not limited to, risks resulting from the regulatory environment in which we operate, economic and market conditions, competitive activities, other business conditions, accounting estimates, 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 and patients, a reduction in the number of patients under higher-paying commercial plans, a reduction in government payment rates or the structure of payments under the Medicare ESRD program which result in lower reimbursement for services we provide to Medicare patients, changes in pharmaceutical or anemia management practice patterns, payment policies or pharmaceutical pricing, our ability to maintain contracts with physician medical directors, legal compliance risks, including our continued compliance with complex government regulations and compliance with the corporate integrity agreement applicable to the dialysis centers acquired from Gambro Healthcare and assumed in connection with such acquisition, the resolution of ongoing investigations by various federal and state government agencies, and the risk factors set forth in this Annual Report on Form 10-K. We base our forward-looking statements on information currently available to us, and we undertake no obligation to update or revise these statements, whether as a result of changes in underlying factors, new information, future events or otherwise.

The following should be read in conjunction with our consolidated financial statements and “Item 1. Business”.

Overview

We are a leading provider of dialysis services in the United States through a network of approximately 1,449 outpatient dialysis centers and 700 hospitals, serving approximately 112,000 patients in 43 states. In 2008, our overall network of dialysis centers increased by 90 centers primarily as a result of opening new centers and acquisitions and the overall number of patients that we serve increased by approximately 5%.

Our stated mission is to be the provider, partner and employer of choice. We believe our attention to these three stakeholders—our patients, our business partners, and our teammates—represent the major drivers of our long-term performance, although we are subject to the impact of external factors such as government policy and physician practice patterns. Accordingly, two principal non-financial metrics we track are quality clinical outcomes and teammate turnover. We have developed our own composite index for measuring improvements in our clinical outcomes, which we refer to as the DaVita Quality Index, or DQI. Our clinical outcomes as measured by DQI have improved over each of the past three years. Although it is difficult to reliably measure clinical performance across our industry, we believe our clinical outcomes compare favorably with other dialysis providers in the United States. In addition, over the past several years our teammate turnover has remained constant, which we believe has been a major contributor to our clinical performance improvements. We will continue to focus on these fundamental long-term value drivers.

Approximately 96% of our 2008 consolidated revenues were derived directly from our dialysis and related lab services business. Approximately 82% of our dialysis and related lab services revenues are derived from

outpatient hemodialysis services in 1,426 centers that we consolidate which are either wholly-owned or majority-owned. Other dialysis services, which are operationally integrated with our dialysis operations, are peritoneal dialysis, home-based hemodialysis, and hospital inpatient hemodialysis services. These services collectively accounted for approximately 15% of our dialysis and related lab services revenues, and the remaining 3% of our dialysis and related lab services revenues were from laboratory services. We also generate management fees from performing management and administrative services to certain dialysis centers that represent less than 1% of our dialysis and related lab services revenues.

Our other business operations include ancillary services and strategic initiatives which are primarily aligned with our core business of providing dialysis services to our patients. These consist primarily of infusion therapy services, oral pharmacy services, vascular access services, disease management services, special needs plans, physician’s services and ESRD clinical research programs. These services generated approximately 4% of our consolidated net revenues in 2008. We currently expect to continue to invest in our ancillary services and strategic initiatives as we work to develop successful new business operations. However, significant changes in market conditions, business performance or in the regulatory environment may impact the economic viability of these strategic initiatives. Any unfavorable changes could result in a write-off or an impairment of some or all of our investments in these strategic initiatives, or could also result in significant termination costs if we were to exit a certain line of business.

The principal drivers of our dialysis and related lab services revenues are:

- the number of treatments, which is primarily a function of the number of chronic patients requiring approximately three treatments per week, as well as the number of treatments for peritoneal dialysis services and home-based dialysis and hospital inpatient dialysis services;
- average dialysis revenue per treatment; and
- the number of laboratory patient tests

The total patient base is a relatively stable factor, which is influenced by a demographically growing need for dialysis services, our relationships with referring physicians together with the quality of our clinical care, and our ability to open and acquire new centers. Our year-over-year treatment volume growth was 5.9% in 2008.

Average dialysis and related lab services revenue per treatment is principally driven by our mix of commercial and government (principally Medicare and Medicaid) patients, the mix and intensity of physician-prescribed pharmaceuticals, commercial and government payment rates, and our billing and collecting operations performance.

On average, payment rates from commercial payors are significantly higher than Medicare, Medicaid and other government program payment rates, and therefore the percentage of commercial patients to total patients represents a major driver of our total average revenue per treatment.

The following table summarizes our dialysis and related lab services revenues for the year ended December 31, 2008:

	<u>Revenues</u>
Medicare and Medicare-assigned HMO plans	59%
Medicaid	4%
Other government-based programs	<u>2%</u>
Total government-based programs	65%
Commercial (including hospital dialysis services)	<u>35%</u>
Total dialysis and related lab services revenues	<u>100%</u>

Government payment rates are principally determined by federal Medicare and state Medicaid policy. These payment rates have historically had limited potential for rate increases and are sometimes at risk of reduction as

federal and state governments face increasing budget pressures. Cumulative net increases in Medicare payment rates from 1990 through 2007 totaled approximately 10%, which is less than the impact of inflation over the same period. In July 2008, Congress passed the Medicare Improvements for Patients and Providers Act. This act provides for an increase in the composite rate of 1% in 2009 and 2010. In 2011, a new payment system will be established that will provide for a single bundled payment base rate with an initial rate set at 2% below the rate we would have received under the historical methodology. Beginning in 2012, the bundled payment base rate will be adjusted annually for inflation based upon a market basket index, less 1% of such index.

Dialysis payment rates from commercial payors can vary significantly and a major portion of our commercial rates are set at contracted amounts with large payors and are subject to intense negotiation pressure. Except for some rate reductions that occurred in late 2007, we have been successful in maintaining relatively stable average payment rates in the aggregate for patients with commercial plans, in addition to obtaining periodic rate increases. However, we are continuously in the process of negotiating agreements with our commercial payors and payors are increasingly aggressive in their negotiations. If our negotiations result in overall commercial rate reductions in excess of overall commercial rate increases, this would have a material adverse effect on our operating results. We also expect that 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, payors have been attempting to impose restrictions and limitations on non-contracted or out-of-network providers, which could further decrease our commercial rate revenues.

Approximately 30% of our dialysis and related lab services revenues for the year ended December 31, 2008 were from physician-prescribed pharmaceuticals, with EPO accounting for approximately 20% of our dialysis and related lab services revenues. Therefore, changes in physician practice patterns, pharmaceutical protocols, pharmaceutical intensities and changes in private and governmental payment rates for EPO significantly influence our revenue. For example, in July 2007, CMS implemented a new reimbursement methodology for EPO which decreased our dialysis and related lab services revenue per treatment. In addition, effective January 2008, changes to the EPO monitoring policy went into effect which further limited reimbursements. These changes impacted the prescribing habits of our physicians, which resulted in lower pharmaceutical intensities during 2008, which negatively impacted our average dialysis and related lab services revenue per treatment in 2008.

Our operating performance with respect to dialysis services billing and collection can also be a significant factor in how much average dialysis and related lab services revenue per treatment we actually realize. Over the past several years we have invested heavily in new systems and processes that we believe have helped improve our operating performance and reduced our regulatory compliance risks and we expect to continue to improve these systems. In 2008, we made several systems upgrades and process changes and will continue to do so in 2009 as necessary to improve our billing and collection performance. However, as we implement these system upgrades, our collection performance as well as our dialysis and related lab services revenue per treatment could be negatively impacted.

Our revenue recognition involves significant estimation risks. Our estimates are developed based on the best information available to us and our best judgment as to the reasonably assured collectibility of our billings as of the reporting date. Changes in estimates are reflected in the then-current period financial statements based upon on-going actual experience trends, or subsequent settlements and realizations depending on the nature and predictability of the estimates and contingencies.

Our annual average dialysis and related lab services revenue per treatment was approximately \$334, \$334 and \$330 for 2008, 2007, and 2006, respectively. In 2008, our average dialysis and related lab services revenue per treatment decreased slightly, primarily due to the impact of some commercial rate compression that occurred in late 2007, a decrease in intensities of physician-prescribed pharmaceuticals offset by changes in mix and rates of some of our other commercial payors. In 2007, the average dialysis and related lab services revenue per treatment increased primarily due to an increase in realized rates from our commercial payors and an increase in the Medicare composite rate, partially offset by a decrease in the government reimbursement for pharmaceuticals

associated with the new CMS reimbursement rates for EPO, and a decrease in intensities of physician-prescribed pharmaceuticals. Our ability to negotiate acceptable payment rates with commercial payors, changes in the mix and intensities of physician-prescribed pharmaceuticals, government payment policies regarding reimbursement amounts for dialysis treatments and pharmaceuticals, including the bundling of such services, and changes in the mix of government and commercial payors may materially impact our average dialysis and related lab services revenue per treatment in the future.

The principal drivers of our dialysis and related lab services patient care costs are clinical hours per treatment, labor rates, vendor pricing of pharmaceuticals, utilization levels of pharmaceuticals and business infrastructure and compliance costs. However, other cost categories can also represent significant cost changes, such as employee benefit costs and insurance costs. Our average clinical hours per treatment have remained relatively stable over the past few years primarily because of improved efficiencies driven by reduced clinical teammate turnover and improved training and processes. We believe there is limited opportunity for productivity improvements beyond the levels previously achieved, and changes in federal and state policies can adversely impact our ability to achieve optimal productivity levels. As an example, during the third and fourth quarters of 2008 we experienced an increase in our labor hours as we implemented new federal guidelines. In 2008 and 2007, we also experienced an increase in our labor rates of approximately 3.5% and 3.0%, respectively, as labor rates have increased consistent with general industry trends, mainly due to the demand for skilled clinical personnel, along with general inflation increases. For the past several years we have been able to negotiate relatively stable pharmaceutical pricing with our vendors. In addition, our agreement with Amgen for the purchase of EPO provides for specific rebates based on a combination of factors, including process improvement and data submission, which could negatively impact our earnings if we are unable to qualify for these rebates. In 2008, we experienced increases in our infrastructure and operating costs of our dialysis centers, primarily due to the number of new centers opened and centers constructed but pending state and/or federal certification, as well as general increases in rent, utilities and repairs and maintenance.

General and administrative expenses have remained relatively constant as a percent of consolidated revenues over the past three years. However, this reflects a substantial increase in the dollar amount of spending related to strengthening our dialysis business, improving our regulatory compliance and other operational processes, responding to certain legal matters and supporting the growth in our ancillary services and strategic initiatives. We expect that the level of general and administrative expenses will be sustained and can vary depending upon the level of investment we make in our long-term initiatives, including further investments in our ancillary services and strategic initiatives, and to support our efforts to achieve the highest levels of regulatory compliance.

Outlook for 2009. Our operating income guidance for 2009 is projected to be in the range of \$820-\$880 million. These projections and the underlying assumptions involve significant risks and uncertainties, and actual results may vary significantly from these current projections. These risks and uncertainties include those relating to 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 or the structure of payments under the Medicare ESRD program which result in lower reimbursement for services we provide to Medicare patients, changes in pharmaceutical or anemia management practice patterns, payment policies or pharmaceutical pricing, our ability to maintain contracts with physician medical directors, legal compliance risks, including our continued compliance with complex government regulations and compliance with the corporate integrity agreement applicable to the dialysis centers acquired from Gambro Healthcare and assumed in connection with such acquisition, and the resolution of ongoing investigations by various federal and state government agencies. You should read "Risk Factors" in Item 1A of this Annual Report on Form 10-K and the cautionary language contained in the forward-looking statements and associated risks as discussed on page 37 for more information about these and other potential risks. We undertake no obligation to update or revise these projections, whether as a result of changes in underlying factors, new information, future events or otherwise.

Results of operations

We operate principally as a dialysis and related lab services business but also operate other ancillary services and strategic initiatives businesses. These ancillary services and strategic initiatives consist of infusion therapy services, pharmacy services, vascular access services, disease management services and full-service special needs plans, physician services, as well as clinical research programs. The dialysis and related lab services business qualifies as a separately reportable segment under SFAS No. 131, and all of the other ancillary services and strategic initiatives have been combined and disclosed in the other segments category.

Following is a summary of consolidated operating results for reference in the discussion that follows.

<u>Continuing Operations</u>	Year ended December 31,					
	2008		2007		2006	
	(dollar amounts rounded to nearest million, except per treatment data)					
Net operating revenues:						
Current period services	\$ 5,660	100%	\$ 5,264	100%	\$ 4,881	100%
Operating expenses and charges:						
Patient care costs	3,920	69%	3,590	68%	3,390	70%
General and administrative	508	9%	491	9%	454	9%
Depreciation and amortization	217	4%	193	4%	173	4%
Provision for uncollectible accounts	146	3%	137	3%	126	2%
Minority interests and equity income, net	47	1%	45	1%	36	1%
Valuation gain on alliance and product supply agreement	—	—	(55)	(1)%	(38)	(1)%
Total operating expenses and charges	4,838	85%	4,402	84%	4,141	85%
Operating income	\$ 822	15%	\$ 862	16%	\$ 739	15%
Dialysis treatments	16,217,107		15,318,995		14,495,796	
Average dialysis treatments per treatment day	51,663		48,942		46,372	
Average dialysis and related lab services revenue per treatment	\$ 334		\$ 334		\$ 330	

The following table summarizes consolidated net operating revenues:

	Year ended		
	2008	2007	2006
	(dollar amounts rounded to nearest million)		
Dialysis and related lab services	\$5,415	\$5,130	\$4,799
Other—ancillary services and strategic initiatives	245	134	82
Consolidated net operating revenues	\$5,660	\$5,264	\$4,881

The following table summarizes consolidated operating income:

	Year ended		
	2008	2007(1)	2006(1)
	(dollar amounts rounded to nearest million)		
Dialysis and related lab services	\$943	\$993	\$829
Other—ancillary services and strategic initiatives loss	(34)	(51)	(27)
Total segment margin	910	942	802
Reconciling items:			
Stock-based compensation	(41)	(34)	(26)
Minority interests and equity income, net	(47)	(45)	(36)
Consolidated operating income	822	862	739
Reconciliation of non-GAAP measures:			
Less: Gains on insurance settlements	—	(7)	—
Valuation gain on the alliance and product supply agreement	—	(55)	(38)
Non-GAAP consolidated operating income	<u>\$822</u>	<u>\$800</u>	<u>\$701</u>

(1) We have excluded valuation gains on the alliance and product supply agreement with Gambro Renal Products Inc. (the Product Supply Agreement) in 2007 and 2006 as well as gains on insurance settlements from Hurricane Katrina in 2007 from non-GAAP adjusted consolidated operating income in 2007 and 2006, respectively, because management believes that this presentation enhances a user's understanding of our normal consolidated operating income by excluding a non-recurring non-cash gain that resulted from the termination of our purchase obligation for dialysis machines from Gambro Renal Products Inc. under the Product Supply Agreement as well as an unusual insurance gain, and as a result is both more meaningful and comparable to our current and prior period results, and more indicative of our normal consolidated operating income.

Consolidated net operating revenues

Consolidated net operating revenues for 2008 increased by approximately \$396 million or approximately 7.5% from 2007. This increase was primarily due to an increase in dialysis and related lab services net revenues of approximately \$285 million, principally due to increased treatments, and an increase of approximately \$111 million in the ancillary services and strategic initiatives net revenues primarily from growth in our pharmacy, VillageHealth special needs plans and from our infusion therapy business.

Consolidated net operating revenues for 2007 increased by approximately \$383 million or approximately 7.9% from 2006. This increase was primarily due to an increase in dialysis and related lab services net revenues of approximately \$331 million, principally due to an increase in both treatments and average revenue per treatment, and an increase of approximately \$52 million in the ancillary services and strategic initiatives net revenues primarily from growth in our pharmacy and in our VillageHealth demonstration projects as well as from the acquisition of our infusion therapy business.

Consolidated operating income

Consolidated operating income was \$822 million for 2008, as compared to \$862 million for 2007. Consolidated operating income in 2007 included a valuation gain of \$55 million on the Product Supply Agreement and the \$7 million insurance settlement related to Hurricane Katrina. Excluding the valuation gain on the Product Supply Agreement and the insurance settlement in 2007, our consolidated operating income for 2008 would have increased by approximately \$22 million, compared to the adjusted operating income for 2007. This increase was primarily due to treatment growth in dialysis and related lab services revenues, combined with growth in revenue in ancillary services and strategic initiatives outpacing increases in our operating expenses. Our ancillary services and strategic initiatives net operating losses were reduced by approximately \$17 million in

2008. However, our consolidated operating income for 2008 was negatively affected by rising labor costs, the absence of a Medicare rate increase, the impact of some commercial rate compression that occurred in late 2007, decreases in intensities of physician-prescribed pharmaceuticals, an increase in the operating costs of our dialysis centers, driven in part by the number of new dialysis centers opened and from centers constructed but pending state and/or federal certification, an increase in pharmaceuticals costs (primarily heparin) and an increase in stock-based compensation costs.

Consolidated operating income was \$862 million for 2007, as compared to \$739 million for 2006. Consolidated operating income in 2007 and 2006 included valuation gains of \$55 million and \$38 million, respectively, on the Product Supply Agreement. 2007 also included a \$7 million insurance settlement related to Hurricane Katrina. Excluding these items our adjusted consolidated operating income for 2007 would have increased by approximately \$99 million compared to our adjusted consolidated operating income for 2006. The increase in adjusted consolidated operating income was primarily due to an increase in both treatment growth and revenue per treatment in the dialysis and related lab services business outpacing slower growth in operating expenses, lower self insurance and benefit costs, as well as reductions in integration expenditures. The increase in adjusted consolidated income in 2007 was primarily the result of increases in operating income in the dialysis and related lab services business, partially offset by higher operating losses in ancillary services and strategic initiatives that increased by approximately \$24 million, as we made additional investments in our infrastructure and incurred additional operating expenses and professional fees associated with establishing our VillageHealth special needs plans.

Operating segments

Dialysis and Related Lab Services

	Year ended		
	2008	2007	2006
Revenues	\$5,415	\$5,130	\$4,799
Segment margin	\$ 943	\$ 993	\$ 829

Net operating revenues

Dialysis and related lab services net operating revenues for 2008 increased by approximately \$285 million or approximately 5.6% from 2007. The increase in net operating revenues was primarily due to an increase in the number of treatments of approximately 5.9%, offset by a slight decrease in the average dialysis revenue per treatment. The increase in number of treatments was primarily due to an increase in the number of treatment days in 2008 and non-acquired treatment growth at existing and new centers and growth through acquisitions. The decrease in the average dialysis revenue per treatment in 2008, as compared to 2007, was primarily due to the impact of some commercial rate compression that occurred in late 2007, decreases in intensity of physician-prescribed pharmaceuticals partially offset by changes in mix and rates of some of our other commercial payors.

Dialysis and related lab services net operating revenues for 2007 increased by approximately \$331 million or 6.9% from 2006. The increase in net operating revenues in 2007 was principally due to an increase in the number of treatments of approximately 5.7% and an increase in the average revenue per treatment of approximately 1.2%. The increase in the number of treatments was primarily attributable to non-acquired annual treatment growth at existing and new centers and growth through acquisitions. Our average dialysis revenue per treatment increased from \$330 in 2006 to \$334 in 2007. This increase in average dialysis revenue per treatment was due primarily to an increase in realized rates from our commercial payors and an increase in the Medicare composite rate, partially offset by a decrease in the government reimbursement for pharmaceuticals associated with the new CMS reimbursement rates for EPO, and a decrease in intensities of physician-prescribed pharmaceuticals.

The following table summarizes our dialysis and related lab services revenues by source for the year ended December 31, 2008:

	<u>Revenue percentages</u>
Outpatient hemodialysis centers	82%
Peritoneal dialysis and home-based hemodialysis	10%
Hospital inpatient hemodialysis	5%
Laboratory services	<u>3%</u>
Total dialysis and related lab services revenues	<u>100%</u>

In addition to reimbursements for dialysis treatments, the other major component of dialysis and related lab services revenues is the administration of EPO and other pharmaceuticals as part of the dialysis treatment, which represents slightly more than 30% of total dialysis and related lab services revenues.

Approximately 65% of our total dialysis and related lab services revenues for the year ended December 31, 2008 were from government-based programs, principally Medicare, Medicaid, and Medicare Advantage Plans, representing approximately 87% of our total patients. Approximately 35% of our dialysis and related lab services revenues and 13% of our patients are associated with commercial payors. Less than 1% of our dialysis and related lab services payments are due directly from patients. No single commercial payor accounted for more than 5% of total dialysis and related lab services revenues for the year ended December 31, 2008.

On average we are paid significantly more for services provided to patients covered by commercial healthcare plans than we are for patients covered by Medicare, Medicaid or other government plans. Patients covered by employer group health plans transition to Medicare coverage after a maximum of 33 months. As a patient transitions from commercial coverage to Medicare or Medicaid coverage, the payment rates normally decline substantially. As of December 31, 2008, the Medicare ESRD dialysis treatment rates for our patients were between \$149 and \$165 per treatment, or an overall average of \$157 per treatment, excluding the administration of separately billed pharmaceuticals. Medicare payment rates are insufficient to cover our costs associated with providing dialysis treatments, and therefore we lose money on each Medicare treatment.

Our net earnings from dialysis and related lab services are derived from commercial payors, some of which pay at negotiated payment rates and others of which pay based on our usual and customary fee schedule. We are continuously in negotiations with commercial payors for contracted rates and some of these payment rates are under downward pressure as we negotiate these rates with large HMOs and insurance carriers and we expect this trend to continue into 2009. We also expect that we may experience decreases in patient volume as our negotiations with commercial payors continue. If we experience a net overall reduction in our contracted commercial rates as a result of these negotiations, it could have a material adverse effect on our operating results.

Our average dialysis and related lab services revenue per treatment can be significantly impacted by several major factors, including our ability to negotiate acceptable payment rates with contracted and non-contracted commercial payors, changes in the mix and intensities of physician-prescribed pharmaceuticals, government payment policies regarding reimbursement amounts for dialysis treatments and pharmaceuticals, including the bundling of such services and changes in the mix of government and non-government payments.

Operating expenses and charges

Patient care costs. Dialysis and related lab services patient care costs are those costs directly associated with operating and supporting our dialysis centers and consist principally of labor, pharmaceuticals, medical supplies and operating costs of the dialysis centers. The dialysis and related lab services patient care costs on a per treatment basis were \$230, \$227 and \$229 for 2008, 2007, and 2006, respectively. The \$3 increase in the per treatment costs in 2008 as compared to 2007 was primarily attributable to an increase in labor rates and our labor

hours were negatively impacted during the year as we implemented new federal guidelines. Additionally, we experienced an increase in the operating costs of our dialysis centers driven in part by the number of new centers opened and from centers constructed but pending state and/or federal certification, and an increase in pharmaceutical costs (primarily heparin), partially offset by a decrease in the intensities of physician-prescribed pharmaceuticals.

Dialysis and related lab services patient care costs on a per treatment basis decreased by approximately \$2 in 2007 as compared to 2006. The decrease in the per treatment costs was primarily attributable to decreases in employee benefit costs, reductions in our professional and general liability costs, as well as decreases in the intensities of physician-prescribed pharmaceuticals, partially offset by an increase in labor costs and an increase in the operating costs of our dialysis centers.

General and administrative expenses. Dialysis and related lab services general and administrative expenses for the years ended 2008, 2007 and 2006 were approximately \$398 million, \$397 million and \$391 million, respectively. The increase of approximately \$1 million in 2008 as compared to 2007 was primarily due to increases in labor costs and the timing of certain other expenditures, mainly offset by lower integration costs and lower professional fees. The increase in general and administrative expenses of approximately \$6 million in 2007 as compared to 2006, was primarily due to higher labor costs and the timing of certain expenditures, partially offset by lower integration expenditures related to the DVA Renal Healthcare acquisition that were completed by the end of 2007 and lower professional fees for legal and compliance initiatives.

Depreciation and amortization. Dialysis and related lab services depreciation and amortization expenses for 2008, 2007 and 2006 were approximately \$210 million, \$189 million and \$171 million, respectively. The increase of approximately \$21 million in depreciation and amortization for dialysis and related lab services in 2008 as compared to 2007 was primarily due to growth through new center developments and expansions and an increase in amortization expense as a result of reductions in the intangible liability associated with the Product Supply Agreement, as discussed below. The increase in depreciation and amortization for 2007 of approximately \$18 million, as compared to 2006 was primarily due to growth through new center developments and expansions.

Provision for uncollectible accounts receivable. The provision for uncollectible accounts receivable for dialysis and related lab services was 2.6% for all years presented. The current provision level of 2.6% may increase if we encounter problems with our billing and collection process.

Product Supply Agreement. We entered into the Alliance and Product Supply Agreement with Gambro AB and Gambro Renal Products, Inc. on October 5, 2005, in conjunction with our acquisition of DVA Renal Healthcare. The agreement committed us to purchase a significant majority of our hemodialysis products, supplies and equipment at fixed prices through 2015. The agreement was amended on August 25, 2006 (the Amended Product Supply Agreement) to reduce our purchase obligations for certain hemodialysis product supplies and equipment. As a result of the reductions, we recorded a net valuation gain of \$38 million during 2006. This valuation gain represents the difference in the amortized original fair value between the Product Supply Agreement and that of the Amended Product Supply Agreement, as of the effective date of the amendment.

In 2007, we terminated our obligation to purchase certain dialysis machines under the Amended Product Supply Agreement. As a result of that termination we recorded a net valuation gain of \$55 million in 2007. This valuation gain represents the difference in the amortized original fair value of the Amended Product Supply Agreement and that of the Amended Product Supply Agreement as adjusted for the termination of the obligation to purchase certain dialysis machines as of June 30, 2007. We continue to be subject to the Product Supply Agreement's requirements to purchase a significant majority of our hemodialysis non-equipment product supplies, such as dialyzers, from Gambro Renal Products at fixed prices.

Operating income

Dialysis and related lab services operating income for 2008 decreased by approximately \$50 million as compared to 2007. Operating income in 2007 included a valuation gain of \$55 million on the Product Supply Agreement and \$7 million of insurance settlements relating to Hurricane Katrina as discussed above. Excluding these items, operating income for 2008 would have increased by approximately \$12 million as compared to adjusted operating income for 2007. The increase in the operating income for 2008 as compared to adjusted operating income for 2007 was primarily due to growth in the volume of revenue outpacing increases in certain expenditures. However, operating income for 2008 was negatively affected by certain significant items such as a decrease in our dialysis revenue per treatment, lower intensities of physician-prescribed pharmaceuticals, an increase in labor costs and higher operating costs of our dialysis centers primarily associated with the number of new centers that were opened and from centers constructed but pending state and/or federal certification, an increase in pharmaceutical costs (primarily heparin), and the absence of a Medicare rate increase.

Dialysis and related lab services operating income for 2007 increased by approximately \$164 million as compared to 2006. 2007 and 2006 included valuation gains of \$55 million and \$38 million, respectively, on the product supply agreement. 2007 also included a \$7 million insurance settlement as discussed above. Excluding these items, adjusted operating income for 2007 would have increased by approximately \$140 million as compared to adjusted operating income for 2006. This large increase was driven primarily by growth in both treatments and revenue per treatment, along with labor productivity improvements, and reductions in certain operating expenditures such as benefit and insurance costs, as well as integration expenditures.

Other—Ancillary services and strategic initiatives

	Year ended		
	2008	2007	2006
Revenues	\$245	\$134	\$ 82
Segment loss	<u>\$(34)</u>	<u>\$(51)</u>	<u>\$(27)</u>

Net operating revenues

The ancillary services and strategic initiatives net operating revenues for 2008 increased by approximately \$111 million or 83% as compared to 2007, primarily from growth in our pharmacy business, VillageHealth special needs plans and demonstration projects, our vascular access services business and a full year of operations of HomeChoice Partners, our infusion therapy business, which we acquired in the third quarter of 2007.

The increase in net operating revenues in 2007 of approximately \$52 million or 64% from 2006 was primarily due to growth in our pharmacy business, the acquisition of HomeChoice Partners, and growth in our VillageHealth demonstration projects.

Operating expenses

Ancillary services and strategic initiatives operating expenses for 2008 increased by approximately \$93 million from 2007, primarily due to an increase in volume in our pharmacy business, an increase in fixed operating expenses, an increase in labor costs and a full year of operations of our infusion therapy services, partially offset by lower professional fees in our VillageHealth business, as described below.

Ancillary services and strategic initiatives operating expenses for 2007 increased by approximately \$76 million from 2006, primarily due to the acquisition of HomeChoice Partners, volume growth in our pharmacy business, additional operating expenses and professional fees associated with establishing the VillageHealth special needs plans that became effective in early 2007, and higher labor and benefit costs.

Operating loss

Ancillary services and strategic initiatives operating losses for 2008 decreased by approximately \$17 million from 2007. The decrease in operating losses was primarily due to growth in revenues outpacing increases in operating expenses, primarily associated with our pharmacy business and our vascular access services. Ancillary services and strategic initiatives operating losses for 2007 increased by approximately \$24 million from 2006. The increase in operating losses was primarily related to the cost of establishing the VillageHealth special needs plans.

Corporate level charges

Stock-based compensation. Stock-based compensation of approximately \$41 million for 2008 increased by approximately \$7 million from 2007. Stock-based compensation for 2007 increased by approximately \$8 million from 2006. The increases in both periods resulted from increases in both the average grant-date fair value and aggregate quantity, of grants that contributed expense to each of these years.

Minority interests and equity income, net. Minority interests and equity income, net, increased by approximately \$1.1 million in 2008, and increased by approximately \$9.7 million in 2007. The increases for both years were primarily due to an increase in new dialysis centers having minority partners, growth in the earnings of our existing dialysis joint ventures and an increase in the number of other non-wholly-owned subsidiaries.

Debt expense. Debt expense for 2008, 2007, and 2006 consisted of interest expense of approximately \$215 million, \$243 million, and \$263 million, respectively, amortization of deferred financing costs of approximately \$10 million for each year presented. 2007 and 2006 also included the write-off of approximately \$4 million and \$3 million, respectively, of deferred financing costs associated with the principal prepayments on our term loans. The decrease in interest expense in 2008 as compared to 2007 was primarily attributable to decreases in the LIBOR-based variable interest rates on the unhedged portion of our debt. Our overall weighted average interest rate in 2008 was 5.82% as compared to 6.49% in 2007. The decrease in interest expense in 2007 as compared to 2006 was primarily attributable to lower average outstanding principal balances during 2007 under our Senior Secured Credit Facilities as a result of principal prepayments, and decreases in the LIBOR-based variable interest rates on the unhedged portion of our debt. Our overall weighted average interest rate in 2007 was 6.49% as compared to 6.64% in 2006.

Other income. Other income was approximately \$12 million, \$22 million, and \$13 million in 2008, 2007, and 2006, respectively, and consisted principally of interest income. The decrease in other income in 2008 was primarily due to the fact that 2007 other income included gains on the sale of investments of approximately \$6 million resulting from the sale of our NxStage shares as discussed below and a decrease in interest rates as well as lower average cash and investment balances.

Provision for income taxes. The provision for income taxes for 2008 represented an effective annualized tax rate of 38.6%, compared with 39.2% and 39.2% in 2007 and 2006, respectively. The decrease in the effective tax rate in 2008 was primarily due to nonrecurring tax benefits associated with transactions occurring in 2008. We currently project the effective income tax rate for 2009 to be in the range of 39.5% to 40.5%.

Impairments and valuation adjustments. We perform impairment or valuation reviews for our property and equipment, amortizable intangibles, investments in and advances to third-party dialysis businesses, and our investments in ancillary services and strategic initiatives at least annually and whenever a change in condition indicates that a review is warranted. Such changes include shifts in our business strategy or plans, the quality or structure of our relationships with our partners, or when a center experiences deteriorating operating performance. Goodwill is also assessed at least annually for possible valuation impairment using fair value methodologies. No significant impairments or valuation adjustments were recognized during the periods presented. These types of adjustments are charged directly to the corresponding operating segment that incurred the charge.

Accounts receivable

Our accounts receivable balances at December 31, 2008 and 2007 represented approximately 70 and 66 days of revenue, respectively, net of bad debt provision. The relative increase in the days of net revenue in accounts receivable as of December 31, 2008 was a result of growth and slower cash collections. In 2007, we experienced high cash collections, which significantly decreased the number of days of net revenue in our account receivable balances. Accounts receivable balances of 70 days of revenue is more consistent with our past and expected trends.

As of December 31, 2008 approximately \$102 million in unreserved accounts receivable, representing approximately 9% of our total accounts receivable balance, were more than six months old. There were no significant unreserved balances over one year old. Less than 1% of our treatments are classified as “patient pay”. Substantially all revenue realized is from government and commercial payors, as discussed above.

Amounts pending approval from third-party payors as of December 31, 2008 and 2007, other than the standard monthly processing, consisted of approximately \$39 million and \$31 million, respectively, associated with Medicare bad debt claims, classified as “other receivables”. Currently, our Medicare bad debt claims are typically paid to us before the Medicare fiscal intermediary audits the claims. However, the payment received from Medicare is subject to adjustment based upon the actual results of the audits. Such audits typically occur one to four years after the claims are filed. As a kidney dialysis provider, our revenue is not subject to cost report settlements, except for potentially limiting the collectibility of these Medicare bad debt claims.

Liquidity and capital resources

Available liquidity. As of December 31, 2008, our cash balance was \$411 million and we had undrawn credit under our Senior Secured Credit Facilities totaling \$250 million, of which approximately \$51 million was committed for outstanding letters of credit. We believe that we will have sufficient liquidity, operating cash flows and access to borrowings to fund our scheduled debt service and other obligations for the foreseeable future. Our primary sources of liquidity are cash from operations and cash from borrowings.

Cash flow from operations during 2008 amounted to \$556 million, compared with \$533 million for 2007. Cash flow from operations in 2008 included cash interest payments of approximately \$223 million and cash tax payments of \$163 million. Cash flow from operations in 2007 included cash interest payments of \$245 million and cash tax payments of \$206 million.

Non-operating cash outflows in 2008 included \$318 million for capital asset expenditures, including \$213 million for new center developments and relocations, and \$105 million for maintenance and information technology. We also spent an additional \$126 million for acquisitions. During 2008, we also received \$43 million from the maturity and sale of investments. However, these proceeds were either used to repurchase other investments or were used to fund distributions from our deferred compensation plans. In addition we received \$48 million associated with stock option exercises and other share issuances and the related excess tax benefits. We also repurchased 4.8 million shares of our common stock for approximately \$233 million. Non-operating cash outflows in 2007 included \$272 million for capital asset expenditures, including \$162 million for new center developments and relocations and \$110 million for maintenance and information technology. We also spent an additional \$127 million for acquisitions. During 2007, we also received \$37 million from the maturity and sale of investments as well as an additional \$88 million associated with stock option exercises and other share issuances and related excess tax benefits. We also repurchased 0.1 million shares of our common stock for approximately \$6 million. During 2008, we acquired a total of 20 dialysis centers, opened 87 new dialysis centers, sold or closed nine centers, merged eight centers into other existing centers, ceased operations at one joint venture in which we owned a noncontrolling interest and added a net one center under management and administrative service agreements. During 2007, we acquired a total of 16 dialysis centers, opened 64 new dialysis centers, sold or closed six centers and discontinued providing management and administrative services to 21 centers. We also acquired a 50% noncontrolling ownership interest in a joint venture that operated six dialysis centers.

We currently expect to spend approximately \$100 million for general maintenance capital asset expenditures in 2009, and approximately \$250 million for new center development, relocations and center acquisitions depending upon the availability of certain projects and sufficient project returns. We expect to generate approximately \$500 million to \$550 million of operating cash flow in 2009. Our actual expenditures for growth and cash flows in 2009 could vary significantly from these expected amounts.

2008 capital structure changes and other items

Our Senior Secured Credit Facilities are guaranteed by substantially all of our direct and indirect wholly-owned subsidiaries and are secured by substantially all of our and our subsidiary guarantors' assets. The Senior Secured Credit Facilities also contain customary affirmative and negative covenants and require compliance with financial covenants, including an interest rate coverage ratio and a leverage ratio that determines the interest rate margins on our term loan A and our revolving line of credit. The Senior Secured Credit Facilities in general also contain limits on the general amount of capital expenditures for internal growth, acquisitions and capital improvements, as described below, as well as limits on the amount of tangible net assets in non-guarantor subsidiaries.

Term Loan A

During 2008, we made mandatory principal payments totaling \$14.9 million on the term loan A. As a result of these principal payments, the outstanding balance on our term loan A as of December 31, 2008 was \$214.4 million and bore interest at LIBOR plus a margin of 1.50%, for an overall weighted average effective rate of 1.97%. The interest rate margin is subject to adjustment depending upon certain financial conditions and could range from 1.50% to 2.25%. Term loan A matures in October 2011 and requires annual principal payments of \$61.3 million in 2009, \$87.5 million in 2010 and \$65.6 million in 2011, respectively.

Term Loan B

As of December 31, 2008, the outstanding balance of our term loan B was \$1.7 billion and bore interest at LIBOR plus a margin of 1.50% for an overall weighted average effective rate of 3.63%, including the impact of our swap agreements. We did not make any principal payments on the term loan B during 2008, nor were we required to. Term loan B matures in October 2012 and requires principal payments of \$1.7 billion in year 2012.

Senior and Senior Subordinated Notes

Our senior and senior subordinated notes, as of December 31, 2008, consisted of \$900 million of 6 ⁵/₈% senior notes due 2013 and \$850 million of 7 ¹/₄% senior subordinated notes due 2015. The notes are guaranteed by substantially all of our direct and indirect wholly-owned subsidiaries and require semi-annual interest payments in March and September. We may redeem some or all of the senior notes at any time on or after March 15, 2009 and some or all of the senior subordinated notes at any time on or after March 15, 2010.

Interest rate swaps

As of December 31, 2008, we maintained a total of nine interest rate swap agreements with amortizing notional amounts totaling \$790 million. These agreements had the economic effect of modifying the LIBOR-based variable interest rate on an equivalent amount of our debt to fixed rates ranging from 3.08% to 4.70%, resulting in an overall weighted average effective interest rate of 5.54% on the hedged portion of our Senior Secured Credit Facilities, including the term loan B margin of 1.50%. The swap agreements expire in 2009 through 2010 and require quarterly interest payments. During 2008, 2007, and 2006 we accrued net cash (obligations) benefits of approximately (\$4.2) million, \$14.5 million, and \$15.8 million, respectively, from these swaps, which are included in debt expense. We estimate that approximately \$14.3 million of existing unrealized pre-tax losses in other comprehensive income at December 31, 2008 will be reclassified into income in 2009. As of December 31, 2008 and 2007, the total fair value of these swaps was a liability of \$21.9 million and a net

liability of \$0.5 million, respectively. The 2008 and 2007 amounts were primarily included in other long-term liabilities. Also during 2008 and 2007, we recorded approximately \$10.4 million and \$16.0 million, respectively, net of tax, as reductions to other comprehensive income for swap valuation losses, net of amounts reclassified into income.

As of December 31, 2008, approximately 41% of our variable rate debt and approximately 69% of our total debt was economically fixed.

As a result of the swap agreements, our overall weighted average effective interest rate on the Senior Secured Credit Facilities was 3.48%, based upon the current margins in effect of 1.50%, as of December 31, 2008.

At December 31, 2008, our overall average effective interest rate was 5.10%.

Stock repurchases

During 2008, we repurchased a total of 4,788,881 shares of our common stock for \$232.7 million, or an average price of \$48.59 per share, pursuant to previously announced authorizations by the Board of Directors. On May 1, 2008, our Board of Directors authorized an increase of an additional \$143.5 million of share repurchases of our common stock. As a result of these transactions the total outstanding authorization for share repurchases as of December 31, 2008 was \$153.5 million. This stock repurchase program has no expiration date.

Stock-based compensation

Under SFAS No. 123(R), stock-based compensation recognized during a period is based on the estimated grant-date fair value of the portion of the stock-based award vesting during that period, adjusted for expected forfeitures. Stock-based compensation recognized in our consolidated financial statements for the years ended December 31, 2008, 2007 and 2006 includes compensation cost for stock-based awards granted prior to, but not fully vested as of, December 31, 2005 and stock-based awards granted thereafter. Shares issued upon exercise of stock awards are generally issued from shares in treasury. We have utilized the Black-Scholes-Merton valuation model for estimating the grant date fair value of stock options and stock-settled stock appreciation rights granted in all prior periods. During 2008, we granted 4,563,350 stock-settled stock appreciation rights with a grant-date fair value of \$50.2 million and a weighted-average expected life of approximately 3.35 years, and also granted 37,819 stock units with a grant-date fair value of \$1.9 million and a weighted-average expected life of approximately 1.1 years.

For the years ended December 31, 2008 and 2007, we recognized \$41.2 million and \$34.1 million, respectively, in stock-based compensation expense for stock options, stock-settled stock appreciation rights, stock units and discounted employee stock plan purchases, which is primarily included in general and administrative expenses. The estimated tax benefits recorded for this stock-based compensation in 2008 and 2007 were \$15.6 million and \$12.8 million, respectively. As of December 31, 2008, there was \$79.6 million of total estimated unrecognized compensation cost related to nonvested stock-based compensation arrangements under our equity compensation and stock purchase plans. We expect to recognize this cost over a weighted average remaining period of 1.4 years.

During the years ended December 31, 2008 and 2007, we received \$35.6 million and \$54.7 million, respectively, in cash proceeds from stock option exercises and \$14.0 million and \$32.8 million, respectively, in total actual tax benefits upon the exercise of stock awards.

Developments in 2008

In July 2008, the Medicare Improvements for Patients and Providers Act for 2008 was passed by Congress. This legislation provides for an increase in the composite rate of 1% in 2009 and in 2010. In addition this

legislation introduces a new payment system for dialysis services beginning in January 2011 whereby ESRD payments will be made under a bundled payment rate which will provide for a fixed rate for all goods and services provided during the dialysis treatment, including laboratory services and the administration of pharmaceuticals. The initial 2011 bundled rate will be set 2% below the payment rate that providers would have received under the historical fee for service payment methodology. Beginning in 2012, a new single bundled payment base rate will be adjusted annually for inflation based upon a market basket index, less 1% of such index. The bundled payment rate will be determined by the Secretary of Health and Human Services, who will have discretion to determine the base payment rate based on the goods and services included in the bundled rate. Dialysis providers will have the option to move fully to the bundled payment system in 2011 or to phase in the payment system over three years.

In February 2008, Baxter Healthcare Corporation proceeded with a recall of heparin, a pharmaceutical used in the treatment of dialysis patients, and ceased further sales. As a result of the recall, there is only one remaining supplier of heparin and the cost to purchase heparin has significantly increased. It is possible that our heparin costs may continue to increase and since there is no separate reimbursement for this drug under Medicare, cost increases have a direct impact on our profitability. An affiliate of Fresenius Medical Care acquired the sole remaining provider of heparin for the U.S. dialysis market. This could negatively impact our access to and pricing for this critical product.

2007 capital structure changes and other capital items

During 2007, we made principal payments totaling \$50 million on term loan A and \$400 million on term loan B. The term loan B payment was made from the proceeds of new senior notes as discussed below. These principal payments were prepayments. As a result of the principal prepayments made in 2007 we wrote off a total of \$4.4 million of deferred financing costs, which is included in debt expense.

Term Loan A

On February 27, 2007, our interest rate margin on term loan A was reduced by 0.25% as a result of our achieving certain financial ratios as defined in the Senior Secured Credit Facilities. At December 31, 2007, our term loan A bore interest at LIBOR plus a margin of 1.50%, for an overall effective rate of 6.35%. The interest rate margin is subject to adjustment depending upon certain financial conditions and could range from 1.50% to 2.25%.

Term Loan B

On February 23, 2007, we amended and restated our existing Senior Secured Credit Facilities to, among other things, reduce the interest rate margin on term loan B by 0.50%, and to amend certain financial covenants. At December 31, 2007, the amended term loan B bore interest at LIBOR plus a margin of 1.50%, for an overall effective rate of 5.80%, including the impact of our swap agreements, except for the forward interest rate swap agreements. Other terms that were changed included the amount by which we can elect to increase the revolving and term loan commitments from \$500 million to \$750 million and certain limitations on purchases, redemptions or acquisitions of capital stock, the payment of dividends and distributions in cash. Further, limitations on capital expenditures for internal growth will not apply during the periods in which our leverage ratio is less than 3.5:1. We incurred financing costs of \$1.8 million which were deferred and also expensed \$0.2 million of other costs in connection with this transaction.

Senior and Senior Subordinated Notes

On February 23, 2007, we issued \$400 million of 6⁵/₈% senior notes due 2013 in a private offering, realizing \$405 million in proceeds, which included a \$5 million premium, and incurred \$2.7 million in related deferred financing costs. These senior notes are part of the same series of debt securities as the \$500 million aggregate principal amount of 6⁵/₈% senior notes that were issued in March 2005. Our effective interest rate for

the \$400 million of 6⁵/₈% senior notes is 6.45%. The senior notes are guaranteed by substantially all of our direct and indirect wholly-owned subsidiaries and require semi-annual interest payments which began March 15, 2007. The senior notes may be redeemed by us in whole or part at any time on or after March 15, 2009, at certain specified prices. We used \$400 million of these proceeds to pay down our term loan B as discussed above.

NxStage agreement

In February 2007 we entered into a National Provider Agreement with NxStage, Inc. As a part of the agreement, we purchased outright all of our NxStage System One equipment then in use for \$5.1 million, and have been purchasing a majority of our home-based hemodialysis equipment and supplies from NxStage. In connection with the provider agreement, we purchased two million shares of NxStage common stock in a private placement offering for \$20 million, representing an ownership position of approximately 7%. We subsequently sold our NxStage Inc. shares in the second and third quarters of 2007 for approximately \$25.9 million and recognized a pre-tax gain of \$5.9 million or \$3.6 million after tax. This pre-tax gain is included in other income.

Other stockholder items

On May 29, 2007, our stockholders approved an amendment to our Amended and Restated Certificate of Incorporation, to increase the number of shares of authorized common stock from 195,000,000 to 450,000,000 shares. Our stockholders also approved an amendment and restatement of our Employee Stock Purchase Plan to increase the number of shares of common stock available for issuance under that plan by 800,001 shares, and approved an amendment and restatement of our 2002 Equity Compensation Plan to increase the number of shares of common stock available for issuance under that plan by 6,000,000 shares and, among other things, to remove certain available share recycling features, to change the limit on the maximum number of shares of common stock that may be subject to awards granted to any single recipient in any consecutive twenty-four month period so that it applies only to awards of stock options and stock appreciation rights, and to provide additional exceptions from the three year minimum vesting period generally applicable to grants of restricted stock units and other full share awards.

Interest rate swaps

As of December 31, 2007, we maintained a total of nine interest rate swap agreements, with amortizing notional amounts totaling \$968 million. These agreements had the economic effect of modifying the LIBOR-based variable interest rate on an equivalent amount of our debt to fixed rates ranging from 3.08% to 4.27%, resulting in a weighted average effective interest rate of 5.37%, on the hedged portion of our Senior Secured Credit Facilities, including the term loan B margin of 1.50%. The swap agreements expire in 2009 through 2010 and require quarterly interest payments. In addition, we also maintained two forward interest rate swaps with notional amounts totaling \$200 million that went effective on September 30, 2008.

As of December 31, 2007, the interest rates were economically fixed on approximately 50% of our variable rate debt and approximately 74% of our total debt.

As a result of the swap agreements, at December 31, 2007 our overall weighted average effective interest rate on our Senior Secured Credit Facilities was 5.90%, based upon the current margins in effect of 1.50%, and our overall average effective interest rate was 6.37%.

Off-balance sheet arrangements and aggregate contractual obligations

In addition to the debt obligations reflected on our balance sheet, we have commitments associated with operating leases, letters of credit and our investments in third-party dialysis businesses. Substantially all of our facilities are leased. We also have potential acquisition obligations for several jointly-owned centers and for

some of our non-wholly-owned subsidiaries in the form of put provisions, which are exercisable at the third-party owners' future discretion within specified periods as outlined in each specific put provision. These put provisions, if exercised, would require us to purchase the third-party owners' interests at either the appraised fair market value or a predetermined multiple of earnings or cash flow attributable to the equity interest put to us, which is intended to approximate fair value. We have estimated the fair values of the interests subject to these put provisions based upon either a predetermined multiple of earnings, or the higher of a liquidation value or an average multiple of earnings determined by historical earnings, patient mix and other performance indicators, as well as other factors. The estimate of the fair values of the interests subject to these put provisions is a critical accounting estimate that involves significant judgments and assumptions and may not be indicative of the actual values at which these obligations may ultimately be settled in the future, which could vary significantly from our current estimates. The estimated fair values of the interests subject to these put provisions can also fluctuate and the implicit multiple of earnings at which these obligations may be settled will vary depending upon market conditions including potential purchasers' access to the credit and capital markets, which can impact the level of competition for dialysis and non-dialysis related businesses, the economic performance of these businesses and the restricted marketability of the third-party owners' interests. For additional information, see Note 21 to the consolidated financial statements.

We also have potential cash commitments to provide working capital advances as needed to several other dialysis centers in which we either own a noncontrolling interest, or which are wholly-owned by third parties, as well as to physician-owned vascular access clinics that we operate under management and administrative services agreements.

The following is a summary of these contractual obligations and commitments as of December 31, 2008 (in millions):

	<u>Less Than 1 year</u>	<u>1-3 years</u>	<u>3-5 years</u>	<u>After 5 years</u>	<u>Total</u>
Scheduled payments under contractual obligations:					
Long-term debt	\$ 72	\$156	\$2,607	\$ 850	\$3,685
Interest payments on senior and senior subordinated notes . . .	121	243	213	92	669
Capital lease obligations	1	1	1	3	6
Operating leases	194	333	257	393	1,177
	<u>\$388</u>	<u>\$733</u>	<u>\$3,078</u>	<u>\$1,338</u>	<u>\$5,537</u>
Potential cash requirements under existing commitments:					
Letters of credit	\$ 51	\$—	\$ —	\$ —	\$ 51
Acquisition of dialysis centers under put provisions	127	64	61	39	291
Pay-fixed swaps potential obligations	14	8	—	—	22
Working capital advances	16	—	—	—	16
	<u>\$208</u>	<u>\$ 72</u>	<u>\$ 61</u>	<u>\$ 39</u>	<u>\$ 380</u>

Not included above are interest payments related to our Senior Secured Credit Facilities. Our Senior Secured Credit Facilities as of December 31, 2008 bear interest at LIBOR plus current margins of 1.50%. The term loan A and the revolving line of credit are adjustable depending upon our achievement of certain financial ratios. At December 31, 2008, our Senior Secured Credit Facilities had an overall weighted average effective interest rate of 3.48%, including the effects of our swap agreements. Interest payments are due at the maturity of specific debt tranches within each term loan, which can range in maturity from one month to twelve months. Future interest payments will depend upon the amount of mandatory principal payments and principal prepayments, as well as changes in the LIBOR-based interest rates and changes in the interest rate margins. Assuming no principal prepayments on our Senior Secured Credit Facilities during 2009 and no changes in the effective interest rate, approximately \$67 million of interest would be required to be paid in 2009.

In addition to the above commitments, we are obligated to purchase a significant majority of our hemodialysis products and supplies at fixed prices through 2015 from Gambro Renal Products, Inc. in connection with the Product Supply Agreement. Our total expenditures for the years ended December 31, 2008 and 2007 on such products were approximately 2% of our total operating costs in each year. The actual amount of purchases in future years under the Product Supply Agreement will depend upon a number of factors, including the operating requirements of our centers, the number of centers we acquire, growth of our existing centers, and Gambro Renal Products' ability to meet our needs.

The pay-fixed swap obligations represent the estimated fair market values of our interest rate swap agreements as reported by various broker dealers that are based upon relevant observable market inputs as well as other current market conditions that existed as of December 31, 2008, and represent the estimated potential obligation that we would be required to pay based upon future settlement of each specific tranche within the swap agreements. The actual amount of our obligation associated with these swaps in the future will depend upon changes in interest rates that can fluctuate significantly depending upon market conditions, and other relevant factors that can affect the fair market value of these swap agreements.

Settlements of approximately \$12.0 million of existing income tax liabilities for unrecognized tax benefits are excluded from the above table as reasonably reliable estimates of their timing cannot be made.

Contingencies

The majority of our revenues are from government programs and may be subject to adjustment as a result of: (1) examination by government agencies or contractors, for which the resolution of any matters raised may take extended periods of time to finalize; (2) differing interpretations of government regulations by different fiscal intermediaries or regulatory authorities; (3) differing opinions regarding a patient's medical diagnosis or the medical necessity of services provided; and (4) retroactive applications or interpretations of governmental requirements. In addition, our revenues from commercial payors may be subject to adjustment as a result of potential claims for refunds, as a result of government actions or as a result of other claims by commercial payors.

Inquiries by the Federal Government

In December 2008, we received a subpoena for documents from the Office of Inspector General, U.S. Department of Health and Human Services, or OIG, relating to the pharmaceutical products Zemplar, Hecitorol, Venofer, Ferrlicit and Epogen®, or EPO, as well as other related matters. The subpoena covers the period from January 2003 to the present. We have been in contact with the United States Attorney's Office, or U.S. Attorney's Office, for the Northern District of Georgia and the U.S. Department of Justice in Washington, DC, since November 2008 relating to this matter, and have been advised that this is a civil inquiry. We are cooperating with the inquiry and are producing the requested records. To our knowledge, no proceedings have been initiated against us at this time. Although we cannot predict whether or when proceedings might be initiated, or when these matters may be resolved, it is not unusual for investigations such as these to continue for a considerable period of time. Responding to the subpoena will continue to require management's attention and significant legal expense. Any negative findings could result in substantial financial penalties against us and exclusion from future participation in the Medicare and Medicaid programs.

In February 2007, we received a request for information from the OIG for records relating to EPO claims submitted to Medicare. In August 2007, we received a subpoena from the OIG seeking similar documents. The requested documents relate to services provided from 2001 to 2004 by a number of our centers. The request and subpoena were sent from the OIG's offices in Houston and Dallas, Texas. We are cooperating with the inquiry and are producing the requested records. We have been in contact with the U.S. Attorney's Office for the Eastern District of Texas, which has stated that this is a civil inquiry related to EPO claims. There appears to be substantial overlap between this issue and the ongoing review of EPO utilization and claims by the U.S. Attorney's Office, for the Eastern District of Missouri in St. Louis described below. To our knowledge, no

proceedings have been initiated against us at this time. Although we cannot predict whether or when proceedings might be initiated or when these matters may be resolved, it is not unusual for investigations such as these to continue for a considerable period of time. Responding to these inquiries will continue to require management's attention and significant legal expense. Any negative findings could result in substantial financial penalties against us and exclusion from future participation in the Medicare and Medicaid programs.

In March 2005, we received a subpoena from the U.S. Attorney's Office for the Eastern District of Missouri in St. Louis. The subpoena requires production of a wide range of documents relating to our operations, including documents related to, among other things, pharmaceutical and other services provided to patients, relationships with pharmaceutical companies, and financial relationships with physicians and joint ventures. The subpoena covers the period from December 1, 1996 through the present. In October 2005, we received a follow-up request for additional documents related to specific medical director and joint venture arrangements. In February 2006, we received an additional subpoena for documents, including certain patient records relating to the administration and billing of EPO. In May 2007, we received a request for documents related to durable medical equipment and supply companies owned and operated by us. We are cooperating with the inquiry and are producing the requested records. The subpoenas have been issued in connection with a joint civil and criminal investigation. It is possible that criminal proceedings may be initiated against us in connection with this inquiry. Any negative findings could result in substantial financial penalties against us, exclusion from future participation in the Medicare and Medicaid programs and criminal penalties. To our knowledge, no proceedings have been initiated against us at this time. Although we cannot predict whether or when proceedings might be initiated or when these matters may be resolved, it is not unusual for investigations such as this to continue for a considerable period of time. Responding to the subpoenas will continue to require management's attention and significant legal expense.

In October 2004, we received a subpoena from the U.S. Attorney's Office for the Eastern District of New York in Brooklyn. The subpoena covers the period from 1996 to present and requires the production of a wide range of documents relating to our operations, including DaVita Laboratory Services. Gambro Healthcare received a similar subpoena in November 2004. The subpoena also includes specific requests for documents relating to testing for parathyroid hormone levels, or PTH, and to products relating to vitamin D therapies. The subpoena has been issued in connection with a joint civil and criminal investigation. It is possible that criminal proceedings may be initiated against us in connection with this inquiry. Any negative findings could result in substantial financial penalties against us, exclusion from future participation in the Medicare and Medicaid programs and criminal penalties. Other participants in the dialysis industry received a similar subpoena, including Fresenius Medical Group. To our knowledge, no proceedings have been initiated against us at this time. Although we cannot predict whether or when proceedings might be initiated or when these matters may be resolved, it is not unusual for investigations such as these to continue for a considerable period of time. Responding to the subpoena will continue to require management's attention and significant legal expense.

Other

We have received several notices of claims from commercial payors and other third parties related to historical billing practices and claims against DVA Renal Healthcare (formerly known as Gambro Healthcare) related to historical Gambro Healthcare billing practices and other matters covered by their 2004 settlement agreement with the Department of Justice and certain agencies of the U.S. government. At least one commercial payor has filed an arbitration demand against us, as described below, and additional commercial payors have threatened litigation. We intend to defend against these claims vigorously; however, we may not be successful and these claims may lead to litigation and any such litigation may be resolved unfavorably.

Several wage and hour claims have been filed against us in the Superior Court of California, each of which has been styled as a class action. In February 2007, June 2008, October 2008 and December 2008, we were served with separate complaints by various former employees, each of which alleges, among other things, that we failed to provide rest and meal periods, failed to pay compensation in lieu of providing such rest or meal periods,

and failed to comply with certain other California labor code requirements. In October 2008, we were served with a complaint which alleges, among other things, that we failed to pay the rate on the “wage statement,” and failed to comply with other California labor code requirements. We intend to vigorously defend against these claims. We also intend to vigorously oppose the certification of these matters as class actions.

In October 2007, we were contacted by the Attorney General’s Office for the State of Nevada. The Attorney General’s Office informed us that it was conducting a civil and criminal investigation of our operations in Nevada and that the investigation related to the billing of pharmaceuticals, including EPO. In February 2008, the Attorney General’s Office informed us that the civil and criminal investigation has been discontinued. The Attorney General’s Office further advised us that Nevada Medicaid intends to conduct audits of ESRD providers in Nevada, including us, and that such audits will relate to the issues that were the subjects of the investigation. Any negative findings could result in substantial financial penalties against us and exclusion from future participation in the Medicare and Medicaid programs. To our knowledge, no proceedings have been initiated against us at this time.

In August 2007, Sheet Metal Workers National Health Fund and Glenn Randle filed a complaint in the United States District Court for the Central District of California against us. The complaint also names as defendants Amgen Inc. and Fresenius Medical Care Holdings, Inc. The complaint is styled as a class action and alleges four claims against us, including violations of the federal RICO statute, California’s unfair competition law, California’s false advertising law and for unjust enrichment. The complaint’s principal allegations against us are that the defendants engaged in a scheme to unlawfully promote the administration of EPO to hemodialysis patients intravenously, as opposed to subcutaneously, and to over-utilize EPO. On December 17, 2008, the Court dismissed the complaint and allegations in their entirety with permission of plaintiffs to amend the complaint. We were not named as a defendant in plaintiff’s amended complaint. As a result, we are no longer a defendant in this action.

In August 2005, Blue Cross/Blue Shield of Louisiana filed a complaint in the United States District Court for the Western District of Louisiana against Gambro AB, DVA Renal Healthcare (formerly known as Gambro Healthcare) and related entities. The plaintiff sought to bring its claims as a class action on behalf of itself and all entities that paid any of the defendants for health care goods and services from on or about January 1991 through at least December 2004. The complaint alleged, among other things, damages resulting from facts and circumstances underlying Gambro Healthcare’s December 2004 settlement agreement with the Department of Justice and certain agencies of the United States Government. In March 2006, the case was dismissed and the plaintiff was compelled to seek arbitration to resolve the matter. In November 2006, the plaintiff filed a demand for class arbitration against us and DVA Renal Healthcare. We intend to vigorously defend against these claims. We also intend to vigorously oppose the certification of this matter as a class action. At this time, we cannot predict the ultimate outcome of this matter or the potential range of damages, if any.

In June 2004, Gambro Healthcare was served with a complaint filed in the Superior Court of California by one of its former employees who worked for its California acute services program. The complaint, which is styled as a class action, alleges, among other things, that DVA Renal Healthcare (formerly known as Gambro Healthcare) failed to provide overtime wages, defined rest periods and meal periods, or compensation in lieu of such provisions and failed to comply with certain other California labor code requirements. We intend to vigorously defend against these claims. We also intend to vigorously oppose the certification of this matter as a class action. At this time, we cannot predict the ultimate outcome of this matter or the potential range of damages, if any.

In addition to the foregoing, we are subject to claims and suits, including from time to time, contractual disputes and professional and general liability claims, as well as audits and investigations by various government entities, in the ordinary course of business. We believe that the ultimate resolution of any such pending proceedings, whether the underlying claims are covered by insurance or not, will not have a material adverse effect on our financial condition, results of operations or cash flows.

Critical accounting estimates and judgments

Our consolidated financial statements and accompanying notes are prepared in accordance with United States generally accepted accounting principles. These accounting principles require us to make estimates, judgments and assumptions that affect the reported amounts of revenues, expenses, assets, liabilities, and contingencies. All significant estimates, judgments and assumptions are developed based on the best information available to us at the time made and are regularly reviewed and updated when necessary. Actual results will generally differ from these estimates. Changes in estimates are reflected in our financial statements in the period of change based upon on-going actual experience trends, or subsequent settlements and realizations depending on the nature and predictability of the estimates and contingencies. Interim changes in estimates are applied prospectively within annual periods. Certain accounting estimates, including those concerning revenue recognition and accounts receivable, impairments of long-lived assets, accounting for income taxes, quarterly variable compensation accruals, purchase accounting valuation estimates, fair value estimates and stock-based compensation are considered to be critical to evaluating and understanding our financial results because they involve inherently uncertain matters and their application requires the most difficult and complex judgments and estimates.

Revenue recognition and accounts receivable. There are significant estimating risks associated with the amount of revenue that we recognize in a given reporting period. Payment rates are often subject to significant uncertainties related to wide variations in the coverage terms of the commercial healthcare plans under which we receive payments. In addition, ongoing insurance coverage changes, geographic coverage differences, differing interpretations of contract coverage, and other payor issues complicate the billing and collection process. Revenue recognition uncertainties inherent in our operations are addressed in AICPA Statement of Position (SOP) No. 00-1. As addressed in SOP No. 00-1, net revenue recognition and allowances for uncollectible billings require the use of estimates of the amounts that will ultimately be realized considering, among other items, retroactive adjustments that may be associated with regulatory reviews, audits, billing reviews and other matters.

Revenues associated with Medicare and Medicaid programs are recognized based on a) the payment rates that are established by statute or regulation for the portion of the payment rates paid by the government payor (e.g., 80% for Medicare patients) and b) for the portion not paid by the primary government payor, the estimated amounts that will ultimately be collectible from other government programs paying secondary coverage (e.g., Medicaid secondary coverage), the patient's commercial health plan secondary coverage, or the patient.

Commercial healthcare plans, including contracted managed-care payors, are billed at our usual and customary rates, however, revenue is recognized based on estimated net realizable revenue for the services provided. Net realizable revenue is estimated based on contractual terms for the patients under healthcare plans with which we have formal agreements, non-contracted healthcare plan coverage terms if known, estimated secondary collections, historical collection experience, historical trends of refunds and payor payment adjustments (retractions), inefficiencies in our billing and collection processes that can result in denied claims for payments, slow down in collections, a reduction in the amounts that we expect to collect and regulatory compliance issues. Determining applicable primary and secondary coverage for our more than 112,000 patients at any point in time, together with the changes in patient coverages that occur each month, requires complex, resource-intensive processes. Collections, refunds and payor retractions typically continue to occur for up to three years or longer after services are provided.

We generally expect our range of dialysis and related lab services revenues estimating risk to be within 1% of its revenue, which can represent as much as 6% of operating income. Changes in estimates are reflected in the then-current financial statements based on on-going actual experience trends, or subsequent settlements and realizations depending on the nature and predictability of the estimates and contingencies. Changes in revenue estimates for prior periods are separately disclosed and reported if material to the current reporting period and longer term trend analyses, and have not been significant.

Lab service revenues for current period dates of services are recognized at the estimated net realizable amounts to be received.

Impairments of long-lived assets. We account for impairments of long-lived assets, which include property and equipment, investments in third-party dialysis businesses, amortizable intangible assets and goodwill, in accordance with the provisions of applicable accounting guidance. Impairment reviews are performed at least annually and whenever a change in condition occurs which indicates that the carrying amounts of assets may not be recoverable.

Such changes include changes in our business strategies and plans, changes in the quality or structure of our relationships with our partners and deteriorating operating performance of individual dialysis centers or other operations. We use a variety of factors to assess the realizable value of assets depending on their nature and use. Such assessments are primarily based upon the sum of expected future undiscounted net cash flows over the expected period the asset will be utilized, as well as market values and conditions. The computation of expected future undiscounted net cash flows can be complex and involves a number of subjective assumptions. Any changes in these factors or assumptions could impact the assessed value of an asset and result in an impairment charge equal to the amount by which its carrying value exceeds its actual or estimated fair value.

Accounting for income taxes. We estimate our income tax provision to recognize our tax expense for the current year, and our deferred tax liabilities and assets for future tax consequences of events that have been recognized in our financial statements, measured using enacted tax rates and laws expected to apply in the periods when the deferred tax liabilities or assets are expected to be realized. In accordance with Financial Accounting Standards Board Interpretation 48 (FIN 48) *Accounting for Income Tax Uncertainties*, which went effective January 1, 2007, we assess our tax positions on a more-likely-than-not criteria and also determine the actual amount of benefit to recognize in the financial statements. Deferred tax assets are assessed based upon the likelihood of recoverability from future taxable income and, to the extent that recovery is not likely, a valuation allowance is established. The allowance is regularly reviewed and updated for changes in circumstances that would cause a change in judgment about the realizability of the related deferred tax assets. These calculations and assessments involve complex estimates and judgments because the ultimate tax outcome can be uncertain and future events unpredictable.

Variable compensation accruals. We estimate variable compensation accruals quarterly based upon the annual amounts expected to be earned and paid out resulting from the achievement of certain teammate-specific and/or corporate financial and operating goals. Our estimates, which include compensation incentives for bonuses, and other awards, are updated periodically based on changes in our economic condition or cash flows that could ultimately impact the actual final award. Actual results reflected in each fiscal quarter may vary due to the subjectivity involved in anticipating fulfillment of specific and/or corporate goals, as well as the final determination and approval of amounts by our Board of Directors.

Purchase accounting valuation estimates. We make various assumptions and estimates regarding the valuation of tangible and intangible assets, liabilities and contractual as well as non-contractual contingencies associated with our acquisitions. These assumptions can have a material effect on our balance sheet valuations and the related amount of depreciation and amortization expense that will be recognized in the future. Long-lived tangible and intangible assets are subject to our regular ongoing impairment assessments.

Fair value estimates. We measure the fair value of certain assets, liabilities and commitments in accordance with SFAS No. 157 *Fair Value Measurements*. Under SFAS No. 157, fair value is defined and is measured based upon certain valuation techniques that include inputs and assumptions that market participants would use in pricing assets, liabilities and commitments. We have measured the fair values of our applicable assets, liabilities and commitments based upon certain market inputs and assumptions that are either observable or unobservable in determining fair values and have also classified these assets, liabilities and commitments into the appropriate fair value hierarchy levels as defined in SFAS No. 157. The fair value of our investments held for sale are based upon quoted market prices and the fair value of our swap agreements are based upon valuation models and a variety of techniques as reported by various broker dealers that are based upon relevant observable market inputs such as current interest rates, forward yield curves, and other credit and liquidity market

conditions. For our put provisions we have estimated the fair values of the interests subject to these commitments based upon either a predetermined multiple of earnings, or the higher of a liquidation value or an average multiple of earnings determined by historical earnings, patient mix and other performance indicators, as well as other factors. The estimate of the fair values of the interests subject to these put provisions involves significant judgments and assumptions and may not be indicative of the actual values at which these obligations may ultimately be settled in the future, which could vary significantly from our current estimates. The estimated fair values of the interests subject to these put provisions can also fluctuate and the implicit multiple of earnings at which these obligations may be settled will vary depending upon market conditions including potential purchasers' access to the credit and capital markets, which can impact the level of competition for dialysis and non-dialysis related businesses, the economic performance of these businesses and the restricted marketability of the third-party owners' interests.

Stock-based compensation. We account for stock-based awards to employees and directors in accordance with the provisions of SFAS No. 123(R) *Share-Based Payments*. Under SFAS No. 123(R), stock-based compensation is recognized during a period based on the estimated grant-date fair value of the portion of the stock-based award vesting during that period, adjusted for expected forfeitures. Stock-based compensation recognized in our consolidated financial statements for the years ended December 31, 2008, 2007 and 2006 include compensation costs for stock-based awards granted prior to, but not fully vested as of December 31, 2005, and stock-based awards granted thereafter. We estimate the grant-date fair value of stock awards using complex option pricing models that rely heavily on estimates from us about uncertain future events, including the expected term of the awards, the expected future volatility of our stock price, and expected future risk-free interest rates.

Significant new accounting standards

On January 1, 2009 we adopted SFAS No. 141(R) *Business Combinations*, which replaces SFAS No. 141 *Business Combinations*. This standard requires all business combinations to be accounted for under the acquisition method (previously referred to as the purchase method). Under the acquisition method, the acquirer recognizes the assets acquired, the liabilities assumed, contractual contingencies, as well as any noncontrolling interest in the acquiree at their fair values at the acquisition date. Noncontractual contingencies are recognized at the acquisition date at their fair values only if it is more likely than not that they meet the definition of an asset or a liability in FASB Concepts Statement No. 6 *Elements of Financial Statements*. Transaction costs are excluded from the acquisition cost and will be expensed as incurred. Any contingent consideration included by the acquirer as part of the purchase price must also be measured at fair value at the acquisition date and will be classified as either equity or a liability. This standard also requires a company that obtains control but acquires less than 100% of an acquiree to record 100% of the fair value of the acquiree assets, liabilities, and noncontrolling interests at the acquisition date. The adoption of this standard will not have a material impact on our consolidated financial statements.

On January 1, 2009 we adopted SFAS No. 160 *Noncontrolling Interests in Consolidated Financial Statements*, which amends Accounting Research Bulletin, No. 51 *Consolidated Financial Statements*. This standard requires noncontrolling interests to be treated as a separate component of equity, but apart from the parent's equity, and not as a liability or other item outside of equity. This standard also specifies that consolidated net income attributable to the parent and to the noncontrolling interest be clearly identified and presented on the face of the consolidated statement of income, and that changes in the parent's ownership interest while it retains a controlling financial interest should be accounted for as equity transactions. This standard also expands disclosures in the financial statements to include a reconciliation of the beginning and ending balances of the equity attributable to the parent and the noncontrolling owners and a schedule showing the effects of changes in a parent's ownership interest in a subsidiary on the equity attributable to the parent. The adoption of this standard will not have a material impact on our consolidated financial statements; however, it will change the presentation of minority interests in our consolidated financial statements. Although, we are still in process of determining the appropriate classification and measurement of minority interests according to SEC Topic No. 98 *Classification and Measurement of Redeemable Securities*.

On January 1, 2009 we adopted SFAS No. 161 *Disclosures about Derivative Instruments and Hedging Activities*, which amends SFAS No. 133 *Accounting for Derivative Instruments and Hedging Activities*. This standard requires enhanced disclosures about an entity's derivative and hedging activities. Entities will be required to provide additional disclosures about (a) how and why an entity uses derivative instruments, (b) how derivative instruments and related hedged items are accounted for under SFAS No. 133, and (c) how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. This standard encourages but does not require comparative disclosures for earlier periods at the initial adoption. The adoption of this standard will not have a material impact on our consolidated financial statements.

On January 1, 2008, we adopted SFAS No. 157 *Fair Value Measurements* except for the nonfinancial assets and liabilities that are subject to a one-year deferral allowed by FASB Staff Position (FSP) FAS157-2 *Effective Date of FASB Statement No. 157*. This standard establishes a framework for measuring fair value and also requires additional disclosures about fair value measurements. The standard applies to assets and liabilities that are carried at fair value on a recurring basis. On January 1, 2009 we adopted certain provisions of SFAS No 157 relating to nonfinancial assets and liabilities that are not recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). See note 22 to the consolidated financial statements for the impact of adopting this standard. The adoption of SFAS No. 157 relating to nonfinancial assets and liabilities will not have a material impact on our consolidated financial statements.

On January 1, 2008, we adopted SFAS No. 159 *Fair Value Option for Financial Assets and Financial Liabilities, including an amendment of SFAS No. 115*. This standard allows companies the alternative to measure certain financial assets and liabilities at fair value on an instrument-by-instrument basis that are currently not required to be measured at fair value. The standard is also designed to reduce the volatility in earnings caused by measuring related assets and liabilities differently and establishes presentation and disclosure requirements designed to facilitate comparisons between companies that choose different measurement attributes for similar types of assets and liabilities. The adoption of this standard did not have a material impact on our consolidated financial statements.

On January 1, 2007, we adopted the provisions of FASB Interpretation 48 (FIN 48) *Accounting for Income Tax Uncertainties*, which clarifies the accounting for uncertainty in income taxes recognized in financial statements in accordance with SFAS Statement No. 109 *Accounting for Income Taxes*. The Interpretation prescribes a recognition threshold of more-likely-than-not and a measurement attribute on all tax positions taken or expected to be taken in a tax return in order to be recognized in the financial statements. In making this assessment, a company must determine whether it is more-likely-than-not that a tax position will be sustained upon examination, including resolution of any related appeals or litigation processes, based solely on the technical merits of the position and must assume that the tax position will be examined by the appropriate taxing authority that would have full knowledge of all relevant information. Once the recognition threshold is met, the tax position is then measured to determine the actual amount of benefit to recognize in the financial statements. In addition, the recognition threshold of more-likely-than-not must continue to be met in each reporting period to support continued recognition of the tax benefit. Tax positions that previously failed to meet the more-likely-than-not recognition threshold should be recognized in the first financial reporting period in which that threshold is met. Previously recognized tax positions that no longer meet the more-likely-than-not recognition threshold should be derecognized in the financial reporting period in which that threshold is no longer met. See note 12 to the consolidated financial statements for the impact of adopting this interpretation.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk.

Interest rate sensitivity

The tables below provide information about our financial instruments that are sensitive to changes in interest rates. For our debt obligations the table presents principal repayments and current weighted average interest rates on our debt obligations as of December 31, 2008. The variable rates presented reflect the weighted average LIBOR rates in effect for all debt tranches plus margins in effect at the end of 2008 including the

economic effects of our swap agreements. Term loan A and revolving line of credit interest rate margins are subject to adjustment depending upon changes in certain of our financial ratios including a leverage ratio. The margins currently in effect at December 31, 2008 were 1.50%. For our interest rate swap agreements, the table below presents the notional amounts by contract maturity date and the related interest rate terms of the agreements (to pay fixed rates, and to receive LIBOR).

	Expected maturity date						Total	Fair Value	Average interest rate
	2009	2010	2011	2012	2013	Thereafter			
	(dollars in millions)								
Long-term debt:									
Fixed rate	\$ 3	\$ 1	\$ 1	\$ 1	\$901	\$853	\$ 1,760	\$ 1,668	6.88%
Variable rate	\$ 69	\$ 89	\$ 66	\$1,706	\$ 1	\$—	\$ 1,931	\$ 1,701	3.48%

	Notional amount	Contract maturity date					Pay fixed	Receive variable	Fair value
		2009	2010	2011	2012	2013			
		(dollars in millions)							
Swaps:									
Pay-fixed swaps	\$790	\$401	\$389	\$ —	\$—	\$—	3.08% to 4.70%	LIBOR	\$(21.9)

Our Senior Secured Credit Facilities, which include the term loan A and the term loan B, consist of various individual tranches that can range in maturity from one month to twelve months and each specific tranche bears interest at a LIBOR rate that is determined by the maturity of that specific tranche. LIBOR-based interest rates are reset as each specific tranche matures and can fluctuate significantly depending upon market conditions including the credit and capital markets. Any increase in the LIBOR-based interest rates on the unhedged portion of our Senior Secured Credit Facilities, which totaled approximately \$1.1 billion as of December 31, 2008 will have a negative impact on our overall earnings.

As of December 31, 2008, we maintained a total of nine interest rate swap agreements, with amortizing notional amounts totaling \$790 million. These agreements had the economic effect of modifying the LIBOR-based variable interest rate on an equivalent amount of our debt to fixed rates ranging from 3.08% to 4.70%, resulting in an overall weighted average effective interest rate of 5.54% on the hedged portion of our Senior Secured Credit Facilities, including the term loan B margin of 1.50%. The swap agreements expire in 2009 through 2010 and require quarterly interest payments. During 2008, we accrued net cash obligations of \$4.2 million from these swaps which is included in debt expense. As of December 31, 2008, the total fair value of these swaps was a liability of \$21.9 million. During 2008, we recorded \$10.4 million, net of tax, as a reduction to other comprehensive income for swap valuation losses, net of amounts reclassified into income.

As of December 31, 2008, the interest rates were economically fixed on approximately 41% of our variable rate debt and approximately 69% of our total debt.

As a result of the swap agreements, the overall weighted average effective interest rate on the Senior Secured Credit Facilities was 3.48%, based upon the current margins in effect of 1.50% as of December 31, 2008.

Our overall average effective interest rate during 2008 was 5.82%.

One means of assessing exposure to debt-related interest rate changes is a duration-based analysis that measures the potential loss in net income resulting from a hypothetical increase in interest rates of 100 basis points across all variable rate maturities (referred to as a “parallel shift in the yield curve”). Under this model, with all else constant, it is estimated that such an increase would have reduced net income by approximately \$7.1 million, \$5.5 million, and \$6.8 million, net of tax, for the years ended December 31, 2008, 2007, and 2006, respectively.

Exchange rate sensitivity

We are currently not exposed to any foreign currency exchange rate risk.

Item 8. Financial Statements and Supplementary Data.

See the Index to Financial Statements and Index to Financial Statement Schedules included at “Item 15. Exhibits, Financial Statement Schedules.”

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Management has established and maintains disclosure controls and procedures designed to ensure that information required to be disclosed in the reports that it files or submits pursuant to the Securities Exchange Act of 1934, as amended, or Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission’s rules and forms, and that such information is accumulated and communicated to our management including our Chief Executive Officer and Chief Financial Officer as appropriate to allow for timely decisions regarding required disclosures.

At the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures in accordance with the Exchange Act requirements. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are effective for timely identification and review of material information required to be included in our Exchange Act reports, including this report on Form 10-K. Management recognizes that these controls and procedures can provide only reasonable assurance of desired outcomes, and that estimates and judgments are still inherent in the process of maintaining effective controls and procedures.

There has not been any change in our internal control over financial reporting that was identified during the evaluation that occurred during the fourth fiscal quarter and that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information.

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

In 2002, we adopted a Corporate Governance Code of Ethics that applies to our principal executive officer, principal financial officer, principal accounting officer or controller, and to all of our financial accounting and legal professionals who are directly or indirectly involved in the preparation, reporting and fair presentation of our financial statements and Exchange Act Reports. The Code of Ethics is posted on our website, located at <http://www.davita.com>. We also maintain a Corporate Code of Conduct that applies to all of our employees, which is posted on our website.

Under our Corporate Governance Guidelines all Board Committees including the Audit Committee, Nominating and Governance Committee and the Compensation Committee, which are comprised solely of Independent Directors as defined within the listing standards of the New York Stock Exchange, have written charters that outline the committee's purpose, goals, membership requirements and responsibilities. These charters are regularly reviewed and updated as necessary by our Board of Directors. All Board Committee charters as well as the Corporate Governance Guidelines are posted on our website located at <http://www.davita.com>. This information is also available in print to any shareholders who request it.

On July 9, 2008, we submitted to the New York Stock Exchange a certification signed by our Chief Executive Officer that he was not aware of any violation by us of the NYSE corporate governance listing standards.

The other information required to be disclosed by this item will appear in, and is incorporated by reference from, the sections entitled "Proposal No. 1. Election of Directors", "Corporate Governance", and "Security Ownership of Certain Beneficial Owners and Management" included in our definitive proxy statement relating to our 2009 annual stockholder meeting.

Item 11. Executive Compensation.

The information required by this item will appear in, and is incorporated by reference from, the sections entitled "Executive Compensation" and "Compensation Committee Interlocks and Insider Participations" included in our definitive proxy statement relating to our 2009 annual stockholder meeting. The information required by Item 407(e)(5) of Regulation S-K will appear in and is incorporated by reference from the section entitled "Compensation Committee Report" included in our definitive proxy statement relating to our 2009 annual stockholder meeting; however, this information shall not be deemed to be "filed".

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The following table provides information about our common stock that may be issued upon the exercise of options, warrants and rights under all of our existing equity compensation plans and arrangements as of December 31, 2008, including the 1994 Equity Compensation Plan, the 1995 Equity Compensation Plan, the 1997 Equity Compensation Plan, the 1999 Equity Compensation Plan, the 1999 Non-Executive Officer and Non-Director Equity Compensation Plan, the Special Purpose Option Plan (RTC Plan), the 2002 Equity Compensation Plan and the Employee Stock Purchase Plan. The material terms of each of these plans and arrangements are described in Note 17 to the Consolidated Financial Statements. The 1999 Non-Executive Officer and Non-Director Equity Compensation Plan was not required to be approved by our shareholders.

<u>Plan category</u>	<u>Number of shares to be issued upon exercise of outstanding options, warrants and rights</u>	<u>Weighted average exercise price of outstanding options, warrants and rights</u>	<u>Number of shares remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))</u>	<u>Total of shares reflected in columns (a) and (c)</u>
	<i>(a)</i>	<i>(b)</i>	<i>(c)</i>	<i>(d)</i>
Equity compensation plans approved by shareholders . . .	12,827,585	\$47.53	8,440,015	21,267,600
Equity compensation plans not requiring shareholder approval	122,974	\$28.08	311,816	434,790
Total	<u>12,950,559</u>	<u>\$47.34</u>	<u>8,751,831</u>	<u>21,702,390</u>

Other information required to be disclosed by Item 12 will appear in, and is incorporated by reference from, the section entitled “Security Ownership of Certain Beneficial Owners and Management” included in our definitive proxy statement relating to our 2009 annual stockholder meeting.

Item 13. Certain Relationships and Related Transactions and Director Independence.

The information required by this item will appear in, and is incorporated by reference from, the section entitled “Certain Relationships and Related Transactions” and the section entitled “Corporate Governance” included in our definitive proxy statement relating to our 2009 annual stockholder meeting.

Item 14. Principal Accounting Fees and Services.

The information required by this item will appear in, and is incorporated by reference from, the section entitled “Ratification of Appointment of Independent Registered Public Accounting Firm” included in our definitive proxy statement relating to our 2009 annual stockholder meeting.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(a) Documents filed as part of this Report:

(1) *Index to Financial Statements:*

	<u>Page</u>
Management’s Report on Internal Control Over Financial Reporting	F-1
Report of Independent Registered Public Accounting Firm	F-2
Report of Independent Registered Public Accounting Firm	F-3
Consolidated Statements of Income for the years ended December 31, 2008, 2007, and 2006	F-4
Consolidated Balance Sheets as of December 31, 2008, and 2007	F-5
Consolidated Statements of Cash Flow for the years ended December 31, 2008, 2007, and 2006	F-6
Consolidated Statements of Shareholders’ Equity and Comprehensive Income for the years ended December 31, 2008, 2007, and 2006	F-7
Notes to Consolidated Financial Statements	F-8

(2) *Index to Financial Statement Schedules:*

Report of Independent Registered Public Accounting Firm	S-1
Schedule II—Valuation and Qualifying Accounts	S-2

(3) *Exhibits:*

2.1	Stock Purchase Agreement dated as of December 6, 2004, among Gambro AB, Gambro, Inc. and DaVita Inc.(11)
2.2	Amended and Restated Asset Purchase Agreement effective as of July 28, 2005, by and among DaVita Inc., Gambro Healthcare, Inc. and Renal Advantage Inc., a Delaware corporation, formerly known as RenalAmerica, Inc.(14)
3.1	Amended and Restated Certificate of Incorporation of Total Renal Care Holdings, Inc., or TRCH, dated December 4, 1995.(1)
3.2	Certificate of Amendment of Certificate of Incorporation of TRCH, dated February 26, 1998.(2)
3.3	Certificate of Amendment of Certificate of Incorporation of DaVita Inc. (formerly Total Renal Care Holdings, Inc.), dated October 5, 2000.(4)
3.4	Certificate of Amendment of Amended and Restated Certificate of Incorporation of DaVita Inc., as amended dated May 30, 2007.(26)
3.5	Amended and Restated Bylaws for DaVita Inc. dated as of March 2, 2007.(29)
4.1	Indenture for the 6 ⁵ / ₈ % Senior Notes due 2013 dated as of March 22, 2005.(3)
4.2	Indenture for the 7 ¹ / ₄ % Senior Subordinated Notes due 2015 dated as of March 22, 2005.(3)

- 4.3 Supplemental Indenture, dated October 5, 2005, by and among DaVita Inc., the Guarantors, the persons named as Additional Guarantors and Senior Trustee.(13)
- 4.4 Supplemental Indenture, dated October 5, 2005, by and among DaVita Inc., the Guarantors, the persons named as Additional Guarantors and Senior Subordinated Trustee.(13)
- 4.5 Rights Agreement, dated as of November 14, 2002, between DaVita Inc. and the Bank of New York, as Rights Agent.(24)
- 4.6 Second Supplemental Indenture (Senior), dated February 9, 2007, by and among DaVita Inc., the Guarantors, the persons named as Additional Guarantors and The Bank of New York Trust Company, N.A., as Trustee.(25)
- 4.7 Second Supplemental Indenture (Senior Subordinated), dated February 9, 2007, by and among DaVita Inc., the Guarantors, the persons named as Additional Guarantors and the Bank of New York Trust Company, N.A., as Trustee.(25)
- 4.8 Registration Rights Agreement for the 6^{5/8}% Senior Notes due 2013 dated as of February 23, 2007.(30)
- 10.1 Employment Agreement, dated as of July 19, 2000, by and between TRCH and Charles J. McAllister.(4)*
- 10.2 Employment Agreement, dated as of June 15, 2000, by and between DaVita Inc. and Joseph Mello.(6)*
- 10.3 Employment Agreement, effective as of August 16, 2004, by and between DaVita Inc. and Tom Usilton.(9)*
- 10.4 Amendment to Mr. Usilton's Employment Agreement, dated February 12, 2007.(28)*
- 10.5 Amendment to Mr. Usilton's Employment Agreement, effective December 12, 2008.✓*
- 10.6 Employment Agreement, effective as of November 18, 2004, by and between DaVita Inc. and Joseph Schohl.(16)*
- 10.7 Amendment to Mr. Schohl's Employment Agreement, effective December 30, 2008.✓*
- 10.8 Employment Agreement, dated as of October 31, 2005, effective October 24, 2005, by and between DaVita Inc. and Dennis Kogod.(15)*
- 10.9 Amendment to Mr. Kogod's Employment Agreement, effective December 12, 2008.✓*
- 10.10 Employment Agreement, effective November 2, 2005, by and between DaVita Inc. and Christopher J. Riopelle.(15)*
- 10.11 Employment Agreement, effective September 22, 2005, by and between DaVita Inc. and James Hilger.(18)*
- 10.12 Amendment to Mr. Hilger's Employment Agreement, effective December 12, 2008.✓*
- 10.13 Offer of Employment Letter to Mary Kowenhoven dated February 15, 2007.(25)*
- 10.14 Employment Agreement, entered into effective July 16, 2007, by and between DaVita Inc. and Patricia Jones.(27)*
- 10.15 Employment Agreement effective February 13, 2008, by and between DaVita Inc. and Richard K. Whitney.(33)*
- 10.16 Amendment to Employment Agreement effective February 21, 2008, by and between DaVita Inc. and Patricia Jones.(33)*
- 10.17 Employment Agreement between the Company and Kent J. Thiry effective July 25, 2008.(34)*
- 10.18 Employment Agreement between the Company and Allen Nissenon effective August 1, 2008.(35)*
- 10.19 Employment Agreement between the Company and David Shapiro, effective March 3, 2008.✓*

- 10.20 Amendment to Mr. Shapiro’s Employment Agreement, effective December 4, 2008.✓*
- 10.21 Memorandum relating to Bonus Structure for Charles J. McAllister.(16)*
- 10.22 Memorandum relating to Bonus Structure for Thomas O. Usilton.(13)*
- 10.23 Memorandum relating to Bonus Structure for Joseph Schohl.(13)*
- 10.24 Amended Director Compensation Philosophy and Plan.(22)*
- 10.25 Form of Indemnity Agreement.(23)*
- 10.26 Form of Indemnity Agreement.(16)*
- 10.27 First Amended and Restated Executive Incentive Plan.(12)*
- 10.28 Second Amended and Restated Executive Incentive Plan.✓*
- 10.29 Executive Retirement Plan.✓*
- 10.30 Post-Retirement Deferred Compensation Arrangement.(16)*
- 10.31 Amendment No. 1 to Post Retirement Deferred Compensation Arrangement.✓*
- 10.32 DaVita Voluntary Deferral Plan.(13)*
- 10.33 Deferred Bonus Plan.(36)
- 10.34 Deferred Bonus Plan (Prosperity Plan).(36)
- 10.35 Amendment No. 1 to Deferred Bonus Plan (Prosperity Plan).✓*
- 10.36 Amended and Restated Employee Stock Purchase Plan.(31)*
- 10.37 Severance Plan.(32)*
- 10.38 Amended and Restated Severance Plan.✓*
- 10.39 Change in Control Bonus Program.(20)*
- 10.40 Amended and Restated Change in Control Bonus Program.✓*
- 10.41 Second Amended and Restated 1994 Equity Compensation Plan.(7)*
- 10.42 First Amended and Restated 1995 Equity Compensation Plan.(7)*
- 10.43 First Amended and Restated 1997 Equity Compensation Plan.(7)*
- 10.44 First Amended and Restated Special Purpose Option Plan.(7)*
- 10.45 Amended and Restated 1999 Equity Compensation Plan.(8)*
- 10.46 First Amended and Restated Total Renal Care Holdings, Inc. 1999 Non-Executive Officer and Non-Director Equity Compensation Plan.(5)
- 10.47 Amended and Restated 2002 Equity Compensation Plan.(12)*
- 10.48 Amended and Restated 2002 Equity Compensation Plan.(22)*
- 10.49 Amended and Restated 2002 Equity Compensation Plan.(31)*
- 10.50 Amended and Restated 2002 Equity Compensation Plan.✓*
- 10.51 Form of Non-Qualified Stock Option Agreement for stock options grants to employees under the Company’s 2002 Equity Compensation Plan.(9)*
- 10.52 Form of Restricted Stock Unit Agreement for restricted stock unit grants to employees under the Company’s 2002 Equity Compensation Plan.(9)*
- 10.53 Form of Stock Appreciation Rights Agreement—Employee (DaVita Inc. 2002 Equity Compensation Plan).(19)*
- 10.54 Form of Non-Qualified Stock Option Agreement—Employee (DaVita Inc. 2002 Equity Compensation Plan).(19)*

- 10.55 Form of Restricted Stock Units Agreement—Employee (DaVita Inc. 2002 Equity Compensation Plan).(19)*
- 10.56 Form of Non-Qualified Stock Option Agreement—Employee (DaVita Inc. 2002 Equity Compensation Plan).(21)*
- 10.57 Form of Non-Qualified Stock Option Agreement—Employee (DaVita Inc. 1999 Non-Executive Officer and Non-Director Equity Compensation Plan).(21)*
- 10.58 Form of Restricted Stock Units Agreement—Employee (DaVita Inc. 2002 Equity Compensation Plan).(21)*
- 10.59 Form of Stock Appreciation Rights Agreement – Employee (DaVita Inc. 2002 Equity Compensation Plan).(21)*
- 10.60 Form of Stock Appreciation Rights Agreement – Board (DaVita Inc. 2002 Equity Compensation Plan).(35)*
- 10.61 Form of Restricted Stock Units Agreement – Board (DaVita Inc. 2002 Equity Compensation Plan).(35)*
- 10.62 Form of Non-qualified Stock Option Agreement - Board (DaVita Inc. 2002 Equity Compensation Plan).(35)*
- 10.63 Form of Restricted Stock Unit Agreement – Employee (DaVita Inc. 2002 Equity Compensation Plan.✓)*
- 10.64 Amendment to Equity Award Agreement effective March 1, 2008, by and between DaVita Inc. and Patricia Jones.(33)*
- 10.65 Non-management Director Compensation Philosophy and Plan.(33)*
- 10.66 Credit Agreement, dated as of October 5, 2005, among DaVita Inc., the Guarantors party thereto, the Lenders party thereto, Bank of America, N.A., Wachovia Bank, National Association, Bear Stearns Corporate Lending Inc., The Bank of New York, The Bank of Nova Scotia, The Royal Bank of Scotland plc, WestLB AG, New York Branch as Co-Docummentation Agents, Credit Suisse, Cayman Islands Branch, as Syndication Agent, JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent, JPMorgan Securities Inc., as Sole Lead Arranger and Bookrunner and Credit Suisse, Cayman Islands Branch, as Co-Arranger.(13)
- 10.67 Credit Agreement, dated as of October 5, 2005, as Amended and Restated as of February 23, 2007, by and among DaVita Inc., the Guarantors party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A.(30)
- 10.68 Amendment Agreement, dated February 23, 2007, by and among DaVita Inc., the Guarantors party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A.(30)
- 10.69 Security Agreement, dated as of October 5, 2005, by DaVita Inc., the Guarantors party thereto and JPMorgan Chase Bank, N.A., as Collateral Agent.(13)
- 10.70 Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and Gambro Healthcare, Inc. effective as of December 1, 2004.(13)
- 10.71 Alliance and Product Supply Agreement, dated as of October 5, 2005, among Gambro Renal Products, Inc., DaVita Inc. and Gambro AB.(13)**
- 10.72 Amended and Restated Alliance and Product Supply Agreement, dated as of August 25, 2006, among Gambro Renal Products, Inc., DaVita Inc. and Gambro AB.(20)**
- 10.73 Letter dated March 19, 2007 from Willard W. Brittain, Jr. to Peter T. Grauer, Lead Independent Director of the Company.(25)
- 10.74 Amended and Restated Agreement dated December 2, 2004, between Amgen USA Inc. and DaVita Inc.(16)**

- 10.75 Dialysis Organization Agreement effective February 3, 2006 between Amgen USA Inc. and DaVita Inc.(17)**
- 10.76 Dialysis Organization Agreement between DaVita Inc. and Amgen USA Inc. dated December 20, 2007.(36)**
- 12.1 Computation of Ratio of Earnings to Fixed Charges.✓
- 14.1 DaVita Inc. Corporate Governance Code of Ethics.(10)
- 21.1 List of our subsidiaries.✓
- 23.1 Consent of KPMG LLP, independent registered public accounting firm.✓
- 24.1 Powers of Attorney with respect to DaVita. (Included on Page II-1).
- 31.1 Certification of the Chief Executive Officer, dated February 27, 2009, pursuant to Rule 13a-14(a) or 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.✓
- 31.2 Certification of the Chief Financial Officer, dated February 27, 2009, pursuant to Rule 13a-14(a) or 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.✓
- 32.1 Certification of the Chief Executive Officer, dated February 27, 2009, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.✓
- 32.2 Certification of the Chief Financial Officer, dated February 27, 2009, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.✓

✓ Included in this filing.

* Management contract or executive compensation plan or arrangement.

** Portions of this exhibit are subject to a request for confidential treatment and have been redacted and filed separately with the SEC.

- (1) Filed on March 18, 1996 as an exhibit to the Company's Transitional Report on Form 10-K for the transition period from June 1, 1995 to December 31, 1995.
- (2) Filed on March 31, 1998 as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 1997.
- (3) Filed on March 25, 2005 as an exhibit to the Company's Current Report on Form 8-K.
- (4) Filed on March 20, 2001 as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2000.
- (5) Filed on February 2, 2003 as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2002.
- (6) Filed on August 15, 2001 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2001.
- (7) Filed on March 29, 2000 as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 1999.
- (8) Filed on April 27, 2001 as an exhibit to the Definitive Proxy Statement for our 2001 Annual Meeting of Stockholders.
- (9) Filed on November 8, 2004 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2004.
- (10) Filed on February 27, 2004 as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2003.
- (11) Filed on December 8, 2004 as an exhibit to the Company's Current Report on Form 8-K.
- (12) Filed on May 4, 2005 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2005.
- (13) Filed on November 8, 2005 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2005.
- (14) Filed on October 11, 2005 as an exhibit to the Company's Current Report on Form 8-K.
- (15) Filed on November 4, 2005 as an exhibit to the Company's Current Report on Form 8-K.

- (16) Filed on March 3, 2005 as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2004.
- (17) Filed on May 8, 2006 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2006.
- (18) Filed on August 7, 2006 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ending June 30, 2006.
- (19) Filed on July 6, 2006 as an exhibit to the Company's Current Report on Form 8-K.
- (20) Filed on November 3, 2006 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2006.
- (21) Filed on October 18, 2006 as an exhibit to the Company's Current Report on Form 8-K.
- (22) Filed on July 31, 2006 as an exhibit to the Company's Current Report on Form 8-K.
- (23) Filed on December 20, 2006 as an exhibit to the Company's Current Report on Form 8-K.
- (24) Filed on November 19, 2002 as an exhibit to the Company's Current Report on Form 8-K.
- (25) Filed on May 3, 2007 as an exhibit to the Company's Quarterly Report as Form 10-Q for the quarter ended March 31, 2007.
- (26) Filed on August 6, 2007 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2007.
- (27) Filed on November 7, 2007 as an exhibit to the Company's Quarterly Report on Form 10-Q for the third quarter ended September 30, 2007.
- (28) Filed on February 16, 2007 as an exhibit to the Company's Current Report on Form 8-K.
- (29) Filed on March 8, 2007 as an exhibit to the Company's Current Report on Form 8-K.
- (30) Filed on February 28, 2007 as an exhibit to the Company's Current Report on Form 8-K.
- (31) Filed on June 4, 2007 as an exhibit to the Company's Current Report on Form 8-K.
- (32) Filed on November 7, 2007 as an exhibit to the Company's Current Report on Form 8-K.
- (33) Filed on May 8, 2008 as an exhibit to the Company's Quarterly Report on Form 10-Q for the first quarter ended March 31, 2008.
- (34) Filed on July 31, 2008 as an exhibit to the Company's Current Report on Form 8-K.
- (35) Filed on November 6, 2008 as an exhibit to the Company's Quarterly Report on Form 10-Q for the third quarter ended September 30, 2008.
- (36) Filed on February 29, 2008 as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2007.

DAVITA INC.

MANAGEMENT'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Management is responsible for establishing and maintaining an adequate system of internal control over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles and which includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Company's assets that could have a material effect on the financial statements.

During the last fiscal year, the Company conducted an evaluation, under the oversight of the Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of the Company's internal control over financial reporting. This evaluation was completed based on the criteria established in the report titled "Internal Control—Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

Based upon our evaluation under the COSO framework, we have concluded that the Company's internal control over financial reporting was effective as of December 31, 2008.

The Company's independent registered public accounting firm, KPMG LLP, has issued an attestation report on the Company's internal control over financial reporting, which report is included in this Annual Report.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Shareholders
DaVita Inc.:

We have audited the accompanying consolidated balance sheets of DaVita Inc. and subsidiaries as of December 31, 2008 and 2007, and the related consolidated statements of income, shareholders' equity and comprehensive income, and cash flows for each of the years in the three-year period ended December 31, 2008. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of DaVita Inc. and subsidiaries as of December 31, 2008 and 2007 and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2008, in conformity with U.S. generally accepted accounting principles.

As discussed in Note 12 to the consolidated financial statements, DaVita Inc. and subsidiaries adopted Financial Accounting Standards Board Interpretation No. 48, Accounting for Income Tax Uncertainties, effective January 1, 2007.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of DaVita Inc.'s internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated February 27, 2009 expressed an unqualified opinion on the effectiveness of DaVita Inc.'s internal control over financial reporting.

/s/ KPMG LLP

Seattle, Washington
February 27, 2009

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Shareholders
DaVita Inc.:

We have audited DaVita Inc.'s internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). DaVita Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying "Management's Report on Internal Control Over Financial Reporting". Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, DaVita Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control—Integrated Framework* issued by COSO.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of DaVita Inc. and subsidiaries as of December 31, 2008 and 2007, and the related consolidated statements of income, shareholders' equity and comprehensive income, and cash flows for each of the years in the three-year period ended December 31, 2008, and our report dated February 27, 2009 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG LLP

Seattle, Washington
February 27, 2009

DAVITA INC.
CONSOLIDATED STATEMENTS OF INCOME
(dollars in thousands, except per share data)

	Year ended December 31,		
	2008	2007	2006
Net operating revenues	\$ 5,660,173	\$ 5,264,151	\$ 4,880,662
Operating expenses and charges:			
Patient care costs	3,920,487	3,590,344	3,390,351
General and administrative	508,240	491,236	453,516
Depreciation and amortization	216,917	193,470	173,295
Provision for uncollectible accounts	146,229	136,682	126,203
Minority interests and equity income, net	46,535	45,485	35,833
Valuation gain on alliance and product supply agreement	—	(55,275)	(37,968)
Total operating expenses and charges	4,838,408	4,401,942	4,141,230
Operating income	821,765	862,209	739,432
Debt expense	(224,716)	(257,147)	(276,706)
Other income, net	12,411	22,460	13,033
Income from continuing operations before income taxes	609,460	627,522	475,759
Income tax expense	235,300	245,744	186,430
Income from continuing operations	374,160	381,778	289,329
Discontinued operations			
Gain on disposal of discontinued operations, net of tax	—	—	362
Net income	<u>\$ 374,160</u>	<u>\$ 381,778</u>	<u>\$ 289,691</u>
Earnings per share:			
Basic earnings per share from continuing operations	<u>\$ 3.56</u>	<u>\$ 3.61</u>	<u>\$ 2.79</u>
Basic earnings per share	<u>\$ 3.56</u>	<u>\$ 3.61</u>	<u>\$ 2.80</u>
Diluted earnings per share from continuing operations	<u>\$ 3.53</u>	<u>\$ 3.55</u>	<u>\$ 2.73</u>
Diluted earnings per share	<u>\$ 3.53</u>	<u>\$ 3.55</u>	<u>\$ 2.74</u>
Weighted average shares for earnings per share:			
Basic	<u>105,149,448</u>	<u>105,893,052</u>	<u>103,520,254</u>
Diluted	<u>105,939,725</u>	<u>107,418,240</u>	<u>105,793,246</u>

See notes to consolidated financial statements.

DAVITA INC.
CONSOLIDATED BALANCE SHEETS
(dollars in thousands, except per share data)

	December 31,	
	2008	2007
ASSETS		
Cash and cash equivalents	\$ 410,881	\$ 447,046
Short-term investments	35,532	40,278
Accounts receivable, less allowance of \$211,222 and \$195,953	1,075,457	927,949
Inventories	84,174	80,173
Other receivables	239,165	198,744
Other current assets	33,761	34,482
Income tax receivable	32,138	—
Deferred income taxes	217,196	247,578
Total current assets	2,128,304	1,976,250
Property and equipment, net	1,048,075	939,326
Amortizable intangibles, net	160,521	183,042
Investments in third-party dialysis businesses	19,274	19,446
Long-term investments	5,656	22,562
Other long-term assets	47,330	35,401
Goodwill	3,876,931	3,767,933
	\$7,286,091	\$6,943,960
LIABILITIES AND SHAREHOLDERS' EQUITY		
Accounts payable	\$ 282,883	\$ 225,461
Other liabilities	495,239	486,151
Accrued compensation and benefits	312,216	334,961
Current portion of long-term debt	72,725	23,431
Income taxes payable	—	16,492
Total current liabilities	1,163,063	1,086,496
Long-term debt	3,622,421	3,683,887
Other long-term liabilities	101,442	83,448
Alliance and product supply agreement, net	35,977	41,307
Deferred income taxes	244,884	166,055
Minority interests (fair value subject to potential put obligations—\$291,000 and \$330,000)	165,846	150,517
Commitments and contingencies		
Shareholders' equity:		
Preferred stock (\$0.001 par value, 5,000,000 shares authorized; none issued) . . .		
Common stock (\$0.001 par value, 450,000,000 shares authorized; 134,862,283 shares issued; 103,753,673 and 107,130,127 shares outstanding)	135	135
Additional paid-in capital	769,069	707,080
Retained earnings	1,889,450	1,515,290
Treasury stock, at cost (31,108,610 and 27,732,156 shares)	(691,857)	(487,744)
Accumulated other comprehensive loss	(14,339)	(2,511)
Total shareholders' equity	1,952,458	1,732,250
	\$7,286,091	\$6,943,960

See notes to consolidated financial statements.

DAVITA INC.
CONSOLIDATED STATEMENTS OF CASH FLOW
(dollars in thousands)

	Year ended December 31,		
	2008	2007	2006
Cash flows from operating activities:			
Net income	\$ 374,160	\$ 381,778	\$ 289,691
Adjustments to reconcile net income to cash provided by operating activities:			
Depreciation and amortization	216,917	193,470	173,295
Valuation gain on alliance and product supply agreement	—	(55,275)	(37,968)
Stock-based compensation expense	41,235	34,149	26,389
Tax benefits from stock award exercises	13,988	32,788	40,375
Excess tax benefits from stock award exercises	(8,013)	(25,541)	(37,251)
Deferred income taxes	94,912	18,601	2,342
Minority interests in income of consolidated subsidiaries	47,331	46,702	38,141
Distributions to minority interests	(57,770)	(48,029)	(32,271)
Equity investment income	(796)	(1,217)	(2,308)
Loss (gain) on disposal of discontinued operations and other dispositions	15,216	(2,825)	239
Non-cash debt expense and non-cash rent charges	11,794	12,713	27,736
Changes in operating assets and liabilities, net of effect of acquisitions and divestitures:			
Accounts receivable	(149,939)	15,911	(74,737)
Inventories	(2,715)	11,271	(18,587)
Other receivables and other current assets	(40,960)	(61,049)	(34,044)
Other long-term assets	(11,929)	(14,528)	(9,791)
Accounts payable	57,422	(9,216)	40,712
Accrued compensation and benefits	(31,602)	9,691	101,555
Other current liabilities	8,871	657	88,841
Income taxes	(30,258)	(12,779)	(67,329)
Other long-term liabilities	8,067	5,764	4,541
Net cash provided by operating activities	<u>555,931</u>	<u>533,036</u>	<u>519,571</u>
Cash flows from investing activities:			
Additions of property and equipment, net	(317,962)	(272,212)	(262,708)
Acquisitions and purchases of other ownership interests	(126,368)	(127,094)	(86,504)
Proceeds from discontinued operations and asset sales	530	12,289	22,179
Purchase of investments available-for-sale	(2,009)	(52,085)	(3,726)
Purchase of investments held-to-maturity	(21,048)	(23,061)	—
Proceeds from the sale of investments available-for-sale	21,291	32,274	3,030
Proceeds from maturities of investments held-to-maturity	21,355	4,795	—
Purchase of a noncontrolling ownership interest in an unconsolidated joint venture	—	(17,550)	—
Contributions from minority owners	30,316	18,463	21,263
Purchase of intangible assets	(65)	(2,291)	(5,597)
Net cash used in investing activities	<u>(393,960)</u>	<u>(426,472)</u>	<u>(312,063)</u>
Cash flows from financing activities:			
Borrowings	17,089,018	13,113,640	6,354,784
Payments on long-term debt	(17,102,569)	(13,160,942)	(6,761,743)
Deferred financing costs	(130)	(4,511)	(2)
Excess tax benefits from stock award exercises	8,013	25,541	37,251
Stock award exercises and other share issuances, net	40,247	62,902	40,593
Purchase of treasury stock	(232,715)	(6,350)	—
Net cash (used in) provided by financing activities	<u>(198,136)</u>	<u>30,280</u>	<u>(329,117)</u>
Net (decrease) increase in cash and cash equivalents	(36,165)	136,844	(121,609)
Cash and cash equivalents at beginning of year	447,046	310,202	431,811
Cash and cash equivalents at end of year	<u>\$ 410,881</u>	<u>\$ 447,046</u>	<u>\$ 310,202</u>

See notes to consolidated financial statements.

DAVITA INC.
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
AND
COMPREHENSIVE INCOME
(dollars and shares in thousands)

	Common stock		Additional paid-in capital	Retained earnings	Treasury stock		Accumulated other comprehensive (loss) income	Total
	Shares	Amount			Shares	Amount		
Balance at December 31, 2005	134,862	\$135	\$569,751	\$ 839,930	(32,927)	\$(574,013)	\$ 14,806	\$ 850,609
Comprehensive income:								
Net income				289,691				289,691
Unrealized gains on interest rate swaps, net of tax							7,862	7,862
Less reclassification of net swap realized gains into net income, net of tax							(9,671)	(9,671)
Total comprehensive income								287,882
Stock purchase shares issued			1,861		80	1,403		3,264
Stock unit shares issued			(1,860)		160	2,790		930
Stock option shares issued			(5,023)		2,461	42,900		37,877
Stock-based compensation expense			26,389					26,389
Excess tax benefits from stock awards exercised			38,973					38,973
Balance at December 31, 2006	134,862	\$135	\$630,091	\$1,129,621	(30,226)	\$(526,920)	\$ 12,997	\$1,245,924
Comprehensive income:								
Net income				381,778				381,778
Unrealized losses on interest rate swaps, net of tax							(7,169)	(7,169)
Less reclassification of net swap realized gains into net income, net of tax							(8,858)	(8,858)
Unrealized gains on investments, net of tax							4,211	4,211
Less reclassification of net investment realized gains into net income, net of tax							(3,692)	(3,692)
Total comprehensive income								366,270
Cumulative effect of change in accounting principle SFAS Interpretation No (FIN) 48				3,891				3,891
Stock purchase shares issued			3,831		124	2,160		5,991
Stock unit shares issued			(1,848)		120	2,098		250
Stock options and SSARs exercised			13,429		2,361	41,268		54,697
Stock-based compensation expense			34,149					34,149
Excess tax benefits from stock awards exercised			27,428					27,428
Purchase of treasury stock					(111)	(6,350)		(6,350)
Balance at December 31, 2007	134,862	\$135	\$707,080	\$1,515,290	(27,732)	\$(487,744)	\$ (2,511)	\$1,732,250
Comprehensive income:								
Net income				374,160				374,160
Unrealized losses on interest rate swaps, net of tax							(12,947)	(12,947)
Less reclassification of net swap realized losses into net income, net of tax							2,590	2,590
Unrealized losses on investments, net of tax							(1,174)	(1,174)
Less reclassification of net investment realized gains into net income, net of tax							(297)	(297)
Total comprehensive income								362,332
Stock purchase shares issued			2,981		98	1,730		4,711
Stock unit shares issued			(2,670)		181	3,544		874
Stock options and SSARs exercised			12,278		1,133	23,328		35,606
Stock-based compensation expense			41,235					41,235
Excess tax benefits from stock awards exercised			8,165					8,165
Purchase of treasury stock					(4,789)	(232,715)		(232,715)
Balance at December 31, 2008	134,862	\$135	\$769,069	\$1,889,450	(31,109)	\$(691,857)	\$(14,339)	\$1,952,458

See notes to consolidated financial statements.

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (dollars in thousands, except per share data)

1. Organization and summary of significant accounting policies

Organization

DaVita Inc. principally operates kidney dialysis centers and provides related lab services primarily in dialysis centers and in contracted hospitals across the United States. The Company also operates other ancillary services and strategic initiatives which relate primarily to our core business of providing renal care services. As of December 31, 2008, the Company operated or provided administrative services to 1,449 outpatient dialysis centers located in 43 states and the District of Columbia, serving approximately 112,000 patients. The Company's dialysis and related lab services business qualifies as a separately reportable segment under Statement of Financial Accounting Standards (SFAS) No. 131 and all other ancillary services and strategic initiatives have been combined and disclosed in the other segments category.

Basis of presentation

These consolidated financial statements and accompanying notes are prepared in accordance with United States generally accepted accounting principles. The financial statements include DaVita and its subsidiaries, partnerships and other entities in which it maintains a 100%, majority voting, or other controlling financial interest (collectively, the Company). All significant intercompany transactions and balances have been eliminated. Non-consolidated equity investments are recorded under the equity or cost method of accounting based upon whether the Company has significant influence over the investee. Prior year balances and amounts have been classified to conform to the current year presentation.

Use of estimates

The preparation of financial statements in conformity with United States generally accepted accounting principles requires the use of estimates and assumptions that affect the reported amounts of revenues, expenses, assets, liabilities and contingencies. Although actual results in subsequent periods will differ from these estimates, such estimates are developed based on the best information available to management and management's best judgments at the time made. All significant assumptions and estimates underlying the amounts reported in the financial statements and accompanying notes are regularly reviewed and updated. Changes in estimates are reflected in the financial statements based upon on-going actual experience trends, or subsequent settlements and realizations depending on the nature and predictability of the estimates and contingencies. Interim changes in estimates related to annual operating costs are applied prospectively within annual periods.

The most significant assumptions and estimates underlying these financial statements and accompanying notes involve revenue recognition and provisions for uncollectible accounts, impairments and valuation adjustments, accounting for income taxes, quarterly variable compensation accruals, purchase accounting valuation estimates, fair value estimates and stock-based compensation. Specific estimating risks and contingencies are further addressed within these notes to the consolidated financial statements.

Net operating revenues and accounts receivable

Revenues associated with Medicare and Medicaid programs are recognized based on: (a) the payment rates that are established by statute or regulation for the portion of the payment rates paid by the government payor (e.g., 80% for Medicare patients) and (b) for the portion not paid by the primary government payor, estimates of the amounts ultimately collectible from other government programs paying secondary coverage (e.g., Medicaid secondary coverage), the patient's commercial health plan secondary coverage, or the patient. Revenues

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

associated with commercial health plans are estimated based on contractual terms for the patients under healthcare plans with which we have formal agreements, non-contracted health plan coverage terms if known, estimated secondary collections, historical collection experience, historical trends of refunds and payor payment adjustments (retractions), inefficiencies in our billing and collection processes that can result in denied claims for payments, and regulatory compliance issues.

Operating revenues are recognized in the period services are provided. Revenues consist primarily of payments from Medicare, Medicaid and commercial health plans for dialysis and ancillary services provided to patients. A usual and customary fee schedule is maintained for our dialysis treatment and other patient services; however, actual collectible revenue is normally recognized at a discount from the fee schedule.

Commercial revenue recognition involves substantial estimating risks. With many larger, commercial insurers the Company has several different contracts and payment arrangements, and these contracts often include only a subset of the Company's centers. It is often not possible to determine which contract, if any, should be applied prior to billing. In addition, for services provided by non-contracted centers, final collection may require specific negotiation of a payment amount, typically at a significant discount from the Company's usual and customary rates.

Services covered by Medicare and Medicaid are less subject to estimating risk. Both Medicare and Medicaid rates use prospective payment methods established in advance with definitive terms. Medicare payments for bad debt claims are subject to individual center profitability, as established by cost reports, and require evidence of collection efforts. As a result, billing and collection of Medicare bad debt claims are often delayed significantly, and final payment is subject to audit.

Medicaid payments, when Medicaid coverage is secondary, can also be difficult to estimate. For many states, Medicaid payment terms and methods differ from Medicare, and may prevent accurate estimation of individual payment amounts prior to billing.

Revenue recognition uncertainties inherent in the Company's operations are addressed in AICPA Statement of Position (SOP) No. 00-1 *Auditing Health Care Third-Party Revenues and Related Receivables*. As addressed in SOP No. 00-1, net revenue recognition and allowances for uncollectible billings require the use of estimates of the amounts that will ultimately be realized considering, among other items, retroactive adjustments that may be associated with regulatory reviews, audits, billing reviews and other matters.

The Company's range of revenue estimating risk for the dialysis and related lab services segment is generally expected to be within 1% of its revenue. Changes in revenue estimates for prior periods are separately disclosed, if material.

Management and administrative support services are provided to dialysis centers and physician practices and clinics that the Company does not own or in which the Company does not maintain a controlling ownership interest. The management fees are principally determined as a percentage of the managed operations' revenues or cash collections and in some cases an additional component based upon a percentage of operating income. Management fees are included in net operating revenues as earned, and represent less than 1% of total consolidated operating revenues.

Other income, net

Other income includes interest income on cash investments and other non-operating gains and losses from investment transactions.

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

Cash and cash equivalents

Cash equivalents are highly liquid investments with maturities of three months or less at date of purchase.

Inventories

Inventories are stated at the lower of cost (first-in, first-out) or market and consist principally of pharmaceuticals and dialysis-related supplies. Rebates related to inventory purchases are recorded when earned and are based on certain achievement factors such as process improvements, data submission and some combination of these factors.

Property and equipment

Property and equipment is stated at cost less accumulated depreciation and amortization and is further reduced by any impairments. Maintenance and repairs are charged to expense as incurred. Depreciation and amortization expenses are computed using the straight-line method over the useful lives of the assets estimated as follows: buildings, 20 to 40 years; leasehold improvements, the shorter of their economic useful life or the expected lease term; and equipment and information systems, principally 3 to 8 years. Disposition gains and losses are included in current operating expenses.

Investments

In accordance with SFAS No. 115 *Accounting for Certain Investments in Debt and Equity Securities*, and based upon the Company's intentions and ability to hold certain assets until maturity, the Company classifies certain debt securities as held-to-maturity and measures them at amortized cost. Based upon the Company's other strategies involving investments, the Company classifies equity securities that have readily determinable fair values and certain other debt securities as available for sale and records them at fair value. Unrealized gains or losses from available for sale investments are recorded in other comprehensive income until realized.

Amortizable intangibles

Amortizable intangible assets and liabilities include non-competition and similar agreements, lease agreements, hospital acute services contracts, deferred debt issuance costs and the Alliance and Product Supply Agreement, each of which have determinate useful lives. Non-competition and similar agreements are amortized over the terms of the agreements, typically ten years, using the straight-line method. Lease agreements and hospital acute service contracts are amortized straight-line over the term of the lease and the contract period, respectively. Deferred debt issuance costs are amortized to debt expense over the term of the related debt using the effective interest method. The Alliance and Product Supply Agreement intangible liability is being amortized using the straight-line method over the term of the agreement, which is ten years.

Goodwill

Goodwill represents the difference between the purchase cost of acquired businesses and the fair value of the identifiable tangible and intangible net assets acquired. Goodwill is not amortized, but is assessed for valuation impairment as circumstances warrant and at least annually. An impairment charge would be recorded to the extent the book value of goodwill exceeds its fair value. The Company operates several reporting units for goodwill impairment assessments.

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

Impairment of long-lived assets

Long-lived assets, including property and equipment, investments in third party dialysis businesses, and amortizable intangible assets, are reviewed for possible impairment at least annually and whenever significant events or changes in circumstances indicate that an impairment may have occurred, including changes in our business strategy and plans, changes in the quality or structure of our relationships with our partners and deteriorating operating performance of individual dialysis centers or other operations. An impairment is indicated when the sum of the expected future undiscounted net cash flows identifiable to an asset or asset group is less than its carrying value. Impairment losses are determined from actual or estimated fair values, which are based on market values, net realizable values or projections of discounted net cash flows, as appropriate. Impairment charges are included in operating expenses.

Income taxes

Federal and state income taxes are computed at current enacted tax rates, less tax credits using the asset and liability method. Deferred taxes are adjusted both for items that do not have tax consequences and for the cumulative effect of any changes in tax rates from those previously used to determine deferred tax assets or liabilities. Tax provisions include amounts that are currently payable, changes in deferred tax assets and liabilities that arise because of temporary differences between the timing of when items of income and expense are recognized for financial reporting and income tax purposes, changes in the recognition of tax positions due to the application of Financial Accounting Standards Board, or FASB, Interpretation 48 (FIN 48), and any changes in the valuation allowance caused by a change in judgment about the realizability of the related deferred tax assets. A valuation allowance is established when necessary to reduce deferred tax assets to amounts expected to be realized.

Self insurance

The Company maintains insurance reserves for professional and general liability and workers' compensation in excess of certain individual and or aggregate amounts not covered by third-party carriers. The Company estimates the self-insured retention portion of professional and general liability and workers' compensation risks using third-party actuarial calculations that are based upon historical claims experience and expectations for future claims.

Minority interests

Consolidated net income is reduced by the proportionate amount of income attributable to minority interests in majority-owned joint ventures and other non-wholly-owned subsidiaries. Minority interests represent the equity interests of third-party owners in consolidated entities which are not wholly-owned. As of December 31, 2008, third parties held minority ownership interests in 117 consolidated entities. See discussion below on the adoption of SFAS No. 160 for changes to minority interests beginning in 2009.

Stock-based compensation

Effective January 1, 2006, the Company implemented SFAS No. 123(R) *Share-Based Payment*, which requires the measurement and recognition of cost for all stock-based awards made to employees and directors, including stock options, stock appreciation rights, stock units and discounted employee stock purchases. Under this standard, the Company's stock-based compensation awards are measured at their estimated fair value on the date of grant and recognized as compensation expense on the straight-line method over their individual requisite service periods. The Company implemented SFAS No. 123(R) using the modified prospective transition method.

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

Interest rate swap agreements

The Company has entered into several interest rate swap agreements as a means of hedging its exposure to and volatility from variable-based interest rate changes. These agreements are not held for trading or speculative purposes, and have the economic effect of converting portions of our variable rate debt to a fixed rate. At December 31, 2008, the Company had nine interest rate swap agreements with amortizing notional amounts totaling \$790,333 that expire in 2009 through 2010 and require quarterly interest payments. These agreements are designated as cash flow hedges, and as a result hedge-effective gains or losses resulting from changes in the fair values of these swaps are reported in other comprehensive income until such time as each specific swap tranche is realized, at which time the amounts are reclassified into net income. Net amounts paid or received under the hedge-effective swaps have been reflected as adjustments to interest expense.

Fair value estimates

The Company measures the fair value of certain assets, liabilities and commitments in accordance with SFAS No. 157 *Fair Value Measurements* based upon certain valuation techniques that include observable or unobservable inputs and assumptions that market participants would use in pricing these assets, liabilities and commitments. The Company also has classified its assets, liabilities and commitments into the appropriate fair value hierarchy levels as defined in SFAS No. 157. See Note 22 to the consolidated financial statements.

New accounting standards

On January 1, 2009 the Company adopted SFAS No. 141(R) *Business Combinations*, which replaces SFAS No. 141 *Business Combinations*. This standard requires all business combinations to be accounted for under the acquisition method (previously referred to as the purchase method). Under the acquisition method, the acquirer recognizes the assets acquired, the liabilities assumed, contractual contingencies, as well as any noncontrolling interest in the acquiree at their fair values at the acquisition date. Noncontractual contingencies are recognized at the acquisition date at their fair values only if it is more likely than not that they meet the definition of an asset or a liability in FASB Concepts Statement No. 6 *Elements of Financial Statements*. Transaction costs are excluded from the acquisition cost and will be expensed as incurred. Any contingent consideration included by the acquirer as part of the purchase price must also be measured at fair value at the acquisition date and will be classified as either equity or a liability. This standard also requires a company that obtains control but acquires less than 100% of an acquiree to record 100% of the fair value of the acquiree assets, liabilities, and noncontrolling interests at the acquisition date. This standard is effective for periods beginning on or after December 15, 2008. The adoption of this standard will not have a material impact on the Company's consolidated financial statements.

On January 1, 2009 the Company adopted SFAS No. 160 *Noncontrolling Interests in Consolidated Financial Statements*, which amends Accounting Research Bulletin No. 51 *Consolidated Financial Statements*. This standard requires noncontrolling interests to be treated as a separate component of equity, but apart from the parent's equity, and not as a liability or other item outside of equity. This standard also specifies that consolidated net income attributable to the parent and to the noncontrolling interest be clearly identified and presented on the face of the consolidated statement of income, and that changes in the parent's ownership interest while it retains a controlling financial interest should be accounted for as equity transactions. This standard also expands disclosures in the financial statements to include a reconciliation of the beginning and ending balances of the equity attributable to the parent and the noncontrolling owners and a schedule showing the effects of changes in a parent's ownership interest in a subsidiary on the equity attributable to the parent. This standard is effective for periods beginning on or after December 15, 2008. The adoption of this standard will not have a material impact on the Company's consolidated financial statements; however, it will change the presentation of

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minority interests in the Company's consolidated financial statements. Although, the Company is still in process of determining the appropriate classification and measurement of minority interests according to SEC Topic No. 98 *Classification and Measurement of Redeemable Securities*.

On January 1, 2009 we adopted SFAS No. 161 *Disclosures about Derivative Instruments and Hedging Activities*, which amends SFAS No. 133 *Accounting for Derivative Instruments and Hedging Activities*. This standard requires enhanced disclosures about an entity's derivative and hedging activities. Entities will be required to provide additional disclosures about (a) how and why an entity uses derivative instruments, (b) how derivative instruments and related hedged items are accounted for under SFAS No. 133, and (c) how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. This standard encourages but does not require comparative disclosures for earlier periods at the initial adoption. The adoption of this standard will not have a material impact on the Company's consolidated financial statements.

2. Earnings per share

Basic net income per share is calculated by dividing net income by the weighted average number of common shares and vested stock units outstanding. Diluted net income per share includes the dilutive effect of stock options, stock-settled stock appreciation rights and unvested stock units under the treasury stock method.

The reconciliations of the numerators and denominators used to calculate basic and diluted net income per share are as follows:

	Year ended December 31,		
	2008	2007	2006
	(shares in thousands)		
Basic:			
Income from continuing operations	\$374,160	\$381,778	\$289,329
Gain on disposal of discontinued operations, net of tax	—	—	362
Net income	<u>\$374,160</u>	<u>\$381,778</u>	<u>\$289,691</u>
Weighted average shares outstanding during the year	105,140	105,848	103,471
Vested stock units	9	45	49
Weighted average shares for basic earnings per share calculation	<u>105,149</u>	<u>105,893</u>	<u>103,520</u>
Basic earnings per share from continuing operations, net of tax	\$ 3.56	\$ 3.61	\$ 2.79
Gain on disposal of discontinued operations, net of tax	—	—	0.01
Basic net income per share	<u>\$ 3.56</u>	<u>\$ 3.61</u>	<u>\$ 2.80</u>
Diluted:			
Income from continuing operations	\$374,160	\$381,778	\$289,329
Gain on disposal of discontinued operations, net of tax	—	—	362
Net income	<u>\$374,160</u>	<u>\$381,778</u>	<u>\$289,691</u>
Weighted average shares outstanding during the year	105,140	105,848	103,471
Vested stock units	9	45	49
Assumed incremental shares from stock plans	791	1,525	2,273
Weighted average shares for diluted earnings per share calculation	<u>105,940</u>	<u>107,418</u>	<u>105,793</u>
Diluted earnings per share from continuing operations, net of tax	\$ 3.53	\$ 3.55	\$ 2.73
Gain on disposal of discontinued operations, net of tax	—	—	0.01
Diluted net income per share	<u>\$ 3.53</u>	<u>\$ 3.55</u>	<u>\$ 2.74</u>
Shares subject to anti-dilutive awards excluded from calculation(1)	<u>10,053</u>	<u>260</u>	<u>933</u>

(1) Shares associated with stock options and stock-settled stock appreciation rights that are excluded from the diluted denominator calculation because they are anti-dilutive under the treasury stock method.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
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3. Accounts receivable

Approximately 9% and 2% of the accounts receivable balances as of December 31, 2008 and 2007, respectively, were more than six months old, and there were no significant balances over one year old. Approximately 1% of our accounts receivable as of December 31, 2008 and 2007 relate to amounts due from patients. Accounts receivable are principally from Medicare and Medicaid programs and commercial insurance plans.

4. Other receivables

Other receivables were comprised of the following:

	December 31,	
	2008	2007
Supplier rebates and other non-trade receivables	\$172,604	\$151,939
Medicare bad debt claims	38,700	31,400
Operating advances under management and administrative services agreements	27,861	15,405
	\$239,165	\$198,744

Operating advances under management and administrative services agreements are generally unsecured.

5. Other current assets

Other current assets consist principally of prepaid expenses and operating deposits.

6. Property and equipment

Property and equipment were comprised of the following:

	December 31,	
	2008	2007
Land	\$ 11,771	\$ 11,827
Buildings	33,833	32,448
Leasehold improvements	873,306	731,426
Equipment and information systems	928,795	814,512
New center and capital asset projects in progress	36,875	33,027
	1,884,580	1,623,240
Less accumulated depreciation and amortization	(836,505)	(683,914)
	\$1,048,075	\$ 939,326

Depreciation and amortization expense on property and equipment was \$201,006, \$178,990 and \$160,717 for 2008, 2007 and 2006, respectively.

Interest on debt incurred during the development of new centers and other capital asset projects is capitalized as a component of the asset cost based on the respective in-process capital asset balances. Interest capitalized was \$4,189, \$3,878 and \$4,708 for 2008, 2007 and 2006, respectively.

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7. Amortizable intangibles

Amortizable intangible assets were comprised of the following:

	December 31,	
	2008	2007
Noncompetition and other agreements	\$ 285,270	\$ 276,182
Lease agreements	8,637	8,738
Deferred debt issuance costs	72,748	72,618
	366,655	357,538
Less accumulated amortization	(206,134)	(174,496)
Total amortizable intangible assets	\$ 160,521	\$ 183,042

Amortizable intangible liabilities were comprised of the following:

	December 31,	
	2008	2007
Alliance and product supply agreement commitment (See Note 21)	\$ 68,200	\$ 68,200
Less accumulated amortization	(32,223)	(26,893)
	\$ 35,977	\$ 41,307

Net amortization expense from noncompetition and other agreements and the amortizable intangible liabilities was \$15,911, \$14,480 and \$12,578 for 2008, 2007 and 2006, respectively. Lease agreements are amortized to rent expense, which was \$1,420 in 2008, \$2,240 in 2007, and \$3,309 in 2006, respectively. Deferred debt issuance costs are amortized to debt expense as described in Note 13 to the consolidated financial statements.

Scheduled amortization charges from intangible assets and liabilities as of December 31, 2008 were as follows:

	Noncompetition and other agreements	Deferred debt issuance costs	Alliance and Product Supply Agreement liability
2009	\$20,238	\$9,780	\$(5,330)
2010	19,101	9,374	(5,330)
2011	18,796	8,914	(5,330)
2012	18,094	6,418	(5,330)
2013	15,993	2,739	(5,330)
Thereafter	28,307	2,767	(9,327)

8. Investments in third-party businesses

Investments in non-consolidated dialysis businesses and related advances were \$19,274 and \$19,446 at December 31, 2008 and 2007. During 2008, 2007 and 2006, the Company recognized income of \$796, \$1,217 and \$2,308, respectively, relating to investments in non-consolidated businesses under the equity method. These amounts are included as a reduction to minority interest expense in the consolidated statements of income.

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On December 31, 2007, the Company acquired a 50% noncontrolling ownership interest in a joint venture that operates six dialysis centers for \$17,550. During 2006, the Company acquired a majority voting interest in one business that was previously minority-controlled and sold its interest in one minority-controlled business. The Company did not recognize a gain or loss on the sale as the investment was carried at fair value as a result of the DVA Renal Healthcare acquisition.

9. Investments

In accordance with SFAS No. 115 and based on the Company's intentions and strategy involving investments, the Company classifies certain debt securities as held-to-maturity and records them at amortized cost. Equity securities that have readily determinable fair values and other debt securities classified as available for sale are recorded at fair value.

The Company's investments consist of the following:

	December 31, 2008			December 31, 2007		
	Held to maturity	Available for sale	Total	Held to maturity	Available for sale	Total
Certificates of deposit and U.S. treasury notes						
due within one year	\$19,355	\$ —	\$19,355	\$19,804	\$ —	\$19,804
Investments in mutual funds	—	21,833	21,833	—	43,036	43,036
	<u>\$19,355</u>	<u>\$21,833</u>	<u>\$41,188</u>	<u>\$19,804</u>	<u>\$43,036</u>	<u>\$62,840</u>
Short-term investments	\$19,355	\$16,177	\$35,532	\$19,804	\$20,474	\$40,278
Long-term investments	—	5,656	5,656	—	22,562	22,562
	<u>\$19,355</u>	<u>\$21,833</u>	<u>\$41,188</u>	<u>\$19,804</u>	<u>\$43,036</u>	<u>\$62,840</u>

The cost of the certificates of deposit and U.S. treasury notes at December 31, 2008 and 2007 approximates fair value. As of December 31, 2008 and 2007, the available for sale investments included \$1,558 of gross pre-tax unrealized losses and \$850 of gross pre-tax unrealized gains, respectively. During 2008, the Company recorded gross pre-tax unrealized losses of \$1,922 in other comprehensive income associated with changes in the fair value of these investments. During 2008, the Company sold investments in mutual funds for net proceeds of \$21,291, and recognized a pre-tax gain of \$486, or \$297 after tax, that was previously recorded in other comprehensive income. During 2007, the Company sold investments in mutual funds for net proceeds of \$6,406 and recognized a pre-tax gain of \$104, or \$64 after-tax, that was also previously recorded in other comprehensive income. These pre-tax gains are included in other income.

The certificates of deposit and U.S. treasury notes classified as held to maturity are investments used to maintain certain capital requirements of the special needs plans of VillageHealth, which is a wholly-owned subsidiary of the Company. The investments in mutual funds classified as available for sale are held within a trust to fund existing obligations associated with several of the Company's non-qualified deferred compensation plans.

On February 7, 2007, the Company entered into a National Provider Agreement with NxStage, Inc. As a part of the agreement, the Company purchased outright all of its NxStage System One equipment then in use for \$5,100, and has been purchasing a majority of its home-based hemodialysis equipment and supplies from NxStage. In connection with the provider agreement, the Company purchased two million shares of NxStage common stock in a private placement offering for \$20,000, representing an ownership position of approximately

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7% in NxStage. The Company subsequently sold these shares in the second and third quarters of 2007 for net proceeds of \$25,868 and recognized a pre-tax gain of \$5,868, or \$3,628 after tax that was previously recorded in other comprehensive income. The pre-tax gain is included in other income.

10. Goodwill

Changes in the book value of goodwill were as follows:

	<u>Year ended December 31,</u>	
	<u>2008</u>	<u>2007</u>
Balance at January 1	\$3,767,933	\$3,667,853
Acquisitions	109,375	105,609
DVA Renal Healthcare income tax adjustments	(642)	(4,951)
Other adjustments	265	(578)
Balance at December 31	<u>\$3,876,931</u>	<u>\$3,767,933</u>

As of December 31, 2008, there was \$3,808,942 and \$67,989 of goodwill associated with the dialysis and related lab services business and the ancillary services and strategic initiatives, respectively.

As of December 31, 2007, there was \$3,712,648 and \$55,285 of goodwill associated with the dialysis and related lab services business and the ancillary services and strategic initiatives, respectively.

11. Other liabilities

Other accrued liabilities were comprised of the following:

	<u>December 31,</u>	
	<u>2008</u>	<u>2007</u>
Payor refunds and retractions	\$361,205	\$333,089
Insurance and self-insurance accruals	55,844	66,222
Accrued interest	44,326	48,506
Accrued non-income tax liabilities	8,920	12,386
Other	24,944	25,948
	<u>\$495,239</u>	<u>\$486,151</u>

12. Income taxes

On January 1, 2007, the Company adopted the provisions of FASB Interpretation 48 (FIN 48) *Accounting for Income Tax Uncertainties*, which clarifies the accounting for uncertainty in income taxes recognized in the consolidated financial statements in accordance with SFAS Statement No. 109 *Accounting for Income Taxes*. The Interpretation prescribes a recognition threshold of more-likely-than-not and a measurement attribute on all tax positions taken or expected to be taken in a tax return in order to be recognized in the financial statements. In making this assessment, a company must determine whether it is more-likely-than-not that a tax position will be sustained upon examination, including resolution of any related appeals or litigation processes, based solely on the technical merits of the position and must assume that the tax position will be examined by the appropriate taxing authority that would have full knowledge of all relevant information. Once the recognition threshold is

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met, the tax position is then measured to determine the actual amount of benefit to recognize in the financial statements. In addition, the recognition threshold of more-likely-than-not must continue to be met in each reporting period to support continued recognition of the tax benefit. Tax positions that previously failed to meet the more-likely-than-not recognition threshold should be recognized in the first financial reporting period in which that threshold is met. Previously recognized tax positions that no longer meet the more-likely-than-not recognition threshold should be derecognized in the financial reporting period in which that threshold is no longer met.

As a result of implementing FIN 48, the Company recognized an increase of \$22,860 to the beginning balance of its current and long-term deferred tax assets, offset by increases in its current taxes payable and other long-term liabilities of \$18,969. This recognized net tax benefit of \$3,891 was recorded as an increase to the beginning balance of retained earnings on January 1, 2007. The Company also recorded a decrease of \$4,951 to the beginning balance of current taxes payable and long-term deferred tax liabilities, and a corresponding decrease to goodwill as a result of recognizing tax benefits associated with our acquisition of DVA Renal Healthcare.

A reconciliation of the beginning and ending amount of unrecognized tax benefits was as follows:

	Year ended December 31,	
	2008	2007
Balance beginning	\$ 25,744	\$27,925
Additions for tax positions related to current year.	1,934	1,798
Additions for tax positions related to prior years.	463	416
Reductions for tax positions related to prior years	(17,254)	(3,200)
Settlements	—	(1,195)
Balance ending	\$ 10,887	\$25,744

As of December 31, 2008, it is reasonably possible that \$125 of unrecognized tax benefits may be recognized within the next 12 months, primarily related to the settlement of an audit assessment. This change will have no impact on the Company's effective tax rate. As of December 31, 2008, unrecognized tax benefits totaling \$10,887 would affect the Company's effective tax rate, if recognized.

The Company recognizes accrued interest and penalties related to unrecognized tax benefits in its income tax expense. At December 31, 2008, the Company had approximately \$1,402 accrued for interest and penalties related to unrecognized tax benefits.

The Company and its subsidiaries file U.S. federal income tax returns and various state returns. The Company is no longer subject to U.S. federal, state and local examinations by tax authorities for years before 2003. The Internal Revenue Service (IRS) completed an examination of the Company's U.S. federal income tax returns for 2003 and 2004 during the second quarter of 2007. The examination did not result in any material impact to the Company's consolidated financial statements.

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Income tax expense consisted of the following:

	<u>Year ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
Current:			
Federal	\$118,619	\$196,697	\$159,054
State	20,569	30,446	24,009
Deferred:			
Federal	81,306	14,945	(12)
State	14,806	3,656	2,354
	<u>\$235,300</u>	<u>\$245,744</u>	<u>\$185,405</u>

The allocations of income tax expense were as follows:

	<u>Year ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
Continuing operations	\$235,300	\$245,744	\$186,430
Gain on discontinued operations	—	—	(1,025)
	<u>\$235,300</u>	<u>\$245,744</u>	<u>\$185,405</u>

Deferred tax assets and liabilities arising from temporary differences were as follows:

	<u>December 31,</u>	
	<u>2008</u>	<u>2007</u>
Receivables, primarily allowance for doubtful accounts	\$ 62,856	\$ 61,184
Alliance and product supply agreement	13,995	16,069
Accrued liabilities	162,893	191,140
Other	65,635	43,218
Deferred tax assets	305,379	311,611
Valuation allowance	(12,588)	(9,353)
Net deferred tax assets	292,791	302,258
Intangible assets	(262,029)	(206,236)
Property and equipment	(55,747)	(12,825)
Other	(2,703)	(1,674)
Deferred tax liabilities	(320,479)	(220,735)
Net deferred tax (liabilities) assets	<u>\$ (27,688)</u>	<u>\$ 81,523</u>

At December 31, 2008, the Company had state net operating loss carryforwards of approximately \$135,638 that expire through 2028, and federal net operating loss carryforwards of \$24,285 that expire through 2028. The utilization of these losses may be limited in future years based on the profitability of certain separate-return entities. The valuation allowance increase of \$3,235 relates to changes in the estimated tax benefit of federal and state operating losses of separate-return entities.

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The reconciliation between our effective tax rate from continuing operations and the U.S. federal income tax rate is as follows:

	Year ended December 31,		
	2008	2007	2006
Federal income tax rate	35.0%	35.0%	35.0%
State taxes, net of federal benefit	3.7	3.5	3.9
Changes in deferred tax valuation allowances	0.3	0.2	(0.1)
Other	(0.4)	0.5	0.4
Effective tax rate	38.6%	39.2%	39.2%

13. Long-term debt

Long-term debt was comprised of the following:

	December 31,	
	2008	2007
Senior Secured Credit Facilities:		
Term loan A	\$ 214,375	\$ 229,250
Term loan B	1,705,875	1,705,875
Senior and senior subordinated notes	1,750,000	1,750,000
Acquisition obligations and other notes payable	15,266	11,047
Capital lease obligations	5,873	6,667
Total principal debt outstanding	3,691,389	3,702,839
Premium on the 6 ⁵ / ₈ % senior notes	3,757	4,479
	3,695,146	3,707,318
Less current portion	(72,725)	(23,431)
	\$3,622,421	\$3,683,887

Scheduled maturities of long-term debt at December 31, 2008 were as follows:

2009	\$ 72,725
2010	89,842
2011	67,346
2012	1,707,395
2013	901,500
Thereafter	852,581

Senior Secured Credit Facility

The Senior Secured Credit Facilities are guaranteed by substantially all of the Company's direct and indirect wholly-owned subsidiaries and are secured by substantially all of the Company's and its subsidiary guarantors' assets. The Senior Secured Credit Facilities also contain customary affirmative and negative covenants and require compliance with financial covenants, including an interest rate coverage ratio, and a leverage ratio that determines the interest rate margins on term loan A and the revolving line of credit. The Senior Secured Credit

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Facilities in general also contain limits on the general amount of capital expenditures for internal growth, acquisitions and capital improvements (see discussion below) as well as limits on the amount of tangible net assets in non-guarantor subsidiaries.

Term Loans

Term loan A and term loan B total outstanding borrowings each consist of various individual tranche amounts that can range in maturity from one month to twelve months. Each specific tranche bears interest at a LIBOR rate determined by the maturity of that specific tranche and the interest rates are reset as each specific tranche matures. The overall weighted average interest rate for each term loan is determined based upon the LIBOR interest rates in effect for each individual tranche plus the interest rate margin.

Term Loan A

During 2008 and 2007, the Company made principal payments totaling \$14,875 and \$50,000, respectively, on term loan A. The principal payment made in 2007 was a prepayment.

On February 27, 2007, the Company's interest rate margin on its term loan A was reduced by 0.25% as a result of achieving certain financial ratios as defined in the Senior Secured Credit Facilities.

Term loan A currently bears interest at LIBOR plus a margin of 1.50%, for an overall weighted average effective rate of 1.97% at December 31, 2008. The interest rate margin is subject to adjustment depending upon certain financial conditions and could range from 1.50% to 2.25%. Term loan A matures in October 2011 and requires annual principal payments of \$61,250 in 2009, \$87,500 in 2010 and \$65,625 in 2011, respectively.

Term Loan B

During 2008, the Company did not make nor was the Company required to make any principal payments on term loan B. In 2007, the Company made a principal prepayment of \$400,000 from the proceeds of the Senior Notes as discussed below.

On February 23, 2007, the Company amended and restated its existing Senior Secured Credit Facilities to, among other things, reduce the interest rate margin on term loan B by 0.50%, and to amend certain financial covenants. The amended term loan B bears interest at LIBOR plus a margin of 1.50%, for an overall weighted average effective rate of 3.63%, including the impact of the Company's swap agreements, as of December 31, 2008. Other terms that were changed included the amount by which the Company can elect to increase the revolving and term loan commitments from \$500,000 to \$750,000 and certain limitations on purchases, redemptions or acquisitions of capital stock, the payment of dividends and distributions in cash. Further, limitations on capital expenditures for internal growth will not apply during the periods in which the Company's leverage ratio is less than 3.5:1. The Company's leverage ratio as of December 31, 2008 was less than 3.5:1. In 2007 the Company incurred financing costs of \$1,781 which were deferred and also expensed \$248 of other costs in connection with this transaction, which are included in debt expense. Term loan B matures in October 2012 and requires principal payments of \$1,705,875 in year 2012.

As a result of the principal prepayments made in 2007 on term loan A and term loan B, the Company wrote off a total of \$4,371 of deferred financing costs, which is included in debt expense.

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Revolving Lines of Credit

The Company has an undrawn revolving line under the Senior Secured Credit Facilities totaling \$250,000, of which approximately \$50,901 was committed for outstanding letters of credit. The Company also has other undrawn revolving lines of credit totaling \$7,200 associated with several of its joint ventures.

Senior and Senior Subordinated Notes

The Company's senior and senior subordinated notes, as of December 31, 2008, consisted of \$900,000 of 6⁵/₈% senior notes due 2013 and \$850,000 of 7¹/₄% senior subordinated notes due 2015. The notes are guaranteed by substantially all of the Company's direct and indirect wholly-owned subsidiaries and require semi-annual interest payments in March and September. The Company may redeem some or all of the senior notes at any time as described below and some or all of the senior subordinated notes at any time on or after March 15, 2010.

On February 23, 2007, the Company issued \$400,000 of 6⁵/₈% senior notes due 2013 in a private offering, realizing \$405,080 in proceeds, which included a \$5,080 premium, and incurred \$2,719 in related deferred financing costs. These senior notes are part of the same series of debt securities as the \$500,000 aggregate principal amount of 6⁵/₈% senior notes that were issued in March 2005. The effective interest rate for the \$400,000 of 6⁵/₈% senior notes is 6.45%. The senior notes are guaranteed by substantially all of the Company's direct and indirect wholly-owned subsidiaries and require semi-annual interest payments which began March 15, 2007. The senior notes may be redeemed by the Company in whole or part at any time on or after March 15, 2009, at certain specified prices. The Company used \$400,000 of these proceeds to pay down its term loan B as discussed above.

Interest rate swaps

As of December 31, 2008, the Company maintained a total of nine interest rate swap agreements with amortizing notional amounts totaling \$790,333. These agreements had the economic effect of modifying the LIBOR-based variable interest rate on an equivalent amount of debt to fixed rates ranging from 3.08% to 4.70%, resulting in an overall weighted average effective interest rate of 5.54% on the hedged portion of our Senior Secured Credit Facilities, including the term loan B margin of 1.50%. The swap agreements expire in 2009 through 2010 and require quarterly interest payments. During 2008, 2007, and 2006 the Company accrued net cash (obligations) benefits of approximately (\$4,239), \$14,498, and \$15,791, respectively, from these swaps, which are included in debt expense. The Company estimates that approximately \$14,300 of existing unrealized pre-tax losses in other comprehensive income at December 31, 2008, will be reclassified into income in 2009. As of December 31, 2008 and 2007, the total fair value of these swaps was a liability of \$21,904 and a net liability of \$511, respectively. The 2008 and 2007 amounts were primarily included in other long-term liabilities. Also during 2008, the Company recorded \$10,357, net of tax, as reductions to other comprehensive income for swap valuation losses, net of amounts reclassified into income.

As of December 31, 2008, the Company had approximately 41% of its variable rate debt and approximately 69% of its total debt economically fixed.

As a result of the swap agreements, the Company's overall Senior Secured Credit Facilities weighted average effective interest rate was 3.48%, based upon the current margins in effect of 1.50%, as of December 31, 2008.

At December 31, 2008, the Company's overall average effective interest rate was 5.10%.

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Debt expense

Debt expense consisted of interest expense of \$214,944, \$242,720 and \$262,967, amortization of deferred financing costs of \$9,772, \$9,808 and \$10,469 for 2008, 2007 and 2006, respectively, and in 2007 and 2006, included the write-off of \$4,371 and \$3,270, respectively, of deferred financing costs. Debt expense in 2007 also included \$248 of other costs associated with the amendment and reinstatement of the Senior Secured Credit Facilities. The interest expense amounts are net of capitalized interest.

14. Leases

The majority of the Company's facilities are leased under non-cancelable operating leases, ranging in terms from five to ten years, which contain renewal options of five to ten years at the fair rental value at the time of renewal or at rates subject to periodic consumer price index increases. The Company also leases certain equipment under capital leases.

Future minimum lease payments under non-cancelable operating leases and capital leases are as follows:

	Operating leases	Capital leases
2009	\$ 193,883	\$ 982
2010	174,139	996
2011	158,749	999
2012	139,457	1,021
2013	117,897	987
Thereafter	393,806	4,454
	<u>\$1,177,931</u>	<u>9,439</u>
Less portion representing interest		(3,566)
Total capital lease obligations, including current portion		<u>\$ 5,873</u>

Rent expense under all operating leases for 2008, 2007, and 2006 was \$225,531, \$200,626 and \$187,139, respectively. Rent expense is recorded on a straight line basis, over the term of the lease, for leases that contain fixed escalation clauses or include abatement provisions. Leasehold improvement incentives are deferred and amortized to rent expense over the term of the lease. The net book value of property and equipment under capital leases was \$6,612, \$7,191 and \$5,765 at December 31, 2008, 2007 and 2006, respectively. Capital lease obligations are included in long-term debt. See Note 13 to the consolidated financial statements.

15. Employee benefit plans

The Company has a savings plan for substantially all employees which has been established pursuant to the provisions of Section 401(k) of the Internal Revenue Code, or IRC. The plan allows for employees to contribute a percentage of their base annual salaries on a tax-deferred basis not to exceed IRC limitations. The Company does not provide any matching contributions.

The Company also maintains a voluntary compensation deferral plan, the DaVita Voluntary Deferral Plan. This plan is non-qualified and permits certain employees whose annualized base salary equals or exceeds a minimum annual threshold amount as set by the Company to elect to defer all or a portion of their annual bonus payment and up to 50% of their base salary into a deferral account maintained by the Company. Total contributions to this plan in 2008 and 2007 were \$1,993, and \$1,601, respectively. Deferred amounts are

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generally paid out in cash at the participant's election either in the first or second year following retirement or in a specified future period at least three to four years after the deferral election was effective. Participants are credited with their proportional amount of annual earnings from the plan. The assets of this plan are held in a "rabbi trust" and as such are subject to the claims of the Company's general creditors in the event of its bankruptcy. As of December 31, 2008 and 2007 the total fair value of assets held in trust were \$4,556 and \$5,196, respectively.

As part of the acquisition of DVA Renal Healthcare on October 5, 2005, the Company acquired an Executive Retirement Plan for certain members of management. This plan is non-qualified and contributions to the plan were made at the discretion of DVA Renal Healthcare based upon a pre-determined percentage of a participant's base salary. Effective November 2005, all contributions to this plan were discontinued and the balance of the plan assets will be paid out upon termination of each individual participant. As of December 31, 2008 and 2007 the total fair value of assets held in trust were \$1,490 and \$2,303, respectively.

The Company maintains a non-qualified deferred compensation plan for key employees. Company contributions are discretionary and are deposited into a rabbi trust. Participants in the plan are subject to a vesting period and typically receive annual distributions from the plan commencing one year after grant date, although in certain situations distributions are paid upon termination or retirement. Participants also have the option to direct their balances into certain investment funds and are credited with their proportional amount of earnings from the investments. The assets of this plan as held in the rabbi trust and are subject to the claims of the Company's general creditors in the event of its bankruptcy. During 2007, the Company contributed \$15,710 into the plan. There were no contributions to this plan in 2008. As of December 31, 2008 and 2007 the total fair value of assets held in trust were \$15,787 and \$20,763, respectively.

The Company also maintains another non-qualified deferred compensation plan for certain employees. Company contributions to the plan are discretionary and are deposited into a rabbi trust that is not subject to general creditors claims in the event of bankruptcy by the Company. Participants in the plan are subject to a vesting period and are credited with their proportional amount of earnings from the investments within the plan. During 2007, the Company contributed \$14,774 into this plan, which was the total value of assets held by the trust as of December 31, 2007. In 2008, the Company distributed this amount, along with earnings which together totaled \$15,122, to all eligible participants.

The fair value of all of the assets held in plan trusts as of December 31, 2008, and 2007 totaled \$21,833 and \$43,036, respectively. These assets are available for sale and as such are recorded at fair market value with changes in the fair market values being recorded in other comprehensive income. Any fair market value changes to the corresponding liability balance will be recorded as compensation expense. See Note 9 to the consolidated financial statements.

Most of the Company's outstanding employee stock plan awards include a provision accelerating the vesting of the award in the event of a change of control. The Company also maintains a change of control protection program for its 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 employees in the event of a change of control. Based on the market price of the Company's common stock and shares outstanding on December 31, 2008, these cash bonuses would total approximately \$198,000 if a control transaction occurred at that price and the Company's Board of Directors did not modify the program. This amount has not been accrued at December 31, 2008, and would only be accrued upon a change of control. These change of control provisions may affect the price an acquirer would be willing to pay for the Company.

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16. Contingencies

The majority of the Company's revenues are from government programs and may be subject to adjustment as a result of: (1) examination by government agencies or contractors, for which the resolution of any matters raised may take extended periods of time to finalize; (2) differing interpretations of government regulations by different fiscal intermediaries or regulatory authorities; (3) differing opinions regarding a patient's medical diagnosis or the medical necessity of services provided; and (4) retroactive applications or interpretations of governmental requirements. In addition, the Company's revenues from commercial payors may be subject to adjustment as a result of potential claims for refunds, as a result of government actions or as a result of other claims by commercial payors.

Inquiries by the Federal Government

In December 2008, the Company received a subpoena for documents from the Office of Inspector General, U.S. Department of Health and Human Services, or OIG, relating to the pharmaceutical products Zemplar, Hectorol, Venofer, Ferrlicit and Epogen®, or EPO, as well as other related matters. The subpoena covers the period from January 2003 to the present. The Company has been in contact with the United States Attorney's Office, or U.S. Attorney's Office, for the Northern District of Georgia and the U.S. Department of Justice in Washington, DC, since November 2008 relating to this matter, and has been advised that this is a civil inquiry. The Company is cooperating with the inquiry and is producing the requested records. To the Company's knowledge, no proceedings have been initiated against the Company at this time. Although the Company cannot predict whether or when proceedings might be initiated, or when these matters may be resolved, it is not unusual for investigations such as these to continue for a considerable period of time. Responding to the subpoena will continue to require management's attention and significant legal expense. Any negative findings could result in substantial financial penalties against us and exclusion from future participation in the Medicare and Medicaid programs.

In February 2007, the Company received a request for information from the OIG for records relating to EPO claims submitted to Medicare. In August 2007, the Company received a subpoena from the OIG seeking similar documents. The requested documents relate to services provided from 2001 to 2004 by a number of the Company's centers. The request and subpoena were sent from the OIG's offices in Houston and Dallas, Texas. The Company is cooperating with the inquiry and is producing the requested records. The Company has been in contact with the U.S. Attorney's Office for the Eastern District of Texas, which has stated that this is a civil inquiry related to EPO claims. There appears to be substantial overlap between this issue and the ongoing review of EPO utilization and claims by the U.S. Attorney's Office, for the Eastern District of Missouri in St. Louis described below. To the Company's knowledge, no proceedings have been initiated against the Company at this time. Although the Company cannot predict whether or when proceedings might be initiated or when these matters may be resolved, it is not unusual for investigations such as these to continue for a considerable period of time. Responding to these inquiries will continue to require management's attention and significant legal expense. Any negative findings could result in substantial financial penalties against the Company and exclusion from future participation in the Medicare and Medicaid programs.

In March 2005, the Company received a subpoena from the U.S. Attorney's Office for the Eastern District of Missouri in St. Louis. The subpoena requires production of a wide range of documents relating to our operations, including documents related to, among other things, pharmaceutical and other services provided to patients, relationships with pharmaceutical companies, and financial relationships with physicians and joint ventures. The subpoena covers the period from December 1, 1996 through the present. In October 2005, the Company received a follow-up request for additional documents related to specific medical director and joint venture arrangements. In February 2006, the Company received an additional subpoena for documents, including

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certain patient records relating to the administration and billing of EPO. In May 2007, the Company received a request for documents related to durable medical equipment and supply companies owned and operated by the Company. The Company is cooperating with the inquiry and is producing the requested records. The subpoenas have been issued in connection with a joint civil and criminal investigation. It is possible that criminal proceedings may be initiated against the Company in connection with this inquiry. Any negative findings could result in substantial financial penalties against the Company, exclusion from future participation in the Medicare and Medicaid programs and criminal penalties. To the Company's knowledge, no proceedings have been initiated against the Company at this time. Although the Company cannot predict whether or when proceedings might be initiated or when these matters may be resolved, it is not unusual for investigations such as this to continue for a considerable period of time. Responding to the subpoenas will continue to require management's attention and significant legal expense.

In October 2004, the Company received a subpoena from the U.S. Attorney's Office for the Eastern District of New York in Brooklyn. The subpoena covers the period from 1996 to present and requires the production of a wide range of documents relating to the Company's operations, including DaVita Laboratory Services. Gambro Healthcare received a similar subpoena in November 2004. The subpoena also includes specific requests for documents relating to testing for parathyroid hormone levels, or PTH, and to products relating to vitamin D therapies. The subpoena has been issued in connection with a joint civil and criminal investigation. It is possible that criminal proceedings may be initiated against the Company in connection with this inquiry. Any negative findings could result in substantial financial penalties against the Company, exclusion from future participation in the Medicare and Medicaid programs and criminal penalties. Other participants in the dialysis industry received a similar subpoena, including Fresenius Medical Group. To the Company's knowledge, no proceedings have been initiated against the Company at this time. Although the Company cannot predict whether or when proceedings might be initiated or when these matters may be resolved, it is not unusual for investigations such as these to continue for a considerable period of time. Responding to the subpoena will continue to require management's attention and significant legal expense.

Other

The Company has received several notices of claims from commercial payors and other third parties related to historical billing practices and claims against DVA Renal Healthcare (formerly known as Gambro Healthcare) related to historical Gambro Healthcare billing practices and other matters covered by their 2004 settlement agreement with the Department of Justice and certain agencies of the U.S. government. At least one commercial payor has filed an arbitration demand against the Company, as described below, and additional commercial payors have threatened litigation. The Company intends to defend against these claims vigorously; however, the Company may not be successful and these claims may lead to litigation and any such litigation may be resolved unfavorably.

Several wage and hour claims have been filed against the Company in the Superior Court of California, each of which has been styled as a class action. In February 2007, June 2008, October 2008 and December 2008, the Company was served with separate complaints by various former employees, each of which alleges, among other things, that the Company failed to provide rest and meal periods, failed to pay compensation in lieu of providing such rest or meal periods, and failed to comply with certain other California labor code requirements. In October 2008, the Company was served with a complaint which alleges, among other things, that the Company failed to pay the rate on the "wage statement," and failed to comply with other California labor code requirements. The Company intends to vigorously defend against these claims. The Company also intends to vigorously oppose the certification of these matters as class actions.

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In October 2007, the Company was contacted by the Attorney General's Office for the State of Nevada. The Attorney General's Office informed the Company that it was conducting a civil and criminal investigation of the Company's operations in Nevada and that the investigation related to the billing of pharmaceuticals, including EPO. In February 2008, the Attorney General's Office informed the Company that the civil and criminal investigation has been discontinued. The Attorney General's Office further advised the Company that Nevada Medicaid intends to conduct audits of ESRD providers in Nevada, including the Company, and that such audits will relate to the issues that were the subjects of the investigation. Any negative findings could result in substantial financial penalties against the Company and exclusion from future participation in the Medicare and Medicaid programs. To the Company's knowledge, no proceedings have been initiated against the Company at this time.

In August 2007, Sheet Metal Workers National Health Fund and Glenn Randle filed a complaint in the United States District Court for the Central District of California against the Company. The complaint also names as defendants Amgen Inc. and Fresenius Medical Care Holdings, Inc. The complaint is styled as a class action and alleges four claims against the Company, including violations of the federal RICO statute, California's unfair competition law, California's false advertising law and for unjust enrichment. The complaint's principal allegations against the Company are that the defendants engaged in a scheme to unlawfully promote the administration of EPO to hemodialysis patients intravenously, as opposed to subcutaneously, and to over-utilize EPO. On December 17, 2008, the Court dismissed the complaint and allegations in their entirety with permission of plaintiffs to amend the complaint. The Company was not named as a defendant in plaintiff's amended complaint. As a result, the Company is no longer a defendant in this action.

In August 2005, Blue Cross/Blue Shield of Louisiana filed a complaint in the United States District Court for the Western District of Louisiana against Gambro AB, DVA Renal Healthcare (formerly known as Gambro Healthcare) and related entities. The plaintiff sought to bring its claims as a class action on behalf of itself and all entities that paid any of the defendants for health care goods and services from on or about January 1991 through at least December 2004. The complaint alleged, among other things, damages resulting from facts and circumstances underlying Gambro Healthcare's December 2004 settlement agreement with the Department of Justice and certain agencies of the United States Government. In March 2006, the case was dismissed and the plaintiff was compelled to seek arbitration to resolve the matter. In November 2006, the plaintiff filed a demand for class arbitration against the Company and DVA Renal Healthcare. The Company intends to vigorously defend against these claims. The Company also intends to vigorously oppose the certification of this matter as a class action. At this time, the Company cannot predict the ultimate outcome of this matter or the potential range of damages, if any.

In June 2004, Gambro Healthcare was served with a complaint filed in the Superior Court of California by one of its former employees who worked for its California acute services program. The complaint, which is styled as a class action, alleges, among other things, that DVA Renal Healthcare (formerly known as Gambro Healthcare) failed to provide overtime wages, defined rest periods and meal periods, or compensation in lieu of such provisions and failed to comply with certain other California labor code requirements. The Company intends to vigorously defend against these claims. The Company also intends to vigorously oppose the certification of this matter as a class action. At this time, the Company cannot predict the ultimate outcome of this matter or the potential range of damages, if any.

In addition to the foregoing, the Company is subject to claims and suits, including from time to time, contractual disputes and professional and general liability claims, as well as audits and investigations by various government entities, in the ordinary course of business. The Company believes that the ultimate resolution of any such pending proceedings, whether the underlying claims are covered by insurance or not, will not have a material adverse effect on its financial condition, results of operations or cash flows.

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17. Shareholders' equity and stock-based compensation

Authorized capital stock of the Company

On May 29, 2007, the stockholders of DaVita Inc. approved an amendment to its Amended and Restated Certificate of Incorporation to increase the number of shares of authorized common stock from 195,000,000 to 450,000,000 shares.

Stock-based compensation

Under SFAS No. 123(R), stock-based compensation recognized during a period is based on the estimated grant-date fair value of the portion of each stock-based award vesting during that period, adjusted for expected forfeitures. Stock-based compensation recognized in the Company's consolidated financial statements for the years ended December 31, 2008, 2007 and 2006 includes compensation cost for stock-based awards granted prior to, but not fully vested as of, December 31, 2005 and stock-based awards granted thereafter. Shares issued upon exercise of stock awards are generally issued from shares in treasury. The Company elected to use the method available under FASB Staff Position FSP No. 123(R)-3 *Transition Election Related to Accounting for the Tax Effects of Share-Based Payment Awards*, which provides an alternative method for calculating historical excess tax benefits from the method described in SFAS No. 123(R) for stock-based compensation awards.

Stock-based compensation plans and agreements

On May 29, 2007, the Company's stockholders approved an amendment and restatement of the Company's Employee Stock Purchase Plan to increase the number of shares of common stock available for issuance under that plan by 800,001 shares, and approved an amendment and restatement of the Company's 2002 Equity Compensation Plan to increase the number of shares of common stock available for issuance under that plan by 6,000,000 shares and, among other things, to remove certain available share recycling features, to change the limit on the maximum number of shares of common stock that may be subject to awards granted to any single recipient in any consecutive twenty-four month period so that such limit applies only to awards of stock options and stock appreciation rights, and to provide additional exceptions from the three year minimum vesting period generally applicable to grants of restricted stock units and other full share awards.

The Company's stock-based compensation plans and agreements are described below.

2002 Plan. The DaVita Inc. 2002 Equity Compensation Plan (the 2002 Plan) provides for grants of stock-based awards to employees, directors and other individuals providing services to the Company, except that incentive stock options may only be awarded to employees. The 2002 Plan mandates a maximum award term of five years, and stipulates that stock options and stock appreciation rights be granted with prices not less than the fair market value on the date of grant. The 2002 Plan further requires that full share awards such as restricted stock units reduce shares available under the 2002 Plan at a rate of 3.0:1. The Company's nonqualified stock options, stock appreciation rights and stock units awarded under the 2002 Plan generally vest over 48 to 60 months from the date of grant. At December 31, 2008, there were 12,229,716 stock options and stock-settled stock appreciation rights and 104,085 stock units outstanding and 7,391,050 shares available for future grants under the 2002 Plan.

1999 Plan. The 1999 Non-Executive Officer and Non-Director Equity Compensation Plan (the 1999 Plan) provides for grants of stock options to employees and other individuals providing services, other than executive officers and members of the Board of Directors. The Company awards nonqualified stock options under the 1999 Plan which are generally issued with exercise prices equal to the market price of the stock on the date of grant,

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vest over 48 to 52 months from the date of grant and bear maximum award terms of five years. At December 31, 2008, there were 122,974 stock options outstanding and 311,816 shares available for future grants under the 1999 Plan.

Predecessor plans. Various previous stock-based compensation plans were terminated upon shareholder approval of the 2002 Plan in 2002, except with respect to option awards then outstanding. Stock options granted under these terminated plans were generally issued with exercise prices equal to the market price of the stock on the date of grant, vested over four years from the date of grant, and bore maximum award terms of five to 10 years. At December 31, 2008, there were 386,444 stock options outstanding under these terminated plans.

Deferred stock unit agreements. During 2001 through 2003, the Company made nonqualified stock unit awards to members of the Board of Directors and certain key executive officers under stand-alone contractual deferred stock unit agreements. These awards vested over one to four years and were settled in stock when they vested or at a later date at the election of the recipient. The last 63,636 shares subject to these agreements were issued to their recipients in 2008.

A combined summary of the status of awards under these stock-based compensation plans and agreements, including base shares for stock appreciation rights and shares subject to stock option and stock unit awards, is as follows:

	Year ended December 31, 2008				
	Stock options and stock appreciation rights			Stock units	
	Awards	Weighted average exercise price	Weighted average remaining contractual life	Awards	Weighted average remaining contractual life
Outstanding at beginning of year	10,540,541	\$36.52		267,981	
Granted	4,563,350	48.30		37,819	
Exercised	(1,295,273)	34.77		(180,575)	
Forfeited	(1,069,484)	49.83		(21,140)	
Outstanding at end of period	<u>12,739,134</u>	<u>\$47.75</u>	<u>3.0</u>	<u>104,085</u>	<u>2.9</u>
Awards exercisable at end of period	<u>4,093,414</u>	<u>\$43.58</u>	<u>2.0</u>	<u>8,755</u>	<u>4.7</u>
Weighted-average fair value of awards granted during 2008	<u>\$ 11.01</u>			<u>\$ 51.13</u>	
Weighted-average fair value of awards granted during 2007	<u>\$ 13.89</u>			<u>\$ 54.69</u>	
Weighted-average fair value of awards granted during 2006	<u>\$ 13.38</u>			<u>\$ 51.72</u>	

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<u>Range of exercise prices</u>	<u>Awards outstanding</u>	<u>Weighted average exercise price</u>	<u>Awards exercisable</u>	<u>Weighted average exercise price</u>
\$ 0.00–\$ 0.00	104,085	\$ —	8,755	\$ —
\$ 0.01–\$10.00	412,394	4.10	412,394	4.10
\$10.01–\$20.00	6,000	19.80	6,000	19.80
\$20.01–\$30.00	280,180	28.20	276,016	28.18
\$30.01–\$40.00	290,584	31.63	81,415	34.83
\$40.01–\$50.00	5,325,155	46.93	1,959,858	47.55
\$50.01–\$60.00	6,378,321	52.78	1,341,106	53.51
\$60.01–\$70.00	46,500	61.28	16,625	60.96
Total	<u>12,843,219</u>	<u>\$47.37</u>	<u>4,102,169</u>	<u>\$43.49</u>

For the years ended December 31, 2008, 2007, and 2006, the aggregate intrinsic value of stock awards exercised was \$35,957, \$86,283 and \$109,562, respectively. At December 31, 2008, the aggregate intrinsic value of stock awards outstanding was \$49,577 and the aggregate intrinsic value exercisable was \$30,535.

Estimated fair value of stock-based compensation awards

The Company has estimated the grant-date fair value of stock option and stock-settled stock appreciation rights awards using the Black-Scholes-Merton valuation model and stock unit awards at intrinsic value on the date of grant. The following assumptions were used in estimating these values and determining the total stock-based compensation attributable to the current period:

Expected term of the awards: The expected term of awards granted represents the period of time that they are expected to remain outstanding from the date of grant. The Company determines the expected term of its stock awards based on its historical experience with similar awards, considering the Company’s historical exercise and post-vesting termination patterns, and the terms expected by peer companies in near industries.

Expected volatility: Expected volatility represents the volatility anticipated over the expected term of the award. The Company determines the expected volatility for its awards based on the volatility of the price of its common stock over the most recent retrospective period commensurate with the expected term of the award, considering the volatility expectations implied by the market price of its exchange-traded options and the volatilities expected by peer companies in near industries.

Expected dividend yield: The Company has not paid dividends on its common stock and does not currently expect to pay dividends during the term of stock awards granted.

Risk-free interest rate: The Company bases the expected risk-free interest rate on the implied yield currently available on stripped interest coupons of U.S. Treasury issues with a remaining term equivalent to the expected term of the award.

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A summary of the weighted average valuation inputs described above used for estimating the grant-date fair value of stock options and stock-settled stock appreciation rights granted in the periods indicated is as follows:

	Year ended December 31,		
	2008	2007	2006
Expected term	3.4 years	3.7 years	3.5 years
Expected volatility	27%	25%	25%
Expected dividend yield	0.0%	0.0%	0.0%
Risk-free interest rate	2.4%	4.4%	5.0%

The Company estimates expected forfeitures based upon historical experience with separate groups of employees that have exhibited similar forfeiture behavior in the past. Stock-based compensation expense is recorded only for awards that are expected to vest.

Employee stock purchase plan

The Employee Stock Purchase Plan entitles qualifying employees to purchase up to \$25 of the Company’s common stock during each calendar year. The amounts used to purchase stock are accumulated through payroll withholdings or through optional lump sum payments made in advance of the first day of the purchase right period. This compensatory plan allows employees to purchase stock for the lesser of 100% of the fair market value on the first day of the purchase right period or 85% of the fair market value on the last day of the purchase right period. Purchase right periods begin on January 1 and July 1, and end on December 31. Payroll withholdings and lump-sum payments related to the plan, included in accrued compensation and benefits, were \$4,596, \$4,711, and \$5,991 at December 31, 2008, 2007 and 2006, respectively. Subsequent to December 31, 2008, 2007 and 2006, 107,340, 98,353 and 123,920 shares, respectively, were issued to satisfy obligations under the plan. At December 31, 2008, there were 1,048,965 shares available for future grants under this plan.

The fair value of employees’ purchase rights was estimated as of the beginning dates of the purchase right periods using the Black-Scholes-Merton valuation model with the following weighted average assumptions for purchase right periods in 2008, 2007 and 2006, respectively: expected volatility of 24%, 23% and 23%; risk-free interest rate of 2.5%, 4.9% and 4.9%, and no dividends. Using these assumptions, the weighted average estimated fair value of these purchase rights was \$13.65, \$13.96 and \$12.35 for 2008, 2007 and 2006, respectively.

Stock-based compensation expense and proceeds

For the years ended December 31, 2008, 2007 and 2006, the Company recognized \$41,235, \$34,149 and \$26,389, respectively, in stock-based compensation expense for stock options, stock appreciation rights, stock units and employee stock plan purchases, which is primarily included in general and administrative expenses. The estimated tax benefits recorded for this stock-based compensation in 2008, 2007 and 2006 were \$15,609, \$12,820 and \$9,678, respectively. As of December 31, 2008, there was \$79,619 of total estimated unrecognized compensation cost related to nonvested stock-based compensation arrangements under the Company’s equity compensation and stock purchase plans. The Company expects to recognize this cost over a weighted average remaining period of 1.4 years.

During the years ended December 31, 2008, 2007 and 2006, the Company received \$35,606, \$54,697 and \$37,877 in cash proceeds from stock option exercises and \$13,988, \$32,788 and \$40,375 in total actual tax benefits upon the exercise of stock awards, respectively.

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Stock repurchases

During 2008, the Company repurchased a total of 4,788,881 shares of its common stock for \$232,715, or an average price of \$48.59 per share, pursuant to previously announced authorizations by the Board of Directors. On May 1, 2008 the Company's Board of Directors authorized an increase of an additional 143,500 of share repurchases of its common stock. As a result of these transactions the total outstanding authorization for share repurchases as of December 31, 2008 was 153,500. This stock repurchase program has no expiration date.

Shareholder rights plan

The Company's Board of Directors approved a shareholder rights plan on November 14, 2002. This plan is designed to assure that DaVita's shareholders receive fair treatment in the event of any proposed takeover of DaVita.

Pursuant to this plan, the Board approved the declaration of a dividend distribution of one common stock purchase right for each outstanding share of its common stock payable on December 10, 2002 to holders of record of DaVita common stock on November 29, 2002. This rights distribution was not taxable to DaVita shareholders. As a result of the stock split that occurred during the second quarter of 2004, two-thirds of a right are now attached to each share of the Company's common stock. Two-thirds of a right will also attach to each newly issued or reissued share of common stock. These rights will become exercisable if a person or group acquires, or announces a tender offer for, 15% or more of DaVita's outstanding common stock. The triggering person's stock purchase rights will become void at that time and will not become exercisable.

Each right initially entitles its holder to purchase one share of common stock from the Company at a price of \$125.00. If the rights become exercisable, and subject to adjustment for authorized shares available, each purchase right will then entitle its holder to purchase \$125.00 of common stock at a price per share equal to 50% of the average daily closing price of the Company's common stock for the immediately preceding 30 consecutive trading days. If DaVita is acquired in a merger or other business combination transaction after the rights become exercisable, provisions will be made to allow the holder of each right to purchase \$125.00 of common stock from the acquiring company at a price equal to 50% of the average daily closing price of that company's common stock for the immediately preceding 30 consecutive trading days.

The Board of Directors may elect to redeem the rights at \$0.01 per purchase right at any time prior to, or exchange common stock for the rights at an exchange ratio of one share per right at any time after, a person or group acquires or announces a tender offer for 15% or more of DaVita's outstanding common stock. The exercise price, number of shares, redemption price or exchange ratio associated with each right may be adjusted as appropriate upon the occurrence of certain events, including any stock split, stock dividend or similar transaction. These purchase rights will expire no later than November 14, 2012.

Charter documents & Delaware law

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

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The Company is also subject to Section 203 of the Delaware General Corporation Law that, subject to exceptions, would prohibit the Company 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 restrictions may discourage, delay or prevent a change in the control of the Company.

18. Other comprehensive income

Charges and credits to other comprehensive income have been as follows:

	<u>2006</u>		
	<u>Before tax amount</u>	<u>Tax (expense) benefit</u>	<u>Net-of-tax amount</u>
Unrealized gains on interest rate swaps	\$ 12,869	\$(5,007)	\$ 7,862
Less reclassification of net swap realized gains into net income	(15,828)	6,157	(9,671)
Net swap activity	<u>\$ (2,959)</u>	<u>\$ 1,150</u>	<u>\$(1,809)</u>
	<u>2007</u>		
	<u>Before tax amount</u>	<u>Tax (expense) benefit</u>	<u>Net-of-tax amount</u>
Unrealized losses on interest rate swaps	\$(11,733)	\$ 4,564	\$ (7,169)
Less reclassification of net swap realized gains into net income	(14,498)	5,640	(8,858)
Net swap activity	<u>(26,231)</u>	<u>10,204</u>	<u>(16,027)</u>
Unrealized gains on investments	6,892	(2,681)	4,211
Less reclassification of net investment realized gains into net income	(6,042)	2,350	(3,692)
Net investment activity	<u>850</u>	<u>(331)</u>	<u>519</u>
Total	<u>\$(25,381)</u>	<u>\$ 9,873</u>	<u>\$(15,508)</u>
	<u>2008</u>		
	<u>Before tax amount</u>	<u>Tax (expense) benefit</u>	<u>Net-of-tax amount</u>
Unrealized losses on interest rate swaps	\$(21,190)	\$ 8,243	\$(12,947)
Less reclassification of net swap realized losses into net income	4,239	(1,649)	2,590
Net swap activity	<u>(16,951)</u>	<u>6,594</u>	<u>(10,357)</u>
Unrealized losses on investments	(1,922)	748	(1,174)
Less reclassification of net investment realized gains into net income	(486)	189	(297)
Net investment activity	<u>(2,408)</u>	<u>937</u>	<u>(1,471)</u>
Total	<u>\$(19,359)</u>	<u>\$ 7,531</u>	<u>\$(11,828)</u>

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

Changes in accumulated other comprehensive income (loss) has been as follows:

	<u>Interest rate swaps</u>	<u>Investment securities</u>	<u>Accumulated other comprehensive income</u>
Balance December 31, 2006	\$ 12,997	\$ —	\$ 12,997
Net activity	<u>(16,027)</u>	<u>519</u>	<u>(15,508)</u>
Balance December 31, 2007	(3,030)	519	(2,511)
Net activity	<u>(10,357)</u>	<u>(1,471)</u>	<u>(11,828)</u>
Balance December 31, 2008	<u>\$(13,387)</u>	<u>\$ (952)</u>	<u>\$(14,339)</u>

19. Acquisitions and divestitures

Acquisitions

The total acquisition amounts were as follows:

	<u>Year ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
Cash paid, net of cash acquired	\$126,368	\$127,094	\$85,658
Deferred purchase price and other acquisition obligations	<u>2,285</u>	<u>1,195</u>	<u>585</u>
Aggregate purchase cost	<u>\$128,653</u>	<u>\$128,289</u>	<u>\$86,243</u>
Cash adjustments for previous acquisitions including DVA Renal Healthcare	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 846</u>
Number of chronic dialysis centers acquired	<u>20</u>	<u>16</u>	<u>26</u>

During 2008, 2007, and 2006, the Company acquired dialysis businesses consisting of 20 centers, 16 centers and 26 centers for a total of \$93,024, \$57,783 and \$86,243, respectively, in cash and deferred purchase price obligations. In 2008, the Company also purchased additional ownership interests in several existing majority-owned joint ventures for \$24,408 and in addition, acquired an 80% ownership interest in one vascular access clinic for \$11,221. In 2007 the Company also purchased 85% of HomeChoice Partners (HCP) pursuant to a stock purchase agreement for \$70,506 in cash and deferred purchase price obligations, subject to further contingent price adjustments. HCP provides infusion therapy services to patients with acute or chronic conditions that can be treated at home or at an ambulatory infusion site. The assets and liabilities for all acquisitions were recorded at their estimated fair market values at the dates of the acquisitions and are included in the Company's financial statements and operating results from the designated effective dates of the acquisitions.

The initial purchase cost allocations for acquired businesses are recorded at fair values based upon the best information available to management and are finalized when identified pre-acquisition contingencies have been resolved and other information arranged to be obtained has been received, but in no case in excess of one year from the acquisition date. Adjustments to purchase accounting for prior acquisitions and payments for acquisitions in process have been included in the periods recognized.

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

The aggregate purchase cost allocations for dialysis and other related businesses were as follows:

	Year ended December 31,		
	2008	2007	2006
Tangible assets, principally leasehold improvements and equipment	\$ 7,972	\$ 20,085	\$ 7,623
Amortizable intangible assets	9,988	12,271	8,584
Goodwill	109,375	105,609	79,948
Minority interest, net purchased (assumed)	1,535	(7,987)	(8,620)
Liabilities assumed	(217)	(1,689)	(1,292)
Aggregate purchase cost	<u>\$128,653</u>	<u>\$128,289</u>	<u>\$86,243</u>

Amortizable intangible assets acquired during 2008, 2007 and 2006 had weighted-average estimated useful lives of nine, eight and ten years, respectively. The total amount of goodwill deductible for tax purposes associated with these acquisitions for 2008, 2007, and 2006 was approximately \$109,000, \$106,000 and \$80,000, respectively.

Discontinued operations

In 2006, the Company recorded a loss of \$311, net of tax, related to the divestiture of its three centers that were required to be divested in conjunction with the DVA Renal healthcare acquisition. The loss on disposal of these centers includes an income tax expense totaling \$1,274, of which \$900 was related to the write off of book goodwill not deductible for tax purposes. In 2006, the company also recorded a net gain of \$673 as an adjustment to the previously reported gain on disposal of discontinued operations.

Pro forma financial information

The following summary, prepared on a pro forma basis, combines the results of operations as if all acquisitions in 2008 and 2007 had been consummated as of the beginning of 2007, after including the impact of certain adjustments such as amortization of intangibles, interest expense on acquisition financing and income tax effects.

	Year ended December 31,	
	2008	2007
	(unaudited)	
Pro forma net revenues	\$5,694,196	\$5,396,942
Pro forma net income	376,749	396,314
Pro forma income from continuing operations	376,749	396,314
Pro forma basic net income per share	3.58	3.74
Pro forma diluted net income per share	3.56	3.69

20. Concentrations

Approximately 65% of the Company's total dialysis and related lab services revenues in 2008, 64% in 2007 and 65% in 2006 are from government-based programs, principally Medicare and Medicaid. Accounts receivable, and other receivables, from Medicare and Medicaid-assigned HMO plans were approximately \$468,000 and \$447,000, respectively as of December 31, 2008 and 2007. No other single payor accounted for more than 5% of total accounts receivable.

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

A significant physician-prescribed pharmaceutical administered during dialysis, EPO, is provided by a sole supplier and accounted for approximately 20% of net operating revenues. Although the Company currently receives discounted prices for EPO, the supplier has unilateral pricing discretion and in the future the Company may not be able to achieve the same cost levels historically obtained.

In 2008, Baxter Healthcare Corporation proceeded with a recall of heparin, a pharmaceutical used in the treatment of dialysis patients and ceased further sales. As a result of the recall, there is only one remaining supplier of heparin and it is possible that our heparin costs may increase since there is no separate reimbursement for this drug under Medicare. An affiliate of Fresenius Medical Care acquired the sole provider of heparin for the U.S. dialysis market. This could potentially impact the Company's access to and pricing for this product.

21. Other commitments

The Company has potential obligations to purchase the interests held by third parties in several of its joint ventures and non-wholly-owned subsidiaries. These obligations are in the form of put provisions and are exercisable at the third-party owners' discretion within specified periods as outlined in each specific put provision. If these put provisions were exercised, the Company would be required to purchase the third-party owners' interests at either the appraised fair market value or a predetermined multiple of earnings or cash flow attributable to the equity interest put to the Company, which is intended to approximate fair value. The methodology the Company used to estimate the fair values of the interests subject to these put provisions assumes either a predetermined multiple of earnings, or the higher of a liquidation value or an average multiple of earnings, determined by historical earnings, patient mix and other performance indicators, as well as other factors. The estimated fair values of the interests subject to these put provisions can fluctuate and the implicit multiple of earnings at which these obligations may ultimately be settled could vary significantly from our current estimates depending upon market conditions including potential purchasers' access to the credit and capital markets, which can impact the level of competition for dialysis and non-dialysis related businesses, the economic performance of these businesses and the restricted marketability of the third-party owners' interests.

The following is a reconciliation of the activity of joint venture interests subject to put provision obligations during the year ended December 31, 2008:

	Fair value estimates using significant unobservable inputs (Level 3)
	Year ended December 31, 2008
Beginning balance	\$330,000
Changes in fair value and changes due to methodology	(68,000)
New agreements	33,000
Purchases pursuant to and exercises of put obligations	<u>(4,000)</u>
Balance at December 31, 2008	<u><u>\$291,000</u></u>

The Company has certain other potential commitments to provide operating capital to several dialysis centers in which the Company owns either a noncontrolling interest or which are wholly-owned by third parties as well as to physician-owned vascular access clinics that the Company operates under management and administrative service agreements of approximately \$16,000.

The Company is obligated under mandatorily redeemable instruments in connection with certain consolidated joint ventures. Future distributions may be required for the minority partners' interests in limited-life entities which dissolve after terms of ten to fifty years. As of December 31, 2008, such distributions would be valued below the related minority interests balances in the consolidated balance sheet.

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued) (dollars in thousands, except per share data)

In conjunction with the acquisition of DVA Renal Healthcare, Inc., formerly known as Gambro Healthcare, Inc., which occurred in October 2005, the Company entered into an Alliance and Product Supply Agreement (the Product Supply Agreement) with Gambro AB and Gambro Renal Products, Inc (Gambro Renal Products). The Product Supply Agreement has an initial term of seven years and will automatically renew for three additional one-year periods if the Company has not negotiated the terms of an extension during the initial term. Because the Product Supply Agreement results in higher costs for most of the products covered by the Product Supply Agreement than would otherwise be available to the Company, the Product Supply Agreement represented an intangible liability initially valued at \$162,100 as of the acquisition date.

The Product Supply Agreement committed the Company to purchase a significant majority of its hemodialysis products, supplies and equipment at fixed prices through 2015. The agreement was amended on August 25, 2006 (the Amended Product Supply Agreement) to reduce the Company's purchase obligations for certain hemodialysis product supplies and equipment. As a result of the reductions, the Company recorded a net valuation gain of \$37,968 during 2006. This valuation gain represents the difference in the amortized original fair value between the Product Supply Agreement and that of the Amended Product Supply Agreement, as of the effective date of the amendment.

In 2007, the Company terminated its obligation to purchase certain dialysis machines under the Amended Product Supply Agreement. As a result of that termination the Company recorded a net valuation gain of \$55,275 in 2007. This valuation gain represents the difference in the amortized original fair value of the Amended Product Supply Agreement and that of the Amended Product Supply Agreement as adjusted for the termination of the obligation to purchase certain dialysis machines as of June 30, 2007. We continue to be subject to the Product Supply Agreement's requirements to purchase a significant majority of our hemodialysis non-equipment product supplies, such as dialyzers, from Gambro at fixed prices.

During 2008, 2007 and 2006, the Company purchased \$83,360, \$90,696 and \$146,408 of hemodialysis product supplies from Gambro Renal Products, representing 2%, 2% and 4%, respectively, of the Company's total operating costs.

The centers acquired from Gambro Healthcare are subject to a five-year Corporate Integrity Agreement in connection with its December 2004 settlement with the U.S. Government that imposes significant specific compliance operating and reporting requirements, and requires an annual audit by an independent reporting organization.

Other than operating leases, disclosed in Note 14 to the consolidated financial statements, and the letters of credit and the interest rate swap agreements, disclosed in Note 13 to the consolidated financial statements, or as described above the Company has no off balance sheet financing arrangements as of December 31, 2008.

22. Fair values of financial instruments

On January 1, 2008, the Company adopted SFAS No. 157 *Fair Value Measurements*, except for the nonfinancial assets and liabilities that are subject to a one-year deferral allowed by FASB Staff Position (FSP) FAS 157-2 *Effective Date of FASB Statement No. 157*. This standard establishes a framework for measuring assets and liabilities at fair value and also requires additional disclosures about fair value measurements. The standard applies to assets and liabilities that are carried at fair value on a recurring basis. On January 1, 2009 we adopted certain provisions of SFAS No. 157 relating to nonfinancial assets and liabilities that are not recognized or disclosed at fair value in the financial statements on a recurring basis, at least annually. The adoption of SFAS No. 157 relating to nonfinancial assets and liabilities will not have a material impact on the Company's consolidated financial statements.

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

The following table summarizes the Company's assets and liabilities measured at fair value on a recurring basis as of December 31, 2008:

	<u>Total</u>	<u>Quoted prices in active markets for identical assets (Level 1)</u>	<u>Significant other observable inputs (Level 2)</u>	<u>Significant unobservable inputs (Level 3)</u>
Assets				
Available for sale securities	\$ 21,833	\$21,833	\$ —	\$ —
Liabilities				
Interest rate swap agreements	\$ 21,904	\$ —	\$21,904	\$ —
Commitments				
Business interests subject to put obligations	\$291,000	\$ —	\$ —	\$291,000

The available for sale securities represent investments in various open or closed-ended registered investment companies, or mutual funds, and are recorded at fair value based upon the quoted market prices as reported by each mutual fund. See Note 9 to the consolidated financial statements for further discussion.

The interest rate swap agreements are recorded at fair value based upon valuation models and a variety of techniques as reported by various broker dealers that are based upon relevant observable market inputs such as current interest rates, forward yield curves, and other credit and liquidity market conditions. The Company does not believe the ultimate amount that could be realized upon settlement of these interest rate swap agreements would be materially different than the fair values as currently reported. See Note 13 to the consolidated financial statements for further discussion.

See Note 21 to the consolidated financial statements for a discussion of the Company's methodology for estimating the fair value of the business interests subject to put obligations.

On January 1, 2008, the Company adopted SFAS No. 159 *Fair Value Option for Financial Assets and Financial Liabilities, including an amendment of SFAS No. 115*. This standard allows companies the alternative to measure certain financial assets and liabilities at fair value on an instrument-by-instrument basis that are currently not required to be measured at fair value. The standard is also designed to reduce the volatility in earnings caused by measuring related assets and liabilities differently and establishes presentation and disclosure requirements designed to facilitate comparisons between companies that choose different measurement attributes for similar types of assets and liabilities. The implementation of this standard did not have a material impact on the Company's consolidated financial statements.

Other financial instruments consist primarily of cash, accounts receivable, notes receivable, accounts payable, accrued compensation and benefits, other accrued liabilities and debt. The balances of the non-debt financial instruments are presented in the consolidated financial statements at December 31, 2008 and 2007 at their approximate fair values due to the short-term nature of their settlements. Borrowings under the Company's Senior Secured Credit Facilities totaled \$1,920,250 as of December 31, 2008, and the fair value was \$1,689,820 based upon quoted market prices. The fair value of the Company's senior and senior subordinated notes was approximately \$1,658,000 at December 31, 2008 based upon quoted market prices.

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

23. Segment reporting

The Company operates principally as a dialysis and related lab services business but also operates other ancillary services and strategic initiatives. These ancillary services and strategic initiatives consist of infusion therapy services, pharmacy services, vascular access services, physician services, disease management services and full-service special needs plans, as well as clinical research programs. For internal management reporting the dialysis and related lab services business and each of the ancillary services and strategic initiatives have been defined as separate operating segments by management in accordance with SFAS No. 131 *Disclosures about Segments of an Enterprise and Related Information*, as separate financial information is regularly produced and reviewed by the Company's chief operating decision maker in making decisions about allocating resources and assessing financial results. The Company's chief operating decision maker is its Chief Executive Officer. The dialysis and related lab services business qualifies as a separately reportable segment under SFAS No. 131, and all of the other ancillary services and strategic initiatives operating segments have been combined and disclosed in the other segments category.

The Company's operating segment financial information is prepared on an internal management reporting basis that the Chief Executive Officer uses to allocate resources and analyze the performance of operating segments. For internal management reporting, segment operations include direct segment operating expenses with the exception of minority interests expense and stock-based compensation expense.

The following is a summary of segment revenues, segment operating margin (loss), and a reconciliation of segment margin to income before income taxes:

	<u>Years ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
Segment revenues:			
Dialysis and related lab services(1)	\$5,415,363	\$5,130,181	\$4,798,756
Other—Ancillary services and strategic initiatives	244,810	133,970	81,906
Consolidated revenues	<u>\$5,660,173</u>	<u>\$5,264,151</u>	<u>\$4,880,662</u>
Segment operating margin (loss):			
Dialysis and related lab services	\$ 943,035	\$ 992,812	\$ 828,927
Other—Ancillary services and strategic initiatives	(33,500)	(50,969)	(27,273)
Total segment margin	909,535	941,843	801,654
Reconciliation of segment margin to income before income taxes:			
Stock-based compensation	(41,235)	(34,149)	(26,389)
Minority interests and equity income, net	(46,535)	(45,485)	(35,833)
Consolidated operating income	821,765	862,209	739,432
Debt expense	(224,716)	(257,147)	(276,706)
Other income	12,411	22,460	13,033
Consolidated income before income taxes	<u>\$ 609,460</u>	<u>\$ 627,522</u>	<u>\$ 475,759</u>

(1) Includes management fees related to providing management and administrative services to dialysis centers in which the Company either owns a noncontrolling interest or are wholly-owned by third parties.

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

Depreciation and amortization expense for the dialysis and related lab services for 2008, 2007 and 2006 were \$210,141, \$189,208 and \$171,350, respectively, and were \$6,776, \$4,262 and \$1,945, respectively, for the ancillary services and strategic initiatives.

Summary of assets by segment is as follows:

	December 31,	
	2008	2007
Segment assets		
Dialysis and related lab services	\$7,031,558	\$6,731,647
Other—Ancillary services and strategic initiatives	254,533	212,313
Consolidated assets	<u>\$7,286,091</u>	<u>\$6,943,960</u>

In 2008 and 2007 the total amount of expenditures for property and equipment for the dialysis and related lab services were \$314,915 and \$263,604, respectively, and were \$3,047 and \$8,608, respectively, for the ancillary services and strategic initiatives.

24. Supplemental cash flow information

The table below provides supplemental cash flow information:

	Year ended December 31,		
	2008	2007	2006
Cash paid:			
Income taxes	\$163,147	\$205,955	\$209,982
Interest	222,558	245,325	271,711
Non-cash investing and financing activities:			
Fixed assets acquired under capital lease obligations	—	2,769	—
Liabilities assumed in conjunction with common stock acquisitions	—	1,653	—

25. Selected quarterly financial data (unaudited)

	2008				2007			
	December 31	September 30	June 30	March 31	December 31	September 30	June 30	March 31
Net operating revenues	\$1,461,010	\$1,447,135	\$1,407,304	\$1,344,724	\$1,354,869	\$1,318,381	\$1,312,735	\$1,278,166
Operating income	211,600	207,884	205,554	196,727	195,263	212,412	261,217	193,317
Income before income taxes	157,855	155,860	153,221	142,524	137,941	155,975	205,964	127,642
Net income	98,365	93,910	94,951	86,934	85,717	94,455	125,024	76,582
Basic earnings per share	0.95	0.90	0.91	0.81	0.80	0.89	1.19	0.73
Diluted earnings per share	\$ 0.94	\$ 0.89	\$ 0.90	\$ 0.80	\$ 0.79	\$ 0.88	\$ 1.17	\$ 0.72

26. Condensed consolidating financial statements

The following information is presented in accordance with Rule 3-10 of Regulation S-X. The operating and investing activities of the separate legal entities included in the Company's consolidated financial statements are fully interdependent and integrated. Revenues and operating expenses of the separate legal entities include intercompany charges for management and other services. The senior notes and the senior subordinated notes were issued by the Company and are guaranteed by substantially all of its direct and indirect wholly-owned subsidiaries. Each of the guarantor subsidiaries has guaranteed the notes on a joint and several, full and unconditional basis. Non-wholly-owned subsidiaries, joint ventures, partnerships and third parties are not guarantors of these obligations.

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

Condensed Consolidating Statements of Income

	<u>DaVita Inc.</u>	<u>Guarantor Subsidiaries</u>	<u>Non- Guarantor Subsidiaries</u>	<u>Consolidating Adjustments</u>	<u>Consolidated Total</u>
For the year ended December 31, 2008					
Net operating revenues	\$ 363,112	\$4,808,324	\$881,810	\$(393,073)	\$5,660,173
Operating expenses	228,729	4,209,565	746,652	(393,073)	4,791,873
Minority interests and equity income, net . . .	—	—	—	46,535	46,535
Operating income	134,383	598,759	135,158	(46,535)	821,765
Debt (expense)	(227,535)	(189,506)	(2,520)	194,845	(224,716)
Other income, net	206,527	—	729	(194,845)	12,411
Income tax expense	43,763	188,717	2,820	—	235,300
Equity earnings in subsidiaries	304,548	82,084	—	(386,632)	—
Net income	<u>\$ 374,160</u>	<u>\$ 302,620</u>	<u>\$130,547</u>	<u>\$(433,167)</u>	<u>\$ 374,160</u>
For the year ended December 31, 2007					
Net operating revenues	\$ 365,728	\$4,534,153	\$754,163	\$(389,893)	\$5,264,151
Operating expenses	208,042	3,921,149	617,159	(389,893)	4,356,457
Minority interests and equity income, net . . .	—	—	—	45,485	45,485
Operating income	157,686	613,004	137,004	(45,485)	862,209
Debt (expense)	(259,745)	(256,050)	(4,002)	262,650	(257,147)
Other income, net	284,038	—	1,072	(262,650)	22,460
Income tax expense (benefit)	70,972	175,854	(1,082)	—	245,744
Equity earnings in subsidiaries	270,771	88,565	—	(359,336)	—
Net income	<u>\$ 381,778</u>	<u>\$ 269,665</u>	<u>\$135,156</u>	<u>\$(404,821)</u>	<u>\$ 381,778</u>
For the year ended December 31, 2006					
Net operating revenues	\$ 351,566	\$4,263,363	\$639,690	\$(373,957)	\$4,880,662
Operating expenses	200,846	3,751,164	527,344	(373,957)	4,105,397
Minority interests and equity income, net . . .	—	—	—	35,833	35,833
Operating income	150,720	512,199	112,346	(35,833)	739,432
Debt (expense)	(280,288)	(291,095)	(2,052)	296,729	(276,706)
Other income, net	308,288	—	1,474	(296,729)	13,033
Income tax expense	70,201	116,183	46	—	186,430
Discontinued operations, net of tax	—	362	—	—	362
Equity earnings in subsidiaries	181,172	75,889	—	(257,061)	—
Net income	<u>\$ 289,691</u>	<u>\$ 181,172</u>	<u>\$111,722</u>	<u>\$(292,894)</u>	<u>\$ 289,691</u>

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

Condensed Consolidating Balance Sheets

	<u>DaVita Inc.</u>	<u>Guarantor Subsidiaries</u>	<u>Non- Guarantor Subsidiaries</u>	<u>Consolidating Adjustments</u>	<u>Consolidated Total</u>
As of December 31, 2008					
Cash and cash equivalents	\$ 397,576	\$ —	\$ 13,305	\$ —	\$ 410,881
Accounts receivable, net	—	933,906	141,551	—	1,075,457
Other current assets	22,112	573,078	46,776	—	641,966
Total current assets	419,688	1,506,984	201,632	—	2,128,304
Property and equipment, net	15,175	864,725	168,175	—	1,048,075
Amortizable intangible assets, net	39,990	114,237	6,294	—	160,521
Investments in subsidiaries	4,866,391	464,369	—	(5,330,760)	—
Receivables from subsidiaries	320,346	—	90,754	(411,100)	—
Other long-term assets and investments	13,320	14,815	44,125	—	72,260
Goodwill	—	3,571,669	305,262	—	3,876,931
Total assets	<u>\$5,674,910</u>	<u>\$6,536,799</u>	<u>\$816,242</u>	<u>\$(5,741,860)</u>	<u>\$7,286,091</u>
Current liabilities	\$ 106,370	\$ 990,024	\$ 66,669	\$ —	\$1,163,063
Payables to parent	—	386,468	24,632	(411,100)	—
Long-term debt and other long-term liabilities	3,616,082	368,774	19,868	—	4,004,724
Minority interests	—	—	—	165,846	165,846
Shareholders' equity	1,952,458	4,791,533	705,073	(5,496,606)	1,952,458
Total liabilities and shareholders' equity	<u>\$5,674,910</u>	<u>\$6,536,799</u>	<u>\$816,242</u>	<u>\$(5,741,860)</u>	<u>\$7,286,091</u>
As of December 31, 2007					
Cash and cash equivalents	\$ 443,157	\$ —	\$ 3,889	\$ —	\$ 447,046
Accounts receivable, net	—	786,765	141,184	—	927,949
Other current assets	26,528	557,357	17,370	—	601,255
Total current assets	469,685	1,344,122	162,443	—	1,976,250
Property and equipment, net	19,317	766,596	153,413	—	939,326
Amortizable intangible assets, net	49,629	126,202	7,211	—	183,042
Investments in subsidiaries	4,340,411	421,273	—	(4,761,684)	—
Receivables from subsidiaries	701,101	—	61,201	(762,302)	—
Other long-term assets and investments	22,729	16,052	38,628	—	77,409
Goodwill	—	3,484,706	283,227	—	3,767,933
Total assets	<u>\$5,602,872</u>	<u>\$6,158,951</u>	<u>\$706,123</u>	<u>\$(5,523,986)</u>	<u>\$6,943,960</u>
Current liabilities	\$ 182,419	\$ 856,638	\$ 47,439	\$ —	\$1,086,496
Payables to parent	—	762,302	—	(762,302)	—
Long-term debt and other long-term liabilities	3,688,203	272,488	14,006	—	3,974,697
Minority interests	—	—	—	150,517	150,517
Shareholders' equity	1,732,250	4,267,523	644,678	(4,912,201)	1,732,250
Total liabilities and shareholders' equity	<u>\$5,602,872</u>	<u>\$6,158,951</u>	<u>\$706,123</u>	<u>\$(5,523,986)</u>	<u>\$6,943,960</u>

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

Condensed Consolidating Statements of Cash Flows

	DaVita Inc.	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated Total
For the year ended December 31, 2008					
Cash flows from operating activities					
Net income	\$ 374,160	\$ 302,620	\$ 130,547	\$(433,167)	\$ 374,160
Changes in operating assets and liabilities and non cash items included in net income	(614,532)	484,864	(121,728)	433,167	181,771
Net cash (used in) provided by operating activities	(240,372)	787,484	8,819	—	555,931
Cash flows from investing activities					
Additions of property and equipment	(2,546)	(271,561)	(43,855)	—	(317,962)
Acquisitions	(439)	(116,708)	(9,221)	—	(126,368)
Proceeds from discontinued operations and asset sales	—	530	—	—	530
Other items	19,281	(40,568)	71,127	—	49,840
Net cash provided by (used in) investing activities	16,296	(428,307)	18,051	—	(393,960)
Cash flows from financing activities					
Long-term debt	(17,675)	(424)	4,548	—	(13,551)
Intercompany borrowing	380,755	(358,753)	(22,002)	—	—
Other items	(184,585)	—	—	—	(184,585)
Net cash provided by (used in) financing activities	178,495	(359,177)	(17,454)	—	(198,136)
Net (decrease) increase in cash	(45,581)	—	9,416	—	(36,165)
Cash at the beginning of the year	443,157	—	3,889	—	447,046
Cash at the end of the year	\$ 397,576	\$ —	\$ 13,305	\$ —	\$ 410,881
For the year ended December 31, 2007					
Cash flows from operating activities					
Net income	\$ 381,778	\$ 269,665	\$ 135,156	\$(404,821)	\$ 381,778
Changes in operating assets and liabilities and non cash items included in net income	(283,759)	156,635	(126,439)	404,821	151,258
Net cash provided by operating activities	98,019	426,300	8,717	—	533,036
Cash flows from investing activities					
Additions of property and equipment	(3,501)	(220,264)	(48,447)	—	(272,212)
Acquisitions	(69,701)	(57,393)	—	—	(127,094)
Proceeds from discontinued operations and asset sales	—	12,289	—	—	12,289
Other items	(19,811)	(82,317)	62,673	—	(39,455)
Net cash (used in) provided by investing activities	(93,013)	(347,685)	14,226	—	(426,472)
Cash flows from financing activities					
Long-term debt	(49,961)	2,212	447	—	(47,302)
Intercompany borrowing	111,100	(80,827)	(30,273)	—	—
Other items	77,582	—	—	—	77,582
Net cash provided by (used in) financing activities	138,721	(78,615)	(29,826)	—	30,280
Net increase (decrease) in cash	143,727	—	(6,883)	—	136,844
Cash at the beginning of the year	299,430	—	10,772	—	310,202
Cash at the end of the year	\$ 443,157	\$ —	\$ 3,889	\$ —	\$ 447,046
For the year ended December 31, 2006					
Cash flows from operating activities					
Net income	\$ 289,691	\$ 181,172	\$ 111,722	\$(292,894)	\$ 289,691
Changes in operating assets and liabilities and non cash items included in net income	(327,844)	370,840	(106,010)	292,894	229,880
Net cash (used in) provided by operating activities	(38,153)	552,012	5,712	—	519,571
Cash flows from investing activities					
Additions of property and equipment	(2,582)	(211,953)	(48,173)	—	(262,708)
Acquisitions	—	(85,153)	(1,351)	—	(86,504)
Proceeds from discontinued operations and asset sales	12,742	9,437	—	—	22,179
Other items	—	(59,606)	74,576	—	14,970
Net cash provided by (used in) investing activities	10,160	(347,275)	25,052	—	(312,063)
Cash flows from financing activities					
Long-term debt	(408,211)	(1,198)	2,450	—	(406,959)
Intercompany borrowing	238,246	(203,539)	(34,707)	—	—
Other items	77,842	—	—	—	77,842
Net cash used in financing activities	(92,123)	(204,737)	(32,257)	—	(329,117)
Net decrease in cash	(120,116)	—	(1,493)	—	(121,609)
Cash at the beginning of the year	419,546	—	12,265	—	431,811
Cash at the end of the year	\$ 299,430	\$ —	\$ 10,772	\$ —	\$ 310,202

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Shareholders
DaVita Inc.:

Under date of February 27, 2009, we reported on the consolidated balance sheets of DaVita Inc. and subsidiaries as of December 31, 2008, and 2007, and the related consolidated statements of income, shareholders' equity and comprehensive income, and cash flows for each of the years in the three-year period ended December 31, 2008, which are included in the Annual Report on Form 10-K. In connection with our audits of the aforementioned consolidated financial statements, we also audited the related consolidated financial statement schedule included in the Annual Report on Form 10-K. The financial statement schedule is the responsibility of the Company's management. Our responsibility is to express an opinion on the financial statement schedule based on our audits.

In our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

As discussed in Note 12 to the consolidated financial statements, DaVita Inc. and subsidiaries adopted Financial Accounting Standards Board Interpretation No. 48, Accounting for Income Tax Uncertainties, effective January 1, 2007.

/s/ KPMG LLP

Seattle, Washington
February 27, 2009

DAVITA INC.

SCHEDULE II—VALUATION AND QUALIFYING ACCOUNTS

<u>Description</u>	<u>Balance at beginning of year</u>	<u>Amounts charged to income</u>	<u>Amounts written off</u>	<u>Balance at end of year</u>
	(in thousands)			
Allowance for uncollectible accounts:				
Year ended December 31, 2006	\$138,598	\$126,203	\$ 93,044	\$171,757
Year ended December 31, 2007	\$171,757	\$136,682	\$112,486	\$195,953
Year ended December 31, 2008	\$195,953	\$146,229	\$130,960	\$211,222

EXHIBIT INDEX

- 2.1 Stock Purchase Agreement dated as of December 6, 2004, among Gambro AB, Gambro, Inc. and DaVita Inc.(11)
- 2.2 Amended and Restated Asset Purchase Agreement effective as of July 28, 2005, by and among DaVita Inc., Gambro Healthcare, Inc. and Renal Advantage Inc., a Delaware corporation, formerly known as RenalAmerica, Inc.(14)
- 3.1 Amended and Restated Certificate of Incorporation of Total Renal Care Holdings, Inc., or TRCH, dated December 4, 1995.(1)
- 3.2 Certificate of Amendment of Certificate of Incorporation of TRCH, dated February 26, 1998.(2)
- 3.3 Certificate of Amendment of Certificate of Incorporation of DaVita Inc. (formerly Total Renal Care Holdings, Inc.), dated October 5, 2000.(4)
- 3.4 Certificate of Amendment of Amended and Restated Certificate of Incorporation of DaVita Inc., as amended dated May 30, 2007.(26)
- 3.5 Amended and Restated Bylaws for DaVita Inc. dated as of March 2, 2007.(29)
- 4.1 Indenture for the 6⁵/₈% Senior Notes due 2013 dated as of March 22, 2005.(3)
- 4.2 Indenture for the 7¹/₄% Senior Subordinated Notes due 2015 dated as of March 22, 2005.(3)
- 4.3 Supplemental Indenture, dated October 5, 2005, by and among DaVita Inc., the Guarantors, the persons named as Additional Guarantors and Senior Trustee.(13)
- 4.4 Supplemental Indenture, dated October 5, 2005, by and among DaVita Inc., the Guarantors, the persons named as Additional Guarantors and Senior Subordinated Trustee.(13)
- 4.5 Rights Agreement, dated as of November 14, 2002, between DaVita Inc. and the Bank of New York, as Rights Agent.(24)
- 4.6 Second Supplemental Indenture (Senior), dated February 9, 2007, by and among DaVita Inc., the Guarantors, the persons named as Additional Guarantors and The Bank of New York Trust Company, N.A., as Trustee.(25)
- 4.7 Second Supplemental Indenture (Senior Subordinated), dated February 9, 2007, by and among DaVita Inc., the Guarantors, the persons named as Additional Guarantors and the Bank of New York Trust Company, N.A., as Trustee.(25)
- 4.8 Registration Rights Agreement for the 6⁵/₈% Senior Notes due 2013 dated as of February 23, 2007.(30)
- 10.1 Employment Agreement, dated as of July 19, 2000, by and between TRCH and Charles J. McAllister.(4)*
- 10.2 Employment Agreement, dated as of June 15, 2000, by and between DaVita Inc. and Joseph Mello.(6)*
- 10.3 Employment Agreement, effective as of August 16, 2004, by and between DaVita Inc. and Tom Usilton.(9)*
- 10.4 Amendment to Mr. Usilton's Employment Agreement, dated February 12, 2007.(28)*
- 10.5 Amendment to Mr. Usilton's Employment Agreement, effective December 12, 2008.✓*
- 10.6 Employment Agreement, effective as of November 18, 2004, by and between DaVita Inc. and Joseph Schohl.(16)*
- 10.7 Amendment to Mr. Schohl's Employment Agreement, effective December 30, 2008.✓*
- 10.8 Employment Agreement, dated as of October 31, 2005, effective October 24, 2005, by and between DaVita Inc. and Dennis Kogod.(15)*
- 10.9 Amendment to Mr. Kogod's Employment Agreement, effective December 12, 2008.✓*

- 10.10 Employment Agreement, effective November 2, 2005, by and between DaVita Inc. and Christopher J. Riopelle.(15)*
- 10.11 Employment Agreement, effective September 22, 2005, by and between DaVita Inc. and James Hilger.(18)*
- 10.12 Amendment to Mr. Hilger's Employment Agreement, effective December 12, 2008.✓*
- 10.13 Offer of Employment Letter to Mary Kowenhoven dated February 15, 2007.(25)*
- 10.14 Employment Agreement, entered into effective July 16, 2007, by and between DaVita Inc. and Patricia Jones.(27)*
- 10.15 Employment Agreement effective February 13, 2008, by and between DaVita Inc. and Richard K. Whitney.(33)*
- 10.16 Amendment to Employment Agreement effective February 21, 2008, by and between DaVita Inc. and Patricia Jones.(33)*
- 10.17 Employment Agreement between the Company and Kent J. Thiry effective July 25, 2008.(34)*
- 10.18 Employment Agreement between the Company and Allen Nissenson effective August 1, 2008.(35)*
- 10.19 Employment Agreement between the Company and David Shapiro, effective March 3, 2008.✓*
- 10.20 Amendment to Mr. Shapiro's Employment Agreement, effective December 4, 2008.✓*
- 10.21 Memorandum relating to Bonus Structure for Charles J. McAllister.(16)*
- 10.22 Memorandum relating to Bonus Structure for Thomas O. Usilton.(13)*
- 10.23 Memorandum relating to Bonus Structure for Joseph Schohl.(13)*
- 10.24 Amended Director Compensation Philosophy and Plan.(22)*
- 10.25 Form of Indemnity Agreement.(23)*
- 10.26 Form of Indemnity Agreement.(16)*
- 10.27 First Amended and Restated Executive Incentive Plan.(12)*
- 10.28 Second Amended and Restated Executive Incentive Plan.✓*
- 10.29 Executive Retirement Plan (as amended).✓*
- 10.30 Post-Retirement Deferred Compensation Arrangement.(16)*
- 10.31 Amendment No. 1 to Post Retirement Deferred Compensation Arrangement.✓*
- 10.32 DaVita Voluntary Deferral Plan.(13)*
- 10.33 Deferred Bonus Plan.(36)
- 10.34 Deferred Bonus Plan (Prosperity Plan).(36)
- 10.35 Amendment No. 1 to Deferred Bonus Plan (Prosperity Plan).✓*
- 10.36 Amended and Restated Employee Stock Purchase Plan.(31)*
- 10.37 Severance Plan.(32)*
- 10.38 Amended and Restated Severance Plan.✓*
- 10.39 Change in Control Bonus Program.(20)*
- 10.40 Amended and Restated Change in Control Bonus Program.✓*
- 10.41 Second Amended and Restated 1994 Equity Compensation Plan.(7)*
- 10.42 First Amended and Restated 1995 Equity Compensation Plan.(7)*
- 10.43 First Amended and Restated 1997 Equity Compensation Plan.(7)*
- 10.44 First Amended and Restated Special Purpose Option Plan.(7)*
- 10.45 Amended and Restated 1999 Equity Compensation Plan.(8)*

- 10.46 First Amended and Restated Total Renal Care Holdings, Inc. 1999 Non-Executive Officer and Non-Director Equity Compensation Plan.(5)
- 10.47 Amended and Restated 2002 Equity Compensation Plan.(12)*
- 10.48 Amended and Restated 2002 Equity Compensation Plan.(22)*
- 10.49 Amended and Restated 2002 Equity Compensation Plan.(31)*
- 10.50 Amended and Restated 2002 Equity Compensation Plan.✓*
- 10.51 Form of Non-Qualified Stock Option Agreement for stock options grants to employees under the Company's 2002 Equity Compensation Plan.(9)*
- 10.52 Form of Restricted Stock Unit Agreement for restricted stock unit grants to employees under the Company's 2002 Equity Compensation Plan.(9)*
- 10.53 Form of Stock Appreciation Rights Agreement—Employee (DaVita Inc. 2002 Equity Compensation Plan).(19)*
- 10.54 Form of Non-Qualified Stock Option Agreement—Employee (DaVita Inc. 2002 Equity Compensation Plan).(19)*
- 10.55 Form of Restricted Stock Units Agreement—Employee (DaVita Inc. 2002 Equity Compensation Plan).(19)*
- 10.56 Form of Non-Qualified Stock Option Agreement—Employee (DaVita Inc. 2002 Equity Compensation Plan).(21)*
- 10.57 Form of Non-Qualified Stock Option Agreement—Employee (DaVita Inc. 1999 Non-Executive Officer and Non-Director Equity Compensation Plan).(21)*
- 10.58 Form of Restricted Stock Units Agreement—Employee (DaVita Inc. 2002 Equity Compensation Plan).(21)*
- 10.59 Form of Stock Appreciation Rights Agreement – Employee (DaVita Inc. 2002 Equity Compensation Plan).(21)*
- 10.60 Form of Stock Appreciation Rights Agreement – Board (DaVita Inc. 2002 Equity Compensation Plan).(35)*
- 10.61 Form of Restricted Stock Units Agreement – Board (DaVita Inc. 2002 Equity Compensation Plan).(35)*
- 10.62 Form of Non-qualified Stock Option Agreement - Board (DaVita Inc. 2002 Equity Compensation Plan).(35)*
- 10.63 Form of Restricted Stock Unit Agreement – Employee (DaVita Inc. 2002 Equity Compensation Plan.✓*
- 10.64 Amendment to Equity Award Agreement effective March 1, 2008, by and between DaVita Inc. and Patricia Jones.(33)*
- 10.65 Non-management Director Compensation Philosophy and Plan.(33)*
- 10.66 Credit Agreement, dated as of October 5, 2005, among DaVita Inc., the Guarantors party thereto, the Lenders party thereto, Bank of America, N.A., Wachovia Bank, National Association, Bear Stearns Corporate Lending Inc., The Bank of New York, The Bank of Nova Scotia, The Royal Bank of Scotland plc, WestLB AG, New York Branch as Co-Documentation Agents, Credit Suisse, Cayman Islands Branch, as Syndication Agent, JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent, JPMorgan Securities Inc., as Sole Lead Arranger and Bookrunner and Credit Suisse, Cayman Islands Branch, as Co-Arranger.(13)
- 10.67 Credit Agreement, dated as of October 5, 2005, as Amended and Restated as of February 23, 2007, by and among DaVita Inc., the Guarantors party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A.(30)

- 10.68 Amendment Agreement, dated February 23, 2007, by and among DaVita Inc., the Guarantors party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A.(30)
- 10.69 Security Agreement, dated as of October 5, 2005, by DaVita Inc., the Guarantors party thereto and JPMorgan Chase Bank, N.A., as Collateral Agent.(13)
- 10.70 Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and Gambro Healthcare, Inc. effective as of December 1, 2004.(13)
- 10.71 Alliance and Product Supply Agreement, dated as of October 5, 2005, among Gambro Renal Products, Inc., DaVita Inc. and Gambro AB.(13)**
- 10.72 Amended and Restated Alliance and Product Supply Agreement, dated as of August 25, 2006, among Gambro Renal Products, Inc., DaVita Inc. and Gambro AB.(20)**
- 10.73 Letter dated March 19, 2007 from Willard W. Brittain, Jr. to Peter T. Grauer, Lead Independent Director of the Company.(25)
- 10.74 Amended and Restated Agreement dated December 2, 2004, between Amgen USA Inc. and DaVita Inc.(16)**
- 10.75 Dialysis Organization Agreement effective February 3, 2006 between Amgen USA Inc. and DaVita Inc.(17)**
- 10.76 Dialysis Organization Agreement between DaVita Inc. and Amgen USA Inc. dated December 20, 2007.(36)**
- 12.1 Computation of Ratio of Earnings to Fixed Charges.✓
- 14.1 DaVita Inc. Corporate Governance Code of Ethics.(10)
- 21.1 List of our subsidiaries.✓
- 23.1 Consent of KPMG LLP, independent registered public accounting firm.✓
- 24.1 Powers of Attorney with respect to DaVita. (Included on Page II-1).
- 31.1 Certification of the Chief Executive Officer, dated February 27, 2009, pursuant to Rule 13a-14(a) or 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.✓
- 31.2 Certification of the Chief Financial Officer, dated February 27, 2009, pursuant to Rule 13a-14(a) or 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.✓
- 32.1 Certification of the Chief Executive Officer, dated February 27, 2009, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.✓
- 32.2 Certification of the Chief Financial Officer, dated February 27, 2009, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.✓

✓ Included in this filing.

* Management contract or executive compensation plan or arrangement.

** Portions of this exhibit are subject to a request for confidential treatment and have been redacted and filed separately with the SEC.

- (1) Filed on March 18, 1996 as an exhibit to the Company's Transitional Report on Form 10-K for the transition period from June 1, 1995 to December 31, 1995.
- (2) Filed on March 31, 1998 as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 1997.
- (3) Filed on March 25, 2005 as an exhibit to the Company's Current Report on Form 8-K.
- (4) Filed on March 20, 2001 as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2000.
- (5) Filed on February 2, 2003 as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2002.
- (6) Filed on August 15, 2001 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2001.

- (7) Filed on March 29, 2000 as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 1999.
- (8) Filed on April 27, 2001 as an exhibit to the Definitive Proxy Statement for our 2001 Annual Meeting of Stockholders.
- (9) Filed on November 8, 2004 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2004.
- (10) Filed on February 27, 2004 as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2003.
- (11) Filed on December 8, 2004 as an exhibit to the Company's Current Report on Form 8-K.
- (12) Filed on May 4, 2005 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2005.
- (13) Filed on November 8, 2005 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2005.
- (14) Filed on October 11, 2005 as an exhibit to the Company's Current Report on Form 8-K.
- (15) Filed on November 4, 2005 as an exhibit to the Company's Current Report on Form 8-K.
- (16) Filed on March 3, 2005 as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2004.
- (17) Filed on May 8, 2006 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2006.
- (18) Filed on August 7, 2006 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ending June 30, 2006.
- (19) Filed on July 6, 2006 as an exhibit to the Company's Current Report on Form 8-K.
- (20) Filed on November 3, 2006 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2006.
- (21) Filed on October 18, 2006 as an exhibit to the Company's Current Report on Form 8-K.
- (22) Filed on July 31, 2006 as an exhibit to the Company's Current Report on Form 8-K.
- (23) Filed on December 20, 2006 as an exhibit to the Company's Current Report on Form 8-K.
- (24) Filed on November 19, 2002 as an exhibit to the Company's Current Report on Form 8-K.
- (25) Filed on May 3, 2007 as an exhibit to the Company's Quarterly Report as Form 10-Q for the quarter ended March 31, 2007.
- (26) Filed on August 6, 2007 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2007.
- (27) Filed on November 7, 2007 as an exhibit to the Company's Quarterly Report on Form 10-Q for the third quarter ended September 30, 2007.
- (28) Filed on February 16, 2007 as an exhibit to the Company's Current Report on Form 8-K.
- (29) Filed on March 8, 2007 as an exhibit to the Company's Current Report on Form 8-K.
- (30) Filed on February 28, 2007 as an exhibit to the Company's Current Report on Form 8-K.
- (31) Filed on June 4, 2007 as an exhibit to the Company's Current Report on Form 8-K.
- (32) Filed on November 7, 2007 as an exhibit to the Company's Current Report on Form 8-K.
- (33) Filed on May 8, 2008 as an exhibit to the Company's Quarterly Report on Form 10-Q for the first quarter ended March 31, 2008.
- (34) Filed on July 31, 2008 as an exhibit to the Company's Current Report on Form 8-K.
- (35) Filed on November 6, 2008 as an exhibit to the Company's Quarterly Report on Form 10-Q for the third quarter ended September 30, 2008.
- (36) Filed on February 29, 2008 as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2007.

Exhibit 10.5**SECOND AMENDMENT TO EMPLOYMENT AGREEMENT**

This document is to amend the Employment Agreement (the "Agreement") entered into as of August 16, 2004, by and between DaVita Inc. ("Employer") and Thomas Usilton ("Employee"), as well as the first amendment to the Employment Agreement, dated December 15, 2006. Specifically, effective December 12, 2008, the parties agree to amend the Agreement as follows:

1. Section 2.8 is hereby deleted in its entirety and replaced with the following:

"Employer Plane. Employee shall have the right to use the Employer's airplane, for business purposes, up to 30 hours per year. If Employee is using an airplane other than Encore, then the Chief Executive Officer must approve the use of the plane by Employee in advance. Employee must keep track of all hours and report it annually and may not exceed the allotted hours in any given year. If Employee does not use all of the allotted hours in any given calendar year, Employer will pay Employee a bonus calculated as follows: Employee shall receive one half of the hourly or the variable costs that would have been incurred by Employer had he used an Encore airplane for the allotted hours not used. This payment shall be paid in the following calendar year."

2. Section 3.3 is hereby deleted in its entirety and replaced with the following:

"Other Involuntary Termination. Employer may terminate the employment of Employee for any reason or for no reason at any time upon at least thirty (30) days' advance written notice. Except following a Change of Control, as set forth below, or a termination following a Change in Management, as set forth below, if Employer terminates the employment of Employee for reasons other than for death, Material Cause, or Disability, Employee shall (i) be entitled to receive the Base Salary and benefits as set forth in Section 2.1 and Section 2.2, respectively, through the effective date of such termination, (ii) be entitled to receive a lump-sum payment equal to the Base Salary in effect as of the date of the termination payable within 90 days after the effective date of Employee's termination of employment; (iii) be entitled to continue to receive during the one-year period following the effective date of such termination (the "Severance Period") the employee health insurance benefits set forth in Section 2.2 (to the extent Employee can continue to receive such benefits under Employer's health insurance policies and programs in effect at the effective time of such termination through the exercise of his rights under COBRA, Employee shall elect to receive COBRA benefits, and Employer shall pay Employee's insurance premiums for COBRA coverage during the Severance Period; provided, however, to the extent such benefits cannot be provided under such policies and programs, Employer shall purchase for Employee reasonably equivalent health insurance benefits during the Severance Period; Employer's obligation to provide this benefit is subject to the limitation set forth below and subject to the limitation set forth in Section 2.13; and (iv) not be entitled to receive any other compensation, benefits, or payments of any kind, except as otherwise required by law or by the terms of any benefit or retirement plan or other arrangement that would, by its terms, apply. The foregoing notwithstanding, in the event Employee accepts employment (as an employee

or as an independent contractor) with another employer during the Severance Period, (x) Employee shall immediately notify Employer of such employment and (y) Employer's obligation to continue to provide certain health insurance benefits pursuant to clause (iv) of the immediately preceding sentence shall terminate at such time as Employee is insured with reasonably equivalent health benefits under such successor employer's health benefit plan, so long as Employee uses his best effort to obtain such insurance.

"During the Severance Period, Employee agrees to make himself available to answer questions and to cooperate in the transition of his duties. In addition, Employee agrees to cooperate with Employer in the prosecution and/or defense of any claim, including making himself available for any interviews, appearing at depositions, and producing requested documents. Employer shall reimburse Employee for any out-of-pocket expenses he may incur, including travel costs. To the extent that Employee is required to travel, he is required to work with Employer's travel department to arrange his travel plans.

"For purposes of this provision, an Employee's employment has been terminated when Employee is no longer providing services for Employer after a specific date or the level of bona fide services that Employee would perform (as an employee or independent contractor) after a specific date would permanently decrease to no more than 20% of the average level of bona fide services performed over the immediately preceding thirty-six month period (or the full period of service if Employee was employed for less than thirty-six months)."

3. Sections 3.8 is hereby deleted in its entirety and replaced with the following:

"**Disability.** Upon thirty (30) days' advance notice (which notice may be given before the completion of the periods described herein), Employer may terminate Employee's employment for Disability (as defined below)."

4. Section 3.9(b) is hereby deleted in its entirety and replaced with the following:

"Constructive Discharge" shall mean the occurrence of any of the following events after the date of a Change of Control without Employee's express written consent: (i) the scope of Employee's authority, duties and responsibilities are materially diminished or are not (A) in the same general level of seniority, or (C) of the same general nature as Employee's authority, duties, and responsibilities with Employer immediately before such Change of Control; (ii) a material change in the geographic location at which the Employee must perform his or her services; or (iii) a material reduction in Employee's base compensation as in effect on the date of such Change of Control. Notwithstanding the above, the occurrence of any such condition shall not constitute Constructive Discharge unless the Employee provides notice to Employer of the existence of such condition not later than 90 days after the initial existence of such condition, and Employer shall have failed to remedy such condition within 30 days after receipt of such notice."

5. Section 3.12 is hereby added, which provides the following:

“Key Employee. Notwithstanding any provision herein to the contrary, in the event that any payment to be made to Employee hereunder (whether pursuant to this Section 3 or any other Section) as a result of Employee’s termination of employment is determined to constitute “deferred compensation” subject to Section 409A of the Internal Revenue Code, and Employee is a “Key Employee” under the DaVita Inc. Key Employee Policy for 409A Arrangements at the time of Employee’s termination of employment, all such deferred compensation payments payable during the first six (6) months following Employee’s termination of employment shall be delayed and paid in a lump sum during the seventh calendar month following the calendar month during which Employee’s termination of employment occurs.”

6. Section 5 is hereby deleted in its entirety and replaced with the following:

“Excess Parachute Payment. In the event that any payment or benefit received or to be received by Employee in connection with a Change of Control, whether payable pursuant to the terms of this Agreement or any other plan, arrangement or agreement by Employer, any predecessor or successor to Employer or any corporation affiliated (within the meaning of Section 1504 of the Internal Revenue Code of 1986, as amended (the “Code”)) with Employer or which becomes so affiliated pursuant to the transactions resulting in a Change of Control (collectively all such payments are hereinafter referred to as the “Total Payments”), is deemed to be an “Excess Parachute Payment” (in whole or in part) to Employee within the meaning of Section 280G of the Code, as in effect at such time, no change shall be made to the Total Payments to be made in connection with the Change of Control, except that, in addition to all other amounts to be paid to Employee by Employer, Employer shall, within thirty (30) days of the date on which any Excess Parachute Payment is made, pay to Employee, in addition to any other payment, coverage or benefit due and owing, an amount determined by (i) multiplying the rate of excise tax then imposed by Code Section 4999 by the amount of the “Excess Parachute Payment” received by Employee (determined without regard to any payments made to Employee pursuant to this Section 5) and (ii) dividing the product so obtained by the amount obtained by subtracting (A) the aggregate local, state and Federal income and employment tax rates (including the value of the loss of itemized deductions under Section 68 of the Internal Revenue Code and the phase-out of the personal exemption) applicable to the receipt by Employee of the “Excess Parachute Payment” (taking into account the deductibility for Federal income tax purposes of the payment of state and local income taxes thereon) from (B) the amount obtained by subtracting from 1.00 the rate of excise tax then imposed by Section 4999 of the Code. It is Employer’s intention that Employee’s net after-tax position be identical to that which would have obtained had Sections 280G and 4999 not been part of the Code. For purposes of implementing this Section 5, (i) no portion, if any, of the Total Payments, the receipt or enjoyment of which Employee shall have effectively waived in writing prior to the date of payment of the Total Payments, shall be taken into account, and (ii) the value of any non-cash benefit or any deferred cash payment included in the Total Payments shall be determined by Employer’s independent auditors in accordance with the principles of Sections 280G of the Code.

“The calculation of the excess parachute payment is as follows: $X = Y / (1 - (A + B + C))$, where X is the total dollar amount of the Tax Gross-Up Payment, Y is the total Excise Tax imposed with respect to such Change in Control Benefit, A is the Excise Tax rate in effect at the time, B is the highest combined marginal federal income and applicable state income tax rate in effect, after taking into account the deductibility of state income taxes against federal income taxes to the extent allowable, for the calendar year in which the Tax Gross-Up Payment is made, and C is the combined federal and state employment tax rate in effect for the calendar year in which the Tax Gross-Up Payment is made.

“Subject to the provisions of this Section 5, all determinations required to be made under this Section 5, including (i) whether and when a Tax Gross-Up Payment is required, (ii) the amount of such Tax Gross-Up Payment, and (iii) the assumptions to be utilized in arriving at such determination, shall be made by independent auditors of Employer (the “Accounting Firm”). The Accounting Firm shall provide detailed supporting calculations both to Employer and Employee within 15 business days of the receipt of notice from Employee that there has been an Excess Parachute Payment, or such earlier time as is requested by Employer. All fees and expenses of the Accounting Firm shall be borne solely by Employer.

“Any Tax Gross-Up Payment, as determined pursuant to this Section 5, shall be paid by Employer to Employee within thirty (30) days of the receipt of the Accounting Firm’s determination. If the Accounting Firm determines that no Excise Tax is payable by Employee, it shall furnish Employee with a written opinion that failure to report the Excise Tax on Employee’s applicable federal income tax return would not result in the imposition of a negligence or similar penalty. Any determination by the Accounting Firm shall be binding upon Employer and Employee.

“In the event that a Tax Gross-Up Payment was not made but should have been made (“Underpayment”), and Employee thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment (including, without limitation, penalties and interest), and Employer shall promptly pay the Underpayment to or for the benefit of Employee, and in no event later than the end of the calendar year following the calendar year in which Employee makes payment of the additional Excise Tax.

“In the event that a Tax Gross-Up Payment was made but should not have been made (“Overpayment”), the Accounting Firm shall determine the amount of the Overpayment and Employee shall promptly pay the Overpayment to Employer.

“Employee shall notify Employer in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by Employer of the Tax Gross-Up Payment (“Gross-Up Notice”). Employee shall give Employer the Gross-Up

Notice as soon as practicable, but no later than 10 business days after Employee is informed in writing of such claim and shall apprise Employer of the nature of such claim and the date on which such claim is requested to be paid. Employee shall not pay such claim prior to the expiration of the 30-day period following the date of the Gross-Up Notice (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If Employer notifies Employee in writing prior to the expiration of such period that it desires to contest such claim, Employee shall:

- (i) give Employer any information reasonably requested by Employer relating to such claim,
- (ii) take such action in connection with contesting such claim as Employer shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by Employer,
- (iii) cooperate with Employer in good faith in order effectively to contest such claim, and
- (iv) permit Employer to participate in any proceedings relating to such claim.

“Employer shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold Employee harmless, on an after-tax basis, for any Excise Tax or income tax (including interest and penalties with respect thereto) imposed on Employee as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 5, Employer shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct Employee to pay the tax claimed and sue for a refund or contest the claim in any permissible manner. In the event that Employer elects to contest the tax, Employee agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as Employer shall determine. If Employer directs Employee to pay such claim and sue for a refund, Employer shall advance the amount of such payment to Employee, on an interest-free basis, for any Excise Tax or income tax (including interest or penalties with respect thereto) imposed with respect to such advance or with respect to any imputed income with respect to such advance. In the event that the Internal Revenue Service requests an extension of the statute of limitations relating to payment of taxes for the taxable year of Employee with respect to which such contested amount is claimed to be due, such an extension may, at the election of Employee, be limited solely to such contested amount. Furthermore, Employer’s control of the contest shall be limited to issues with respect to which a Tax Gross-Up Payment would be payable hereunder, and Employee shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

“If, after the receipt by Employee of an amount advanced by Employer pursuant to Section 5, Employee becomes entitled to receive any refund with respect to such claim, Employee shall promptly pay Employer the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by Employee of an amount advanced by Employer pursuant to this Section 5, a determination is made that Employee shall not be entitled to any refund with respect to such claim and Employer does not notify Employee in writing of its intent to contest such denial of refund prior to the expiration of thirty (30) days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Tax Gross-Up Payment to be paid.

“Notwithstanding anything to the contrary in this Section 5, in the event that a Tax Gross-Up Payment is made before the date on which Employee actually owes the Excise Tax, then the amount of the payment shall be discounted using the applicable interest rate, i.e., the prime rate, used to compute the present value of an amount at the same time in the future for purposes of computing the Excise Tax.”

In all other respects, and with the exception of the previous amendment, the Agreement remains unchanged and in full force and effect.

DAVITA INC

EMPLOYEE

By /s/ Laura Mildenberger
Laura Mildenberger
Chief People Officer

By /s/ Thomas Usilton
Thomas Usilton

Approved as to Form

/s/ Steven M. Cooper
Steven M. Cooper
Assistant General Counsel – Labor

Exhibit 10.7**AMENDMENT TO EMPLOYMENT AGREEMENT**

This document is to amend the Employment Agreement (the "Agreement"), entered into as of November 18, 2004, by and between DaVita Inc. ("Employer") and Joseph Schohl ("Employee"). Specifically, effective December 30, 2008, the parties agree to amend the Agreement as follows:

1. Section 3.3 is hereby deleted in its entirety and replaced with the following:

"Other Termination. Employer may terminate the employment of Employee for any reason or for no reason at any time upon at least thirty (30) days' advance written notice. If Employer terminates the employment of Employee for reasons other than for Material Cause or Disability, or if Employee resigns within sixty (60) days following Constructive Discharge or a Good Cause Event (as those terms are defined below), Employee shall (i) be entitled to receive the Base Salary and benefits as set forth in Section 2.1 and Section 2.2, respectively, through the effective date of such termination or resignation, (ii) be entitled to receive his salary for the two-year period following the termination of his employment (the "Severance Period"), paid in accordance with Employer's usual payroll practices, (iii) be entitled to continue to receive during the one-year period following the effective date of such termination (the "COBRA Period") the employee health insurance benefits set forth in Section 2.2 at the same cost to him as he paid prior to his termination; and (iv) not be entitled to receive any other compensation, benefits, or payments of any kind, except as otherwise required by law or by the terms of any benefit or retirement plan or other arrangement that would, by its terms, apply. The foregoing notwithstanding, in the event Employee accepts employment (as an employee or as an independent contractor) with another employer during the COBRA Period, (x) Employee shall immediately notify Employer of such employment and (y) Employer's obligation to continue to provide certain health insurance benefits pursuant to clause (iii) of the immediately preceding sentence shall terminate once Employee becomes eligible to participate in his new employer's health benefit plan. In addition, once Employee accepts employment (as an employee or as an independent contractor), Employer may reduce its obligation under clause (ii) herein dollar-for-dollar for every dollar Employee earns in base salary or other compensation during the Severance Period from his new employer. Employee agrees to use reasonable efforts to find employment after the first year of the Severance Period and that if he fails to use reasonable efforts, the Company's obligations under clause (ii) herein may be terminated by Employer in its sole discretion.

"With respect to Employee's right to continue receiving health insurance, to the extent Employee can continue to receive such benefits under Employer's health insurance policies and programs in effect at the effective time of such termination through the exercise of his rights under COBRA, Employee shall elect to receive COBRA benefits, and Employer shall pay Employee's insurance premiums for COBRA coverage during this one-year period; provided, however, to the extent such benefits cannot be provided under such policies and programs, Employer shall purchase for Employee reasonably equivalent health insurance benefits during the one-year period subject to the limitation set forth below and subject to the limitation set forth in Section 2.11.

During the Severance Period, Employee agrees to make himself available to answer questions and to cooperate in the transition of his duties. In addition, Employee agrees to cooperate with Employer in the prosecution and/or defense of any claim, including making himself available for any interviews, appearing at depositions, and producing requested documents.

“For purposes of this provision, an Employee’s employment has been terminated when Employee is no longer providing services for Employer after a specific date or the level of bona fide services that Employee would perform (as an employee or independent contractor) after a specific date would permanently decrease to no more than 20% of the average level of bona fide services performed over the immediately preceding thirty-six month period (or the full period of service if Employee was employed for less than thirty-six months).”

2. Section 3.9 is hereby added, which provides the following:

“Key Employee. Notwithstanding any provision herein to the contrary, in the event that any payment to be made to Employee hereunder (whether pursuant to this Section 3 or any other Section) as a result of Employee’s termination of employment is determined to constitute “deferred compensation” subject to Section 409A of the Internal Revenue Code, and Employee is a “Key Employee” under the DaVita Inc. Key Employee Policy for 409A Arrangements at the time of Employee’s termination of employment, all such deferred compensation payments payable during the first six (6) months following Employee’s termination of employment shall be delayed and paid in a lump sum during the seventh calendar month following the calendar month during which Employee’s termination of employment occurs.”

3. Section 5 is hereby deleted in its entirety and replaced with the following:

“Excess Parachute Payment. In the event that any payment or benefit received or to be received by Employee in connection with a Change of Control, whether payable pursuant to the terms of this Agreement or any other plan, arrangement or agreement by Employer, any predecessor or successor to Employer or any corporation affiliated (within the meaning of Section 1504 of the Internal Revenue Code of 1986, as amended (the “Code”)) with Employer or which becomes so affiliated pursuant to the transactions resulting in a Change of Control (collectively all such payments are hereinafter referred to as the “Total Payments”), is deemed to be an “Excess Parachute Payment” (in whole or in part) to Employee within the meaning of Section 280G of the Code, as in effect at such time, no change shall be made to the Total Payments to be made in connection with the Change of Control, except that, in addition to all other amounts to be paid to Employee by Employer, Employer shall, within thirty (30) days of the date on which any Excess Parachute Payment is made, pay to Employee, in addition to any other payment, coverage or benefit due and owing, an amount determined by (i) multiplying the rate of excise tax then imposed by Code Section 4999 by the amount of the “Excess Parachute Payment” received by Employee (determined without regard to any payments made to Employee pursuant to this Section 5) and (ii) dividing the product so obtained by the amount

obtained by subtracting (A) the aggregate local, state and Federal income and employment tax rates (including the value of the loss of itemized deductions under Section 68 of the Internal Revenue Code and the phase-out of the personal exemption) applicable to the receipt by Employee of the "Excess Parachute Payment" (taking into account the deductibility for Federal income tax purposes of the payment of state and local income taxes thereon) from (B) the amount obtained by subtracting from 1.00 the rate of excise tax then imposed by Section 4999 of the Code. It is Employer's intention that Employee's net after-tax position be identical to that which would have obtained had Sections 280G and 4999 not been part of the Code. For purposes of implementing this Section 5, (i) no portion, if any, of the Total Payments, the receipt or enjoyment of which Employee shall have effectively waived in writing prior to the date of payment of the Total Payments, shall be taken into account, and (ii) the value of any non-cash benefit or any deferred cash payment included in the Total Payments shall be determined by Employer's independent auditors in accordance with the principles of Sections 280G of the Code.

"The calculation of the excess parachute payment is as follows: $X = Y / (1 - (A + B + C))$, where X is the total dollar amount of the Tax Gross-Up Payment, Y is the total Excise Tax imposed with respect to such Change in Control Benefit, A is the Excise Tax rate in effect at the time, B is the highest combined marginal federal income and applicable state income tax rate in effect, after taking into account the deductibility of state income taxes against federal income taxes to the extent allowable, for the calendar year in which the Tax Gross-Up Payment is made, and C is the combined federal and state employment tax rate in effect for the calendar year in which the Tax Gross-Up Payment is made.

"Subject to the provisions of this Section 5, all determinations required to be made under this Section 5, including (i) whether and when a Tax Gross-Up Payment is required, (ii) the amount of such Tax Gross-Up Payment, and (iii) the assumptions to be utilized in arriving at such determination, shall be made by independent auditors of Employer (the "Accounting Firm"). The Accounting Firm shall provide detailed supporting calculations both to Employer and Employee within 15 business days of the receipt of notice from Employee that there has been an Excess Parachute Payment, or such earlier time as is requested by Employer. All fees and expenses of the Accounting Firm shall be borne solely by Employer.

"Any Tax Gross-Up Payment, as determined pursuant to this Section 5, shall be paid by Employer to Employee within thirty (30) days of the receipt of the Accounting Firm's determination. If the Accounting Firm determines that no Excise Tax is payable by Employee, it shall furnish Employee with a written opinion that failure to report the Excise Tax on Employee's applicable federal income tax return would not result in the imposition of a negligence or similar penalty. Any determination by the Accounting Firm shall be binding upon Employer and Employee.

“In the event that a Tax Gross-Up Payment was not made but should have been made (“Underpayment”), and Employee thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment (including, without limitation, penalties and interest), and Employer shall promptly pay the Underpayment to or for the benefit of Employee, and in no event later than the end of the calendar year following the calendar year in which Employee makes payment of the additional Excise Tax.

“In the event that a Tax Gross-Up Payment was made but should not have been made (“Overpayment”), the Accounting Firm shall determine the amount of the Overpayment and Employee shall promptly pay the Overpayment to Employer.

“Employee shall notify Employer in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by Employer of the Tax Gross-Up Payment (“Gross-Up Notice”). Employee shall give Employer the Gross-Up Notice as soon as practicable, but no later than 10 business days after Employee is informed in writing of such claim and shall apprise Employer of the nature of such claim and the date on which such claim is requested to be paid. Employee shall not pay such claim prior to the expiration of the 30-day period following the date of the Gross-Up Notice (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If Employer notifies Employee in writing prior to the expiration of such period that it desires to contest such claim, Employee shall:

- (i) give Employer any information reasonably requested by Employer relating to such claim,
- (ii) take such action in connection with contesting such claim as Employer shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by Employer,
- (iii) cooperate with Employer in good faith in order effectively to contest such claim, and
- (iv) permit Employer to participate in any proceedings relating to such claim.

“Employer shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold Employee harmless, on an after-tax basis, for any Excise Tax or income tax (including interest and penalties with respect thereto) imposed on Employee as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 5, Employer shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct Employee to pay the tax claimed and sue for a refund or contest the claim in any permissible manner. In the event that Employer elects to contest the tax, Employee agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as Employer shall determine. If Employer directs Employee to pay such claim and sue for a refund, Employer shall advance the amount of such payment to Employee, on an interest-free basis, for any Excise Tax or income tax

(including interest or penalties with respect thereto) imposed with respect to such advance or with respect to any imputed income with respect to such advance. In the event that the Internal Revenue Service requests an extension of the statute of limitations relating to payment of taxes for the taxable year of Employee with respect to which such contested amount is claimed to be due, such an extension may, at the election of Employee, be limited solely to such contested amount. Furthermore, Employer's control of the contest shall be limited to issues with respect to which a Tax Gross-Up Payment would be payable hereunder, and Employee shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

"If, after the receipt by Employee of an amount advanced by Employer pursuant to Section 5, Employee becomes entitled to receive any refund with respect to such claim, Employee shall promptly pay Employer the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by Employee of an amount advanced by Employer pursuant to this Section 5, a determination is made that Employee shall not be entitled to any refund with respect to such claim and Employer does not notify Employee in writing of its intent to contest such denial of refund prior to the expiration of thirty (30) days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Tax Gross-Up Payment to be paid.

"Notwithstanding anything to the contrary in this Section 5, in the event that a Tax Gross-Up Payment is made before the date on which Employee actually owes the Excise Tax, then the amount of the payment shall be discounted using the applicable interest rate, i.e., the prime rate, used to compute the present value of an amount at the same time in the future for purposes of computing the Excise Tax."

In all other respects, and with the exception of the previous amendment, the Agreement remains unchanged and in full force and effect.

DAVITA INC

EMPLOYEE

By /s/ Laura Mildenberger
Laura Mildenberger
Chief People Officer

By /s/ Joseph Schohl
Joseph Schohl

Approved as to Form

/s/ Steven M. Cooper
Steven M. Cooper
Assistant General Counsel - Labor

Exhibit 10.9**AMENDMENT TO EMPLOYMENT AGREEMENT**

This document is to amend the Employment Agreement (the "Agreement"), entered into as of October 31, 2005, by and between DaVita Inc. ("Employer") and Dennis Kogod ("Employee"). Specifically, effective December 12, 2008, the parties agree to amend the Agreement as follows:

1. Section 3.3 is hereby deleted in its entirety and replaced with the following:

"Other Termination. Employer may terminate the employment of Employee for any reason or for no reason at any time upon at least thirty (30) days' advance written notice. If Employer terminates the employment of Employee for reasons other than for death, Material Cause, or Disability or if Employee resigns within sixty (60) days following a Good Cause Event unrelated to a Change of Control (as those terms are defined below), Employee shall (i) be entitled to receive the base salary and benefits as set forth in Section 2.1 and Section 2.2, respectively, through the effective date of such termination or resignation, (ii) be entitled to continue to receive his salary for the one-year period following the termination of his employment (the "Severance Period"), paid in accordance with Employer's usual payroll practices, (iii) be entitled to receive a lump-sum payment payable within 90 days after the effective date of Employee's termination of employment equivalent to the Bonus that he had been paid in the year before the termination of his employment, and (iv) not be entitled to receive any other compensation, benefits, or payments of any kind, except as otherwise required by law or by the terms of any benefit or retirement plan or other arrangement that would, by its terms, apply. If Employee resigns within sixty (60) days following a Good Cause Event after a Change of Control (as those terms are defined below), Employee shall receive the severance benefits set forth above except that the Severance Period, i.e., the time in which Employee is entitled to continue to receive his salary, shall increase from one year to two years.

"During the Severance Period, Employee agrees (1) to make himself available to answer questions and to cooperate in the transition of his duties, (2) to respond to any inquiries from the compliance department, including making himself available for interviews, and (3) to cooperate with Employer in the prosecution and/or defense of any claim, including making himself available for any interviews, appearing at depositions, and producing requested documents. Employer shall reimburse Employee for any out-of-pocket expenses he may incur, including travel costs, provided that Employee used Employer's travel department to arrange and purchase all travel-related expense.

"Employee must execute a standard Severance and General Release Agreement within twenty-eight (28) days of the termination of Employee's employment before being eligible to receive the severance benefits set forth above. The Severance and General Release Agreement shall indicate that Employee is not releasing his right, if any, to indemnification pursuant to any agreement, article or by-law provision of Employer or his right, if any, to coverage under any applicable directors and officers insurance or other insurance, as Employer has in place from time to time.

“All severance arrangements shall comply with the American Jobs Creation Act of 2004, all related regulations, and all other laws and regulations governing the payment of severance.

“For purposes of this provision, an Employee’s employment has been terminated when Employee is no longer providing services for Employer after a specific date or the level of bona fide services that Employee would perform (as an employee or independent contractor) after a specific date would permanently decrease to no more than 20% of the average level of bona fide services performed over the immediately preceding thirty-six month period (or the full period of service if Employee was employed for less than thirty-six months).”

2. Sections 3.6(c) is hereby deleted in its entirety and replaced with the following:

“‘Good Cause’ shall mean the occurrence of the following events without Employer’s express written consent: (i) Employer materially diminishes the scope of Employee’s duties and responsibilities; or (ii) Employer materially reduces Employee’s base compensation. Notwithstanding the above, the occurrence of any such condition shall not constitute Good Cause unless the Employee provides notice to Employer of the existence of such condition not later than 90 days after the initial existence of such condition, and Employer shall have failed to remedy such condition within 30 days after receipt of such notice.”

3. Section 3.9 is hereby added, which provides the following:

“Key Employee. Notwithstanding any provision herein to the contrary, in the event that any payment to be made to Employee hereunder (whether pursuant to this Section 3 or any other Section) as a result of Employee’s termination of employment is determined to constitute “deferred compensation” subject to Section 409A of the Internal Revenue Code, and Employee is a “Key Employee” under the DaVita Inc. Key Employee Policy for 409A Arrangements at the time of Employee’s termination of employment, all such deferred compensation payments payable during the first six (6) months following Employee’s termination of employment shall be delayed and paid in a lump sum during the seventh calendar month following the calendar month during which Employee’s termination of employment occurs.”

4. Section 4.3 is hereby deleted in its entirety and replaced with the following:

“4.3 Solicitation of Employees. Employee promises and agrees that, during the term of this Agreement and for a period of one (1) year after the termination of his employment, he will not directly or indirectly, solicit any of Employer’s employees to work for any business, individual, partnership, firm, corporation, or other entity. Employee also agrees that during his employment and for a period of one (1) year after

the termination of his employment, directly or indirectly, that he will not hire any of Employer's employees to work (as an employee or an independent contractor) for any business, individual, partnership, firm, corporation, or other entity. In addition, Employee agrees that during his employment and for a period of one (1) year after the termination of his employment, directly or indirectly, that he will not take any action that may reasonably result in any of Employer's employees going to work (as an employee or an independent contractor) for any business, individual, partnership, firm, corporation, or other entity."

In all other respects, and with the exception of the previous amendment, the Agreement remains unchanged and in full force and effect.

DAVITA INC

EMPLOYEE

By /s/ Laura Mildenberger
Laura Mildenberger
Chief People Officer

By /s/ Dennis Kogod
Dennis Kogod

Approved as to Form

/s/ Steven M. Cooper
Steven M. Cooper
Assistant General Counsel – Labor

Exhibit 10.12**AMENDMENT TO EMPLOYMENT AGREEMENT**

This document is to amend the Employment Agreement (the "Agreement"), entered into as of September 22, 2005 by and between DaVita Inc. ("Employer") and James Hilger ("Employee"). Specifically, effective December 12, 2008, the parties agree to amend the Agreement as follows:

1. Section 3.3 is hereby deleted in its entirety and replaced with the following:

"Other Termination. Employer may terminate the employment of Employee for any reason or for no reason at any time upon at least thirty (30) days' advance written notice. If Employer terminates the employment of Employee for reasons other than for death, Material Cause, or Disability, and contingent upon Employee's execution of the Employer's standard Severance and General Release Agreement within twenty-eight (28) days of the termination of Employee's employment, Employee shall (i) be entitled to receive the base salary and benefits as set forth in Section 2.1 and Section 2.2, respectively, through the effective date of such termination or resignation, (ii) be entitled to continue to receive an amount equal to his salary for the 12-month period following the termination of his employment (the "Severance Period"), paid in accordance with the Employer's usual payroll practices, (iii) be entitled to continue to receive during the 12-month period following the effective date of such termination the employee health insurance benefits set forth in Section 2.2, pursuant to the election of COBRA coverage, at the same cost to him as he paid prior to his termination, and (iv) not be entitled to receive any other compensation, benefits, or payments of any kind, except as otherwise required by law or by the terms of any benefit or retirement plan or other arrangement that would, by its terms, apply. The foregoing notwithstanding, in the event Employee accepts employment (as an employee or as an independent contractor) with another employer during the Severance Period, (x) Employee shall immediately notify Employer of such employment and (y) Employer's obligation to continue to provide certain health insurance benefits pursuant to clause (iii) of the immediately preceding sentence shall terminate once Employee becomes eligible to participate in his new employer's health benefit plan. In addition, once Employee accepts employment (as an employee or as an independent contractor), Employer may reduce its obligation under clause (ii) herein dollar-for-dollar for every dollar Employee earns in base salary or other compensation during the Severance Period from his new employer. Employee agrees to use reasonable efforts to find employment and that if he fails to use reasonable efforts, the Company's obligations under clause (ii) herein may be terminated by Employer in its sole discretion. For purposes of this provision, an Employee's employment has been terminated when Employee is no longer providing services for Employer after a specific date or the level of bona fide services that Employee would perform (as an employee or independent contractor) after a specific date would permanently decrease to no more than 20% of the average level of bona fide services performed over the immediately preceding thirty-six month period (or the full period of service if Employee was employed for less than thirty-six months).

During the Severance Period, Employee agrees (1) to make himself available to answer questions and to cooperate in the transition of his duties, (2) to respond to any inquiries from the compliance department, including making himself available for interviews, and (3) to cooperate with Employer in the prosecution and/or defense of any claim, including making himself available for any interviews, appearing at depositions, and producing requested documents.”

2. Section 3.9 is hereby added, which provides the following:

“Key Employee. Notwithstanding any provision herein to the contrary, in the event that any payment to be made to Employee hereunder (whether pursuant to this Section 3 or any other Section) as a result of Employee’s termination of employment is determined to constitute “deferred compensation” subject to Section 409A of the Internal Revenue Code, and Employee is a “Key Employee” under the DaVita Inc. Key Employee Policy for 409A Arrangements at the time of Employee’s termination of employment, all such deferred compensation payments payable during the first six (6) months following Employee’s termination of employment shall be delayed and paid in a lump sum during the seventh calendar month following the calendar month during which Employee’s termination of employment occurs.”

In all other respects, and with the exception of the previous amendment, the Agreement remains unchanged and in full force and effect.

DAVITA INC

EMPLOYEE

By /s/ Laura Mildenberger
Laura Mildenberger
Chief People Officer

By /s/ James Hilger
James Hilger

Approved as to Form

/s/ Steven M. Cooper
Steven M. Cooper
Assistant General Counsel - Labor

Exhibit 10.19EMPLOYMENT AGREEMENT

This Employment Agreement (this "Agreement") is entered into effective March 3, 2008 (the "Effective Date"), by and between DaVita Inc. ("Employer") and David Shapiro ("Employee").

In consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the parties hereto, intending to be legally bound hereby, agree as follows:

Section 1. Employment and Duties. Employer hereby employs Employee to serve initially as Deputy Chief Compliance Officer. Employee accepts such employment on the terms and conditions set forth in this Agreement. Subject to the provisions of Section 2.5 (b), below, Employee shall perform the duties of Deputy Chief Compliance Officer or any additional or different duties or jobs as the Company deems appropriate. Employee shall work out of Employer's El Segundo, California headquarters. Employee agrees to devote substantially all of his time, energy, and ability to the business of Employer on a full-time basis and shall not engage in any other business activities during the term of this Agreement, provided however, Employee may pursue normal charitable activities so long as such activities do not require a substantial amount of time and do not interfere with his ability to perform his duties. Employee agrees that he shall not serve on the board of directors of any not-for-profit or for-profit company without the express written approval of the Chief Executive Officer or the Board of Directors. Employee shall at all times observe and abide by the Employer's policies and procedures as in effect from time to time.

Section 2. Compensation. In consideration of the services to be performed by Employee hereunder, Employee shall receive the following compensation and benefits:

2.1 Base Salary. Employer shall pay Employee a base salary of \$310,000 per annum, less standard withholdings and authorized deductions. Employee shall be paid consistent with Employer's payroll schedule. The base salary will be reviewed annually. Employer, in its sole discretion, may increase the base salary as a result of any such review.

2.2 Benefits. Employee and/or his family, as the case may be, shall be eligible for participation in and shall receive all benefits under Employer's health and welfare benefit plans (including, without limitation, medical, prescription, dental, disability, and life insurance) under the same terms and conditions applicable to most executives at similar levels of compensation and responsibility.

2.3 Performance Bonus.

(a) Employee shall be eligible to receive a discretionary performance bonus (the "Bonus") between zero and \$100,000, payable in a manner consistent with Employer's practices and procedures. The amount of the Bonus, if any, will be decided by the Chief Executive Officer and/or the Board of Directors or the Compensation Committee of the Board in his/her/its sole discretion. With respect to the Bonus to be paid in March 2009 for work performed in 2008, Employee shall receive a non-discretionary guaranteed minimum Bonus of \$80,000, less standard withholdings and authorized deductions; however, the amount of the Bonus paid in 2009 shall be reduced by the amount of the Sign-on Bonus, set forth in Section 2.4, below. The Performance Bonus range will be reviewed annually. Employer, in its sole discretion, may increase the base salary as a result of any such review.

(b) Employee must be employed by Employer (or an affiliate) on the date any Bonus is paid on a Company wide basis to be eligible to receive such Bonus and, if Employee is not employed by Employer (or an affiliate) on the date any Bonus is paid on a Company wide basis for any reason whatsoever, Employee shall not be entitled to receive such Bonus.

2.4 Sign-on Bonus. On or about the Effective Date, Employer shall pay Employee a sign-on bonus of \$25,000, less standard withholdings and authorized deductions.

2.5 Relocation.

(a) During the first five months of his employment, Employee may commute from his home in Philadelphia in order to assist Employee sell his house and relocate to California. Employer will reimburse Employee for all reasonable commuting expenses.

(b) Beginning with the first pay period after Employee relocates to California, Employer shall provide Employee with a housing allowance of \$5,000 per month, which will be grossed up for taxes. This benefit will cease upon either the sale of Employee's Philadelphia home or 12 months after Employer began to provide this benefit, whichever comes first.

(c) Employer shall pay certain of Employee's reasonable relocation costs. Relocation costs include the cost of packing and moving your personal property, including a car, 60 days of lodging while house hunting, and all trips by you and/or your spouse to find a house. Relocation costs do not include the costs for purchasing a house, including points, closing fees, and attorneys' fees (i.e., the cost of a real estate attorney or an attorney to review the contract). In consideration for Employer's agreement to pay these expenses (the "Relocation Costs"), Employee agrees that if he voluntarily terminates his employment after one (1) year of the Effective Date, and before the second anniversary of the Effective Date, Employee shall repay Employer fifty percent (50%) of the amount of the Relocation Costs. If Employer terminates Employee, Employee does not have an obligation to repay the Relocation Costs.

(d) Once Employee has successfully purchased a home in California, Employer shall pay Employee a relocation bonus of \$15,000, less standard deductions and authorized withholdings.

(e) To assist Employee with the cost of housing in California, so long as Employee is employed by Employer, Employer shall pay Employee a Housing Bonus of \$40,000 per year, less standard withholdings and authorized deductions, for the first two years after he has purchased a home in California. This payment shall be paid in equal installments over each pay period during the year. Employee agrees that if he voluntarily terminates his employment after one (1) year of the Effective Date, and before the second anniversary of the Effective Date, Employee shall repay Employer 75% of the Housing Bonus received in equal installments on a monthly basis.

2.6 Vacation. Employee shall have vacation, subject to the approval of the Chief Executive Officer.

2.7 Stock Appreciation Rights. Employer shall issue a grant to Employee of stock-settled Stock Appreciation Rights (“SSARS”) on a base number of 20,000 shares of DaVita common stock, upon approval. This grant shall have a five-year term and vest 25% on the first anniversary date of the grant, 8.33% on the 20th month of the grant, and 8.33% every 4 months thereafter. The exercise price shall be the closing price as reported on the New York Stock Exchange on the Effective Date, the date on which Employee has begun his employment with Employer and has begun to perform the services set forth within this Agreement, or on the date that appropriate approval has been obtained, whichever is later. The terms of the SSARS grant will be reflected in a separate agreement to be signed by Employer and Employee.

2.8 Restricted Stock Units. On the Effective Date, on the date on which Employee has begun his employment with Employer and has begun to perform the services set forth within this Agreement, or on the date appropriate approval has been given, whichever date is later, Employee will receive 1,000 shares of Employer’s restricted stock units, entitling Employee to the same number of full shares of DaVita common stock, subject to the following vesting conditions: such restricted stock units shall vest over a five-year period, one-third vesting on the third anniversary date of the grant, 11.11% at 40th month of the grant, then 11.11% every 4 months thereafter until the 60th month. The terms of the restricted stock units will be reflected in a separate Restricted Stock Units Agreement to be signed by Employer and Employee.

2.9 Management Share Ownership Policy. Employee shall review and understand the terms of the Management Share Ownership Policy with respect to all equity-based awards.

2.10 Indemnification. Employer agrees to indemnify Employee against and in respect of any and all claims, actions, or demands, to the extent permitted by the Company’s By-laws and applicable law. The terms of Employer’s agreement shall be reflected in a separate document.

2.11 Reimbursement. Employer also agrees to reimburse Employee in accordance with Employer's reimbursement policies for travel and entertainment expenses, as well as other business-related expenses, incurred in the performance of his duties hereunder.

2.12 Changes to Benefit Plans. Employer reserves the right to modify, suspend, or discontinue any and all of its health and welfare benefit plans, practices, policies, and programs at any time without recourse by Employee so long as such action is taken generally with respect to all other similarly-situated peer executives and does not single out Employee.

Section 3. Provisions Relating to Termination of Employment.

3.1 Employment Is At-Will. Employee's employment with Employer is "at will" and is terminable by Employer or by Employee at any time and for any reason or no reason, subject to the notice requirements set forth below.

3.2 Termination for Material Cause. Employer may terminate Employee's employment without advanced notice for Material Cause (as defined below). Upon termination for Material Cause, Employee shall (i) be entitled to receive the Base Salary and benefits as set forth in Section 2.1 and Section 2.2, respectively, through the effective date of such termination and (ii) not be entitled to receive any other compensation, benefits, or payments of any kind, except as otherwise required by law or by the terms of any benefit or retirement plan or other arrangement that would, by its terms, apply.

3.3 Other Termination. Employer may terminate the employment of Employee for any reason or for no reason at any time upon at least thirty (30) days' advance written notice. If Employer terminates the employment of Employee for reasons other than for death, Material Cause, or Disability, or if Employee resigns For Cause, as that term is defined below, and contingent upon Employee's execution of the Employer's standard Severance and General Release Agreement, Employee shall be entitled to the benefits set forth in the DaVita Inc. Severance Plan, pursuant to the terms and conditions of that plan as they exist at the time of the termination of Employee's employment.

3.4 Voluntary Resignation. Employee may resign from Employer at any time upon at least thirty (30) days' advance written notice. If Employee resigns from Employer for any reason other than For Cause or not being promoted to the Chief Compliance Officer, Employee shall (i) be entitled to receive the base salary and benefits as set forth in Section 2.1 and Section 2.2, respectively, through the effective date of such termination and (ii) not be entitled to receive any other compensation, benefits, or payments of any kind, except as otherwise required by law or by the terms of any benefit or retirement plan or other arrangement that would, by its terms, apply. In the event Employee resigns from Employer at any time, Employer shall have the right to make such resignation effective as of any date before the expiration of the required notice period.

3.5 Chief Compliance Officer.

(a) Employer agrees to consider Employee for the Chief Compliance Officer position within 6 months, 9 months, and 12 months of the Effective Date.

(b) If Employer fails to promote Employee to the Chief Compliance Officer position within one year of the Effective Date, Employee may work the next six months on a part-time basis while still receiving the same Base Salary, as set forth in Section 2.1, and the same benefits that other part-time employees receive. At the conclusion of this six-month period, Employee may then resign and, contingent upon Employee's execution of the Employer's standard Severance and General Release Agreement, Employee shall be entitled to severance in the form of six months of salary continuation, as well as other benefits set forth in the DaVita Inc. Severance Plan, pursuant to the terms and conditions of that plan as they exist at the time of the termination of Employee's employment.

3.6 Disability. Upon thirty (30) days' advance notice (which notice may be given before the completion of the periods described herein), Employer may terminate Employee's employment for Disability (as defined below).

3.7 Definitions. For the purposes of this Agreement, the following terms shall have the meanings indicated:

(a) "Disability" shall mean the inability, for a period of six (6) months, to adequately perform Employee's regular duties, with or without reasonable accommodation, due to a physical or mental illness, condition, or disability.

(b) "Material Cause" shall mean any of the following: (i) conviction of a felony or plea of no contest to a felony; (ii) any act of fraud or dishonesty in connection with the performance of his duties; (iii) repeated failure or refusal by Employee to follow policies or directives reasonably established by the Chief Executive Officer of Employer or his/her designee that goes uncorrected for a period of ten (10) consecutive days after written notice has been provided to Employee; (iv) a material breach of this Agreement that goes uncorrected for a period of ten (10) consecutive days after written notice has been provided to Employee; (v) any gross or willful misconduct or gross negligence by Employee in the performance of his duties; (vi) egregious conduct by Employee that brings Employer or any of its subsidiaries or affiliates into public disgrace or disrepute; (vii) an act of unlawful discrimination, including sexual harassment; (viii) a violation of the duty of loyalty or of any fiduciary duty; or (ix) exclusion or notice of exclusion of Employee from participating in any federal health care program.

(c) "For Cause" shall mean the occurrence of the following: (i) Employee, in his capacity as Chief Compliance Officer, brings to Employer's attention conduct that Employee believes constitutes an on-going material violation of federal law ("Alleged Violation"); (ii) Employer fails to remedy the Alleged Violation within a reasonable time; and (iii) Employee then provides written notice to Employer, in the manner described in Section 5.3 of this Agreement, that he will resign within sixty (60) days of the written notice if the Alleged Violation remains un-remedied. An Alleged Violation shall be considered remedied if (x) the on-going conduct that constitutes the Alleged Violation ceases, (y) Employer provides

Employee with a competent opinion of outside counsel that the Alleged Violation does not constitute a material violation of federal law, or (z) the on-going conduct that constitutes the Alleged Violation has either been modified and Employer provides Employee with a competent opinion of outside counsel that the Alleged Violation, in view of the modified conduct, does not constitute a material violation of federal law or the Employer has made a good faith effort to modify the Alleged Violation but reasonably needs more than 60 days to modify the Alleged Violation.

3.8 Notice of Termination. Any purported termination of Employee's employment by Employer or by Employee shall be communicated by a written Notice of Termination to the other party hereto in accordance with Section 5 hereof. A "Notice of Termination" shall mean a written notice that indicates the specific termination provision in this Agreement.

3.9 Effect of Termination. Upon termination, this Agreement shall be of no further force and effect and neither party shall have any further right or obligation hereunder; provided, however, that no termination shall modify or affect the rights and obligations of the parties that have accrued prior to termination; and provided further, that the rights and obligations of the parties under Section 3, Section 4, and Section 5 shall survive termination of this Agreement.

Section 4: Confidentiality Agreement. Employee, contemporaneously herewith, shall enter into a Confidentiality and Non-Solicitation Agreement, the terms of which are incorporated herein and made a part hereof as though set forth in this Agreement.

Section 5. Miscellaneous.

5.1 Entire Agreement; Amendment. This Agreement, in addition to the other written agreements explicitly referred to in this Agreement, represents the entire understanding of the parties hereto with respect to the employment of Employee and supersedes all prior agreements with respect thereto. This Agreement may not be altered or amended except in writing executed by both parties hereto.

5.2 Assignment; Benefit. This Agreement is personal and may not be assigned by Employee. This Agreement may be assigned by Employer and shall inure to the benefit of and be binding upon the successors and assigns of Employer.

5.3. Notice. Notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered mail, return receipt requested, postage prepaid, addressed to Employer at its principal office and to Employee at Employee's principal residence as shown in Employer's personnel records, provided that all notices to Employer shall be directed to the attention of the Chief Executive Officer, or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address shall be effective only upon receipt.

5.4 Construction. Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party on the basis that the party was the drafter. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect.

5.5 Execution. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Photographic or facsimile copies of such signed counterparts may be used in lieu of the originals for any purpose.

5.6 Legal Counsel. Employee and Employer recognize that this is a legally binding contract and acknowledge and agree that they have had the opportunity to consult with legal counsel of their choice.

5.7 Waiver. The waiver by any party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any other or subsequent breach of such or any provision.

5.8 Invalidity of Provision. In the event that any provision of this Agreement is determined to be illegal, invalid, or void for any reason, the remaining provisions hereof shall continue in full force and effect.

5.9 Approval by DaVita Inc. as to Form. The parties acknowledge and agree that this Agreement shall take effect and be legally binding upon the parties only upon full execution hereof by the parties and upon approval by DaVita Inc. as to the form of hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date and year first written above.

DAVITA INC.

EMPLOYEE

By /s/ Chris Riopelle

By /s/ David T. Shapiro

Approved by DaVita Inc. as to Form:

/s/ Steven M. Cooper

Exhibit 10.20**AMENDMENT TO EMPLOYMENT AGREEMENT**

This document is to amend the Employment Agreement (the "Agreement"), entered into as of March 3, 2008, by and between DaVita Inc. ("Employer") and David Shapiro ("Employee"). Specifically, effective December 4, 2008, the parties agree to amend the Agreement as follows:

1. Section 3.3 is hereby deleted in its entirety and replaced with the following:

"Other Termination. Employer may terminate the employment of Employee for any reason or for no reason at any time upon at least thirty (30) days' advance written notice. If Employer terminates the employment of Employee for reasons other than for death, Material Cause, or Disability, and contingent upon Employee's execution of the Employer's standard Severance and General Release Agreement within twenty-eight (28) days of the termination of Employee's employment, Employee shall be entitled to the benefits set forth in the DaVita Inc. Severance Plan, pursuant to the terms and conditions of that plan as they exist at the time of the termination of Employee's employment. For purposes of this provision, an Employee's employment has been terminated when Employee is no longer providing services for Employer after a specific date or the level of bona fide services that Employee would perform (as an employee or independent contractor) after a specific date would permanently decrease to no more than 20% of the average level of bona fide services performed over the immediately preceding thirty-six month period (or the full period of service if Employee was employed for less than thirty-six months)."

2. Section 3.10 is hereby added, which provides the following:

"Key Employee. Notwithstanding any provision herein to the contrary, in the event that any payment to be made to Employee hereunder (whether pursuant to this Section 3 or any other Section) as a result of Employee's termination of employment is determined to constitute "deferred compensation" subject to Section 409A of the Internal Revenue Code, and Employee is a "Key Employee" under the DaVita Inc. Key Employee Policy for 409A Arrangements at the time of Employee's termination of employment, all such deferred compensation payments payable during the first six (6) months following Employee's termination of employment shall be delayed and paid in a lump sum during the seventh calendar month following the calendar month during which Employee's termination of employment occurs."

In all other respects, and with the exception of the previous amendment, the Agreement remains unchanged and in full force and effect.

DAVITA INC

EMPLOYEE

By /s/ Laura Mildenberger
Laura Mildenberger
Chief People Officer

By /s/ David Shapiro
David Shapiro

Exhibit 10.28

DAVITA INC. EXECUTIVE INCENTIVE PLAN
(As Amended and Restated Effective January 1, 2009)

PURPOSE.

The purpose of the DaVita Inc. Executive Incentive Plan (the “Plan”) is to provide annual incentive compensation payments (“Awards”) to senior executives that are directly tied to the attainment of business objectives of DaVita Inc. (the “Company”) and to the attainment of its *mission* to be the partner, provider, and employer of choice and that may qualify as “performance-based compensation” under Section 162(m) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the “Code”).

ELIGIBILITY.

The Chief Executive Officer of the Company and each other senior executive of the Company who is determined by the Compensation Committee (the “Committee”) of the Board of Directors of the Company (the “Board”) to be likely to be deemed to be a “covered employee” under Section 162(m) of the Code for a calendar year shall be eligible to participate in the Plan for such calendar year (the “Participants”).

ADMINISTRATION.

The Plan shall be administered by the Committee, which shall consist solely of two (2) or more directors, each of whom is an “outside director” within the meaning of Section 162(m) of the Code. The members of the Committee shall be appointed by the Board and may be changed from time to time at the discretion of the Board.

The Committee shall have the authority:

- (1) to select the Participants in the Plan for each calendar year;
- (2) to establish and administer the performance goals and the amount of the Award for each Participant for each calendar year;
- (3) to certify whether the performance goals for each Participant for each calendar year have been satisfied;
- (4) to construe, interpret, and implement the Plan;
- (5) to prescribe, amend, and rescind rules and regulations relating to the Plan and the administration of the Plan;

- (6) to make all determinations necessary or advisable in administering the Plan; and
- (7) to reduce the amount payable under any Award granted under the Plan if, in the judgment of the Committee, such reduction is in the best interests of the Company and its stockholders.

Any determination by the Committee shall be final and binding.

AWARDS.

No later than 90 days after the commencement of each calendar year, the Committee shall designate the Participants for such calendar year, shall establish, in writing, the performance goals for each Participant and the method of calculating the amount of the Award that will be payable under the Plan to each Participant if the performance goals established by the Committee for the Participant are attained, in whole or in part. Such method shall be stated in terms of an objective formula or standard that precludes discretion to increase the amount of the Award that would be payable to the Participant upon attainment of the goals.

The performance goals for each Participant shall be based on one or more of the following business criteria: cash generation targets, profit and revenue targets on an absolute or per share basis (including but not limited to EBIT, EBITDA, operating income and EPS), market share targets, acquisition targets, profitability targets (as measured through return ratios or stockholder returns), treatment growth, clinical outcomes, physician relations, employee turnover and employee relations. Such business criteria may, in the discretion of the Committee, be applied to the Participant, the Company as a whole, or any designated subsidiary or business unit of the Company or a subsidiary thereof.

PAYMENT OF AWARDS.

Following the end of each calendar year, and as soon as practicable after the Committee's certification of a Participant's attainment of the performance goals established by the Committee for such Participant, but in no event later than the end of the calendar year following the year to which the Award relates, the Company shall pay to the Participant the amount of the Award earned by the Participant. Payment may be made in cash, in shares of common stock of the Company ("Common Stock"), or in units representing the right to receive shares of Common Stock ("Stock Units"). Shares of Common Stock or Stock Units granted to a Participant in payment of an Award may be subject to such restrictions as determined by the Committee in its discretion. The date on which a cash payment is made to the Participant in the case of an Award paid in cash, or the date on which shares of Common Stock or Stock Units are granted to the Participant in the case of an Award paid in shares of Common Stock or Stock Units, is hereinafter referred to as the "Payment Date". To the extent the payment of an Award in shares of Common Stock or Stock Units would require stockholder approval under the rules of the

principal national securities exchange on which the Common Stock is traded or listed, such payment shall be made pursuant to an equity compensation plan of the Company, other than the Plan, under which such payment can be made without further approval by the Company's stockholders.

The maximum amount that may be paid as an Award under the Plan to any Participant for any calendar year is Ten Million Dollars (\$10,000,000). For this purpose, the amount of an Award that is paid in shares of Common Stock or Stock Units shall be valued without reduction for any restrictions to which such shares of Common Stock or Stock Units may be subject and shall be based on the last reported sale price regular way on the Payment Date, or if no such reported sale takes place on the Payment Date, the average of the last reported bid and ask prices regular way on the Payment Date, in either case on the principal national securities exchange on which the Common Stock is traded or listed. If on the Payment Date the principal national securities exchange on which the Common Stock is traded or listed is closed, the value of the shares of Common Stock or Stock Units shall be determined as of the last preceding day on which the Common Stock was traded or for which bid and asked prices are available.

An Award shall be paid under this Plan to a Participant for any calendar year solely on account of the attainment of the performance goals established by the Committee with respect to such Participant for such calendar year. An Award to a Participant shall, except as otherwise provided herein, also be contingent upon the Participant's continued employment by the Company or a subsidiary of the Company on the Payment Date.

OFFSETS OF BENEFITS.

The Company shall have the right to withhold from Award payments any amounts that a Participant owes to the Company. The Company also shall have the right to use any Award to offset any incentive compensation payments required to be provided to an employee pursuant to the terms of that employee's employment agreement.

TERMINATION OF EMPLOYMENT.

If a Participant's employment with the Company terminates prior to the Payment Date for an Award, then the Participant shall not be entitled to any payment with respect to the Award, unless otherwise provided by the terms of the Participant's employment agreement, or otherwise determined by the Committee, in its sole discretion.

If any payee is a minor, or if the Committee reasonably believes that any payee is legally incapable of giving a valid receipt and discharge for any payment due him or her, the Committee may have the payment made to the person (or persons or institution) whom it reasonably believes is caring for or supporting such payee. Any such payment shall be a payment for the benefit of the payee and shall be a complete discharge of any liability under the Plan to the payee.

EFFECTIVE DATE.

Payment of any Award under this amended and restated Plan shall be contingent upon stockholder approval of this amended and restated Plan pursuant to Section 162(m) of the Code. All Awards under this amended and restated Plan shall be null and void if this amended and restated Plan is not approved by such stockholders.

After stockholder approval of this amended and restated Plan has been obtained at the 2005 annual meeting of stockholders, the material terms of the performance goals shall be disclosed to and reapproved by the stockholders no later than the first stockholder meeting in 2010.

COMMITTEE CERTIFICATION.

Prior to the payment of any Award to a Participant, the Committee will certify in writing that the applicable performance goals were in fact satisfied.

AMENDMENT OF THE PLAN.

The Board may from time to time alter, amend, suspend, or discontinue the Plan. However, no such amendment or modification shall adversely affect any Participant's rights with regard to outstanding, previously certified Awards.

ASSIGNABILITY.

No Awards granted under the Plan shall be pledged, assigned, or transferred by any Participant except by a will or by the laws of descent and distribution. Any estate of any Participant receiving any Award under the Plan shall be subject to the terms and conditions of the Plan.

TAX WITHHOLDING.

Award payments made to Participants shall be made net of any amounts necessary to satisfy federal, state and local withholding tax requirements, where required by law.

NO CONTRACT OF EMPLOYMENT.

Neither the action of the Company in establishing this Plan, nor any provisions hereof, nor any action taken by the Company, the Committee or the Board pursuant to the Plan and its provisions, shall be construed as giving to any employee or Participant the right to be retained in the employ of the Company.

OTHER PROVISIONS.

Any expenses and liabilities incurred by the Board, the Committee or the Company in administering the Plan shall be paid by the Company.

Amounts paid to a Participant with respect to Awards under the Plan shall have no effect on the level of benefits provided to or received by such Participant, or the Participant's estate or beneficiaries, as a part of any other employee benefit plan or similar arrangement provided by the Company, except as provided under the terms of such other employee benefit plan or similar arrangement.

The Plan and all actions taken under the Plan shall be governed by, and construed in accordance with, the laws of the State of Delaware without regard to the conflict of law principles thereof.

SECTION 409A OF THE CODE

The Plan is intended to meet the requirements of Section 409A of the Code, and shall be interpreted and construed consistent with that intent. Notwithstanding any other provision of the Plan, to the extent that a Participant's right to any payment hereunder provides for the "deferral of compensation" within the meaning of Section 409A(d)(1) of the Code, the payment shall be made in accordance with the following:

If the Participant is a "specified employee" within the meaning of Section 409A(a)(2)(B)(i) of the Code on the date of the Participant's "separation from service" within the meaning of Section 409A(a)(2)(A)(i) of the Code (the "Separation Date"), then no such payment shall be made during the period beginning on the Separation Date and ending on the date that is six months following the Separation Date or, if earlier, on the date of the Participant's death, if the earlier making of such payment would result in tax penalties being imposed on the Participant under Section 409A of the Code. The amount of any payment that would otherwise be made during this period shall instead be made on the first business day following the date that is six months following the Separation Date or, if earlier, the date of the Participant's death.

Exhibit 10.29**DAVITA INC. EXECUTIVE RETIREMENT PLAN**

AMENDMENT #1

WHEREAS, on February 2, 2006, the Board of Directors of DaVita Inc. (the "Board") has authorized the amendment of the Gambro Healthcare, Inc. Executive Retirement Plan (the "Plan") to change the name of the Plan to the DaVita Inc. Executive Retirement Plan and to cease all future benefit accruals under the Plan.

NOW, THEREFORE, the Plan is hereby amended as follows as follows:

1. Effective February 2, 2006, the name of the Plan shall be the "DaVita Inc. Executive Retirement Plan."
2. Effective February 2, 2006, Article 5.2 of the Plan is hereby amended to read in its entirety as follows:
"5.2 As of February 2, 2006, the Employer shall cease all future benefit accruals under the Plan and shall cease crediting the accounts of each participant in the Plan with additional contributions."

**Gambro Healthcare, Inc.
Executive Retirement Plan**

Article 1. Establishment, Purpose, and Duration

1.1 Establishment of the Plan. Gambro Healthcare, Inc. (the “Company”) establishes this executive retirement plan for key management Employees as described herein, known as the “Gambro Healthcare, Inc. Executive Retirement Plan” (the “Plan”), effective the day before the closing of the sale of Gambro Healthcare, Inc. to DaVita Inc. This Plan is a spinoff of the Gambro, Inc. Executive Retirement Plan (“GERP”).

Except as otherwise provided herein, the provisions of this Plan apply to amounts deferred after December 31, 2004 into this Plan and amounts deferred after December 31, 2004 into the GERP, pursuant to Section 409A of the Code (as defined below in Section 2(e)). Amounts deferred after December 31, 2004 shall include the 2003 and 2004 Annual Contributions (as defined below in Section 2(b)) made to the GERP (adjusted for hypothetical earnings and losses thereon) for Participants who are not vested in such 2003 and 2004 Annual Contributions as of December 31, 2004. The provisions of this Plan shall be construed and administered in accordance with Code Section 409A and shall be deemed to be modified to the extent necessary to comply with Code Section 409A.

The Plan provides for the contribution by the Employer of certain amounts into the Participants’ accounts, as described herein. In addition, a one-time Transition Contribution was made to the accounts of certain Participants, pursuant to the terms of Section 5.1 herein.

1.2 Purpose of the Plan. The purpose of the Plan is to: (a) provide Employees with the opportunity to receive contributions from the Employer on a tax-deferred basis; (b) replace benefits for certain Employees who have previously participated in the Supplemental Retirement Income Plan of COBE Laboratories, Inc. (As Amended and Restated Effective April 1, 1992) (the “SERP”); (c) promote the achievement of long-term objectives of the Employer by attracting and retaining key Employees of outstanding competence; and (d) assist in providing competitive total compensation opportunities. This Plan is an unfunded deferred compensation plan for a select group of management, highly compensated employees, and persons who have been part of a select group of management and/or highly compensated employees. It is intended that the Plan constitute an unfunded “top hat plan” for purposes of the Employee Retirement Income Security Act of 1974, as amended.

1.3 Duration of the Plan. The Plan remains in effect indefinitely, subject to the right of the Board of Directors to terminate the Plan at any time pursuant to Article 7.

Article 2. Definitions

Whenever used in this Plan, the following terms shall have the meanings set forth below and, when the defined meaning is intended, the initial letter of the word is capitalized:

- (a) **“Adoption Agreement”** means an application for participation in the Plan, execution of which by an eligible employee is required for Plan participation, as described in Section 4.2 herein.
- (b) **“Annual Contribution”** means an annual contribution made by the Employer into the Participant’s Deferral Account, as described in Section 5.2 herein.
- (c) **“Base Salary”** means an Employee’s total annual base salary, including any commissions that may be paid to the Employee. For 2005, Base Salary shall include an Employee’s total annual base salary including any commission that may be paid to the employee from Gambro, Inc. or a subsidiary of Gambro, Inc., earned prior to the establishment of this Plan.
- (d) **“Board”** or **“Board of Directors”** means the Board of Directors of the Company.
- (e) **“Code”** means the Internal Revenue Code of 1986, as amended, Treasury Regulations and administrative guidance issued thereunder.
- (f) **“Company”** means Gambro Healthcare, Inc., a Tennessee corporation.
- (g) **“Deferral Account”** means an account established and maintained by the Participant’s Employer for each Participant which shall include the following sub-accounts:
 - (1) Post-2004 Annual Contributions Sub-Account;
 - (2) Pre-2005 Annual Contributions Sub-Account;
 - (3) Pre-2005 Company Contributions Sub-Account; and
 - (4) Pre-2005 Transition Sub-Account.
- (h) **“Deferred Amounts”** means, individually or collectively, contributions made under this Plan and maintained in the Deferral Accounts.
- (i) **“Disabled”** refers to a Participant who ceases service with the Employer because he or she:
 - (1) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months; or
 - (2) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the Participant’s Employer.

This definition shall be construed and administered in accordance with the requirements of Code Section 409A(a)(2)(C).

- (j) **“Employee”** means any regular status, nonunion, salaried employee of the Employer.
- (k) **“Employer”** means Gambro Healthcare, Inc., a Tennessee corporation, together with any and all Subsidiaries incorporated in the United States, as listed in Appendix I.
- (l) **“Participant”** means an Employee of the Employer who has been notified by the Plan Administrator of his or her selection to participate in the Plan and who executes an Adoption Agreement as provided in Section 4.2.
- (m) **“Plan Administrator”** means an individual designated by the Company to administer this Plan.
- (n) **“Retirement”** means that an Employee has voluntarily terminated employment with the Employer on or after his or her attainment of age sixty (60) and does not continue to provide services to the Employer.
- (o) **“Separation from Service”** means the cessation of an Employee’s service with the Employer.

This definition shall be construed and administered in accordance with the requirements of Code Section 409A(a)(2)(A)(i).

- (p) **“SERP”** means the Supplemental Retirement Income Plan of COBE Laboratories, Inc. (As Amended and Restated Effective April 1, 1992).
- (q) **“Service”** means the period of time from the Employee’s date of employment by the Employer to the Employee’s date of termination of employment with the Employer. An Employee’s period of employment with Gambro, Inc., or a subsidiary thereof, prior to the establishment of this Plan shall also constitute Service under this Plan. The Plan Administrator may, in its sole discretion determine all issues regarding Service, including whether to include in Service all or part of any period of time during which the Participant was employed by a corporation or entity which was acquired by, merged into, or consolidated with the Employer. The definition of Service includes leave pursuant to the Family and Medical Leave Act of 1993.

- (r) **“Specified Employee”** means a key employee as described in Code Section 416(i), without regard to paragraph (5) thereof, of:
- (1) Gambro AB (prior to the closing of the sale of Gambro Healthcare, Inc. to DaVita Inc.); and
 - (2) DaVita Inc. (on or after the closing of the sale of Gambro Healthcare, Inc. to DaVita Inc.)
- for so long as, any of the applicable corporation’s stock is publicly traded on an established securities market or otherwise. This definition shall be construed and administered in accordance with the requirements of Code Section 409A(a)(2)(B)(i).
- (s) **“Subsidiary”** means any corporation in which the Company owns directly, or indirectly through subsidiaries, at least fifty percent (50%) of the total combined voting power of all classes of stock, or any other entity (including, but not limited to, partnerships and joint ventures) of which the Company owns at least fifty percent (50%) of the combined equity.
- (t) **“Transition Contribution”** means the contribution made by Gambro, Inc. into the Participant’s Deferral Account as consideration for removal from participation in the SERP, as described in Section 5.1 herein.
- (u) **“Year of Service”** means a twelve (12) consecutive month period beginning on a Participant’s date of employment with the Employer (or date of latest re-employment) and each anniversary thereof during which the Participant is employed on a regular basis by the Employer. An Employee’s period of employment with Gambro, Inc., or a subsidiary thereof, prior to the establishment of this Plan shall also constitute Service under this Plan.

Article 3. Administration

3.1 General. The Plan Administrator shall administer the Plan. The Plan Administrator shall be appointed by, and shall serve at the discretion of, the Company. The Board may delegate to the Plan Administrator any or all of the administration of the Plan. To the extent that the Board has delegated to the Plan Administrator any authority and responsibility under the Plan, all applicable references to the Board in the Plan shall be to the Plan Administrator.

3.2 Administration by the Plan Administrator. The Plan Administrator shall have the full power, discretion, and authority to interpret and administer the Plan in a manner which is consistent with the Plan’s provisions. However, in no event shall the Plan Administrator have the power to determine Plan design.

3.3 Decisions Binding. All determinations and decisions made by the Plan Administrator pursuant to the Plan, and all related orders or resolutions of the Plan Administrator, shall be final, conclusive, and binding on all persons, including the Employer, its shareholders, Employees, Participants, and their estates and beneficiaries.

Article 4. Eligibility and Participation

4.1 Eligibility. Persons eligible to participate in the Plan are limited to Employees who are executives in International Bands 2, 3, and 4 or any other person of equivalent authority and reporting relationship, as determined by the Plan Administrator. Also, eligibility in the Plan shall further be limited to Employees who are active Employees.

4.2 Actual Participation.

(a) Post-2004 Deferrals

For any amounts deferred after December 31, 2004, an Employee is eligible to participate in the Plan when selected by the Plan Administrator, in its sole discretion, based upon the criteria set forth in Section 4.1 herein or other relevant considerations, but not before the Employee is entered into the Employer's payroll system. If an Employee first becomes eligible to participate in the Plan during the calendar year, the Employer may allow such Employee to enter the Plan within thirty (30) days of becoming eligible, provided the Employer's Annual Contribution is based on Base Salary earned after the Adoption Agreement is entered into between the Employee and the Company. Such thirty (30) day period shall commence when the Employee is first eligible to participate in this Plan (or the GERP) or in the Gambro Healthcare Voluntary Deferral Plan (known as the DaVita Voluntary Deferral Plan effective the day of closing of the sale of Gambro Healthcare, Inc. to DaVita Inc.) (or the Gambro Voluntary Deferral Plan); provided, however, this provision shall be construed and interpreted in accordance with Treasury Regulations and other guidance issued by the Treasury and/or the Internal Revenue Service under Code Section 409A. Employees who are selected and approved to participate in the Plan in any given year shall enroll in the Plan by entering into an Adoption Agreement with the Company, which shall specify that the Employee shall participate in this Plan, and completing such other forms and furnishing such other information as the Company may reasonably require. The administrative documents completed by GERP Participants, such as the Adoption Agreement and other administrative forms, shall be deemed for purposes of this Plan to also have been completed under this Plan.

(b) Pre-2005 Deferrals Under GERP

For amounts deferred prior to 2005 under the GERP (which were earned and vested as of December 31, 2004), participants in the GERP were selected by the GERP Plan Administrator, in its sole discretion, based upon the criteria set forth in Section 4.1 herein or other relevant considerations. Employees who were selected and approved to participate in the GERP enrolled in the GERP by entering into an Adoption Agreement with Gambro, Inc., which specified that the employee would participate in the GERP, and complete such other forms and furnish such other information as Gambro, Inc. required.

Article 5. Contributions

5.1 Transition Contribution. Subject to selection by the GERP Plan Administrator and approval of the Gambro, Inc. Board of Directors, Participants who were also participants in the SERP and employed by Gambro, Inc., or a subsidiary thereof, as of December 31, 1999, had, in lieu of any other benefits under the SERP, their Deferral Accounts, as described in Section 6.1 herein, credited by Gambro, Inc. with Transition Contributions.

The Transition Contribution was credited to the Participant's Deferral Account on or before May 1, 2000 and took the form of a one-time lump sum.

5.2 Annual Contributions. On November 1 of each year during which the Plan is in effect, the Employer shall credit the Post-2004 Annual Contributions Sub-Account of each Participant with an amount equal to:

- (a) The Participant's annual Base Salary in effect as of November 1 of the year in which such contribution is made (without regard to any voluntary deferrals of Base Salary made by the Participant pursuant to any Employer-sponsored plans, which for 2005 include Gambro, Inc. sponsored plans); multiplied by
- (b) A percentage, which shall be determined on a yearly basis by the President of Gambro Healthcare, Inc. and shall be at a minimum equal to the following baseline percentages:
 - (1) Band 2 - eight percent (8%)
 - (2) Bands 3 and 4 - six percent (6%)

The President of Gambro Healthcare, Inc. has the discretion to identify Participants, other than the President of Gambro, Healthcare, Inc., who are eligible to receive a percentage greater than the baseline percentages. The Board may vote upon an increased percentage greater than the baseline percentage relating specifically to the President of Gambro Healthcare, Inc.

Solely for amounts deferred after December 31, 2004 into this Plan and amounts deferred after December 31, 2004 into the GERP, for any Participant who first entered the Plan during the year, since Base Salary prior to Plan entry may not be considered, the applicable percentage shall be increased so that the Participant will receive the same Annual Contribution he or she would have received if all of the Participant's Base Salary was considered.

5.3 Vesting of Transition Contribution. The Transition Contribution, if any, made to the Participant's Deferral Account, and any hypothetical earnings/losses credited (or debited) is one hundred percent (100%) vested.

5.4 Vesting of Annual Contributions. Each Annual Contribution made by the Employer (or Gambro, Inc., for a transferred Deferral Account) to the Participant's Deferral Account, and any hypothetical earnings/losses credited (or debited) on such Annual Contribution, shall become one hundred percent (100%) vested upon the earlier to occur of:

- (a) The Participant's completion of two (2) consecutive Years of Service following the date on which each separate contribution was credited to the Participant's Deferral Account pursuant to Section 5.2 herein; or
- (b) The date on which the Participant attains the age of sixty (60).

5.5 Vesting Upon Occurrence of Certain Events.

- (a) Post-2004 Deferrals

For any amounts deferred after December 31, 2004, if a Participant:

- (1) dies;
- (2) becomes Disabled; or
- (3) incurs a Separation from Service which triggers a severance/separation agreement,

all contributions made under this Plan to the Participant's Post-2004 Annual Contributions Sub-Account as of the date of such event, including all hypothetical earnings/losses credited (or debited) on such contributions, shall become one hundred percent (100%) vested as of the date of such event.

For any other event, the contributions made under this Plan to the Participant's Post-2004 Annual Contributions Sub-Account, including all hypothetical earnings/losses credited (or debited) on such contributions, shall vest only to the extent that vesting has already occurred pursuant to Sections 5.3 and 5.4 of the Plan as of the date of such event; otherwise, all such contributions, including all hypothetical earnings/losses credited (or debited) on such contributions, shall be forfeited by the Participant to the Employer.

(b) Pre-2005 Deferrals under GERP

For amounts deferred prior to 2005 under the GERP (which were earned and vested as of December 31, 2004), in the event that the Participant dies, becomes Disabled as defined in Section 2(i), or incurs a termination which triggers a severance/separation agreement, all contributions made under this Plan to the Participant's Pre-2005 Deferral Sub-Accounts as of the date of such event, including all hypothetical earnings/losses credited (or debited) on such contributions, shall become one hundred percent (100%) vested as of the date of such event.

If the Participant's employment with the Employer is terminated for any other reason, the contributions made under this Plan to the Participant's Pre-2005 Deferral Sub-Accounts, including all hypothetical earnings/losses credited (or debited) on such contributions, shall vest only to the extent that vesting has already occurred pursuant to Sections 5.3 and 5.4 of the Plan as of the date of termination; otherwise, all such contributions, including all hypothetical earnings/losses credited (or debited) on such contributions, shall be forfeited by the Participant to the Employer.

5.6 Length of Deferral. Except as otherwise provided herein, all contributions made hereunder and any hypothetical investment returns thereon shall be maintained in a tax-deferred status until distribution of the vested amounts from the Deferral Account.

Article 6. Participants' Accounts**6.1 Deferral Account.**

(a) Post-2004 Deferral Sub-Accounts

For any amounts deferred after December 31, 2004, the following deferral sub-account shall be established and maintained by the Participant's Employer for each Participant:

(1) Post-2004 Annual Contributions Sub-Account: this sub-account contains:

- (A) all post-2004 Annual Contributions (adjusted for hypothetical earnings and losses thereon) made by the Employer; and
- (B) all 2003 and 2004 Annual Contributions (adjusted for hypothetical earnings and losses thereon) made by Gambro, Inc., or a subsidiary thereof, for Participants who were not vested in such 2003 and 2004 Annual Contributions as of December 31, 2004.

(b) Pre-2005 Deferral Sub-Accounts

For amounts deferred prior to 2005 under the GERP (which were earned and vested as of December 31, 2004), the following deferral sub-accounts shall be established and maintained by the Employer for each Participant:

- (1) Pre-2005 Annual Contributions Sub-Account: this sub-account contains all 2003 and 2004 Annual Contributions (adjusted for hypothetical earnings and losses thereon) made by Gambro, Inc., or a subsidiary thereof for Participants who were vested in such 2003 and 2004 Annual Contributions as of December 31, 2004;
- (2) Pre-2005 Company Contributions Sub-Account: this sub-account contains all 2000, 2001 and 2002 Annual Contributions (adjusted for hypothetical earnings and losses thereon) made by Gambro, Inc., or a subsidiary thereof; and
- (3) Pre-2005 Transition Sub-Account: this sub-account contains the Transition Contribution described in Section 5.1 (adjusted for hypothetical earnings and losses thereon) made by Gambro, Inc., or a subsidiary thereof.

(c) Hypothetical Rates of Return

Each Deferral Account shall be credited with contributions (“Deferred Amounts”) made pursuant to the provisions of the Plan and shall be credited to reflect the hypothetical rates of return earned on the Deferred Amounts that are equal to the actual returns achieved on those investments. The establishment and maintenance of such Deferral Account, however, shall not be construed as entitling any Participant to any specific assets of the Employer.

(d) Employer’s Insolvency

In the event the Employer becomes insolvent, each Participant under the Plan will become a creditor of the Participant’s Employer. Each Participant’s Deferral Account hereunder will be subject to the general rights of all creditors of the Participant’s Employer.

6.2 Investment Return on Deferral Accounts. Each Participant may elect to have the amount in his or her Deferral Account hereunder deemed invested in one or more hypothetical investment funds, which funds are selected for availability by the Company. Participants shall be permitted to change their investment elections daily. The hypothetical rates of return deemed earned on Deferred Amounts shall be equal to the actual returns achieved on these investments.

Each Participant's Deferral Account shall be credited daily, with the value of the account fluctuating daily based upon the actual performance achieved on Deferred Amounts pursuant to the investment elections of each Participant. Any hypothetical investment returns on the Deferred Amounts shall be paid out to Participants at the same time and in the same manner as the underlying Deferred Amounts.

6.3 Form and Timing of Payout of Deferral Accounts.

(a) Post-2004 Annual Contributions Sub-Account

For any amounts deferred after December 31, 2004, the balance in a Participant's Post-2004 Annual Contributions Sub-Account shall be paid out in cash. At the time of Separation from Service, the Participant shall be paid a cash lump sum, equal to the balance of his or her Post-2004 Annual Contributions Sub-Account, as of the date of such Separation from Service, to the extent such account is vested. This payment shall be made the January following the Participant's Separation from Service (or if the Participant has attained an age equal to or greater than sixty (60) upon his or her Separation from Service, the payment shall be made as soon as administratively feasible after such Separation from Service).

Notwithstanding the foregoing, if a Participant becomes Disabled, a lump-sum payment shall be made as soon as administratively feasible following the Participant's becoming Disabled. In the event of a Participant's death, only a lump-sum payment shall be made, as soon as administratively feasible following such death.

Notwithstanding the foregoing, a distribution triggered by a Separation from Service for a Specified Employee must be delayed six (6) months after the date of such Specified Employee's Separation from Service or, if earlier, the date of death of the Specified Employee.

(b) Pre-2005 Deferral Sub-Accounts

For amounts deferred prior to 2005 under the GERP (which were earned and vested as of December 31, 2004), a Participant's Pre-2005 Deferral Sub-Accounts shall be paid out in cash. At the time of termination of employment, the Participant shall be paid a cash lump sum, unless elected otherwise, equal to the balance of his or her Pre-2005 Annual Contributions Sub-Account, Pre-2005 Company Contributions Sub-Account and Pre-2005 Transition Sub-Account, as of the date of termination, to the extent such account is vested. This payment shall be made the January following the date of termination (or if the Participant has attained an age equal to or greater than sixty (60) at the date of termination, the payment shall be made as soon as administratively feasible after the date of termination).

To the extent, however, that the Participant has attained an age equal to or greater than sixty (60) years at the date of termination and has also made the corresponding election at least ninety (90) days prior to the date of termination, the Participant shall receive the balance of his or her Pre-2005 Deferral Sub-Accounts, including hypothetical earnings/losses credited (or debited) on the contributions, to the extent such account is vested, in the form of ten (10) annual installment payments, with the first installment payment to commence as soon as administratively feasible after the date of termination. The remaining balance shall continue to accrue hypothetical earnings/losses credited (or debited) on the contributions, between payment dates at the rates designated by the Participant's investment elections, as described in Section 6.2 herein. Each installment shall be equal to the remaining unpaid balance of the Pre-2005 Deferral Sub-Accounts, divided by the total number of installments yet to be made (i.e., the denominator in the year of the first installment shall be ten (10), in the year of the second installment shall be nine (9), etc).

Notwithstanding the foregoing, if a Participant becomes Disabled (as defined in Section 2(i)), a lump-sum payment shall be made or installment payments (if such election has been made) shall commence as soon as administratively feasible following the Participant's becoming Disabled.

Notwithstanding the foregoing, in the event of a Participant's death prior to the commencement of distributions or during the installment period, only a lump-sum payment shall be made as soon as administratively feasible following such death.

6.4 Establishment of Rabbi Trust. The Company shall establish an irrevocable rabbi trust (which shall be a grantor trust within the meaning of Code Sections 671-678) for the benefit of Plan Participants and beneficiaries of Plan Participants, as appropriate. The rabbi trust shall be governed by a trust agreement and shall have an independent trustee (such trustee to have a fiduciary duty to carry out the terms and conditions of the rabbi trust) as selected by the Company, and shall have restrictions as to the Company's ability to amend the rabbi trust or to cancel benefits provided thereunder.

Assets contained in any rabbi trust established hereunder shall at all times be specifically subject to the claims of each Participant's Employer's general creditors in the event of bankruptcy or insolvency; such terms shall be specifically defined within the provisions of the rabbi trust, along with a required procedure for notifying the trustee of any such bankruptcy or insolvency. The terms of the trust agreement shall not provide that assets contained in the rabbi trust will become restricted to the provision of benefits under the Plan in connection with a change in the Employer's financial health.

Assets contained in any rabbi trust established hereunder shall at all times be located within the United States.

Subject to the other provisions of this Section 6.4, at the sole discretion of the Board, the Employer shall contribute cash or other assets to the rabbi trust for the benefit of Plan Participants and beneficiaries of Plan Participants.

Article 7. Amendment, Modification, Termination, Acknowledgment of Authority, and Spinoff

7.1 Amendment and Modification. The Company may, with prospective or retroactive effect, amend or modify the Plan at any time and from time to time, including at any time during the calendar year 2005 if determined to be necessary, appropriate or advisable in response to administrative guidance issued under Code Section 409A or to comply with the provisions of Code Section 409A. Notwithstanding the preceding sentence, the Company may accelerate distributions under this Plan only when doing so is consistent with Treasury Regulations and other guidance issued by the Internal Revenue Service under Code Section 409A. In the event the spinoff of this Plan (and related transfer of assets) from the GERP is construed to be a material modification of the GERP or of this Plan, then the amounts deferred prior to 2005 under the GERP (which were earned and vested as of December 31, 2004) which are transferred to this Plan and related rabbi trust shall be subject to the provisions of Code Section 409A.

7.2 Suspension, Discontinuance, and Termination. The Board may suspend, discontinue or terminate the Plan at any time and from time to time; provided that, the Company may accelerate distributions under this Plan only when doing so is consistent with Treasury Regulations and other guidance issued by the Internal Revenue Service under Code Section 409A.

7.3 Acknowledgment of Authority. Each Employer acknowledges the Company's right to amend, modify and otherwise take action regarding the Plan with respect to all Employers. The Employers also acknowledge the Board's right to terminate the Plan with respect to all Employers.

7.4 Spinoff of Gambro Healthcare, Inc. Executive Retirement Plan from GERP. Effective the day before the closing of the sale of Gambro Healthcare, Inc. to DaVita Inc. ("Transfer Date"), the Deferral Account and related liabilities under the GERP and related rabbi trust of each:

- (a) Participant who is an Employee of Gambro Healthcare, Inc. on the Transfer Date; and
- (b) former Employee (or his or her beneficiary) of Gambro Healthcare, Inc. who is entitled to a benefit from the GERP on the Transfer Date

shall be transferred to this Plan and related rabbi trust.

Article 8. Miscellaneous

8.1 Gender and Number. Except where otherwise indicated by the context, any masculine term used herein also shall include the feminine, the plural shall include the singular, and the singular shall include the plural.

8.2 Severability. In the event any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

8.3 Beneficiary Designation. Each Participant under the Plan may, from time to time, name any beneficiary or beneficiaries (who may be named contingently or successively) to whom any benefit under the Plan is to be paid in the event of his or her death. Each designation will revoke all prior designations by the same Participant, shall be in a form prescribed by the Plan Administrator, and will be effective only when filed by the Participant in writing with the Plan Administrator during his or her lifetime. In the absence of any such designation, benefits remaining unpaid at the Participant's death shall be paid to the Participant's surviving spouse. In the event that there is no surviving spouse, any remaining benefits shall be paid in equal shares to the surviving children of the Participant. If there are no surviving children, any remaining benefits shall be paid to the Participant's estate.

8.4 Successors. All obligations of the Employer under the Plan with respect to Deferred Amounts hereunder shall be binding on any successor to the Employer, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and/or assets of the Employer.

8.5 Requirements of Law. Contributions and resulting Deferred Amounts under the Plan shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

8.6 Governing Law. The Plan, and all agreements hereunder, shall be construed in accordance with and governed by the internal, substantive laws of the State of Colorado.

8.7 Federal Insurance Contributions Act ("FICA") and Federal Unemployment Tax Act ("FUTA"). The "Amount Deferred" (which includes hypothetical earnings/losses credited to the principal amount before the principal amount is included in FICA and FUTA wages) under this Plan shall be subject to FICA and FUTA taxes and related withholding as of the later of:

- (a) when the services are performed, or
- (b) when the Participant vests in the Amount Deferred as provided in Article V and in accordance with Code Sections 3121(v) and 3306(r).

8.8 Withholding of Income Taxes. The Employer and/or Trustee shall have the right to deduct from amounts otherwise credited to or paid from a Participant's Deferral Account, amounts sufficient to satisfy federal, state, local and foreign tax withholding requirements.

8.9 Assumption of Risk. The Participant and the Participant's beneficiary shall assume all risk (other than for gross negligence of the Company, Board, or the Plan Administrator, or breach by the Company of the terms of this Plan) in connection with:

- (a) the Plan and trust design, implementation and/or administration;
- (b) investment decisions made by the Participant and the resulting value of the Participant's Deferral Account;
- (c) the selection of and actions of the Trustee or any other third party providing services to the Company or the rabbi trust in connection with the Plan or rabbi trust (including their administrative and investment expenses); and
- (d) any income taxes, penalties and interest incurred by the Participant or Participant's beneficiary relating to or arising out of his or her participation in the Plan.

IN WITNESS WHEREOF, the Company has caused this Gambro Healthcare, Inc. Executive Retirement Plan to be effective as provided above and executed by its duly authorized officer this 4th day of October 2005.

Gambro Healthcare, Inc.

By /s/ Larry Buckelew

Larry Buckelew

President

Exhibit 10.31

DAVITA INC. POST-RETIREMENT DEFERRED COMPENSATION ARRANGEMENT

AMENDMENT #1

WHEREAS, Section 7.1 of the DaVita Inc. Post-Retirement Deferred Compensation Arrangement (the "Plan") provides that the DaVita Inc. (the "Company") has the right to amend the Plan at any time;

WHEREAS, the Company desires to amend the Plan to comply with the final regulations issued under Section 409A of the Internal Revenue Code of 1986, as amended;

WHEREAS, the Company desires to preserve the grandfathered status of those Plan benefits that were earned and vested as of December 31, 2004, so that those grandfathered amounts will not be subject to Code Section 409A, but will remain subject to the terms of the Plan in effect prior to this Amendment, and this Amendment is intended to not constitute a material modification of the Plan with respect to those grandfathered amounts;

NOW THEREFORE, the Company hereby amends the Plan as follows:

1. Effective January 1, 2009, Section 2.2 of the Plan hereby is amended by the addition of the following sentence at the end of such Section:

With respect to amounts that are subject to Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), for purposes of determining whether a Change of Control has occurred under this Section 2.2, "Company" shall mean DaVita Inc.

2. Effective January 1, 2009, the first sentence of Section 3.2 of the Plan hereby is amended to read as follows:

In the event it is subsequently determined that a Participant does not constitute a Top-Hat Employee, contributions on behalf of such Participant shall cease and his benefit shall be payable only as provided under this Plan, unless otherwise permitted under Code Section 409A.

3. Effective January 1, 2009, Section 5.1 of the Plan hereby is amended to read in its entirety as follows:

5.1 Distributions following Termination of Employment. Participants shall receive the vested portion of their benefits determined pursuant to the rules of Article III within 90 days after the Participant's termination of employment, regardless of the reason for termination of employment (*e.g.*, death, disability, retirement, or otherwise), provided that, with respect to those benefits that are subject to Code Section 409A, such termination of employment constitutes a separation from service, as defined below.

(a) A “separation from service” means a separation from service with the Company and all other persons or entities with whom the Company would be considered a single employer under Code Section 414(b) or 414(c), within the meaning of Code Section 409A.

(b) With respect to any amount that becomes payable to a Participant upon the Participant’s separation from service, as defined above, for any reason, notwithstanding any other provision of the Plan to the contrary, if the Company determines in good faith that the Participant is a “specified employee” under Code Section 409A then, to the extent required under Code Section 409A, any amount that otherwise would be payable to the Participant during the six-month period following the Participant’s separation from service shall be suspended until the lapse of such six-month period (or, if earlier, the date of death of the Participant). The amount that otherwise would be payable to the Participant during such period of suspension shall be paid in a single payment on the day following the end of such six-month period (or, if such day is not a business day, on the next succeeding business day) or within 30 days following the death of the Participant during such six-month period, provided that the death of the Participant during such six-month period shall not cause the acceleration of any amount that otherwise would be payable on any date during such six-month period following the date of the Participant’s death. Any amounts not subject to the suspension described in the preceding sentence shall be paid as otherwise provided in the Plan.

4. Effective January 1, 2009, Section 5.2 of the Plan hereby is amended by the addition of the following paragraph at the end of such Section:

With respect to the portion of any Account that is subject to Code Section 409A, any election under Section 5.2(a) or 5.2(b) above with respect to that portion of the Participant’s Account that is attributable to Company contributions made for a calendar year shall be made prior to the calendar year during which the Participant’s services to the Company which give rise to the contributions made for such calendar year were performed, and such withdrawal election will be irrevocable except with respect to subsequent payment elections which shall be permitted in compliance with Code Section 409A. Any withdrawal election under Section 5.2(b) shall be made in compliance with Code Section 409A with respect to the portion of any Account that is subject to Code Section 409A.

5. Effective January 1, 2009, Section 7.1 of the Plan hereby is amended by the addition of the following sentence at the end of such Section:

Notwithstanding the preceding sentence, to the extent the Participant’s Account is subject to Code Section 409A, benefits will be distributed upon the termination of the Plan only in compliance with Code Section 409A.

DAVITA INC. DEFERRED BONUS PLAN

AMENDMENT #1

WHEREAS, Section 10.1 of the DaVita Inc. Deferred Bonus Plan (the "Plan") provides that the DaVita Inc. (the "Plan Sponsor") has the right to amend the Plan at any time;

WHEREAS, the Plan is made up of an Adoption Agreement (the "Adoption Agreement") and a basic plan document (the "Base Plan") which together constitute the Plan;

WHEREAS, the Plan Sponsor desires to amend the Plan to comply with the final regulations issued under Section 409A of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, the Plan Sponsor hereby amends the Plan as follows:

1. Effective January 1, 2009, Section 9.8 of the Base Plan hereby is amended to read in its entirety as follows:

9.8 Permissible Delays in Payment. Distributions may be delayed beyond the date payment would otherwise occur in accordance with the provisions of Articles 8 and 9 in any of the following circumstances:

(a) The Employer may delay payment if it reasonably anticipates that its deduction with respect to such payment would not be permitted by the application of Section 162(m) of the Code; provided that the payment is made either (i) during the first taxable year in which the Employer reasonably anticipates, or should reasonably anticipate, that if the payment is made during such year, the deduction of such payment will not be barred by application of Section 162(m) of the Code or (ii) during the period beginning with the date of the Participant's Separation from Service and ending on the later of the last day of the taxable year in which such Separation from Service occurred or the 15th day of the third month following the Separation from Service, and provided further that where any scheduled payment to a Participant is delayed in accordance with this sentence, the delay in payment will be treated as a subsequent deferral election unless all scheduled payments to that Participant that could be delayed in accordance with this sentence are also delayed.

(b) The Employer may delay payment if it reasonably anticipates that the making of the payment will violate Federal Securities Laws or other applicable law; provided that the payment is made at the earliest date at which the Employer reasonably anticipates that the making of the payment will not cause such violation. The making of a payment that would cause inclusion in gross income or the application of any penalty provision or other provision of the Internal Revenue Code is not treated as a violation of applicable law.

(c) The Employer may delay a payment upon such other events and conditions as the Secretary of the Treasury may prescribe in generally applicable guidance published in the Internal Revenue Bulletin.

2. Effective January 1, 2009, Section 10.3 of the Base Plan hereby is amended to read in its entirety as follows:

10.3 Other Plan Terminations. The Plan Sponsor retains the discretion to terminate and liquidate the Plan, provided that:

(a) the termination and liquidation does not occur proximate to a downturn in the financial health of the Plan Sponsor or the Employer;

(b) all arrangements sponsored by the Plan Sponsor and the Employer that would be aggregated with the terminated and liquidated Plan under Section 409A of the Code if the same Participant had deferrals of compensation under such other arrangements also are terminated and liquidated;

(c) No payments in liquidation of the Plan or other aggregated arrangements (which would not include payments that would be payable under the terms of the Plan and other arrangements if the termination and liquidation had not occurred) are made within 12 months of the date the Plan Sponsor terminates the Plan;

(d) All payments are made within 24 months of the date the Plan Sponsor takes all necessary action to irrevocably terminate and liquidate the Plan; and

(e) The Plan Sponsor and the Employer do not adopt a new plan that would be aggregated with the terminated and liquidated Plan or other terminated and liquidated arrangement under Treas. Reg. Section 1.409A-1(c) if the same Participant participated in both plans, at any time within three years following the date the Plan Sponsor takes all necessary action to irrevocably terminate and liquidate the Plan.

3. Effective January 1, 2009, the last sentence of Section 13.4 of the Base Plan hereby is amended to read as follows:

Notwithstanding the preceding, the benefit payable from a Participant's Account may be reduced, at the discretion of the Administrator, to satisfy any debt or liability to the Employer, provided that such reduction does not result in a prohibited acceleration of any payment under Section 409A of the Code.

4. Effective January 1, 2009, Section 13.9(b) of the Base Plan hereby is amended to read as follows:

(b) to the extent reasonably necessary to avoid the violation of an applicable Federal, state, local, or foreign ethics law or conflicts of interest law (including where such payment is reasonably necessary to permit the Participant to participate in activities in the normal course of his or her position in which the Participant would otherwise not be able to participate under an applicable rule),
...

5. Effective December 31, 2008, Section 1.06 of the Adoption Agreement hereby is amended to read in its entirety as follows:

1.06 IDENTIFICATION DATE

The Employer has designated December 31 as the Identification Date for purposes of determining Key Employees.

Exhibit 10.38**DAVITA INC.
SEVERANCE PLAN**

DaVita Inc., a Delaware corporation (the “Company”), hereby adopts the DaVita Inc. Severance Plan (this “Plan”) for the benefit of certain Teammates of the Company and its subsidiaries.

This Plan is intended to secure the continued services and ensure the continued dedication of the Teammates (as defined in Section 1(c)) by providing to such Teammates certain protections in the event of a Qualifying Termination (as defined in Section 1(d)).

This Plan is intended to qualify as a Teammate welfare benefit plan as described in section 3(1) of the Teammate Retirement Income Security Act of 1974, as amended (“ERISA”).

1. Definitions. As used in this Plan, the following terms shall have the respective meanings set forth below:

(a) “Code” means the Internal Revenue Code of 1986, as amended.

(b) “Company” means DaVita Inc., a Delaware corporation.

(c) “Teammate” means any person who is employed by the Company in an position of Vice President or Director.

(d) “Qualifying Termination” means the involuntary termination of a Teammate’s employment by the Company under circumstances for which the payment of severance payments and benefits under this Plan is approved by the Senior Vice President of People Services and the Assistant General Counsel – Labor of the Company; provided, however, that a Teammate will not incur a Qualifying Termination and will not receive severance payments and benefits under this Plan if (i) the Teammate’s employment is terminated by the Company for any action which the Company, in its sole discretion, determines is for material cause, including, but not limited to, failure to perform job responsibilities, violation of the Company’s policies and procedures, an act of fraud or dishonesty affecting or involving the Company, or a breach of a material provision of the Teammate’s employment agreement or other similar agreement with the Company, or (ii) a Teammate in the position of Director is terminated during the first year of the Teammate’s employment with the Company.

(e) “Termination Date” with respect to a Teammate means the date on which the Teammate incurs a “separation from service” within the meaning of Section 409A(a)(2)(A) of the Code.

(f) by reason of a Qualifying Termination.

2. **Payments and Benefits Upon Qualifying Termination.** If a Teammate shall incur a Qualifying Termination, and the Teammate (or the Teammate's executor or other legal representative in the case of the Teammate's death or disability following such termination) executes and does not revoke a waiver and release agreement substantially in the form of Exhibit A hereto (the "Waiver and Release") and a noncompetition, nonsolicitation, confidentiality and cooperation agreement substantially in the form of Exhibit B hereto (the "Noncompetition Agreement") within 28 days following the Termination Date, the Company shall provide to the Teammate, as compensation for services rendered to the Company, and in consideration of the covenants set forth in the Waiver and Release and Noncompetition Agreement, the payments and benefits described in this Section 2. Notwithstanding the foregoing provisions of this Section 2, if, as a result of a Teammate's termination of employment on the Termination Date, a Teammate is entitled to severance payments and benefits from the Company or any of its subsidiaries which are not payable pursuant to this Plan, but are payable pursuant to an employment agreement or other compensation arrangement entered into between such Teammate and the Company or any of its subsidiaries ("Other Severance Payments and Benefits"), the payments and benefits to be received by the Teammate pursuant to this Section 2 shall be reduced by the amount of the Other Severance Payments and Benefits, if any, received by the Teammate.

(a) The Company shall continue to pay to the Teammate (or the Teammate's beneficiary or estate, as the case may be), commencing within 14 days following the date of execution of the Waiver and Release and Noncompetition Agreement, the Teammate's base salary for the applicable period set forth below based on the Teammate's job classification and period of service:

<u>Job Classification</u>	<u>Period of Service</u>	<u>Salary Continuation Period</u>
Vice President	Less than one year	6 months
Vice President	One year or more	12 months
Director	Less than 3 months	0-3 months
Director	3 to 24 months	3 months
Director	More than 24 months	6 months

The applicable salary continuation period set forth above may be extended in the sole discretion of the Chief Executive Officer or Chief Operating Officer of the Company.

(b) The Company shall provide outplacement assistance to the Teammate, the nature of which will be at the Company's discretion, and which shall, in no event be provided after the last day of the second calendar year following the calendar year in which the termination date occurs.

(c) The Teammate's stock options, restricted stock units, other stock-based awards, and other long-term incentives shall be treated in accordance with the terms of any agreements that Teammate has previously entered into with the Company concerning these benefits.

3. **Plan 409A of the Code.** This Plan is intended to meet the requirements of Section 409A of the Code, and shall be interpreted and construed consistent with that intent.

Notwithstanding any other provision of this Plan, to the extent that the right to any payment (including the provision of benefits) to a Teammate hereunder provides for the “deferral of compensation” within the meaning of Section 409A(d)(1) of the Code, the payment shall be made (or provided) in accordance with the following:

If the Teammate is a “specified employee” within the meaning of Section 409A(a)(2)(B)(i) of the Code on the date of the Teammate’s Termination Date, then no such payment shall be made during the period beginning on the Termination Date and ending on the date that is six months following the Termination Date or, if earlier, on the date of the Teammate’s death, if the earlier making of such payment would result in tax penalties being imposed on the Teammate under Section 409A of the Code. The amount of any payment that would otherwise be made during this period shall instead be made on the first business day following the date that is six months following the Termination Date or, if earlier, the date of the Teammate’s death. Each payment and benefit hereunder shall constitute a “separately identified” amount within the meaning of Treasury Regulation §1.409A-2(b)(2).

4. Plan Administration; Claims Procedure.

(a) This Plan shall be interpreted and administered by the Company, or if the Company has delegated its authority to interpret and administer this Plan, by the person or persons appointed by the Company from time to time to interpret and administer this Plan (the “Plan Administrator”), who shall have complete authority, in his or her sole discretion subject to the express provisions of this Plan, to make all determinations necessary or advisable for the administration of this Plan. All questions arising in connection with the interpretation of this Plan or its administration shall be submitted to and determined by the Plan Administrator in a fair and equitable manner in accordance with the procedure for claims and appeals described in Section 4(b).

(b) Any Teammate whose employment has been terminated who believes that he or she is entitled to receive benefits under this Plan, including benefits other than those initially determined by the Plan Administrator to be payable, may file a claim in writing with the Plan Administrator, specifying the reasons for such claim. The Plan Administrator shall, within 90 days after receipt of such written claim (unless special circumstances require an extension of time, but in no event more than 180 days after such receipt), send a written notification to the Teammate as to the disposition of such claim. Such notification shall be written in a manner calculated to be understood by the claimant and in the event that such claim is denied in whole or in part, shall (i) state the specific reasons for the denial, (ii) make specific reference to the pertinent Plan provisions on which the denial is based, (iii) provide a description of any additional material or information necessary for the Teammate to perfect the claim and an explanation of why such material or information is necessary, and (iv) set forth the procedure by which the Teammate may appeal the denial of such claim. The Teammate (or his or her duly authorized representative) may request a review of the denial of any such claim or portion thereof by making application in writing to the Plan Administrator within 60 days after receipt of such denial. Such Teammate (or his or her duly authorized representative) may, upon written

request to the Plan Administrator, review any documents pertinent to such claim, and submit in writing issues and comments in support of such claim. Within 60 days after receipt of a written appeal (unless special circumstances require an extension of time, but in no event more than 120 days after such receipt), the Plan Administrator shall notify the Teammate of the final decision with respect to such claim. Such decision shall be written in a manner calculated to be understood by the claimant and shall state the specific reasons for such decision and make specific references to the pertinent Plan provision on which the decision is based.

(c) The Plan Administrator may from time to time delegate any of his or her duties hereunder to such person or persons as the Plan Administrator may designate. The Plan Administrator is empowered, on behalf of this Plan, to engage accountants, legal counsel and such other persons as the Plan Administrator deems necessary or advisable for the performance of his or her duties under this Plan. The functions of any such persons engaged by the Plan Administrator shall be limited to the specified services and duties for which they are engaged, and such persons shall have no other duties, obligations or responsibilities under this Plan. Such persons shall exercise no discretionary authority or discretionary control respecting the administration of this Plan. All reasonable fees and expenses of such persons shall be borne by the Company.

5. Withholding Taxes. The Company will withhold from all payments due under this Plan to each Teammate (or the Teammate's beneficiary or estate) all taxes which, by applicable federal, state, local or other law, the Company is required to withhold therefrom.

6. Amendment. The Company shall have the right, in its sole discretion, pursuant to action by the Chief Executive Officer of the Company, to amend this Plan in any respect; provided, however, that no amendment may reduce any severance payments or benefits due hereunder with respect to a Teammate who previously incurred a Qualifying Termination and who has not forfeited such payments and benefits pursuant to the Noncompetition Agreement. In the event that this Plan is determined to be a "deferred compensation plan" subject to Section 409A of the Code, the Committee shall, as necessary, adopt such conforming amendments as are necessary to comply with Section 409A of the Code without reducing the payments and benefits due to the Teammates hereunder.

7. Effect of Plan. Any amount payable pursuant to this Plan shall be reduced by any other amount of severance relating to salary continuation or any other continuation of medical coverage to be received by the Teammate upon termination of employment of the Teammate under any severance plan, policy or arrangement of the Company. Subject to the foregoing and to the provisions of Sections 2 and 8 hereof, the rights of, and benefits payable to, a Teammate pursuant to this Plan are in addition to any rights of, or benefits payable to, a Teammate under any other Teammate benefit plan or compensation program of the Company. All rights of a Teammate under any such plan or program shall be determined in accordance with the provisions of such plan or program.

8. Offset; Mitigation.

(a) If the Company is obligated by law or contract to pay severance pay, notice pay or other similar benefits, or if the Company is obligated by law to provide advance notice of separation (“Notice Period”), then any payments hereunder shall be reduced by the amount of any such severance pay, notice pay or other similar benefits, as applicable, and by the amount of any severance pay, notice pay or other similar benefits received during any Notice Period.

(b) Any amount payable pursuant to this Plan shall also be reduced by any amount of compensation received by the Teammate from another employer (as a Teammate, consultant, or independent contractor) during the applicable salary continuation period set forth in Section 2(a) hereof. Teammate may not defer compensation with his new employer or client or take any other action in an effort to avoid the dollar-for-dollar reduction required by this Plan, and that if Teammate does take such action, the benefits under this Plan may be reduced by the Plan Administrator in its sole discretion.

(c) A Teammate who is entitled to receive severance payments and benefits hereunder shall be obligated to seek other employment and to take all other reasonable actions so as to mitigate the amounts payable and the benefits to be provided to such Teammate under any of the provisions of this Plan.

9. Unfunded Plan. This Plan shall not be funded. No Teammate entitled to benefits hereunder shall have any right to, or interest in, any specific assets of the Company, but a Teammate shall have only the rights of a general creditor of the Company to receive benefits on the terms and subject to the conditions provided in this Plan.

10. Payments to Minors, Incompetents and Beneficiaries. Any benefit payable to or for the benefit of a minor, an incompetent person or other person incapable of giving a receipt therefor shall be deemed paid when paid to such person’s guardian or to the party providing or reasonably appearing to provide for the care of such person, and such payment shall fully discharge the Company, the Plan Administrator and all other parties with respect thereto. If a Teammate shall die while any amounts would be payable to the Teammate under this Plan had the Teammate continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Plan to such person or persons appointed in writing by the Teammate to receive such amounts or, if no person is so appointed, to the estate of the Teammate.

11. Non-Assignability. None of the payments, benefits or rights of any Teammate shall be subject to any claim of any creditor, and, in particular, to the fullest extent permitted by law, all such payments, benefits and rights shall be free from attachment, garnishment, trustee’s process or any other legal or equitable process available to any creditor of such Teammate. Except as otherwise provided herein or by law, no right or interest of any Teammate under this Plan shall be assignable or transferable, in whole or in part, either directly

or by operation of law or otherwise, including without limitation by execution, levy, garnishment, attachment or pledge; no attempted assignment or transfer thereof shall be effective; and no right or interest of any Teammate under this Plan shall be subject to any obligation or liability of such Teammate.

12. No Rights to Continued Employment. Neither the adoption of this Plan, nor any amendment hereof, nor the creation of any fund, trust or account, nor the payment of any benefits, shall be construed as giving any Teammate the right to be retained in the service of the Company, and all Teammates shall remain subject to discharge to the same extent as if this Plan had not been adopted.

13. Successors; Binding Agreement. This Plan shall inure to the benefit of and be binding upon the beneficiaries, heirs, executors, administrators, successors and assigns of the parties, including each Teammate, present and future, and any successor to the Company or one of its subsidiaries. This Plan shall not be terminated by any merger or consolidation of the Company whereby the Company is or is not the surviving or resulting corporation or as a result of any transfer of all or substantially all of the assets of the Company. In the event of any such merger, consolidation or transfer of assets, the provisions of this Plan shall be binding upon the surviving or resulting corporation or the person or entity to which such assets are transferred. The Company agrees that concurrently with any merger, consolidation or transfer of assets referred to in this Section 16, it will cause any surviving or resulting corporation or transferee unconditionally to assume all of the obligations of the Company hereunder.

14. Headings. The headings and captions herein are provided for reference and convenience only, shall not be considered part of this Plan and shall not be employed in the construction of this Plan.

15. Notices. Any notice or other communication required or permitted pursuant to the terms hereof shall have been duly given when delivered or mailed by United States mail, first class, postage prepaid, addressed to the intended recipient at his, her or its last known address.

16. Effective Date and Term. This Plan shall be effective as of the date hereof and shall end on the date on which this Plan is terminated by the Company; provided that this Plan and the obligations of the Company hereunder shall not terminate with respect any severance payments or benefits due hereunder with respect to a Teammate who previously incurred a Qualifying Termination and who has not forfeited such payments and benefits pursuant to the Noncompetition Agreement until such obligations have been fully satisfied by the Company.

17. Employment with, and Action by, Subsidiaries. For purposes of this Plan, employment with the Company or actions taken by the Company with respect to the Teammate shall include employment with or actions taken by any corporation or other entity in which the Company has a direct or indirect ownership interest of 50% or more of the total combined voting power of the then outstanding securities of such corporation or other entity entitled to vote generally in the election of directors.

18. Governing Law; Validity. This Plan shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Delaware (without regard to principles of conflicts of laws) to the extent not preempted by ERISA or other Federal law, which shall otherwise control. If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereof, and this Plan shall be construed and enforced as if such provision had not been included.

Exhibit 10.40**DaVita Inc.
Change in Control Bonus Program****I. Purpose**

The purpose of the bonus program is to ensure the continued dedication of employees to DaVita Inc. (the “Company”) and its subsidiaries, through additional assurances of financial and employment security in the event of a Change in Control of the Company.

II. Eligible Employees

- a. Only Eligible Employees may participate in the bonus program.
- b. Eligible Employees are those employees who were either full-time or part-time benefit eligible employees for the entire 12-month period preceding the Change in Control and who are employed by the Company on the date of the Change in Control. An approved leave of absence will count towards the 12-month period for eligibility. Employees who have received stock options for a total of 50,000 or more shares of the Company’s stock (without regard to vesting) are disqualified as Eligible Employees.
- c. Employees who are represented by a union are not Eligible Employees unless this bonus program is expressly included within their collective bargaining agreement.
- d. Employees employed in units we manage but do not own are eligible to participate in this program if they meet the above criteria.
- e. Employees employed in units in which we are a minority partner are eligible to participate in this program if they meet the above criteria.

III. Qualifying Change in Control

“Change in Control” shall mean:

- a. Any transaction or series of transactions in which any person or group (within the meaning of Rule 13d-5 under the Securities Exchange Act of 1934 (the “Exchange Act”) and Sections 13(d) and 14(d) under the Exchange Act) becomes the direct or indirect “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), by way of a stock issuance, tender offer, merger, consolidation, other business combination or otherwise, of greater than 50% of the total voting power (on a fully diluted basis as if all convertible securities had been converted and all warrants and options had been exercised) entitled to vote in the election of directors of the Company (including any transaction in which the Company becomes a wholly-owned or majority-owned subsidiary of another corporation), or
- b. Any merger or consolidation or reorganization in which the Company does not survive, or

- c. Any merger or consolidation in which the Company survives, but the shares of the Company's common stock outstanding immediately prior to such merger or consolidation represent 50% or less of the voting power of the Company after such merger or consolidation, or
- d. Any transaction in which more than 50% of the Company's assets are sold,

provided, however, that no transaction contemplated by clauses a through d above shall constitute a Change of Control if both (x) the person acting as the Chief Executive Officer of the Company for the six months prior to such transaction becomes the Chief Executive Officer or Executive Chairman of the Board of Directors of the entity that has acquired control of the Company as a result of such transaction (the "Acquiror") immediately after such transaction and remains the Chief Executive Officer or Executive Chairman of the Board of Directors for not less than one year following the transaction and (y) a majority of the Acquiror's board of directors immediately after such transaction consist of persons who were directors of the Company immediately prior to such transaction, and, further provided, that, if both (x) and (y) are satisfied immediately after such transaction, but the person acting as the Chief Executive Officer of the Company for the six months prior to such transaction does not remain as the Chief Executive Officer or Executive Chairman of the Board of Directors of the Acquiror for a full year after the transaction, then a Change in Control shall be deemed to occur on the first date on which such person is no longer the Chief Executive Officer or Executive Chairman of the Board of Directors of the Acquiror.

IV. Determination of Bonus Amount

- a. The aggregate bonus is to equal 4% of the premium realized in the Change in Control transaction, measured from the closing price per share of the Company's stock on March 29, 2000 (as adjusted for stock-splits) of \$1.7917. For example:
 - 1. If the Change in Control is a purchase of the Company's outstanding stock for cash, the aggregate bonus shall equal 4% of the product of (x) the difference between the cash purchase price per share and \$1.7917 and (y) the total shares outstanding on the date of the Change in Control.
 - 2. If the Change in Control is a stock-for-stock transaction, the aggregate bonus shall equal 4% of the product of (x) the difference between the market value of the stock received per share of Company stock and \$1.7917 and (y) the total shares outstanding on the date of the Change in Control.
- b. The calculation of the premium realized shall be approved by the Company's Board of Directors.
- c. The allocation of the aggregate bonus amount among individual Eligible Employees will be reasonably determined by the Company's Chief Executive Officer and confirmed by the Company's Board of Directors.

V. Bonus Payment Terms

- a. Bonus to be paid within 30 days after Change in Control.
- b. The bonus will be paid to an Eligible Employee's estate if he or she dies before payment is required, with no change in the payment date.
- c. The bonus will be paid in a lump-sum cash payment.
- d. Eligible Employees who receive a Change in Control bonus will be required to sign a release agreement, which includes a nondisparagement clause, as a condition precedent to receiving any bonus payment under this program.

VI. Miscellaneous

- a. The Company shall have the right, in its sole discretion, pursuant to action by the Board of Directors of the Company, to terminate this program at any time or to amend this program in any respect; provided, however, that no termination of the program or amendment which is adverse to the interests of any Eligible Employee may be made after a transaction contemplated by clauses a through d of the definition of Change in Control has occurred until it can be determined that, due to the satisfaction of clauses (x) and (y) contained in the proviso to the definition of Change in Control, such transaction will not result in a Change in Control; and provided further, that on and after a Change in Control, this program may not be amended in a manner which is adverse to the interests of any Eligible Employee and may not be terminated prior to the payment of all amounts payable to Eligible Employees hereunder as a result of such Change in Control. To the extent applicable, this program is intended to be administered and interpreted in a manner that is consistent with the requirements of Section 409A of the Code. Notwithstanding the foregoing, no particular tax result with respect to any income recognized by an Eligible Employee in connection with the program is guaranteed and each Eligible Employee shall be responsible for any taxes imposed on him or her in connection with the program.
- b. This program shall be governed by and construed in accordance with the laws of the State of Delaware.

Exhibit 10.50

DaVita Inc.

**2002 Equity Compensation Plan
(As Amended and Restated Effective January 1, 2009)**

1. Purpose. The purpose of the DaVita Inc. 2002 Equity Compensation Plan (“Plan”) is to promote the interests of DaVita Inc. (“Company”) and its stockholders by enabling the Company to offer an opportunity to acquire an equity interest in the Company so as to better attract, retain, and reward Employees, directors, and independent contractors and, accordingly, to strengthen the mutuality of interests between those persons and the Company’s stockholders by providing those persons with a proprietary interest in pursuing the Company’s long-term growth and financial success. Awards under the Plan will be made in the form of the issuance of Options, Restricted Stock, Stock Issuances, Stock Appreciation Rights, and Other Awards.

2. Definitions. For purposes of this Plan, the following terms shall have the meanings set forth below.

(a) “Board” or “Board of Directors” means the Board of Directors of DaVita Inc.

(b) “Code” means the Internal Revenue Code of 1986. Reference to any specific section of the Code shall also be deemed to be a reference to any successor provision.

(c) “Committee” means the administrative committee of this Plan that is provided for in Section 3 of this Plan.

(d) “Common Stock” means the common stock of DaVita Inc. or any security issued in substitution, exchange, or in lieu thereof.

(e) “Company” means DaVita Inc., a Delaware corporation, or any successor corporation. Except where the context indicates otherwise, the term “Company” shall include its Parent and Subsidiaries, if any.

(f) “Disabled” means permanent and total disability, as defined in Code Section 22(e)(3).

(g) “Effective Date” of this Plan is April 11, 2002.

(h) “Employee” means a worker whose earnings the Company reports on a Form W-2.

(i) “Exchange Act” means the Securities Exchange Act of 1934.

(j) “Fair Market Value” of Common Stock for any day shall, except as otherwise provided below, be the last reported sale price on that day regular way, or if no such reported sale takes place on that day, the average of the last reported bid and ask prices on that day regular way, in either case on the principal national securities exchange on which the Common Stock is traded or listed.

- (i) If the national securities exchange is closed on such date, the “Fair Market Value” shall be determined as of the last preceding day on which the Common Stock was traded or for which bid and ask prices are available.
- (ii) In the case of an Incentive Stock Option, “Fair Market Value” shall be determined without reference to any restriction other than one that, by its terms, will never lapse.
- (iii) In the case of the settlement of a Stock Appreciation Right, “Fair Market Value” of Common Stock shall mean the last reported sale price on the most recently closed trading day regular way, or if no such reported sale takes place on that day, the average of the last reported bid and asked prices on that day regular way, in either case on the principal national securities exchange on which the Common Stock is traded or listed.

(k) “Grants” mean awards of Options, Restricted Stock, Stock Issuances, Stock Appreciation Rights, and Other Awards.

(l) “Incentive Stock Option” means an option to purchase Common Stock that is intended to be an incentive stock option under Code Section 422.

(m) “Insider” means a person who is subject to Section 16 of the Exchange Act.

(n) “Non-Qualified Stock Option” means any option to purchase Common Stock that is *not* an Incentive Stock Option.

(o) “Option” means an Incentive Stock Option or a Non-Qualified Stock Option.

(p) “Other Awards” mean equity-based awards that are not Options, Restricted Stock, Stock Appreciation Rights, or Stock Issuances. However, in the event that the Other Award is the functional equivalent of Restricted Stock or Stock Issuance, (i) the special share-counting rule contained in Section 5(a)(iv) and (ii) the vesting limitations contained in Section 7(e) shall apply.

(q) “Parent” means any corporation (*other than* the Company) in an unbroken chain of corporations ending with the Company if each of the corporations (*other than* the Company) owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in the chain, as determined in accordance with the rules of Code Section 424(e).

(r) “Participant” means a person who has received a Grant.

(s) “Plan” means this DaVita Inc. 2002 Equity Compensation Plan.

(t) “Predecessor Plans” mean the DaVita Inc. 1994 Equity Compensation Plan, 1995 Equity Compensation Plan, 1997 Equity Compensation Plan, and 1999 Equity Compensation Plan.

(u) “Restricted Stock” means the shares of Common Stock that are issued to a Participant, where the Participant does not immediately possess a vested right to those shares. Nevertheless, the terms of a Grant may provide for faster vesting in limited situations of retirement, death, disability, change in control, and/or grants to newly-hired Employees. Other than the right to sell or otherwise transfer the shares and such other restrictions as may be contained in the Grant, the Participant shall be treated as the owner of the Restricted Stock (*e.g.*, for voting purposes) from the date of the issuance of the shares.

(v) “Rule 16b-3” means Rule 16b-3 promulgated by the Securities and Exchange Commission.

(w) “Section 162(m)” means Code Section 162(m), which imposes a million dollar (\$1,000,000) compensation deduction limitation on amounts paid to certain senior executives.

(x) “Service” means the performance of service, whether as an Employee or as an independent contractor (*e.g.*, as a member of the Board).

- (i) Nevertheless, except to the extent otherwise expressly provided to the contrary in the terms of the Grant, service performed by the Participant shall only be taken into account to the extent it is performed in the same capacity as on the date of the Grant (that is, as an Employee or as an independent contractor). In making the determination as to whether or not a Grant should provide for the continuation of Service after a change in status, the Committee shall take into account the relevant possible tax and accounting consequences.
- (ii) The Committee shall prescribe such rules as it may deem necessary or appropriate regarding crediting of periods of Service while a Participant is on a leave of absence.

(y) “Severance” means, with respect to a Participant, the termination of the Participant’s Service, whether by reason of death, disability, or any other reason.

- (i) For purposes of determining the exercisability of an Incentive Stock Option, a Participant who is on a leave of absence that exceeds ninety (90) days will be considered to have incurred a Severance on the ninety-first (91st) day of the leave of absence, unless the Participant’s rights to reemployment are guaranteed by statute or contract.
- (ii) A Participant will *not* be considered to have incurred a Severance because of a transfer between the Company, Subsidiary, or Parent.

- (iii) If a Participant switches from Employee to independent contractor status or vice versa, that will be treated as a Severance, except as otherwise expressly provided to the contrary in the terms of the Grant.
- (iv) If a Participant switches from Employee to independent contractor status, that will result in an Option losing its status as an Incentive Stock Option after ninety (90) days has elapsed since the switch. Thereafter, the Option (if it is exercisable at all) will be treated as a Non-Qualified Stock Option.

(z) “Stock Appreciation Right” means the right to receive a payment equal to the difference between the Fair Market Value of the Common Stock on the date of its issuance and the date on which the right is exercised. Stock Appreciation Rights may be settled in cash or Common Stock.

(aa) “Stock Issuance” means the direct issuance of fully vested shares to an Employee or an independent contractor (including a director) for compensation previously earned. The shares may be issued immediately or on a deferred basis.

(bb) “Subsidiary” means any corporation (*other than* the Company) in an unbroken chain of corporations beginning with the Company if each of the corporations (*other than* the last corporation in the unbroken chain) owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in the chain, as determined in accordance with the rules of Code Section 424(f).

(cc) “Substitute Grant” means an award issued to a person who had performed services for an entity that was acquired by the Company in substitution of a grant previously awarded to that individual or entity by the acquired entity. Any such substitution shall be made in compliance with the requirements of Section 409A of the Code (to the extent applicable thereto), including without limitation, with respect to Options and Stock Appreciation Rights, the requirements of Treasury Regulation §1.409A-1(b)(5)(v)(D).

(dd) “Ten Percent Stockholder” means any person who owns (after taking into account the constructive ownership rules of Code Section 424(d)) more than ten percent (10%) of the combined voting power of all classes of stock of DaVita Inc. or of any of its Parents or Subsidiaries.

3. Administration.

(a) Except as provided below, this Plan shall be administered by the Compensation Committee of the Board.

(b) If the income recognized with respect to an Option is intended to be exempt from Section 162(m), the Committee must be composed exclusively of “Outside Directors,” as that term is defined in Section 162(m). Similarly, if a Grant to an Insider is intended to be an exempt purchase under Section 16 of the Exchange Act, then either (i) the Committee must be composed exclusively of “Non-Employee Directors,” as that term is defined in Rule 16b-3 or (ii) the grant must be made by the Board of Directors.

(c) The Committee is authorized to interpret this Plan and to adopt rules and procedures relating to the administration of this Plan, including those relating to sub-plans established for the purpose of qualifying for preferred tax or other treatment under foreign laws. All actions of the Committee in connection with the interpretation and administration of this Plan shall be binding upon all parties. No member of the Committee shall incur any liability for any actions taken or inactions done in good faith.

(d) Subject to the limitations of Sections 9 and 14 of this Plan, the Committee is expressly authorized, to the extent permitted by Section 409A of the Code, to make such modifications to this Plan and to Grants made under this Plan as are necessary to effectuate the intent of this Plan as a result of any changes in the tax, accounting, or securities laws treatment of Participants or of the Plan.

(e) The Board of Directors may, by a resolution adopted by the Board, delegate the power to issue Grants under the Plan, provided such delegation is consistent with applicable law and the requirements of any stock exchange on which the Common Stock is traded.

4. Duration of Plan.

(a) This Plan shall be effective as of the Effective Date.

(b) The Plan shall terminate on February 8, 2012, which is the tenth anniversary of the date on which the Board of Directors adopted the Plan. The preceding sentence shall *not* apply if the Company's stockholders reapprove the Plan prior to the termination date. The effect of obtaining such reapproval shall be to extend the term of the Plan for another ten (10) years from the date on which such reapproval shall be obtained.

5. Number of Shares.

(a) The following rules shall govern the size of Grants under this Plan.

- (i) The base maximum number of shares of Common Stock which may be issued pursuant to this Plan is sixteen million, two hundred fifty-eight thousand, five hundred (16,258,500) shares. In addition, three million six hundred sixteen thousand, five hundred and sixty (3,616,560) shares, representing the balance remaining in the Predecessor Plans at the Effective Date were transferred to this Plan. The total number of shares available under the Plan will also be increased by the shares that subsequently become available under the Predecessor Plans as determined pursuant to this Plan.
- (ii) The maximum number of shares that may be subject to Options or Stock Appreciation Rights awarded to a single Participant in any consecutive twenty-four (24) month period is two million two hundred fifty thousand (2,250,000). For this purpose, (A) shares subject to a terminated or expired Option or Stock Appreciation Right shall be considered to remain outstanding and (B) the repricing of an Option or Stock Appreciation Right shall be treated as the issuance of a new Option or Stock Appreciation Right.

- (iii) The maximum number of shares that may be issued pursuant to Incentive Stock Options during the lifetime of the Plan is seven million five hundred thousand (7,500,000) shares.
- (iv) To the extent that a Grant is made in the form of Restricted Stock or Stock Issuance (or an Other Award that is the functional equivalent of Restricted Stock or Stock Issuance), the remaining share reserve in the Plan shall be reduced by an amount equal to 3.0 times the number of shares subject to that Grant.
- (v) To the extent that a Grant is made in the form of an Option or Stock Appreciation Right, the remaining share reserve in the Plan shall be reduced by an amount equal to 1.0 times the number of shares subject to that Grant.

The preceding numbers shall be adjusted as set forth in Section 12 of this Plan.

(b) If any shares of Common Stock subject to a Grant under the Plan or a Predecessor Plan are forfeited or expire, or if any Grant under the Plan or a Predecessor Plan is settled for cash, the shares subject to the Grant shall, to the extent of such forfeiture, expiration or cash settlement, again be available for use under the Plan, subject to Section 5(d) below. Notwithstanding anything to the contrary contained herein, the following shares shall not be added to the shares of Common Stock available for use under the Plan: (i) shares tendered by the Participant or withheld by the Company in payment of the exercise price of an Option, (ii) shares tendered by the Participant or withheld by the Company to satisfy any tax withholding obligation with respect to a Grant, and (iii) shares subject to a Stock Appreciation Right that are not issued in connection with the stock settlement of the Stock Appreciation Right on exercise thereof.

(c) Substitute Grants shall not reduce the shares available for use under the Plan or the maximum number of shares authorized for grant to a Participant under Section 5(a)(ii). Additionally, in the event that a corporation acquired by the Company or any Subsidiary or with which the Company or any Subsidiary combines has shares available under a pre-existing plan approved by stockholders of such corporation and not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the corporation party to such acquisition or combination) shall be added to the shares available for use under the Plan; provided that Grants using such available shares shall not be made after the date Grants could no longer have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not Employees or members of the Board of Directors prior to such acquisition or combination.

(d) Any shares that again become available for Grant pursuant to Section 5(b) shall be added back as (i) 1 share if such shares were subject to Options or Stock Appreciation Rights granted under the Plan or a Predecessor Plan, and (ii) as 3 shares if such shares were subject to Grants other than Options or Stock Appreciation Rights.

6. Eligibility.

(a) Persons eligible to receive Grants under this Plan shall consist of (i) Employees, (ii) members of the Board of Directors, and (iii) other persons providing Services to the Company or a Subsidiary, *other than* persons only providing Services in connection with a capital raising transaction. However, Incentive Stock Options may only be awarded to Employees.

(b) In the event that the Company acquires another entity, the Committee may authorize the issuance of Substitute Grants upon such terms and conditions as the Committee shall determine, which may be different from the terms contained in this Plan, taking into account the limitations of Code Section 424(a) in the case of a Substitute Grant that is intended to be an Incentive Stock Option. Any such Substitute Grant shall be made in compliance with the requirements of Section 409A of the Code (to the extent applicable thereto), including without limitation, with respect to Options and Stock Appreciation Rights, the requirements of Treasury Regulation §1.409A-1(b)(5)(v)(D).

(c) In the event that the Committee makes a Grant to a person who is not currently an Employee of or an independent contractor providing Services to the Company or a Subsidiary, such Grant shall not become effective until such individual commences performing Services to the Company or a Subsidiary and it must satisfy the pricing limitations set forth in Section 7 of this Plan at that time.

(d) After taking into consideration the tax, securities, and accounting consequences of doing so, the Committee may issue Non-Qualified Stock Options, Restricted Stock, Stock Issuances, Stock Appreciation Rights, and Other Awards to individuals who are performing Services (whether as Employees or as independent contractors) to entities that are related to or affiliated with the Company but that do *not* qualify as Parents or Subsidiaries; provided, however, that Non-Qualified Stock Options and Stock Appreciation Rights may be granted to an individual only if Common Stock qualifies, with respect to such individual, as “service recipient stock” within the meaning set forth in Section 409A of the Code. The Committee shall prescribe such rules as it deems appropriate regarding the crediting of Service in these circumstances.

7. Form of Grants. Grants shall be awarded under this Plan in such amounts, at such times, to such persons, on such terms and in such form as the Committee may approve, which shall not be inconsistent with the provisions of this Plan, but which need not be identical from Grant to Grant.

(a) The exercise price per share of Common Stock purchasable under an Option shall be set forth in the Option, and shall not be less than the Fair Market Value of the Common Stock on the date of Grant. However, the exercise price of an Incentive Stock Option issued to a Ten Percent Stockholder shall be no less than one hundred ten percent (110%) of the Fair Market

Value of the Common Stock on the date of the Grant. Similarly, the base price of a Stock Appreciation Right shall not be less than the Fair Market Value of the Common Stock on the date of the Grant. However, the preceding three sentences shall *not* apply in the case of Substitute Grants issued under this Plan. Similar pricing rules shall apply in the case of Other Awards. Any Substitute Grant shall be made in compliance with the requirements of Section 409A of the Code (to the extent applicable thereto), including without limitation, with respect to Options and Stock Appreciation Rights, the requirements of Treasury Regulation §1.409A-1(b)(5)(v)(D).

(b) A Grant shall be exercisable at such time or times and be subject to such terms and conditions as may be set forth in its provisions. However, no Grant shall be exercisable prior to the Effective Date.

(c) Except in the case of Substitute Grants, the aggregate Fair Market Value (determined as of the date of Grant) of the number of shares of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by a Participant during any calendar year shall not exceed one hundred thousand dollars (\$100,000). To the extent that a Participant's Options exceed that limit, they will be treated as Non-Qualified Stock Options, with the first Options that were awarded to the Participant to be treated as Incentive Stock Options.

(d) Except as provided in Section 10 or in the case of Substitute Grants, the term of a Grant shall not exceed five (5) years from the date of its issuance.

(e) Except as may be determined by the Committee in the event of a change of control of the Company, or the Participant's death, disability or retirement, notwithstanding any other provision of this Plan to the contrary, a Grant to an Employee of a Stock Issuance, Restricted Stock or an Other Award that is the functional equivalent of a Stock Issuance or Restricted Stock shall not become fully vested earlier than three years from the grant date (two years in the case of Employees who are not executives of the Company (holding the title of vice president or an equivalent title), or, in the case of vesting based upon the attainment of performance-based objectives, over a period of not less than one year, which shall include a Stock Issuance granted in lieu of cash awards that have been earned based on a performance period of at least one year); *provided, however*, that notwithstanding the foregoing, Grants of a Stock Issuance, Restricted Stock or Other Awards that are the functional equivalent of a Stock Issuance or Restricted Stock (i) that do not exceed in the aggregate 5% of the shares of Stock available pursuant to Section 5(a)(i) shall not be subject to such minimum vesting provisions and (ii) the Company may Grant a Stock Issuance, Restricted Stock or Other Award that is the functional equivalent of a Stock Issuance or Restricted Stock to Employees newly hired by the Company or any of its Subsidiaries without respect to such minimum vesting provisions.

8. Exercise of Grants.

(a) Grants that are settled in stock shall only be exercisable for whole numbers of shares.

(b) Options are exercised by payment of the full amount of the purchase price to the Company as follows:

- (i) The payment shall be in cash or such other form or forms of consideration as the Committee shall deem acceptable, such as the surrender (either actually or constructively by means of attestation) of outstanding shares of Common Stock owned by the Participant for the minimum period of time necessary to avoid adverse accounting treatment (if applicable).
- (ii) After giving due consideration to the consequences under Rule 16b-3 and under the Code, the Committee may also authorize the exercise of Options by the delivery to the Company (or its designated agent) of an executed written notice of exercise form together with irrevocable instructions to a broker-dealer to sell or margin a sufficient portion of the shares of Common Stock and to deliver the sale or margin loan proceeds directly to the Company to pay all or a portion of the exercise price of the Option and/or any tax withholding obligations.

For purposes of determining the amount of income that is recognized by a Participant pursuant to a “same-day sale” transaction described in Subparagraph (ii) above, the Fair Market Value of the Common Stock shall be the price at which the Common Stock was sold.

(c) Stock Appreciation Rights may be exercised by providing notice to the Company on such terms and conditions as are set forth in the Grant.

(d) Except as otherwise provided in the terms of the Grant, the Participant may exercise the Grant following his or her Severance only to the extent that the Grant could have been exercised on the date of the Severance, so that no events that occur following Severance will increase the vested portion of the Grant.

(e) The Committee may, to the extent permitted by Section 409A of the Code, provide for the acceleration of the vesting of Grants upon a change of control or similar circumstances, under such conditions as may be set forth in the terms of the Grants.

9. Modification of Grants.

(a) After due consideration to the possible tax, securities, and accounting consequences, the Committee may, to the extent permitted by Section 409A of the Code, modify an existing Grant, including by:

- (i) Accelerating the right to exercise it; or
- (ii) Extending or renewing it.

(b) In no event without first obtaining stockholder approval will (i) the exercise or base price of any outstanding Option or Stock Appreciation Right be reduced or repriced, including any repricing effected by issuing replacement Options or Stock Appreciation Rights for outstanding Options or Stock Appreciation Rights that have an exercise or base price greater

than the Fair Market Value of the Common Stock, (ii) an Option or Stock Appreciation Right be canceled in exchange for cash or another Grant (other than in connection with Substitute Grants), or (iii) any other action be taken with respect to an Option or Stock Appreciation Right that would be treated as a repricing under the rules and regulations of the principal national securities exchange on which the Common Stock is traded or listed.

(c) In the event that the Board amends the terms of an Option so that it no longer qualifies as an Incentive Stock Option, the limitations imposed upon the Option under the Code and the Plan solely by virtue of its (formerly) qualifying as an Incentive Stock Option shall no longer apply, to the extent specified in the amendment.

(d) Whether a modification of an existing Incentive Stock Option will be treated as the issuance of a new Incentive Stock Option will be determined in accordance with the rules of Code Section 424(h).

(e) Whether a modification of an existing Grant previously awarded to an Insider will be treated as a new Grant for purposes of Section 16 of the Exchange Act will be determined in accordance with Rule 16b-3.

10. Termination of Grants.

(a) Except to the extent provided otherwise in the terms of the Grant, each Grant shall terminate on the *earliest* of the following dates:

- (i) The date that is one (1) year from the date of the Severance of the Participant, if the Severance occurred because of the Participant's death or Disability.
- (ii) In the case of any Severance *other than* one described in Subparagraph (i) above, the date that is three (3) months from the date of the Participant's Severance.

(b) *Except in the case of a Severance caused by death or Disability*, in no event shall an Option or Stock Appreciation Right be exercisable more than five (5) years after the date on which it was issued.

(c) The nonvested portion of the Option or Stock Appreciation Right shall terminate immediately upon Severance, and the vested portion at the time the balance of the Option or Stock Appreciation Right terminates, as determined pursuant to the above rules.

(d) The nonvested portion of a Grant of Restricted Stock shall terminate immediately upon Severance.

11. Non-Transferability of Grants. During the lifetime of the Participant, Grants are exercisable only by the Participant, and Grants are not assignable or transferable except by will or the laws of descent and distribution.

12. Adjustments.

(a) In the event of any change in the capitalization of the Company affecting its Common Stock (*e.g.*, a stock split, reverse stock split, stock dividend, recapitalization, combination, reclassification, or other similar transaction), the Committee shall make such adjustments as it may deem appropriate with respect to:

- (i) The number, kind, and exercise price of shares covered by each outstanding Grant; and
- (ii) The maximum number and/or kind of shares that may be awarded under this Plan, including the limitations contained in Section 5(a) of this Plan.

(b) The Committee shall also make such adjustments as it may deem appropriate in the event of a spin-off or other distribution of Company assets to stockholders (*other than* normal cash dividends).

(c) Any adjustment of Grants shall be made in compliance with the requirements of Section 409A of the Code (to the extent applicable thereto), including without limitation, with respect to Options and Stock Appreciation Rights, the requirements of Treasury Regulation §1.409A-1(b)(5)(v)(D).

13. Notice of Disqualifying Disposition. A Participant must notify the Company within fifteen (15) days if the Participant disposes of stock acquired pursuant to the exercise of an Incentive Stock Option issued under the Plan or a Predecessor Plan prior to the expiration of the holding periods required to qualify for long-term capital gains treatment on the disposition.

14. Amendments and Termination. Subject to the limitations of applicable law and any stock exchange on which the Common Stock is listed or traded, and the requirements of Section 9(b) and this Section, the Board may at any time amend or terminate this Plan by means of written action. Furthermore, no Participant may rely upon any statement (oral or written) that is inconsistent with the terms of the Plan or the Grant. To insure that Options can qualify as Incentive Stock Options, within twelve (12) months after the adoption of the amendment by the Board of Directors, the stockholders must approve any amendment that changes:

(a) The class of Employees who are eligible to receive Incentive Stock Options; and/or

(b) The maximum number of shares of Common Stock that may be issued as Incentive Stock Options under the Plan, except as adjusted pursuant to Section 12 of this Plan.

Notwithstanding the foregoing, the Board of Directors may not, without the approval of the Company's stockholders, (i) take any other action with respect to an Option or Stock Appreciation Right that would be treated as a repricing under the rules and regulations of the principal securities exchange on which the Common Stock is traded or listed, (ii) reduce the exercise price of an Option or the grant price of a Stock Appreciation Right or (iii) exchange an Option or Stock Appreciation Right for cash or another Grant.

15. Tax Withholding.

(a) The Company shall have the right to take such actions as may be necessary to satisfy its tax withholding obligations relating to the operation of this Plan.

(b) To the extent authorized by the Committee, Participants may (i) surrender previously acquired shares of Common Stock or (ii) have shares withheld in satisfaction of the tax withholding obligations. To the extent necessary to avoid adverse accounting treatment, the number of shares that may be withheld for this purpose shall not exceed the *minimum* number needed to satisfy the applicable income and employment tax withholding rules. Similarly, the shares surrendered must have been owned by the Participant for the minimum period of time necessary to avoid adverse accounting treatment (if applicable).

(c) If Common Stock is used to satisfy the Company's tax withholding obligations, the stock shall be valued at its Fair Market Value when the tax withholding is required to be made.

16. No Additional Rights.

(a) Neither the adoption of this Plan nor the awarding of any Grant shall:

- (i) Affect or restrict in any way the power of the Company to undertake any corporate action; or
- (ii) Confer upon any Participant the right to continue performing Service for the Company, nor shall it interfere in any way with the right of the Company to terminate the Service of any Participant at any time, with or without cause, subject to the terms of any applicable employment or consulting agreement between the Participant and the Company.

(b) No Participant shall have any rights as a stockholder with respect to any shares awarded to the Participant under this Plan until the date a certificate for such shares has been issued to the Participant.

17. Securities Law Restrictions.

(a) No shares of Common Stock shall be issued under this Plan unless the Committee shall be satisfied that the issuance will be in compliance with applicable federal and state securities laws and the requirements of any stock exchange or other securities market on which the Company's securities may then be traded. Similarly, a Participant will not be permitted to exercise a Grant if such exercise would violate the Company's internal policies.

(b) The Committee may require certain investment (or other) representations and undertakings by the person exercising a Grant if necessary to comply with applicable law.

(c) Certificates for shares of Common Stock delivered under this Plan may be subject to such restrictions as the Committee may deem advisable. The Committee may cause a legend to be placed on the certificates to refer to those restrictions.

(d) The inability of the Company to obtain registration, qualification, or other necessary authorization, or the unavailability of an exemption from any registration or qualification obligation deemed by the Company's counsel to be necessary for the lawful issuance and sale of any shares of its Common Stock under this Plan shall:

- (i) Suspend the Company's obligation to permit the exercise of any Grant or to issue any shares under this Plan; and
- (ii) Relieve the Company of any liability in respect of the nonissuance or sale of the shares as to which the requisite authority or exemption shall not have been obtained.

18. Indemnification.

(a) To the maximum extent permitted by law, the Company shall indemnify each member of the Committee and of the Board, as well as any other Employee of the Company with duties under the Plan, against expenses and liabilities (including any amount paid in settlement) reasonably incurred by the individual in connection with any claims against the individual by reason of the performance of the individual's duties under this Plan, unless the losses are due to the individual's gross negligence or lack of good faith.

(b) The Company will have the right to select counsel and to control the prosecution or defense of the suit.

(c) In the event that more than one person who is entitled to indemnification is subject to the same claim, all such persons shall be represented by a single counsel, unless such counsel advises the Company in writing that he or she cannot represent all such persons under the applicable rules of professional responsibility.

(d) The Company will not be required to indemnify any person for any amount incurred through any settlement unless the Company consents in writing to the settlement.

19. Application of Code Section 409A. To the extent applicable, this Plan and all Grants made hereunder are intended to be administered and interpreted in a manner that is consistent with the requirements of Section 409A of the Code. Notwithstanding the foregoing, no particular tax result with respect to any income recognized by a Participant in connection with a Grant is guaranteed and each Participant shall be responsible for any taxes imposed on the Participant in connection with Grants made under the Plan.

20. Governing Law. This Plan and all actions taken pursuant to it shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflicts of laws provisions.

Plan History

February 8, 2002	Board of Directors of DaVita adopted the Plan, subject to stockholder approval.
April 11, 2002	DaVita stockholders approved the adoption of the Plan.
February 26, 2003	Board of Directors of DaVita adopted amendments to the Plan (a) authorizing grants of stock appreciation rights, restricted stock, (direct) stock issuances, and other equity-based awards, (b) decreasing the maximum number of shares that can be issued under the Plan from 8,500,000 to 6,839,000, and (c) specifying the exact number of shares that were transferred to the Plan from the Predecessor Plans on the Effective Date (that represented the share reserves remaining under those plans).
May 21, 2003	DaVita stockholders approved the Plan amendments adopted by the Board of Directors of DaVita on February 26, 2003.
May 21, 2004	Board of Directors of DaVita adjusted the number of shares available under the Plan pursuant to Section 12 of the Plan to reflect the 2004 three-for-two stock split.
March 30, 2005	Board of Directors of DaVita adopted amendments to the Plan (a) establishing a ten year term, (b) adjusting the limit on the number of shares that can be subject to grants awarded to any single participant in any consecutive twenty-four month period to reflect the 2004 three-for-two stock split; and (c) adjusting the maximum number of shares that may be issued pursuant to incentive stock options (within the meaning of Section 422 of the Internal Revenue Code) to reflect the 2004 three-for-two stock split.
July 25, 2006	Board of Directors of DaVita adopted an amendment to the Plan to include the treatment of Stock Appreciation Rights in the definition of Fair Market Value.
March 2, 2007	Board of Directors of DaVita adopted amendments to the Plan (a) increasing the base number of shares that can be issued under the Plan from 10,258,500 to 16,258,500, (b) removing the liberal share recycling provisions from the Plan and (c) changing the full value share counting ratio to 3.0 from 2.75.
December 10, 2008	Compensation Committee of DaVita adopted amendments to the Plan to reflect the final regulations issued under Section 409A of the Code.

Exhibit 10.63

**Restricted Stock Units Award under
the DaVita Inc. 2002 Equity Compensation Plan
- Employee**

[Address]

In recognition of your continuing contributions toward making DaVita the Greatest Dialysis Company the World has ever seen, and as a reward for your hard work and commitment to living our Mission and our Values, you have been granted this award (the "Award") of restricted stock units ("Restricted Stock Units" or "Units") under **DaVita's 2002 Equity Compensation Plan (the "Plan")**. This award represents your right to receive shares of common stock of DaVita Inc. (the "Company"), subject to your fulfillment of the vesting conditions set forth in this agreement (the "Agreement").

The terms of your Award are as set forth in this Agreement and in the Plan. The Plan is incorporated into this Agreement by reference, which means that this Agreement is limited by and subject to the terms of the Plan. In the event of a conflict between the terms of this Agreement and the terms of the Plan, the terms of the Plan will control. Capitalized terms that are used here but that are not defined in this Agreement have the meanings given to them in the Plan. The most important terms of the Award are summarized as follows:

- 1. Award Date:**
- 2. Number of Units:**
- 3. Vesting Schedule:**

The terms set forth above, together with the terms and conditions attached, constitute one agreement.

Note: Please mark and initial any correction to the Name, SSN and/or Address shown on this page before returning a signed copy of this agreement to the Stock Plan Administrator.

4. Conversion of Restricted Stock Units and Stock Issuance. Upon each vesting date of the Award (each, a “Vesting Date”), one share of Common Stock will become issuable to you for each Restricted Stock Unit that vests on such Vesting Date (the “Shares”). After the Vesting Date, the Company will issue the Shares to you, after reducing the Shares by a number of shares (if any) that are sold to satisfy your tax withholding obligations. No fractional shares will be issued under this Agreement, even though such fractions may result if a portion of a share must be sold to pay your withholding taxes.

5. Termination of Employment. You must be an employee of the Company on a Vesting Date in order to receive the Shares then vesting. Thus, Restricted Stock Units will not continue to vest if your employment terminates for any reason, including in the event you die, become disabled, retire, or change status to that of an independent contractor. In those circumstances, you will forfeit your right to any Restricted Stock Units that would otherwise vest after the date on which your employment is terminated.

6. Right to Shares. You will not have any right to the Shares subject to your Award until they are actually issued to you.

7. Taxes.

(a) Generally. You are ultimately liable and responsible for all taxes owed in connection with the Award, regardless of any action the Company or any of its Subsidiaries takes with respect to any tax withholding obligations that arise in connection with the Award. Neither the Company nor any of its Subsidiaries makes any representation or undertaking regarding the treatment of any tax withholding in connection with the grant or vesting of the Award or the subsequent sale of Shares issuable pursuant to the Award. The Company and its Subsidiaries do not commit and are under no obligation to structure the Award to reduce or eliminate your tax liability. As a condition and term of this Award, no election under 83(b) of the United States Internal Revenue Code may be made by you or any other person with respect to all or any portion of the Award.

(b) Payment of Withholding Taxes. Prior to any event in connection with the Award (e.g., vesting) that the Company determines may result in any domestic or foreign tax withholding obligation, whether national, federal, state or local, including any social tax obligation (the “Tax Withholding Obligation”), you must arrange for the satisfaction of the minimum amount of such Tax Withholding Obligation in a manner acceptable to the Company. You may choose to satisfy your tax obligation in either of the following manners:

(i) *By Sale of Shares.* **Unless you choose to satisfy the Tax Withholding Obligation by some other means in accordance with clause (ii) below, your acceptance of this Award constitutes your instruction and authorization to the Company and any brokerage firm determined acceptable to the Company for such purpose to withhold or sell on your behalf a whole number of Shares from those Shares issuable to you as the Company determines to be appropriate to generate cash proceeds sufficient to satisfy the Tax Withholding Obligation.** Such Shares will be sold on the day the tax Withholding Obligation arises (e.g., a Vesting Date) or as soon thereafter as practicable. You will be responsible for all broker’s fees and other costs of sale, and you agree to indemnify and hold the Company harmless from any losses, costs, damages, or expenses relating to any such sale. To the extent the proceeds of such sale exceed your Tax Withholding Obligation, the Company agrees to pay such excess in cash to you through payroll or otherwise as soon as practicable. You acknowledge that the Company or its designee is under no obligation to arrange for such sale at any particular price, and that the proceeds of any such sale may not be sufficient to satisfy your Tax Withholding Obligation. Accordingly, you agree to pay to the Company or any of its Subsidiaries as soon as practicable, including through additional payroll withholding, any amount of Tax Withholding Obligation that is not satisfied by the sale of Shares described above.

(ii) *By Check, Wire Transfer or Other Means.* At any time not less than ten (10) business days before any Tax Withholding Obligation arises (e.g., a Vesting Date), you may notify the Company of your intent to make a separate cash payment to satisfy your Tax Withholding Obligation. If you elect to satisfy your Tax Withholding Obligation in this manner, you will be asked to remit to the Company an amount that the Company determines is sufficient to satisfy the Tax Withholding Obligation within ten (10) business days after the Vesting Date by (a) delivery of a certified check payable to the Company, attn: Dan Chandler, Stock Plan Administrator, P.O. Box 2076, Tacoma, Washington 98401-2076, or such other address as the Company may from time to time direct, (b) wire transfer to such account as the Company may direct, or (c) such other means as the Company may establish or permit. If you do not remit this amount to the Company within twenty (20) business days after the Vesting Date, the Company reserves the right to satisfy your Tax Withholding Obligation in the manner set out under paragraph (i) above in its sole discretion.

(c) Right to Retain Shares. The Company will not be able to issue any Shares to you until you satisfy the Tax Withholding Obligation.

8. Assignment. Your interest in this Award may not be assigned or alienated, whether voluntarily or involuntarily.

9. Amendments. This Award may be amended only by means of a written document signed by both you and the Company. Notwithstanding the foregoing, if there is a meaningful reduction, determined in the Company's sole discretion, in your duties and responsibilities and the level of your regular cash compensation for an extended or indefinite period of time, the Company reserves the right to unilaterally revoke some or all of the unvested portion of the Award.

10. Change of Control of the Company. Under certain circumstances, if the Company is sold, your entire Award will vest immediately. The specific rules regarding the circumstances in which full vesting would occur are contained in an exhibit to this Agreement.

11. Non-Competition/Non-Solicitation/Non-Disclosure

(a) You acknowledge and recognize the highly competitive nature of the business of the Company and accordingly agree that while you are an employee of the Company and for the one-year period following termination of such relationship, you will not (i) engage in or become an employee, director, principal or shareholder of, consultant to or equity participant in, any person, firm, partnership in, any person, firm, partnership, joint venture, association, corporation or other business organization, entity, or enterprise other than the Company that engages in activities that are in competition with the Company in the United States; (ii) directly or indirectly, own, manage, control, operate, invest in, acquire an interest in, or otherwise engage in, act for, or act on behalf of any person firm, partnership, joint venture, association, corporation or other business organization, entity, or enterprise other than the Company that engages in activities that are in competition with the Company; (iii) be an officer, director, consultant, partner, employee, creditor, agent, trustee, independent contractor, or advisor on a paid or unpaid basis of any person, firm, partnership, joint venture, association, corporation or other business organization, entity, or enterprise that has been a supplier to or client of the Company; (iv) be an officer, director, consultant, partner, owner, employee, creditor, agent, trustee, independent contractor, or advisor on a paid or unpaid basis of any physician group or physician partners who provide nephrology-related services; (v) (x) directly or indirectly induce any employee of the Company, its affiliates or its subsidiaries or any physician with privileges at a dialysis facility owned by the Company, its affiliates or its subsidiaries to (A) engage in any activity that you have agreed to refrain from pursuant to (i)-(iv) above or (B) terminate his or her relationship with the Company or any of its affiliates or subsidiaries or (y) directly or indirectly employ, or offer employment to or other similar arrangement with, any person who is or was during the period of your employment or consulting or advisory relationship with the Company, or was beforehand, employed or engaged by the Company, its affiliates or subsidiaries, including but not limited to a medical director of a dialysis facility owned or operated by the Company, its subsidiaries or affiliates, or a physician with admitting privileges at a dialysis facility owned, operated or managed by Company, or one of its affiliates or subsidiaries, or (vi) take any action that results, or might reasonably result in any of the foregoing.

(b) In addition, you agree not to disclose or use for your own benefit or purposes or for the benefit or purposes of any person, firm, partnership, joint venture, association, corporation or other business organization, entity or enterprise other than the Company and any of its subsidiaries or affiliates, any trade secrets, information, data, or other confidential information relating to customers, development, programs, costs, marketing, trading, investment, sales activities, promotion, credit and financial data, financing methods, plans, or the business and affairs of the Company ("Information"); provided, however, the foregoing shall not apply to (i) Information which is not unique to the Company, or (ii) Information which is generally known to the industry or the public other than as a result of your breach of this covenant, or (iii) disclosure that is required by any applicable law, rule or regulation. If you receive such a request to produce Information in your possession, you shall provide Company reasonable advance notice, in writing, prior to producing said Information, so as to give Company reasonable time to object to your producing said Information. You also agree that you will not become employed by or enter into service with any person, firm, partnership, joint venture, association, corporation or other business organization, entity or enterprise other than the Company and any of its subsidiaries or affiliates in which you will be obligated to disclose or use any Information, or where such disclosure would be inevitable because of the nature of the position.

(c) If, at any time within (a) the Term of this Agreement, or (b) one (1) year after termination of employment for any reason, whichever is the latest, you (i) breach the non-competition provision of Section 11(a), (ii) breach the non-solicitation provision of Section 11(a), (iii) breach the non-disclosure provision of Section 11(b), (iv) are convicted of a felony, (v) have been adjudicated by a court of competent jurisdiction of having committed an act of fraud or dishonesty resulting or intending to result directly or indirectly in personal enrichment at the expense of the Company, or (vi) are excluded from participating in any federal health care program, then (1) this Agreement shall terminate effective on the date on which you enter into such activity, and (2) the Company may seek temporary, preliminary, and permanent injunctive relief to prevent any actual or threatened breach or continuation of any breach of this Agreement without the necessity of proving actual damages or posting a bond or other security (which you hereby agree to) and/or an order requiring you to repay the Company any consideration received by you as a result of this Award under this Agreement.

12. Execution of Award Agreement. This agreement may be considered null and void at the discretion of the Company if a signed copy is not returned to the Stock Plan Administrator for the Company by **NO LATER THAN July 31, 2005.**

13. Section 409A of the Code. This Agreement is intended to meet the requirements of Section 409A of the Code, and shall be interpreted and construed consistent with that intent. Notwithstanding any other provision of this Agreement, to the extent that the right to any issuance of Common Stock or payment to you hereunder provides for the “deferral of compensation” within the meaning of Section 409A(d)(1) of the Code, the issuance or payment shall be made in accordance with the following:

If you are a “specified employee” within the meaning of Section 409A(a)(2)(B)(i) of the Code on the date of your “separation from service” within the meaning of Section 409A(a)(2)(A)(i) of the Code (the “Separation Date”), then no such issuance of Common Stock or payment shall be made during the period beginning on the Separation Date and ending on the date that is six months following the Separation Date or, if earlier, on the date of your death, if the earlier making of such issuance of Common Stock or payment would result in tax penalties being imposed on you under Section 409A of the Code. The amount of any issuance of Common Stock or payment that would otherwise be made during this period shall instead be made on the first business day following the date that is six months following the Separation Date or, if earlier, the date of your death.

In Witness Whereof, the Company and the Award recipient have executed this Agreement as of the date first written above.

Recipient

Company

Printed Name

Printed Name

Signature

Signature

Title

Title

Division/Department

Division/Department

EXHIBIT

Events Causing Full Vesting Awards

In the event that either (i) in connection with a “Change of Control” (defined below), the “Acquiror” (defined below) fails to assume, convert or replace this Award, or (ii) your employment is terminated within the twenty-four (24) month period following a Change of Control by the Company (or the Acquiror) other than for “Cause” (defined below) or, if applicable, by you in accordance with the termination for “Good Reason” provisions of your employment agreement, if any, then, in any such case, this Award shall automatically vest and become immediately exercisable in its entirety, such vesting to be effective as of immediately prior to the effective date of the Change of Control in the case of (i), and as of the date of termination of your employment in the case of (ii).

Change of Control will mean:

(i) any transaction or series of transactions in which any person or group (within the meaning of Rule 13d-5 under the Exchange Act and Sections 13(d) and 14(d) under the Exchange Act) becomes the direct or indirect “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), by way of a stock issuance, tender offer, merger, consolidation, other business combination or otherwise, of greater than 50% of the total voting power (on a fully diluted basis as if all convertible securities had been converted and all warrants and options had been exercised) entitled to vote in the election of directors of the Company (including any transaction in which the Company becomes a wholly-owned or majority-owned subsidiary of another corporation), or

(ii) any merger or consolidation or reorganization in which the Company does not survive, or

(iii) any merger or consolidation in which the Company survives, but the shares of the Company’s Common Stock outstanding immediately prior to such merger or consolidation represent 50% or less of the voting power of the Company after such merger or consolidation, or

(iv) any transaction in which more than 50% of the Company’s assets are sold.

However, no transaction contemplated by clauses (i) through (iv) above shall constitute a Change of Control if both (x) the person acting as the Chief Executive Officer of the Company for the six months prior to such transaction becomes the Chief Executive Officer or the Executive Chairman of the Board of Directors of the entity that has acquired control of the Company as a result of such transaction (the “Acquiror”) immediately after such transaction and remains the Chief Executive Officer or Executive Chairman of the Board of Directors for not less than one year following the transaction and (y) a majority of the Acquiror’s board of directors immediately after such transaction consist of persons who were directors of the Company immediately prior to such transaction. For purposes of this Agreement, “Cause” means: (1) a material breach by you of your duties and responsibilities which do not differ in any material respect from your duties and responsibilities during the ninety (90) day period immediately prior to a Change in Control (other than as a result of incapacity due to physical or mental illness) which is demonstrably willful and deliberate on your part, which is committed in bad faith or without reasonable belief that such breach is in the best interests of the Company and which is not remedied in a reasonable period of time after receipt of written notice from the Company specifying such breach; (2) willful misconduct or gross negligence which results in material harm to the Company; or (3) your conviction of, or a plea of *nolo contendere* by the you, to a felony or other crime involving fraud or dishonesty; or (4) willful violation of Company policies which results in material harm to the Company.

DAVITA INC.

RATIO OF EARNINGS TO FIXED CHARGES

The ratio of earnings to fixed charges is 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 the amortization of deferred financing costs), the estimated interest component of rent expense on operating leases, and capitalized interest.

	Year ended December 31,				
	2008	2007	2006	2005	2004
	(dollars in thousands)				
Earnings adjusted for fixed charges:					
Income from continuing operations before income taxes	\$609,460	\$627,522	\$475,759	\$331,097	\$332,840
Add:					
Debt expense	224,716	257,147	276,706	139,586	52,411
Interest portion of rent expense	72,562	64,613	60,395	35,189	24,305
	<u>297,278</u>	<u>321,760</u>	<u>337,101</u>	<u>174,775</u>	<u>76,716</u>
	<u>\$906,738</u>	<u>\$949,282</u>	<u>\$812,860</u>	<u>\$505,872</u>	<u>\$409,556</u>
Fixed charges:					
Debt expense	224,716	257,147	276,706	139,586	52,411
Interest portion of rent expense	72,562	64,613	60,395	35,189	24,305
Capitalized interest	4,189	3,878	4,708	1,912	1,078
	<u>\$301,467</u>	<u>\$325,638</u>	<u>\$341,809</u>	<u>\$176,687</u>	<u>\$ 77,794</u>
Ratio of earnings to fixed charges	<u>3.01</u>	<u>2.92</u>	<u>2.38</u>	<u>2.86</u>	<u>5.26</u>

SUBSIDIARIES OF THE COMPANY

<u>Name</u>	<u>Structure</u>	<u>Jurisdiction of Incorporation</u>
Aberdeen Dialysis, LLC	Limited Liability Company	DE
Alamosa Dialysis, LLC	Limited Liability Company	DE
American Fork Dialysis, LLC	Limited Liability Company	DE
Amery Dialysis, LLC	Limited Liability Company	DE
Arcadia Gardens Dialysis, LLC	Limited Liability Company	DE
Astro, Hobby, West Mt. Renal Care Limited Partnership	Limited Partnership	DE
Austin Dialysis Centers, L.P.	Limited Partnership	DE
Bay Area Dialysis Partnership	Partnership	FL
Bear Creek Dialysis, L.P.	Limited Partnership	DE
Beverly Hills Dialysis Partnership	Partnership	CA
Bluegrass Dialysis, LLC	Limited Liability Company	DE
Brighton Dialysis Center, LLC	Limited Liability Company	DE
Bruno Dialysis, LLC	Limited Liability Company	DE
Buford Dialysis, LLC	Limited Liability Company	DE
Canyon Springs Dialysis, LLC	Limited Liability Company	DE
Capital Dialysis Partnership	Partnership	CA
Carroll County Dialysis Facility, Inc.	Corporation	MD
Carroll County Dialysis Facility Limited Partnership	Limited Partnership	MD
Centennial LV, LLC	Limited Liability Company	DE
Central Carolina Dialysis Centers, LLC	Limited Liability Company	DE
Central Georgia Dialysis, LLC	Limited Liability Company	DE
Central Iowa Dialysis Partners, LLC	Limited Liability Company	DE
Central Kentucky Dialysis Centers, LLC	Limited Liability Company	DE
Cherry Valley Dialysis, LLC	Limited Liability Company	DE
Chicago Heights Dialysis, LLC	Limited Liability Company	DE
Chipeta Dialysis, LLC	Limited Liability Company	DE
Clinton Township Dialysis, LLC	Limited Liability Company	DE
Columbus-RNA-DaVita, LLC	Limited Liability Company	DE
Commerce Township Dialysis Center, LLC	Limited Liability Company	DE
Continental Dialysis Center, Inc.	Corporation	VA
Continental Dialysis Center of Springfield-Fairfax, Inc.	Corporation	VA
Cordele Dialysis Center, LLC	Limited Liability Company	DE
Creek Dialysis, LLC	Limited Liability Company	DE
Dallas-Fort Worth Nephrology, L.P.	Limited Partnership	DE
Dallas-Fort Worth Nephrology II, LLC	Limited Liability Company	DE
DaVita Dakota Dialysis Center, LLC	Limited Liability Company	DE
DaVita El Paso East, L.P.	Limited Partnership	DE
DaVita Nephrology Medical Associates of California, Inc.	Corporation	CA
DaVita Nephrology Medical Associates of Illinois, P.C.	Professional Corporation	IL
DaVita Nephrology Medical Associates of Pennsylvania, P.C.	Professional Corporation	PA
DaVita Nephrology Medical Associates of Washington, P.C.	Professional Corporation	WA
DaVita Nephrology Medical Partners-Midwest, Co	Professional Association	OH
DaVita of New York, Inc.	Corporation	NY
DaVita-Riverside, LLC	Limited Liability Company	DE
DaVita-Riverside II, LLC	Limited Liability Company	DE
DaVita Rx, LLC	Limited Liability Company	DE

<u>Name</u>	<u>Structure</u>	<u>Jurisdiction of Incorporation</u>
DaVita Tidewater, LLC	Limited Liability Company	DE
DaVita Tidewater-Virginia Beach, LLC	Limited Liability Company	DE
DaVita VillageHealth, Inc	Corporation	DE
DaVita VillageHealth Insurance of Alabama, Inc.	Corporation	AL
DaVita VillageHealth of Colorado, Inc.	Corporation	CO
DaVita VillageHealth of Georgia, Inc.	Corporation	GA
DaVita VillageHealth of Michigan, Inc.	Corporation	MI
DaVita VillageHealth of Ohio, Inc.	Corporation	OH
DaVita VillageHealth of Virginia, Inc.	Corporation	VA
DaVita-West, LLC	Limited Liability Company	DE
Decker Dialysis, LLC	Limited Liability Company	DE
Dialysis Center of Abilene, L.P.	Limited Partnership	DE
Dialysis Holdings, Inc.	Corporation	DE
Dialysis of Des Moines, LLC	Limited Liability Company	DE
Dialysis of North Atlanta, LLC	Limited Liability Company	DE
Dialysis of Northern Illinois, LLC	Limited Liability Company	DE
Dialysis Specialists of Dallas, Inc.	Corporation	TX
DNP Management Company, LLC	Limited Liability Company	DE
Downriver Centers, Inc.	Corporation	MI
Downtown Houston Dialysis Center, L.P.	Limited Partnership	DE
Durango Dialysis Center, LLC	Limited Liability Company	DE
DVA Healthcare of Maryland, Inc.	Corporation	MD
DVA Healthcare of Massachusetts, Inc.	Corporation	MA
DVA Healthcare of New London, LLC	Limited Liability Company	TN
DVA Healthcare of Norwich, LLC	Limited Liability Company	TN
DVA Healthcare of Pennsylvania, Inc.	Corporation	PA
DVA Healthcare of Tuscaloosa, LLC	Limited Liability Company	TN
DVA Healthcare Procurement Services, Inc.	Corporation	CA
DVA Healthcare Renal Care, Inc.	Corporation	NV
DVA Healthcare-Southwest Ohio, LLC	Limited Liability Company	TN
DVA Laboratory Services, Inc.	Corporation	FL
DVA of New York, Inc.	Corporation	NY
DVA Renal Healthcare, Inc.	Corporation	TN
DVA/Washington University Healthcare of Greater St. Louis, LLC	Limited Liability Company	DE
East Dearborn Dialysis, LLC	Limited Liability Company	DE
East End Dialysis Center, Inc.	Corporation	VA
East Ft. Lauderdale, LLC	Limited Liability Company	DE
East Houston Kidney Center, L.P.	Limited Partnership	DE
Eastmont Dialysis Partnership	Partnership	CA
Eastover Dialysis, LLC	Limited Liability Company	DE
Elberton Dialysis Facility, Inc.	Corporation	GA
Elk Grove Dialysis Center, LLC	Limited Liability Company	DE
Empire State DC, Inc.	Corporation	NY
Five Star Dialysis, LLC	Limited Liability Company	DE
Flamingo Park Kidney Center, Inc.	Corporation	FL
Freehold Artificial Kidney Center, LLC	Limited Liability Company	NJ
Fullerton Dialysis Center, LLC	Limited Liability Company	DE
Grand Home Dialysis, LLC	Limited Liability Company	DE

<u>Name</u>	<u>Structure</u>	<u>Jurisdiction of Incorporation</u>
Greater Las Vegas Dialysis LLC	Limited Liability Company	DE
Greater Los Angeles Dialysis Centers, LLC	Limited Liability Company	DE
Green Desert Dialysis, LLC	Limited Liability Company	DE
Greenwood Dialysis, LLC	Limited Liability Company	DE
Grosse Pointe Dialysis, LLC	Limited Liability Company	DE
Hanford Dialysis, LLC	Limited Liability Company	DE
Hawaiian Gardens Dialysis, LLC	Limited Liability Company	DE
Hialeah Kidney Dialysis, LLC	Limited Liability Company	DE
HomeChoice Partners, Inc	Corporation	DE
Houston Acute Dialysis, L.P.	Limited Partnership	DE
Houston Kidney Center/Total Renal Care Integrated Service Network Limited Partnership	Limited Partnership	DE
Huntington Artificial Kidney Center, Ltd.	Limited Liability Company	NY
Huntington Park Dialysis, LLC	Limited Liability Company	DE
Hyattsville Dialysis, LLC	Limited Liability Company	DE
Indian River Dialysis Center, LLC	Limited Liability Company	DE
Ionia Dialysis, LLC	Limited Liability Company	DE
J.E.T. New Orleans East Dialysis, LLC	Limited Liability Company	DE
Kidney Care Services, LLC	Limited Liability Company	DE
Kidney Centers of Michigan, LLC	Limited Liability Company	DE
Knickerbocker Dialysis, Inc.	Corporation	NY
La Grange Dialysis, LLC	Limited Liability Company	DE
Las Vegas Pediatric Dialysis, LLC	Limited Liability Company	DE
Lawrenceburg Dialysis, LLC	Limited Liability Company	DE
Leo Dialysis, LLC	Limited Liability Company	DE
Lexington Dialysis, LLC	Limited Liability Company	DE
Liberty RC, Inc.	Corporation	NY
Limon Dialysis, LLC	Limited Liability Company	DE
Lincoln Park Dialysis Services, Inc.	Corporation	IL
Little Rock Dialysis Centers, LLC	Limited Liability Company	DE
Lockport Dialysis, LLC	Limited Liability Company	DE
Long Beach Dialysis Center, LLC	Limited Liability Company	DE
Lord Baltimore Dialysis, LLC	Limited Liability Company	DE
Los Angeles Dialysis Center	Partnership	CA
Louisville Dialysis Centers, LLC	Limited Liability Company	DE
Maple Grove Dialysis, LLC	Limited Liability Company	DE
Marysville Dialysis Center, LLC	Limited Liability Company	DE
Mason-Dixon Dialysis Facilities, Inc.	Corporation	MD
Memorial Dialysis Center, L.P.	Limited Partnership	DE
Mena Dialysis Center, LLC	Limited Liability Company	DE
Mid-City New Orleans Dialysis Partnership, LLC	Limited Liability Company	DE
Middlesex Dialysis Center, LLC	Limited Liability Company	DE
Miramar Dialysis Center, LLC	Limited Liability Company	DE
Moncrief Dialysis Center/Total Renal Care Limited Partnership	Limited Partnership	DE
Mountain West Dialysis Services, LLC	Limited Liability Company	DE
Muskogee Dialysis, LLC	Limited Liability Company	DE
Natomas Dialysis, LLC	Limited Liability Company	DE
Nephrology Medical Associates of California, Inc.	Professional Corporation	CA
Nephrology Medical Associates of Georgia, LLC	Limited Liability Company	GA

<u>Name</u>	<u>Structure</u>	<u>Jurisdiction of Incorporation</u>
Neptune Artificial Kidney Center, LLC	Limited Liability Company	NJ
New Hope Dialysis, LLC	Limited Liability Company	DE
North Atlanta Dialysis Center, LLC	Limited Liability Company	DE
North Austin Dialysis, LLC	Limited Liability Company	DE
North Colorado Springs Dialysis, LLC	Limited Liability Company	DE
Northwest Tucson Dialysis, LLC	Limited Liability Company	DE
Ohio River Dialysis, LLC	Limited Liability Company	DE
Ontario Dialysis Center, LLC	Limited Liability Company	DE
Open Access Lifeline, LLC	Limited Liability Company	DE
Orange Dialysis, LLC	Limited Liability Company	CA
Pacific Coast Dialysis Center	Partnership	CA
Pacific Dialysis Partnership	Partnership	GU
Palomar Dialysis, LLC	Limited Liability Company	DE
PDI Holdings, Inc.	Corporation	DE
Physicians Choice Dialysis of Alabama, LLC	Limited Liability Company	DE
Physicians Choice Dialysis, LLC	Limited Liability Company	DE
Physicians Dialysis Acquisitions, Inc.	Corporation	DE
Physicians Dialysis, Inc.	Corporation	DE
Physicians Dialysis of Houston, LLP	Limited Liability Partnership	TX
Physicians Dialysis of Lancaster, LLC	Limited Liability Company	PA
Physicians Dialysis of Newark, LLC	Limited Liability Company	NJ
Physicians Dialysis Ventures, Inc.	Corporation	DE
Pittsburg Dialysis Partners, LLC	Limited Liability Company	DE
Pooler Dialysis, LLC	Limited Liability Company	DE
Princeton Dialysis, LLC	Limited Liability Company	DE
Renal Clinic Of Houston, LLC	Limited Liability Company	DE
Renal Life Link, Inc.	Corporation	DE
Renal Treatment Centers—California, Inc.	Corporation	DE
Renal Treatment Centers—Hawaii, Inc.	Corporation	DE
Renal Treatment Centers—Illinois, Inc.	Corporation	DE
Renal Treatment Centers, Inc.	Corporation	DE
Renal Treatment Centers—Mid-Atlantic, Inc.	Corporation	DE
Renal Treatment Centers—Northeast, Inc.	Corporation	DE
Renal Treatment Centers—Southeast, L.P.	Limited Partnership	DE
Renal Treatment Centers—West, Inc.	Corporation	DE
Riddle Dialysis, LLC	Limited Liability Company	DE
Ridgeland Dialysis, LLC	Limited Liability Company	DE
Rita Ranch Dialysis, LLC	Limited Liability Company	DE
River Valley Dialysis, LLC	Limited Liability Company	DE
RMS Lifeline, Inc.	Corporation	DE
RNA-DaVita Dialysis, LLC	Limited Liability Company	DE
Rochester Dialysis Center, LLC	Limited Liability Company	DE
Rocky Mountain Dialysis Services, LLC	Limited Liability Company	DE
Ross Clark Circle Dialysis, LLC	Limited Liability Company	DE
RTC Holdings, Inc.	Corporation	DE
RTC TN, Inc.	Corporation	DE
SAKDC-DaVita Dialysis Partners, L.P.	Limited Partnership	DE
Salisbury Dialysis, LLC	Limited Liability Company	DE
Sandusky Dialysis, LLC	Limited Liability Company	DE

<u>Name</u>	<u>Structure</u>	<u>Jurisdiction of Incorporation</u>
San Gabriel Valley Partnership	Partnership	CA
San Marcos Dialysis, LLC	Limited Liability Company	DE
Santa Fe Springs Dialysis, LLC	Limited Liability Company	DE
Seneca Dialysis, LLC	Limited Liability Company	DE
Shadow Dialysis, LLC	Limited Liability Company	DE
Shining Star Dialysis, Inc.	Corporation	NJ
Siena Dialysis Center, LLC	Limited liability Company	DE
Sierra Rose Dialysis Center, LLC	Limited Liability Company	DE
Soledad Dialysis Center, LLC	Limited Liability Company	DE
Somerville Dialysis Center, LLC	Limited Liability Company	DE
South Central Florida Dialysis Partners, LLC	Limited Liability Company	DE
South Shore Dialysis Center. L.P.	Limited Partnership	DE
Southcrest Dialysis, LLC	Limited Liability Company	DE
Southeast Florida Dialysis, LLC	Limited Liability Company	DE
Southeastern Indiana Dialysis, LLC	Limited Liability Company	DE
Southern Colorado Joint Ventures, LLC	Limited Liability Company	DE
Southern Hills Dialysis Center, LLC	Limited Liability Company	DE
Southwest Atlanta Dialysis Centers, LLC	Limited Liability Company	DE
Southwestern Tennessee Dialysis, LLC	Limited Liability Company	DE
St. Luke's Dialysis, LLC	Limited Liability Company	DE
Strongsville Dialysis, LLC	Limited Liability Company	DE
Sugarloaf Dialysis, LLC	Limited Liability Company	DE
Summit Dialysis Center, L.P.	Limited Partnership	DE
Sun City Dialysis Center, LLC	Limited Liability Company	DE
Sun City West Dialysis Center LLC	Limited Liability Company	DE
Sunset Dialysis, LLC	Limited Liability Company	DE
Taylor Dialysis, LLC	Limited Liability Company	DE
Tel-Huron Dialysis, LLC	Limited Liability Company	DE
Tennessee Valley Dialysis Center, LLC	Limited Liability Company	DE
The DaVita Collection, Inc.	Corporation	CA
The Woodlands Dialysis Center, L.P.	Limited Partnership	DE
Total Acute Kidney Care, Inc.	Corporation	FL
Total Renal Care/Eaton Canyon Dialysis Center Partnership	Partnership	CA
Total Renal Care, Inc.	Corporation	CA
Total Renal Care North Carolina, LLC	Limited Liability Company	DE
Total Renal Care of Utah, LLC	Limited Liability Company	DE
Total Renal Care/Peralta Renal Center Partnership	Partnership	CA
Total Renal Care/Piedmont Dialysis Center Partnership	Partnership	CA
Total Renal Care Texas Limited Partnership	Limited Partnership	DE
Total Renal Laboratories, Inc.	Corporation	FL
Total Renal Research, Inc.	Corporation	DE
Total Renal Support Services of North Carolina, LLC	Limited Liability Company	DE
Transmountain Dialysis, L.P.	Limited Partnership	DE
TRC-Dyker Heights, L.P.	Limited Partnership	NY
TRC El Paso Limited Partnership	Limited Partnership	DE
TRC-Four Corners Dialysis Clinics, LLC	Limited Liability Company	NM
TRC-Georgetown Regional Dialysis LLC	Limited Liability Company	DC
TRC-Indiana LLC	Limited Liability Company	IN
TRC-Petersburg, LLC	Limited Liability Company	DE

<u>Name</u>	<u>Structure</u>	<u>Jurisdiction of Incorporation</u>
TRC of New York, Inc.	Corporation	NY
TRC West, Inc.	Corporation	DE
Tree City Dialysis, LLC	Limited Liability Company	DE
Tulsa Dialysis, LLC	Limited Liability Company	DE
Turlock Dialysis Center, LLC	Limited Liability Company	DE
Tustin Dialysis Center, LLC	Limited Liability Company	DE
University Dialysis Center, LLC	Limited Liability Company	DE
Upper Valley Dialysis, L.P.	Limited Partnership	DE
USC-DaVita Dialysis Center, LLC	Limited Liability Company	CA
UT Southwestern DVA Healthcare, LLP	Limited Liability Partnership	TX
Valley Springs Dialysis, LLC	Limited Liability Company	DE
Verde Dialysis, LLC	Limited Liability Company	DE
VillageHealth DM, LLC	Limited Liability Company	DE
Wauseon Dialysis, LLC	Limited Liability Company	DE
West Broomfield Dialysis, LLC	Limited Liability Company	DE
West Elk Grove Dialysis, LLC	Limited Liability Company	DE
West Monroe Dialysis, LLC	Limited Liability Company	DE
West Pensacola Dialysis, LLC	Limited Liability Company	DE
West Sacramento Dialysis, LLC	Limited Liability Company	DE
Weston Dialysis Center, LLC	Limited Liability Company	DE
Westview Dialysis, LLC	Limited Liability Company	DE
Willowbrook Dialysis Center, L.P.	Limited Partnership	DE
Wyandotte Central Dialysis, LLC	Limited Liability Company	DE
Ybor City Dialysis, LLC	Limited Liability Company	DE
Yucaipa Dialysis, LLC	Limited Liability Company	DE

Consent of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders
DaVita Inc.:

We consent to the incorporation by reference in the registration statements on Forms S-8 (No. 33-84610, No. 33-83018, No. 33-99862, No. 33-99864, No. 333-01620, No. 333 -34693, No. 333-34695, No. 333-46887, No. 333-75361, No. 333-56149, No. 333-30734, No. 333-30736, No. 333-63158, No. 333-42653, No. 333-86550, No. 333-86556 and No. 333-144097) and Form S-3 (No. 333-69227) of DaVita Inc. of our reports dated February 27, 2009, with respect to the consolidated balance sheets of DaVita Inc. and subsidiaries as of December 31, 2008 and 2007, and the related consolidated statements of income, shareholders' equity and comprehensive income, and cash flows for each of the years in the three-year period ended December 31, 2008, and the related financial statement schedule and the effectiveness of internal control over financial reporting as of December 31, 2008, which reports appear in the December 31, 2008 annual report on Form 10-K of DaVita Inc.

Our reports dated February 27, 2009, on the consolidated balance sheets of DaVita Inc. and subsidiaries as of December 31, 2008 and 2007 and the related statements of income, shareholders' equity and comprehensive income, and cash flows for each of the years in the three-year period ended December 31, 2008, and the related financial statement schedule refers to DaVita Inc. and subsidiaries adoption of Financial Accounting Standards Board Interpretation No. 48, Accounting for Income Tax Uncertainties, effective January 1, 2007.

/s/ KPMG LLP

Seattle, Washington
February 27, 2009

SECTION 302 CERTIFICATION

I, Kent J. Thiry, certify that:

1. I have reviewed this annual report on Form 10-K of DaVita Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ KENT J. THIRY

Kent J. Thiry
Chief Executive Officer

Date: February 27, 2009

SECTION 302 CERTIFICATION

I, Richard K. Whitney, certify that:

1. I have reviewed this annual report on Form 10-K of DaVita Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ RICHARD K. WHITNEY

Richard K. Whitney
Chief Financial Officer

Date: February 27, 2009

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of DaVita Inc. (the “Company”) on Form 10-K for the year ending December 31, 2008 as filed with the Securities and Exchange Commission on the date hereof (the “Periodic Report”), I, Kent J. Thiry, Chief Executive Officer of the Company, certify, pursuant to 18.U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Periodic Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ KENT J. THIRY

Kent J. Thiry
Chief Executive Officer

February 27, 2009

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of DaVita Inc. (the “Company”) on Form 10-K for the year ending December 31, 2008 as filed with the Securities and Exchange Commission on the date hereof (the “Periodic Report”), I, Richard K. Whitney, Chief Financial Officer of the Company, certify, pursuant to 18.U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Periodic Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ RICHARD K. WHITNEY

**Richard K. Whitney
Chief Financial Officer**

February 27, 2009