

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

[UNDER SEAL],) Case No. 09 cv 02175 WJM-KMT
)
Plaintiffs,) FIRST AMENDED COMPLAINT
)
vs.)
)
[UNDER SEAL],) **FILED IN CAMERA AND UNDER SEAL**
) **PURSUANT TO 31 U.S.C. §3730(b)(2)**
Defendants.)
_____)

DOCUMENT TO BE KEPT UNDER SEAL

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

UNITED STATES OF AMERICA, and the) Case No. 09 cv 02175 WJM-KMT
STATES OF CALIFORNIA, COLORADO,)
CONNECTICUT, FLORIDA, GEORGIA,) FIRST AMENDED COMPLAINT FOR
ILLINOIS, INDIANA, IOWA, LOUISIANA,) VIOLATION OF FEDERAL FALSE CLAIMS
MARYLAND, MICHIGAN, NEVADA, NEW) ACT [31 U.S.C. §§3729 et seq.]; CALIFORNIA
YORK, NORTH CAROLINA, OKLAHOMA,) FALSE CLAIMS ACT [Cal. Govt. Code
TENNESSEE, TEXAS, VIRGINIA, and) §§12650 et seq.]; COLORADO MEDICAID
WISCONSIN, ex rel. DAVID BARBETTA,) FALSE CLAIMS ACT [Colo. Rev. Stat. §§25.5-
) 4-303.5 et seq.]; CONNECTICUT FALSE
Plaintiffs,) CLAIMS ACT FOR MEDICAL ASSISTANCE
) PROGRAMS [Conn. Gen. Stat. §§17b-301a et
) seq.]; FLORIDA FALSE CLAIMS ACT [Fla.
vs.) Stat. Ann. §§68.081 et seq.]; GEORGIA FALSE
) MEDICAID CLAIMS ACT [Ga. Code Ann.
DEFENDANTS DAVITA, INC. and TOTAL) §§49-4-168 et seq.]; ILLINOIS
RENAL CARE, INC.,)
) WHISTLEBLOWER REWARD AND
Defendants.) PROTECTION ACT [740 Ill. Comp. Stat. §§175
) et seq.]; INDIANA FALSE CLAIMS AND
) WHISTLEBLOWER PROTECTION ACT [Ind.
) Code Ann. §§5-11-5.5-1 et seq.]; IOWA FALSE
) CLAIMS LAW [Iowa Code §§685.1 et seq.];
) LOUISIANA MEDICAL ASSISTANCE

PROGRAMS INTEGRITY LAW [La. Rev. Stat. §§437 et seq.]; MARYLAND FALSE
HEALTH CLAIMS ACT [Md. Code Ann., [Health – General] §§2-601 et seq.]; MICHIGAN
MEDICAID FALSE CLAIMS ACT [Mich. Comp. Laws. §§400.601 et seq.]; NEVADA FALSE
CLAIMS ACT [Nev. Rev. Stat. Ann. §§357.010 et seq.]; NEW YORK FALSE CLAIMS ACT
[N.Y. State Fin. §§187 et seq.]; NORTH CAROLINA FALSE CLAIMS ACT [N.C. Gen. Stat.
§§1-605 et seq.]; OKLAHOMA MEDICAID FALSE CLAIMS ACT [Okla. Stat. tit. 63 §§5053
et seq.]; TENNESSEE FALSE CLAIMS ACT AND TENNESSEE MEDICAID FALSE
CLAIMS ACT [Tenn. Code Ann. §§4-18-101 et seq. and §§71-5-181 et seq.] TEXAS
MEDICAID FRAUD PREVENTION LAW [Tex. Hum. Res. Code Ann. §§36.001 et seq.];
VIRGINIA FRAUD AGAINST TAXPAYERS ACT [Va. Code Ann §§8.01-216.1 et seq.]; and
WISCONSIN FALSE CLAIMS FOR MEDICAL ASSISTANCE ACT [Wis. Stat §§20.931 et
seq.]

JURY TRIAL DEMANDED

(FILED IN CAMERA AND UNDER SEAL)

Plaintiff-Relator David Barbetta (“Relator”), through his attorneys Phillips & Cohen LLP
and Cross & Bennett LLC, on behalf of the United States of America, the States of California,

Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Maryland, Michigan, Nevada, New York, North Carolina, Oklahoma, Tennessee, Texas, Wisconsin, and the Commonwealth of Virginia (collectively “the Plaintiff States”), for his Complaint against defendants DaVita, Inc. and Total Renal Care, Inc. (collectively “DaVita” or “Defendants”), alleges, based upon personal knowledge, relevant documents, and information and belief, as follows:

I. INTRODUCTION

1. This is an action to recover damages and civil penalties on behalf of the United States of America and the Plaintiff States arising from false and/or fraudulent statements, records, and claims made and caused to be made by defendants and/or their agents, employees and co-conspirators in violation of the federal False Claims Act, 31 U.S.C. §§3729 et seq. (the “Act” or “FCA”), and the false claims acts of the Plaintiff States.

2. DaVita has engaged in a nationwide scheme to illegally induce physicians to refer, recommend and otherwise influence their patients to go to DaVita-owned dialysis centers to receive treatment for End Stage Renal Disease.

3. DaVita owns dialysis centers across the country, both by itself and in joint ventures with physician groups. DaVita induces physicians to refer business to its facilities, and rewards monetarily those that provide such referrals by: (a) selling them shares in existing DaVita dialysis centers for below-market rates; (b) buying shares in dialysis centers owned by physicians for above-market rates; (c) giving physicians kickbacks masked as profits from joint ventures; and (d) paying physicians to refrain from building competing dialysis centers.

4. DaVita has violated the federal Anti-Kickback Statute (“AKS”), 42 U.S.C. §1320a-7b(b), by providing these inducements to physicians. The AKS is designed to ensure

that physicians make clinical decisions based upon informed, impartial medical judgment – judgment unaffected by personal financial motives. DaVita has knowingly and routinely violated that fundamental principle – corrupting the medical judgment of physicians across the country by giving them what one DaVita manager described as “a bag of money” to obtain referrals of the physicians’ patients.

5. Any claims submitted either by DaVita or the physicians for services tainted by these illegal kickbacks are ineligible for reimbursement by the Medicare Program, Medicaid Program, or other federal or state-funded health care programs. Defendants have submitted, or caused others to submit, such kickback-tainted claims. As a consequence, the United States and the Plaintiff States have been damaged in significant amount.

6. Defendants’ conduct alleged herein violates the federal False Claims Act and False Claims Acts of the Plaintiff States. The federal False Claims Act was originally enacted during the Civil War. Congress substantially amended the Act in 1986 – and, again, in May 2009 – to enhance the ability of the United States Government to recover losses sustained as a result of fraud against it. The Act was amended after Congress found that fraud in federal programs was pervasive and that the Act, which Congress characterized as the primary tool for combating government fraud, was in need of modernization. Congress intended that the amendments would create incentives for individuals with knowledge of fraud against the Government to disclose the information without fear of reprisals or Government inaction, and to encourage the private bar to commit legal resources to prosecuting fraud on the Government's behalf.

7. The FCA prohibits: (a) knowingly presenting (or causing to be presented) to the federal government a false or fraudulent claim for payment or approval; (b) knowingly making

or using, or causing to be made or used, a false or fraudulent record or statement material to a false or fraudulent claim; and (c) conspiring to violate any of these provisions. 31 U.S.C. §§3729(a)(1)(A)-(C). Any person who violates the FCA is liable for a civil penalty of up to \$11,000 for each violation, plus three times the amount of the damages sustained by the United States. 31 U.S.C. §3729(a)(1).

8. The FCA allows any person having information about an FCA violation to bring an action on behalf of the United States, and to share in any recovery. The FCA requires that the Complaint be filed under seal for a minimum of 60 days (without service on the defendant during that time) to allow the government time to conduct its own investigation and to determine whether to join the suit.

9. As set forth below, Defendants' actions alleged in this Complaint also violate the California False Claims Act, Cal. Govt. Code §§12650 et seq.; the Colorado Medicaid False Claims Act, Colo. Rev. Stat. §§ 25.5-4-303.5 et seq.; the Connecticut False Claims Act for Medical Assistance Programs, Conn. Gen. Stat. §§17b-301a et seq.; the Florida False Claims Act, Fla. Stat. Ann. §§68.081 et seq.; the Georgia False Medicaid Claims Act, Ga. Code Ann. §§49-4-168 et seq.; the Illinois Whistleblower Reward and Protection Act, 740 Ill. Comp. Stat. §§175/1-8; the Indiana False Claims and Whistleblower Protection Act, Ind. Code §§5-11-5.5 et seq.; the Iowa False Claims Law, Iowa Code §§685.1 et seq.; the Louisiana Medical Assistance Program Integrity Law, La. Rev. Stat. §§46:437.1 et seq.; the Maryland False Health Claims Act, Md. Code Ann., [Health – General] §§2-601 et seq.; the Michigan Medicaid False Claims Act, Mich. Comp. Laws. §§400.601 et seq.; the Nevada False Claims Act, Nev. Rev. Stat. Ann. §§357.010 et seq.; the New York False Claims Act, N.Y. State Fin. §§187 et seq.; the North Carolina False Claims Act, N.C. Gen. Stat. §§1-605 et seq.; the Oklahoma Medicaid False

Claims Act, Okla. Stat. tit. 63 §§5053 et seq.; the Tennessee False Claims Act and Tennessee Medicaid False Claims Act, Tenn. Code Ann. §§4-18-101 et seq. and §§71-5-181 et seq.; the Texas Medicaid Fraud Prevention Law, Tex. Hum. Res. Code Ann. §§36.001 et seq.; the Virginia Fraud Against Taxpayers Act, Va. Code Ann. §§8.01-216.1 et seq.; and the Wisconsin False Claims for Medical Assistance Act, Wis. Stat §§20.931 et seq.

10. Based on these provisions, qui tam plaintiff and relator David Barbetta seeks to recover all available damages, civil penalties, and other relief for federal and state-law violations alleged herein.

II. PARTIES

11. Plaintiff/Relator David Barbetta is a citizen of California. Mr. Barbetta is a CFA Charterholder. He worked for DaVita from April 2007 until July 2009 as a Senior Financial Analyst in the Mergers and Acquisitions department, known within DaVita as “Deal Depot.” DaVita’s Deal Depot is responsible for buying and selling shares in dialysis centers and dialysis-related joint ventures. Mr. Barbetta’s responsibilities included using the economic models developed by DaVita for determining values of dialysis centers and joint ventures. Mr. Barbetta currently is an independent financial and software programming consultant, working in such areas as portfolio analyses for asset management firms, various data analyses and programming, and financial modeling.

12. Defendant DaVita, Inc. is a Delaware corporation with its corporate headquarters located at 1551 Wewatta St., Denver, CO 80202. Prior to 2009, DaVita’s home offices were located at 601 Hawaii Street, El Segundo, California 90245.

13. According to its most recent annual report, 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, 2010, DaVita operated or provided administrative services to 1,612 outpatient dialysis centers located in 42 states and the District of Columbia, serving approximately 125,000 patients. DaVita also provides acute inpatient dialysis services in approximately 750 hospitals and related laboratory services. Its dialysis and related lab services business accounts for approximately 94% of its consolidated revenues. Ex. 1 at 2, incorporated herein. Hereinafter, all Exhibits referenced in this Complaint are incorporated herein.

14. Total Renal Care, Inc. (“TRC”) is a California corporation and a wholly-owned subsidiary of DaVita, Inc. DaVita uses TRC and other subsidiaries to buy, sell and hold interests in various dialysis centers and dialysis-related joint ventures.

III. JURISDICTION AND VENUE

15. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331, 28 U.S.C. §1367, and 31 U.S.C. §3732, the last of which specifically confers jurisdiction on this Court for actions brought pursuant to 31 U.S.C. §§3729 and 3730. In addition, 31 U.S.C. §3732(b) specifically confers jurisdiction on this Court over the State-law claims.

16. Under 31 U.S.C. §3730(e), and under the comparable provisions of the Plaintiff State statutes, there has been no statutorily relevant public disclosure of the “allegations or transactions” in this Complaint. Moreover, whether or not such a disclosure had occurred, Relator would qualify under the relevant sections as an “original source” of the information in this Complaint even had such a public disclosure occurred. Relator has direct and independent knowledge of the information on which the allegations are based, such knowledge materially adds to any publicly disclosed allegations or transactions, and Relator voluntarily provided the

information to the government before filing this action.

17. This Court has personal jurisdiction over the defendants pursuant to 31 U.S.C. §3732(a), which authorizes nationwide service of process and because the Defendants have minimum contacts with the United States, and can be found in and/or transact business in this District.

18. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b) and 1395(a) and 31 U.S.C. §3732(a) because Defendants can be found in and/or transact business in this District. At all times relevant to this Complaint, Defendants regularly conducted substantial business within this District, maintained employees in this District, and/or made significant sales within this District. Defendant maintains its corporate headquarters in this District. In addition, statutory violations, as alleged herein, occurred in this District.

IV. FEDERAL AND STATE-FUNDED HEALTH CARE PROGRAMS

A. Medicare

19. Medicare is a federally-funded health insurance program primarily benefitting the elderly. Medicare was created in 1965 when Title XVIII of the Social Security Act was adopted.

20. The Medicare program has four parts: Part A, Part B, Part C and Part D. Medicare Part A (“Part A”), the Basic Plan of Hospital Insurance, covers the cost of inpatient hospital services and post-hospital nursing facility care. Medicare Part B, the Voluntary Supplemental Insurance Plan, covers the cost of services performed by physicians and certain other health care providers, both inpatient and outpatient, if the services are medically necessary and directly and personally provided by the provider. Medicare Part C covers certain managed care plans, and Medicare Part D provides subsidized prescription drug coverage for Medicare beneficiaries.

21. Medicare provides benefits for patients with End Stage Renal Disease under Parts

A and B. Individuals otherwise ineligible for Medicare, become eligible when they develop ESRD.

22. Medicare pays providers only for services that it considers “reasonable and necessary for the diagnosis or treatment of illness or injury.” Social Security Act §1862(a)(1)(A). Providers who wish to participate in the Medicare program must ensure that their services are provided “economically and only when, and to the extent, medically necessary.” 42 U.S.C. §1320c-5(a).

23. The Medicare program is administered through the Department of Health and Human Services (“HHS”), Centers for Medicare and Medicaid Services (“CMS”).

B. Medicaid

24. Medicaid was also created in 1965 under Title XIX of the Social Security Act. Funding for Medicaid is shared between the federal Government and those states participating in the program. Thus, under Title XIX of the Social Security Act, 42 U.S.C. §1396 *et seq.*, federal money is distributed to the states, which in turn provide certain medical services to the poor.

25. Federal Medicaid regulations require each state to designate a single state agency responsible for the Medicaid program. The agency must create and implement a “plan for medical assistance” that is consistent with Title XIX and with the regulations of the Secretary of HHS (“the Secretary”). After the Secretary approves the plan submitted by the state, the state is entitled each quarter to be reimbursed for a percentage of its expenditures made in providing specific types of “medical assistance” under the plan. 42 U.S.C. §1396b(a)(1).

26. Individuals may be “dual eligible” for both the Medicare program (as the primary insurer) and the Medicaid program (as the secondary insurer).

C. Other Federal and State-Funded Health Care Programs

27. The federal Government administers other health care programs including, but not limited to, TRICARE, CHAMPVA, and the Federal Employee Health Benefit Program.

28. TRICARE, administered by the United States Department of Defense, is a health care program for individuals and dependents affiliated with the armed forces.

29. CHAMPVA, administered by the United States Department of Veterans Affairs, is a health care program for the families of veterans with 100 percent service-connected disability.

30. The Federal Employee Health Benefit Program, administered by the United States Office of Personnel Management, provides health insurance for federal employees, retirees, and survivors.

31. The Plaintiff States provide health care benefits to certain individuals, based either on the person's financial need, employment status or other factors. To the extent those programs are covered by that State's False Claims Act, those programs are referred to in this Complaint as "state-funded health care programs."

V. APPLICABLE LAW

A. The Federal Anti-Kickback Statute Prohibits Dialysis Centers From Offering Financial Incentives To Induce Physicians To Refer Their Patients to the Center

32. The federal health care Anti-Kickback Statute, 42 U.S.C. §1320a-7b(b), arose out of Congressional concern that payoffs to those who can influence health care decisions will result in goods and services being provided that are medically unnecessary, of poor quality, or even harmful to a vulnerable patient population. To protect the integrity of federal health care programs from these difficult-to-detect harms, Congress enacted a prohibition against the payment of kickbacks in any form, regardless of whether the particular kickback actually gives rise to overutilization or poor quality of care.

33. The AKS prohibits any person or entity from making or accepting payment to induce or reward any person for referring, recommending or arranging for the purchase of any item for which payment may be made under a federally-funded health care program. 42 U.S.C. §1320a-7b(b).

34. The AKS defines impermissible “payments” broadly as: “any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind.” 42 U.S.C. § 1320a-7b(b)(1). In addition to the more obvious types of remuneration (e.g., cash payments, gifts of cars, free vacations, etc.), the statute also prohibits less direct forms of payment such as providing items or services (such as an opportunity to buy into a joint venture) at less than market value, or investment arrangements where the referring provider has a substantial financial interest in referring his or her patients to the joint venture.

35. The Department of Health and Human Services (“HHS”) Office of Inspector General (“OIG”) is responsible for issuing regulations and guidance interpreting the AKS. In this capacity, HHS OIG has expressed particular concern that at least three types of transactions at issue in this case have a strong likelihood of violating the AKS and thus should be subject to heightened scrutiny: (a) compensation to referring physicians embedded in excessive payments for the purchase of the physicians’ practice by an entity who is in a position to receive ongoing referrals from the physician; (b) compensation in the form of payments for non-competition agreements; and (c) joint ventures and other investment arrangements where a referring-physician owns part of an entity to which he or she refers patients.

1. **Excessive Payments for Physician Practices and Other Physician Assets**

36. HHS OIG has specifically expressed concern about the purchase of a physician practice or other similar entity in a position to make referrals by an entity that receives referrals

from that practice. In a December 22, 1992 Opinion Letter, the HHS Office of the Inspector General (“OIG”) cautioned that the purchase of a physician practice by a hospital

“as a means to retain existing referrals or to attract new referrals . . . implicate[s] the anti-kickback statute because the remuneration paid for the practice can constitute illegal remuneration to induce the referral of business reimbursed by the Medicare or Medicaid programs.” Ex. 2 (12/22/1992 HHS OIG Opinion Letter).

37. The letter further advised that, in order to determine whether the price paid for a physician practice constituted an illegal kickback:

“it is necessary to scrutinize the payments (including the surrounding facts and circumstances) to determine the purpose for which they have been made. As part of this undertaking, it is necessary to consider the amounts paid for the practice . . . to determine whether they reasonably reflect the fair market value of the practice . . . , in order to determine whether such items in reality constitute remuneration for referrals.”

(emphasis in original).

38. Moreover, the letter cautioned:

“When considering the question of fair market value, we would note that the traditional or common methods of economic valuation do not comport with the prescriptions of the anti-kickback statute. Items ordinarily considered in determining the fair market value may be expressly barred by the anti-kickback statute’s prohibition against payment for referrals. . . . Accordingly, when attempting to assess the fair market value . . . attributable to a physician’s

practice, it may be necessary to exclude from consideration any amounts which reflect, facilitate or otherwise relate to the continuing treatment of the former practice's patients. . . . Thus, any amount paid in excess of the fair market value of the hard assets of the physician practice would be open to question. . . .

Ex. 2 (emphasis added).

39. Accordingly, HHS OIG has cautioned that valuing a physician practice or other physician investment using a formula based on the practice's revenue stream raises concerns under the AKS. Cash-flow based valuation is not per se a violation of the AKS, but it presents a significant concern because such a valuation would potentially lead to a payment based on the value of Medicare, Medicaid or other federal program referrals the selling physician made to the practice and/or might make to the practice in the future. Cf. Ex. 3 (HHS OIG Advisory Opinion 09-09, at 7 n.5 (July 29, 2009)) (“a cash flow-based valuation of that business potentially would include the value of the [physicians'] referrals over the time that their [practice] was in existence prior to the [sale]”). Accordingly, it is appropriate to apply heightened scrutiny to such transactions.

40. HHS OIG further expresses significant concern where referral sources receive extraordinary returns on an investment compared to the risk involved. See, e.g., Ex. 30 (HHS OIG Special Fraud Alert, 59 Fed. Reg. 65372 at 67374 (December 19, 1994)) (citing as concerns “The amount of capital invested by the physician may be disproportionately small and the returns on investment may be disproportionately large when compared to a typical investment in a new business enterprise,” and “Investors may be paid extraordinary returns on the investment in comparison with the risk involved, often well over 50 to 100 percent per year.”).

2. Non-Competition Agreements

41. The December 22, 1992 HHS OIG Opinion also cautioned that “payment for covenants not to compete” where there is a continuing relationship of referrals would raise the question of compliance with the AKS. In some cases, payments for non-competition agreements unlawfully compensate a physician for steering patients for federally funded medical care or services. Ex. 2.

3. Joint Ventures and Other Physician Investments

42. The HHS OIG has issued regulations defining certain “safe harbors” to describe types of financial relationships that would be otherwise prohibited by the AKS, but do not present sufficient concern that they should ordinarily be subject to the law. The burden is on the party seeking to benefit from the safe harbor to demonstrate that the transaction falls within the protection of the safe harbor.

43. One such safe harbor covers certain situations in which a physician is an investor in a dialysis center or other business to which that physician makes referrals or otherwise recommends to patients. See 42 C.F.R. § 1001.952. Ordinarily, any money a physician received as a result of his or her investment in the dialysis center – such as regular distribution of profits – could constitute illegal remuneration under the AKS.

44. This “safe harbor” is narrowly tailored to prevent improper economic inducements from being disguised as unproblematic investment mechanisms. As HHS OIG explained: “With respect to joint ventures, the major concern is that the profit distributions to investors in the joint venture, who are also referral sources to the joint venture, may potentially represent remuneration for those referrals.” Ex. 4 (HHS OIG Advisory Opinion 97-5, at 7 (October 6, 1997)).

45. An entity whose activity otherwise would be covered by the broad, remedial

language of the AKS is exempted from liability through the “safe harbor” only if that entity’s investment interests and conduct meet all of the applicable standards set forth in the regulations. 42 C.F.R. § 1001.952(a). Four of those requirements particularly relevant in the present case include that:

- (a) “No more than 40 percent of the value of the investment interests of each class of investment interests may be held in the previous fiscal year or previous 12 month period by investors who are in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity;” and
- (b) “The terms on which an investment interest is offered to an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity must not be related to the previous or expected volume of referrals, items or services furnished, or the amount of business otherwise generated from that investor to the entity;” and
- (c) “No more than 40 percent of the entity’s gross revenue related to the furnishing of health care items and services in the previous fiscal year or previous 12-month period may come from referrals or business otherwise generated from investors;” and
- (d) “The amount of payment to an investor in return for the investment interest must be directly proportional to the amount of the capital investment (including the fair market value of any pre-operational services rendered) of that investor.”

See 42 CFR § 1001.952(a)(2)(i), (iii), (vi) (viii).). As will be discussed below, DaVita’s transactions with physicians do not fall within this safe harbor.

B. Compliance With the Federal Anti-Kickback Statute Is a Prerequisite to a Provider's Right To Receive or Retain Reimbursement from Federal and State-Funded Health Care Programs.

46. Compliance with the Anti-Kickback law is a precondition to participation as a health care provider in federal and state-funded health care programs. With regard to Medicare and Medicaid, for example, each provider that participates in the programs must sign a provider agreement with his or her state. Although there are variations in the agreements among the states, the agreement typically requires the prospective Medicare and Medicaid providers to agree that they will comply with all legal requirements, which include the anti-kickback provisions of the law. In a number of states, the Medicare and Medicaid claim form itself contains a certification by the provider that the provider has complied with all aspects of the Medicare or Medicaid program, including compliance with federal laws. Ex. 5 (examples of form certifications for Medicare, Medicaid, and other federal health programs).

47. In sum, either pursuant to provider agreements, claims forms, or in another manner, providers who participate in a federal or state-funded health care program must certify that they have complied with the applicable federal rules and regulations, including the AKS.

48. Any party convicted under the AKS must be excluded from federal health care programs (i.e., not allowed to bill for services rendered) for a term of at least five years. 42 U.S.C. §1320a-7(a)(1). Even without a conviction, if the Secretary of HHS finds administratively that a provider has violated the statute, the Secretary may exclude that provider from the federal health care programs for a discretionary period (in which event the Secretary must also direct the relevant State agency(ies) to exclude that provider from the State health program), and may consider imposing administrative sanctions of \$50,000 per kickback violation. 42 U.S.C. §1320a-7(b).

49. Thus, compliance with the Anti-Kickback statute is a prerequisite to a provider's right to receive or retain reimbursement payments from Medicare, Medicaid and other federal health care programs. Similarly, compliance with the federal anti-kickback statute and comparable state anti-kickback statutes is a prerequisite to a provider's right to receive or retain reimbursement payments from state-funded health care programs. Claims for reimbursement for services tainted by kickbacks prohibited by the AKS are false or fraudulent under the False Claims Act because providers of such services are ineligible to participate in government health care programs, and the government would not have paid such claims had it known of the kickbacks. See 31 U.S.C. §§ 3729(a) & (b); 42. U.S.C. §§ 1320a-7b(b), (f) &(g).

VI. BACKGROUND

50. Chronic kidney disease is a progressive disease, which ultimately destroys the kidney's ability to process and clean blood. The loss of kidney function is normally irreversible. End Stage Renal Disease ("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.

51. Patients suffering from ESRD generally require dialysis at least three times per week for the rest of their lives. There are more than 345,000 ESRD dialysis patients in the United States.

52. 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. Other Government-funded health care programs and private insurance plans also routinely provide coverage for dialysis, either separately or in combination with a patient's Medicare coverage.

53. As of December 31, 2010, DaVita owns, operates and/or provides administrative services to 1,612 outpatient dialysis centers located in 42 states and the District of Columbia, serving approximately 125,000 patients. Ex. 1 at 2.

54. Approximately 87% of DaVita's total patients are covered by Government-funded health care programs. Id.

VII. ALLEGATIONS

55. DaVita's business model is fundamentally dependent on its relationship with physicians who refer patients to its dialysis centers – especially its relationships with the few key physicians who are responsible for a major share of all patients who are treated at the centers. DaVita explained this dynamic succinctly in its 2010 annual report filed with the Securities and Exchange Commission as follows:

“As is typical in the dialysis industry, one or a few physicians, including the outpatient dialysis center's medical director, usually account for all or a significant portion of an outpatient dialysis center's patient base. If a significant number of physicians, including an outpatient dialysis center's medical directors, were to cease referring patients to our outpatient dialysis centers, our business could be adversely affected.” Ex. 1 at 10.

56. Rather than working to generate business by simply demonstrating superior quality of clinical services and patient care, DaVita intentionally uses illegal kickbacks to physicians to secure a steady flow of referrals. DaVita routinely enters into joint ventures with these physicians, selling them shares of existing dialysis centers below fair-market value, and/or buying shares of dialysis centers above fair-market value from them. DaVita at times also enters into joint ventures with physicians to build new centers (known as “De Novos”), or to relocate existing centers, where the opening or relocation of such centers makes little to no economic sense apart from buying the doctors’ patients (e.g., the center was not built or moved because of a particular market demand apart from compensating the doctor to refer his or her patients). The building of such De Novo centers, or the relocation of centers, is sometimes included in transactions that also involve suspect joint-ventures with centers that already exist. One DaVita manager explained to Relator that Deal Depot used these deals to funnel “a bag of money” to the physicians. In fact, the only possible motivation for DaVita to sell a physician an ownership interest in a center at below fair market value is to induce the physicians to commit to steer all or nearly all of their patients to DaVita-owned dialysis centers.

A. DaVita’s “Buy High / Sell Low” Strategy

57. The AKS allows physicians to engage in certain business transactions with entities to which they refer patients. As discussed above, however, an essential limitation on such relationships is that any payments made to the physicians must be at fair market value. This rule is designed to prevent dialysis centers (and other referral-receiving companies) from disguising illegal kickbacks as inflated payments to physicians for other assets or services.

58. The prices DaVita pays for dialysis centers it buys, and similarly its charges for centers it sells, violate this restriction. An elementary feature of the marketplace is that

participants try to sell their goods and services for as much as possible, and buy goods and services as cheaply as possible (i.e., Buy Low / Sell High). DaVita's approach to dialysis center joint ventures turns this dynamic on its head. DaVita deliberately pays more than fair market value for dialysis centers and joint-venture shares it buys from physicians in a position to refer business to the centers, and regularly charges cut-rate, below market prices when it sells shares of dialysis centers to physicians.

59. This "Buy High / Sell Low" strategy is the cover DaVita uses to mask the illegal kickbacks it gives these physicians to secure a steady flow of referrals from them.

60. DaVita masks and supports its "Buy High / Sell Low" strategy primarily through manipulation of the financial models its analysts and its outside appraisers use to calculate the value of dialysis centers. DaVita personnel in its "Deal Depot" Mergers and Acquisitions department, under direct orders from the Vice Presidents and other managers in charge of the department, manipulate the valuation process with both ad hoc adjustments to various financial models, and through the application of non-standard – even illogical – (from an accounting point of view) formulas and algorithms.

61. Some of the non-standard algorithms DaVita uses to "game" its projections tend to decrease the projected value of a dialysis center. Others generally have the opposite effect, increasing the projected value of a center. When DaVita sells centers to physicians, it uses the algorithms that decrease the value of the centers, thus decreasing the purchase price to the physicians. Conversely, when it buys centers from physicians, DaVita tends to use only the algorithms that increase the values of centers, thus increasing the price paid to the physicians. The manipulative application of these algorithms, as standard practice, leads to the occasional over-valuing of the centers DaVita buys, and the systematic undervaluing of the centers it sells.

62. The primary mechanism DaVita uses to depress the value of centers DaVita sells is the application of a financial algorithm known as HIPPER compression. In addition to this structural machination, DaVita routinely manipulates its financial models by using artificial and unreasonable values for expected costs or other key financial indicators.

63. EBITDA is an accounting convention representing “Earnings Before Interest, Taxes, Depreciation and Amortization.” EBITDA is a metric used by DaVita to value centers. EBITDA represents a measure of a center’s earnings, and one way DaVita gauges the value of centers is based on a multiple of annual EBITDA. The higher the multiple, the more the buyer is paying for a particular stream of profits.

64. As a result of DaVita’s routine fraudulent manipulations, since 2006 DaVita has paid, on average, more than seven times (7x) a center’s expected future annual EBITDA for dialysis centers it has purchased from physicians. Exs. 6 (Closed Deal Activity Spreadsheet // “2006 Closed Deals,” “2007 Closed Deals,” “2008 Closed Deals,” “2009 Closed Deals” worksheets) & 7 (DaVita M&A Transaction v8 spreadsheet). At the same time, however, Relator is aware from his experience and from discussions at DaVita that it charged less than three times (3x) a center’s annual historical EBITDA when selling a dialysis center to physicians.

65. Because of DaVita’s manipulation, in at least one of the transactions where DaVita purchased a center, the price paid was so high that DaVita’s expected rate of return on capital was less than its cost of capital. Conversely, the valuation DaVita assigned to centers it simultaneously sold shares in to the same physician group was less than 1/20th the per-center valuation of the centers it purchased, even though the centers it sold shares in had higher profits. Ex. 8 (Rocky Mountain 2008-04-21c 39.497M" // Summary worksheet) & Ex. 9 (Denver

Transaction Summary). These manipulations resulted in money paid (and assets transferred) to referral sources in excess of any amount justified as fair market value. These overpayments were made for the specific purpose of inducing those referral sources to send their patients to DaVita dialysis centers for medical services, including government funded services.

66. One way that DaVita hides these machinations is through the selective use of third-party valuations. DaVita generally uses an outside firm, Duff & Phelps (“D&P”), to provide a “fair market value” opinion whenever DaVita sells (“divests” in DaVita’s parlance) all or part of a dialysis center. DaVita manipulates these opinions to ensure they support the proposed sale price by “gaming” the revenue and cost assumptions given to D&P. Because D&P relies on these assumptions without independent confirmation, DaVita is able to ensure that these opinions say whatever DaVita wants them to say (i.e., they are not “independent” third-party valuations, but rather are valuations of projections which DaVita has manipulated).

67. However, DaVita typically does not get a “fair market value” opinion from D&P or any other firm when it buys all or part of a dialysis center, except when purchasing 100% of a partner’s interest in a jointly owned center. Even in that circumstance, it does not always obtain such a valuation, and does not always employ D&P for the valuation. In this way, DaVita hides from D&P the substantial difference in its revenue and cost projections when it is buying versus selling a dialysis center.

68. DaVita’s suspect financial arrangements with patient referral sources were often most egregious in cases of “hotspots.” Internally at DaVita, a “hotspot” is a competitive situation in which DaVita risked losing a prime relationship with a physician group to a DaVita competitor.

1. HIPPER Compression

69. HIPPER compression is an algorithm developed by DaVita and utilized as a policy from at least 2006. It is based on the presumption that insurance companies that pay the most for dialysis treatments will, within three years, be able to negotiate lower reimbursement rates to more closely mirror average rates. In DaVita's parlance, a HIPPER is a "High Paying Patient" (i.e. a patient with an insurance plan that reimburses at a high rate).

70. The HIPPER compression algorithm assumes that no insurer will pay more than \$750 per dialysis treatment, beginning in year 3 of a financial model. Therefore, for patients whose insurance company would likely pay \$1,200 per treatment, DaVita assumes that the insurance company will, in fact, lower its payment by nearly 40% per treatment from year 3 onward. DaVita CEO Kent Thiry pushed the use of the Hipper Compression algorithm on company departments, over objections.

71. The predictable and expected result of applying HIPPER compression to a financial analysis is that the dialysis center will be expected to have substantially lower future revenue, and thus will be less valuable. HIPPER compression, however, is an overly conservative and unrealistic assumption, acknowledged even by DaVita's CFO, Richard Whitney, in a May 19, 2009 email. In the email, Mr. Whitney (and other recipients) are asked about aspects of the acquisition revenue build up model, including specifically that it "compresses revenue to \$750 all in for years 3 and beyond." Mr. Whitney responds: "If all of our private pay compresses to 750 without increases in the lower rate biz or mcare [Medicare]. .we are out of business. In other words this is not a realistic assumption." Ex. 10 (5/19/2009 email "RE: Acquisition Revenue Build Up Assumptions").

72. As one of many examples, in the "Wauseon" partial divestiture in Ohio in November 2008, DaVita sold additional shares of a center to an existing joint-venture

physician/referral source. The application of HIPPER compression drove the value of the center down by more than 50%, from approximately \$4.0M to \$1.7M. Ex. 11 (Wauseon Valuation Summary). On the basis of this artificially low value, DaVita literally gave away to the referral source much of the value of the divested shares.

73. Although DaVita's standard financial models provide that HIPPER compression should be used when valuing centers to be bought as well as those to be sold, in practice HIPPER compression is overridden when valuing centers to be bought. DaVita understands that the adjustment will produce valuations well below market and thus will not be accepted by any rational seller. Thus, for acquisitions, DaVita uses a number of tactics in order to reverse the effect of Hipper compression in its standard financial models and thereby increase acquisition valuations. These techniques, which standing alone in certain circumstances might be justifiable, are noteworthy because DaVita does not use them when valuing partial divestitures. It is the selective application of these adjustments that provides further evidence of DaVita's goal to suppress the valuation of divestitures while increasing the valuation of acquisitions.

74. Sometimes DaVita simply did not use HIPPER compression, as in the following acquisitions: (a) the "Bakersfield" acquisition in California in October 2007, (b) the "SKI" acquisition in Arizona in December 2007, (c) the "Decatur" acquisition in Georgia in April 2008, (d) the "Coastal" acquisition in Florida in May 2008, (e) the "Kansas" acquisition in June 2008, and (f) the "Caucus" acquisition in Iowa in December 2008. Ex. 7 (DaVita M&A Transactions).

75. In some acquisitions DaVita ostensibly used HIPPER compression, but negated its effect by artificially increasing the revenue-per-treatment cap significantly. For example, in the "Payton" acquisition, in Ohio in September 2008, DaVita increased the HIPPER per transaction cap from \$750 to \$950. More recently, in the "Stemmer" and "Central Florida"

acquisitions in Florida in December 2008 and February 2009, respectively, the cap was increased from \$750 up to \$2500. Ex. 7 (DaVita M&A Transactions).

76. More often, when valuing acquisitions DaVita overrides the effect of HIPPER compression through manual adjustments to revenue projections or patient volume projections, as described below.

2. Manipulating Individual Values Used in Financial Models

77. Beyond the use of non-standard algorithms, DaVita also routinely games the valuations produced by its financial models by manipulating the individual values that are plugged into standard formulas. These adjustments are used mostly in acquisitions in order to increase the supposed value of the centers DaVita intends to buy from doctors. Occasionally DaVita makes individual adjustments in divestitures (in addition to Hipper compression), but with the opposite effect, decreasing the supposed value of centers it wishes to partially sell to doctors. Some typical examples of such manipulations include the following:

78. DaVita routinely manipulates the estimate of how much it will cost to provide each treatment. For example, in most of its internal financial modeling and reporting, DaVita's accountants estimate that it costs the company \$25-\$35 in general and administrative ("G&A") expenses to provide each dialysis treatment. However, when projecting the value of dialysis centers DaVita intends to purchase, the analysts in Deal Depot are instructed to use an estimate of \$13.50 per treatment for G&A expenses. In addition, they estimate that these expenses will remain constant from year to year regardless of inflation. By artificially underestimating the dialysis center's costs, this manipulation unrealistically inflates the profit the center is expected to generate and increases the projected "value" of the center.

79. The impact of this one manipulation is significant. From 2007 to 2009, the

difference between the price DaVita paid in 34 of its acquisition transactions was approximately \$20 million (more than 10%) higher than the valuation would have justified if the value used for the expected expense per treatment were increased to just \$18.00. Ex. 7 (DaVita M&A Transactions). DaVita's finance team documented and recommended more accurate reflections of expense-per-treatment costs, but Deal Depot prevailed in its artificial manipulations without any apparent support or analysis.

80. In a similar manner, DaVita routinely uses artificially low values for its expected bad debt (i.e., amounts due to DaVita that will be written off as uncollectable) to fraudulently increase the "value" it assigns to centers it plans to buy from physicians. It does not employ this technique with divestitures.

81. On occasion, DaVita also manipulates other cost elements to achieve the same result. For example, in the "Atlanta Dialysis" transaction in December 2006 and a transaction with Dr. Dahhan in California in December 2007, DaVita depressed the expected staffing costs to manipulate the valuation. Ex. 12 (Atlanta – Final Acquisition Model – 10.31.06); Ex. 13 (Dahhan 120407 Version 2 // Consolidated P&L worksheet).

82. On the revenue side of the transaction, DaVita uses multiple methods to inflate the valuation and hence the purchase price. For some transactions, DaVita increased the expected revenue by inflating the projected number of high paying (HIPPER) patients the center was expected to treat. This method, which effectively turns the usual HIPPER assumption on its head, is known colloquially within DaVita as using the "HIPPER bus" – i.e., assuming a mythic bus full of HIPPERs will routinely drop patients off at the center. For example, in the "Fayetteville" transaction in Arkansas in February 2008 – a transaction involving centers treating 110 patients – the initial projected revenue was \$243 per treatment. DaVita increased this to

\$320 per treatment, by assuming the HIPPER bus would drop off 10 patients whose insurance policies each paid \$1050 per treatment. Ex. 14 (Fayetteville RKC Model Post DD ROD Review Final \$3.79MM 080114 // Summary worksheet). The “Hipper bus” never appears in divestitures.

83. DaVita also increased the expected revenue per transaction by artificially increasing the amount of epogen each patient was projected to receive. Epogen is a drug given to patients during dialysis treatment. A substantial portion of the revenue DaVita receives for each treatment is attributable to the profit it makes on epogen. Id. Artificial increases in epogen are not factored into divestiture valuations.

84. In other situations, DaVita’s method was far more direct – it simply increased the expected revenue per treatment. For example, in a transaction in Kansas in June 2008, DaVita “gamed” the revenue by simply bumping the expected revenue per treatment up from \$310 to \$350. Ex. 15 (Kansas – Post DD Model 06-05-08 \$18.75M with Budgets // Summary worksheet). This tactic, known within DaVita as “plugging revenue,” is not used in divestiture financial models.

85. Of late, DaVita has relied more on artificially increasing the “terminal value” of a center to boost its projected value. DaVita’s financial models (as is standard) estimate projected revenue year-by-year for a certain number of years going forward, and then account for all expected revenue beyond that point through use of a lump-sum amount. That lump sum is the “terminal value.” This terminal value is usually calculated as a certain multiple of the center’s expected annual earnings. A higher terminal value produces a higher overall projected value for the center.

86. In recent years, DaVita has used progressively higher EBITDA multipliers, without justification, to produce higher terminal values and thus further arbitrarily inflate the

projected value of centers it intends to buy. In 2007 the average terminal value was 5.3 times expected EBITDA. Ex. 7 (DaVita M&A Transactions). In 2008, the multiple increased to 5.8 and in 2009 it is close to 7.0. Id. On one deal that was active at the time Relator left the company, the multiple was 7.8. Ex. 16 (KantTucker Model 2009-06-16 // Assumptions Summary worksheet). No such efforts to increase terminal values are used in DaVita's divestiture models. In order to artificially depress the value of centers DaVita sells to physicians, its managers and analysts reverse the ad hoc "gaming" method, artificially inflating the expected amounts to be paid for labor and other expenses and using HIPPER compression to artificially decrease the expected revenue. Thus, to the extent ad hoc adjustments are made to financial models for divestitures, the manipulations are employed to effect a decrease in the valuations (rather than an increase as in the case of acquisitions).

87. For example, on May 27, 2009, Relator was preparing the financial projections for a transaction involving the sale of seven DaVita-owned dialysis centers in the San Francisco East Bay. This transaction had not yet been completed at the time Relator left DaVita. The transaction was intended to address a "competitive hot spot," namely DaVita's concern that the physician group responsible for a substantial portion of the referrals to those facilities would decide to partner with a competing dialysis company, and send their patients to centers owned by that company. To prevent that defection, DaVita decided to sell these physicians an ownership stake in the East Bay facilities, thereby providing them with a financial incentive to continue referring their patients there.

88. While Relator was preparing the financial projections that DaVita planned to give its third-party valuation firm (D&P), Division Vice President Misha Palecek told Relator that he (Palecek) had artificially inflated the operating cost projections for the centers because he wanted

to “crush the projections to keep the valuation low.” When Relator indicated discomfort with that brazen admission, Mr. Palecek warned him not to “give me any of that ethics nonsense.”

89. DaVita was concerned that East Bay Nephrology (EBN) would balk at the dismal revenue projections contained in D&P’s valuation, which incorporated the HIPPER-compressed artifice. Although DaVita offered to sell the shares at slightly above the ostensible fair market value obtained from D&P, DaVita did not share the D&P projections, instead directing the buyer (EBN) to use a financial advisor to create its own valuation numbers. EBN did so, ultimately using projections created by the financial advisor. Thus, DaVita possessed two sets of projections for the same centers: one using artificial HIPPER compression in the D&P valuation (concealed from the buyer), and another that was viewed by both parties and ostensibly relied upon by DaVita. In fact, DaVita needed the buyer’s commissioned valuation because DaVita was afraid its own normally used and dismally low projections would scare the buyer off.

90. As a result of HIPPER compression, and those ad hoc manipulations, the value assigned to the East Bay centers, for purposes of the sale to the referring physicians, was substantially lower than their fair market value. This “sell-low” transaction resulted in free money to the physicians in exchange for a guaranteed supply of referrals for DaVita.

91. That the “gaming” of the financial models is standard practice at DaVita is illustrated by an email exchange among DaVita executives around the time Relator announced he was leaving the company.

92. In a July 24, 2009 email to Relator (and copied to other members of the Deal Depot team), Bryan R. Parker, Vice President of Special Projects, wrote:

“Sorry to hear you are leaving us, but do wish you the best.

“I was hopeful before you leave you, or you and Queenie, can give us a list of the

most common things one could do within the model to make sure it passes the COC [“Cash-on-Cash”] and IRR [“Internal Rate of Return”] hurdles. As we redesign the model I would like to be mindful of these.”

93. Chet Mehta, Vice President of Finance, responded: “Bryan - you mean ‘gaming’ the model, right?”

94. To which Mr. Parker replied: “I do. Thanks Chet.” Ex. 17 (2009-07-24 email RE DeNovo Model).

95. The above exchange illustrates how DaVita management understands that its employees game the models, and only objects when the manipulation works to DaVita’s disadvantage. Mr. Parker was inquiring about use of financial models to evaluate whether DaVita should build a new center (termed a “De Novo”). He was concerned because DaVita’s regional directors receive extra compensation for new centers and therefore manipulate the models to make a De Novo appear more financially viable. In other words, as illustrated by the email, DaVita executives know full well that gaming of the financial models occurs.

B. DaVita Uses Non-Competition Agreements To Secure Referrals from Physicians To Whom it Has Paid Kickbacks

96. In addition to the inflated payments for center acquisitions and below-market sweetheart deals for sales, DaVita fraudulently ensures that it will receive the referrals from a physician or group to whom it pays kickbacks by requiring them to execute Medical Director Agreements with non-competition provisions. Through these contracts, DaVita ensures that the physicians will have no ownership interest in any other dialysis center during their tenure as Medical Director at the DaVita center (usually ten years) – and thus will have no financial incentive to send referrals to any other center.

97. The critical role these non-competition agreements, and their corresponding

implicit guarantee of referrals, play in these transactions is illustrated in a July 25, 2008 email exchange between John Walcher, a DaVita Transaction Director, and Michael Staffieri, the Division Vice President, concerning a deal in the Klamath Falls region of Oregon. DaVita was buying a dialysis center, Sky Lakes Dialysis, and contemplating hiring as medical directors a group of physicians (Renal Care Consultants or “RCC”) who, themselves, owned a separate group of dialysis centers. The RCC physicians were also responsible for a substantial portion of the referrals to the Sky Lakes center. Mr. Walcher asked Mr. Staffieri:

“Do you want us to proceed with the acquisition in the event RCC sells their centers to FMC [a DaVita competitor] or some other competitor (whether or not RCC is the Sky Lakes medical director)?

“Our concern is being able to close the Sky Lakes acquisition prior to knowing if RCC will sell to us or FMC. If you two are comfortable closing the Sky Lakes acquisition as long as RCC is the medical director (and is bound by a reasonable non-compete clause), we will push both Sky Lakes and RCC for a quick resolution to this issue. If we aren’t willing to close Sky Lakes until we know whether or not we’re buying RCC’s centers, we’ll need to delay the Sky Lakes close (thereby potentially putting the deal in jeopardy) until we have closure on RCC.”

98. Mr. Staffieri responded:

“I am less concerned about whether or not RCC sells its centers to us or not. The important thing is that they sign a 10-year MDA with a 25 mile non-compete around Klamath Falls. If they will not sign that agreement, then we are wasting our time and money. All the patients in Klamath Falls are theirs.

Without the agreement and non-compete, they will simply build [a center of their own] and move their referrals to the center and we will be left with nothing.”

“Call me if you want to discuss. I will not approve closing without RCC signing an MDA.”

Ex. 18 (2008-07-25 email RE Klamath Falls MDA Question) (emphasis added).

99. In order to maximize the amount it would pay the RCC physician group for its dialysis centers, DaVita assumed that half of the patient revenue from the Sky Lakes center would be diverted to the RCC-owned centers, on the assumption that Sky Lakes would lose those referrals if DaVita did not buy the RCC centers. Ex. 19 (2009-05-05 email RE RCC sensitivity). Of course, no such assumption of diminished revenue was used when calculating the price DaVita paid a local hospital for the Sky Lakes center itself.

100. DaVita also pays more for dialysis centers depending on the number of physicians who would be bound to refer to DaVita through non-competition agreements or otherwise. For example, in an October 8, 2008 email from David Finn, Deal Depot Vice President, to Mr. Walcher, the transaction director for the Klamath Falls deal, Mr. Finn wrote: “assuming we get jointers from all docs in the med dir group (4?), you can go up to 3.5mm.” Ex. 20 (2008-10-08 email RE Klamath Falls).

C. Examples Illustrating the Effect of DaVita’s Various Fraudulent Manipulations of its Valuation Models

1. Rocky Mountain Dialysis / Mountain West Dialysis Transaction

101. A prime example of DaVita’s use of illegal kickbacks masked as joint ventures and other transactions to respond to a “competitive hot spot” – i.e., the risk of loss of business to a competitor – occurred in Denver, Colorado in June 2008. This type of transaction, in which DaVita bought and sold centers in the same geographic market at the same time, is particularly

revealing of DaVita's goal to funnel cash and other illegal remuneration to referring physicians.

102. In the Spring of 2008, a DaVita-aligned physician practice, Western Nephrology, terminated its relationship with DaVita and moved forward with plans to build (and send its patients to) new dialysis centers in a joint venture with a different dialysis company. Prior to that time, Western Nephrology was responsible for a substantial portion of the referrals to DaVita's dialysis centers on the west side of Denver.

103. In order to replace that business and maintain its market share, DaVita approached Denver Nephrology ("DN"), the physician practice that provided most of the referrals to DaVita's dialysis centers on the east side of Denver, to see if they would be interested in expanding to the west side of Denver. At that time, DaVita and DN were co-owners of Rocky Mountain Dialysis, a joint venture which ran three dialysis centers on Denver's east side.

104. At the time, DN did not have any offices on the west side of Denver. DN was interested in DaVita's proposal, but did not want to commit the capital to open the necessary new offices across town. In order to provide money for DN to open new offices, and cover any losses the offices would experience, DaVita proposed a transaction that would give DN both an immediate cash infusion, and an ongoing share of the profits from DaVita's west-side dialysis centers. DaVita and DN entered into a deal where DaVita: (1) bought out DN's shares (49%) of Rocky Mountain Dialysis for almost \$19 million and (2) sold DN a 49% interest in joint ventures containing eight of DaVita's dialysis programs on the west side of Denver, for \$1.9 million. Ex. 6 (Closed Deal Activity spreadsheet); Ex. 7 (DaVita M&A Transactions); Ex. 21 (Membership Interest Purchase and Sale Agreement); Ex. 22 (Contribution Agreement); Ex. 23 (Intercompany Distribution Agreement); Ex. 24 (Stock Purchase Agreement); Ex. 25 (Asset Purchase Agreement).

105. Although the centers were all in the same city/geographic region, the prices paid for the two types of transactions (purchase versus sale) were starkly different. On average, DaVita valued the centers it bought at approximately \$13 million each, but only valued the centers it sold at approximately \$635,000 each. Ex. 9 (Denver Transaction Summary). These price differentials reflect the impact of HIPPER Compression and other ad hoc manipulations DaVita used to fit the transaction into its Buy High / Sell Low kickback strategy.

106. When DaVita first began analyzing this potential deal, Transaction Director Kenneth Leidner approached Relator and asked him to produce an analysis of the projected value of the three centers in the Rocky Mountain joint venture using DaVita's standard assumptions. Relator's preliminary model projected that the three centers were collectively worth \$21.1 million.

107. To reach this figure, Transaction Director Ken Leidner directed Relator not to use HIPPER compression. Accordingly, the model was gamed as follows: the effect of HIPPER compression was offset arbitrarily by increasing the expected revenue per treatment from \$299 to \$315; operating costs were arbitrarily reduced by decreasing the expected bad debt from \$14.29 per treatment to only \$7.88, and expected G&A costs from \$23.04 to \$13.50.

108. Mr. Leidner then told Relator that Tom Usilton, Senior Vice President of Corporate Development, requested a table showing the projected value for the centers that would result if the model was further manipulated to reflect various EBITDA multiples and growth rates.

109. Relator later learned that DaVita was moving forward, but the Rocky Mountain joint venture had been valued at some \$39.5 million. To reach this value, Deal Depot management "gamed" the model even further, increasing the "terminal value" from \$25 million

to \$29 million, and slashing the required IRR from 16.7% to 3.5%. Ex. 8 (Rocky Mountain 2008-04-21c 39.497M //Summary worksheet)

110. Near the time the transaction was set to close, Deal Depot's management sought a third-party opinion to reflect that the approximately \$39 million price for these three centers was fair market value. This was unusual because typically Deal Depot only sought fair-market-value opinions on the value of centers it was selling. Rather than use Deal Depot's usual valuation firm, they gave the task to a new firm. Relator was told that this new firm's analysis did not support DaVita's desired \$39 million price. Instead, even using the doctored financial data provided by DaVita, this new firm reported that fair market value for the three centers was no more than \$30 million. When the valuation firm orally reported its findings, DaVita ordered the company not to produce a written report of its findings, and consummated the deal based on its inflated \$39 million price. DaVita managers told Relator that DaVita paid the new valuation firm thousands of dollars for its unwritten services that DaVita ended up not using in the deal.

111. Despite the gaming employed to inflate the purchase price of centers bought from referring physicians, no such favorable manipulations were made when valuing the eight centers DaVita sold to DN. Instead, projected revenues were improperly depressed using HIPPER compression. As a result, the prices charged to the physicians for these centers were barely at the value of the hard assets of the centers. Ex. 9 (Denver Transaction Summary)

2. St. Cloud, Florida Transaction

112. Another example of a transaction where DaVita both bought and sold shares of dialysis centers in the same general market, to the same physician, at the same time is the St. Cloud transaction in Florida in August 2007. In this transaction, DaVita: (1) bought a 60% interest in Nephrology Consultants Dialysis Center from its physician-owners; (2) sold a 40%

interest in three existing DaVita dialysis centers in the same area to the same physician group; and (3) created a joint-venture with that physician group, which included ownership of the four existing dialysis centers, and one De Novo center. Ex. 26 (St Cloud Transaction Summary)

113. DaVita executed this transaction because, according to the Executive Summary of the deal analysis, the deal would: “Further align[] our interests with Internal Medicine Specialists (IMS), a leading physician group in Orlando with medical directorships . . . at 10 Orlando-area DaVita dialysis centers.” In other words, the center was owned by an influential physician who (along with his medical group) was responsible for a substantial portion of the referrals to 10 existing DaVita dialysis centers. Ex. 26 (St Cloud Transaction Summary).

114. Relator has financial performance data for the center DaVita bought and one of the three centers it sold. According to this data, the center DaVita sold had comparable profits – earning \$1.16 million versus \$1.05 million earned by the center DaVita bought. The center DaVita sold was also busier – serving 154 patients versus 126 patients served by the bought center. Ex. 26 (St Cloud Transaction Summary).

115. Notwithstanding the comparable features of the two centers, DaVita attributed a much higher value to the center it bought. DaVita valued the center it bought at \$5,975,000, but only valued the three centers it sold at \$3,075,000 total (\$1,025,000 each). Ex. 26 (St Cloud Transaction Summary).

116. To justify the inflated price for the center it bought, DaVita gamed the model by simply increasing the expected revenue per treatment from \$246 to \$268. DaVita also used artificially low figures for bad debt (\$4.91 per treatment versus the average in that region of \$9.20) and G&A expenses (\$13.50 per treatment versus the average in that region of \$22.62). Ex. 27 (StCloud_Model_MSP_080107_final // ‘Consolidated P&L’ worksheet).

117. Even after DaVita gamed the profitability of the financial model for the center it bought, that center was still only slightly more profitable on a per treatment basis than one of the centers it sold – still far from justifying the highly inflated purchase price.

3. Columbus, Ohio Transaction

118. Two transactions in Columbus, Ohio provide another example of the different prices DaVita assigned to similar dialysis centers in the same market. DaVita Financial Analyst Chris Pannell told Relator that, shortly before being acquired by DaVita in 2005, Gambro (DaVita's predecessor company) bought a group of dialysis centers from a physician group for \$18 million. Several years later, DaVita sold a 40% share in the same centers back to the same physician group, but this time based on a 100% valuation of only approximately \$6 million, even though the financial situation of the centers and of the market had not changed in the intervening years. Ex. 6 (Closed Deal Activity Spreadsheet).

4. Kidney Center, Inc. (aka Kant Tucker) Transaction

119. DaVita's planned purchase of a large group of dialysis centers in Simi Valley, California provides a prime example of the extreme manipulations DaVita used to ensure that it would win access to physicians with a substantial referral base. At the time Relator left DaVita, the company was planning to purchase a number of dialysis centers from Kidney Center, Inc. This transaction is alternately known as the "Kant Tucker" transaction, named after the founder, CEO and president of KCI, Dr. Kant Tucker.

120. The deal originally involved the purchase of 13 dialysis centers, where 1,145 patients received treatment. DaVita Senior Vice President Tom Usilton was in charge of the deal, and pushed aggressively to pay as much as possible to win the business because a deal with that many patients would have satisfied a large portion of Deal Depot's annual quota. DaVita's

management expected Deal Depot to acquire centers whose physicians would refer at least 1,500 patients to DaVita centers in 2009.

121. Mr. Usilton originally proposed purchasing all thirteen centers for \$81 million, even though the deal would only produce an IRR of 2.7% at that price. Because this IRR is less than DaVita's cost of capital, DaVita would have been required (under Generally Accepted Accounting Principles) to record a loss as soon as the deal closed. Such a result was unacceptable, so Mr. Usilton began a process of manipulating the model to increase the reported IRR.

122. As of the time Relator left the company, Mr. Usilton was pushing to pay \$48.1 million for part of KCI. This price was more than double the amount supported by DaVita's financial models – even after the standard gaming was done to increase projected revenue and decrease costs. With standard gaming, the projected value was only \$21.8 million.

123. Mr. Usilton and Mr. Finn manipulated the model to justify the \$48 million figure. To do this, Mr. Usilton and Mr. Finn first directed Relator to remove HIPPER compression, which increased the projected value to \$28.8 million. Next, they decreased the expected cost of capital from 12% to 9%, which increased the projected value to \$41.2 million. Then, they further manipulated several of the values commonly used to game the model (increasing the expected revenue per transaction by \$29, and reducing the expected G&A expenses from \$13.50 to \$9), which increased the projected value to \$46.8 million. Two additional, smaller adjustments brought the final value to the desired \$48.1 million. Ex. 28 (KCI Waterfall).

124. In the above examples of deals as well as other deals, the kickbacks provided to physicians are further evidenced by the extraordinarily high returns on their investments in the joint ventures. Such returns approximately range from 120% to 220% or more within two years

from the initial investment. These returns do not include the gain in the value of the shares due to the fair market value deviation. When compared to returns expected from a typical investment in a new enterprise, or even when compared to the expected returns on investment for dialysis centers, the doctors' returns on investment in the joint ventures with DaVita are disproportionately large. Such returns evince not only the immediate kickback received upon the creation of the joint ventures, but also the ongoing stream of kickbacks in the form of distributions of profits from the centers.

5. Other Transactions

125. Since 2002, DaVita has bought shares of dialysis centers, sold shares of dialysis centers or built De Novo centers for purposes of creating a joint venture with physicians in: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

126. Details of each of these transactions are contained in the table attached as Exhibit 6 to this Complaint. Ex. 6 (Closed Deal Activity Spreadsheet // worksheets 2002-2009).

127. Based on Relator's knowledge of DaVita's business practices as set forth herein, especially the use of HIPPER compression and the standard practice of "gaming" models using ad hoc adjustments to model assumptions, Relator alleges, on information and belief, that many transactions where DaVita sold referring physicians all or part of an existing DaVita center, bought all or part of a center from referring physicians, or entered into a joint venture involving existing or new dialysis centers violated the AKS statute.

128. In the time since these kickbacks were paid, these centers submitted many thousands of claims for payment for dialysis services to Medicare and other Government-funded health care programs. For the centers in suspect transactions in 2008 alone, the total amount DaVita billed to Medicare and Medicaid was at least \$78M. Ex. 29 (Centers of Interest). DaVita's systematic divestitures at artificially low prices potentially affected over 40 centers in 16 states from 2006-2009 alone (since it instituted the HIPPER compression policy). Ex. 7 (DaVita M&A Transactions). Extrapolated from the 2008 Medicare and Medicaid billings, these 40 centers billed Medicare and Medicaid well over \$200M for dialysis and related products and services in from 2006-2009 alone.

129. All claims for services submitted by DaVita or any of the physicians who received kickbacks are false claims within the meaning of the federal and Plaintiff State False Claims Acts.

D. DaVita's Payments for Referrals Are Not Sanctioned by any AKS Safe Harbor

130. DaVita's "Buy High / Sell Low" strategy gives the physicians involved an immediate kickback, either the inflated sale price of the centers sold, or ownership of a share of existing centers at a below market value price. By forming joint ventures, DaVita provides those referring physicians an ongoing stream of kickbacks in the form of distribution of profits from the centers.

131. As set forth above, HHS OIG has recognized that such revenue streams pose a substantial risk of violating the AKS, because the physician is in a position to earn profits based on the volume and value of referrals he or she sends to the joint venture. Accordingly, HHS OIG has created a safe harbor, which allows physician ownership of such joint ventures only if the transaction meets the eight requirements of the safe harbor. See 42 C.F.R. § 1001.952(a)(2).

132. The DaVita joint ventures do not qualify for protection under that safe harbor, for several reasons. First, for joint ventures which include dialysis centers formerly owned solely by either DaVita or its physician partners, because of DaVita's fraudulent manipulation of the prices it paid and charged for those centers, the relative ownership shares of DaVita and the physicians are not proportional to their respective capital contributions. When Davita sold a portion of its interest in a center at below market price, or purchased a portion at above market price, the physicians ended up owning a higher percentage of the true value of the center than their relative capital contribution. Thus, the profit distribution to the physicians are not "directly proportional to the amount of the capital investment (including the fair market value of any pre-operational services rendered) of that investor." See 42 CFR § 1001.952(a)(2)(viii).

133. Second, in many cases, physicians who refer business to the joint venture own more than 40% of the entity, in violation of 42 CFR § 1001.952(a)(2)(i). Although DaVita's official policy provides that, as a general rule, "DaVita should attempt to own at least 60% and have controlling rights for [any] JV," this rule may be, and regularly is, overridden. Examples of such transactions include the following:

- In the Rocky Mountain / Mountain West transaction, described in greater detail above, the Denver Nephrology physician group initially owned 49% of DaVita's Rocky Mountain Dialysis joint venture, and later owned 49% of DaVita's Mountain West Dialysis joint venture. Exs. 6, 9, 21.
- In February 2009, DaVita sold a 46% share in a dialysis center joint venture to the Florida Medical Clinic physician group in Florida in the "Zephyrhills" transaction. Ex. 7 (DaVita M&A Transactions).
- In April 2009, DaVita sold a 49% share in a dialysis center joint venture in

California to Capital Nephrology Medical Group in the “West Elk Grove” transaction. Ex. 7 (DaVita M&A Transactions).

134. Third, DaVita knows, and often expects, that physicians who own part of a dialysis center joint venture will likely be responsible for more than 40% of the centers’ gross revenue. Cf. 42 CFR § 1001.952(a)(2)(vi) As DaVita explained in its most recent SEC annual report: “As is typical in the dialysis industry, one or a few physicians, including the outpatient dialysis center’s medical director, usually account for all or a significant portion of an outpatient dialysis center’s patient base.” Ex. 1 at 10. DaVita’s joint venture partners were nearly always the medical directors and physicians who referred a high volume of patients to the centers.

135. Finally, physicians are generally only offered the opportunity to join in a joint venture with DaVita if they have referred patients to DaVita centers in the past, or are in a position to do so in the future. Thus, the terms under which the physicians are allowed to invest are “related to the previous or expected volume of referrals, items or services furnished, or the amount of business otherwise generated from that investor to the entity.” Cf. 42 CFR § 1001.952(a)(2)(iii).

136. A transaction that fails to comply with one of the safe harbors does not necessarily violate the AKS. Instead, the facts and circumstances surrounding such transactions must be analyzed to determine whether the physicians were paid, in whole or in part, in order to influence where the physicians referred their patients. As discussed above, DaVita’s practices clearly evidence payments in exchange for referrals.

E. Purchases of Non-Competition Agreements

137. Another DaVita practice which violates the AKS is the stand-alone purchase of non-competition agreements. As set forth above, DaVita views non-competition agreements as

an essential part of any transaction where it buys dialysis centers from or sells a share of centers to referring physicians. DaVita uses these agreements to functionally ensure that the physician will refer his or her patients to DaVita centers by eliminating the physician's opportunity to have an ownership interest in, and thus a financial incentive to refer patients to, another center.

138. Relator has been told by DaVita personnel that in some cases, DaVita has paid a physician to enter into a stand-alone non-competition agreement – i.e., a contract unrelated to the purchase or sale of shares in any dialysis center or joint venture. This was done in situations where DaVita was concerned that a physician who referred a substantial volume of patients might decide to build or buy a dialysis center, either independently or in connection with a competing dialysis company. Usually, in such situations, DaVita would sell the physician a share of DaVita's existing centers at a bargain price. However, in some limited circumstances DaVita instead simply paid the physician to sign a stand-alone non-competition agreement, agreeing not to build a competing center.

139. Through this practice, DaVita effectively paid the physician to continue referring patients to the DaVita center. As such, this payment violates the AKS. Any claims submitted for services rendered to the physician's patients are false claims within the meaning of the federal and Plaintiff State False Claims Act.

Count I
False Claims Act
31 U.S.C. §§3729(a)(1)(A)-(C)

140. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 139 above as though fully set forth herein.

141. This is a claim for treble damages and penalties under the False Claims Act, 31 U.S.C. §3729, et seq., as amended.

142. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to the United States Government for payment or approval.

143. By virtue of the acts described above, Defendants knowingly made or used, or caused to be made or used, false or fraudulent records or statements material to a false or fraudulent claims for dialysis services and dialysis-related items and services.

144. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to violate subsections a(1)(A) and a(1)(B) of 31 U.S.C. §3729.

145. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false claims were presented by numerous separate entities, across the United States. Relator has no control over or dealings with such entities and has no access to the records in their possession.

146. The Government, unaware of the falsity of the records, statements and claims made or caused to be made by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' illegal conduct.

147. By reason of Defendants' acts, the United States has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

148. Additionally, the United States is entitled to the maximum penalty of up to \$11,000 for each and every violation alleged herein.

Count II
California False Claims Act
Cal Govt Code §12651(a)(1)-(3)

149. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 139 above as though fully set forth herein.

150. This is a claim for treble damages and penalties under the California False Claims Act.

151. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to the State for payment or approval.

152. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State to approve and pay such false and fraudulent claims.

153. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related items and services allowed or paid by the State.

154. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if not thousands, of separate entities across the State. Relator has no control over or dealings with such entities and has no access to the records in their possession.

155. The California State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' illegal conduct.

156. By reason of Defendants' acts, the State of California has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

157. Additionally, the California State Government is entitled to the maximum penalty of \$10,000 for each and every violation alleged herein.

Count III
Colorado Medicaid False Claims Act
Colo. Rev. Stat. §25.5-4-305(1)(a),(b) & (g)

158. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 139 above as though fully set forth herein.

159. This is a claim for treble damages and penalties under the Colorado Medicaid False Claims Act.

160. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to the State for payment or approval.

161. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State to approve and pay such false and fraudulent claims.

162. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related items and services allowed or paid by the State.

163. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if

not thousands, of separate entities across the State. Relator has no control over or dealings with such entities and has no access to the records in their possession.

164. The Colorado State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' illegal conduct.

165. By reason of Defendants' acts, the State of Colorado has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

166. Additionally, the Colorado State Government is entitled to the maximum penalty of \$10,000 for each and every violation alleged herein.

Count IV
Connecticut False Claims Act for Medical Assistance Programs
Conn. Gen. Stat. §§17b-301b(1) – (3)

167. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 139 above as though fully set forth herein.

168. This is a claim for treble damages and penalties under the Connecticut False Claims Act for Medical Assistance Programs.

169. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to the State for payment or approval.

170. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State to approve and pay such false and fraudulent claims.

171. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the

physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related items and services allowed or paid by the State.

172. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if not thousands, of separate entities across the State. Relator has no control over or dealings with such entities and has no access to the records in their possession.

173. The Connecticut State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

174. By reason of Defendants' acts, the State of Connecticut has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

175. Additionally, the Connecticut State Government is entitled to the maximum penalty of \$10,000 for each and every violation alleged herein.

Count V
Florida False Claims Act
Fla. Stat. Ann. §68.082(2)(a)-(c)

176. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 139 above as though fully set forth herein.

177. This is a claim for treble damages and penalties under the Florida False Claims Act.

178. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and

services to the State for payment or approval.

179. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State to approve and pay such false and fraudulent claims.

180. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related items and services allowed or paid by the State.

181. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if not thousands, of separate entities across the State. Relator has no control over or dealings with such entities and has no access to the records in their possession.

182. The Florida State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

183. By reason of Defendants' acts, the State of Florida has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

184. Additionally, the Florida State Government is entitled to the maximum penalty of \$11,000 for each and every violation alleged herein.

Count VI
Georgia False Medicaid Claims Act
Ga. Code Ann. §49-4-168.1(1)-(3)

185. Relator realleges and incorporates by reference the allegations contained in

paragraphs 1 through 139 above as though fully set forth herein.

186. This is a claim for treble damages and penalties under the Georgia False Medicaid Claims Act.

187. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to the State for payment or approval.

188. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State to approve and pay such false and fraudulent claims.

189. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related items and services allowed or paid by the State.

190. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if not thousands, of separate entities across the State. Relator has no control over or dealings with such entities and has no access to the records in their possession.

191. The Georgia State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

192. By reason of Defendants' acts, the State of Georgia has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

193. Additionally, the Georgia State Government is entitled to the maximum penalty of \$11,000 for each and every violation alleged herein.

Count VII
Illinois Whistleblower Reward and Protection Act
740 Ill. Comp. Stat. §175/3(a)(1)-(3)

194. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 139 above as though fully set forth herein.

195. This is a claim for treble damages and penalties under the Illinois Whistleblower Reward and Protection Act.

196. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to the State for payment or approval.

197. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State to approve and pay such false and fraudulent claims.

198. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related items and services allowed or paid by the State.

199. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if not thousands, of separate entities across the State. Relator has no control over or dealings with such entities and has no access to the records in their possession.

200. The Illinois State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct..

201. By reason of Defendants' acts, the State of Illinois has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

202. Additionally, the Illinois State Government is entitled to the maximum penalty of \$11,000 for each and every violation alleged herein.

Count VIII
Indiana False Claims and Whistleblower Protection Act
Ind. Code Ann. §5-11-5.5-2(b)(1)-(2), (7)

203. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 139 above as though fully set forth herein.

204. This is a claim for treble damages and penalties under the Indiana False Claims and Whistleblower Protection Act.

205. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to the State for payment or approval.

206. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State to approve and pay such false and fraudulent claims.

207. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related

items and services allowed or paid by the State.

208. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if not thousands, of separate entities across the State. Relator has no control over or dealings with such entities and has no access to the records in their possession.

209. The Indiana State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

210. By reason of Defendants' acts, the State of Indiana has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

211. Additionally, the Indiana State Government is entitled to the maximum penalty of \$5,000 for each and every violation alleged herein.

Count IX
Iowa False Claims Law
Iowa Code §§685.2(1)(a) – (c)

212. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 139 above as though fully set forth herein.

213. This is a claim for treble damages and penalties under the Iowa False Claims Law.

214. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to the State for payment or approval.

215. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the

State to approve and pay such false and fraudulent claims.

216. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related items and services allowed or paid by the State.

217. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if not thousands, of separate entities across the State. Relator has no control over or dealings with such entities and has no access to the records in their possession.

218. The Iowa State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

219. By reason of Defendants' acts, the State of Iowa has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

220. Additionally, the Iowa State Government is entitled to the maximum penalty of \$10,000 for each and every violation alleged herein.

Count X
Louisiana Medical Assistance Programs Integrity Law
La. Rev. Stat. §437 et seq.

221. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 139 above as though fully set forth herein.

222. This is a claim for treble damages and penalties under the Louisiana Medical Assistance Programs Integrity Law.

223. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to the State for payment or approval.

224. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State to approve and pay such false and fraudulent claims.

225. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related items and services allowed or paid by the State.

226. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if not thousands, of separate entities across the State. Relator has no control over or dealings with such entities and has no access to the records in their possession.

227. The Louisiana State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

228. By reason of Defendants' acts, the State of Louisiana has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

229. Additionally, the Louisiana State Government is entitled to the maximum penalty of \$10,000 for each and every violation alleged herein.

Count XI
Maryland False Health Claims Act

Md. Code Ann., [Health-General] §2-602(a)(1)-(3)

230. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 139 above as though fully set forth herein.

231. This is a claim for treble damages and penalties under the Maryland False Health Claims Act.

232. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to the State for payment or approval.

233. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State to approve and pay such false and fraudulent claims.

234. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related items and services allowed or paid by the State.

235. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if not thousands, of separate entities across the State. Relator has no control over or dealings with such entities and has no access to the records in their possession.

236. The Maryland State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' illegal conduct.

237. By reason of Defendants' acts, the State of Maryland has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

238. Additionally, the Maryland State Government is entitled to the maximum penalty of \$10,000 for each and every violation alleged herein.

Count XII
Michigan Medicaid False Claims Act
Mich. Comp. Laws. §400.601 et seq.

239. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 139 above as though fully set forth herein.

240. This is a claim for treble damages and penalties under the Michigan Medicaid False Claims Act.

241. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to the State for payment or approval.

242. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State to approve and pay such false and fraudulent claims.

243. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related items and services allowed or paid by the State.

244. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if

not thousands, of separate entities across the State. Relator has no control over or dealings with such entities and has no access to the records in their possession.

245. The Michigan State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

246. By reason of Defendants' acts, the State of Michigan has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

247. Additionally, the Michigan State Government is entitled to the maximum civil penalties for each and every violation alleged herein.

Count XIII
Nevada False Claims Act
Nev. Rev. Stat. Ann. §357.040(1)(a)-(c)

248. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 139 above as though fully set forth herein.

249. This is a claim for treble damages and penalties under the Nevada False Claims Act.

250. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to the State for payment or approval.

251. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State to approve and pay such false and fraudulent claims.

252. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the

physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related items and services allowed or paid by the State.

253. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if not thousands, of separate entities across the State. Relator has no control over or dealings with such entities and has no access to the records in their possession.

254. The Nevada State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

255. By reason of Defendants' acts, the State of Nevada has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

256. Additionally, the Nevada State Government is entitled to the maximum penalty of \$10,000 for each and every violation alleged herein.

Count XIV
New York False Claims Act
N.Y. State Fin. §189(1)(a)-(c)

257. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 139 above as though fully set forth herein.

258. This is a claim for treble damages and penalties under the New York False Claims Act.

259. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to the State for payment or approval.

260. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State to approve and pay such false and fraudulent claims.

261. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related items and services allowed or paid by the State.

262. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if not thousands, of separate entities across the State. Relator has no control over or dealings with such entities and has no access to the records in their possession.

263. The New York State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

264. By reason of Defendants' acts, the State of New York has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

265. Additionally, the New York State Government is entitled the maximum civil penalty of \$12,000 for each and every violation alleged herein.

Count XV
North Carolina False Claims Act
N.C. Gen. Stat. §1-607(a)(1)-(3)

266. Relator realleges and incorporates by reference the allegations contained in

paragraphs 1 through 139 above as though fully set forth herein.

267. This is a claim for treble damages and penalties under the North Carolina Medicaid False Claims Act.

268. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to the State for payment or approval.

269. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State to approve and pay such false and fraudulent claims.

270. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related items and services allowed or paid by the State.

271. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if not thousands, of separate entities across the State. Relator has no control over or dealings with such entities and has no access to the records in their possession.

272. The North Carolina State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' illegal conduct.

273. By reason of Defendants' acts, the State of North Carolina has been damaged, and

continues to be damaged, in substantial amount to be determined at trial.

274. Additionally, the North Carolina State Government is entitled to the maximum penalty of \$11,000 for each and every violation alleged herein.

Count XVI
Oklahoma Medicaid False Claims Act
Okla. Stat. tit. 63 §5053.1(B)(1)-(3)

275. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 139 above as though fully set forth herein.

276. This is a claim for treble damages and penalties under the Oklahoma Medicaid False Claims Act.

277. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to the State for payment or approval.

278. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State to approve and pay such false and fraudulent claims.

279. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related items and services allowed or paid by the State.

280. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if

not thousands, of separate entities across the State. Relator has no control over or dealings with such entities and has no access to the records in their possession.

281. The Oklahoma State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

282. By reason of Defendants' acts, the State of Oklahoma has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

283. Additionally, the Oklahoma State Government is entitled to the maximum civil penalty of \$10,000 for each and every violation alleged herein.

Count XVII

Tennessee False Claims Act and Tennessee Medicaid False Claims Act Tenn. Code Ann. §§4-18-103(a)(1)-(3) and 71-5-182(a)(1)(A)-(C)

284. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 139 above as though fully set forth herein.

285. This is a claim for treble damages and penalties under the Tennessee False Claims Act and Tennessee Medicaid False Claims Act.

286. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to Tennessee and the Tennessee Medicaid Program for payment or approval.

287. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce Tennessee and the Tennessee Medicaid Program to approve and pay such false and fraudulent claims.

288. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related items and services allowed or paid by Tennessee and the Tennessee Medicaid Program.

289. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if not thousands, of separate entities across the State. Relator has no control over or dealings with such entities and has no access to the records in their possession.

290. The Tennessee State Government and the Tennessee Medicaid Program, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continue to pay the claims that would not be paid but for Defendants' unlawful conduct.

291. By reason of Defendants' acts, Tennessee and the Tennessee Medicaid Program have been damaged, and continue to be damaged, in substantial amount to be determined at trial.

292. Additionally, Tennessee and the Tennessee Medicaid Program are entitled to the maximum penalty allowed by Tennessee law for each and every violation alleged herein.

Count XVIII
Texas Medicaid Fraud Prevention Law
Tex. Hum. Res. Code Ann. §36.002

293. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 139 above as though fully set forth herein.

294. This is a claim for treble damages and penalties under the Texas Medicaid Fraud Prevention Law.

295. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to the State for payment or approval.

296. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State to approve and pay such false and fraudulent claims.

297. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related items and services allowed or paid by the State.

298. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if not thousands, of separate entities across the State. Relator has no control over or dealings with such entities and has no access to the records in their possession.

299. The Texas State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

300. By reason of Defendants' acts, the State of Texas has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

301. Additionally, the Texas State Government is entitled to the maximum penalty of \$10,000 for each and every violation alleged herein.

Count XIX
Virginia Fraud Against Taxpayers Act
Va. Code Ann. §8.01-216.3(a)(1)-(3)

302. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 139 above as though fully set forth herein.

303. This is a claim for treble damages and penalties under the Virginia Fraud Against Taxpayers Act.

304. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to the Commonwealth for payment or approval.

305. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the Commonwealth to approve and pay such false and fraudulent claims.

306. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related items and services allowed or paid by the Commonwealth.

307. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if not thousands, of separate entities across the Commonwealth. Relator has no control over or dealings with such entities and has no access to the records in their possession.

308. The Government of the Commonwealth of Virginia, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by

Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

309. By reason of Defendants' acts, the Commonwealth of Virginia has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

310. Additionally, the Government of the Commonwealth of Virginia is entitled to the maximum penalty of \$11,000 for each and every violation alleged herein.

Count XX
Wisconsin False Claims for Medical Assistance Act
Wis. Stat §20.931(2)(a)-(c)

311. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 139 above as though fully set forth herein.

312. This is a claim for treble damages and penalties under the Wisconsin False Claims for Medical Assistance Act.

313. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims for dialysis services and dialysis-related items and services to the State for payment or approval.

314. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State to approve and pay such false and fraudulent claims.

315. By virtue of the acts described above, Defendants have conspired among themselves and with the other persons and entities identified in this Complaint, especially the physicians to whom they sold and from whom they bought dialysis centers, and with whom they entered joint ventures, to get false or fraudulent claims for dialysis services and dialysis-related items and services allowed or paid by the State.

316. Relator cannot at this time identify all of the false claims for payment that were caused by Defendants' conduct. The false or fraudulent claims were presented by hundreds, if not thousands, of separate entities across the State. Relator has no control over or dealings with such entities and has no access to the records in their possession.

317. The Wisconsin State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

318. By reason of Defendants' acts, the State of Wisconsin has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

319. Additionally, the Wisconsin State Government is entitled to the maximum penalty of \$10,000 for each and every violation alleged herein.

Prayer

WHEREFORE, Relator prays for judgment against Defendants as follows:

1. That Defendants cease and desist from violating 31 U.S.C. §3729 et seq., and the counterpart provisions of the Plaintiff State statutes set forth above;
2. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the United States has sustained because of Defendants' actions, plus a civil penalty of not less than \$5,500 and not more than \$11,000 for each violation of 31 U.S.C. §3729;
3. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of California has sustained because of Defendants' actions, plus a civil penalty of \$10,000 for each violation of Cal. Govt. Code §12651(a);

4. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Colorado has sustained because of Defendants' actions, plus a civil penalty of \$10,000 for each violation of Colo. Rev. Stat. §25.5-4-305(1);

5. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Connecticut has sustained because of Defendants' actions, plus a civil penalty of \$10,000 for each violation of Conn. Gen. Stat. §17b-301b;

6. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Florida has sustained because of Defendants' actions, plus a civil penalty of \$11,000 for each violation of Fla. Stat. Ann. §68.082(2);

7. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Georgia has sustained because of Defendants' actions, plus a civil penalty of \$11,000 for each violation of Ga. Code Ann. §49-4-168.1;

8. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Illinois has sustained because of Defendants' actions, plus a civil penalty of \$11,000 for each violation of 740 Ill. Comp. Stat. §175/3(a);

9. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Indiana has sustained because of Defendants' actions, plus a civil penalty of at least \$5,000 for each violation of Ind. Code Ann. §5-11-5.5-2(b);

10. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Iowa has sustained because of Defendants' actions, plus a civil penalty of \$10,000 for each violation of Iowa Code §685.2(1).

11. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Louisiana has sustained because of Defendants' actions, plus a civil penalty of \$10,000 for each violation of La. Rev. Stat. §437 et seq.;

12. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Maryland has sustained because of Defendants' actions, plus a civil penalty of \$10,000 for each violation of Md. Code Ann., [Health-General] §2-602(a);

13. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Michigan has sustained because of Defendants' actions, plus the maximum civil penalties allowed for each violation of Mich. Comp. Laws. §400.601 et seq.;

14. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Nevada has sustained because of Defendants' actions, plus a civil penalty of \$10,000 for each violation of Nev. Rev. Stat. Ann. §357.040(1);

15. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of New York has sustained because of Defendants' actions, plus a civil penalty of \$12,000 for each violation of N.Y. State Fin. §189(1);

16. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of North Carolina has sustained because of Defendants' actions, plus a civil penalty of \$11,000 for each violation of N.C. Gen. Stat. §1-607(a).

17. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Oklahoma has sustained because of Defendants' actions, plus a civil penalty of \$10,000 for each violation of Okla. Stat. tit. 63 §5053.1(B);

18. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Tennessee has sustained because of Defendants' actions, plus the maximum civil penalty allowable for each violation of Tenn. Code Ann. §§4-18-103(a) and 71-5-182(a)(1);

19. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Texas has sustained because of Defendants' actions, plus a civil penalty of \$10,000 for each violation of Tex. Hum. Res. Code Ann. §36.002;

20. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the Commonwealth of Virginia has sustained because of Defendants' actions, plus a civil penalty of \$11,000 for each violation of Va. Code Ann. §8.01-216.3(a);

21. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Wisconsin has sustained because of Defendants' actions, plus a civil penalty of \$10,000 for each violation of Wis. Stat §20.931(2);

22. That Relator be awarded the maximum amount allowed pursuant to §3730(d) of the False Claims Act, and the equivalent provisions of the State statutes set forth above;

23. That Relator be awarded all costs of this action, including attorneys' fees and expenses; and

24. That Relator recover such other relief as the Court deems just and proper.

Demand for Jury Trial

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Relator hereby demands a trial by jury.

Dated: December 23, 2011

Respectfully submitted,

PHILLIPS & COHEN LLP

By: _____ /s/
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jtm@pcsf.com

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Fax: (719) 633-5788

Attorneys for Qui Tam Plaintiff David Barbetta

CERTIFICATE OF SERVICE

I am a citizen of the United States, over the age of 18 and not a party to this action. My business address is 131 Steuart St., Suite 501, San Francisco, CA 94105.

On December 23, 2011, I served the foregoing documents described as:

FIRST AMENDED COMPLAINT

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as set forth below:

Party	Service	Service Method
United States of America	The Honorable Eric H. Holder, Jr. Attorney General of the United States United States Department of Justice 950 Pennsylvania Ave., NW Washington, D.C. 20530-0001	Certified mail, return receipt requested
	John K. Henebery, Esq. U.S. Department of Justice – Civil Division Commercial Litigation Branch Civil Fraud Section 601 D Street N.W., Room 9008 Patrick Henry Building Washington, D.C. 20579	Certified mail, return receipt requested
	J. Chris Larson, AUSA, District of Colorado U.S. Department of Justice 1225 17th Street, Suite 700 Denver, CO 80202	Certified mail, return receipt requested
	Edwin Winstead, AUSA, District of Colorado U.S. Department of Justice 1225 17th Street, Suite 700 Denver, CO 80202	Certified mail, return receipt requested
State of California	Kamala D. Harris, Attorney General State of California Office of the Attorney General POB 944255 Sacramento, CA 94244-2550	Certified mail, return receipt requested

Party	Service	Service Method
State of Colorado	<p>John W. Suthers Office of the Attorney General 1525 Sherman St., 7th floor Denver, CO 80203</p> <p>Colorado Attorney General Medicaid Fraud Control Unit 1525 Sherman St., 2nd Floor Denver, CO 80203</p> <p>First Amended Complaint and Disclosure Statements</p>	<p>Certified mail, return receipt requested</p> <p>Certified mail, return receipt requested</p>
State of Connecticut	<p>Robert B. Teitelman Assistant Attorney General, State of Connecticut 55 Elm Street Hartford, CT 06106-1774</p> <p>First Amended Complaint and Disclosure Statements</p>	<p>Certified mail, return receipt requested</p>
State of Florida	<p>Pam Bondi Florida Attorney General The Capitol, PL 01 Tallahassee, FL 32399-1050</p>	<p>Registered mail, return receipt requested</p>
State of Georgia	<p>Victoria L. Kitzito Assistant Attorney General State Health Care Fraud Control Unit 2100 East Exchange Place Bldg. One, Suite 200 Tucker, Georgia 30084 Tel: (770) 414-3655 ext. 257 Fax: (770) 414-2718</p>	<p>Certified mail, return receipt requested</p>
State of Illinois	<p>Honorable Lisa Madigan Attorney General State of Illinois Attn: Patrick Keenan, Bureau Chief of Medicaid Fraud 100 W. Randolph Street, 13th Fl. Chicago, IL 60601 Tel: 312-814-3796</p>	<p>Certified mail, return receipt requested</p>

Party	Service	Service Method
State of Indiana	<p>Greg Zoeller, Esq. Attorney General State of Indiana Attn: Medicaid Fraud Unit 302 W. Washington Street, IGCS - 5th Fl. Indianapolis, IN 46204 Tel: 317-232-6201</p> <p>David Thomas Inspector General of the State of Indiana 315 West Ohio Street Indianapolis, IN 46202 Tel: 317-232-3850</p>	<p>Certified mail, return receipt requested</p> <p>Certified mail, return receipt requested</p>
State of Iowa	<p>Tom Miller Attorney General of the State of Iowa 1305 E. Walnut Street Des Moines, IA 50319 Phone: 515-281-5164 Fax: 515-281-4209</p> <p>Joshua J. Happe Director, MFCU Medicaid Fraud Control Unit Department of Inspections and Appeals 3rd Floor, Lucas State Office Building 321 E 12th St. Des Moines, IA 50319 Joshua.happe@dia.iowa.gov</p>	<p>Certified mail, return receipt requested</p>
State of Louisiana	<p>James D. "Buddy" Caldwell Attorney General P.O Box 94005 Baton Rouge, LA 70804 Tel: 225-326-6079</p> <p>Alan Levine Secretary, Dept. of Health & Hospitals 628 N. 4th Street P.O. Box 629 Baton Rouge, LA 70802 Tel: 225-342-9500</p>	<p>Certified mail, return receipt requested</p> <p>Certified mail, return receipt requested</p>

Party	Service	Service Method
State of Maryland	Douglas F. Gansler Office of the Attorney General 200 St. Paul Place Baltimore, MD 21202 T: (410) 576-6300 First Amended Complaint and Disclosure Statements	Certified mail, return receipt requested
State of Michigan	Bill Schuette Attorney General State of Michigan G. Mennen Williams Building, 7th Fl. 525 W. Ottawa Street Lansing, MI 48909 Tel: 517-373-1110	Certified mail, return receipt requested
State of Nevada	Attorney General Catherine Cortez Masto Attn: Medicaid and Fraud Unit 100 North Carson Street Carson City, Nevada 89701-4717	Certified mail, return receipt requested
State of New York	Eric T. Schneiderman Office of the Attorney General The Capitol Albany, NY 12224-0341 Tel: (518) 474-7330	Certified mail, return receipt requested
State of North Carolina	F. Edward Kirby, Jr. Assistant Attorney General State of North Carolina Medicaid Fraud Investigations Unit 3824 Barrett Drive, Suite 200 Raleigh, NC 27609 Tel: (919) 881-2320 Fax: (919) 571-4837 First Amended Complaint and Disclosure Statements	Certified mail, return receipt requested
State of Oklahoma	E. Scott Pruitt, Attorney General Attn: Assistant Attorney General Susan Stallings State of Oklahoma 313 NE 21st St. Oklahoma City, OK 73105 Tel: 405-521-3921	Certified mail, return receipt requested

Party	Service	Service Method
State of Tennessee	Robert E. Cooper, Jr. Office of the Attorney General and Reporter State of Tennessee P.O. Box 20207 Nashville, Tennessee 37202-0207 Tel: (615) 741-3491 Fax: (615) 741-2009	Certified mail, return receipt requested
State of Texas	Office of Greg Abbott, Attorney General for the State of Texas Texas Civil Medicaid Fraud Control Unit 300 W. 15th Street, 9th Floor Austin, TX 78701 Tel: 512-463-2100	Registered mail, return receipt requested
Commonwealth of Virginia	Lelia Beck, A.A.G. Lead Attorney Medicaid Fraud Control Unit, Civil Investigation Squad Commonwealth of Virginia Office of the Attorney General 900 East Main Street Richmond, Virginia 23219	Certified mail, return receipt requested
State of Wisconsin	J.B. Van Hollen Attorney General Wisconsin Department of Justice P.O. Box 7857 Madison, WI 53707-7857 Tel: 608-266-1221	Certified mail, return receipt requested

I caused such envelope(s) to be placed in the United States mail, postage fully prepaid, in accordance with the standard business practices of this office, in the city of San Francisco, California. I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 23, 2011, in San Francisco, California.

_____/s/_____
Christine Zengel

INDEX OF EXHIBITS TO THE FIRST AMENDED COMPLAINT

**UNITED STATES OF AMERICA, et al. *ex rel.* DAVID BARBETTA,
Plaintiffs**

v.

**DAVITA, INC. and TOTAL RENAL CARE, INC.,
Defendants**

Case No. 09 cv 02175 WJM-KMT

DESCRIPTION OF DOCUMENT

EXHIBIT

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Exhibit 1

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

FORM 10-K

For the Fiscal Year Ended
December 31, 2010

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

Commission File Number: 1-14106

DAVITA INC.

1551 Wewatta Street
Denver, Colorado 80202
Telephone number (303) 405-2100

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:
Common Stock, \$0.001 par value
Common Stock Purchase Rights

Registered on:
New York Stock Exchange
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 has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

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, 2010, the number of shares of the Registrant's common stock outstanding was approximately 102.6 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 \$6.4 billion.

As of January 31, 2011, the number of shares of the Registrant's common stock outstanding was approximately 96.0 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 \$7.1 billion.

Documents incorporated by reference

Portions of the Registrant's proxy statement for its 2011 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 kidney dialysis services in the United States for patients suffering from chronic kidney failure, also known as end stage renal disease, or ESRD. As of December 31, 2010, we operated or provided administrative services to 1,612 outpatient dialysis centers located in 42 states and the District of Columbia, serving approximately 125,000 patients. We also provide acute inpatient dialysis services in approximately 750 hospitals and related laboratory services. Our dialysis and related lab services business accounts for approximately 94% of our consolidated net operating revenues. Our other ancillary services and strategic initiatives currently account for approximately 6% of our consolidated net operating revenues and relate primarily to our core business of providing kidney dialysis services.

The dialysis industry

The loss of kidney function is normally irreversible. Kidney failure is typically caused by Type I and Type II diabetes, high blood pressure, polycystic kidney disease, long-term autoimmune attack on the kidney and prolonged urinary tract obstruction. 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 a week for the rest of their lives.

According to United States Renal Data System, there were 382,000 ESRD dialysis patients in the United States in 2008 and the underlying ESRD dialysis patient population has grown at an approximate compound rate of 3.8% from 2000 to 2008, the latest period for which such data is available. 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.

Since 1972, the federal government has provided health care coverage for ESRD patients under the Medicare ESRD program regardless of age or financial circumstances. ESRD is the first and only disease state eligible for Medicare coverage both for dialysis and dialysis-related services and for all benefits available under the Medicare program. Under this system, Congress established Medicare rates for dialysis treatments, related supplies, lab tests and medications. Although Medicare reimbursement limits the allowable charge per treatment, it provides industry participants with a relatively predictable and recurring revenue stream for dialysis services provided to patients without commercial insurance. Approximately 89% of our total patients are under government-based programs, with approximately 80% of our patients under Medicare and Medicare-assigned plans.

Prior to January 2011, dialysis providers operating under the Medicare ESRD program received a composite payment rate to cover routine dialysis treatments and certain supplies. There was a separate payment for laboratory testing and pharmaceuticals such as erythropoietin, or EPO, vitamin D analogs and iron supplements

that were not included in the composite payment rate. However, beginning in January 2011, Medicare implemented a new payment system in which all ESRD payments are now made under a single bundled payment rate that provides for an annual inflation adjustment based upon a market basket index, less a productivity improvement factor. The bundled payment rate provides a fixed rate to encompass all goods and services provided during the dialysis treatment, including pharmaceuticals that were historically separately reimbursed to the dialysis providers, such as EPO, vitamin D analogs and iron supplements, irrespective of the level of pharmaceuticals administered or additional services performed. Most lab services that used to be paid directly to laboratories are also included in the new payment bundle.

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 at a freestanding outpatient dialysis center, a hospital-based outpatient center, or at the patient's home. 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 who are healthier and more independent 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 dialysis treatments performed in outpatient dialysis centers 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 and is typically performed at home. The most common methods of peritoneal dialysis are continuous ambulatory peritoneal dialysis, or CAPD, and continuous cycling peritoneal dialysis, or CCPD. Because it does not involve going to an outpatient dialysis center three times a week for treatment, peritoneal dialysis is an alternative to hemodialysis for patients who are healthier, more independent and desire more 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.

- *Kidney transplantation*

Although kidney 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, 2010, we operated or provided administrative services to 1,612 outpatient dialysis centers in the United States that are designed specifically for outpatient hemodialysis. In 2010, we added a net total of 82 outpatient dialysis centers primarily as a result of acquisitions and the opening of new centers, net of center closures and divestitures. This represented a total increase of approximately 5% to our overall network of outpatient dialysis centers.

As a condition of our enrollment in Medicare, 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 dialysis patients who prefer and are able to perform either home-based hemodialysis in their homes or peritoneal dialysis. Home-based hemodialysis services consist of providing equipment and supplies, training, patient monitoring, on-call support services and follow-up assistance. Registered nurses train patients and their families or other caregivers to perform either home-based hemodialysis or peritoneal dialysis.

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. Our total patient turnover averaged approximately 30% per year for the last two years. However, in 2010 the overall number of patients to whom we furnished services increased by approximately 6%, primarily from continued growth within the industry, lower mortality rates and the opening of new centers and acquisitions.

Hospital inpatient hemodialysis services

We provide hospital inpatient hemodialysis services, excluding physician services, to patients in approximately 750 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 as discussed above. In 2010, hospital inpatient hemodialysis services accounted for approximately 4% of our total dialysis treatments.

ESRD laboratory services

We own two separately incorporated, licensed, clinical laboratories specializing in ESRD patient testing. These specialized laboratories provide routine laboratory tests for dialysis and other physician-prescribed laboratory tests for ESRD patients. Our laboratories provide these tests predominantly for our network of 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 medical conditions. Our laboratories utilize information systems which provide information to our dialysis centers regarding critical outcome indicators.

Management services

We currently operate or provide management and administrative services to 32 outpatient dialysis centers in which we either own a minority equity investment or are wholly-owned by third parties. These services are provided pursuant to 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 6% of our total consolidated net operating revenues, consist of the following:

- *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 by facilitating increased patient compliance and to provide our patients a convenient way to fill their prescription needs by delivering the prescriptions to the center where they are treated. Revenues are recognized as prescriptions are filled and shipped to patients.
- *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 health care needs. Revenues are recognized in the period when infusion therapy services are provided.
- *Disease management services.* VillageHealth provides advanced care management services to health plans and government agencies for employees/members diagnosed with Chronic Kidney Disease (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.
- *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.
- *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.

- *Physician services.* DaVita Nephrology Partners offers practice management and administrative services to physicians who specialize in nephrology under 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.

Quality care

We employ 180 clinical service specialists. The primary focus of this group is assuring and facilitating processes that aim to achieve superior clinical outcomes at our centers.

Our physician leadership in the Office of the Chief Medical Officer (OCMO) includes eight senior nephrologists, led by our Chief Medical Officer, with a variety of academic, clinical practice, and clinical research backgrounds. Our Physician Council is an advisory body to senior management, composed of nine physicians with extensive experience in clinical practice in addition to the members of OCMO and five Group Medical Directors.

Sources of revenue—concentrations and risks

Our dialysis and related lab services business revenues represent approximately 94% of our consolidated net operating revenues for the year ended December 31, 2010, with the balance of our revenues from ancillary services and strategic initiatives. Dialysis and related lab services revenues are derived primarily from our core business of providing kidney dialysis services, the administration of pharmaceuticals, related laboratory services and to a lesser extent 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 and Medicare-assigned plans, Medicaid and Medicaid-assigned plans and commercial insurance plans.

The following table summarizes our dialysis and related lab services revenues by source for the year ended December 31, 2010:

	<u>Revenue percentages</u>
Medicare and Medicare-assigned plans	57%
Medicaid and Medicaid-assigned plans	6%
Other government-based programs	3%
Total government-based programs	66%
Commercial (including hospital inpatient dialysis services)	34%
Total dialysis and related lab services revenues	<u>100%</u>

The following table summarizes our dialysis and related lab services revenues by modality for the year ended December 31, 2010:

	<u>Revenue percentages</u>
Outpatient hemodialysis centers	83%
Peritoneal dialysis and home-based hemodialysis	12%
Hospital inpatient hemodialysis	5%
Total dialysis and related lab services revenues	<u>100%</u>

Medicare revenue

Under the Medicare ESRD program, payment rates for dialysis are established by the U.S. Congress. Prior to January 2011, the Medicare composite rate set by the Centers for Medicare and Medicaid Services, or CMS, paid dialysis providers for services furnished to Medicare beneficiaries in two parts: (1) the composite payment which included a base payment, adjusted for case-mix which linked payments more closely with illness severity and regional geography differences, and a drug add-on payment, which was updated annually to account for changes in drug prices and utilization and (2) separately billable reimbursement for certain drugs. Thus, dialysis providers received 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 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 were generally paid at average sale price, or ASP, plus 6% based upon prices set by Medicare. The Medicare payment rates that were paid to us, including payments for separately billable drugs, were not sufficient to cover our average cost of providing a dialysis treatment.

ESRD patients receiving dialysis services 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 a three month 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 commercial insurance plan rate to the Medicare payment rate.

Medicare pays 80% of the amount set by the Medicare system for each covered treatment. 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. However, we are able to recover some portion of this unpaid patient balance from Medicare through an established cost reporting process by identifying these Medicare bad debts on each center's Medicare cost report.

The Medicare composite payment rates set by Congress for dialysis treatments that were in effect for 2010 were between \$151 and \$169 per treatment, with an average rate of \$161 per treatment. Historically, Medicare payment rates for dialysis services have not been routinely increased to compensate for the impact of inflation, which negatively impacted our margins as patient care costs continued to rise. The Medicare Improvements for Patients and Providers Act for 2008, or MIPPA, provided dialysis providers with an increase in the composite rate of 1% that went into effect on January 1, 2009 and an additional 1% that went into effect on January 1, 2010. This legislation also changed the way Medicare pays for dialysis services beginning in January 2011, as further described below. The new payment system also provides for an annual inflation adjustment based upon a market basket index, less a productivity adjustment, beginning in 2012. Also beginning in 2012, the rule provides for up to a 2% annual payment withhold that can be earned back by facilities that meet certain defined clinical performance standards.

The new payment system reimburses providers based on a single bundled or average payment for each Medicare treatment provided. The new bundled payment amount is designed to cover all dialysis services that were historically included in the composite rate and all separately billable ESRD services such as pharmaceuticals and laboratory tests. This new bundled payment rate is adjusted for certain patient characteristics, a geographic wage

index and certain other factors. The initial 2011 bundled payment rate includes reductions of 2% and 3.1%, respectively, to conform to the provisions of MIPPA and to establish budget neutrality. Further, there is a 5.94% reduction tied to an expanded list of case mix adjusters which can be earned back based upon the presence of these certain patient characteristics and co-morbidities at the time of treatment. There are also other provisions which may impact payment including an outlier pool and a low volume facility adjustment. Historically, services that were separately billable accounted for approximately 30% of our total dialysis and related lab revenues. Now the dialysis providers are at risk for variations in pharmaceutical utilization since reimbursement set at a fixed average reimbursement rate. With regard to the expanded list of case-mix adjusters, these are difficult or, in some cases, have been impossible for our dialysis clinics to document and track, which could result in a reduction in the reimbursement amounts that we would otherwise be entitled to receive.

We are attempting to reduce our operating costs to minimize the overall negative financial impact from the reductions in reimbursement for services we provide to Medicare patients. However, certain operating expenditures, such as labor and supply costs, are subject to inflation, and without a compensating inflation-based increase in the new bundled payment rate system, could significantly impact our operating results.

We participated in two Medicare demonstration programs through a contract with CMS in 2010. One program was an ESRD demonstration program that started in January 2006 and terminated in December 2010. This program was converted into a full service health care plan for ESRD patients in 2011, which is referred to as a Medicare Advantage ESRD Special Needs Plan that works with CMS to provide ESRD patients full service health care. The revenue in 2010 was capitated for all medical services required by enrollees in the program. We are still at risk for all medical costs of the program in excess of the capitation payments. The other program is a CKD/ESRD demonstration program which started in November 2008 and will continue for three years. We are paid a management fee for program enrollees relating to CKD and ESRD disease states. 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 enrolled in the Medicaid programs in the states in which we conduct our business.

Commercial revenues

Before a patient becomes eligible to have Medicare as their primary payor for dialysis services, a patient's commercial insurance plan, if any, is responsible for payment of such dialysis services. 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. Payment methods from commercial payors include a single lump-sum per treatment, referred to as bundled rates, and in some cases separate payments for treatments and pharmaceuticals, if used as part of the treatment, referred to as fee for service rates. Commercial payment rates are typically the result of negotiations between us and insurers or third-party administrators. Our out-of-network payment rates are on average higher than in-network payment rates. In 2010, we entered into several new commercial contracts with certain commercial payors that will primarily pay us a single bundled payment rate for all dialysis services provided to patients covered by the commercial insurance plan. However, some of the contracts will pay us for certain other services and pharmaceuticals in addition to the bundled payment. These contracts contain annual escalators and effectively eliminate all payments for out-of-network patients. 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. In addition, if there

are sustained or increased job losses in the United States as a result of current economic conditions, or depending upon changes to the healthcare regulatory system, we could experience a decrease in the number of patients covered under commercial plans.

Approximately 34% of our dialysis and related lab services revenues and approximately 11% of our patients were associated with commercial payors for the year ended December 31, 2010. Less than 1% of our dialysis and related lab services revenues 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, 2010.

Revenue from EPO and other pharmaceuticals

Approximately 26% of our total dialysis and related lab services revenues for the year ended December 31, 2010 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. However, as described above, the majority of these pharmaceuticals will no longer be separately billable as a result of the new Medicare single bundled payment rate system effective in January 2011 as well as some of our new commercial contracts that implemented a single bundled payment rate.

EPO is an erythropoiesis stimulating agent, or ESA, 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 was separately billable under the Medicare payment program through 2010, accounted for approximately 18% of our dialysis and related lab services revenues for the year ended December 31, 2010.

Furthermore, EPO is produced by a single manufacturer, Amgen, who can unilaterally increase its price for EPO at any time during the term of our agreement with them. Any interruption of supply or product cost increases could adversely affect our operations. In 2010, we experienced an increase in the cost of EPO of approximately 2%. In December 2010, we entered into a new Dialysis Organization Agreement (the "Agreement") with Amgen USA Inc., a wholly owned subsidiary of Amgen Inc. The Agreement sets forth the terms under which we and certain of our affiliates will purchase EPO. The Agreement, among other things, provides for discount pricing and rebates for EPO. Some of the rebates are subject to various qualification requirements based on a variety of factors including process improvement targets, patient outcome targets and data submission. The term of the Agreement commenced January 1, 2011 and ends June 30, 2011.

There continues to be significant media discussion and government scrutiny regarding anemia management practices in the United States. In late 2006, the U.S. House of Representatives Ways and Means Committee held a hearing on the issue of the utilization of ESAs, which include EPO, and in 2007, the FDA required changes to the labeling of EPO and darbepoetin alfa, or Aranesp[®] to include a black box warning, the FDA's strongest form of warning label. An FDA advisory panel on ESA use met in October 2010, which meeting was similar to the prior meeting held in 2007 in that there was significant discussion and concern about the safety of ESAs. The panel concluded it would not recommend a change in ESA labeling. However, the FDA is not bound by the panel's recommendation. In addition, in June 2010, CMS opened a National Coverage Analysis (NCA) for ESAs. Further, in January 2011, CMS convened a meeting of the Medicare Evidence Development and Coverage Advisory Committee (MEDCAC) to evaluate evidence for the pending NCA. CMS expects to complete its decision memo in March 2011 and issue final guidance in June 2011. The foregoing congressional and agency activities and related actions could result in further restrictions on the utilization and reimbursement for ESAs. Commercial payors have also increasingly examined their administration policies for EPO and, in some cases, have modified those policies. Inclusion of EPO in the Medicare bundled payment rate, as well as in a bundled payment rate for several of our commercial payors, is expected to mitigate the effect of lower utilization of EPO. However, further changes in labeling of EPO and other pharmaceuticals in a manner that alters physician practice patterns or accepted clinical practices, changes in private and governmental payment criteria, including the introduction of EPO administration policies or the conversion to alternate types of administration of EPO or other pharmaceuticals that result in further decreases in utilization or reimbursement for EPO and other pharmaceuticals, could have a material adverse effect on our operating results.

Physician relationships

An ESRD patient generally seeks treatment at an outpatient dialysis center near his or her home where 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 our dialysis operations. Over 3,900 nephrologists currently refer patients to our outpatient dialysis centers. As is typical in the dialysis industry, one or a few physicians, including the outpatient dialysis center's medical director, usually account for all or a significant portion of an outpatient dialysis center's patient base. If a significant number of physicians, including an outpatient dialysis center's medical directors, were to cease referring patients to our outpatient dialysis centers, our business could be adversely affected.

Participation in the Medicare ESRD program requires that dialysis services at an outpatient dialysis center be under the general supervision of a medical director who is a licensed physician. We have engaged physicians or groups of physicians to serve as medical directors for each of our outpatient dialysis centers. At some outpatient dialysis 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 1,400 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 contracts generally include covenants not to compete. Also, when we acquire an outpatient dialysis center from one or more physicians or where one or more physicians own minority interests in our outpatient dialysis centers, these physicians have agreed to refrain from owning interests in other competing outpatient dialysis 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 outpatient dialysis centers, but do not prohibit the physicians from referring patients to any outpatient dialysis center, including competing centers. Many of these agreements not to compete continue for a period of time beyond expiration of the corresponding medical director agreements, although some expire at the same time as the medical director agreement. Occasionally, we experience competition from a new outpatient 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 Law violations, submission of false claims, civil or criminal liability based on violations of law or other failures to meet regulatory requirements;

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- 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;
 - Mandated changes to our practices or procedures 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 have a material adverse impact on 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, referred to as 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 the anti-kickback statute 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 this law 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. Court decisions have also held that the statute is violated whenever one of the purposes of remuneration is to induce referrals.

Exhibit 2

Web Link: <http://oig.hhs.gov/fraud/docs/safeharborregulations/acquisition122292.htm>

December 22, 1992

Mr. T. J. Sullivan

Technical Assistant (Health Care Industries)

Office of the Associate Chief Counsel

(Employee Benefits and Exempt Organizations)

Internal Revenue Service

Washington, D.C. 20224

Dear Mr. Sullivan:

You have informally inquired about our views concerning the application of the Medicare and Medicaid anti-kickback statute, 42 U.S.C. 1320a-7b(b), to certain types of situations involving the acquisition of physician practices. In the situations in question, the physician practices would be acquired either by a hospital or by another entity which would also acquire one or more hospitals (and potentially other health care providers as well). The physicians from these practices would continue to treat patients and be affiliated (through an employment relationship or otherwise) with the hospital or other entity which acquired their practices. The acquisition of the physician practices could arise through a number of different methods or arrangements and the resulting or ensuing relationships or affiliations could vary. However, the end result in each case would be the common ownership or control of both hospitals and physician practices by a single entity. We are responding to your inquiry in general terms and not in reference to any specific fact pattern(s).

Typically, in the case of the acquisition of a physician practice by a hospital or other entity, there is a large, up front payment to the physician, often of many hundreds of thousands of dollars or more. This sum is asserted to be payment for the purchase of the assets of the practice. There are also payments made to the physician subsequent to the sale of the practice where the physician becomes employed by the hospital or entity or otherwise enters into a contract to provide services to patients. These payments are asserted to be compensation for services rendered to patients by the physician.

As you know, the anti-kickback statute provides for penalties against anyone who knowingly and willfully solicits, receives, offers or pays remuneration, in cash or in kind, to induce or in return for:

A. referring an individual to a person for the furnishing or arranging for the furnishing of any

item or service payable under the Medicare or Medicaid programs, or

B. purchasing, leasing or ordering or arranging for or recommending purchasing, leasing, or ordering any good, facility, service or item payable under the Medicare or Medicaid programs.

Persons who violate the anti-kickback statute are subject to criminal penalties and/or exclusion from participation in the Medicare and Medicaid programs. The anti-kickback statute sets forth certain specific exceptions to the general prohibition against remuneration, and specifically authorizes this Department to promulgate, by regulation, additional payment practices (known as "safe harbors") which will be immune from prosecution. The Department published final "safe harbor" regulations on July 29, 1991 (42 C.F.R. 1001.952, 56 Fed. Reg. 35,952) setting forth eleven regulatory exceptions to the anti-kickback statute. Among the safe harbors included in the regulations were provisions relating to employees and sale of practitioner practices. Additional safe harbor provisions relating to "managed care" entities were published as final regulations (with comment period) on November 5, 1992 (57 Fed. Reg. 52,723).

We have significant concerns under the anti-kickback statute about the type of physician practice acquisitions described in your inquiry to us. Frequently, hospitals seek to purchase physician practices as a means to retain existing referrals or to attract new referrals of patients to the hospital. Such purchases implicate the anti-kickback statute because the remuneration paid for the practice can constitute illegal remuneration to induce the referral of business reimbursed by the Medicare or Medicaid programs.(1)

We believe the same concerns raised by hospital purchases of physician practices could also arise where another entity (such as a foundation) purchases a physician practice, when such foundation also owns or operates a hospital which benefits from referrals from those physicians.

In particular, we are concerned that the remuneration paid in connection with or as a result of the acquisition of a physician's practice could serve to interfere with the physician's subsequent judgment of what is the most appropriate care for a patient. The remuneration could result in the delivery of inappropriate care to Medicare or Medicaid beneficiaries by inducing the physician to utilize the affiliated hospital rather than another hospital or less costly facility which may provide better or more appropriate care. It could also have the effect of inflating costs to the Medicare or Medicaid programs by causing physicians to overuse inappropriately the services of a particular hospital (or other affiliated provider). This higher cost could occur directly because of the higher rates of that hospital or the ordering of unnecessary services or indirectly as a result of lessened competition in the marketplace. Finally, these arrangements could significantly interfere with a beneficiary's freedom of choice of providers. All these considerations are the very abuses that the antikickback statute was designed to prevent. We recently addressed these same types of possible abuses in an Office of Inspector General Special Fraud Alert entitled "Hospital Incentives to Physicians". A copy of that Fraud Alert is enclosed for your information.

The following are specific aspects of physician practice acquisition or subsequent activities that may implicate or result in violations of the anti-kickback statute. Our comments focus primarily on two broad issue categories: (1) the total amount paid for the physician practice and the nature

and type of items for which the physician receives payment; and (2) the amount and manner in which the physician is subsequently compensated for providing services to patients.(2)

Under the anti-kickback statute, either of the above categories of payment could constitute illegal remuneration. This is because under the anti-kickback statute, the statute is violated if "one purpose" of the payment is to induce the referral of future Medicare or Medicaid program business. *United States v. Greber*, 760 F.2d 68, 69 (3rd Cir. 1985) cert. denied, 474 U.S. 988 (1985); *United States v. Kats*, 871 F.2d 105, 108 (9th Cir. 1989). Thus, it is necessary to scrutinize the payments (including the surrounding facts and circumstances) to determine the purpose for which they have been made. As part of this undertaking, it is necessary to consider the amounts paid for the practice or as compensation to determine whether they reasonably reflect the fair market value of the practice or the services rendered, in order to determine whether such items in reality constitute remuneration for referrals. Moreover, to the extent that a payment exceeds the fair market value of the practice or the value of the services rendered, it can be inferred that the excess amount paid over fair market value is intended as payment for the referral of program-related business. *United States v. Lipkis*, 770 F.2d 1447 (9th Cir. 1985).

When considering the question of fair market value, we would note that the traditional or common methods of economic valuation do not comport with the prescriptions of the anti-kickback statute. Items ordinarily considered in determining the fair market value may be expressly barred by the anti-kickback statute's prohibition against payments for referrals. Merely because another buyer may be willing to pay a particular price is not sufficient to render the price paid to be fair market value. The fact that a buyer in a position to benefit from referrals is willing to pay a particular price may only be a reflection of the value of the referral stream that is likely to result from the purchase.(3)

Accordingly, when attempting to assess the fair market value (as that term is used in an anti-kickback analysis) attributable to a physician's practice, it may be necessary to exclude from consideration any amounts which reflect, facilitate or otherwise relate to the continuing treatment of the former practice's patients. This would be because any such items only have value with respect to the on-going flow of business to the practice. It is doubtful whether this value may be paid by a party who could expect to benefit from referrals from that ongoing practice.(4) Such amounts could be considered as payments for referrals. Thus, any amount paid in excess of the fair market value of the hard assets of a physician practice would be open to question. Similarly, in determining the fair market value of services rendered by employee or contract physicians, it may be necessary to exclude from consideration any amounts which reflect or relate to past or future referrals or any amounts which reflect or are affected by the expectation or guarantee of a certain volume of business (by either the physician or the hospital). Specific items that we believe would raise a question as to whether payment was being made for the value of a referral stream would include, among other things:

-- payment for goodwill,

-- payment for value of ongoing business unit,

- payment for covenants not to compete,
- payment for exclusive dealing agreements,
- payment for patient lists, or
- payment for patient records.

Payments for the above types of assets or items are questionable where, as is the case here, there is a continuing relationship between the buyer and the seller and the buyer relies (at least in part) on referrals from the seller.

We believe a very revealing inquiry would be to compare the financial welfare of the physicians involved before and after the acquisition. (One can expect to find projections on this subject among materials given to prospective physician participants in these arrangements.) If the economic position of these physicians is expected to significantly improve as a result of the acquisition, it is likely that a purpose of the acquisition is to offer remuneration for the referrals which these physicians can make to the buyer. Another revealing inquiry would be to compare referral patterns before and after the acquisition, specifically, whether the sellers become increasingly "loyal" to the buyer. (Obviously, this inquiry would only occur if the acquisition took place, but it is a potential topic to study in the future to the extent acquisitions occur and are subject to audit or investigation by the Internal Revenue Service.)

In sum, these arrangements raise grave questions of compliance with the anti-kickback statute. We believe that many of these arrangements are merely sophisticated disguises to share the profits of business at a hospital with referring physicians, in order to induce the physicians to steer referrals to the hospital.

We hope this letter has provided helpful information in response to your informal inquiry.

Sincerely,

/s/

D. McCarty Thornton

Associate General Counsel

Inspector General Division

Enclosure

FOOTNOTES:

1. Since tax exempt hospitals are generally required to participate in the Medicare and-Medicaid

programs as a condition of obtaining or maintaining their tax exempt status, the antikickback statute is necessarily a significant issue to be addressed by them.

2. We would also note that while the anti-kickback statute contains a statutory exemption for payments made to employees by an employer, the exemption does not cover any and all such payments. Specifically, the statute exempts only payments to employees which are for "the provision of covered items or services". Accordingly, since referrals do not represent covered items or services, payments to employees which are for the purpose of compensating such employees for the referral of patients would likely not be covered by the employee exemption.

3. This deviation from the normal "economic" model was made expressly clear in the safe harbor provisions. For purposes of determining the value of space or equipment rentals, "fair market value" is specifically defined to exclude the "additional value one party . . . would attribute to the property [equipment] as a result of its proximity or convenience to sources of referrals or business otherwise generated". 42 C.F.R. 1001.952(b) and (c), 56 Fed. Reg. 35971-35973, 35985.

4. We note that these physician practice acquisitions do not fall within the parameters of the existing safe harbor provisions on the sale of practitioner practices. In the final safe harbor regulations, we expressly declined to expand the scope of the safe harbor to cover purchases of physician practices by hospitals or other types of entities or to situations where the seller remains in a continuing position to make referrals or influence referrals to the buyer because of our concerns that many of such purchases were in fact merely attempts to provide remuneration in return for a future stream of referrals. See Preamble to the final safe harbor regulations, 56 Fed. Reg. at 35975. We also attempted to deal with arrangements which have the potential to lock in a referral stream in the safe harbor provisions dealing with joint ventures. See 42 C.F.R. 1001.952(a), 56 Fed. Reg. 35,984-85.

Exhibit 3



[We redact certain identifying information and certain potentially privileged, confidential, or proprietary information associated with the individual or entity, unless otherwise approved by the requestor.]

Issued: July 22, 2009

Posted: July 29, 2009

To: ATTACHED DISTRIBUTION LIST

Re: OIG Advisory Opinion No. 09-09

Ladies and Gentlemen:

We are writing in response to your request for an advisory opinion regarding a proposed joint venture involving ownership of an ambulatory surgery center by a hospital and physicians (the "Proposed Arrangement"). Specifically, you have inquired whether the Proposed Arrangement would constitute grounds for the imposition of sanctions under the exclusion authority at section 1128(b)(7) of the Social Security Act (the "Act"), or the civil monetary penalty provision at section 1128A(a)(7) of the Act, as those sections relate to the commission of acts described in section 1128B(b) of the Act, the Federal anti-kickback statute.

You have certified that all of the information provided in your request, including all supplemental submissions, is true and correct and constitutes a complete description of the relevant facts and agreements among the parties.

In issuing this opinion, we have relied solely on the facts and information presented to us. We have not undertaken an independent investigation of such information. This opinion is limited to the facts presented. If material facts have not been disclosed or have been misrepresented, this opinion is without force and effect.

Based on the facts certified in your request for an advisory opinion and supplemental submissions, we conclude that while the Proposed Arrangement could potentially generate prohibited remuneration under the anti-kickback statute, if the requisite intent to induce or reward referrals of Federal health care program business were present, the Office of

Inspector General (“OIG”) would not impose administrative sanctions on [names redacted] (the “Requestors”) under sections 1128(b)(7) or 1128A(a)(7) of the Act (as those sections relate to the commission of acts described in section 1128B(b) of the Act) in connection with the Proposed Arrangement. This opinion is limited to the Proposed Arrangement and, therefore, we express no opinion about any ancillary agreements or arrangements disclosed or referenced in your request letter or supplemental submissions.

This opinion may not be relied on by any persons other than the Requestors of this opinion, and is further qualified as set out in Part IV below and in 42 C.F.R. Part 1008.

I. FACTUAL BACKGROUND

[Name redacted] owns and operates a general acute care hospital, [name redacted], in [city redacted] [state redacted]. (For purposes of this opinion, both of these entities will be designated as the “Hospital.”)

[Name redacted] (the “Surgeon LLC”) is a limited liability company organized under the laws of the State of [state redacted], owned by seven orthopedic surgeons (the “Surgeon Investors”) who are members of a single physician group practice. The Requestors have certified that each Surgeon Investor’s ownership in the Surgeon LLC is proportional to his or her capital investment and that each Surgeon Investor received at least one-third of his or her medical practice income for the previous fiscal year or previous 12-month period from the performance of procedures payable by Medicare when performed in an ambulatory surgery center (“ASC”).

The Surgeon Investors (through the Surgeon LLC) and the Hospital desire to enter into a joint venture to own and operate an ASC with two operating rooms in a medical office building (the “Building”) owned by the Hospital and located on its campus.

The Requestors have certified that, under state law, the development of an ASC requires obtaining a certificate of need (“CON”), except in certain circumstances. They have devised the Proposed Arrangement, by which they plan to develop a single two-operating room ASC by first developing two separate and adjacent ASCs, each consisting of one operating room and neither requiring a CON, and subsequently merging the two into a single ASC.¹

In furtherance of this goal, the Surgeon LLC has developed an outpatient operating room in the Building and is operating it as a Medicare-certified ASC (the “Surgeon ASC”). The

¹ We express no opinion with respect to whether the Proposed Arrangement complies with state law.

Requestors have certified that the Surgeon ASC occupies space in the Building pursuant to a lease agreement that complies with the requirements of the space rental safe harbor at 42 C.F.R. § 1001.952(b).

Under the Proposed Arrangement, the Hospital will develop a single hospital operating room (the “OR”) in space within the Building adjacent to the Surgeon ASC. Upon receipt of necessary regulatory approvals, it will then contribute the assets used to operate the OR to [name redacted] (the “Company”), after which the OR will be operated as a Medicare-certified ASC (the “Hospital ASC”). The Hospital currently is the sole member of the Company, which at the present time has no tangible assets.

The Requestors have certified that, upon receipt of necessary regulatory approvals, the Surgeon LLC will purchase 50 percent of the membership units in the Company. The purchase price will consist, at least in part, of the Surgeon ASC, which the Surgeon LLC will contribute to the Company. Prior to this contribution, appraisals will be conducted to determine the fair market value of the Company (whose sole asset at that time will be the Hospital ASC) and the fair market value of the Surgeon ASC. The Requestors have certified that the appraisals will not take into account the volume or value of referrals made or business otherwise generated among the parties to the transaction, including past or anticipated referrals to the ASCs, but will be based solely on the fair market value of the tangible assets of the Company and the Surgeon ASC, which will consist for the most part of equipment, furnishings, and supplies. If the fair market value of the tangible assets of the Surgeon ASC is determined to be less than the fair market value of the tangible assets of the Company, the Surgeon LLC will make a cash contribution to the Company in the amount of the difference. If the fair market value of the tangible assets of the Surgeon ASC is determined to be more than the fair market value of the tangible assets of the Company, the Hospital will make a cash contribution to the Company in the amount of the difference. At the time of this transaction, the lease for the space occupied by the Surgeon ASC will be terminated, and the Hospital (as lessor) and the Company (as lessee) will execute a lease for the combined space. The Requestors have certified that this lease will comply with the requirements of the safe harbor for space rental at 42 C.F.R. § 1001.952(b).

At the conclusion of this transaction, the Hospital and the Surgeon LLC will jointly own the Company, which in turn will own and operate a two-operating room ASC (the “Hospital-Surgeon ASC”). The Requestors have certified that this ASC will comply with all the requirements of the safe harbor for hospital/physicians-owned ASCs at 42 C.F.R. § 1001.952(r)(4), except for the requirements that (1) the hospital not be in a position to make or influence referrals directly or indirectly to any investor or the ASC (see 42 C.F.R. § 1001.952(r)(4)(viii)); (2) physician investors in the ASC invest directly or through a group practice composed of physicians who meet the requirements of paragraphs (r)(1), (r)(2) or (r)(3) of 42 C.F.R. § 1001.952(r) (see 42 C.F.R. § 1001.952(r)(4)); and (3) the amount of

payment to an investor in return for the investment be directly proportional to the amount of the capital investment (including the fair market value of any pre-operational services rendered) of that investor (see 42 C.F.R. § 1001.952(r)(4)(iii)).

The Requestors have certified that any physicians employed by the Hospital or its affiliates will not make referrals to the Hospital-Surgeon ASC; the Hospital will not take any actions to require or encourage its medical staff to refer patients to the Hospital-Surgeon ASC or the Surgeon Investors; neither the Hospital nor the Company will track referrals to the Hospital-Surgeon ASC or the Surgeon Investors by the Hospital or members of its medical staff; any compensation the Hospital pays its medical staff will be at fair market value and will not take into account any referrals its medical staff may make to the Hospital-Surgeon ASC or to its Surgeon Investors; and the Hospital will inform its medical staff annually of these measures. In addition, the Hospital will continue to operate its own facilities for outpatient surgery.

II. LEGAL ANALYSIS

A. Law

The anti-kickback statute makes it a criminal offense knowingly and willfully to offer, pay, solicit, or receive any remuneration to induce or reward referrals of items or services reimbursable by a Federal health care program. See section 1128B(b) of the Act. Where remuneration is paid purposefully to induce or reward referrals of items or services payable by a Federal health care program, the anti-kickback statute is violated. By its terms, the statute ascribes criminal liability to parties on both sides of an impermissible “kickback” transaction. For purposes of the anti-kickback statute, “remuneration” includes the transfer of anything of value, directly or indirectly, overtly or covertly, in cash or in kind.

The statute has been interpreted to cover any arrangement where one purpose of the remuneration was to obtain money for the referral of services or to induce further referrals. United States v. Kats, 871 F.2d 105 (9th Cir. 1989); United States v. Greber, 760 F.2d 68 (3d Cir.), cert. denied, 474 U.S. 988 (1985). Violation of the statute constitutes a felony punishable by a maximum fine of \$25,000, imprisonment up to five years, or both. Conviction will also lead to automatic exclusion from Federal health care programs, including Medicare and Medicaid. Where a party commits an act described in section 1128B(b) of the Act, the OIG may initiate administrative proceedings to impose civil monetary penalties on such party under section 1128A(a)(7) of the Act. The OIG may also initiate administrative proceedings to exclude such party from the Federal health care programs under section 1128(b)(7) of the Act.

The Department of Health and Human Services has promulgated safe harbor regulations that define practices that are not subject to the anti-kickback statute because such practices would be unlikely to result in fraud or abuse. See 42 C.F.R. § 1001.952. The safe harbors set forth specific conditions that, if met, assure entities involved of not being prosecuted or sanctioned for the arrangement qualifying for the safe harbor. However, safe harbor protection is afforded only to those arrangements that precisely meet all of the conditions set forth in the safe harbor.

The safe harbor for investment income from physician/hospital-owned ASCs, 42 C.F.R. § 1001.952(r)(4), is potentially applicable to the Proposed Arrangement.

B. Analysis

Although joint ventures by physicians and hospitals are susceptible to fraud and abuse, the OIG recognizes that hospitals may be at a competitive disadvantage when they compete with ASCs owned by physicians, who principally control referrals. Thus, the OIG promulgated a safe harbor for investment income from ASCs jointly-owned by physicians and hospitals that meet certain conditions, 42 C.F.R. § 1001.952(r)(4). Among the ownership arrangements potentially protected by this safe harbor are ASCs jointly owned by hospitals and general surgeons or surgeons engaged in the same surgical specialty. Because all the Surgeon Investors in the ASC are engaged in the same surgical specialty (orthopedics), the safe harbor is potentially applicable to the Proposed Arrangement.

The Requestors acknowledge that the Proposed Arrangement does not qualify for protection by this safe harbor, however, for the reasons noted below. Because no safe harbor would protect the investment income from the Hospital-Surgeon ASC, we must determine whether, given all the relevant facts, the Proposed Arrangement poses a minimal risk under the anti-kickback statute.

First, safe harbor protection requires that the Hospital not be in a position to make or influence referrals directly or indirectly to any investor or the ASC. 42 C.F.R. § 1001.952(r)(4)(viii). Here, the Hospital is in a position to make or influence referrals to the ASC and to the Surgeon Investors. However, the Proposed Arrangement includes certain commitments limiting the ability of the Hospital to direct or influence such referrals. The Requestors have certified that employees of the Hospital will not refer patients to the Hospital-Surgeon ASC, and the Hospital will refrain from any actions to require or encourage any members of its medical staff to refer patients to the ASC or to its Surgeon Investors. The Hospital will not track referrals, if any, by its medical staff to the Hospital-Surgeon ASC or to its Surgeon Investors; any compensation the Hospital pays its medical staff will be at fair market value and will not take into account any referrals to the Hospital-Surgeon ASC or to its Surgeon Investors; and the Hospital will inform its medical staff

annually of these measures. Also, the Hospital will continue to operate its own facilities for outpatient surgery. In light of these safeguards, the ability of the Hospital to direct or influence referrals to the Hospital-Surgeon ASC or to its Surgeon Investors is significantly constrained.

Second, safe harbor protection requires physician investors to hold their investment interests in an ASC either directly or through a group practice composed entirely of physicians who are qualified to invest directly. See 42 C.F.R. § 1001.952(r)(4). Each of the Surgeon Investors is qualified to invest in the ASC directly without destroying its eligibility for safe harbor protection.² In the Proposed Arrangement, they would invest in the Hospital-Surgeon ASC indirectly, through the Surgeon LLC, which would own 50 percent of the Company. The Company, in turn, would own and operate the Hospital-Surgeon ASC. We have previously expressed concern that intermediate investment entities could be used to redirect revenues to reward referrals or otherwise vitiate the safeguards provided by direct investment, including distributions of profits in proportion to capital investment. However, in this case, the use of a “pass-through” entity does not substantially increase the risk of fraud or abuse. Each Surgeon Investor’s ownership in the Surgeon LLC is proportional to his or her capital investment, and the individual Surgeon Investors will receive a return on their investments that is the same as if they had invested in the Hospital-Surgeon ASC directly.

Third, safe harbor protection requires that the amount of payment to an investor in return for the investment be directly proportional to the amount of capital invested by that investor. 42 C.F.R. § 1001.952(r)(4)(iii). This requirement helps ensure that referral sources are not rewarded for their referrals through investment returns that are disproportionate to the capital they invested. In this case, the Surgeon Investors, through the Surgeon LLC, have developed the Surgeon ASC, and the Hospital is to develop the Hospital ASC. The Requestors propose to value the respective contributions to the jointly-owned Hospital-Surgeon ASC by obtaining appraisals of the tangible assets of the ASCs at the time of their merger, with either party (the Surgeon LLC or the Hospital) contributing cash, if necessary, to equalize the value of their respective contributions. The Requesters have certified that the appraisals will not take into account the volume or value of referrals made or business otherwise generated among the parties to the transaction, including past or anticipated referrals to the ASCs, but will be based solely on the fair market value of tangible assets.³

² The Surgeon Investors are qualified to invest in the ASC directly because each of them practices a single surgical specialty (orthopedic surgery) and receives at least one-third of his or her medical practice income from performing procedures that are payable by Medicare when performed in an ASC. See 42 C.F.R. § 1001.952(r)(1).

³ We are not authorized to opine on whether fair market value shall be, or was, paid or received for any goods, services, or property. See section 1128D(b)(3) of the Act.

Depending upon the amounts originally invested in the separate ASCs and the value of the tangible assets at the time of the planned merger, it is possible that the Hospital and the Surgeon LLC (and through the Surgeon LLC, the Surgeon Investors) will receive different returns on their investments.⁴

Given the facts presented here, however, we conclude that the risk of abuse resulting from any differences in return on capital is low. There are a number of factors that might influence the degree of such differences, including amounts paid for, and depreciation of, tangible assets. Nothing in the facts presented to us, however, suggests that any differences in return on capital might be related to the investors' past or anticipated referrals.⁵

For these reasons, taken together, we conclude that, while the Proposed Arrangement would result in income to investors that would not be protected by any safe harbor, it involves minimal risk of fraud or abuse.

Therefore, we rely on the certification of the Requestors with regard to whether the valuations described will represent fair market value, without taking into account the volume and value of referrals.

⁴ In the particular circumstances of the Proposed Arrangement, where the Hospital and the Surgeon Investors developed two separate ASCs as part of a plan to form a single, jointly-owned Hospital-Surgeon ASC, we consider each investor's investment to be the amount that the investor contributes to develop a separate ASC, plus any additional cash that the investor contributes at the time the two ASCs are merged. We would measure each investor's return on investment accordingly.

⁵ Our conclusion might be different if the valuation of the respective contributions of the investors included intangible assets. For example, given the circumstances of the Proposed Arrangement, we might be concerned if the valuation were based on a cash flow analysis of the Surgeon ASC as a going concern. Because the Surgeon Investors are referral sources for the Surgeon ASC, a cash flow-based valuation of that business potentially would include the value of the Surgeon Investors' referrals over the time that their ASC was in existence prior to the merger with the Hospital ASC. The result might be that the Surgeon Investors would receive a greater return on their capital investment than the Hospital, which could reflect the value of their referrals to the Surgeon ASC. (In these circumstances, the Hospital ASC, being newly developed at the time of the proposed merger, may have little or no cash flow record, but we might be similarly concerned with a valuation based on a cash flow analysis of a hospital-owned ASC for which the hospital could influence referrals.) We do not assert that a cash flow-based valuation or other valuation involving intangible assets would necessarily result in a violation of the anti-kickback statute; the existence of a violation depends upon all the facts and circumstances of a particular case.

III. CONCLUSION

Based on the facts certified in your request for an advisory opinion and supplemental submissions, we conclude that while the Proposed Arrangement could potentially generate prohibited remuneration under the anti-kickback statute, if the requisite intent to induce or reward referrals of Federal health care program business were present, the OIG would not impose administrative sanctions on the Requestors under sections 1128(b)(7) or 1128A(a)(7) of the Act (as those sections relate to the commission of acts described in section 1128B(b) of the Act) in connection with the Proposed Arrangement. This opinion is limited to the Proposed Arrangement and, therefore, we express no opinion about any ancillary agreements or arrangements disclosed or referenced in your request letter or supplemental submissions.

IV. LIMITATIONS

The limitations applicable to this opinion include the following:

- This advisory opinion is issued only to the Requestors of this opinion. This advisory opinion has no application to, and cannot be relied upon by, any other individual or entity.
- This advisory opinion may not be introduced into evidence in any matter involving an entity or individual that is not a requestor of this opinion.
- This advisory opinion is applicable only to the statutory provisions specifically noted above. No opinion is expressed or implied herein with respect to the application of any other Federal, state, or local statute, rule, regulation, ordinance, or other law that may be applicable to the Proposed Arrangement, including, without limitation, the physician self-referral law, section 1877 of the Act.
- This advisory opinion will not bind or obligate any agency other than the U.S. Department of Health and Human Services.
- This advisory opinion is limited in scope to the specific arrangement described in this letter and has no applicability to other arrangements, even those which appear similar in nature or scope.
- No opinion is expressed herein regarding the liability of any party under the False Claims Act or other legal authorities for any improper billing, claims submission, cost reporting, or related conduct.

This opinion is also subject to any additional limitations set forth at 42 C.F.R. Part 1008.

The OIG will not proceed against the Requestors with respect to any action that is part of the Proposed Arrangement taken in good faith reliance upon this advisory opinion, as long as all of the material facts have been fully, completely, and accurately presented, and the Proposed Arrangement in practice comports with the information provided. The OIG reserves the right to reconsider the questions and issues raised in this advisory opinion and, where the public interest requires, to rescind, modify, or terminate this opinion. In the event that this advisory opinion is modified or terminated, the OIG will not proceed against the Requestors with respect to any action taken in good faith reliance upon this advisory opinion, where all of the relevant facts were fully, completely, and accurately presented and where such action was promptly discontinued upon notification of the modification or termination of this advisory opinion. An advisory opinion may be rescinded only if the relevant and material facts have not been fully, completely, and accurately disclosed to the OIG.

Sincerely,

/Lewis Morris/

Lewis Morris
Chief Counsel to the Inspector General

Exhibit 4

October 6, 1997

[Names and addresses of Requestors have been redacted]

Re: Advisory Opinion No. 97-5

Dear Sirs:

We are writing in response to your request for an advisory opinion on behalf of Radiology Group X and Hospital System A. The request asks whether an outpatient radiology imaging center joint venture owned by a medical group specializing in radiology and a hospital care provider (i) generates prohibited remuneration within the meaning of the anti-kickback statute, Section 1128B of the Social Security Act ("Act"); (ii) constitutes grounds for the imposition of an exclusion under Section 1128(b)(7) of the Act (as it applies to kickbacks); (iii) constitutes grounds for criminal sanctions under Section 1128B(b) of the Act; and/or (iv) satisfies the criteria set out in Section 1128B(b)(3) of the Act or associated regulations, 42 C.F.R. § 1001.952.

Radiology Group X and Hospital System A have certified that all of the information provided in the request, including all supplementary letters, is true and correct, and constitutes a complete description of the relevant facts and agreements among the parties regarding the joint venture ("Proposed Arrangement"). Radiology Group X and Hospital System A have also certified that upon our approval, they will undertake to effectuate the Proposed Arrangement.

In issuing this opinion, we have relied solely on the facts and information presented to us. We have not undertaken an independent investigation of such information. This opinion is limited to the facts presented. If material facts have not been disclosed, this opinion is without force and effect.

Based on the information provided and subject to certain conditions described below, we have determined that the Proposed Arrangement does not meet any of the statutory or regulatory safe harbors set out in Section 1128B(b)(3) of the Act or 42 C.F.R. § 1001.952. However, we also conclude that the Proposed Arrangement would not generate prohibited remuneration within the meaning of the anti-kickback statute, Section

1128B of the Act, and therefore, does not constitute grounds for the imposition of either an exclusion under Section 1128(b)(7) of the Act (as it applies to kickbacks) or criminal sanctions under Section 1128B(b) of the Act.

This opinion may not be relied on by any person or entity other than the addressees and is further qualified as set out in Part III below and in 42 C.F.R. Part 1008.

I. FACTUAL BACKGROUND

Radiology Group X and Hospital System A have made the following representations with respect to the Proposed Arrangement. Radiology Group X and Hospital System A are collectively the "Requestors".

A. Parties to the Proposed Arrangement.

Hospital System A. Hospital System A operates three hospitals in State C: Hospital 1, Hospital 2, and Hospital 3. Hospital 1, located in State C, is licensed for 351 beds and is the largest hospital in the several counties surrounding City D. Hospital 1 has a full range of radiological equipment at its facility, including a CT scanner, ultrasound equipment, fluoroscopic radiographic equipment, nuclear radiographic equipment, and magnetic resonance imaging ("MRI") equipment. Hospital 1 will continue to operate its radiology department after the Proposed Arrangement is implemented.

Hospital System A employs three physicians directly or through its subsidiary organizations. These physicians will not make referrals to the Proposed Arrangement's joint venture imaging center, nor will any such referrals be accepted if made.

Radiology Group X. Radiology Group X is a medical group specializing in radiology. It is a State C professional corporation owned and controlled by five radiologists. Dr. Y, serves as the President of Radiology Group X.

The shareholders of Radiology Group X are also the members of Radiology Group X's affiliate, Company Z. Ownership and control interests in Radiology Group X and Company Z are identical. Company Z is a newly-formed State C limited liability company and one of the members of the Proposed Arrangement's joint venture company, Imaging Center [defined below].

Current Relationship Between Radiology Group X and Hospital 1. Radiology Group X and Hospital 1 have represented that they have an informal, unwritten arrangement whereby Radiology Group X provides professional radiology services to the hospital, while hospital employees provide the technical services. The hospital owns all of the radiological equipment and is responsible for employing qualified technicians. As part of

this arrangement, Radiology Group X's president, Dr. Y, serves as Hospital 1's Director of the Department of Radiology. His duties are set forth in the hospital's Medical and Dental Staff By-Laws. In addition, Hospital 1 provides Radiology Group X with space in its facility to perform radiologic interpretations.¹

While there is no written agreement, the hospital has certified that the fair market value of the space used by Radiology Group X is substantially equal to the fair market value for compensation of Dr. Y's duties as the Director of the Department of Radiology. Further, the arrangements whereby Radiology Group X and Dr. Y provide services to Hospital 1 and Hospital 1 provides Radiology Group X with space in its facility are separate from, and not dependent on, the terms and conditions of the Proposed Arrangement.

B. Proposed Arrangement.

Radiology Group X, through its affiliate Company Z, and Hospital System A have proposed to enter into a joint venture to establish an outpatient radiology imaging center ("Imaging Center"). The Imaging Center will be located in the Village of E, at the western edge of City D. The Imaging Center will offer a full range of state-of-the-art imaging techniques, including X-ray equipment, fluoroscope equipment, a superconducting open MRI system, a computerized tomography scanner, and an ultrasound system.

The Imaging Center will be owned and operated by a State C limited liability company, Company B. The members of Company B will be Company Z and Hospital System A. Company Z and Hospital System A will make capital contributions of \$204,000 and \$196,000, respectively. In return, each member will receive voting and distribution rights proportional to its investment. Additional capital contributions will be apportioned to Company Z and Hospital System A based upon their respective ownership interests.²

¹ Radiology Group X does not have any non-hospital based office space.

² If either member of Company B is unable or unwilling to make any part of an additional capital contribution, the other member has a right to make up the difference, treat such amount as either an additional capital contribution or as a loan, and adjust the

The Imaging Center will be staffed by employees hired by Company B. Radiology Group X radiologists will be the exclusive providers of professional services to the Imaging Center. The president of Radiology Group X, or his designee, will be in charge of supervising and administering all aspects of the clinical services rendered at the Imaging Center, including quality assurance. The Radiology Group X radiologists will not be employees of the Imaging Center, but will enter into a service provider agreement with Company B. Under the service agreement, Radiology Group X will not receive any compensation from the Imaging Center. Radiology Group X will bill patients and third-party payers, including Medicare and Medicaid, for the professional component of radiological services directly. The Imaging Center will bill separately its technical component to patients and third-party payers.

II. LEGAL ANALYSIS

The anti-kickback statute makes it a criminal offense knowingly and willfully to offer, pay, solicit or receive any remuneration to induce referrals of items or services reimbursed by Federal health care programs. 42 U.S.C. § 1320a-7b(b). Where remuneration is paid purposefully in exchange for referrals of items or services paid for by a Federal health care program, the kickback statute is violated. By its terms, the statute ascribes criminal liability to parties on both sides of an impermissible “kickback” transaction.

The statute has been interpreted to cover any arrangement where one purpose of the remuneration is to obtain money for the referral of services or to induce further referrals. United States v. Kats, 871 F.2d 105 (9th Cir. 1989); United States v. Greber, 760 F.2d 68 (3d Cir.), cert. denied, 476 U.S. 988 (1985). Violations of the statute constitute a felony punishable by a maximum fine of \$25,000, imprisonment up to five years or both. Conviction will also lead to automatic exclusion from Federal health care programs including Medicare and Medicaid.

The Office of Inspector General may also initiate an administrative proceeding to exclude an individual from Federal health care programs for fraud, kickbacks and other prohibited activities. Section 1128(b)(7) of the Act. Because both the criminal and administrative

proportional percentages of ownership accordingly. For purposes of this opinion, we have assumed that any loan would be at fair market value.

sanctions related to the Proposed Arrangement are based on the anti-kickback statute, the analysis is the same under either provision.

Health care joint ventures in which investors are also sources of referrals or suppliers of items or services to the joint venture raise many questions under the anti-kickback statute.

In 1989, the Office of Inspector General issued a "Special Fraud Alert" specifically discussing joint venture arrangements that may violate the anti-kickback statute.³ In general, joint ventures between radiologists and health care providers in a position to order imaging services may be suspect, because distributions from the joint ventures may be disguised remuneration paid in return for referrals. Like any kickback scheme, these arrangements can lead to overutilization of such services, increased costs for Federal health care programs, corruption of professional judgment, and unfair competition.

A. The Proposed Joint Venture Does Not Meet the Safe Harbor For Investment Interests in Small Entities.

In 1991, the Department of Health and Human Services ("Department") published safe harbor regulations which define practices that are not subject to the anti-kickback statute because such arrangements would be unlikely to result in fraud or abuse. Failure to comply with a safe harbor provision does not make an arrangement per se illegal. Rather, the safe harbors set forth specific conditions that, if fully met, would assure the entities involved of not being prosecuted or sanctioned for the arrangement qualifying for the safe harbor. The only safe harbor regulation potentially available to the Proposed Arrangement addresses investment interests in small entities. See 42 C.F.R. § 1001.952(a)(2).⁴

The safe harbor for investments in small entities has eight elements, each of which must be satisfied in order for the arrangement to qualify for the exception. The eight elements address three areas of concern in abusive joint ventures: (i) how investors are selected and retained; (ii) the nature of the business structure; and (iii) the financing and profit distributions. The eight elements are:

³ See Special Fraud Alert, "Joint Venture Arrangements" (OIG-89-4), reprinted in 59 Fed. Reg. 65373 (December 19, 1994).

⁴ The Requestors had suggested that the "shared risk" statutory exception to the anti-kickback statute added by Section 216 of the Health Insurance Portability and Accountability Act, Pub. Law No. 104-191 (Aug. 21, 1996), potentially applied. That provision, however, applies only to contractual arrangements where a person supplying items or services is at risk for the cost or utilization of such items or services and is obligated to provide them, as in some managed care contracts.

- no more than forty percent of the investment interests may be held by investors who are in a position to make or influence referrals, furnish items or services, or generate business (“Interested Investors”);
- interests offered to passive investors who are Interested Investors cannot be made on terms different from those offered to other investors;
- the terms on which an investment is offered to Interested Investors cannot take into account any previous or expected volume of referrals, services furnished, or amount of business generated from such investors;
- there is no requirement that a passive investor make referrals to, or otherwise generate business for, the entity as a condition of remaining an investor;
- the entity cannot market or furnish the items or services differently to passive investors and non-investors;
- no more than forty percent of the gross revenue of the entity may come from Interested Investors;
- the entity cannot loan or guarantee funds to an Interested Investor if the loan or guarantee is used to obtain the investment interest; and
- an investor’s return on investment must be directly proportional to the amount of capital investment of that investor.

Strict compliance with all elements is required. See 56 Fed. Reg. 35952, 35954 (July 29, 1991).

The Proposed Arrangement fails to meet at least one of the eight elements. More than 40% of the investment interest is owned by persons who furnish items or services to the new venture; Radiology Group X owns 51% of the entity and will provide the professional services to the venture. Accordingly, the Proposed Arrangement does not meet the only relevant safe harbor.

B. The Proposed Arrangement Will Not Result in Prohibited Remuneration.

Even though the Proposed Arrangement does not fall within a safe harbor, it does not necessarily violate the anti-kickback statute. With respect to joint ventures, the major concern is that the profit distributions to investors in the joint venture, who are also referral sources to the joint venture, may potentially represent remuneration for those referrals. A related concern is that, where the investing parties have a referral relationship wholly apart from the joint venture, distributions from the joint venture could potentially represent remuneration to one party for referrals to the other party based on those independent relationships. Accordingly, all aspects of all relationships between the parties must be examined.

1. There Is No Prohibited Remuneration For Referrals To The Imaging Center.

Our initial inquiry is whether the distributions from the joint venture may be “disguised” remuneration for referrals by the investors to the joint venture. Based upon the information and representations provided, we find that neither Radiology Group X nor Hospital System A will be able to generate referrals to the joint venture.

A threshold issue is the proper characterization of Hospital System A’s role in relationship to the joint venture. In many instances, hospitals are capable of influencing, and do influence, referrals to other health care providers, such as through discharge planning with respect to post-discharge care. In addition, hospitals are in a position to influence the flow of radiology work performed at the hospital, because the hospital controls to whom radiologic interpretations are referred. See Financial Arrangements Between Hospitals and Hospital-Based Physicians, OEI-09-89-00330, 1991. In this instance, however, and subject to the conditions set out below, we do not believe that the Hospital System A hospitals will be able to generate referrals to the Imaging Center.

First, Hospital System A has represented that its employed physicians will make no referrals to the Imaging Center, and the Imaging Center will not accept any referrals from those physicians. Second, Hospital System A has agreed that it will take no actions, either overt or covert, financial or otherwise, to induce its medical staff (i.e., any physician with admitting or staff privileges) to use the Imaging Center. Third, Hospital System A has agreed that it will inform the medical staff of the preceding agreement. Fourth, physician referrals to the Imaging Center will not be tracked by Hospital System A, its hospitals, Company Z, or Radiology Group X. Fifth, Hospital System A hospitals will continue to operate and use their own radiology units. In these circumstances, referrals from physicians with admitting or staff privileges at the Hospital System A hospitals would not be attributable to Hospital System A.

Moreover, the Radiology Group X radiologists are also unlikely to be able to generate an appreciable number of referrals to the Imaging Center. In general, radiologists do not order the radiological tests they perform; such tests are ordered by a patient’s attending

physician. Although there may be situations in which a radiologist can recommend additional testing to the attending physician during the course of a consultation and, as a practical matter, indirectly generate some additional business, those tests must be approved by the patient's attending physician.⁵ In these limited circumstances -- the recommendation of additional testing by a radiologist to an attending physician with whom the radiologist has no financial arrangements and pursuant to a bona fide medical consultation -- we conclude that a Radiology Group X radiologist's recommendation is not prohibited under the anti-kickback statute.⁶

In sum, since neither Radiology Group X nor Hospital System A will be in a position to generate or influence an appreciable number of referrals to the Imaging Center, the

⁵ See 61 Fed. Reg. 59490, 59497 (November 22, 1996) (with respect to when Medicare will cover diagnostic tests, the Health Care Financing Administration has stated, "we believe that the physician interpreting the diagnostic tests has an obligation to discuss any changes in or additions to the original order with the patient's physician.").

⁶ Radiology Group X radiologists receive no remuneration from patients' attending physicians, and none of the attending physicians which refer to Radiology Group X have any financial relationships with Radiology Group X.

distributions of any profits would not constitute illegal remuneration in exchange for referrals.

2. There Is No Prohibited Remuneration For Referrals Outside Of The Joint Venture.

Radiology Group X derives a substantial amount of its revenues from its position as the exclusive provider of professional radiology services for Hospital 1.⁷ This raises the possibility that the joint venture may be a vehicle by which Radiology Group X may indirectly reward Hospital System A for revenues Radiology Group X receives as a result of its arrangement with Hospital 1.⁸

In determining whether the joint venture may be a vehicle for illegally remunerating one investor for referrals to another investor, we examine initially whether the party making the referrals receives a disproportionate return on its investment compared to the return on the investment of the party receiving the referrals. Any excess or disproportionate return on the investment may be remuneration for referrals. Based on the facts and circumstances as represented by Radiology Group X and Hospital System A, both parties have made substantial financial investments in the venture, and control of the venture and

⁷ Radiology Group X radiologists are not in a position to make referrals to the Hospital System A hospitals for the same reasons that they cannot make appreciable referrals to the Imaging Center. Accordingly, the potential profit distributions from the Imaging Center to the Radiology Group X radiologists would not represent disguised remuneration for any possible referrals to Hospital System A hospitals.

⁸ Specific problems with financial arrangements between hospital-based physicians, such as radiologists, and hospitals were discussed in a 1991 Management Advisory Report entitled Financial Arrangements Between Hospitals and Hospital-Based Physicians, OEI-09-89-00330 (1991).

distribution of profits will be in direct proportion to such investments. Thus, both parties' return on investment is commensurate with their undertakings and would not appear to include any "unearned" remuneration to Hospital 1 attributable to its arrangements with Radiology Group X. Accordingly, any profit distributions from the Proposed Arrangement would not appear to represent compensation to Hospital System A or Hospital 1 for their referrals to Radiology Group X.

Moreover, based on the representations by Radiology Group X and Hospital System A that the value of the premises and equipment provided to Radiology Group X are substantially equal to the value of Dr. Y's services to Hospital 1, we conclude that any profit distribution from the Imaging Center will not represent illegal remuneration for the use of space and equipment at Hospital 1.⁹

However, even in situations where each party's return is proportionate with its investment, the mere opportunity to invest (and consequently receive profit distributions) may in certain circumstances constitute illegal remuneration if offered in exchange for past or future referrals. Such situations may include arrangements where one or several investors in a joint venture control a sufficiently large stream of referrals to make the venture's financial success highly likely, or where one investor has an established track record with similar ventures or the financial investment required is so small that the investors have little or no real risk. By contrast, there are no such indicia that the Proposed Arrangement will generate any profits for its investors, since neither party is in a position to influence appreciable referrals to the joint venture nor has successfully operated a freestanding imaging center before. In light of the substantial financial investment being made by Hospital System A, we find no evidence that the mere opportunity to participate as an investor in the Imaging Center constitutes illegal remuneration to Hospital System A.

III. CONCLUSION

For the above reasons, we have determined that the Proposed Arrangement does not contain any prohibited remuneration within the meaning of the anti-kickback statute,

⁹ We are not, however, making any independent finding as to the legality of the current arrangement between Radiology Group X and Hospital 1.

1128B of the Social Security Act ("Act"), and consequently does not constitute grounds for the imposition of either an exclusion under section 1128(b)(7) of the Act (as it applies to kickbacks) or criminal sanction under 1128B(b) of the Act.

IV. LIMITATIONS

The limitations applicable to this opinion include the following:

- This advisory opinion is issued only to the Radiology Group X and Hospital System A, which are the Requestors of this opinion. This advisory opinion has no application, and cannot be relied upon, by any other individual or entity.
- This advisory opinion may not be introduced into evidence in any matter involving an entity or individual that is not a Requestor to this opinion.
- This advisory opinion is applicable only to the statutory provisions specifically noted above. No opinion is herein expressed or implied with respect to the application of any other Federal, state, or local statute, rule, regulation, ordinance, or other law that may be applicable to the Proposed Arrangement, including any laws relating to insurance or insurance contracts.
- This advisory opinion will not bind or obligate any agency other than the U.S. Department of Health and Human Services.
- This advisory opinion is prospective only. It has no application to conduct which precedes the date of this opinion.
- This advisory opinion does not make any determination as to whether any amounts paid by one party to another are representative of fair market value.
- This advisory opinion is limited in scope to the specific arrangement described in this letter and has no applicability to other arrangements, even those which appear similar in nature or scope.

This opinion is also subject to any additional limitations set forth at 42 C.F.R. Part 1008.

The OIG will not proceed against the Requestors with respect to any action taken in good faith reliance upon this advisory opinion as long as all of the material facts have been fully, completely, and accurately presented, and the arrangement in practice comports with the information provided. The OIG reserves the right to reconsider the questions

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and issues raised in this advisory opinion and, where the public interest requires, modify or terminate this opinion. In the event that this advisory opinion is modified or terminated, the OIG will not proceed against the Requestors with respect to any action taken in good faith reliance upon this advisory opinion, where all of the relevant facts were fully, completely, and accurately presented and where such action was promptly discontinued upon notification of the modification or termination of this advisory opinion.

Sincerely,

/S/

D. McCarty Thornton
Chief Counsel to the Inspector General

Exhibit 5



MEDICARE ENROLLMENT APPLICATION

**Clinics/Group Practices
and Certain Other Suppliers**

CMS-855B

SEE PAGE 1 TO DETERMINE IF YOU ARE COMPLETING THE CORRECT APPLICATION.

SEE PAGE 2 FOR INFORMATION ON WHERE TO MAIL THIS APPLICATION.

SEE PAGE 34 TO FIND A LIST OF THE SUPPORTING DOCUMENTATION THAT MUST BE SUBMITTED WITH THIS APPLICATION.



SECTION 15: CERTIFICATION STATEMENT

An **AUTHORIZED OFFICIAL** means an appointed official (for example, chief executive officer, chief financial officer, general partner, chairman of the board, or direct owner) to whom the organization has granted the legal authority to enroll it in the Medicare program, to make changes or updates to the organization's status in the Medicare program, and to commit the organization to fully abide by the statutes, regulations, and program instructions of the Medicare program.

A **DELEGATED OFFICIAL** means an individual who is delegated by an authorized official the authority to report changes and updates to the supplier's enrollment record. A delegated official must be an individual with an "ownership or control interest" in (as that term is defined in Section 1124(a)(3) of the Social Security Act), or be a W-2 managing employee of, the supplier.

Delegated officials may not delegate their authority to any other individual. Only an authorized official may delegate the authority to make changes and/or updates to the supplier's Medicare status. Even when delegated officials are reported in this application, an authorized official retains the authority to make any such changes and/or updates by providing his or her printed name, signature, and date of signature as required in Section 15B.

NOTE: Authorized officials and delegated officials must be reported in Section 6, either on this application or on a previous application to this same Medicare fee-for-service contractor. **If this is the first time an authorized and/or delegated official has been reported on the CMS-855B, you must complete Section 6 for that individual.**

By his/her signature(s), an authorized official binds the supplier to all of the requirements listed in the Certification Statement and acknowledges that the supplier may be denied entry to or revoked from the Medicare program if any requirements are not met. All signatures must be original and in ink. Faxed, photocopied, or stamped signatures will not be accepted.

Only an authorized official has the authority to sign (1) the initial enrollment application on behalf of the supplier or (2) the enrollment application that must be submitted as part of the periodic revalidation process. A delegated official does not have this authority.

By signing this application, an authorized official agrees to immediately notify the Medicare fee-for-service contractor if any information furnished on the application is not true, correct, or complete. In addition, an authorized official, by his/her signature, agrees to notify the Medicare fee-for-service contractor of any future changes to the information contained in this form, after the supplier is enrolled in Medicare, in accordance with the timeframes established in 42 C.F.R. 424.520(b). (IDTF changes of information must be reported in accordance with 42 C.F.R. 410.33.)

The supplier can have as many authorized officials as it wants. If the supplier has more than two authorized officials, it should copy and complete this section as needed.

**EACH AUTHORIZED AND DELEGATED OFFICIAL MUST HAVE
AND DISCLOSE HIS/HER SOCIAL SECURITY NUMBER.**

SECTION 15: CERTIFICATION STATEMENT (Continued)

A. ADDITIONAL REQUIREMENTS FOR MEDICARE ENROLLMENT

These are additional requirements that the supplier must meet and maintain in order to bill the Medicare program. Read these requirements carefully. By signing, the supplier is attesting to having read the requirements and understanding them.

By his/her signature(s), the authorized official(s) named below and the delegated official(s) named in Section 16 agree to adhere to the following requirements stated in this Certification Statement:

1. I authorize the Medicare contractor to verify the information contained herein. I agree to notify the Medicare contractor of any future changes to the information contained in this application in accordance with the timeframes established in 42 C.F.R. § 424.516. I understand that any change in the business structure of this supplier may require the submission of a new application.
2. I have read and understand the Penalties for Falsifying Information, as printed in this application. I understand that any deliberate omission, misrepresentation, or falsification of any information contained in this application or contained in any communication supplying information to Medicare, or any deliberate alteration of any text on this application form, may be punished by criminal, civil, or administrative penalties including, but not limited to, the denial or revocation of Medicare billing privileges, and/or the imposition of fines, civil damages, and/or imprisonment.
3. I agree to abide by the Medicare laws, regulations and program instructions that apply to this supplier. The Medicare laws, regulations, and program instructions are available through the Medicare contractor. I understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations, and program instructions (including, but not limited to, the Federal anti-kickback statute and the Stark law), and on the supplier's compliance with all applicable conditions of participation in Medicare.
4. Neither this supplier, nor any five percent or greater owner, partner, officer, director, managing employee, authorized official, or delegated official thereof is currently sanctioned, suspended, debarred, or excluded by the Medicare or State Health Care Program, e.g., Medicaid program, or any other Federal program, or is otherwise prohibited from supplying services to Medicare or other Federal program beneficiaries.
5. I agree that any existing or future overpayment made to the supplier by the Medicare program may be recouped by Medicare through the withholding of future payments.
6. I will not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare, and I will not submit claims with deliberate ignorance or reckless disregard of their truth or falsity.
7. I authorize any national accrediting body whose standards are recognized by the Secretary as meeting the Medicare program participation requirements, to release to any authorized representative, employee, or agent of the Centers for Medicare & Medicaid Services (CMS) a copy of my most recent accreditation survey, together with any information related to the survey that CMS may require (including corrective action plans).

SECTION 15: CERTIFICATION STATEMENT (Continued)

B. 1ST AUTHORIZED OFFICIAL SIGNATURE

I have read the contents of this application. My signature legally and financially binds this supplier to the laws, regulations, and program instructions of the Medicare program. By my signature, I certify that the information contained herein is true, correct, and complete and I authorize the Medicare fee-for-service contractor to verify this information. If I become aware that any information in this application is not true, correct, or complete, I agree to notify the Medicare fee-for-service contractor of this fact immediately.

If you are changing, adding, or deleting information, check the applicable box, furnish the effective date, and complete the appropriate fields in this section.

CHECK ONE	<input type="checkbox"/> CHANGE	<input type="checkbox"/> ADD	<input type="checkbox"/> DELETE
DATE (mm/dd/yyyy)			

Authorized Official's Information and Signature

First Name	Middle Initial	Last Name	Suffix (e.g., Jr., Sr.)
Telephone Number			Title/Position
Authorized Official Signature (First, Middle, Last Name, Jr., Sr., M.D., D.O., etc.)			Date Signed (mm/dd/yyyy)

(blue ink preferred)

C. 2ND AUTHORIZED OFFICIAL SIGNATURE

I have read the contents of this application. My signature legally and financially binds this supplier to the laws, regulations, and program instructions of the Medicare program. By my signature, I certify that the information contained herein is true, correct, and complete and I authorize the Medicare fee-for-service contractor to verify this information. If I become aware that any information in this application is not true, correct, or complete, I agree to notify the Medicare fee-for-service contractor of this fact immediately.

If you are changing, adding, or deleting information, check the applicable box, furnish the effective date, and complete the appropriate fields in this section.

CHECK ONE	<input type="checkbox"/> CHANGE	<input type="checkbox"/> ADD	<input type="checkbox"/> DELETE
DATE (mm/dd/yyyy)			

Authorized Official's Information and Signature

First Name	Middle Initial	Last Name	Suffix (e.g., Jr., Sr.)
Telephone Number			Title/Position
Authorized Official Signature (First, Middle, Last Name, Jr., Sr., M.D., D.O., etc.)			Date Signed (mm/dd/yyyy)

All signatures must be original and signed in ink (blue ink preferred). Applications with signatures deemed not original will not be processed. Stamped, faxed or copied signatures will not be accepted.

UB-04 NOTICE: THE SUBMITTER OF THIS FORM UNDERSTANDS THAT MISREPRESENTATION OR FALSIFICATION OF ESSENTIAL INFORMATION AS REQUESTED BY THIS FORM, MAY SERVE AS THE BASIS FOR CIVIL MONETARY PENALTIES AND ASSESSMENTS AND MAY UPON CONVICTION INCLUDE FINES AND/OR IMPRISONMENT UNDER FEDERAL AND/OR STATE LAW(S).

Submission of this claim constitutes certification that the billing information as shown on the face hereof is true, accurate and complete. That the submitter did not knowingly or recklessly disregard or misrepresent or conceal material facts. The following certifications or verifications apply where pertinent to this Bill:

1. If third party benefits are indicated, the appropriate assignments by the insured /beneficiary and signature of the patient or parent or a legal guardian covering authorization to release information are on file. Determinations as to the release of medical and financial information should be guided by the patient or the patient's legal representative.
2. If patient occupied a private room or required private nursing for medical necessity, any required certifications are on file.
3. Physician's certifications and re-certifications, if required by contract or Federal regulations, are on file.
4. For Religious Non-Medical facilities, verifications and if necessary re-certifications of the patient's need for services are on file.
5. Signature of patient or his representative on certifications, authorization to release information, and payment request, as required by Federal Law and Regulations (42 USC 1935f, 42 CFR 424.36, 10 USC 1071 through 1086, 32 CFR 199) and any other applicable contract regulations, is on file.
6. The provider of care submitter acknowledges that the bill is in conformance with the Civil Rights Act of 1964 as amended. Records adequately describing services will be maintained and necessary information will be furnished to such governmental agencies as required by applicable law.
7. For Medicare Purposes: If the patient has indicated that other health insurance or a state medical assistance agency will pay part of his/her medical expenses and he/she wants information about his/her claim released to them upon request, necessary authorization is on file. The patient's signature on the provider's request to bill Medicare medical and non-medical information, including employment status, and whether the person has employer group health insurance which is responsible to pay for the services for which this Medicare claim is made.
8. For Medicaid purposes: The submitter understands that because payment and satisfaction of this claim will be from Federal and State funds, any false statements, documents, or concealment of a material fact are subject to prosecution under applicable Federal or State Laws.

9. For TRICARE Purposes:

- (a) The information on the face of this claim is true, accurate and complete to the best of the submitter's knowledge and belief, and services were medically and appropriate for the health of the patient;
- (b) The patient has represented that by a reported residential address outside a military medical treatment facility catchment area he or she does not live within the catchment area of a U.S. Public Health Service medical facility, or if the patient resides within a catchment area of such a facility, a copy of Non-Availability Statement (DD Form 1251) is on file, or the physician has certified to a medical emergency in any instance where a copy of a Non-Availability Statement is not on file;
- (c) The patient or the patient's parent or guardian has responded directly to the provider's request to identify all health insurance coverage, and that all such coverage is identified on the face of the claim except that coverage which is exclusively supplemental payments to TRICARE-determined benefits;
- (d) The amount billed to TRICARE has been billed after all such coverage have been billed and paid excluding Medicaid, and the amount billed to TRICARE is that remaining claimed against TRICARE benefits;
- (e) The beneficiary's cost share has not been waived by consent or failure to exercise generally accepted billing and collection efforts; and,
- (f) Any hospital-based physician under contract, the cost of whose services are allocated in the charges included in this bill, is not an employee or member of the Uniformed Services. For purposes of this certification, an employee of the Uniformed Services is an employee, appointed in civil service (refer to 5 USC 2105), including part-time or intermittent employees, but excluding contract surgeons or other personal service contracts. Similarly, member of the Uniformed Services does not apply to reserve members of the Uniformed Services not on active duty.
- (g) Based on 42 United States Code 1395cc(a)(1)(j) all providers participating in Medicare must also participate in TRICARE for inpatient hospital services provided pursuant to admissions to hospitals occurring on or after January 1, 1987; and
- (h) If TRICARE benefits are to be paid in a participating status, the submitter of this claim agrees to submit this claim to the appropriate TRICARE claims processor. The provider of care submitter also agrees to accept the TRICARE determined reasonable charge as the total charge for the medical services or supplies listed on the claim form. The provider of care will accept the TRICARE-determined reasonable charge even if it is less than the billed amount, and also agrees to accept the amount paid by TRICARE combined with the cost-share amount and deductible amount, if any, paid by or on behalf of the patient as full payment for the listed medical services or supplies. The provider of care submitter will not attempt to collect from the patient (or his or her parent or guardian) amounts over the TRICARE determined reasonable charge. TRICARE will make any benefits payable directly to the provider of care, if the provider of care a participating provider.

1500

HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE 08/05

PICA

PICA

1. MEDICARE <input type="checkbox"/> (Medicare #)	MEDICAID <input type="checkbox"/> (Medicaid #)	TRICARE CHAMPUS (Sponsor's SSN) <input type="checkbox"/>	CHAMPVA (Member ID#) <input type="checkbox"/>	GROUP HEALTH PLAN (SSN or ID) <input type="checkbox"/>	FECA BLK LUNG (SSN) <input type="checkbox"/>	OTHER (ID) <input type="checkbox"/>	1a. INSURED'S I.D. NUMBER (For Program in Item 1)
2. PATIENT'S NAME (Last Name, First Name, Middle Initial)				3. PATIENT'S BIRTH DATE MM DD YY		SEX M <input type="checkbox"/> F <input type="checkbox"/>	4. INSURED'S NAME (Last Name, First Name, Middle Initial)
5. PATIENT'S ADDRESS (No., Street)				6. PATIENT RELATIONSHIP TO INSURED Self <input type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>			7. INSURED'S ADDRESS (No., Street)
CITY		STATE		8. PATIENT STATUS Single <input type="checkbox"/> Married <input type="checkbox"/> Other <input type="checkbox"/>			CITY
STATE		STATE		Employed <input type="checkbox"/> Full-Time Student <input type="checkbox"/> Part-Time Student <input type="checkbox"/>			STATE
ZIP CODE		TELEPHONE (Include Area Code) ()		9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)			ZIP CODE
TELEPHONE (Include Area Code) ()		10. IS PATIENT'S CONDITION RELATED TO:			11. INSURED'S POLICY GROUP OR FECA NUMBER		
a. OTHER INSURED'S POLICY OR GROUP NUMBER		a. EMPLOYMENT? (Current or Previous) <input type="checkbox"/> YES <input type="checkbox"/> NO			a. INSURED'S DATE OF BIRTH MM DD YY		
b. OTHER INSURED'S DATE OF BIRTH MM DD YY		b. AUTO ACCIDENT? <input type="checkbox"/> YES <input type="checkbox"/> NO			SEX M <input type="checkbox"/> F <input type="checkbox"/>		
c. EMPLOYER'S NAME OR SCHOOL NAME		c. OTHER ACCIDENT? <input type="checkbox"/> YES <input type="checkbox"/> NO			b. EMPLOYER'S NAME OR SCHOOL NAME		
d. INSURANCE PLAN NAME OR PROGRAM NAME		10d. RESERVED FOR LOCAL USE			c. INSURANCE PLAN NAME OR PROGRAM NAME		
12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below.							d. IS THERE ANOTHER HEALTH BENEFIT PLAN? <input type="checkbox"/> YES <input type="checkbox"/> NO <i>If yes, return to and complete item 9 a-d.</i>
SIGNED _____				DATE _____			13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below.
SIGNED _____				DATE _____			SIGNED _____
14. DATE OF CURRENT ILLNESS (First symptom) OR INJURY (Accident) OR PREGNANCY(LMP) MM DD YY		15. IF PATIENT HAS HAD SAME OR SIMILAR ILLNESS. GIVE FIRST DATE MM DD YY			16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION FROM MM DD YY TO MM DD YY		
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE				17a. _____	18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY		
				17b. NPI _____			
19. RESERVED FOR LOCAL USE				20. OUTSIDE LAB? \$ CHARGES <input type="checkbox"/> YES <input type="checkbox"/> NO			
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY (Relate Items 1, 2, 3 or 4 to Item 24E by Line)				22. MEDICAID RESUBMISSION CODE ORIGINAL REF. NO.			
1. _____ 3. _____				23. PRIOR AUTHORIZATION NUMBER			
2. _____ 4. _____							
24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY		B. PLACE OF SERVICE	C. EMG	D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS MODIFIER		E. DIAGNOSIS POINTER	F. \$ CHARGES
							G. DAYS OR UNITS
							H. EPSDT Family Plan
							I. ID. QUAL
							J. RENDERING PROVIDER ID. #
1							NPI
2							NPI
3							NPI
4							NPI
5							NPI
6							NPI
25. FEDERAL TAX I.D. NUMBER		SSN EIN <input type="checkbox"/> <input type="checkbox"/>	26. PATIENT'S ACCOUNT NO.		27. ACCEPT ASSIGNMENT? (For govt. claims, see back) <input type="checkbox"/> YES <input type="checkbox"/> NO		28. TOTAL CHARGE \$
							29. AMOUNT PAID \$
							30. BALANCE DUE \$
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.)			32. SERVICE FACILITY LOCATION INFORMATION			33. BILLING PROVIDER INFO & PH # ()	
SIGNED _____			DATE _____			a. _____ b. _____	

CARRIER

PATIENT AND INSURED INFORMATION

PHYSICIAN OR SUPPLIER INFORMATION

Exhibit 6

Deal Depot

Closed Deals 2002

Deal Name	Date of Close	State	Market Segment	Purchase Price	(b) Patients	(a) Centers	IRR	Year 3 Cash on Cash	EBITDA Year 1	(b) Price/Pt
2002 Acquisitions										
Sidell	Mar-02	LA	A (9.0%)	\$ 2,840,000	62	1	21.2%	13.9%	\$ 689,315	\$ 45,679
Vainier	Jul-02	GA	E (4.5%)	3,990,000	102	4	17.0%	16.6%	637,915	39,118
Imperial	Aug-02	CA	H (2.4%)	2,500,000	93	1	16.2%	13.9%	563,821	26,882
Methodist	Sep-02	MIN	B (6.1%)	3,840,000	123	1	17.5%	14.7%	985,036	31,135
Covington	Oct-02	LA	A / C (9.0% / 5.7%)	4,927,500	130	3	16.8%	15.7%	789,616	37,985
Yakima	Dec-02	WA	A (9.0%)	1,650,000	103	1	16.0%	13.3%	756,240	16,064
Total				\$ 19,747,500	613	11	17.5% (d)	15.0% (d)	\$ 4,441,943	\$ 34,761 (d)
2002 JVs										
Irvine (JV DeNovo)	Jul-02	CA	H (2.4%)	N/A	53	1				
Denver Nephrology (HS / JV DeNovo) (c)	Closed 9/23/02, Effective 6/15/02	CO	E (4.5%)	N/A	150	5				
2002 Other										
Sapulpa & South Crest Hospital (HS / JV DeNovo) (f)	Oct-02	OK	B (6.1%)	N/A	60	2				
Soledad (JV DeNovo)	Oct-02	CA	B (6.1%)	N/A	45	1				
Total					308	9				
2002 Other										
Pasadena Purchase Rights (HS) (e)	Apr-02	CA	H (2.4%)	\$ 60,000	60	1				

(a) Includes acute equivalent patients. JV census represents 100% ownership.

(b) Purchase Price and EBITDA reflect DaVita's pro rata proportionate ownership interest in the deal.

(c) Resolved hot spot by renewing 6 centers and approximately 700 patients (saved pre G&A EBITDA of \$9.5MM). JV denovo for 5 new centers. Total patients saved plus new JV patients was 850.

(d) Weighted average based on Purchase Price.

(e) Acquisition of Purchase Rights. Option exercisable from 36 to 48 months after Medicare certification date.

(f) Resolved hot spot with Tulsa Nephrology saving 275 patients, 4 centers, and \$3.5MM in pre G&A EBITDA. Forecasted Yr. 1 census reflects Sapulpa and Southcrest units. Partners have identified 3 additional potential JV locations.

Deal Name	Date of Close	State	Market Segment	Purchase Price	(b) Patients	(g) Centers	IRR	Cash on Cash	EBITDA Year 1	(b) Price/Pt
2003 Acquisitions										
Rockford - Midway	May-03	Midwestern US	C (3.5%)	\$ 23,000,000	437	5	21.3%	15.8%	\$ 4,831,784	\$ 52,632
Bon Secours	May-03	VA	B (6.1%)	\$4,000,000	172	2	16.0%	15.0%	1,388,153	23,234
Aur - Saginaw	May-03	MI	A (9.0%)	2,000,000	54	1	16.7%	15.4%	490,418	37,037
Hurley	Jun-03	MI	A (9.0%)	17,300,000	360	3	17.1%	15.3%	3,501,953	48,100
Washington Parish	Jul-03	LA	C (5.7%)	850,000	19	1	9.0%	12.8%	109,592	44,737
Dr. Pierce - Franklin Dialysis Center	Aug-03	MI	E (4.5%)	1,350,000	38	1	18.6%	15.3%	326,609	35,526
SWORC	Sep-03	OH	B (6.1%)	2,550,000	72	1	17.0%	16.0%	711,989	35,212
Owensboro & Tell City	Oct-03	KY	A (9.0%)	6,430,000	142	2	11.4%	13.6%	1,246,784	45,173
Vanner (C)	Oct-03	MO	E (4.5%)	1,500,000	33	0	NA	NA	NA	45,045
HRG St. Louis	Oct-03	GA	H (2.4%)	700,000	26	1	17.3%	14.6%	83,375	26,923
Eaton Canyon (C)	Oct-03	CA	H (2.4%)	1,133,400	22	0	NA	NA	NA	50,939
Nebraska Health System	Nov-03	NE/IA	A / B (9.0% / 6.1%)	12,250,000	292	5	24.8%	19.1%	3,494,085	41,904
Dr. Handelsman - North Georgia	Nov-03	GA	E (4.5%)	800,000	18	1	16.1%	14.4%	182,362	44,444
Kidney Care Maryland	Dec-03	MD	E (4.5%)	7,400,000	181	2	17.4%	15.0%	1,916,444	40,884
DIALYassist	Dec-03	AZ	B (6.1%)	1,250,000	45	0	15.1%	26.4%	338,646	28,077
Total				\$ 82,513,401	1,912	25	18.3% (g)	15.5% (g)	\$ 18,622,193	\$ 44,921 (g)
2003 JVs										
Tustin (JV DeNovo)	Mar-03	CA	H (2.4%)	NA	44	2				
Riverside (HS / JV DeNovo) (f)	Mar-03	CA	H (2.4%)	NA	225	4				
Rockford (JV DeNovo)	May-03	Midwestern US	G (3.5%)	NA	60	2				
Dr. Buchsbaum (JV DeNovo)	May-03	IA	B (6.1%)	NA	33	1				
Sun City (JV DeNovo)	May-03	AZ	B (6.1%)	NA	67	1				
Cleveland Clinic (Weston Dialysis) (JV DeNovo)	Sep-03	FL	F (2.2%)	NA	42	1				
Michigan (HS / Partial divestiture (JV) (e)	Oct-03	MI	B (6.1%)	2,850,000	69	2				
East Ft. Lauderdale (JV DeNovo)	Oct-03	FL	F (2.2%)	NA	40	1				
Lawrenceburg (Partial divestiture / JV)	Nov-03	IN	B (6.1%)	800,000	44	1				
Southern Hills (JV DeNovo)	Dec-03	NV	B (6.1%)	NA	42	1				
Total				\$ 3,650,000	666	16				
2003 Other										
Lifeline (d)	Jul-03	IL	NA	NA	NA	13				
Children's Hospital (MSA)	Jul-03	Washington D.C.	F (2.2%)	NA	25	1				
Gonzales/Alvarado (HS / PD carve-out) (i)	Apr-03	CA	H (2.4%)	175,000	NA	NA				
Total				\$ 175,000	25	14				
2003 Divestitures										
Salt Lake City (h)	Jul-03	UT	B (6.1%)	NA	NA	3				
Total Acquisitions Purchase Price by Quarter										
First Quarter				\$ -						
Second Quarter				47,150,001						
Third Quarter				3,900,000						
Fourth Quarter				31,463,400						

(a) Includes acute equivalent patients. JV census represents 100% ownership.

(b) Purchase Price and EBITDA reflect Davita's pro rata proportionate ownership interest in the deal.

(c) Vanner and Eaton Canyon are buy-outs of the minority interest in the JV. For this analysis, pro-rata patients are included - however center numbers are not counted as facilities were already owned by DVA (Vanner and Eaton Canyon included 2 and 1 facilities, respectively). Purchase price and census reflects DVA purchasing remaining 30% minority interest in Vanner and 12.5% interest in Eaton Canyon. The Eaton Canyon transaction was completed pursuant to the seller's put option.

(d) Acquisition of Baxter's Vascular Access Program includes pro-rata interest of 11 existing facilities and buildout costs of 2 additional de novo facilities. Resolved hot spot saved \$17.1MM in pre G&A EBITDA. 11 facilities, and renewed 1,076 DaVita patients. 69 patients reflect Year 1 census of the 2 de novo facilities (38 at Oak Park and 31 at Southfield West). Detroit facilities in E (4.5%) market segment, Ypsilanti and Jackson facilities in C (5.7%) market segment, and Grand Blanc facility in A (9.0%) market segment.

(e) Transaction contemplated denovos in Riverside, Norco, Hemet, Chino, Banning, and Lake Elsinore. To date, Lake Elsinore opened, Norco, Riverside, and Yucaipa denovos in process. Census figures represent Lake Elsinore census as of 7/04 + Year 1 estimate for 3 denovos. Includes a 10 year (+1 year tail) MDA renewal. Also includes 750 renewed DVA patients and \$11.4MM saved pre G&A EBITDA.

(g) Weighted average based on Purchase Price.

(h) Legal settlement whereby 2 of the 3 facilities were closed down.

(i) Resolved hot spot saving 217 patients and \$1.9MM in pre G&A EBITDA. DaVita PD program had 35 patients at the time of transaction.

Deal Name	Date of Close	State	Market Segment	Purchase Price	(e) Patients	(b) Centers	IRR	Year 3 Cash on Cash	EBITDA Year 1	(a) CMLs	Incremental Unit Mix (By # of Facilities)	Price/Pt
											Political	High Hipper Mix
2004 Acquisitions												
Kidney Care lows	Mar-04	IA	A/B (0.0%/6.1%)	\$ 14,000,000	246	9	21.7%	14.2%	\$ 3,125,518	2	5	\$ 56,968
Long Beach Memorial (Acquis)	Mar-04	CA	H (2.4%)	500,000	23	0 (d)	15.7%	33.7%	208,237	0	0	21,283
Battle Creek	Apr-04	MI	A (0.0%)	5,400,000	100	1	15.2%	13.4%	777,633	0	0	53,821
Dr. Bravo	May-04	TX	B (6.1%)	2,400,000	53	1	16.0%	14.0%	415,024	0	0	45,283
Curro	May-04	TX	B (6.1%)	503,993	NA	1	NA	NA	NA	NA	0	NA
Bogalusa	May-04	LA	C (5.7%)	1,120,000	55	1	17.0%	14.9%	284,913	0	0	20,364
Big Sandy (e)	Jun/Dec-04	KY and WV	A/C (0.4%/5.7%)	5,224,000	154	4	16.7%	14.9%	1,289,708	0	0	33,971
Redsville	Jun-04	NC	B (6.1%)	32,000	30	1	31.2%	23.7%	203,184	1	0	24,400
Hillmed	Jul-04	OH	B (6.1%)	25,500,000	305	3	16.1%	14.2%	2,362,339	0	0	84,426
RCM	Jul-04	MD	E/JE (6.1%/4.5%)	17,500,000	288	3	12.4%	12.2%	1,960,073	0	0	65,289
Innovative	Jul-04	NE	A/B (0.0%/6.1%)	13,100,000	116	2	19.9%	18.0%	426,456	1	0	65,529
Gambro Inland Empire (f)	Aug-04	CA	H (2.4%)	1,590,000	188	2	23.2%	19.3%	2,189,965	0	0	13,707
Savannah/Statesboro (g)	Aug/Nov-04	GA	B/D (6.1%/4.4%)	9,156,507	100	2	26.7%	19.3%	851,607	0	1	48,706
Chicago Heights (Partial Acquisition)(h)	Sep-04	IL	B (6.1%)	2,754,000	100	1	26.7%	19.3%	851,607	0	1	27,940
Eastmont (Acquisition of Remaining Interest)(i)	Sep-04	CA	H (2.4%)	1,137,360	100	1	NA	NA	NA	0	0	11,374
Physicians Diagnostics, Inc. (j)	Sep-04	AL, CT, MA, MI, PA, TX	NA	150,000,000	1,757	24	8.4%	11.0%	15,940,362	4	0	85,373
New Orleans Metropolitan Dialysis	Oct-04	LA	G (0.5%)	792,000	0	1	16.0%	17.2%	(19,633)	0	0	NA
Contract Dialysis (Acquis)(k)	Oct-04	TX	B (6.1%)	281,500	54	0	17.0%	NA	508,451	NA	NA	5,174
Comprehensive Renal Care of Northlake (SpectraCare)	Nov-04	GA	B (High B)/6.1%	2,400,000	61	1	19.3%	15.3%	428,289	0	1	39,663
Down River Kinsey Center	Nov-04	MI	E (Med B)/4.5%	9,500,000	148	1	17.4%	14.2%	1,902,176	0	0	64,189
Total				\$ 263,641,470	3,957	62	11.7% (l)	12.3% (l)	\$ 37,085,761	9	5	\$ 74,566 (l)
2004 JVs												
Brighton (Western Nephrology) (JV DeNovo)	Feb-04	CO	C (6.7%)	NA	30	1	NA	NA	NA	0	0	NA
Kannapolis (Partial Divestiture)(V)	Feb-04	NC	B (6.1%)	300,000	70	1	NA	NA	NA	0	0	NA
DPC Iowa (JV DeNovo)	Mar-04	IA	A/B (0.0%/6.1%)	NA	121	2	NA	NA	NA	0	0	NA
North Tulsa/Greenwood (JV DeNovo)	Mar-04	OK	C (5.7%)	NA	43	1	NA	NA	NA	0	0	NA
Summit/Dr. Hagstrom (JV DeNovo)	Jun-04	TX	B (6.1%)	NA	36	1	NA	NA	NA	0	0	NA
Tidewater Kidney Services (HS/JV DeNovo)	Jun-04	VA	C (6.7%)	NA	40	1	NA	NA	NA	0	0	NA
Dr. Magnus-Lawson (Downtown Houston) (JV DeNovo) (m)	Jun-04	TX	B (6.1%)	NA	36	1	NA	NA	NA	0	0	NA
Sapulpa (Partial Divestiture)(V)	Jul-04	OK	B (6.1%)	NA	30	1	NA	NA	NA	0	0	NA
Fadem (JV DeNovo) (n)	Aug-04	TX	B (6.1%)	NA	30	1	NA	NA	NA	0	0	NA
Dr. Hines (JV / MDA Renewal)	Nov-04	TX	B (6.1%)	NA	275	3	NA	NA	NA	0	0	NA
Durango (JV DeNovo)	Nov-04	CO	H (2.4%)	NA	54	1	NA	NA	NA	0	0	NA
Eik Grove (JV DeNovo) (n)	Dec-04	CA	H (2.4%)	NA	54	1	NA	NA	NA	0	0	NA
Muskogee (Partial Divestiture)	Dec-04	OK	A (8.0%)	NA	NA	1	NA	NA	NA	0	0	NA
Southcrest (Partial Divestiture)(V)	Dec-04	OK	B (6.1%)	NA	NA	NA	NA	NA	NA	0	0	NA
Total				\$ 300,000	795	16						
2004 Divestitures / Other												
North Philly	Mar-04	PA	G (0.5%)	1,300,000	107	1	NA	NA	NA	0	0	NA
Paranant City (Management Agreement)	Feb-04	FL	D (4.4%)	1,600,000	200	2	NA	NA	NA	0	0	NA
Connmed (Acq Contract)	Jun-04	CA	C (5.7%)	NA	36	1	NA	NA	NA	0	0	NA
Nephrology & Hypertension Assc. (MDA only)	Oct-04	MD	B (6.1%)	NA	51	1	NA	NA	NA	0	0	NA
East Decatur (Partial Divestiture and JV DeNovo)	Nov-04	UT	D (4.4%)	NA	90	1	NA	NA	NA	0	0	NA
Las Piedras Pharmacy (Acquisition)	Nov-04	MI	E (4.5%)	602,116	80	2	NA	NA	NA	0	0	NA
Atlanta Divestiture (JV Cleveland Hotspot / MDA) (o)	Dec-04	GA	NA	181,011	NA	NA	NA	NA	NA	0	0	NA
Harbor UCLA (MDA Renewal)	Dec-04	CA	E / 4.3% H (2.4%)	NA	368	NA	NA	NA	NA	0	0	NA
Total Acquisitions Purchase Price by Quarter												
First Quarter				\$ 14,500,000								Price/Pt
Second Quarter				\$ 55,738								
Third Quarter				\$ 15,379,993								
Fourth Quarter				\$ 220,967,877								
				\$ 12,973,500								\$ 54,453

(a) Purchase Price and EBITDA reflect DaVita's pro rata proportionate ownership interest in the deal
 (b) Includes acute equivalent patients. JV census represents 100% ownership
 (c) Purchase price based on an amount paid over time assuming contract is not terminated. The maximum amount payable is \$660K
 (d) Long Beach Memorial was an acquisition of an acute program at a hospital. Therefore, no center was included in totals
 (e) Acquired through DaVita/Riverside, LLC (60%/40% JV with NIAMS)
 (f) The two facilities of this deal were closed in separate transactions in which Savannah closed in August 2004 and Statesboro was closed in November 2004.
 (g) Made partial acquisition of Chicago Heights, resulting in a JV partnership whereby DaVita owns 51% and partners own 49%.
 (h) Resolution of threatened litigation.
 (i) Merics (IRR, Cash, Yr 1 EBITDA) include economics associated with lab business
 (j) Acquisition of 75% of business associated with 9 acute contracts. Patient and Year 1 EBITDA reflect 100% of business
 (k) Weighted average based on Purchase Price
 (l) Magnus-Lawson invested in the East Houston de novo and Fadem and his 2 partners invested in the Downtown Houston de novo. Each of the 4 doctors signed new 15-mile non-compete agreements.
 (m) As a separate transaction, included resolution of hotspot with Capital Nephrology via extension of MDAs for 10 wholly-owned centers.
 (n) Resolution of hotspot via signed MDA. Total census of the 5 facilities is 420 patients, of which DVA's share is 368 patients. Physicians have an opportunity to purchase up to 12.5% equity interest in the centers.
 (o) Resolution of hotspot via signed MDA. Total census of the 5 facilities is 420 patients, of which DVA's share is 368 patients. Physicians have an opportunity to purchase up to 12.5% equity interest in the centers.

Deal Depot

Closed Deals YTD 2005

Deal Name	Date of Close	State	Market Segment	Purchase Price	(a) Patents	(b) Centers	IRR	Year 3 Cash on Cash	EBITDA Year 1	(c) CMs	Incremental Unit Mix (by # of Facilities)	Price/Pl	Tx in FVUS
											Political	High-Risk/Plx	
2005 Acquisitions													
LARD	Jan-05	CA	H (2.4%)	\$ 1,575,000	36	1	21.5%	16.3%	\$ 342,499	0	0	\$ 41,447	5,472
Sparks	Mar-05	GA	D (4.4%)	350,000	15	1	18.6%	14.5%	300,122	0	0	\$ 23,333	1,800
Liberty (Partial Acquisition) (JV)	Apr-05	OH	A (9.0%)	1,690,000	50	1	25.5%	18.7%	601,841	0	0	\$ 33,800	5,400
Alamosa (c)	Apr-05	TX	D (1.9%)	50,000	40	1	22.2%	17.6%	(42,089)	1	0	\$ 1,250	4,320
Liberty Dialysis (Santelli) (d)	Apr-05	TX	D (1.9%)	1,682,501	432	1	20.4%	14.1%	12,916	0	0	\$ 178,448	1,188
Tennessee Kidney Clinics	May-05	TX	A (9.0%)/B (6.1%)	27,262,501	432	11	29.4%	12.3%	3,300,931	3	0	\$ 62,963	41,472
Moses Taylor	May-05	PA	C (5.7%)	5,350,000	234	5	23.7%	13.2%	6,507,593	0	0	\$ 22,863	22,464
Evanville	May-05	IN, KY	A (9.0%)/B (6.1%)	37,000,000	423	5	14.3%	12.2%	1,361,847	0	0	\$ 37,470	40,008
Renal Care of Illinois	Jun-05	IL	B (6.1%)	7,550,000	105	1	17.1%	13.5%	1,169,531	0	0	\$ 69,342	8,073
Good Samaritan	Jul-05	MI	A (9.0%)	9,000,000	130	2	16.4%	14.0%	1,525,098	2	1	\$ 81,395	6,162
Dr. McClair - Nelsonville	Jul-05	TX	B (6.1%)	7,000,000	86	1	18.2%	14.1%	1,169,531	0	0	\$ 104,255	2,938
Spring Dialysis	Aug-05	OH	A (High A) / 9.0%	4,900,000	371	1	17.7%	14.5%	925,360	0	0	\$ 51,213	17,509
Royal Ln & Bay Area PD	Sep-05	FL	A (High B) / A (High A)	19,000,000	164	3	13.9%	14.1%	3,695,427	0	0	\$ 5,904	5,904
Charleston	Oct-05	SC	A (High A) / 9.0%	8,475,000	163	3	18.1%	14.3%	1,836,255	0	0	\$ 51,677	17,509
Wilmington	Nov-05	OH	A (High A) / 9.0%	12,000,000	163	3	21.3%	15.0%	2,896,023	0	0	\$ 65,574	6,988
New Braunfels (m)	Nov-05	TX	D (High A) / 4.4%	2,300,000	56	1	16.5%	12.6%	808,249	0	0	\$ 82,018	1,344
Castroville (m)	Nov-05	TX	D (High C) / 4.4%	2,300,000	56	1	15.0%	15.5%	410,000	0	0	\$ 41,071	1,344
East Bay Acuties	Nov-05	CA	B (Low B)	590,000	13	1	10.0%	14.1%	627,000	0	0	\$ 45,985	512
Winchester	Dec-05	VA	B (6.1%) / D (4.4%)	11,000,000	154	2	16.0%	12.5%	1,353,762	1	0	\$ 71,236	1,893
Total				\$ 166,103,931	2,660	54	15.3% (e)	13.5% (e)	\$ 28,722,920	8	0	\$ 70,280 (e)	186,058
Total (excluding Tennessee Kidney Clinics)				\$ 138,903,931	2,228	43	16.4% (e)	13.7% (e)	\$ 25,421,889	5	0	\$ 71,725 (e)	144,586
2005 JVs													
Louisville (Partial Divestiture / JV DeNovo)	Jan-05	KY	E (4.5%)	NA	44	1							
Fullerton (JV DeNovo)	Jan-05	CA	H (2.4%)	NA	41	1							
NE El Paso (JV DeNovo)	Feb-05	TX	D (4.4%)	NA	50	1							
Memorial Dialysis (Partial Divestiture)	Mar-05	TX	B (6.1%)	1,680,000	120	1							
Marysville (JV DeNovo)	Mar-05	CA	G (3.5%)	NA	62	1							
Dr. Provenzano / St. Clare (JV De Novo/Lehine)	Mar-05	MI	B (6.1%)	NA	40	1							
Central Kentucky (Partial Divestiture)	Mar-05	KY	A (9.0%)	NA	30	1							
Macon (JV DeNovo)	Mar-05	CA	H (2.4%)	NA	394	3							
Macon (JV DeNovo)	Jun-05	TX	D (4.4%)	630,000	43	1							
Dr. Agronhar (JV DeNovo)	Jun-05	TX	D (4.4%)	NA	40	1							
San Antonio Kidney Disease Center (JV De Novo)	Jun-05	TX	D (4.4%)	NA	95	5							
East New Orleans (Partial Divestiture) (f)	Jul-05	LA	G (3.5%)	NA	31	1							
Hillsboro (JV DeNovo/MDA) (i)	Sep-05	TX	B (6.1%)	NA	82	3							
Wilbrook (JV DeNovo)	Sep-05	TX	B (6.1%)	NA	20	1							
Rochester, JV	Dec-05	MI	B (6.1%)	NA	17	1							
Woodland/Leitchfield JV	Dec-05	KY	A (9.0%)	NA	115	1							
Long Beach JV	Dec-05	CA	B (2.4%)	NA	45	1							
Total				\$ 2,310,000	1,521	25							
2005 Divestitures / Other													
Merck U.S.A. Research Grant	Jan-05	CA	H (2.4%)	NA	NA	NA							
Pacific Coast Dialysis (Minority Partner Buyout) (j)	Mar-05	CA	H (2.4%)	280,000	105	1							
Garey Refinancing	Mar-05	CA	C (5.7%)	NA	76	1							
Macon (JV DeNovo)	Jun-05	GA	D (4.4%)	NA	76	1							
Macon (JV DeNovo) (Divestiture) (g)	Jun-05	GA	D (4.4%)	408,000	NA	NA							
Apothecary Shop	Aug-05	FL	NA	408,000	NA	NA							
PDI-Alabama ^h	Aug-05	AL	A (9.0%)	1,424,512	251	4							
Atlantic City (Divestiture)	Sep-05	NJ	B (6.1%)	NA	NA	NA							
USC ⁱ	Oct-05	CA	G (Low A)	3,550,000	277	1							
Wichita Hot Spot	Oct-05	KS	B (6.1%)	NA	604	1							

(a) Purchase Price and EBITDA reflect Davita's pro rata proportionate ownership interest in the deal
 (b) Includes acute equipment patients. JV DeNovo represents 100% ownership
 (c) NA = Not Applicable. EBITDA numbers are based on de novo model.
 (d) This is a JV acquisition transaction where Davita owns 66%.
 (e) Weighted average based on Purchase Price
 (f) Recapitalized existing JV's (3 centers) to resolve compliance hot spot.
 (g) Pertains to acquisition of 70% interest of Perry. No cash expended as transaction also includes the divestiture of 70% of East Macon (\$2.1 million)
 (h) Partial divestiture of 20% in East New Orleans facility.
 (i) DVA closed a deal for 2 de novo centers and a MDA for the third facility. The centers are located in Arlington, Grapevine, and Hillsboro, TX
 (j) Acquisition of remaining 7% interest from DVA JV partner resulting in a wholly-owned entity.
 (k) DVA exercised call option and acquired the ~17% ownership of 3 non-physician partners
 (l) USC paid 40% of \$3,550,000 plus working capital
 (m) Per D. Firm. DVA paid for 51% of the center and SAKOC paid the remaining 49%

Deal Name	Date of Close	State	Market Segment	Transaction Value	(e) Patients	(b) Centers	IRR	Year 3 Cash on Cash	EBITDA Year 1	(a) CMLE	Incremental Unit Mix (By # of Facilities)	Price/Pl	Tx in FY06
											High Hipper Mix		
2006 Acquisitions													
Nephroplex	Jan-06	IL	A (9.0%)	\$ 13,900,000	222	4	18.1%	14.5%	\$ 2,610,873	1	0	\$ 62,754	31,956
Diamond Dialysis	Feb-06	IL	B (6.1%)	\$ 9,150,000	96	2	14.3%	11.4%	\$ 2,600,260	0	0	\$ 95,313	12,672
SAKOC (Sakoc Family Health, Inc.)	Apr-06	CA	D (4.4%) / A (9.0%)	\$ 44,000,000	534	6	16.2%	13.8%	\$ 7,239,670	6	0	\$ 82,367	57,672
Frederic (Frederic Family Health, Inc.)	Jun-06	CA	G (Low A) / 3.5%	\$ 600,000	18		TBD	TBD	TBD	0	0	\$ 33,333	1,944
FMC Concord	Jun-06	NV	B (6.1%)	\$ 7,680,000 (d)	124	1	15.3%	13.3%	\$ 3,028,000	0	0	\$ 61,935	10,416
Cobb Paulding	Jun-06	NC	B (6.1%)	\$ 7,000,000	52	1	17.4%	14.1%	\$ 250,747	0	0	\$ 13,462	4,368
Eastern Concrete	Jul-06	CA	A (9.0%)	\$ 3,000,000	141	3	17.1%	14.1%	\$ 617,606	3	0	\$ 21,277	10,152
Grand Junction	Sep-06	CO	G (Low A) / 3.5%	\$ 2,700,000	195	2	17.1%	14.1%	\$ 488,804	2	0	\$ 18,477	6,434
Dyersburg	Oct-06	TN	A (9.0%)	\$ 1,150,000	39 (m)	1	16.7%	13.1%	\$ 529,935	0	0	\$ 42,253	3,187
Annalis Island	Nov-06	FL	C (5.7%)	\$ 1,300,000	28	1	16.6%	14.4%	\$ 184,074	0	0	\$ 39,655	696
Virginia Beach	Nov-06	VA	B (6.1%)	\$ 2,300,000	49	1	21.3%	15.4%	\$ 153,302	0	0	\$ 46,559	1,176
Atlanta Dialysis	Dec-06	GA	B (6.1%)	\$ 3,250,000	52	1	9.5%	11.4%	\$ 381,477	0	0	\$ 62,930	624
Total				\$ 93,270,000	1,578	24	16.1% (c)	13.4% (c)	\$ 18,074,427	12	0	\$ 70,164 (c)	142,209
2006 JVs													
SuperMed/Burd (Partial Divestiture/JV De Novo)	Mar-06	GA	B (6.1%)	\$ 671,250	20	2							
Sacred Heart (JV De Novo)	Apr-06	CO	B (6.1%)	\$ 2,310,907	62	Yr 3							
La Grange (Partial Divestiture/JV De Novo)	May-06	TX	Med (8.0%)	\$ 1,050,000	38	Yr 3							
Anedarko (JV De Novo)	May-06	OK	B (6.1%)	\$ 9,129	47	Yr 3							
Upper Valley (JV De Novo)	May-06	NV	D (4.4%)	\$ 7,240,000 (d)	408	3							
Las Vegas Partnership (Partial Divestiture / JV)	Jun-06	NV	B (6.1%)	\$	48	Yr 1							
Strongsville (JV De Novo)	Jun-06	OH	H (2.4%)	\$	32	1							
Natomas (JV De Novo)	Jul-06	CA	H (2.4%)	\$	32	Yr 3							
Bear Creek (JV De Novo)	Aug-06	TX	B (6.1%)	\$	34	Yr 1							
Henderson (JV De Novo)	Aug-06	NV	B (6.1%)	\$	26	Yr 1							
Commerce Township (JV De Novo)	Aug-06	MI	A (9.0%)	\$	26	Yr 1							
Iona (JV De Novo)	Oct-06	MI	C (4.4%)	\$	70	Yr 1							
East El Paso (JV De Novo)	Oct-06	TX	A (9.0%)	\$	106	Yr 1							
Chickasha (JV De Novo)	Oct-06	CA	H (2.4%)	\$	106	Yr 1							
Riverside (JV De Novo)	Oct-06	CA	H (2.4%)	\$	34	Yr 1							
The Woodlands (JV De Novo)	Nov-06	TX	B (6.1%)	\$	34	Yr 1							
East Bay Vascular Access (JV De Novo)	Nov-06	CA	H (2.4%)	\$	1	1							
Menaj (JV De Novo)	Dec-06	OK	H (2.4%)	\$	1	1							
Total				\$ 12,247,326	1,031	22							
2006 Divestitures / Other													
UAB Holston (Buyout / Change of Control)	Feb-06	AL	B (6.1%)	\$ 5,000,000	533	7							
Kilmarnock (Buyout)	Feb-06	VA	C (4.4%) / A (9.0%)	\$ 153,426	30	4							
Tuscaloosa (Divestiture)	Feb-06	AL	A (9.0%)	\$ NA	450	8							
Tuscaloosa (MDA)	Apr-06	MD	B (6.1%)	\$ 5,000,000	644	4							
Johns Hopkins Hotspot (Buyout / Change of Control)	Apr-06	CA	H (2.4%)	\$ NA	1,192	13							
Capital Nephrology Hotspot	Apr-06	CA	H (2.4%)	\$ 588,000	65	1							
University - Sacramento, CA (Partial Divestiture)	May-06	CA	B (6.1%)	\$ 1,332,125 (e)	243	4							
PDI Alabama (Buyout)	May-06	AL	B (6.1%) / D (4.4%)	\$ 675,000 (f)	47	2							
Woodstock / Elley (Buyout)	Jun-06	GA	G (Low A) / 3.5%	\$ 4,000,000 (h)	NA	NA							
American Access (Divestiture/Hot Spot Resolution) (g)	Jun-06	PA	H (2.4%)	\$	270	(i)							
HRG (Buyout / Partial Divestiture)	Jun-06	OK	H (2.4%)	\$ 100,000 (j)	36	1							
Flowersville (Partial Divestiture)	Aug-06	TX	B (6.1%)	\$ 1,200,000	na	na							
DC Lifetime (Access Acquisition)	Sep-06	MD	D (4.2%)	\$ 3,580,800 (k)	483	8							
SAKOC (Loan)	Sep-06	TX		\$	4,053								

(a) Transaction Value and EBITDA reflect Davita's pro-rata proportionate ownership interest in the deal.

(b) Includes acute equivalent patients.

(c) Weighted average based on Transaction Value.

(d) Davita contributed the South Las Vegas, North Las Vegas, and West Las Vegas clinics to the partnership. The owners of the Summerlin clinic contributed the Summerlin clinic to the partnership. Cash outflow from DVA to Summerlin owners in the amount of \$440k to result in a 60%/40% joint venture.

(e) Davita bought out its partner's 40% interest in Summerlin for \$7,680. Davita sold a 40% interest in South Las Vegas, North Las Vegas, and West Las Vegas for \$1.3mm.

(f) Involves the buyout of 30% interest in Woodstock and Elley centers, which are fully-valued at a \$2.25mm. The appraisal was performed by Applied Economics. The valuation methodology was on a multiple-basis and not a DCF-basis.

(g) Divested 1/3 interest in three Gambio-legacy access centers in greater Philadelphia for \$4mm.

(h) Davita divested 11% of its 72.5% stake in Muskogee. Full valuation was \$3.9mm.

(i) Involves a total of 270 patients, 26 in the one acquired by DVA, and a total of six centers, of which one center is DVA's.

(j) Davita divested 100% of its interest in Flowersville to SAKOC-Davita Dialysis Partners, L.P., which is 51% owned by Davita.

(k) Total Loan Amount to SAKOC JV is \$3.5M -- \$1.5M in term loan and \$2.0M in revolving line of credit.

(l) Year 3 EBITDA is \$237,669.

(m) Includes 1370 acute treatments which is the equivalent of 9.5 hemo patients. Therefore total number of patients is 79 plus 9.5 (hemo equivalent) which is 88.5.

Deal Name	Date of Close	State	Market Segment	Transaction Value	Patients	Centers	IRR	Year 3 Cash on Cash	EBITDA Year 1	Incremental Unit Mix (By # of Facilities)	Price/EPI	Tx. in FY07	EBITDA
				(a)	(b)	(c)		(d)	(e)	(f)		(g)	(h)
2007 Acquisitions													
Little Rock	Mar-07	AR	High B16 (1%)	\$ 500,000	55	2	65.5%	27.0%	\$ 535,923	0	\$ 5,000	7,200	0.6 x
Florida Hemo	Mar-07	FL	Low B12 (4%)	\$ 1,377,000	30	1	17.8%	17.8%	\$ 59,066	0	\$ 65,000	2,880	33.5 x
South Valley	Jun-07	CA	Low B12 (4%)	\$ 4,000,000	145	1	19.0%	19.0%	\$ 39,066	0	\$ 27,585	12,180	4.3 x
Leesburg	Jun-07	FL	Med A (5.7%)	\$ 3,000,000	50	1	17.4%	12.7%	\$ 443,227	0	\$ 28,652	7,500	5.9 x
St. Cloud (Partial Acquisition)	Aug-07	FL	Med C (2.2%)	\$ 3,855,000 (i)	126	1	18.3%	14.0%	\$ 645,587	0	\$ 21,818	3,300	5.7 x
RCF Phoenix	Aug-07	OH	High B16 (1%)	\$ 1,200,000 (j)	55	1	17.3%	14.3%	\$ 209,059	0	\$ 37,931	2,220	7.1 x
Low B12 (4%)	Aug-07	CA	Low B12 (4%)	\$ 1,100,000	29	1	20.4%	15.3%	\$ (161,454)	0	\$ 23,757	2,220	7.1 x
Turkox (Partial Acquisition)	Aug-07	CA	Low B12 (4%)	\$ 820,000 (k)	37	1	18.5%	14.5%	\$ 123,436	0	\$ 66,667	576	7.6 x
Hialeah	Sep-07	FL	Low B12 (4%)	\$ 1,700,000	377	1	16.5%	14.8%	\$ 2,477,300	2	\$ 46,820	3,778	19.4 x
Bakersfield	Oct-07	CA	Low A13 (5%)	\$ 8,125,000	189	2	15.6%	11.2%	\$ 781,587	0	\$ 35,553	5,316	12.8 x
Erie	Nov-07	PA	High B16 (1%)	\$ 18,900,000	311	3	11.8%	11.2%	\$ 2,323,875	0	\$ 45,181	68,652	8.1 x
Dx Darian	Dec-07	CA	Low B12 (4%)	\$ 15,750,000	443	8	18.2%	15.0%	\$ 1,227,508	3	\$ 45,181	68,652	8.1 x
SKF (Partial Acquisition)	Dec-07	AZ	High B16 (1%)	\$ 78,716,000	1,854	24	16.8%	13.6%	\$ 9,417,654	0	\$ 45,181	68,652	8.1 x
Total													
2007 JVs													
Dr. Handler (JV De Novo)	Jan-07	FL	C15 (7%)	De Novo Price	28 (Yr 1)	1							
Wyandotte Central (JV De Novo)	Feb-07	KS	High B16 (1%)	De Novo Price		1							
Widener (JV De Novo)	Mar-07	PA	High B16 (1%)	De Novo Price		1							
Widener (JV De Novo)	Mar-07	PA	High B16 (1%)	De Novo Price		1							
Higgins (JV De Novo)	Mar-07	KY	Med B14 (5%)	De Novo Price	33 (Yr 1)	1							
West Sacramento (JV De Novo)	Mar-07	CA	Med B14 (5%)	De Novo Price	50 (Yr 1)	1							
West Sacramento (JV De Novo)	Mar-07	CA	Med B14 (5%)	De Novo Price	50 (Yr 1)	1							
West Sacramento (JV De Novo)	Mar-07	CA	Low B12 (4%)	De Novo Price	33 (Yr 1)	2							
Silverton (JV De Novo)	May-07	OH / KY	Low B12 (4%)	De Novo Price (a)	134 (Yr 1)	5							
Desert Springs (JV De Novo)	May-07	NV	High B16 (1%)	De Novo Price	27 (Yr 1)	1							
San City West (JV De Novo)	Aug-07	AZ	High B16 (1%)	De Novo Price	45 (Yr 1)	1							
San City West (JV De Novo)	Aug-07	AZ	High B16 (1%)	De Novo Price (b)		1							
Rowleside III (JV De Novo)	Oct-07	GA	Low B12 (4%)	De Novo Price	96 (Yr 1)	2							
Rowleside III (JV De Novo)	Oct-07	GA	Low B12 (4%)	De Novo Price	20 (Yr 1)	1							
Feigo JV (JV De Novo)	Nov-07	OH	A19 (0%)	De Novo Price	478 (Yr 1)	4							
Sandusky (JV De Novo)	Nov-07	OH	A19 (0%)	De Novo Price	26 (Yr 1)	1							
REA (JV De Novo)	Nov-07	PA	A19 (0%)	De Novo Price	26 (Yr 1)	1							
Sommerville (JV De Novo)	Dec-07	TN		De Novo Price	26 (Yr 1)	1							
Total													
2007 Divestitures / Other													
SAXCO Partners (Physician Practices - Divestiture)	Jan-07	CA	H12 (4%)	\$ 70,000	NA	1							
Reading (100% Divestiture)	Jan-07	KY	High C14 (4%)	\$ 0	122	3							
KHC Silverton (Partial Divestiture)	Mar-07	PA	Med B14 (5%)	\$ 500,000 (e)	52	1							
Little Rock (Partial Divestiture)	Mar-07	AR	Med B14 (5%)	\$ 120,000 (f)	50	2							
Central Kentucky (Partial Divestiture)	Jun-07	KY	High B16 (1%)	\$ 1,520,000 (h)	211	3							
RMS (Partial Divestiture)	Aug-07	FL	Med C (2.2%)	\$ 3,075,000 (m)	2,000	NA							
Hone Choice Partners (Partial Acquisition)	Sep-07	VA/GA	NA	\$ 176,000,000 (n)	2,000	NA							
Hone (Partial Divestiture)	Oct-07	MI	NA	\$ 82,050,000	26	1							
Total													

(a) Transaction Value and EBITDA reflect Davita's pro rata proportionate ownership interest in the deal.
 (b) Involves acquisition of 85% interest in an infusion business.
 (c) Weighted average based on Transaction Value.
 (d) This transaction involves the partial divestiture of one center with 53 pts and currently 80.5% DVA. 100% valuation is \$3,000,000. Silverton deal also includes 5 JV De Novos - White Oak, Anderson, Lebanon/Warren County, Turkey, and Cold Springs. All centers are in OH.
 (e) This transaction involves the partial divestiture of 3 centers in San Antonio, TX. 100% valuation is \$1,400,000.
 (f) This transaction involves acquisition of the center first and then divesting 40% of the center. Total value is \$300,000.
 (g) Silverton deal includes 5 JV De Novos - White Oak, Anderson, Lebanon/Warren County, Turkey and Cold Springs. All centers are in OH.
 (h) The transaction involves the doctor group buying an additional 18% in the Woodland and Bardonia centers. Total Valuation is \$2.5M.
 (i) This transaction involves the doctor group buying an additional 18% in the Woodland and Bardonia centers. Total Valuation is \$2.5M.
 (j) DVA Acquired interest is 60%. Net cash impact is \$3,285,000.
 (k) DVA Acquired interest is 60%. Net cash impact is \$3,285,000.
 (l) DVA Acquired interest is 60%. Net cash impact is \$3,285,000.
 (m) DVA Acquired interest is 60%. Net cash impact is \$3,285,000.
 (n) Centers divested include Oriando/Hunters Creek, Kissimmee and Celebration. DVA interest divested is 40%. Net cash impact \$1,230,000.
 (o) Involves acquisition of 85% interest in an infusion business.

Deal Name	Date of Close	State	Est. % HIPERS	Transaction Value	Patients (b)	Centers	IRR	Year 3 Cash on Cash	EBITDA Year 1	(a)	Incremental Unit Mix (By % of Facilities)	High-Risk Mkt	Price/pt	Tx in FY08	x EBITDA
2008 Acquisitions															
Fayetteville	1-Feb-08	AR	8.3%	\$ 3,750,000	110	4	16.6%	14.8%	\$ (423,233)	1	0	0	\$ 34,455	14,520	9.0 x
Decatur	1-Apr-08	GA	7.7%	\$ 8,000,000	198	2	16.2%	14.2%	\$ 1,209,252	0	0	0	\$ 47,619	18,144	6.6 x
Conestoga	1-May-08	FL	1.0%	\$ 5,400,000	111	3	12.5%	12.0%	\$ 749,078	0	0	0	\$ 48,649	10,556	7.2 x
Kent	1-Jun-08	KS	9.1%	\$ 18,750,000	189	3	14.0%	12.3%	\$ 2,987,596	0	0	0	\$ 59,206	15,676	6.5 x
Clear	1-Jul-08	TX	5.8%	\$ 5,100,000	23	1	15.5%	13.3%	\$ 1,100,000	0	0	0	\$ 22,248	1,380	1.80x
Traver	1-Aug-08	TX	8.3%	\$ 1,100,000	87	1	15.5%	13.3%	\$ 220,739	0	0	0	\$ 15,967	1,080	6.0 x
Payton	30-Sep-08	OH	9.8%	\$ 28,275,000	295	3	14.5%	10.7%	\$ 4,306,975	0	0	0	\$ 56,847	14,180	6.6 x
PortLavaca	1-Oct-08	TX	5.6%	\$ 600,000	39	1	2.0%	10.1%	\$ 114,411	0	0	0	\$ 20,513	1,464	7.0 x
Stemmer	1-Dec-08	FL	6.0%	\$ 10,000,000	111	2	17.4%	11.5%	\$ 1,288,967	0	0	0	\$ 90,090	3,342	7.8 x
Caucus	1-Dec-08	IA	9.8%	\$ 14,000,000	170	2	13.3%	12.5%	\$ 1,148,410	0	0	0	\$ 82,319	2,041	12.2 x
Total				\$ 90,928,000	1,321	20	14.4% (c)	11.9% (c)	\$ 11,592,210	1	0	0	\$ 81,873 (c)	\$ 88,813	7.8 x
2008 JVs															
American Fertility (JV De Novo)	1-Jan-08	UT	12.2%	De Novo Price	28 (Yr 1)	1									
Concord (JV De Novo)	1-Feb-08	TX	12.3%	De Novo Price	24 (Yr 1)	1									
Concord (JV De Novo)	5-Feb-08	TX	12.3%	De Novo Price	24 (Yr 1)	1									
Galeta PD-HCD (JV De Novo)	22-Feb-08	TN	8.6%	De Novo Price	19 (Yr 1)	1									
RNA (JV De Novo)	1-Apr-08	OH	8.3%	De Novo Price	55 (Yr 1)	2									
Wauson (JV De Novo)	1-Apr-08	OH	5.8%	De Novo Price	38 (Yr 1)	1									
BANA (JV De Novo)	5-Mar-08	MD	13.4%	De Novo Price	50 (Yr 1)	1									
Wauson (JV De Novo)	1-Mar-08	OH	10.5%	De Novo Price	30 (Yr 1)	1									
Wauson (JV De Novo)	1-Jun-08	TX	11.2%	De Novo Price	9 (Yr 1)	1									
San Marcos (JV De Novo)	1-Jun-08	TX		De Novo Price		1									
Five Star (JV De Novo)	1-Nov-08	RV		De Novo Price		1									
Sunset (JV De Novo)	1-Dec-08	CA		De Novo Price		1									
Total				\$ -	278	12									
2008 Divestitures / Other															
Houston Acute (JV BUYOUT)	1-Jan-08	TX	7.4%	\$ 80,579	2	2									
Prostate (JV BUYOUT)	1-Feb-08	CA	14.6%	\$ 2,300,000	92	1									
PDI Midsize (JV Buyout)	1-Feb-08	CA	12.5%	\$ 2,300,000	108	1									
Menzies - AI Home (Partial Divestiture - 45%)	1-Feb-08	CA	7.3%	\$ (143,856)											
Columbia I (Partial Divestiture - 40%)	1-Mar-08	OH	13.0%	\$ (4,208,177) (d)	297	3									
Turlock (JV BUYOUT)	1-Mar-08	AR	4.30%	\$ 704,639											
Miami FL - Open Access Vascular Center	1-Mar-08	FL	4.30%	\$ 10,978,364											
31-Medical (JV BUYOUT)	31-Mar-08	CO	7.25%	\$ (1,396,757)											
Rocky Mountain (JV BUYOUT)	1-Jun-08	CO		\$ (2,412,786)	230	3									
Mountain West Dialysis LLC (Partial Divestiture - 49%)	1-Jun-08	CA		\$ 369,437											
Capital Dialysis (Partial Acquisition - 2.492%)	1-Jun-08	VA		\$ 19,530											
TRC Petroleum (JV BUYOUT)	1-Jul-08	GA		\$ (139,789)											
Wynndorco (DIVESTITURE)	1-Aug-08	GA	8.30%	\$ 1,100,000	79	1									
Scholar (CA JV BUYOUT) - Scholar Dialysis Center, LLC	1-Aug-08	CA		\$ (1,100,000)											
Wauson (JV Buyout)	1-Nov-08	OH		\$ (229,150)											
Shadow Dialysis (Partial Divestiture - 18%)	1-Nov-08	OH		\$ (229,150)											
Manipal (Partial Divestiture - 36%)	1-Dec-08	CA		\$ (504,000)											
Total				\$ 24,905,719	734	10									

(a) Transaction Value and EBITDA reflect Co. JV's pro rata percentage ownership interest in the deal
 (b) Includes acute care patients / JV ownership 100% ownership
 (c) Weighted average based on Transaction Value
 (d) Involves Columbia \$5,402,000, Columbia East \$139,000 and Columbia Downtown \$1,002,000 centers

- CMLs and Political deals are defined by Transaction Directors
 - High-Risk Mkt is laboratory facilities with estimated % HIPERS greater than 10%

Deal Depot

Closed Deals YTD 2009

Deal Name	Date of Close	State	Est. % HIPERS	Transaction Value	(a) Patients	(b) Centers	IRR	IRR with Lab	Year 3 COC	Yr 3 COC with Lab	EBITDA Year 1	(c) Implied Price/PT	Tx in FY08	x EBITDA	Physicians
2009 Acquisitions															
Dialysis Services of Central Florida	1-Feb-09	FL	10.3%	\$ 32,800,000	474	5	12.2%	14.0%	9.9%	10.5%	\$ 3,173,219	\$ 69,198	62,568	10.3 x	11
Renown	1-Feb-09	NV	13.2%	\$ 1,024,000	64	3	16.2%	27.4%	9.2%	10.5%	\$ 242,067	\$ 19,940	13,355	4.2 x	4
Bakersfield Acute	1-Feb-09	CA	6.7%	\$ 400,000	21	NA	47.7%	47.7%	46.5%	46.5%	\$ 495,401	\$ 18,701	2,823	0.8 x	NA
Klamath Falls	1-Mar-09	OR	7.5%	\$ 3,500,000	51	1	16.1%	17.5%	12.1%	12.6%	\$ 648,614	\$ 68,627	6,120	5.4 x	4
Timpanogas PD	1-Mar-09	UT	10.7%	\$ 1,050,000	8	1	14.3%	15.6%	10.6%	11.1%	\$ 359,332	\$ 131,250	960	2.9 x	3
Muskogee/JV Buyout - 38.5%	1-Mar-09	OK	6.2%	\$ 1,424,500	18	1	19.1%	20.4%	12.7%	12.7%	\$ 243,623	\$ 77,083	2,218	5.8 x	1
TKS/JV Buyout-40%	1-Apr-09	VA	5.9%	\$ 3,280,000	70	2	8.3%	10.7%	10.2%	10.2%	\$ 561,880	\$ 46,857	7,560	5.9 x	9
Wheaton	1-Jun-09	IA	9.0%	\$ 3,500,000	84	2	22.3%	24.0%	14.4%	15.6%	\$ 356,115	\$ 41,667	7,056	9.9 x	4
Total				46,978,500	820	15	13.8%	15.6%	10.8%	12.1%	6,080,271	\$ 66,471	101,600	7.7 x	36
2009 JVs															
Wesley Chapel (JV DeNovo)	1-Jan-09	FL	6.7%	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Kennesaw	1-Jan-09	GA	11.2%	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Felds Forest Fair (JV)	1-Mar-09	OH	11.5%	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Blue Grass/Williamstown (JV)	1-Mar-09	KY	9.2%	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Felds (JV)	1-Mar-09	OH	11.5%	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Cypress Woods (JV)	1-Mar-09	TX	5.6%	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Plyor (JV)	1-Apr-09	OK	6.0%	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
District Heights (JV DeNovo)	1-May-09	MD	15.3%	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Total				0	0	0	0	0	0	0	0	0	0	0	0
2009 Divestitures / Other															
East LA (Partial Divestiture - 20%)	1-Feb-09	CA		\$ (770,000)		2									
Zephyris (Partial Divestiture - 46%)	1-Feb-09	FL		\$ (690,000)		1									
Hennepin (Full Divestiture)	1-Feb-09	MIN		\$ (170,000)		1									
New Springs (Partial Divestiture - 15%)	1-Feb-09	IN		\$ (173,339)		1									
Single (Full Divestiture - 23%)	1-Feb-09	KY		\$ (244,872)		1									
NVA (Partial Divestiture - 50%)	1-Feb-09	AZ		\$ (875,000)		1									
Sparks and Sierra Rock (Partial Divestiture - 60%)	1-Feb-09	NV		\$ (1,370,000)		2									
Monroe (Full Divestiture)	1-Apr-09	LA		\$ (1,416,282)		1									
Amery (Partial Divestiture - 25%)	1-Apr-09	WI		\$ (1,078,000)		1									
West Elk Grove (Partial Divestiture - 48%)	1-Apr-09	CA		\$ (7,463,481)		14									

(a) Transaction Value and EBITDA reflect Davita's pro rata proportionate ownership interest in the deal.
 (b) Includes acute equivalent patients. JV census represents pro rata ownership.
 (c) Weighted average based on Transaction Value.

Exhibit 7

DaVita Acquisition Transactions

Transaction	Closed	State	Interest Purchased	Purchase Price	Centers	Patients	Proj. Yr 1 EBITDA	EBITDA Multiple	IRR	Assumptions		Valuation @ \$18 G&A
										Hipper comp.	Plugged Or Bus?	
Nephroplex	Jan-06	IL	100%	\$ 13,900,000	4	222	\$ 2,810,873	4.9x	18.1%	NA	no	\$ 13,000,000
Diamond Dialysis	Feb-06	IL	100%	9,150,000	2	96	2,600,260	3.5x	14.3%	750	no	8,600,000
SANC Idaho	Apr-06	ID	100%	44,000,000	6	534	7,239,870	6.1x	16.2%	NA	no	41,300,000
Las Vegas Summerlin	Jun-06	NV	60%	7,680,000	1	124	3,028,000	2.5x	15.3%			
FMC Concord	Jun-06	NC	100%	700,000	1	52	250,747	2.8x	17.4%	NA	no	500,000
Cobb Paulding	Jul-06	GA	100%	3,000,000	3	141	617,606	4.9x	17.1%	750	no	2,350,000
Eastern Connecticut	Sep-06	CT	100%	2,500,000	2	135	498,804	5.0x	17.1%	NA	287 vs 245	1,900,000
Grand Junction	Oct-06	CO	100%	3,740,000	1	89	505,116	7.4x	16.7%	750	5 @ 1,015	3,350,000
Dyersburg	Nov-06	TN	100%	1,150,000	1	29	94,074	12.2x	14.7%			
Amelia Island	Nov-06	FL	100%	1,300,000	1	38	(180,320)	NM	16.6%	750	14 @ 450	1,100,000
Virginia Beach	Nov-06	VA	100%	2,300,000	1	49	193,102	11.9x	21.3%	NA	300 vs 252	2,050,000
Atlanta Dialysis	Dec-06	GA	100%	3,250,000	1	52	391,477	8.3x	9.5%	NA	staffing	2,900,000
Little Rock	Apr-07	AR	100%	\$ 300,000	2	50	\$ 535,923	0.6x	69.5%	750	4 @ 1250	\$ 225,000
Florida Hemo	May-07	FL	100%	1,977,000	1	30	59,066	33.5x	19.0%	750	253 vs 239	1,550,000
South Valley	Jun-07	CA	100%	4,000,000	1	145	935,429	4.3x	19.0%	750	EPO	3,300,000
Leesburg	Jul-07	FL	100%	3,000,000	1	50	443,227	6.8x	17.4%	750	12 @ 450	2,700,000
St. Cloud	Aug-07	FL	60%	3,585,000	1	126	645,987	5.5x	18.3%	750	265 vs 245	2,880,000
Hillmed	Aug-07	OH	60%	1,200,000	1	55	209,099	5.7x	17.3%	750	6 @ 455	900,000
RCP Hialeah	Aug-07	FL	100%	1,100,000	1	29	(161,454)	NM	17.6%	750	1 @ 750	850,000
Hialeah	Sep-07	FL	100%	800,000	1	12	(47,130)	NM	18.5%	750	4 @ 305	600,000
Bakersfield	Oct-07	CA	100%	17,700,000	1	377	2,341,001	7.6x	14.2%	750	294 vs 262	14,400,000
Erie	Nov-07	PA	100%	8,125,000	2	199	781,687	10.4x	16.6%	750	279 vs 262	7,300,000
Dr Dahhan	Dec-07	CA	100%	18,300,000	3	311	2,323,875	7.9x	11.8%	750	staffing	16,400,000
SKI	Dec-07	AZ	50%	15,750,000	8	443	1,227,508	12.8x	18.2%	750	306 vs 260	13,500,000
Fayetteville	Feb-08	AR	100%	\$ 3,790,000	4	110	\$ (423,233)	NM	16.6%	750	10 @ 1050	\$ 3,100,000
Decatur	Apr-08	GA	100%	8,000,000	2	168	1,209,252	6.6x	16.2%	750	277 vs 269	7,100,000
Coastal	May-08	FL	100%	5,400,000	1	111	749,078	7.2x	12.5%	750	260 vs 239	4,800,000
Kansas	Jun-08	KS	100%	18,750,000	3	189	2,887,596	6.5x	14.0%	750	350 vs 310	17,750,000
Trover	Aug-08	KY	100%	1,100,000	1	87	220,739	5.0x	15.5%	750	1 @ 780	600,000
Payton	Sep-08	OH	100%	28,275,000	3	295	4,306,975	6.6x	14.5%	950	WACC - g	26,100,000
Stemmer	Dec-08	FL	100%	10,000,000	1	111	1,288,987	7.8x	17.4%	2,500	2 Aetna OON	9,400,000
Caucus	Dec-08	IA	100%	14,000,000	2	170	1,148,410	12.2x	13.3%	750	320 vs 303	13,000,000
Central Florida	Feb-09	FL	100%	\$ 32,800,000	5	474	\$ 3,173,219	10.3x	12.2%	2,500	WACC, HC	\$ 29,800,000
Timpanogos PD	Mar-09	UT	100%	1,050,000	1	8	359,332	2.9x	14.3%	750	290 vs NA	990,000
Kant Tucker (proposed)	Jun-09	CA	100%	71,000,000	13	1,145	6,305,764	11.3x	6.1%	2,500	WACC & g	
Totals				362,672,000	83	6,255	48,569,947	7.5x				254,295,000
Totals (2007-2008)				165,152,000	40	3,068	20,682,023	8.0x				146,455,000

DaVita Divestiture Transactions

Divestitures	Closed	State	Transaction Director	Analyst	Location #	Interest Divested	Valuation *	Centers	Patients
SAKDC	Apr-07	TX	David Finn				\$560,000	3	122
Reading	May-07	PA	David Finn			100%	\$200,000	1	42
KHC Silverton	May-07	OH	Paul Dorsa		LOC_3443		\$505,000	1	53
Little Rock	May-07	AR			LOC_1864 & 3615		\$120,000	2	50
Central Kentucky	Jun-07	KY	Giles Caver		LOC_0555 & 2055		\$1,520,000	2	
IMS / St. Cloud	Aug-07	FL		Chris Pannell	LOC_0170, 0178, 4013	40%	\$3,075,000	3	211
Ionia	Oct-07	MI	Giles Caver		LOC_2252			1	26
Hemet	Feb-08	CA	Ken Leidner		LOC_0878	40%	\$260,000	1	92
Manzanita - At Home	Feb-08	CA			LOC_6016	49%	\$143,898	1	
Columbus	Mar-08	OH	Finn / Menezes	Chris Pannell	LOC_2318, 3354, 3454, 3566	40%	\$4,208,177	3	297
TRC Colorado	May-08	CO	Ken Leidner	Ben Chiu		49%	\$1,396,757	2	
Mountain West Dialysis, LLC	Jun-08	CO	Ken Leidner	Ben Chiu		49%	\$2,412,786	6	628
Waynesboro	Jul-08	GA	Giles Caver				\$139,769	1	31
Shadow Dialysis	Oct-08	CA			LOC_1930	49%	\$1,296,338	1	
Wauseon	Nov-08	OH	John Walcher		LOC_2254	10%	\$223,150	1	
Shadow Dialysis	Nov-08	CA			LOC_1930	10%		1	
Mainplace	Dec-08	CA	John Walcher	Ben Chiu	LOC_0884	36%	\$1,400,000	1	
East LA	Feb-09	CA			LOC_2541	20%	\$3,850,000	2	
Zephyrhills	Feb-09	FL	Demetrius Menezes	Sheila Bruch	LOC_4068	46%	\$1,500,000	1	
Hennepin	Feb-09	MN	John Walcher		LOC_0244	100%	\$170,000	1	
New Springs	Feb-09	IN				15%	\$1,155,592	1	
La Grange	Feb-09	KY			LOC_2148	20%	\$1,224,358	1	
NW Tucson	Mar-09	AZ		Ben Chiu	LOC_2325	50%	\$1,750,000	1	
Sparks and Sierra Rose	Feb-09	NV	Ken Leidner	David Barbetta	LOC_0844, 2015	60%	\$2,618,000	2	162
Monroe	Apr-09	LA	Ben Jacobs			100%	\$1,475,199	3	
Amery	Apr-09	WI	John Walcher		LOC_1966 or 4305	25%	\$1,665,128	1	
West Elk Grove	Apr-09	CA	John Walcher	Alan Zhang	LOC_2343	49%	\$2,200,000	1	

* It remains to be determined which of these are 100% valuations and which are the proceeds received for the pro rata interest sold.

Exhibit 8

Rocky Mountain Colorado Transaction Summary

Acquisition Metrics

Forecasted Closing Date: **May-06**

Total Purchase Price	\$ 39,496,669
Total IRR	3.5%
Total IRR, Including Lab	4.4%
Mult. of Yr 1 EBITDA	10.3x
Mult. of Yr 1 EBITA	11.4x
Mult. of Yr 1 EBIT	12.8x
Mult. of Yr 1 EBITDA - Recur. Ouplt. Capex	10.6x
Mult. of Yr 1 Net Income	21.5x
Yr.3 Cash on Cash Return	(2) 8.9%

Outpatient Business Only

Outpatient Purchase Price	\$ 39,496,669
Outpatient IRR	3.5%
Outpatient IRR, Including Lab	4.4%
Mult. of Yr 1 EBITDA	10.3x
Mult. of Yr 1 EBITA	11.4x
Mult. of Yr 1 EBIT	12.8x
Mult. of Yr 1 EBITDA - Recur. Ouplt. Capex	10.6x
Mult. of Yr 1 Net Income	14.5x
Yr.3 Cash on Cash Return	(2) 8.9%

Acute Business Only

Acute Purchase Price	\$ -
Length of Contract	NA
Revenue Per Acute Tx	NA
Required IRR	NA
Yr.3 Cash on Cash Return	NA

Finance adjustments?	Yes
MSP Extension?	No
Likelihood of Extension	80.0%
Months of Extension	6 Months
Year Extension Begins	2

Purchase Price Sensitivity

	12%	13%	14%	15%	16%	17%	18%	19%
Outpatient Business	\$ 39,496,669	\$ 39,496,669	\$ 39,496,669	\$ 39,496,669	\$ 39,496,669	\$ 39,496,669	\$ 39,496,669	\$ 39,496,669
Acute Contract	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Purchase Price	\$ 39,496,669							
Year 1 & 2 Non-Recurring Capex	\$ 120,000	\$ 120,000	\$ 120,000	\$ 120,000	\$ 120,000	\$ 120,000	\$ 120,000	\$ 120,000
Mult. of DVA Yr.1 EBITDA	10.3x							

Summary Financials

	2004	2005	Base Year	Year 1	Year 2	Year 3	Year 4	Year 5
Avg. Patients	-	230	230	235	244	254	264	274
Treatments	-	33,126	33,126	33,789	35,140	36,546	38,007	39,528
<i>Tx Growth</i>	-	-	-	2.0%	4.0%	4.0%	4.0%	4.0%
Net Revenue	\$ -	\$ 4,887,202	\$ 10,443,853	\$ 10,652,730	\$ 11,189,627	\$ 11,753,585	\$ 12,223,728	\$ 12,712,677
Per Tx	\$ -	\$ 147.53	\$ 315.28	\$ 315.28	\$ 318.43	\$ 321.61	\$ 321.61	\$ 321.61
EBITDA	\$ -	\$ 1,549,047	\$ 3,817,503	\$ 3,823,176	\$ 4,024,118	\$ 4,223,103	\$ 4,311,389	\$ 4,397,692
Per Tx	\$ -	\$ 46.76	\$ 115.24	\$ 113.15	\$ 114.52	\$ 115.56	\$ 113.44	\$ 111.26
% of Revenue	-	31.7%	36.6%	35.9%	36.0%	35.9%	35.3%	34.6%
Pre-Tax Income	\$ -	\$ 3,077,336	\$ 3,266,705	\$ 3,077,336	\$ 3,266,705	\$ 3,349,976	\$ 3,426,691	\$ 3,501,423
Taxes	\$ -	\$ 1,243,244	\$ 1,319,749	\$ 1,243,244	\$ 1,319,749	\$ 1,353,390	\$ 1,384,383	\$ 1,414,575
Book Net Income	\$ -	\$ 1,834,092	\$ 1,946,956	\$ 1,834,092	\$ 1,946,956	\$ 1,996,586	\$ 2,042,308	\$ 2,086,848
EPS	\$ -	\$ 0.017	\$ 0.018	\$ 0.017	\$ 0.019	\$ 0.019	\$ 0.019	\$ 0.019
Fully Diluted Shares Outstanding	-	107.2 MM	107.2 MM	107.2 MM	107.2 MM	107.2 MM	107.2 MM	107.2 MM
Capex	\$ -	\$ 201,000	\$ 81,000	\$ 201,000	\$ 81,000	\$ 810,000	\$ 81,000	\$ 81,000

(1) Purchase Price/(Net Income + Tax Affected Interest Expense)

(2) After-tax C/F to Capital divided by Total Capital Expended (yrs 1-3).

Model created by: NAME

Exhibit 9

Denver Transaction Summary

Component	Valuation	Centers	Valuation per Center	EBITDA (1)	EBITDA Multiple	Patients	Price per Patient
Acquired Centers (2)	\$ 38,571,400	3	\$ 12,857,133	\$ 2,423,878	15.9x	225	\$ 171,428
Divested Centers (3)	\$ 3,865,000	6	\$ 644,167	\$ 3,598,929	1.1x	556	\$ 6,951

(1) Twelve month period 6/1/2008-5/31/2009.

(2) Valuation figure represents 100% of value. Amount attributable to the 49% ownership interest which DaVita purchased from Denver Nephrology was \$18,899,986.

(3) Valuation figure represents 100% of value. Amount attributable to the 49% ownership interest which DaVita sold to Denver Nephrology was \$1,893,850.

Exhibit 10

REDACTED

From: Chet Mehta
Sent: Tuesday, May 19, 2009 11:44 PM
To: Richard Whitney; Bob Badal; Tom Usilton; David Finn
Cc: Javier Rodriguez; Doug Saqui; Theresa Benson; Susan Dynes
Subject: RE: Acquisition Revenue Build Up Assumptions

Wow. Mike Staffieri, Bryan Parker, Dave Barbetta and I have been talking about the exact same issue on Number 3 (Hipper Compression). Mike/Bryan/I have been talking about an idea to retain Hipper compression but much different way than in current model. And then David Barbetta refined it to be something very similar to what Rich/Bob are talking about. I will be talking to Cassie to see what the right threshold for compression is to produce aggregate results comparable to Total SNIPER hit. A bunch of people on this email have been invited to a 7am call (Pacific) on THursday. Please try to participate if you can. (Rich/Tom/Bob mandatory or we will have to reschedule the call.....again)

From: Richard Whitney
Sent: Tue 5/19/2009 9:43 PM
To: Bob Badal; Tom Usilton; David Finn
Cc: Javier Rodriguez; Doug Saqui; Chet Mehta; Theresa Benson; Susan Dynes
Subject: Re: Acquisition Revenue Build Up Assumptions

1. Assumption should be the contracted increases.
2. Uhc. I think using the 2x rate penalty (ie 2/3 of what they owe us contractually) is appropriate for now. This should be consistent w what is in system rev (double check pls).
3. If all of our private pay compresses to 750 without increases in the lower rate biz or mcare...we are out of business. In other words this is not a realistic assumption. I would say for sure you shouldn't lower the rate for plans where we have long term contracts. Then instead of just assuming all of the high rate biz comes down we instead may want to assume a certain % reduction in avg non gov rate or assume avg non gov rate drops to something like 750 (if the acq asset has avg non gov rates above 750)
4. Depending on how we end up on 3 above this may not be relevant bc you just have an overall assumption for non gov whether contracted or not. If we don't go that way then we should consider having rates decline to 70% of charges over time.

Thx for bringing this up. We need to get these assumptions closer to our best (conservative) cut rather than something that is so conservative that it loses its usefulness.

From: Bob Badal
To: Tom Usilton; David Finn
Cc: Javier Rodriguez; Doug Saqui; Richard Whitney; Chet Mehta; Theresa Benson; Susan Dynes; Bob Badal
Sent: Tue May 19 21:07:16 2009
Subject: Acquisition Revenue Build Up Assumptions

TU,

Not sure if you are aware, but I have a standing call every week (sometimes 2x per week) with Theresa Benson, Doug Saqui, and Susan Dynes to discuss current acquisition revenue build up models. During these calls, we review all private payor revenue data for deals in play...both pre due diligence and post due diligence assumptions.

For pre due diligence, it is rare to have complete and accurate private payor data (contracts, rates, cash,

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contract terms, etc) from sellers. As such, we make educated decisions on what rates would be appropriate to include in the model. These rate build up assumptions, at the payor level, can be set at 1) sellers rates, 2) DVA's contracted rates with that payor, 3) DVA's non-k rates, 4) % of DVA's billed charge, 5) Medicare...or some combination thereof.

For post due diligence (after DVA has been selected as a finalist), we typically receive more complete and accurate data from the seller re: private payor rates/contract information. During these post due diligence calls, the team evaluates any changes that are necessary to the pre due diligence rate assumptions.

The purpose of this email is to highlight a couple of the revenue assumption practices that we are using in these models, and, where appropriate, recommend changes to those assumptions. Here are a few questions that I would like your input on:

- Currently, the model assumes flat 1% increases on contracts instead of actual contract set increases - we propose that this change to more accurately reflect contract increases; this will add some extra work to the process however.
- For United Healthcare we are assuming booked revenue - this includes penalty amounts that were effective 1/1/09; these penalty increases have not yet been realized and will be tied up in legal arbitration for a while; should we continue to include these penalties in our rate build up for acquisitions
- For all contracted and noncontracted payors, the model compresses revenue to \$750 all in for years 3 and beyond. Does this rate compression policy still hold true, given the success (though limited) that we have had in fighting ONR? Also, the logic of compressing contracted revenue that is currently above \$750 RPT is overly conservative for select payors like Multiplan, BCBS IL, Med Mutual of Ohio, etc - payors whose current \$750+ contracted RPT is not expected to drop anytime soon.
- Should we consider establishing a general rule that when there is noncontracted payment history in excess of 70% of billed charges, that we cap the revenue at 70% of billed charges in the model (ie., if we are currently getting paid at 90% of billed charge, it seems a bit bold to assume that we will continue to get that much...so should we discount it to a more conservative 70% figure)

Please provide your thoughts to the above 4 items. Thanks

Bob

Exhibit 11

Wauseon Valuation Summary

Projection	Year 1	Year 2	Year 3	Year 4	Year 5
With HIPPER Compression					
Net Cash Flow	\$ 14,590	\$ 890,240	\$ 280,015	\$ 184,598	\$ 1,743,717
Minimum Fair Market Value	\$ 1,744,814				
Without HIPPER Compression					
Net Cash Flow	\$ 14,590	\$ 890,240	\$ 529,306	\$ 585,480	\$ 5,697,874
Minimum Fair Market Value	\$ 3,940,163				

HIPPER Compression artificially depressed the supposed fair market value of this center by more than 50%.

Exhibit 12

Atlanta Dialysis Center, LLC
Atlanta, GA

Staffing Projections

35%
3%
5%
4%
10%

Benefits
Annual SWC Increase
Overtime
Profit Sharing
Year 1 SWB Transition Buffer

Annual Yr 1 Salary	Projected Year 1 Headcount per Quarter					Projected Headcount					SWBs per Year				
	Q1	Q2	Q3	Q4		Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5
Hemo Patients	54	54	54	54	63	7,788	8,089	8,423	8,760	9,110					
Treatments	1,864	1,947	1,983	1,993	1,993	1.00	1.00	1.00	1.00	1.00	4.0%	4.0%	4.0%	4.0%	4.0%
FA	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
RN	1.00	1.00	1.00	1.00	1.00	1.00	1.25	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50
LPN	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
PCT	4.80	4.80	4.80	4.80	4.80	4.80	2.31	2.36	2.90	3.46	0.65	0.65	0.65	0.65	0.65
Reuse	0.65	0.65	0.65	0.65	0.65	0.65	0.65	0.65	0.65	0.65	0.65	0.65	0.65	0.65	0.65
Admin Assist	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Dietician	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
MSW	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
Biomd	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40
Overtime Ptx															
Transition Buffer															
Transition Buffer Allocation															
Total SWC	11.25	11.25	11.25	11.25	11.25	11.25	9.01	9.31	9.85	10.41					
SWC Ptx															
Profit Sharing															
Profit Sharing Ptx															
Total SWB															
SWB Ptx															

Annual Yr 1 Salary	Projected Year 1 Headcount per Quarter					Projected Headcount					SWBs per Year				
	Q1	Q2	Q3	Q4		Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5
PD Patients															
Hemo Equivalent Treatments															
CC															
RN															
PCT															
Reuse															
FA															
Admin Assist															
Dietician															
MSW															
Biomd															
Overtime Ptx															
Transition Buffer															
Transition Buffer Allocation															
Total SWC															
SWC Ptx															
Profit Sharing															
Profit Sharing Ptx															
Total SWB															
SWB Ptx															

(1) Per HR department, profit sharing expenses are delayed 12 months after beginning the program.
(2) Assumed SWB tx of \$75, which is consistent with that of DIA comps, growing at 3% annually thereafter.

Exhibit 13

Exhibit 14

Regional Kidney Centers
NW Arkansas

Transaction Summary

Acquisition Metrics

Forecasted Closing Date: Feb-08

Total Purchase Price	\$ 3,790,000
Total IRR	16.6%
Total IRR, Including Lab	19.5%
Mult. of Yr 1 EBITDA	-9.0x
Mult. of Yr 1 EBITA	-5.8x
Mult. of Yr 1 EBIT	-5.4x
Mult. of Yr 1 EBITDA - Recur. Outpt. Capex	-8.4x
Mult. of Yr 1 Net Income (1)	-9.1x
Yr 3 Cash on Cash Return (2)	14.8%

Outpatient Business Only

Outpatient Purchase Price	\$ 3,790,000
Outpatient IRR	16.6%
Outpatient IRR, Including Lab	19.5%
Mult. of Yr 1 EBITDA	-9.0x
Mult. of Yr 1 EBITA	-5.8x
Mult. of Yr 1 EBIT	-5.4x
Mult. of Yr 1 EBITDA - Recur. Outpt. Capex	-8.4x
Mult. of Yr 1 Net Income (1)	-11.9x
Yr 3 Cash on Cash Return (2)	14.8%

Acute Business Only

Acute Purchase Price	\$ -
Length of Contract	NA
Revenue Per Acute Tx	NA
Required IRR	NA
Yr 3 Cash on Cash Return	NA
Finance adjustments?	Yes
MSP Extension?	Yes
Likelihood of Extension	80.0%
Months of Extension	6 Months
Year Extension Begins	2

Purchase Price Sensitivity

	12%	13%	14%	15%	16%	17%	18%	19%
Outpatient Business	\$ 3,790,000	\$ 3,790,000	\$ 3,790,000	\$ 3,790,000	\$ 3,790,000	\$ 3,790,000	\$ 3,790,000	\$ 3,790,000
Acute Contract	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Purchase Price	\$ 3,790,000							
Year 1 & 2 Non-Recurring Capex	\$ 818,124	\$ 818,124	\$ 818,124	\$ 818,124	\$ 818,124	\$ 818,124	\$ 818,124	\$ 818,124
Mult. of DVA Yr 1 EBITDA	-9.0x							

Summary Financials

	2004	2005	Base Year	Year 1	Year 2	Year 3	Year 4	Year 5
Avg. Patients	110	110	110	118	137	153	170	188
Treatments Tx Growth	-	-	15,840	17,032 7.5%	19,693 15.6%	21,987 11.7%	24,421 11.1%	27,036 10.7%
Net Revenue Per Tx	\$ 4,457,575	\$ 3,725,963	\$ 4,012,963	\$ 4,314,820	\$ 5,912,172	\$ 6,576,565	\$ 7,304,537	\$ 8,086,566
EBITDA Per Tx	\$ (558,818)	\$ (595,634)	\$ (425,218)	\$ (423,233)	\$ 807,796	\$ 1,082,260	\$ 1,381,531	\$ 1,501,631
% of Revenue	-12.5%	-16.0%	(26.84)	(24.85)	41.02	49.22	56.57	55.54
Pre-Tax Income			\$ (697,379)	\$ (697,379)	\$ 525,793	\$ 790,218	\$ 1,081,631	\$ 1,193,874
Taxes			\$ (281,741)	\$ (281,741)	\$ 212,420	\$ 319,248	\$ 436,979	\$ 482,325
Book Net Income			\$ (415,638)	\$ (415,638)	\$ 313,373	\$ 470,970	\$ 644,652	\$ 711,549
EPS			\$ (0.004)	\$ (0.004)	\$ 0.003	\$ 0.004	\$ 0.006	\$ 0.007
Fully Diluted Shares Outstanding			107.2 MM	107.2 MM	107.2 MM	107.2 MM	107.2 MM	107.2 MM
Capex			\$ 845,624	\$ 845,624	\$ 55,000	\$ 70,276	\$ 55,000	\$ 55,000

(1) Purchase Price/(Net Income + Tax Affected Interest Expense)
(2) After-tax CF to Capital divided by Total Capital Expended (Yrs 1-3).

Model created by: Jeff Young

Exhibit 15

Johnson County, Wyandotte County and Leavenworth Dialysis
Lenexa, Kansas Transaction Summary

Acquisition Metrics

Forecasted Closing Date: Jun-08

Total Purchase Price	\$ 18,750,000
Total IRR	14.1%
Total IRR, Including Lab	15.1%
Mult. of Yr 1 EBITDA	6.5x
Mult. of Yr 1 EBITA	7.3x
Mult. of Yr 1 EBIT	7.8x
Mult. of Yr 1 EBITDA - Recur. Outpt. Capex	6.5x
Mult. of Yr 1 Net Income (1)	13.2x
Yr.3 Cash on Cash Return (2)	12.3%

Outpatient Business Only

Outpatient Purchase Price	\$ 18,750,000
Outpatient IRR	14.1%
Outpatient IRR, Including Lab	15.1%
Mult. of Yr 1 EBITDA	6.5x
Mult. of Yr 1 EBITA	7.3x
Mult. of Yr 1 EBIT	7.8x
Mult. of Yr 1 EBITDA - Recur. Outpt. Capex	6.5x
Mult. of Yr 1 Net Income (1)	10.0x
Yr.3 Cash on Cash Return (2)	12.3%

Acute Business Only

Acute Purchase Price	\$ -
Length of Contract	NA
Revenue Per Acute Tx	NA
Required IRR	NA
Yr.3 Cash on Cash Return	NA

Finance adjustments?	Yes
MSP Extension?	No
Likelihood of Extension	80.0%
Months of Extension	6 Months
Year Extension Begins	2

Purchase Price Sensitivity

	12%	13%	14%	15%	16%	17%	18%	19%
Outpatient Business	\$ 18,775,000	\$ 18,775,000	\$ 18,775,000	\$ 18,775,000	\$ 18,775,000	\$ 18,775,000	\$ 18,775,000	\$ 18,775,000
Acute Contract	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Purchase Price	\$ 18,775,000							
Year 1 & 2 Non-Recurring Capex	\$ 1,842,927	\$ 1,842,927	\$ 1,842,927	\$ 1,842,927	\$ 1,842,927	\$ 1,842,927	\$ 1,842,927	\$ 1,842,927
Mult. of DVA Yr.1 EBITDA	6.5x							

Summary Financials

	2006	2007	Base Year	Year 1	Year 2	Year 3	Year 4	Year 5
Avg. Patients	-	189	189	192	198	204	210	216
Treatments	-	27,266	27,216	27,624	28,453	29,307	30,186	31,091
Tx Growth	-	-	-	1.5%	3.0%	3.0%	3.0%	3.0%
Net Revenue	\$ -	\$ 7,656,848	\$ 8,454,667	\$ 9,668,484	\$ 9,958,539	\$ 10,257,295	\$ 10,565,014	\$ 10,881,964
Per Tx	\$ -	\$ 280.82	\$ 310.65	\$ 350.00	\$ 350.00	\$ 350.00	\$ 350.00	\$ 350.00
EBITDA	\$ -	\$ 1,459,712	\$ 1,934,663	\$ 2,887,596	\$ 3,463,764	\$ 3,532,848	\$ 3,622,631	\$ 3,682,594
Per Tx	\$ -	\$ 53.54	\$ 71.09	\$ 104.53	\$ 121.74	\$ 120.55	\$ 120.01	\$ 118.44
% of Revenue	-	19.1%	22.9%	29.9%	34.8%	34.4%	34.3%	33.8%
Pre-Tax Income	\$ -	\$ 2,388,909	\$ 2,962,220	\$ 3,388,909	\$ 2,962,220	\$ 3,028,448	\$ 3,115,373	\$ 3,172,480
Taxes	\$ -	\$ 965,119	\$ 1,196,737	\$ 965,119	\$ 1,196,737	\$ 1,223,493	\$ 1,258,611	\$ 1,281,682
Book Net Income	\$ -	\$ 1,423,790	\$ 1,765,483	\$ 1,423,790	\$ 1,765,483	\$ 1,804,955	\$ 1,856,762	\$ 1,890,798
EPS	\$ -	\$ 0.013	\$ 0.016	\$ 0.013	\$ 0.016	\$ 0.017	\$ 0.017	\$ 0.018
Fully Diluted Shares Outstanding	-	107.2 MM	107.2 MM	107.2 MM				
Capex	\$ -	\$ 1,862,927	\$ 20,000	\$ 1,862,927	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000

(1) Purchase Price/(Net Income + Tax-Affected Interest Expense)
(2) After-tax C/F to Capital divided by Total Capital Expended (yrs 1-3)

Model created by: SHEILA D. BRUCH

Exhibit 16

Exhibit 17

REDACTED

From: Bryan Parker
Sent: Friday, July 24, 2009 8:51 PM
To: Chet Mehta; David Barbetta
Cc: Queenie Nguyen; Steve Williams (Team Genesis); Bruce Ware; Mike Staffieri
Subject: RE: DeNovo Model

I do. Thanks Chet.

Bryan R. Parker
Vice President
Special Projects

Casa DaVita
601 Hawaii Street
El Segundo, CA 90245
Tel: 650.696.8970
Fax: 866.319.2440
Cell: 650.714.7494
Email: bryan.parker@davita.com

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Our Core Values: Service Excellence, Integrity, Team, Continuous Improvement, Accountability, Fulfillment, Fun

From: Chet Mehta
Sent: Friday, July 24, 2009 8:50 PM
To: Bryan Parker; David Barbetta
Cc: Queenie Nguyen; Steve Williams (Team Genesis); Bruce Ware; Mike Staffieri
Subject: Re: DeNovo Model

Bryan - you mean "gaming" the model, right?
Chet Mehta
VP, Finance
DaVita Inc.
601 Hawaii St.
El Segundo, CA 90245
Phone: 310-536-2634
Email: chet.mehta@davita.com

From: Bryan Parker
To: David Barbetta
Cc: Queenie Nguyen; Steve Williams (Team Genesis); Chet Mehta; Bruce Ware; Mike Staffieri
Sent: Fri Jul 24 20:45:17 2009
Subject: DeNovo Model

David

Sorry to hear you are leaving us, but do wish you the best.

I was hopeful before you leave you, or you and Queenie, can give us a list of the most common things

REDACTED

one could do within the model to make sure it passes the COC and IRR hurdles. As we redesign the model I would like to be mindful of these.

Best,

Bryan R. Parker
Vice President
Special Projects

Casa DaVita
601 Hawaii Street
El Segundo, CA 90245
Tel: 650.696.8970
Fax: 866.319.2440
Cell: 650.714.7494
Email: bryan.parker@davita.com

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Our Core Values: Service Excellence, Integrity, Team, Continuous Improvement, Accountability, Fulfillment, Fun

Exhibit 18

REDACTED

From: Mike Staffieri
Sent: Friday, July 25, 2008 11:24 AM
To: John Walcher; John Westover
Cc: Marsha Dodd; David Barbetta
Subject: RE: Klamath Falls MDA Question
John –

I am less concerned about whether or not RCC sells its centers to us or not. The important thing is that they sign a 10-year MDA with a 25 mile non-compete around Klamath Falls. If they will not sign that agreement, then we are wasting our time and money. All the patients in Klamath Falls are theirs. Without the agreement and non-compete, they will simply build a DeNovo and move their referrals to the center and we will be left with nothing.

Call me if you want to discuss. I will not approve closing without RCC signing an MDA.

Michael Staffieri
Division Vice President
North Star Division
2615 SW Trenton Street
Seattle, WA 98126-3745
206-935-5423(o) 949-233-4310(c) 866-309-3548(f)

From: John Walcher
Sent: Friday, July 25, 2008 10:12 AM
To: Mike Staffieri; John Westover
Cc: Marsha Dodd; David Barbetta
Subject: Klamath Falls MDA Question
Importance: High

Mike & John,

We're strategizing on the MDA and need to clarify a key issue.

One possible scenario is:

- DVA buys Sky Lakes;
- DVA hires RCC to be medical director (with a 15-20 mile non-compete radius); and
- RCC sells its centers to FMC.

Another possible scenario is:

- DVA buys Sky Lakes;
- DVA hires our Grant's Pass doctor to be medical director (with a 15-20 mile non-compete radius); and
- RCC sells its centers to FMC.

Do you want us to proceed with the acquisition in the event RCC sells their centers to FMC or some other competitor (whether or not RCC is the Sky Lakes medical director)?

Our concern is being able to close the Sky Lakes acquisition prior to knowing if RCC will sell to us or FMC. If you two are comfortable closing the Sky Lakes acquisition as long as RCC is the medical director (and is bound by a reasonable non-compete clause), we will push both Sky Lakes and RCC for a quick resolution to this issue. If we aren't willing to close Sky Lakes until we know whether or not we're buying

RCC's centers, we'll need to delay the Sky Lakes close (thereby potentially putting the deal in jeopardy) until we have closure on RCC.

Thanks in advance for your input.

John

*John Walcher
Transaction Director
Mergers & Acquisitions / Corporate Development
DaVita, Inc.
15253 Bake Pkwy
Irvine, CA 92618
Direct: 949.930.4424
eFax: 866.442.3585*

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Exhibit 19

From: David Finn
Sent: Tuesday, May 05, 2009 11:18 AM
To: David Barbetta
Subject: RE: RCC sensitivity

how abt 70/30, with klamath save and without?

From: David Barbetta
Sent: Tue 5/5/2009 11:16 AM
To: David Finn
Subject: RE: RCC sensitivity

Fixed it. Here are the tables for wholly owned & JV:

Sensitivity -- IRR with Lab -- 100% acquisition

		Purchase Price			
		\$18M	\$19M	\$20M	\$21M
Klamath CF Saved	20%	7.5%	6.0%	4.7%	3.5%
	30%	8.2%	6.8%	5.4%	4.1%
	40%	9.0%	7.5%	6.1%	4.7%
	50%	9.9%	8.3%	6.8%	5.4%

Sensitivity -- IRR with Lab -- 60/40 JV

		Purchase Price			
		\$18M	\$19M	\$20M	\$21M
Klamath CF Saved	20%	9.7%	8.4%	7.2%	6.1%
	30%	10.4%	9.1%	7.8%	6.6%
	40%	11.2%	9.8%	8.5%	7.2%
	50%	11.8%	10.3%	9.0%	7.7%

Klamath Cash Flow

Cash flow decline	Decline in PV*
20%	\$ (1,017,442)
30%	(1,526,508)
40%	(2,037,966)
50%	(2,546,925)

* at 12% discount rate

From: David Finn
Sent: Tuesday, May 05, 2009 10:52 AM
To: David Barbetta
Subject: RE: RCC sensitivity

definitely not right...

From: David Barbetta
Sent: Tue 5/5/2009 10:45 AM
To: David Finn
Subject: RCC sensitivity

David,

Here is the new table based on changes to the model that Ben made this morning. This is for 100% owned again. I'd send the 60% JV scenario too but the returns are lower than wholly-owned, which doesn't seem right. I'm waiting for Ben to review.

Sensitivity -- IRR with Lab

		Purchase Price			
		\$18M	\$19M	\$20M	\$21M
Klamath CF Saved	20%	7.5%	6.0%	4.7%	3.5%
	30%	8.2%	6.8%	5.4%	4.1%
	40%	9.0%	7.5%	6.1%	4.7%
	50%	9.9%	8.3%	6.8%	5.4%

Exhibit 20

REDACTED

From: David Finn

Sent: Wednesday, October 08, 2008 6:25 AM

To: John Walcher

Cc: David Barbeta

Subject: klamath falls

assuming we get joinders from all docs in the med dir group (4?), you can go up to 3.5mm

thx

Exhibit 21

MEMBERSHIP INTEREST PURCHASE AND SALE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into this 30th day of May, 2008 ("Effective Date"), by and between Renal Treatment Centers - West, Inc., a Delaware corporation ("Buyer"), and DNPC Investments, LLC, a Colorado limited liability company ("Seller").

RECITALS

A. Buyer and Seller are equity members of Rocky Mountain Dialysis Services, LLC, a Delaware limited liability company (the "Company"), formed pursuant to that certain Operating Agreement dated June 15, 2002, as amended on August 1, 2003 (as amended, the "Operating Agreement").

B. Buyer owns fifty one percent (51%) of the membership interests of the Company and Seller owns forty nine percent (49%) of the membership interests of the Company (the "Seller's Interest").

C. Seller desires to sell and transfer to Buyer, and Buyer desires to purchase from Seller, the Seller's Interest on the terms and conditions set forth herein.

D. All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Operating Agreement and all other capitalized terms used herein shall have the meaning set forth in the Table of Definitions attached hereto as Schedule 1.0.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, agreements, representations and warranties contained herein, the parties hereto hereby agree as follows:

1. Purchase and Sale of the Seller's Interest.

(a) Purchase and Sale. Subject to the terms and the conditions set forth in this Agreement and on the basis of the representations and warranties herein, Buyer agrees to purchase from Seller, and Seller agrees to irrevocably sell to Buyer, the Seller's Interest.

(b) Purchase Price. The purchase price to be paid by Buyer to Seller for the Seller's Interest shall be Nineteen Million Three Hundred Fifty Three Thousand Three Hundred Sixty Eight Dollars (\$19,353,368) (the "Purchase Price"), which amount shall be paid to Seller in immediately available funds by wire transfer pursuant to the wire instructions set forth on Exhibit A attached hereto at the Closing (as defined below).

(c) Closing; Effective Time. The closing of the purchase and sale of the Seller's Interest (the "Closing") shall take place on June 1, 2008 (the "Closing Date"), at the offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston,

Massachusetts, or at some other location as the parties may mutually agree, or by facsimile transmission and overnight mail. Buyer and Seller shall use their respective good faith efforts to close this transaction as promptly as possible after the Effective Date. Closing shall be deemed to have occurred at 12:04 a.m. Mountain Time on the Closing Date (the "Effective Time").

(d) Instruments of Transfer. The sale of the Seller's Interest as herein provided shall be effected at Closing by the Transfer Agreement in the form attached hereto as Exhibit B.

(e) Adjustments. The parties acknowledge and agree that the Purchase Price includes Seller's pro rata share of the purchase price being paid for the Acute Programs (as defined in the Asset Purchase Agreement) (the "Acute Purchase Price") pursuant to the Asset Purchase Agreement. In the event the Acute Purchase Price is increased or decreased (the "Adjusted Acute Purchase Price"), the Purchase Price hereunder shall be increased or decreased by an amount equal to forty nine percent (49%) of such Adjusted Acute Purchase Price.

2. Tax Matters.

(a) Seller shall be solely responsible for and shall pay any and all sales, stamp, documentary or similar taxes payable by reason of the transfer and conveyance of the Seller's Interest hereunder, and Buyer shall not have any liability therefor.

(b) Consistent with IRS Revenue Ruling 99-6, the purchase and sale of Seller's Interest hereunder shall be treated as if the Company distributed its assets to Buyer and Seller in complete liquidation and Buyer purchased Seller's pro rata interest in the Company's assets. Within thirty (30) days of the Closing Date, Buyer shall deliver to Seller a schedule allocating the Purchase Price among Seller's pro rata portion of the Company's assets in accordance with Section 1060 of the Code and the regulations thereunder (the "Allocation Schedule"). Seller shall have fifteen (15) days from receipt of the Allocation Schedule to notify Buyer, in writing, that Seller disputes one or more items on the Allocation Schedule. If Seller does not notify Buyer of any dispute within such fifteen (15) days, Seller shall be deemed to accept the Allocation Schedule as delivered by Buyer. If Seller does provide such notice, Buyer and Seller shall negotiate in good faith to resolve such dispute; provided that if all disputes are not resolved in fifteen (15) days after Seller's notice to Buyer, Buyer and Seller shall engage an independent accounting firm (whose fees shall be borne equally by Buyer and Seller) to resolve any dispute. The determination of the independent accounting firm shall be final and binding. Buyer and Seller shall prepare and file all forms and returns, including IRS Form 8594, consistent with the finalized Allocation Schedule.

(c) Notwithstanding anything to the contrary in this Agreement or the Company's operating agreement, any taxable gain or loss of the Company arising from the sale of certain assets described in the Asset Purchase Agreement between the Company and Mountain West Dialysis Services, LLC, of even date herewith, shall be treated as realized before the transaction contemplated by this Agreement, and such taxable gain or loss shall be reported on the Company's final partnership income tax returns and allocated among the members of the Company in accordance with the Company's operating agreement.

3. Proof of Ownership; Transfer. Seller hereby represents and warrants to Buyer that

the Seller's Interest is not and has never been certificated or otherwise reduced to a written proof of ownership. The Operating Agreement, together with the Company's Certificate of Formation, represents the exclusive written instruments with respect to the Company and Seller's interest therein. From and after the date hereof, Seller agrees to execute and deliver all such documents and instruments and to take all such additional action as may be reasonably requested by Buyer or the Company in order to effectuate or complete the assignment and transfer contemplated hereby.

4. Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer that:

(a) Organization, Good Standing and Qualification. Seller is a limited liability company duly organized, validly existing and in good standing under the provisions of the laws of the State of Colorado. Seller has all requisite power and authority to own and operate its properties and to carry on its business as now conducted. Seller has all power and authority to enter into this Agreement and any other document or instrument required hereby to which Seller is a party and to carry out and perform its obligations under this Agreement and any other document or instrument required hereby.

(b) Authorization; Binding Obligation. Seller has full legal and corporate right, power, and authority to execute and deliver this Agreement and any other document or instrument required hereby, and to carry out and perform its obligations under the terms hereof and thereof. The execution and delivery by Seller of this Agreement and any other document or instrument required hereby and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Seller and conform with the provisions of the Operating Agreement. This Agreement and any other document or instrument required hereby or delivered in connection herewith to which Seller is a party has been duly executed and delivered by Seller, and constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

(c) Consents and Approvals.

(i) Governmental Consents and Approvals. Except as set forth on Schedule 4(c)(i), no registration or filing with, or consent or approval of, or other action by, any federal, state or other governmental agency or instrumentality is or will be necessary for the valid execution, delivery and performance of this Agreement by Seller, the transfer of the Seller's Interest to Buyer (each, a "Governmental Approval").

(ii) Third Party Consents. Except as set forth on Schedule 4(c)(ii), no consent, approval or authorization of any non-governmental third party is required in order to consummate the transactions or perform the related covenants and agreements contemplated hereby or to vest full right, title and interest in the Seller's Interest free and clear of any lien, claim, security interest, mortgage, pledge, restriction, covenant, charge or encumbrance of any kind or character, direct or indirect, whether accrued, absolute, contingent or otherwise (each, a "Lien") upon Buyer (each, a "Third Party Consent").

(d) Title to Interest; No Liens. Seller is the sole legal and beneficial holder of the Seller's Interest, free and clear of any Liens or other security arrangement, option, warrant,

attachment, right of first refusal, preemptive right, conversion, put, call or other claim or right, restriction, transfer, or preferential arrangement of any kind or nature whatsoever, except pursuant to the Operating Agreement.

(e) Entire Interest. The Seller's Interest represents all of Seller's Percentage Interest in the Company.

(f) No Violation. The execution, delivery and compliance with and performance by Seller of this Agreement and any other document or instrument required hereby, do not and will not (i) violate or contravene the organizational certificates, documents and agreements, as amended to date, of Seller, (ii) violate or contravene any law, statute, rule, regulation, order, judgment or decree to which Seller is subject, (iii) conflict with or result in a breach of or constitute a default by any party under any contract, agreement, instrument or other document to which Seller is a party or by which Seller or any of its assets or properties are bound or subject or to which any entity in which Seller has an interest, is a party, or by which any such entity is bound, or (iv) result in the creation of any Lien upon the Seller's Interest.

(g) Legal Proceedings. There is no action, suit, litigation, proceeding or investigation pending, or to Seller's knowledge, threatened by or against Seller relating to Company or the Seller's Interest, and Seller has not received any written or oral claim, complaint, incident, report, threat or notice of any such proceeding or claim. There are no outstanding orders, writs, judgments, injunctions or decrees of any court, governmental agency or arbitration tribunal against, involving or affecting the Seller's Interest, and, to Seller's knowledge, there are no facts or circumstances which may result in the institution of any such action, suit, claim or legal, administrative or arbitration proceeding or investigation against, involving or affecting Company, the Seller's Interest or the transactions contemplated hereby. Seller is not in default with respect to any order, writ, injunction or decree known to or served upon it from any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

(h) Solvency and Value of Transfer. There is no bankruptcy or insolvency proceeding of any character including without limitation, bankruptcy, receivership, reorganization, dissolution or arrangement with creditors, voluntary or involuntary, affecting Seller, and Seller has not taken any action in contemplation of, or which would constitute the basis for, the institution of any such proceedings. Seller is not insolvent under any bankruptcy, receivership or insolvency law. Seller's sale of the Seller's Interest has not been undertaken with the intention to hinder, delay or defraud Seller's current or future creditors.

(i) No Brokers. Seller has not employed, either directly or indirectly, or incurred any liability to, any broker, finder or other agent in connection with the transactions contemplated by this Agreement. Seller agrees to indemnify and hold harmless Buyer for any claims brought by any broker, finder or other agent claiming to have acted on behalf of Seller in connection with the purchase and sale of the Seller's Interest.

5. Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller that:

(a) Organization, Good Standing and Qualification. Buyer is a corporation

duly organized, validly existing and in good standing under the provisions of the laws of the State of Delaware and is qualified and licensed to do business in the State of Colorado. Buyer has all requisite power and authority to own and operate its properties and to carry on its business as now conducted. Buyer has all power and authority to enter into this Agreement and any other document or instrument required hereby to which Buyer is a party and to carry out and perform its obligations under this Agreement and any other document or instrument required hereby.

(b) Authorization; Binding Obligation. Buyer has full legal and corporate right, power, and authority to execute and deliver this Agreement and any other document or instrument required hereby, and to carry out and perform its obligations under the terms hereof and thereof. The execution and delivery by Buyer of this Agreement and any other document or instrument required hereby and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Buyer and conform with the provisions of the Operating Agreement. This Agreement and any other document or instrument required hereby or delivered in connection herewith to which Buyer is a party has been duly executed and delivered by Buyer, and constitute the legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms.

(c) No Violation. The execution, delivery and compliance with and performance by Buyer of this Agreement and any other document or instrument required hereby, do not and will not (i) violate or contravene the organizational certificates, documents and agreements, as amended to date, of Buyer, (ii) violate or contravene any law, statute, rule, regulation, order, judgment or decree to which Buyer is subject, or (iii) conflict with or result in a breach of or constitute a default by any party under any contract, agreement, instrument or other document to which Buyer is a party or by which Buyer or any of its assets or properties are bound or subject or to which any entity in which Buyer has an interest, is a party, or by which any such entity is bound.

(d) Legal Proceedings. There are no actions, suits, litigation, or proceedings pending or, to the knowledge of Buyer, threatened against Buyer which could materially adversely affect Buyer's ability to perform its obligations under this Agreement or the consummation of the transactions contemplated by this Agreement.

(e) Solvency. There is no bankruptcy or insolvency proceeding of any character including without limitation, bankruptcy, receivership, reorganization, dissolution or arrangement with creditors, voluntary or involuntary, affecting Buyer, and Buyer has not taken any action in contemplation of, or which would constitute the basis for, the institution of any such proceedings. Buyer is not insolvent under any bankruptcy, receivership or insolvency law.

(f) No Brokers. Buyer has not employed, either directly or indirectly, or incurred any liability to, any broker, finder or other agent in connection with the transactions contemplated by this Agreement. Buyer agrees to indemnify Seller for any claims brought by any broker, finder or other agent claiming to have acted on behalf of Buyer in connection with this sale.

6. Termination of Operating Agreement; Continuing Obligations of Seller. Buyer and Seller acknowledge and agree that the Operating Agreement shall be terminated as of the Effective Time. The parties further acknowledge that Buyer will replace the Operating

Agreement with a form of agreement acceptable to Buyer in its sole discretion, which will become effective as of the Effective Time. Notwithstanding the foregoing, Seller shall continue to be bound by the terms of the restrictive covenants set forth in Section 9.6 of the Operating Agreement for the period set forth therein following the Closing. Except with respect to the foregoing, and except as set forth herein and under the Delaware Limited Liability Company Act, as of the Effective Time, neither Buyer nor Seller shall continue to be bound by the Operating Agreement in any respect.

7. Indemnification.

(a) Survival of Representations and Warranties. All Buyer and Seller representations and warranties contained in this Agreement or any other agreement, schedule, certificate, instrument or other writing delivered by Buyer or Seller in connection with this transaction shall survive for one (1) year after the Closing Date. If a party hereto determines that there has been a breach by any other party hereto of any such representation or warranty and notifies the breaching party in writing reasonably promptly after learning of such breach, such representation or warranty and liability therefor shall survive with respect to the specified breach until such breach has been resolved, but no party shall have any liability after such one (1) year period for any matters not specified in a writing delivered within such one (1) year period.

(b) Indemnification by Seller. Subject to the provisions of Sections 7(d) and 7(e) below, Seller agrees to indemnify, defend and hold Buyer harmless from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, taxes, sanctions, deficiencies, assessments, judgments, costs, interest, penalties and expenses (including without limitation reasonable attorneys' fees, which shall include a reasonable estimate of the allocable costs of in-house legal counsel and staff (collectively, "Losses") arising out of (i) any breach of a representation or warranty made by Seller in this Agreement (including the Exhibits and Schedules hereto); (ii) any failure by Seller to perform, comply with or observe any one or more of its covenants, agreements or obligations contained in this Agreement or in any other agreement, instrument or document delivered to Buyer in connection with this Agreement or any of the transactions contemplated by this Agreement; and (iii) Seller's pro rata share of Losses arising out of the operation of the Company prior to the Closing Date.

(c) Indemnification by Buyer.

(i) Subject to the provisions of Sections 7(d) and 7(e) below, Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all Losses arising out of (i) breach of any representation or warranty made by Buyer in this Agreement (including the Exhibits and Schedules hereto); (ii) any failure by Buyer to perform, comply with or observe any one or more of its covenants, agreements, or obligations contained in this Agreement or in any other agreement, instrument or document delivered to Seller in connection with this Agreement or any of the transactions contemplated by this Agreement; and (iii) the operation of the Company on or after the Closing Date.

(ii) The parties acknowledge that, pursuant to the Dialysis Management Services Agreement, dated June 15, 2002, between DaVita Inc. ("DaVita") and Company (the "MSA"), DaVita agreed to defend and hold Seller harmless for any Losses arising out of or resulting from DaVita's gross negligence or willful misconduct associated with or

incident to the services it has provided to Company pursuant to the MSA prior to the Closing Date. The parties further acknowledge that such provisions of the MSA shall survive the termination of the MSA. In consideration thereof, Buyer agrees to offset any claim by Buyer for any Losses arising out of or resulting from Company's operation of the Centers prior to the Closing Date to the extent to which any such Loss arises from or is the result of DaVita's gross negligence or willful misconduct associated with or incident to such management.

(d) Limitations on Indemnification.

(i) No indemnification shall be payable to an Indemnified Party (as defined below) hereunder until the aggregate amount of all Losses incurred by such Indemnified Party (as defined below) exceeds Fifty Thousand Dollars (\$50,000), whereupon such Indemnified Party shall be entitled, subject to Section 7(d)(ii) below, to receive the full amount of all such Losses.

(ii) The maximum aggregate liability of Seller to Buyer as a result of all Losses arising under this Agreement shall not exceed the Purchase Price. The maximum aggregate liability of Buyer to Seller as a result of all Losses arising under this Agreement shall not exceed the Purchase Price.

(iii) In no event shall Buyer or Seller be liable for indirect, punitive, special or consequential damage or loss (including but not limited to lost profits) pursuant to this Section 7.

(iv) After the Closing, the sole and exclusive remedy for any breach or inaccuracy, or alleged breach or inaccuracy, of any representation or warranty in this Agreement, or any breach of any covenant or agreement in this Agreement shall be indemnification in accordance with this Section 7.

(e) Indemnification Process.

(i) Any party seeking indemnification under this Section 7 (an "Indemnified Party") shall give each party from whom indemnification is being sought (each, an "Indemnifying Party") notice of any matter which such Indemnified Party has determined has given rise to or could give rise to a right of indemnification under this Agreement, stating the amount of the loss, if known, and method of computation thereof, and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises. The obligations and liabilities of an Indemnifying Party under this Section 7 with respect to Losses arising from claims of any third party which are subject to the indemnification provided for in this Section 7 ("Third Party Claims") shall be governed by and contingent upon the following additional terms and conditions:

(ii) If any Indemnified Party shall receive notice of any Third Party Claim, the Indemnified Party shall give the Indemnifying Party notice of such Third Party Claim within thirty (30) days of the receipt by the Indemnified Party of such notice; provided, however, that the failure to provide such notice shall not release the Indemnifying Party from any of its obligations under this Section except to the extent the Indemnifying Party is materially prejudiced by such failure.

(iii) If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party hereunder against any losses that may result from such Third Party Claim, then the Indemnifying Party shall be entitled to assume and control the defense of such Third Party Claim at its expense and through counsel of its choice if it gives notice of its intention to do so to the Indemnified Party within thirty (30) days of the receipt of such notice from the Indemnified Party; provided, further however, that if it would be detrimental to the defense of the Indemnified Party for the same counsel to represent both the Indemnified Party and the Indemnifying Party, then the Indemnified Party shall be entitled to retain its own counsel, in each jurisdiction for which the Indemnified Party determines counsel is required, at the expense of the Indemnifying Party.

(iv) In the event the Indemnifying Party exercises the right to undertake any such defense against any such Third Party Claim as provided above, the Indemnified Party shall cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party, at the Indemnifying Party's expense, all witnesses, pertinent records, materials and information in the Indemnified Party's possession or under the Indemnified Party's control relating thereto as is reasonably required by the Indemnifying Party. Similarly, in the event the Indemnifying Party declines to take such defense and the Indemnified Party is, directly or indirectly, conducting the defense against any such Third Party Claim, the Indemnifying Party shall cooperate with the Indemnified Party in such defense and make available to the Indemnified Party, at the Indemnifying Party's expense, all such witnesses, records, materials and information in the Indemnifying Party's possession or under the Indemnifying Party's control relating thereto as is reasonably required by the Indemnified Party.

(v) If the Indemnifying Party shall have failed to assume the defense of any claim in accordance with the provisions of this Article, then the Indemnified Party shall have the absolute right to control the defense of such claim and, if and when it is finally determined that the Indemnified Party is entitled to indemnification from the Indemnifying Party hereunder, the fees and expenses of the Indemnified Party's counsel shall be borne by the Indemnifying Party and paid by the Indemnifying Party to the Indemnified Party within five (5) business days of written demand therefor, but the Indemnifying Party shall be entitled, at its own expense, to participate in (but not control) such defense.

(vi) So long as the Indemnifying Party has assumed and is conducting the defense of the Third Party Claim in accordance with Section 7(e)(ii) above, (A) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (not to be withheld unreasonably provided that the Indemnified Party is completely released from all claims) unless the judgment or proposed settlement involves only the payment of money damages by the Indemnifying Party and does not impose an injunction or other equitable relief upon the Indemnified Party, and (B) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnifying Party (not to be withheld unreasonably).

8. Closing Conditions.

(a) Conditions to Buyer's Obligations. The obligations of Buyer under this Agreement are subject to the satisfaction of the following conditions on or prior to the Closing Date, all or any of which may be waived in writing by Buyer:

(i) Each representation and warranty made by Seller in this Agreement that is qualified by "materiality" or a similar qualifier shall be true and correct in all respects, and each such representation and warranty that is not so qualified shall be true and correct in all material respects, in each case, as of the Effective Date and as of the Closing Date as though made on such dates (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date).

(ii) Seller shall have performed, satisfied and complied with all obligations and covenants required by this Agreement to be performed or complied with by Seller on or prior to the Closing Date.

(iii) As of the Closing Date, there shall not have occurred any event, circumstance, change or effect that individually or in the aggregate with all other events, circumstances, changes or effects, is reasonably expected to be materially adverse to the Seller's Interest or to Seller's ability to perform its obligations as contemplated in this Agreement since the Effective Date.

(iv) Seller shall have delivered to Buyer all documents required to be delivered by Seller, and all such documents shall have been properly executed by Seller. Such documents shall include, without limitation:

(A) A good standing certificate for Seller from the State of Colorado, dated no more than ten (10) days prior to the Closing Date;

(B) A certificate signed by the secretary or other authorized officer of Seller and dated immediately prior to the Effective Date, certifying (I) that the managing body and members of Seller have adopted resolutions to authorize the transactions contemplated by this Agreement, and (II) a specimen signature of an officer duly authorized thereby to execute this Agreement and any other document or instrument required hereby to be delivered in connection with Closing on behalf of Seller; and

(C) Such other documents and instruments, each in a form reasonably satisfactory to Buyer and its counsel, as may be reasonably requested by Buyer in order to carry out the transaction contemplated by this Agreement and to vest good and marketable title in the Seller's Interest in Buyer, free and clear of all Liens.

(v) Seller shall have executed and delivered to Buyer the Transfer in the form attached hereto as Exhibit B, effective as of the Closing Date.

(vi) Seller shall have delivered to Buyer an affidavit meeting the requirements of Section 1445(b)(2) of the Internal Revenue Code certifying that Seller is not a foreign person.

(vii) Buyer shall have received all Third Party Consents in form and substance satisfactory to Buyer, effective as of the Closing Date.

(viii) Buyer shall have received all Governmental Approvals and consents by necessary governmental authorities in form and substance satisfactory to Buyer.

(ix) Buyer shall have received the consent from North-South Retail Partners, LLC the landlord of the premises where Company operates the center known as "East Aurora Dialysis Center," in form and substance satisfactory to Buyer, effective as of the Closing Date.

(x) Buyer shall have received payment and release letters, together with UCC-3 amendments to terminate all financing statements from all parties having such financing statements filed against the Seller's Interest in form and substance satisfactory to Buyer.

(xi) Buyer shall have received certificates of authorized officers of Seller certifying (A) as of the Effective Date and as of the Closing Date, the accuracy of Seller's representations and warranties as set forth in Section 4 hereof, and (B) as of the Effective Date and as of the Closing Date, compliance with Seller's covenants as set forth in this Agreement.

(b) Conditions to Seller's Obligations. The obligations of Seller under this Agreement are subject to the satisfaction of the following conditions on or prior to the Closing Date, all or any of which may be waived in writing by Seller:

(i) Each representation and warranty made by Buyer in this Agreement that is qualified by "materiality" or a similar qualifier shall be true and correct in all respects, and each such representation and warranty that is not so qualified shall be true and correct in all material respects, in each case, as of the Effective Date and as of the Closing Date as though made on such dates (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date).

(ii) Buyer shall have performed, satisfied and complied with all obligations and covenants required by this Agreement to be performed or complied with by Buyer on or prior to the Closing Date.

(iii) Buyer shall have delivered to Seller all documents required to be delivered by Buyer, and all such documents shall have been properly executed by Buyer.

(iv) Buyer shall have delivered to Seller a good standing certificate from the State of Delaware and a certificate of foreign qualification from the State of Colorado, each dated no more than ten (10) days prior to the Closing Date.

(v) Buyer shall have delivered to Seller certificates signed by an authorized officer of Buyer certifying, as of the Effective Date and as of the Closing Date, (A) the accuracy of Buyer's representations and warranties as set forth in Section 5 hereof, and (B) compliance with Buyer's covenants as set forth in this Agreement.

(vi) Buyer shall have executed and delivered to Seller the Transfer Agreement in the form attached hereto as Exhibit B, dated and effective as of the Closing Date.

(c) Mutual Closing Conditions. The obligations of Buyer and Seller under this Agreement are conditioned upon the following:

(i) The consummation of the transactions set forth in this Agreement, and any other document or instrument required hereby, are conditioned upon (i) the consummation of the purchase, immediately prior to the Effective Time, of the acute programs at SkyRidge Medical Center, Parker Adventist Hospital and Exempla-St. Joseph Hospital pursuant to an Asset Purchase Agreement between Company and Mountain West Dialysis Services, LLC; and (ii) compliance by all parties to the Stock Purchase Agreement among Total Renal Care, Inc., Total Renal Care of Colorado, Inc., and DNPC LLLP, with their respective covenants thereunder and under the Related Agreements (as defined therein), to the extent such covenants can be performed prior to the Effective Time.

(ii) There shall be, as of the Effective Date and as of the Closing Date, no preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or by a governmental agency concerning this Agreement which would make illegal or otherwise prevent consummation of this Agreement in accordance with its terms, and no proceeding or action brought by any governmental authority seeking the foregoing shall be pending.

9. Miscellaneous.

(a) Termination. This Agreement may be terminated and the transaction contemplated hereby may be abandoned at any time prior to the Closing Date as follows:

(i) By mutual written consent of Buyer and Seller;

(ii) By either Buyer or Seller, if Closing shall not have occurred on or before July 1, 2008; provided, however, that the right to terminate this Agreement under this Section 9(a)(ii) shall not be available to the party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or resulted in, the failure of Closing to occur on or before such date;

(iii) By either Buyer or Seller, if any final and nonappealable order or other legal restraint or prohibition preventing the consummation of the transaction contemplated by this Agreement shall have been issued by any governmental authority or any law shall have been enacted or adopted that enjoins, prohibits or makes illegal consummation of the transaction;

(iv) By Buyer, upon a breach of, or failure to perform in any material respect (which breach or failure cannot be or has not been cured within thirty (30) days after the giving of notice of such breach or failure), any representation, warranty, covenant or agreement on the part of Seller set forth in this Agreement, such that a condition set forth in Section 8(a) would not be satisfied; or

(v) By Seller, upon a breach of, or failure to perform in any material respect (which breach or failure cannot be or has not been cured within thirty (30) days after the giving of notice of such breach or failure), any representation, warranty, covenant or agreement on the part of Buyer set forth in this Agreement, such that a condition set forth in Section 8(b) would not be satisfied.

(b) Notice of Termination; Effect of Termination. In the event of termination of this Agreement by either Buyer or Seller pursuant to Sections 9(a)(ii), 9(a)(iii), 9(a)(iv) or 9(a)(v) hereof, the terminating party shall give prompt written notice thereof to the nonterminating party. In the event of termination of this Agreement pursuant to Section 9(a), this Agreement shall be of no further effect, there shall be no liability under this Agreement on the part of Buyer or Seller and all rights and obligations of each party hereto shall cease, provided, however, that nothing herein shall relieve any party from liability for the breach of any of its representations and warranties or the breach of any of its covenants or agreements set forth in this Agreement.

(c) Further Actions. Each party further agrees to execute and deliver such other instruments as the other party shall reasonably request to effectuate or to confirm the validity of the transactions described in this Agreement.

(d) Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed properly given three (3) business days after being sent by registered or certified mail, postage prepaid, to the parties at the address listed below:

If to Seller: DNPC Investments, LLC
1601 East 19th Avenue
Suite 4300
Denver, Colorado 80218
Attention: Michael Shapiro, M.D., President

With a copy to: Robinson, Diss and Clowdus, P.C.
1660 Lincoln Street
Suite 2500
Denver, Colorado 80264
Attention: Fred J. Diss, Esq.

If to Buyer: Renal Treatment Centers - West, Inc.
c/o DaVita Inc.
601 Hawaii Street
El Segundo, California 90245
Attention: Chief Operating Officer

With a copy to: DaVita Inc.
601 Hawaii Street
El Segundo, California 90245
Attention: General Counsel

(e) Entire Subject Matter; Amendment. This Agreement, together with its Schedules and Exhibits and all ancillary agreements and exhibits and schedules thereto to be delivered at Closing, contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, either oral or written. The Agreement may not be amended, or any term or condition waived, unless signed by the party to be charged or making the waiver. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by other party(ies), or by anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

(f) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and to be performed in that State.

(g) Counterparts. This Agreement may be executed in two or more counterparts, any one of which need not contain the signatures of all parties, but all of which counterparts when taken together will constitute one and the same agreement.

(h) Assignment. No party hereto shall assign or otherwise transfer this Agreement or any of its rights hereunder, or delegate any of its obligations hereunder, without the prior written consent of the other party; provided, however, that Buyer shall be permitted, without the consent of Seller, to assign or otherwise transfer this Agreement or any of its rights hereunder to any affiliate of Buyer capable of carrying out Buyer's obligations hereunder. Subject to the foregoing, this Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon the parties hereto, and each of their respective successors, heirs and assigns.

(i) Representation by Counsel. Each party hereto acknowledges that it has been advised by legal and any other counsel retained by such party in its sole discretion. Each party acknowledges that such party has had a full opportunity to review this Agreement and all related exhibits, schedules and ancillary agreements and to negotiate any and all such documents in its sole discretion, without any undue influence by any other party hereto or any third party.

(j) Construction. The parties have participated jointly in the negotiations and drafting of this Agreement and in the event of any ambiguity or question of intent or interpretation, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

(k) Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

(l) Waivers. No waiver by any party, whether express or implied, of its rights under any provision of this Agreement shall constitute a waiver of the party's rights under such provisions at any other time or a waiver of the party's rights under any other provision of this Agreement. No failure by any party to take any action against any breach of this Agreement or default by another party shall constitute a waiver of the former party's right to enforce any provision of this Agreement or to take action against such breach or default or any subsequent

breach or default by the other party. To be effective any waiver must be in writing and signed by the waiving party.

[Signature pages to follow]

IN WITNESS WHEREOF, Buyer and Seller have caused this Membership Interest Purchase and Sale Agreement to be executed as of the date first written above.

BUYER:

RENAL TREATMENT CENTERS - WEST, INC.

By:

Its:

SELLER:

DNPC INVESTMENTS, LLC

By:

Its:

TABLE OF EXHIBITS AND SCHEDULES

Exhibit A – Wire Instructions

Exhibit B – Form of Transfer Agreement

Schedule 1.0 – Definitions

Schedule 4(c)(i) – Governmental Approvals

Schedule 4(c)(ii) – Third Party Consents

EXHIBIT A

Wire Instructions

EXHIBIT B

TRANSFER AGREEMENT

This Transfer Agreement (this "Agreement") is made and entered into as of May 30, 2008 pursuant to the Membership Interest Purchase and Sale Agreement dated as of May 30, 2008 (the "Purchase Agreement"), by and between DNPC Investments, LLC, a Colorado limited liability company ("Seller"), and Renal Treatment Centers - West, Inc., a Delaware corporation ("Buyer").

RECITALS

WHEREAS, Buyer and Seller are members of Rocky Mountain Dialysis Services, LLC, a Delaware limited liability company (the "Company") formed pursuant to a Certificate of Formation filed with the Secretary of State of Delaware and which is governed by the Company's Operating Agreement dated as of June 15, 2002, as amended;

WHEREAS, Buyer and Seller are parties to the Purchase Agreement, pursuant to which Seller has agreed to sell, convey, transfer and assign and deliver to Buyer the Seller's Interest; and

WHEREAS, all capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement.

NOW, THEREFORE, pursuant to the Purchase Agreement, and in consideration of the mutual promises, covenants and agreements therein and hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Transfer of Ownership.

(a) Seller hereby conveys, transfers, assigns and delivers to Buyer, its successors and assigns, free and clear of any pledge, lien, option, security interest, mortgage or other encumbrance all right, title and interest in, to and under the Seller's Interest. The Seller's Interest shall include all rights, privileges, hereditaments and appurtenances belonging, incident or appertaining to the Seller's Interest.

(b) It is understood by Seller and Buyer that, contemporaneously with the execution and delivery of this Agreement, Seller may be executing and delivering to Buyer certain further assignments and other instruments of transfer which in particular cover certain of the property and assets described herein or in the Purchase Agreement, the purpose of which is to supplement, facilitate and otherwise implement the transfer intended hereby.

2. Effective Date. This Agreement shall be deemed effective as of the Effective Time of the Purchase Agreement.

3. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, including all matters of construction, validity, performance and enforcement and without giving effect to contrary principles of conflict of laws.

5. Counterparts. This Agreement may be signed in any number of counterparts and all such counterparts shall be read together and construed as one and the same document.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have caused this Transfer Agreement to be duly executed on their behalf effective as of the date first written above.

BUYER:

RENAL TREATMENT CENTERS - WEST, INC.

By:

Its:

SELLER:

DNPC INVESTMENTS, LLC

By:

Its:

Schedule 1.0

TABLE OF DEFINITIONS

“Agreement” has the meaning set forth in the first sentence of this Agreement.

“Allocation Schedule” has the meaning set forth in Section 2(b).

“Buyer” has the meaning set forth in the first sentence of this Agreement.

“Centers” means East Aurora Dialysis Center, located at 482 South Chambers Road, Aurora, Colorado 80017, the Lonetree Dialysis Center, located at 9777 Mount Pyramid Court, Suite 140, Englewood, Colorado 80112, and the Belcaro Dialysis Center, located at 775 S. Colorado Avenue, Denver, Colorado 80246.

“Closing” has the meaning set forth in Section 1(c).

“Closing Date” has the meaning set forth in Section 1(c).

“Company” has the meaning set forth in the Recitals of this Agreement.

“DaVita” has the meaning set forth in Section 7(c)(ii).

“Effective Date” has the meaning set forth in the first sentence of this Agreement.

“Effective Time” has the meaning set forth in Section 1(c).

“Governmental Approval” has the meaning set forth in Section 4(c)(i).

“Indemnified Party” has the meaning set forth in Section 7(e)(i).

“Indemnifying Party” has the meaning set forth in Section 7(e)(i).

“Lien” has the meaning set forth in Section 4(c)(ii).

“Losses” has the meaning set forth in Section 7(b).

“MSA” has the meaning set forth in Section 7(c)(ii).

“Operating Agreement” has the meaning set forth in the Recitals of this Agreement.

“Purchase Price” has the meaning set forth in Section 1(b).

“Seller” has the meaning set forth in the first sentence of this Agreement.

“Seller’s Interest” has the meaning set forth in the Recitals of this Agreement.

“Third Party Claim” has the meaning set forth in Section 7(e)(i).

“Third Party Consent” has the meaning set forth in Section 4(c)(ii).

Exhibit 22

CONTRIBUTION AGREEMENT

This CONTRIBUTION AGREEMENT (the “Agreement”) is made and entered into as of the 30th day of May, 2008 (the “Effective Date”), by and among Total Renal Care, Inc., a California corporation (“TRC”), Mountain West Dialysis Services, LLC, a Delaware limited liability company (“Company”), and DNPC LLLP, a Colorado limited liability limited partnership (“Group”).

RECITALS

A. TRC is engaged in the business of providing dialysis and related services at the free-standing dialysis centers located at (i) 1057 S. Wadsworth Blvd, Lakewood, Colorado 80501, and (ii) 1700 Kylie Drive, Longmont, Colorado 80504 (each, a “Center” and together, the “Centers”). The business of providing dialysis and related services at the Centers by TRC is referred to as the “Dialysis Business” herein.

B. Company is engaged in the business of providing dialysis and related services at (i) Arvada Dialysis, 9950 W 80th Avenue, Arvada, Colorado 80005, (ii) Boulder Dialysis, 2880 Fulsom Drive, Boulder, Colorado 80304, (iii) Lakewood Dialysis, 1750 Pierce Street, Lakewood, Colorado 80214, (iv) Lakewood At Home (HHD Program), 1750 Pierce Street, Lakewood, Colorado 80214, (v) Western Home PD, 1750 Pierce Street, Lakewood, Colorado 80214, and (vi) Thornton Dialysis, 8800 Fox Drive, Thornton, Colorado 80260 (collectively, the “Mountain West Centers”).

C. Immediately following the Effective Time, Company intends to acquire from Rocky Mountain Dialysis Services, LLC, a Delaware limited liability company, the acute dialysis programs at (i) Sky Ridge Medical Center, 10101 RidgeGate Parkway, LoneTree, Colorado, (ii) Parker Adventist Hospital, 9395 Crown Crest Boulevard, Parker, Colorado, and (iii) Saint Joseph Hospital, 1835 Franklin Street, Denver, Colorado (collectively, the “Acute Programs”).

D. TRC owns a fifty one (51%) percent and Group owns a forty nine (49%) percent equity ownership interest in Company.

E. The parties desire that TRC contribute to Company certain assets that are used or useable in connection with the ownership and operation of the Centers.

F. The parties desire that Group and TRC maintain their respective Percentage Interests (as such term is defined in Company’s Operating Agreement) in Company.

G. The parties desire to enter into this written agreement to provide a full statement of each party’s respective rights and responsibilities.

H. Capitalized terms used herein shall have the meaning set forth in the Table of Definitions attached hereto as Schedule 1.0.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, agreements, representations and warranties contained herein, the parties hereto hereby agree as follows:

ARTICLE I ASSETS AND LIABILITIES

1.1 TRC Contribution Obligations. On the Closing Date, TRC shall contribute to Company all rights, title and interest in and to the assets and properties of every kind, character and description (other than Excluded Assets) used in or for the benefit of the Dialysis Business, whether tangible, intangible, real, personal, or mixed, and located on the Premises (collectively referred to hereinafter as the "Assets"), including but not limited to the assets set forth at Schedule 1.1 hereto, and the Assumed Liabilities (collectively, the "TRC Asset Contribution").

(a) Assets. Without limiting the foregoing, the Assets shall include all tangible and intangible property owned and used by TRC in providing services at the Centers, including without limitation, real property, leasehold rights, improvements, furniture, fixtures, equipment, supplies, inventory, leased equipment, Assigned Contracts, Assigned Personal Property Leases, non-exclusive licenses to use trade names, trademarks and service mark, telephone numbers, trade secrets, other proprietary rights or intellectual property, goodwill, Medicare and Medicaid provider numbers and agreements to the extent transferable to Company, and, to the extent permitted by law, permits, licenses and other rights held by TRC with respect to the ownership or operation of the Dialysis Business, and all of TRC's books and records (including patient records and files, lists and appointment books relating to patients treated at the Centers on or after June 1, 2007, in each case to the extent transferable under applicable law, all medical records existing as of the Closing and any policies and procedures of TRC relating to the Dialysis Business) to the extent relating to the foregoing.

(b) Excluded Assets. Notwithstanding anything contained in Section 1.1(a), TRC is not contributing, and the Assets do not include, TRC's cash, cash equivalents, accounts receivable, inter-company receivables, or any assets or properties expressly set forth on Schedule 1.1(b) (such assets being referred to as the "Excluded Assets" and such Schedule 1.1(b) being referred to herein as the "Excluded Assets Schedule").

(c) Assumed Liabilities. On the Closing Date, TRC shall assign to Company and Company shall assume (i) the Assumed PTO; and (ii) all obligations of the Centers, including but not limited to TRC's obligations arising from events occurring on or after the Closing Date under those agreements and contracts designated specifically on Schedule 3.7 as Assigned Personal Property Leases and on Schedule 3.19(a) as Assigned Contracts, except to the extent that any such executory obligations result from, arise out of, relate to, or are caused by, any one or more of the following: (A) a breach of any of the Assigned Personal Property Leases or Assigned Contracts occurring prior to the Effective Time; (B) a breach of warranty, infringement or violation of law occurring prior to the Effective Time; or (C) an event or condition occurring or existing prior to the Effective Time which, through the passage of time or the giving of notice or both, would constitute a breach or default by TRC under any of the Assigned Personal Property Leases or Assigned Contracts (collectively, the "Assumed Liabilities").

(d) Excluded Liabilities. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, COMPANY DOES NOT ASSUME AND SHALL NOT BE LIABLE FOR ANY OF THE DEBTS, OBLIGATIONS OR LIABILITIES OF TRC OR THE DIALYSIS BUSINESS, WHENEVER ARISING AND OF WHATEVER TYPE OR NATURE. In particular, but without limiting the foregoing, Company shall not assume, and shall not be deemed by anything contained in this Agreement (other than to the extent expressly provided in Section 1.1(c) Assumed Liabilities) to have assumed and shall not be liable for any debts, obligations or liabilities of TRC, any Affiliate of TRC, or the Dialysis Business whether known or unknown, contingent, absolute or otherwise and whether or not they would be included or disclosed in financial statements (the "Excluded Liabilities"). Without limitation of the foregoing, the Excluded Liabilities shall include debts, liabilities and obligations whether known or unknown, arising from or relating to the operation of the Centers prior to the Closing regardless of when such claim is made. The intent and objective of TRC and Company is that, except for liabilities explicitly assumed by Company hereunder, Company does not assume, and no transferee liability shall attach to Company pertaining to, any of the Excluded Liabilities.

1.2 TRC Cash Contribution. In addition to its TRC Asset Contribution, TRC shall make a capital contribution in the amount of Five Hundred Forty One Thousand Eight Hundred Eighty Eight Dollars (\$541,888) (the "TRC Cash Contribution" and together with the TRC Asset Contribution, the "TRC Capital Contribution"), which represents the working capital needed to operate the Centers and the Mountain West Centers following the Closing as a result of the change in ownership thereof, and TRC's pro rata contribution for the acquisition of the Acute Programs, less forty nine percent (49%) of the fair market value of the Assets.

1.3 Group Contribution. On the Closing Date, Group shall make a capital contribution to Company in the amount of One Million Four Hundred Thirty Three Thousand Three Hundred Eighty Two Dollars (\$1,433,382) (the "Group Capital Contribution"), payable in cash via wire transfer, which represents forty nine percent (49%) of the fair market value of the Assets, plus Group's pro rata share of the working capital needed to operate the Centers and the Mountain West Centers following the Closing as a result of the change in ownership thereof, and Group's pro rata contribution for the acquisition of the Acute Programs.

1.4 Appraised Asset Value; Continuing Percentage Interest in Company. The parties acknowledge that the Group Capital Contribution and the TRC Capital Contribution have been determined based upon (a) an appraised value of the Assets of Nine Hundred Fifty Thousand Dollars (\$950,000) (the "Asset Value"), (b) an estimated working capital for the Centers and the Mountain West Centers in the amount of One Million Six Hundred Fifty Thousand Dollars (\$1,650,000), (c) a fair market value of Nine Hundred Twenty Five Thousand Two Hundred Seventy Thousand (\$925,270) for the Acute Programs, and (d) cash existing on the balance sheet of the Company as of the Effective Time. At Closing, in exchange for its contribution of the TRC Capital Contribution, TRC will maintain its current fifty one percent (51%) Percentage Interest in Company and, in exchange for its contribution of the Group Capital Contribution, Group will maintain its current forty nine percent (49%) Percentage Interest in Company.

1.5 Employees. Effective as of the Effective Time, Company shall assume, or Company's Affiliate shall retain, as applicable, each employee of TRC or TRC's Affiliate who is principally employed in support of the Centers (collectively, the "Center Employees")

immediately prior to Closing and who continues in the service of Company on and after the Effective Time (collectively, the “Transferring Employees”). With respect to each Transferring Employee, the parties agree that TRC shall transfer and Company shall assume, following the Effective Time, up to a maximum of forty (40) hours of PTO per employee (the “Assumed PTO”). Any PTO in excess of Assumed PTO shall be paid by TRC to each Transferring Employee on or prior to Effective Time or TRC shall increase the TRC Cash Contribution by an amount equal to the dollar value of such excess. Schedule 1.5 sets forth with respect to each Transferring Employee such person’s position, date of hire, current salary, accrued PTO and amount of any other accrued benefits to which such person may be entitled or for which such person has made either written or oral claim to TRC through the pay period ending immediately prior to the Closing. TRC shall provide an updated Schedule 1.5 at Closing. From and after the Effective Time, all Transferring Employees shall be employees of Company or Company’s Affiliate, subject to Company’s or its Affiliate’s employment policies. Nothing herein shall obligate Company to employ the Transferring Employees for any specific time period following the Closing Date. All Transferring Employees shall be credited with their years of service with TRC for the purpose of determining their eligibility and participation under Company’s or its Affiliate’s employee benefit plans. Nothing in this Section shall be construed to grant any employee any rights as a third party beneficiary. TRC shall retain all liabilities with respect to any and all of Center Employees who are not Transferring Employees.

1.6 Instruments of Transfer. The contribution of the Assets by TRC to Company and the assumption of the Assumed Liabilities by Company as herein provided shall be effected at Closing by the Assignment and Assumption and Bill of Transfer in the form attached hereto as Exhibit A.

1.7 Adjustments. The parties acknowledge and agree that the accrued PTO amount set forth next to each Transferring Employee on Schedule 1.5 is as of May 17, 2008 (the “Preliminary PTO Amount”). Within thirty (30) business days following the Closing Date, the parties shall calculate the actual amount of accrued PTO assumed by Company as of the Effective Time. In the event that the actual accrued PTO amount in excess of forty (40) hours is greater than the Preliminary PTO Amount, TRC will pay to Company the value of the difference no later than ten (10) business days after such determination is made. In the event that the actual accrued PTO amount in excess of forty (40) hours is less than the Preliminary PTO Amount, Company will pay to TRC the value of the difference no later than ten (10) business days after such determination is made.

ARTICLE II

CLOSING

The contribution of the TRC Capital Contribution and Group Capital Contribution (the “Closing”) shall take place on June 1, 2008 (the “Closing Date”) at the offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, Massachusetts, or at some other location as the parties may mutually agree, or by facsimile transmission and overnight mail. TRC and Group shall use their respective good faith efforts to close this transaction as

promptly as possible after the Effective Date. Closing shall be deemed to have occurred at 12:02 a.m. Mountain Time on the Closing Date (the “Effective Time”)

ARTICLE III REPRESENTATIONS AND WARRANTIES OF TRC

With respect to the Dialysis Business and not in connection with any other center owned by or business of TRC or any of its Affiliates, TRC hereby represents and warrants to Group and Company, as of the Effective Date and as of the Closing Date (except for those representations and warranties that are made as of the Closing Date only, which are true and correct as of the Closing Date), as follows:

3.1 Organization, Good Standing and Qualification. TRC is a corporation duly organized, validly existing and in good standing under the provisions of the laws of the State of California, and is qualified and licensed to do business in the State of Colorado. TRC has all requisite power and authority to own and operate its properties and to carry on its business as now conducted. TRC has all power and authority to enter into all of the Transaction Agreements to which TRC is a party and to carry out and perform its obligations under the Transaction Agreements.

3.2 Authorization; Binding Obligation. TRC has full legal and corporate right, power, and authority to execute and deliver the Transaction Agreements to which TRC is a party, and to carry out the transactions contemplated thereby. The execution and delivery by TRC of the Transaction Agreements and all of the documents and instruments required thereby and the consummation of the transactions contemplated thereby have been duly authorized by all requisite action on the part of TRC. The Transaction Agreements to which TRC is a party and each of the other documents and instruments required thereby or delivered in connection therewith have been duly executed and delivered by TRC, and constitute the legal, valid and binding obligations of TRC, enforceable against it in accordance with their respective terms.

3.3 Consents and Approvals.

(a) Governmental Consents and Approvals. Except as set forth on Schedule 3.3(a), no registration or filing with, or consent or approval of, or other action by, any federal, state, local or other governmental agency or instrumentality is or will be necessary for the valid execution, delivery and performance of this Agreement by TRC, the contribution of the Assets to Company, or the operation of the Dialysis Business by Company after Closing (each, a “Governmental Approval”).

(b) Third Party Consents. Except as set forth on Schedule 3.3(b), no consent, approval or authorization of any non-governmental third party is required in order to consummate the transactions or perform the related covenants and agreements contemplated hereby, or to vest full right, title and interest in the Assets free and clear of any Lien upon Company (each, a “Third Party Consent”).

3.4 No Violation. The execution, delivery, compliance with and performance by TRC of the Transaction Agreements and each of the other documents and instruments delivered in connection therewith do not and will not (a) violate or contravene the organizational certificates, documents and agreements, as amended to date, of TRC, (b) violate or contravene any law, statute, rule, regulation, order, judgment or decree to which TRC is subject, (c) conflict with or result in a breach of or constitute a default by any party under any contract, agreement, instrument or other document to which TRC is a party or by which TRC or any of its assets or properties are bound or subject or to which any entity in which TRC has an interest, is a party, or by which any such entity is bound, or (d) result in the creation of any Lien upon the Assets or the Dialysis Business or any interest of TRC therein.

3.5 Licenses and Permits. Schedule 3.5 attached hereto contains a true, correct and complete list and summary description of all Licenses which currently are issued to TRC in connection with the Dialysis Business (the "TRC Licenses"). Each TRC License is valid and in full force and effect as of the date hereof, no TRC License is subject to any Lien, limitation, restriction, probation or other qualification and there is no default under any TRC License or any basis for the assertion of any default thereunder. There is no pending or, to the knowledge of Company and TRC, threatened, investigation or proceeding that would reasonably be expected to result in the termination, revocation, limitation, suspension, restriction or impairment of any TRC License or the imposition of any fine, penalty or other sanctions for violation of any legal or regulatory requirements relating to any TRC License. TRC has, and has had at all relevant times, all Licenses that are or were necessary in order to enable TRC to own the Assets and conduct and be reimbursed for the Dialysis Business.

3.6 Assets. TRC is the sole and exclusive legal and equitable owner of all right, title and interest in, and has good, clear, indefeasible, insurable and marketable title to, all of the Assets free of all Liens, other than Liens that will be satisfied by TRC on or prior to the Closing Date. All of the Assets have been maintained in accordance with normal industry practice, and are in good operating condition and repair. During the past three (3) years, there has not been any interruption of the operations of the Dialysis Business due to the condition of any of the Assets. The Assets include all assets, properties and rights used or found useful by TRC in connection with the Dialysis Business and which are necessary in order for Company to continue the Dialysis Business as historically and currently conducted at the Centers following Closing.

3.7 Leases of Personal Property. For the purposes of this Agreement, "Personal Property Leases" means any lease, conditional or installment sale contract, lien or similar arrangement to which TRC is a party and to which any tangible personal property used by TRC in connection with the operation of the Dialysis Business is subject. Except as set forth on Schedule 3.7, none of the tangible personal property used by TRC in connection with the operation of the Dialysis Business is subject to a Personal Property Lease. TRC has delivered to Company a complete and correct copy of each Personal Property Lease listed on Schedule 3.7. All of such Personal Property Leases are valid, binding and enforceable in accordance with their respective terms and are in full force and effect. TRC is not in default under any of such Personal Property Leases and there has not been asserted, either by or against TRC under any of such Personal Property Leases, any notice of default, set-off or claim of default. To TRC's knowledge, the parties to such Personal Property Leases other than TRC are not in default of their respective obligations under any of such Personal Property Leases. There has not occurred

any event which, with the passage of time or giving of notice (or both), would constitute such a default or breach under any of such Personal Property Leases by any party thereto. Each Personal Property Lease is separately designated on Schedule 3.7 as either a Personal Property Lease that TRC has agreed to assign and that Company has agreed to assume (each, an “Assigned Personal Property Lease”) or as a Personal Property Lease that shall be paid off by TRC prior to Closing at its own expense (each, a “Terminated Personal Property Lease”).

3.8 Operating Statements. Set forth on Schedule 3.8 are the balance sheet of the Dialysis Business as of December 31, 2007 and the related statement of income for the 12-month period then ended (the “Operating Statements”). The Operating Statements are true and accurately present the financial condition and the results of operations of the Dialysis Business (and no other business of TRC) as of December 31, 2007. Any disclosure omitted due to the nonconformity of the Operating Statements to GAAP, or the absence of footnotes in the Operating Statements, does not either individually or in the aggregate have a TRC Material Adverse Effect. The Operating Statements reflect the application of consistent accounting principles throughout the period involved.

3.9 Absence of Certain Events. Except as noted on Schedule 3.9 or as contemplated by this Agreement or any Transaction Agreement, since the date of the Operating Statements, the Dialysis Business has been conducted only in the ordinary course and in a manner consistent with past practices. As amplification and not in limitation of the foregoing, since the date of the Operating Statements, with respect to the Dialysis Business, other than with respect to the replacement of the medical directors at the Centers, there has not been:

(a) any decrease in the value of the Assets other than ordinary depreciation consistent with past practices;

(b) any voluntary or involuntary sale, assignment, license or other disposition, of any kind, of any property or right included in the Assets, except as specifically contemplated by this Agreement except for the utilization of supplies and drugs in the ordinary course of business;

(c) any Lien imposed or created on the Assets;

(d) any TRC Material Adverse Effect;

(e) any damage to or destruction of any of the assets utilized in the Dialysis Business by fire or other casualty, whether or not covered by insurance;

(f) any termination of any material provider agreement or other contract pursuant to which TRC receives compensation or reimbursement for patient care services in connection with the Dialysis Business;

(g) any sale, transfer, assignment, termination, modification or amendment of any Assigned Contract, except for terminations, modifications and amendments of Assigned Contracts made in the ordinary course of business consistent with past practice and which would not have a TRC Material Adverse Effect;

(h) any notice (written or oral) to TRC that any Assigned Contract has been breached or repudiated or will be breached or repudiated;

(i) except in the ordinary course of business, or otherwise as necessary to comply with any applicable minimum wage law, any increase in the salary or other compensation of any Center Employee engaged in the Dialysis Business, or any increase in or any addition to other benefits to which any such Center Employee may be entitled;

(j) any failure to pay or discharge when due any liabilities which arose out of the ownership or operation of the Dialysis Business;

(k) any change in any of the accounting principles adopted by TRC, or any change in TRC's policies, procedures, or methods with respect to applying such principles;

(l) any transaction or Contract outside the ordinary course of business or involving an amount in excess of \$25,000;

(m) any termination of key personnel such as registered nurses, facility administrators, social workers or dieticians; or

(n) any action that if taken after the Effective Date would constitute a breach of any of the covenants in Article VI hereof.

3.10 Legal Proceedings. Except as set forth on Schedule 3.10, there is no action, suit, litigation, proceeding or investigation pending or, to TRC's knowledge, threatened, by or against TRC relating to the Dialysis Business or the Assets, and TRC has not received any written or oral claim, complaint, incident, report, threat or notice of any such proceeding or claim. There are no outstanding orders, writs, judgments, injunctions or decrees of any court, governmental agency or arbitration tribunal against, involving or affecting TRC with respect to the Dialysis Business or the Assets, and, to TRC's knowledge, there are no facts or circumstances which may result in the institution of any such action, suit, claim or legal, administrative or arbitration proceeding or investigation against, involving or affecting TRC with respect to the Dialysis Business, the Assets or the transactions contemplated hereby. With respect to the Dialysis Business, TRC is not in default with respect to any order, writ, injunction or decree known to or served upon it from any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

3.11 Solvency and Value of Transfer. There is no bankruptcy or insolvency proceeding of any character including without limitation, bankruptcy, receivership, reorganization, dissolution or arrangement with creditors, voluntary or involuntary, affecting TRC, and TRC has not taken any action in contemplation of, or which would constitute the basis for, the institution of any such proceedings. TRC is not insolvent under any bankruptcy, receivership or insolvency law. TRC's contribution of the Assets has not been undertaken with the intention to hinder, delay or defraud TRC's current or future creditors.

3.12 Center Payment Programs.

(a) All Payment Programs in which TRC currently participates with respect to the Dialysis Business are listed on Schedule 3.12 (the “Center Payment Programs”). TRC is a participating provider, in good standing, in each Center Payment Program. There is no pending, concluded or, to TRC’s knowledge, threatened, investigation, or civil, administrative or criminal proceeding relating to TRC’s participation in any Center Payment Program. TRC is not subject to, nor has it been subjected to, any pre-payment utilization review or other utilization review by any Center Payment Program. No Center Payment Program has requested or, to the knowledge of TRC, threatened, any recoupment, refund, or set-off from TRC. No Center Payment Program has imposed a fine, penalty or other sanction on TRC. TRC has not been excluded from participation in any Center Payment Program. TRC has not submitted to any Center Payment Program any false or fraudulent claim for payment or at any time violated in any material respect any condition for participation, or any rule, regulation, policy or standard of, any Center Payment Program. All Medicare Cost Reports for the Centers for all periods prior to the Closing Date have been accurately completed in all material respects and timely filed.

(b) Neither TRC nor any of TRC’s Affiliates, directors, or corporate members, officers, employees or agents has, directly or indirectly, with respect to the Dialysis Business: (i) offered to pay to or solicited any remuneration from, in cash, property or in kind, or made any financial arrangements with, any past or present patient or customer, past or present medical director, physician, other health care provider, supplier, contractor, third party, or Center Payment Program in order to induce or directly or indirectly obtain business or payments from such person, including without limitation any item or service for which payment may be made in whole or in part under any federal, state or private health care program, or for purchasing, leasing, ordering or arranging for or recommending, purchasing, leasing, or ordering any good, facility, service or item for which payment may be made in whole or in part under any federal, state or private health care program; (ii) given or received, or agreed to give or receive, or is aware that there has been made or that there is any agreement to make or receive, any gift or gratuitous payment or benefit of any kind, nature or description (including without limitation in money, property or services), other than gifts of minimal value, to any past, present or potential patient or customer, medical director, physician, other health care provider supplier or potential supplier, contractor, Center Payment Program or any other person, in violation of any applicable Law; (iii) made or agreed to make, or is aware that there has been made or that there is any agreement to make, any contribution, payment or gift of funds or property to, or for the private use of, any governmental official, employee or agent where either the contribution, payment or gift or the purpose of such contribution, payment or gift is or was illegal under the laws of the United States or under the laws of any state thereof or any other jurisdiction in which such payment, contribution or gift was made; (iv) established or maintained any unrecorded fund or asset for any purpose or made any false or artificial entries on any of its books or records for any reason; or (v) made or received or agreed to make or receive, or is aware that there has been made or received or that there has been any intention to make or receive, any payment to any person with the intention or understanding that any part of such payment would be used for any purpose other than that described in the documents supporting such payment. All billing practices of TRC and all predecessors in interest thereof with respect to all Center Payment Programs have been true, fair and correct and in compliance in all material respects with all applicable Laws and all regulations and policies of all such Center Payment Programs. Except for receipt of overpayments in the ordinary course of business and that are consistent with

customary industry practice, TRC has not billed for or received any payment or reimbursement in excess of amounts permitted by law or the rules and regulations of Center Payment Programs or contracts therewith.

3.13 Compliance with Laws.

(a) Schedule 3.13(a) lists all claims occurring during the three (3) year period immediately preceding the Closing Date (or carrying over into such period from any prior period) concerning or relating to any federal or state government funded health care program that involves, relates to or alleges, with respect to the Centers and the Dialysis Business and not in connection with any other centers owned by or business of TRC: (i) any violation of any applicable rule, regulation, policy or requirement of any such program or any irregularity with respect to any activity, practice or policy of TRC or the Dialysis Business; or (ii) any violation of any applicable rule, regulation, policy or requirement of any such program or any irregularity with respect to any claim for payment or reimbursement made by TRC or any payment or reimbursement paid to TRC. To the knowledge of TRC, TRC is not currently subject to any outstanding audit by any such government agency, intermediary or carrier with respect to the Dialysis Business, and, to the knowledge of TRC, there are no grounds to anticipate any such audit in the foreseeable future.

(b) To the knowledge of TRC has not violated and is in compliance in all material respects with all applicable Laws with respect to the Dialysis Business. TRC has not received any notice to the effect that, or otherwise been advised that, it is not in compliance with any Laws with respect to the Dialysis Business, and TRC has no reasonable basis to anticipate that any existing circumstances are likely to result in a violation of any Law with respect to the Dialysis Business.

(c) TRC has not submitted any claim to any Center Payment Program with respect to the Dialysis Business in connection with any referrals that violated any applicable self-referral Law, including without limitation the Federal Ethics in Patient Referrals Act, 42 U.S.C. § 1395nn (known as the “Stark Law”), or any applicable state self-referral Law.

(d) With respect to the Dialysis Business, TRC has complied in all material respects with all disclosure requirements of all applicable self referral Laws, including without limitation the Stark Law and any applicable state self referral Law.

(e) With respect to the Dialysis Business, neither TRC nor any Affiliate of TRC has knowingly or willfully solicited, received, paid or offered to pay any remuneration, directly or indirectly, overtly or covertly, in cash or kind for the purpose of making or receiving any referral or arranging for services which violated any applicable anti-kickback Law, including without limitation the Federal Health Care Program Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) (known as the “Anti-Kickback Statute”), or any applicable state anti-kickback Law.

(f) With respect to the Dialysis Business, TRC has not submitted any claim for payment to any Center Payment Program in violation of any Laws relating to false claim or fraud, including without limitation the Federal False Claim Act, 31 U.S.C. § 3729, or any applicable state false claim or fraud Law.

(g) TRC has delivered to Company copies of the most recent Medicare or Medicaid survey reports (which detail, at a minimum, all outstanding deficiencies) relating to the Centers and the Dialysis Business, copies of which are attached to Schedule 3.13(g). Except as set forth on Schedule 3.13(g), there is no Medicare or Medicaid survey in progress with respect to the Dialysis Business.

(h) TRC has complied in all material respects with all Environmental Laws with respect to the Dialysis Business, the Assets and the Premises, and TRC has not received any notice alleging any violation of any Environmental Laws with respect to the Dialysis Business, the Premises, or the Assets. Any past noncompliance with Environmental Laws by or with respect to the Dialysis Business is identified by TRC on Schedule 3.13(h), and has been resolved without any pending, ongoing or future obligation, cost or liability. There has been no Release of Hazardous Materials in violation of any Environmental Law on the Premises. There is no asbestos or asbestos-containing material on the Premises. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will require any Remedial Action or notice to or consent of any governmental authority or third party pursuant to any applicable Environmental Law.

(i) With respect to the Dialysis Business, TRC has complied in all material respects with all applicable requirements of the Occupational Safety and Health Act and all applicable state equivalents, and with all applicable regulations promulgated under any such legislation, and with all orders, judgments, and decrees of any tribunal under such legislation, that apply to the Dialysis Business, the Assets or the Premises, and, except as set forth on Schedule 3.13(i), TRC has not received any notice alleging any violation thereof.

(j) With respect to the Dialysis Business, TRC has complied in all material respects with all applicable security and privacy standards regarding protected health information under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and all applicable state privacy Laws.

(k) With respect to the Dialysis Business, TRC has maintained and complied with a compliance plan regarding dialysis services, and such compliance plan includes appropriate training and a comprehensive ethical code of conduct.

3.14 Employment Matters.

(a) Schedule 1.5 hereto contains a true and accurate list of each Center Employee, together with such person’s position, date of hire, current salary and accrued PTO as of the last pay period prior to the Closing Date.

(b) Except as indicated on Schedule 1.5, no Center Employee (i) has a written employment agreement with TRC or TRC’s Affiliate; or (ii) has indicated that he or she intends to terminate his or her employment with TRC or TRC’s Affiliate or seek a material change in his or her duties or status. Each Center Employee who is required to be licensed by applicable law is so licensed, and copies of such Licenses are attached to Schedule 1.5 hereto.

(c) Except as listed on Schedule 3.14(c), with respect to the Dialysis Business, (i) TRC is not a party to any collective bargaining contracts or any other contracts, agreements or understandings with any labor unions or other representatives of the Center Employees (a “Labor Contract”); (ii) TRC is not subject to any union organizing activities; (iii) TRC has not breached or otherwise failed to comply with any provision of any Labor Contract, and there are no grievances outstanding against TRC under any Labor Contract; (iv) there are no unfair labor practice complaints pending against TRC with respect to the Center Employees before the National Labor Relations Board or any current union representation questions involving the Center Employees; and (v) there is no strike, slowdown, work stoppage or lockout or, to the best of TRC’s knowledge, threat thereof, by or with respect to the Center Employees. The consent of any labor union which is a party to any Labor Contract is not required to consummate the transactions contemplated by this Agreement.

(d) With respect to the Dialysis Business, no person employed by or affiliated with TRC in connection with the Dialysis Business has employed or, to TRC’s knowledge, proposes to employ any trade secret or any information or documentation proprietary to any former employer and, no person employed by or affiliated with TRC in connection with the Dialysis Business has violated any confidential relationship which such person may have had with any third party while working on behalf of TRC has no reason to believe that any such event could occur.

3.15 Benefit Plan Compliance with Provisions of Applicable Law. The Employee Benefit Plans maintained by TRC or its Affiliate for the benefit of any Center Employees are listed in Schedule 3.15. Neither TRC nor its Affiliate has incurred any liability (other than normal claims for benefits under its welfare plans) under any provision of ERISA or other applicable Law relating to any Employee Benefit Plan. Each Employee Benefit Plan has been established, maintained and administered in compliance with its terms and complies, in all material respects, with the applicable provisions of ERISA (including without limitation the funding and prohibited transactions provisions thereof), the Code, and all other state and federal applicable Laws. No Employee Benefit Plan is funded through a trust intended to be exempt from tax pursuant to Section 501 of the Code. Neither TRC nor its Affiliate nor any ERISA Affiliate has ever maintained or contributed to any plan or arrangement subject to Title IV of ERISA or Section 412 of the Code, a multiemployer plan as described in Section 3(37) of ERISA or a “multiple employer plan” as described in Section 3(40) of ERISA or Section 413(c) of the Code, and to the knowledge of TRC, neither TRC nor its Affiliate has ever had any liability with respect to any such plan sponsored or maintained by an ERISA Affiliate. No Employee Benefit Plan provides benefits, including, without limitation, death or medical benefits (through insurance or otherwise) with respect to employees or former employees beyond their retirement or other termination of service other than coverage mandated by applicable Law. No Employee Benefit Plan which is a group health plan, as described in Section 5000(b)(1) of the Code is self-insured. No Employee Benefit Plan liability, contingent or otherwise, shall affect any of the Assets, including but not limited to subjecting such Assets to attachment, forfeiture, seizure liquidation or use as collateral.

3.16 No Undisclosed Liability. With respect to the Dialysis Business, except as and to the extent of the amounts specifically accrued or disclosed in the Operating Statements, TRC does not have any liabilities or obligations of any nature whatsoever, due or to become due,

accrued, absolute, contingent or otherwise, whether or not required by GAAP to be reflected on a balance sheet, except for liabilities and obligations incurred in the ordinary course of business and consistent with past practice since the date of the Operating Statements, none of which individually or in the aggregate has a TRC Material Adverse Effect. To TRC's knowledge, there is no basis for the assertion against TRC of any liability or obligation with respect to the Dialysis Business not fully and expressly accrued or disclosed in the Operating Statements. TRC has not incurred any liabilities to customers or suppliers for discounts, returns, promotional allowances or otherwise in connection with the Dialysis Business or any liability for rebates, refunds, allowances or returns for goods or services provided to, by or for the account of TRC which have not been accrued or disclosed in the Operating Statements, (a) other than in the ordinary course of the Dialysis Business consistent with past practice, provided that no such liability, either individually or in the aggregate, shall result in a TRC Material Adverse Effect, and (b) provided that no such liability shall be included among the Assumed Liabilities.

3.17 No Brokers. Neither TRC nor any Affiliate of TRC has employed, either directly or indirectly, or incurred any liability to, any broker, finder or other agent in connection with the transactions contemplated by this Agreement. TRC and its Affiliates agree to indemnify and hold harmless Company and Group for any claims brought by any broker, finder or other agent claiming to have acted on behalf of TRC or an Affiliate of TRC in connection with the contribution of the Assets or the Dialysis Business.

3.18 Taxes. With respect to the Dialysis Business, TRC has filed, or has caused to be filed, on a timely basis and subject to all permitted extensions, all material Tax Returns with the appropriate governmental agencies in all jurisdictions in which such Tax Returns are required to be filed, and all such Tax Returns were correct and complete in all material respects. With respect to the Dialysis Business, all Taxes that are shown as due on such Tax Returns have been timely paid, or delinquencies cured with payment of any applicable penalties and interest, as of the Closing Date. There are no Liens for Taxes on any of the Assets other than Liens for Taxes not yet due and payable. No adjustment of or deficiency of any Tax or claim for additional Taxes with respect to the Dialysis Business has been proposed, asserted, assessed or, to the knowledge of TRC, threatened in writing, against TRC or any member of any affiliated or combined group of which TRC is or was a member or for which TRC could be liable. There are no audits or other examinations being conducted or, to the knowledge of TRC, threatened, in writing, and there is no deficiency or refund litigation or controversy in progress or, to the knowledge of TRC, threatened, in writing, with respect to any Taxes previously paid by TRC or with respect to any Tax Return previously filed by TRC or on behalf of TRC with respect to the Dialysis Business. TRC has not made any extension or waiver of any statute of limitations relating to the assessment or collection of Taxes with respect to the Dialysis Business. There are in effect no powers of attorney or other authorizations to any persons or representatives of TRC with respect to any Tax. Company shall have no liability for any Taxes related to the ownership or operation of the Centers, the Assets or the Dialysis Business for the periods prior to the Effective Time.

3.19 List of Contracts.

(a) For purposes of this Agreement, "Contracts" means all agreements, contracts and commitments, written or oral, to which TRC is a party and relating exclusively to the Assets or

the Dialysis Business including, without limitation: (i) notes, loans, credit agreements, mortgages, indentures, security agreements, operating leases, capital leases and other agreements and instruments relating to the borrowing of money or extension of credit and any contract of suretyship or guaranty; (ii) all employment and consulting agreements and arrangements (including but not limited to agreements for medical director services), and all bonus, compensation, pension, insurance, retirement, deferred compensation and other plans, agreements, trusts, funds and other arrangements for the benefit of employees; (iii) agreements with health care providers, including without limitation, visiting nurses associations, health maintenance organizations, hospitals and long-term care facilities; (iv) agreements, orders or commitments for the purchase by TRC of inventories and supplies which involve annual purchases exceeding \$25,000; (v) agreements, orders or commitments for the sale or lease to customers of goods or services which involve annual sales exceeding \$25,000 (including without limitation agreements to provide dialysis services); (vi) licenses of patents, copyrights, trademarks and other intangible property rights; (vii) agreements or commitments for capital expenditures in excess of \$25,000 for any single project; (viii) provider and supplier agreements with Center Payment Programs; (ix) any joint venture, partnership or other agreement involving a share of profits or losses; (x) any contract, agreement or arrangements with any Affiliate; (xi) any agreement restricting competition or the business activities of any person or entity; (xii) any agreement for the purchase or sale of any Asset; (xiii) all leases of real property; and (xiv) any other agreements or obligations material to the Dialysis Business or the Assets. Schedule 3.19(a) hereto contains a complete and correct list of Contracts, including a complete description for any oral Contracts. Each Contract is separately designated on Schedule 3.19(a) as either a Contract that TRC has agreed to assign and that Company has agreed to assume (each, an "Assigned Contract") or as a Contract that shall be retained or terminated by TRC, in its discretion and at its own expense (each, a "Retained Contract").

(b) TRC is not in default under the terms of any Assigned Contract. No event has occurred that would constitute a default by TRC under any Assigned Contract, nor has TRC received any notice of any default under any Assigned Contract. To TRC's knowledge, the counterparties to the Assigned Contracts are not in default under the terms thereof, nor has any event occurred that would constitute a default by any such counterparty under any Assigned Contract, nor has TRC received any notice of any such counterparty's default under any Assigned Contract.

(c) TRC has made no prepayments or deposits under any Assigned Contract except as set forth on Schedule 3.19(c).

(d) The Assigned Contracts are valid and binding obligations and in full force and effect and have been entered into in the ordinary course of business, consistent with past practice. TRC has not received any notice from any other party to an Assigned Contract of the termination or threatened termination thereof, nor any claim, dispute or controversy thereon, nor has TRC received notice of any asserted claim of default, breach or violation of, any Assigned Contract.

(e) Except as set forth on Schedule 3.19(e), consummation of the transactions contemplated by this Agreement will not constitute a default under any Assigned Contract nor will it trigger any other provision in such Assigned Contract that would result in a change in such

Assigned Contract, including without limitation the requirement for a transfer fee or new deposit, or termination thereof.

3.20 Real Properties. Schedule 3.20 sets forth a true and complete description of all real property used in connection with the Centers (the “Premises”). TRC has the right to use the Premises, which it leases from third parties, and to conduct the Dialysis Business as currently conducted. TRC holds the Premises free and clear of all claims or rights of any third parties and, except as set forth on Schedule 3.20, the possession of the Premises by TRC has not been disturbed and no claim has been asserted against TRC adverse to its rights in such Premises. All improvements, fixtures and all structures on the Premises and the current uses of the Premises conform to all applicable federal, state and local laws, building, health and safety and other ordinances, laws, rules and regulations, except to the extent that such nonconformance could not have a TRC Material Adverse Effect. Applicable zoning laws permit the presently existing improvements and the conduct and continuation of the Dialysis Business as being conducted on the Premises.

3.21 Financing Statements. There are no financing statements under the Uniform Commercial Code with respect to the Assets or the Dialysis Business which name TRC as debtor or lessee filed in any state, except as set forth on Schedule 3.21. Except for those no longer in effect as of the Effective Time, TRC has not signed any financing statement or any security agreement under which a secured party thereunder may file any such financing statement with respect to the Dialysis Business or the Acquired Assets.

3.22 Insurance. With respect to the Centers, TRC is, and will through the Closing Date be, insured with responsible insurers or through a program of self-insurance (including without limitation general liability insurance coverage of the Assets and Premises, and professional liability coverage) against risks normally insured against by similar businesses under similar circumstances. TRC has not failed to give any notice or present any claim under any such policy or binder with respect to the Dialysis Business in due and timely fashion, has not received notice of cancellation or non-renewal of any such policy or binder and is not aware of any threatened or proposed cancellation or non-renewal of any such policy or binder. There are no outstanding claims under any such policy with respect to the Dialysis Business which have gone unpaid for more than thirty (30) days, or as to which the insurer has disclaimed liability.

3.23 Inventory. TRC has maintained sufficient medical and office inventory at the Centers consisting of items of a quality and quantity usable or saleable in the ordinary course of business at levels consistent with those maintained by businesses of similar size and providing similar services as the Dialysis Business.

3.24 Intellectual Property. Schedule 3.24 sets forth a list of Intellectual Property owned, controlled or used by TRC and which relate solely to the Dialysis Business and not any other business of TRC or its Affiliates, together in each case with a brief description of the nature of such right. All TRC-owned fictitious or assumed business names, patents, copyrights and trademarks with respect to the Dialysis Business listed in Schedule 3.24 are valid and in full force and all applications listed therein as pending have been prosecuted in good faith as required by law and are in good standing. There has been no infringement by TRC or any of its Affiliates with respect to any Intellectual Property rights of others with respect to the Dialysis Business.

TRC owns or possesses adequate licenses or other rights to use all Intellectual Property necessary or desirable to conduct the Dialysis Business consistent with past practices, none of which rights will be impaired by the consummation of the transactions contemplated by this Agreement, and all of the rights of TRC thereunder will be enforceable by Company immediately after Closing without the consent or agreement of any other party. None of the Intellectual Property listed in Schedule 3.24 is involved in any interference or opposition proceeding with respect to the Dialysis Business, and there has been no written notice received by TRC or any other indication that any such proceeding will hereafter be commenced. With respect to the Dialysis Business, TRC has not granted any person or entity any right to use any of the Intellectual Property listed in Schedule 3.24 for any purpose.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF COMPANY

Company hereby represents, warrants and covenants to TRC and Group, as of the Effective Date and as of the Closing Date (except for those representations and warranties that are made as of the Closing Date only, which are true and correct as of the Closing Date), as follows:

4.1 Organization, Good Standing and Qualification. Company is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified and licensed as a foreign limited liability company in the State of Colorado. Company has all requisite power and authority to own and operate its properties and to carry on its business as now conducted, to enter into this Agreement and to carry out and perform its obligations under the Transaction Agreements to which Company is a party.

4.2 Authorization; Binding Agreement. Company has full legal and limited liability company right, power, and authority to execute and deliver this Agreement, and to carry out the transactions contemplated hereby. The execution and delivery by Company of the Transaction Agreements to which Company is a party and all of the documents and instruments required thereby and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite limited liability company action on the part of Company. The Transaction Agreements to which Company is a party and each of the other documents and instruments required hereby have been duly executed and delivered by Company and constitute the valid and binding obligations of Company, enforceable against Company in accordance with their respective terms.

4.3 Legal Proceedings. There are no actions, suits, litigation, or proceedings pending or, to Company's knowledge, threatened against Company which could materially adversely affect Company's ability to perform its obligations under this Agreement or the consummation of the transactions contemplated by this Agreement.

4.4 Solvency. There is no bankruptcy or insolvency proceeding of any character including without limitation, bankruptcy, receivership, reorganization, dissolution or arrangement with creditors, voluntary or involuntary, affecting Company, and Company has not taken any action in contemplation of, or which would constitute the basis for, the institution of

any such proceedings. Company is not insolvent under any bankruptcy, receivership or insolvency law.

4.5 No Brokers. Company has not employed, either directly or indirectly, or incurred any liability to, any broker, finder or other agent in connection with the transactions contemplated by this Agreement. Company agrees to indemnify TRC and Group for any claims brought by any broker, finder or other agent claiming to have acted on behalf of Company in connection with this transfer.

4.6 No Violation. The execution, delivery, compliance with and performance by Company of the Transaction Agreements to which Company is a party and each of the other documents and instruments delivered in connection therewith do not and will not (a) violate or contravene the organizational certificates, documents and agreements, as amended to date, of Company; (b) violate or contravene any law, statute, rule, regulation, order, judgment or decree to which Company is subject; or (c) conflict with or result in a breach of or constitute a default by Company under any contract, agreement, instrument or other document or contract to which Company is a party or by which Company or any of its assets or properties are bound or to which Company or any of its assets or properties are subject.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF GROUP

Group hereby represents, warrants and covenants to TRC and Company, as of the Effective Date and as of the Closing Date (except for those representations and warranties that are made as of the Closing Date only, which are true and correct as of the Closing Date), as follows:

5.1 Organization, Good Standing and Qualification. Group is a limited liability limited partnership duly organized, validly existing and in good standing under the laws of the State of Colorado. Group has all requisite power and authority to own and operate its properties and to carry on its business as now conducted, to enter into this Agreement and to carry out and perform its obligations under the Transaction Agreements to which Group is a party.

5.2 Authorization; Binding Agreement. Group has full legal and corporate right, power, and authority to execute and deliver this Agreement, and to carry out the transactions contemplated hereby. The execution and delivery by Group of the Transaction Agreements to which Group is a party and all of the documents and instruments required thereby and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of Group. The Transaction Agreements to which Group is a party and each of the other documents and instruments required hereby have been duly executed and delivered by Group and constitute the valid and binding obligations of Group, enforceable against Group in accordance with their respective terms.

5.3 Legal Proceedings. There are no actions, suits, litigation, or proceedings pending or, to Group's knowledge, threatened against Group which could materially adversely affect

Group's ability to perform its obligations under this Agreement or the consummation of the transactions contemplated by this Agreement.

5.4 Solvency. There is no bankruptcy or insolvency proceeding of any character including without limitation, bankruptcy, receivership, reorganization, dissolution or arrangement with creditors, voluntary or involuntary, affecting Group, and Group has not taken any action in contemplation of, or which would constitute the basis for, the institution of any such proceedings. Group is not insolvent under any bankruptcy, receivership or insolvency law.

5.5 No Brokers. Group has not employed, either directly or indirectly, or incurred any liability to, any broker, finder or other agent in connection with the transactions contemplated by this Agreement. Group agrees to indemnify TRC and Company for any claims brought by any broker, finder or other agent claiming to have acted on behalf of Group in connection with this transfer.

5.6 No Violation. The execution, delivery, compliance with and performance by Group of the Transaction Agreements to which Group is a party and each of the other documents and instruments delivered in connection therewith do not and will not (a) violate or contravene the organizational certificates, documents and agreements, as amended to date, of Group; (b) violate or contravene any law, statute, rule, regulation, order, judgment or decree to which Group is subject; or (c) conflict with or result in a breach of or constitute a default by Group under any contract, agreement, instrument or other document or contract to which Group is a party or by which Group or any of its assets or properties are bound or to which Group or any of its assets or properties are subject.

ARTICLE VI COVENANTS

6.1 Conduct of the Dialysis Business Pending Closing. TRC agrees that, between the Effective Date and the Closing Date, unless Group and Company shall consent in writing, or as otherwise contemplated by this Agreement or any Transaction Agreement, the Dialysis Business shall be conducted only in, and TRC shall not take any action except in, the ordinary course of business consistent with past practice. By way of amplification and not limitation, between the Effective Date and the Closing Date, TRC shall not, and shall neither cause nor permit any of TRC's Affiliates, officers, directors, employees and agents to, directly or indirectly, do, or agree to do, any of the following with respect to the Dialysis Business or the Assets, without the prior written consent of Group and Company, or as otherwise contemplated by this Agreement or any Transaction Agreement:

(a) Sell, pledge, dispose of, grant, transfer, lease, license, guarantee, encumber, or authorize the sale, pledge, disposition, grant, transfer, lease, license, guarantee or encumbrance of the Dialysis Business or any of the Assets except in the ordinary course of business and in a manner consistent with past practice; provided that the aggregate amount of any such sale or disposition (other than a sale or disposition of products or other inventory in the ordinary course of business consistent with past practice, as to which there shall be no restriction on the

aggregate amount), or pledge, grant, transfer, lease, license, guarantee or encumbrance of such property or assets shall not exceed \$25,000;

(b) Acquire (including, without limitation, by merger, consolidation or acquisition of stock or assets) for or in connection with the Dialysis Business any interest in any corporation, partnership, other business organization, person or any division thereof or any assets, other than (i) acquisitions of any assets in the ordinary course of business consistent with past practice that are not, in the aggregate, in excess of \$25,000, or (ii) purchases of inventory for resale (whether for cash or pursuant to an exchange) in the ordinary course of business and consistent with past practice;

(c) Incur any indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any person for borrowed money;

(d) Enter into, amend, terminate, cancel or make any material change in any Assigned Contract or Assigned Personal Property Lease;

(e) Make or authorize any capital expenditure, dividends or distribution;

(f) Increase the compensation payable or to become payable to any Center Employee, except for increases in the ordinary course of business in accordance with past practices in salaries or wages of such employees, or grant any rights to severance or termination pay to, or enter into any employment or severance agreement with, any Center Employee, or establish, adopt, enter into or amend any collective bargaining, bonus, profit sharing, thrift, compensation, pension, retirement, deferred compensation, employment, termination, severance or other plan, agreement, trust, fund, policy or arrangement for the benefit of any Center Employee;

(g) Modify any material accounting policies, procedures or methods;

(h) Waive, release, assign, settle or compromise any claims or litigation involving amounts in excess of \$25,000 or any agreements as to or limiting in any way the operations of Dialysis Business;

(i) Take any action or fail to take any action that could result in a TRC Material Adverse Effect; or

(j) Authorize or enter into any formal or informal agreement or otherwise make any commitment to do any of the foregoing.

6.2 Notice by TRC of Certain Events. TRC shall give prompt written notice to Company and Group of (a) any notice or other communication from any person alleging that the consent of such person is or may be required in connection with the consummation of the transactions contemplated by this Agreement; (b) any notice or other communication from any governmental entity in connection with the transactions contemplated by this Agreement; (c) any actions, suits, claims, investigations or proceedings commenced or, to TRC's knowledge, threatened against, relating to or involving or otherwise affecting the Dialysis Business or the Assets or the transactions contemplated by this Agreement; (d) the occurrence of a breach or

default or event that, with notice or lapse of time or both, would reasonably be expected to become a breach or default under this Agreement or any Assigned Contract or Assigned Personal Property Lease; and (e) any TRC Material Adverse Effect or change, event or circumstance which is likely to delay or impede the ability of TRC to consummate the transactions contemplated by this Agreement or to fulfill its obligations set forth herein.

6.3 Consents and Approvals.

(a) Third Party Consents. Unless otherwise agreed to in writing by Company and Group, TRC shall obtain prior to the Closing Date all Third Party Consents. If a Third Party Consent is not obtained and delivered at Closing and Company and Group waive in writing such requirement, (i) neither this Agreement nor any action taken hereunder shall be deemed to constitute an assignment of any Asset or any Contract if such assignment or attempted assignment would constitute a breach of any Contract or result in the loss or diminution of any rights thereunder or acceleration of any obligations thereunder, and (ii) TRC shall cooperate with Company and Group in any reasonable arrangement proposed by Company designed to provide Company with the benefits of the Asset and Contract as to which such Third Party Consent relates, including enforcement by TRC, for the account and benefit of Company, of any and all rights of TRC against any other person arising out of the breach or cancellation of any such Contract by such other person or otherwise.

(b) Governmental Approvals. Within ten (10) days of the Closing Date, Company and TRC shall file with the Medicare and Medicaid authorities documentation notifying same of a change of ownership of the Dialysis Business effective as of the Closing Date. Upon Company's receipt of written notification from the Centers for Medicare and Medicaid Services ("CMS") and/or TRC's fiscal intermediary indicating that CMS has processed and approved Company's change of ownership application with respect to TRC's Medicare provider number (the "Medicare CHOW Approval"), TRC will (i) terminate all electronic funds transfer arrangements with third party payors effective as of the Closing Date, and (ii) notify the Medicare and Medicaid programs to discontinue the linkage of TRC's Medicare provider number to its Medicaid provider number. Company will cooperate as necessary with TRC in the filing of the documents necessary to obtain the Medicare CHOW Approval.

(c) License to Use Provider Numbers. TRC hereby grants Company a license to use its name, provider numbers and employer identification number on the terms set forth in this Section 6.3(c). From the period of time commencing on the Closing Date and until Company's receipt of the Medicare CHOW Approval, to the extent permitted by law and to ensure cash flow to the Centers during such period of time while the change of ownership application is processed, Company shall submit claims for services provided at the Centers using TRC's name, provider numbers, employer identification number and electronic funds transfer arrangements, as permitted by the Medicare Program Integrity Manual Chapter 10, Sections 5.5C and 11.1B. TRC shall not close or otherwise modify the TRC Lock-box Account or the electronic funds transfer arrangement with third party payors until Company has received the Medicare CHOW Approval.

(d) Cooperation. TRC, with Company's full cooperation, shall continue after the Closing Date to pursue the Third Party Consents and Governmental Approvals to the extent not

previously obtained in connection with the consummation of the transactions contemplated hereunder. Each of the parties hereto shall, from time to time after the Closing Date, upon the request of any other party hereto and at the expense of such requesting party, duly execute, acknowledge and deliver all such further instruments and documents reasonably required to further effectuate the interests and purposes of this Agreement.

(e) Right to Revenues. Company shall have the right to receive all revenues from any source relating to services provided at or with respect to the Dialysis Business on and following the Closing Date (the “Post-Closing Date Services”) and TRC shall pay to Company all cash received relating thereto in accordance with the provisions of Section 6.5(a) below. TRC shall instruct the financial institution at which TRC’s lock-box account (the “TRC Lock-box Account”) is located to sweep all funds received in connection with the Post-Closing Date Services to an account designated by Company. TRC shall have the right to retain all revenues received from any source relating to services provided at or with respect to the Dialysis Business prior to the Closing Date, and any such revenue received by Company shall be returned to TRC in accordance with the provisions of Section 6.5(b) below.

6.4 Cost Reports. TRC shall be responsible for accurately completing and filing on a timely basis, but no later than when due, all Medicare Cost Reports for the period up to the Closing Date. TRC shall provide Company with a reasonable opportunity to review such Medicare Cost Reports before filing. Company shall be responsible for completing and filing on time Medicare Cost Reports for the periods beginning on and after the Closing Date. Each of the parties shall provide reasonable access to their respective employees and records to the other party for the purpose of completing all such Medicare Cost Reports.

6.5 Payments; Collections.

(a) TRC shall pay to Company all cash received from any source relating to services provided at or with respect to the Dialysis Business subsequent to the Effective Time. Such payments shall be made within forty five (45) days after receipt of such payments by TRC, and a copy of the remittance advice shall accompany such payments.

(b) Company shall pay to TRC all cash received after the Closing Date from any source relating to services provided at or with respect to the Dialysis Business prior to the Effective Time. Such payments shall be made within forty five (45) days after receipt of such payments by Company, and a copy of the remittance advice shall accompany such payments.

(c) If and to the extent that, after the Effective Time, Medicare or any other payor withholds funds from Company or Company is required to refund any payments due on claims which are attributable to any period prior to the Effective Time, and which payment Company did not receive and retain after the Effective Time, TRC shall promptly compensate and reimburse Company and take any such action as may be required to satisfy Medicare or any other payor as the case may be.

(d) If and to the extent that, after the Effective Time, Medicare or any other payor withholds funds from TRC or TRC is required to refund any payments due on claims which are attributable to the operation of the Dialysis Business on or after the Effective Time, and which

payment TRC did not receive and retain on or after the Effective Time, Company shall promptly compensate and reimburse TRC and take any such action as may be required to satisfy Medicare or any other payor as the case may be.

6.6 Preservation of and Access to Certain Records.

(a) After Closing, Company shall, in the ordinary course of business and to the extent required by Law, keep and preserve all medical records and other records of the Dialysis Business existing as of the Closing and which are delivered to Company by TRC; provided that, notwithstanding any other provision of this Agreement, if and to the extent Company desires at any time following the Closing Date to dispose of any such records, Company shall first notify TRC of its intent and TRC shall have twenty (20) days following its receipt of such notice to notify Company of its intent to reclaim any such records in whole or in part. TRC shall reclaim such records no later than ten (10) days following TRC's delivery of such notice of intent. In addition to Company's obligations set forth herein, upon reasonable notice, subject to patient confidentiality and during regular business hours and at mutually agreeable times, Company will afford the representatives of TRC, including its counsel and accountants, full and complete access to, and copies of (at the sole cost and expense of TRC), the patient medical records transferred to Company at Closing; provided, however, that TRC shall indemnify Company and its Affiliates from any loss, liability or expense that may arise therefrom.

(b) After Closing, TRC shall keep and preserve all medical records and other records relating to the Dialysis Business or the Assets as of Closing which are not delivered to Company by TRC and which are required to be kept and preserved by applicable Law or in connection with any claim or controversy pending at Closing involving the Dialysis Business. For such period as is required by Law from and after the Closing Date, TRC shall retain and make available to representatives of Company, including its counsel and accountants, upon reasonable notice, subject to patient confidentiality and during regular business hours and at mutually agreeable times, full and complete access to, and copies of (at sole cost of Company), any such records of the Dialysis Business prior to the Closing Date and access to such of TRC's personnel as may be reasonably necessary for Company to comply with applicable Law or to resolve any such pending dispute. Notwithstanding the foregoing, should TRC wish to destroy such records or any portion thereof, TRC shall first notify Company of its intent and Company shall have twenty (20) days following its receipt of such notice to notify TRC of its intent to claim any such records in whole or in part. Company shall take possession of such records no later than ten (10) days following Company's delivery of such notice of intent.

6.7 Maintenance of Insurance Coverage. From and after the Effective Time, TRC will continue its existing professional and general liability insurance coverages of the Centers at its own expense, and such policies will cover any and all claims arising from incidents that occurred prior to the Effective Time in connection with the Dialysis Business.

ARTICLE VII CONFIDENTIALITY

7.1 Confidential Information. The parties agree that (a) all information not disclosed to the public by TRC regarding the Dialysis Business and the medical information of any patient

currently receiving treatment or having previously received treatment at the Centers, which is compiled by, obtained by, or furnished to Company or Group or any of their respective agents or employees in the course of its due diligence review of the Dialysis Business is acknowledged to be confidential information, trade secrets and the exclusive property of TRC through the Closing Date, and of Company thereafter; (b) all information not disclosed to the public by Company regarding Company's business or operations is acknowledged to be confidential information, trade secrets and the exclusive property of Company; and (c) all information not disclosed to the public by Group regarding Group's business or operations is acknowledged to be confidential information, trade secrets and the exclusive property of TRC (collectively, "Confidential Information"). The term "Confidential Information" shall include the terms of this Agreement and the transactions contemplated hereby. The term "Confidential Information" does not include information that (i) is at the time of disclosure or later becomes generally known to the public or within the industry or segment of the industry to which such information relates without violation by a party of any of its obligations hereunder and not through any action by any of its directors, officers, employees and agents which, if committed by such party, would have constituted a violation by it of any of its obligations hereunder; (ii) at the time of disclosure to the other party was already known by such other party; or (iii) after the time of the disclosure to the other party, is received by such party from a third party which, to such party's knowledge, is under no confidentiality obligation with respect thereto.

7.2 Obligations of the Parties. Each of the parties hereto agrees not to divulge, directly or indirectly, any Confidential Information of any other party in any manner contrary to the interests of such party, use or cause or suffer to be used any Confidential Information in competition with such party, or use Confidential Information in violation of the patients' confidentiality rights under HIPAA or any applicable state Law. Each of the parties acknowledges that the breach or threatened breach of the provisions of this Section would cause irreparable injury to the other parties that could not be adequately compensated by money damages. Accordingly, a party may obtain a restraining order and/or injunction prohibiting a breach or threatened breach of the provisions of this Section, in addition to any other legal or equitable remedies that may be available. If requested by legal process to disclose any Confidential Information of another party, the party in receipt of such request shall promptly give notice thereof to the other party so that such party may, at its own cost and expense, seek an appropriate protective order or, in the alternative, waive compliance to the extent necessary to comply with such request if a protective order is not obtained. If a protective order or waiver is granted, the party subject to such legal process may disclose the Confidential Information to the extent required by such court order or as may be permitted by such waiver. Notwithstanding any part of the foregoing, each party shall be permitted to disclose Confidential Information, including without limitation a copy of this Agreement and the Assignment and Assumption and Bill of Transfer, for the purpose of complying with government filing requirements and for the purpose of issuing a press release about the transaction following the Closing Date.

ARTICLE VIII
CONDITIONS PRECEDENT TO PERFORMANCE
OF COMPANY, TRC AND GROUP

8.1 Conditions to Company's Obligations. The obligations of Company under this Agreement are subject to the satisfaction of the following conditions on or prior to the Closing Date, all or any of which may be waived in writing by Company:

(a) Each representation and warranty made by TRC and Group in this Agreement that is qualified by "materiality," "Material Adverse Effect" or a similar qualifier shall be true and correct in all respects, and each such representation and warranty that is not so qualified shall be true and correct in all material respects, in each case, as of the Effective Date and as of the Closing Date as though made on such dates (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date).

(b) TRC and Group, each solely for themselves, shall have performed, satisfied and complied with all obligations and covenants required by this Agreement to be performed or complied with by them on or prior to the Closing Date.

(c) As of the Effective Date and as of the Closing Date, there shall not have occurred any TRC Material Adverse Effect since the date of the Operating Statements.

(d) TRC and Group, each solely for themselves, shall have delivered to Company all documents required to be delivered by them, and all such documents shall have been properly executed by TRC and/or Group, as applicable. Such documents shall include, without limitation:

(i) A certificate of good standing for TRC from the State of California and a certificate of foreign qualification from the State of Colorado, each dated no more than ten (10) days prior to the Closing Date;

(ii) A certificate of good standing for Group from the State of Colorado, dated no more than ten (10) days prior to the Closing Date;

(iii) A certificate signed by the secretary or other authorized officer of TRC and dated immediately prior to the Effective Date, certifying that the Board of Directors of TRC has adopted resolutions to authorize the transactions contemplated by this Agreement;

(iv) A certificate signed by the secretary or other authorized officer of Group and dated immediately prior to the Effective Date, certifying that the governing body of Group has adopted resolutions to authorize the transactions contemplated by this Agreement; and

(v) Such other documents and instruments, each in a form reasonably satisfactory to Buyer and its counsel, as may be reasonably requested by Company in order to carry out the transactions contemplated by this Agreement.

(e) TRC shall have executed and delivered to Company on the Closing Date the Assignment and Assumption and Bill of Transfer in the form attached hereto as Exhibit A, effective as of the Closing Date.

(f) Company shall have received all Third Party Consents in form and substance satisfactory to Company, effective as of the Closing Date.

(g) Company shall have received all Governmental Approvals and consents by necessary governmental authorities to the transfer or reissuance to Company of all Licenses with respect to the Dialysis Business in form and substance satisfactory to Buyer.

(h) Company shall have received payment and release letters, together with UCC-3 amendments to terminate all financing statements, from all parties having such financing statements filed against the Assets in form and substance satisfactory to Company.

(i) Company shall have received certificates from TRC certifying: (i) as of the Effective Date and as of the Closing Date, the accuracy of TRC's representations and warranties as set forth in Article III hereof, and (ii) as of the Effective Date and as of the Closing Date, compliance with TRC's covenants as set forth in this Agreement.

(j) Company shall have received certificates from Group certifying: (i) as of the Effective Date and as of the Closing Date, the accuracy of Group's representations and warranties as set forth in Article V hereof, and (ii) as of the Effective Date and as of the Closing Date, compliance with Group's covenants as set forth in this Agreement.

(k) TRC shall have assigned to Company the Medical Director Agreement for the Centers dated May 15, 2008, by and among Denver Nephrologists, P.C., Bruce Fisch, M.D. and Mary Ellen Vierthaler, M.D. (the "Medical Director Agreement"), effective as of the Closing Date.

(l) Company shall have received for each Center an Assignment and Assumption of Lease (each, a "Lease Assignment") executed by TRC and the landlord for such Center, if applicable, assigning to Company TRC's existing lease for that portion of the Premises that it currently leases from landlord, in form and substance satisfactory to Company, dated and effective as of the Closing Date.

(m) TRC shall have delivered to Company a complete copy of the medical records existing as of the Closing Date of each patient who has been dialyzed at the Centers, such records to be provided in paper and electronic format, as available.

(n) The closing shall have occurred under the Stock Purchase Agreement and all conditions to closing thereunder shall have been satisfied.

8.2 Conditions to TRC's Obligations. The obligations of TRC under this Agreement are subject to the satisfaction of the following conditions, on or prior to the Closing Date, all or any of which may be waived in writing by TRC:

(a) Each representation and warranty made by Company and Group in this Agreement that is qualified by "materiality," "Material Adverse Effect" or a similar qualifier shall be true and correct in all respects, and each such representation and warranty that is not so qualified shall be true and correct in all material respects, in each case, as of the Effective Date and as of the Closing Date as though made on such dates (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date).

(b) Company and Group, each solely for themselves, shall have performed, satisfied and complied with all obligations and covenants of each required by this Agreement to be performed or complied with by each on or prior to the Closing Date.

(c) Company and Group, each solely for themselves, shall have delivered to TRC all documents required to be delivered by each, and all such documents shall have been properly executed by Company and Group, as applicable.

(d) Group shall have delivered to TRC a good standing certificate from the State of Colorado dated no more than ten (10) days prior to the Closing Date.

(e) Group shall have delivered to TRC certificates signed by an authorized officer of Group certifying, as of the Effective Date and as of the Closing Date, (i) the accuracy of Group's representations and warranties as set forth in Article V hereof, and (ii) compliance with Group's covenants as set forth in this Agreement.

(f) Company shall have executed and delivered to TRC the Assignment and Assumption and Bill of Transfer and the Lease Assignments referenced in Section 8.1(l), effective as of the Closing Date.

(f) Company shall have assumed the Medical Director Agreement, effective as of the Closing Date.

(g) The closing shall have occurred under the Stock Purchase Agreement and all conditions to closing thereunder shall have been satisfied.

8.3 Conditions to Group's Obligations. The obligations of Group under this Agreement are subject to the satisfaction of the following conditions, on or prior to the Closing Date, all or any of which may be waived in writing by Group:

(a) Each representation and warranty made by Company and TRC in this Agreement that is qualified by "materiality," "Material Adverse Effect" or a similar qualifier shall be true and correct in all respects, and each such representation and warranty that is not so qualified shall be true and correct in all material respects, in each case, as of the Effective Date and as of the Closing Date as though made on such dates (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date).

(b) Company and TRC, each solely for themselves, shall have performed, satisfied and complied with all obligations and covenants of each required by this Agreement to be performed or complied with by each on or prior to the Closing Date.

(c) Company and TRC, each solely for themselves, shall have delivered to Group all documents required to be delivered by each, and all such documents shall have been properly executed by Company and TRC, as applicable.

(d) TRC shall have delivered to Group a good standing certificate from the State of California and a certificate of foreign qualification from the State of Colorado, each dated no more than ten (10) days prior to the Closing Date.

(e) TRC shall have delivered to Group certificates signed by an authorized officer of TRC certifying, as of the Effective Date and as of the Closing Date, (i) the accuracy of TRC's representations and warranties as set forth in Article III hereof, and (ii) compliance with TRC's covenants as set forth in this Agreement.

(f) Company and TRC shall have executed and delivered to Group on the Closing Date the Assignment and Assumption and Bill of Transfer and the Lease Assignments referenced in Section 8.1(l), effective as of the Closing Date.

(g) TRC shall have assigned and Company shall have assumed the Medical Director Agreement effective as of the Closing Date.

(h) The closing shall have occurred under the Stock Purchase Agreement and all conditions to closing thereunder shall have been satisfied.

8.4 No Injunction or Action. The obligations of Company, TRC and Group under this Agreement are conditioned upon there being, as of the Effective Date and as of the Closing Date, no preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or by a governmental agency concerning this Agreement which would make illegal or otherwise prevent consummation of this Agreement in accordance with its terms, and no proceeding or action brought by any governmental authority seeking the foregoing shall be pending.

ARTICLE IX

SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

9.1 Survival of Representations and Warranties. All Company, TRC and Group representations and warranties contained in this Agreement or any other agreement, schedule, certificate, instrument or other writing delivered by Company, TRC or Group in connection with this transaction shall survive for one (1) year after the Closing Date. If a party hereto determines that there has been a breach by any other party hereto of any such representation or warranty and notifies the breaching party in writing reasonably promptly after learning of such breach, such representation or warranty and liability therefor shall survive with respect to the specified breach until such breach has been resolved, but no party shall have any liability after such one (1) year period for any matters not specified in a writing delivered within such one (1) year period.

9.2 Indemnification by TRC. Subject to the provisions of Sections 9.5 and 9.6 below, TRC agrees to indemnify, defend and hold Group and Company harmless from and against any and all Losses arising out of (a) any breach of a representation or warranty made by TRC in this Agreement (including the Exhibits and Schedules hereto); (b) any failure by TRC to perform, comply with or observe any one or more of its covenants, agreements or obligations contained in this Agreement or in any other agreement, instrument or document delivered to Group and Company in connection with this Agreement or any of the transactions contemplated by this Agreement; or (c) any and all Losses that arise out of the operation of the Centers prior to the Closing Date.

9.3 Indemnification by Company. Subject to the provisions of Sections 9.5 and 9.6 below, Company agrees to indemnify, defend and hold Group and TRC harmless from and against any and all Losses arising out of (a) any breach of a representation or warranty made by Company in this Agreement (including the Exhibits and Schedules hereto); (b) any failure by Company to perform, comply with or observe any one or more of its covenants, agreements or obligations contained in this Agreement or in any other agreement, instrument or document delivered to Group in connection with this Agreement or any of the transactions contemplated by this Agreement; or (c) any and all Losses that arise out of the operation of the Centers on and after the Closing Date.

9.4 Indemnification by Group. Subject to the provisions of Sections 9.5 and 9.6 below, Group agrees to indemnify, defend and hold TRC and Company harmless from and against any and all Losses arising out of (a) breach of any representation or warranty made by Group in this Agreement (including the Exhibits and Schedules hereto); or (b) any failure by Group to perform, comply with or observe any one or more of its covenants, agreements, or obligations contained in this Agreement or in any other agreement, instrument or document delivered to TRC or Company in connection with this Agreement or any of the transactions contemplated by this Agreement.

9.5 Limitations on Indemnification.

(a) Except for Losses arising out of Taxes arising from the operation of the Centers prior to the Effective Time, no indemnification shall be payable to an Indemnified Party until the aggregate amount of all Losses incurred by such Indemnified Party under this Agreement, the Transaction Agreements, the Stock Purchase Agreement, the Assumption Agreement (as defined in the Stock Purchase Agreement), and the Transfer Agreement (as defined in the Stock Purchase Agreement and, collectively with the Stock Purchase Agreement and the Assumption Agreement, the "Stock Purchase Documents") exceeds Fifty Thousand Dollars (\$50,000) (the "Deductible"), whereupon such Indemnified Party shall be entitled, subject to 9.5(b) below, to receive the full amount of all such Losses.

(b) The maximum aggregate liability of TRC to Group and Company (in the aggregate) as a result of all Losses arising under this Agreement, Transaction Agreements and the Stock Purchase Documents shall not exceed One Million Eight Hundred Ninety-Three Thousand Eight Hundred Fifty Dollars (\$1,893,850); provided, however, that this cap on the aggregate liability of TRC shall not apply to Losses that arise out of any Taxes arising from the operation of the Centers prior to the Effective Time. The maximum aggregate liability of Company to TRC and Group (in the aggregate) as a result of all Losses arising under this Agreement, the Transaction Agreements, and the Stock Purchase Documents shall not exceed One Million Eight Hundred Ninety-Three Thousand Eight Hundred Fifty Dollars (\$1,893,850). The maximum aggregate liability of Group to TRC and Company (in the aggregate) as a result of all Losses arising under this Agreement, the Transaction Agreements, and the Stock Purchase Documents shall not exceed One Million Eight Hundred Ninety-Three Thousand Eight Hundred Fifty Dollars (\$1,893,850).

(c) In no event shall Group, TRC or Company be liable for indirect, punitive, special or consequential damage or loss (including but not limited to lost profits) pursuant to this Article IX.

(d) After the Closing, the sole and exclusive remedy for any breach or inaccuracy, or alleged breach or inaccuracy, of any representation or warranty in this Agreement, or any breach of any covenant or agreement in this Agreement shall be indemnification in accordance with this Article IX.

9.6 Indemnification Process. Any party seeking indemnification under this Article IX (an “Indemnified Party”) shall give each party from whom indemnification is being sought (each, an “Indemnifying Party”) notice of any matter which such Indemnified Party has determined has given rise to or could give rise to a right of indemnification under this Agreement, stating the amount of the loss, if known, and method of computation thereof, and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises. The obligations and liabilities of an Indemnifying Party under this Article IX with respect to Losses arising from claims of any third party which are subject to the indemnification provided for in this Article IX (“Third Party Claims”) shall be governed by and contingent upon the following additional terms and conditions:

(a) If any Indemnified Party shall receive notice of any Third Party Claim, the Indemnified Party shall give the Indemnifying Party notice of such Third Party Claim within thirty (30) days of the receipt by the Indemnified Party of such notice; provided, however, that the failure to provide such notice shall not release the Indemnifying Party from any of its obligations under this Article IX except to the extent the Indemnifying Party is materially prejudiced by such failure.

(b) If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party hereunder against any losses that may result from such Third Party Claim, then the Indemnifying Party shall be entitled to assume and control the defense of such Third Party Claim at its expense and through counsel of its choice if it gives notice of its intention to do so to the Indemnified Party within thirty (30) days of the receipt of such notice from the Indemnified Party; provided, further however, that if it would be detrimental to the defense of the Indemnified Party for the same counsel to represent both the Indemnified Party and the Indemnifying Party, then the Indemnified Party shall be entitled to retain its own counsel, in each jurisdiction for which the Indemnified Party determines counsel is required, at the expense of the Indemnifying Party.

(c) In the event the Indemnifying Party exercises the right to undertake any such defense against any such Third Party Claim as provided above, the Indemnified Party shall cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party, at the Indemnifying Party’s expense, all witnesses, pertinent records, materials and information in the Indemnified Party’s possession or under the Indemnified Party’s control relating thereto as is reasonably required by the Indemnifying Party. Similarly, in the event the Indemnifying Party declines to take such defense and the Indemnified Party is, directly or indirectly, conducting the defense against any such Third Party Claim, the Indemnifying Party shall cooperate with the Indemnified Party in such defense and make available to the

Indemnified Party, at the Indemnifying Party's expense, all such witnesses, records, materials and information in the Indemnifying Party's possession or under the Indemnifying Party's control relating thereto as is reasonably required by the Indemnified Party.

(d) If the Indemnifying Party shall have failed to assume the defense of any claim in accordance with the provisions of this Article, then the Indemnified Party shall have the absolute right to control the defense of such claim and, if and when it is finally determined that the Indemnified Party is entitled to indemnification from the Indemnifying Party hereunder, the fees and expenses of the Indemnified Party's counsel shall be borne by the Indemnifying Party and paid by the Indemnifying Party to the Indemnified Party within five (5) business days of written demand therefor, but the Indemnifying Party shall be entitled, at its own expense, to participate in (but not control) such defense.

(e) So long as the Indemnifying Party has assumed and is conducting the defense of the Third Party Claim in accordance with Section 9.6(b) above, (i) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (not to be withheld unreasonably provided that the Indemnified Party is completely released from all claims) unless the judgment or proposed settlement involves only the payment of money damages by the Indemnifying Party and does not impose an injunction or other equitable relief upon the Indemnified Party, and (ii) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnifying Party (not to be withheld unreasonably).

ARTICLE X MISCELLANEOUS

10.1 Termination. This Agreement may be terminated and the transaction contemplated hereby may be abandoned at any time prior to the Closing Date as follows:

- (a) By mutual written consent of Company, TRC and Group;
- (b) By any of Company, TRC or Group, if Closing shall not have occurred on or before July 1, 2008; provided, however, that the right to terminate this Agreement under this Section 10.1(b) shall not be available to the party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or resulted in, the failure of Closing to occur on or before such date;
- (c) By either Company, TRC or Group, if any final and nonappealable order or other legal restraint or prohibition preventing the consummation of the transaction contemplated by this Agreement shall have been issued by any governmental authority or any Law shall have been enacted or adopted that enjoins, prohibits or makes illegal consummation of the transaction;
- (d) By Company, upon a breach of, or failure to perform in any material respect (which breach or failure cannot be or has not been cured within thirty (30) days after the giving of notice of such breach or failure), any representation, warranty, covenant or agreement on the

part of TRC or Group set forth in this Agreement, such that a condition set forth in Section 8.1 would not be satisfied;

(e) By TRC, upon a breach of, or failure to perform in any material respect (which breach or failure cannot be or has not been cured within thirty (30) days after the giving of notice of such breach or failure), any representation, warranty, covenant or agreement on the part of Company or Group set forth in this Agreement, such that a condition set forth in Section 8.2 would not be satisfied; or

(f) By Group, upon a breach of, or failure to perform in any material respect (which breach or failure cannot be or has not been cured within thirty (30) days after the giving of notice of such breach or failure), any representation, warranty, covenant or agreement on the part of Company or TRC set forth in this Agreement, such that a condition set forth in Section 8.3 would not be satisfied.

10.2 Notice of Termination; Effect of Termination. In the event of termination of this Agreement by any of Company, TRC or Group pursuant to Sections 10.1(b), 10.1(c), 10.1(d), 10.1(e) or 10.1(f) hereof, the terminating party shall give prompt written notice thereof to the nonterminating party. In the event of termination of this Agreement pursuant to Section 10.1, this Agreement shall be of no further effect, there shall be no liability under this Agreement on the part of Company, TRC or Group and all rights and obligations of each party hereto shall cease, provided, however, that nothing herein shall relieve any party from liability for the breach of any of its representations and warranties or the breach of any of its covenants or agreements set forth in this Agreement.

10.3 Expenses. Each of the parties hereto shall pay its own fees, costs and expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

10.4 Entire Subject Matter; Amendment. This Agreement, together with its Schedules and Exhibits and all ancillary agreements and exhibits and schedules thereto to be delivered at Closing, contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, either oral or written. The Agreement may not be amended, or any term or condition waived, unless signed by the party to be charged or making the waiver. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by other party(ies), or by anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

10.5 Assignment. No party hereto shall assign or otherwise transfer this Agreement or any of its rights hereunder, or delegate any of its obligations hereunder, without the prior written consent of the other party; provided, however, that any party shall be permitted, without the consent of any other party, to assign or otherwise transfer this Agreement or any of its rights hereunder to any Affiliate of such party capable of carrying out such party's obligations hereunder.

10.6 Counterparts. This Agreement may be executed in two or more counterparts, any one of which need not contain the signatures of all parties, but all of which counterparts when taken together will constitute one and the same agreement.

10.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado applicable to contracts made and to be performed in that State.

10.8 Schedules and Exhibits. The Schedules and Exhibits attached hereto are an integral part of this Agreement. All exhibits and schedules attached to this Agreement are incorporated herein by this reference and all references herein to this "Agreement" shall mean this Contribution Agreement together with all such exhibits and schedules, and all ancillary agreements and exhibits and schedules thereto to be delivered at Closing.

10.9 Severability. Any provision hereof which is held to be prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be adjusted rather than avoided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible without in any manner invalidating the remaining provisions hereof.

10.10 Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed properly given three (3) business days after being sent by registered or certified mail, postage prepaid, to the parties at the address listed below:

If to TRC: Total Renal Care, Inc.
c/o DaVita Inc.
601 Hawaii Street
El Segundo, California 90245
Attention: General Counsel

With a copy to: DaVita Inc.
601 Hawaii Street
El Segundo, California 90245
Attention: Chief Operating Officer

If to Company: Mountain West Dialysis Services, LLC
c/o DaVita Inc.
601 Hawaii Street
El Segundo, California 90245
Attention: Chief Operating Officer

With copies to: DaVita Inc.
601 Hawaii Street
El Segundo, California 90245
Attention: General Counsel

DaVita Inc.
601 Hawaii Street

El Segundo, California 90245
Attention: Vice President for Corporate
Development

If to Group:

DNPC LLLP
1601 East 19th Avenue
Suite 4300
Denver, Colorado 80218
Attention: Michael Shapiro, M.D.

With copy to:

Robinson, Diss and Clowdus, P.C.
1660 Lincoln Street
Suite 2500
Denver, Colorado 80264
Attention: Fred J. Diss, Esq.

10.11 Representation by Counsel. Each party hereto acknowledges that it has been advised by legal and any other counsel retained by such party in its sole discretion. Each party acknowledges that such party has had a full opportunity to review this Agreement and all related exhibits, schedules and ancillary agreements and to negotiate any and all such documents in its sole discretion, without any undue influence by any other party hereto or any third party.

10.12 Construction. The parties have participated jointly in the negotiations and drafting of this Agreement and in the event of any ambiguity or question of intent or interpretation, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

10.13 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

10.14 Waivers. No waiver by any party, whether express or implied, of its rights under any provision of this Agreement shall constitute a waiver of the party's rights under such provisions at any other time or a waiver of the party's rights under any other provision of this Agreement. No failure by any party to take any action against any breach of this Agreement or default by another party shall constitute a waiver of the former party's right to enforce any provision of this Agreement or to take action against such breach or default or any subsequent breach or default by the other party. To be effective any waiver must be in writing and signed by the waiving party.

[Signature page follows]

THEREFORE, the parties hereto have executed, or caused this Contribution Agreement to be executed by their duly authorized representatives, as of the date first written above.

COMPANY:

MOUNTAIN WEST DIALYSIS SERVICES, LLC

By its LLC Manager,
Total Renal Care, Inc.

By:
Its:

TRC:

TOTAL RENAL CARE, INC.

By:
Its:

GROUP:

DNPC LLLP

By:
Its:

TABLE OF EXHIBITS AND SCHEDULES

Exhibit A – Form of Assignment and Assumption and Bill of Transfer

Schedule 1.0	– Table of Definitions
Schedule 1.1(a)	– Assets
Schedule 1.1(b)	– Excluded Assets
Schedule 1.5	– Center Employees
Schedule 3.3(a)	– Governmental Approvals
Schedule 3.3(b)	– Third Party Consents
Schedule 3.5	– Licenses and Permits
Schedule 3.7	– Personal Property Leases
Schedule 3.8	– Operating Statements
Schedule 3.9	– Absence of Certain Events
Schedule 3.10	– Legal Proceedings
Schedule 3.12	– Center Payment Programs
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Schedule 3.14(c)	– Employment Matters
Schedule 3.19(a)	– Contracts
Schedule 3.19(c)	– Prepayments or Deposits
Schedule 3.19(e)	– Defaults
Schedule 3.20	– Real Property
Schedule 3.21	– Financing Statements
Schedule 3.24	– Intellectual Property

EXHIBIT A

ASSIGNMENT AND ASSUMPTION AND BILL OF TRANSFER

This Assignment and Assumption and Bill of Transfer (the "Agreement"), is made and entered into this 30th day of May, 2008 by and between Total Renal Care, Inc., a Colorado corporation ("Assignor"), and Mountain West Dialysis Services, LLC, a Delaware limited liability company ("Assignee").

RECITALS

WHEREAS, Assignor, Assignee and DNPC LLLP are parties to a Contribution Agreement dated as of May 30, 2008 (the "Contribution Agreement"), whereby (a) Assignor has agreed to contribute, convey, transfer, assign and deliver to Assignee all of the Assets (as defined in the Contribution Agreement), and (b) Assignor has agreed to assign and Assignee has agreed to assume, the Assumed Liabilities (as defined in the Contribution Agreement);

WHEREAS, Assignor operates the freestanding renal dialysis centers located at 1057 S. Wadsworth Blvd, Lakewood, Colorado 80501 and 1700 Kylie Drive, Longmont, Colorado 80504 (collectively, the "Centers");

WHEREAS, Assignor desires to convey, transfer, assign and deliver to Assignee, all of the tangible and intangible assets used or useable and necessary in connection with the operation of the Assets, and the Assumed Liabilities, and Assignee desires to accept and assume the Assets and the Assumed Liabilities; and

WHEREAS, all capitalized terms not defined herein shall have the meanings ascribed to such terms in the Contribution Agreement.

NOW, THEREFORE, pursuant to the Contribution Agreement and in consideration of the mutual promises, covenants and agreements therein and hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Bill of Transfer.

(a) Assignor hereby conveys, transfers, assigns and delivers to Assignee, its successors and assigns, the Assets free and clear of any pledge, lien, option, security interest, mortgage or other encumbrance, and Assignee does hereby acquire from Assignor, all right, title and interest in, to and under the Assets. The Assets shall include all rights, privileges, hereditaments and appurtenances belonging, incident or appertaining to the Assets.

(b) Notwithstanding anything contained herein, Assignor is not transferring to Assignee any Excluded Assets.

(c) It is understood by Assignor and Assignee that, contemporaneously with the execution and delivery of this Agreement, Assignor may be executing and delivering to Assignee certain further assignments and other instruments of transfer which in particular cover certain of the property and assets described herein or in the Contribution Agreement, the purpose of which is to supplement, facilitate and otherwise implement the transfer intended hereby.

(d) Assignor does hereby irrevocably constitute and appoint Assignee, its successors and assigns, its true and lawful attorney, with full power of substitution, in its name or otherwise, and on behalf of Assignor, or for its own use, to claim, demand, collect and receive at any time and from time to time any and all Assets, properties, claims, accounts and other rights, tangible or intangible, hereby sold, transferred, conveyed, assigned and delivered, or intended so to be, and to prosecute the same at law or in equity and, upon discharge thereof, to complete, execute and deliver any and all necessary instruments of satisfaction and release.

2. Assignment and Assumption of Assumed Liabilities.

(a) Assignor hereby assigns to Assignee, its successors and assigns, and Assignee hereby assumes, in accordance with the terms and conditions of the Contribution Agreement, the Assumed Liabilities. Notwithstanding anything in this Agreement to the contrary, except as specifically set forth in the Contribution Agreement, Assignee shall not assume nor be deemed to have assumed any debt, claim, obligation or other liability of Assignor or any Affiliate of Assignor, whether known or unknown, accrued or unaccrued, fixed or contingent, natural or unnatural, whether arising out of occurrences, events or actions prior to, at or after the Effective Time.

(b) In the event that Assignor and/or Assignee determines after execution of this Agreement that one or more contracts or agreements between Assignor and any third party necessary to operate the Assets was not designated as an Assigned Contract (each an "Omitted Agreement"), and the parties consent in writing to the assignment and assumption of such Omitted Agreement, which consent shall not be unreasonably withheld, then, such Omitted Agreement shall be deemed assigned by Assignor to Assignee as of the Effective Time.

(c) Assignor hereby authorizes and directs all obligors under any Assigned Contract, to deliver to Assignee any warrants, checks, drafts or payments to be issued or paid to Assignor pursuant to such Assigned Contract; and Assignor further authorizes Assignee to receive such warrants, checks, drafts or payments from such obligors and to endorse Assignor's name on them and to collect all funds due or to become due under such Assigned Contracts.

(d) Any payment that may be received by Assignor to which Assignee is entitled by reason of this Agreement shall be received by Assignor as trustee for Assignee, and will be delivered promptly to Assignee.

(e) Notice of the assignment under this Agreement may be given at the option of either party to all parties to the Assigned Contracts (other than Assignor) or to such parties' duly authorized agents.

(f) The assumption by Assignee of any Assumed Liabilities shall not enlarge the rights of any third party with respect to any Assumed Liabilities, nor shall it prevent Assignee, with respect to any party other than Assignor, from contesting or disputing any Assumed Liability.

(g) Assignor hereby appoints Assignee, its successors and assigns, as the true and lawful attorney-in-fact of Assignor, with full power of substitution, having full right and authority, in the name of Assignor, to collect or enforce for the account of Assignee, liabilities and obligations of third parties under the Assumed Liabilities; to institute and prosecute all proceedings they may deem proper in order to enforce any claim to obligations owed under the

Assumed Liabilities, to defend and compromise any and all actions, suits or proceedings in respect of the Assumed Liabilities, and to do all such acts in relation to the Assumed Liabilities that Assignee may deem advisable. Assignor agrees that the above-stated powers are coupled with an interest and shall be irrevocable by Assignor.

3. Effective Date. This Agreement shall be deemed effective as of the Effective Time of the Contribution Agreement.

4. Consummation of Contribution Agreement. This Agreement is intended to evidence the consummation of the contribution by Assignor and assumption by Assignee of the Assets and the Assumed Liabilities contemplated by the Contribution Agreement. Assignee and Assignor by their execution of this Agreement each hereby acknowledges and agrees that neither the representations and warranties nor the rights and remedies of any party under the Contribution Agreement shall be deemed to be enlarged, modified or altered in any way by this Agreement. Any inconsistencies or ambiguities between this Agreement and the Contribution Agreement shall be resolved in favor of the Contribution Agreement.

5. Interim Billing and Collections.

(a) Assignee shall have the right to receive all revenues from any source relating to services provided at or with respect to the Post-Closing Date Services and Assignor shall pay to Assignee all cash received relating thereto. Assignor shall instruct the financial institution at which Assignor's lock-box account (the "Assignor Lock-box Account") is located to sweep all funds received in connection with the Post-Closing Date Services to an account designated by Assignee. Assignor shall have the right to retain all revenues received from any source relating to services provided at or with respect to the Dialysis Business prior to the Closing Date, and any such revenue received by Assignee shall be returned to Assignor in accordance with the provisions of the Contribution Agreement.

(b) Assignor hereby grants Assignee a license to use its name, provider numbers and employer identification number on the terms set forth in the Contribution Agreement. From the period of time commencing on the Closing Date and until Assignee's receipt of the Medicare CHOW Approval, to the extent permitted by law and to ensure cash flow to the Centers during such period of time while the change of ownership application is processed, Assignee shall submit claims for services provided at the Centers using Assignor's name, provider numbers, employer identification number and electronic funds transfer arrangements, as permitted by the Medicare Program Integrity Manual Chapter 10, Sections 5.5C and 11.1B. Assignor shall not close or otherwise modify the Assignor Lock-box Account or the electronic funds transfer arrangement with third party payors until Assignee has received the Medicare CHOW Approval.

6. Consideration. In consideration of the transfer by Assignor to Assignee of the Assets, Assignee shall assume from Assignor the Assumed Liabilities.

7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

8. Further Assurances. After the Closing Date, each party will from time to time, at the other party's request and without further cost to the party receiving the request, execute and

deliver to the requesting party such other instruments and take such other action as the requesting party may reasonably request so as to enable it to exercise and enforce its rights under and fully enjoy the benefits and privileges with respect to this Agreement and to carry out the provisions and purposes hereof.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, including all matters of construction, validity, performance and enforcement and without giving effect to contrary principles of conflict of laws.

10. Counterparts. This Agreement may be signed in any number of counterparts and all such counterparts shall be read together and construed as one and the same document.

[Signatures on following page.]

IN WITNESS WHEREOF, the undersigned have caused this Assignment and Assumption and Bill of Transfer to be duly executed on their behalf on the day and year first above written.

ASSIGNEE:

MOUNTAIN WEST DIALYSIS SERVICES, LLC

By its LLC Manager,
Total Renal Care, Inc.

By:
Its:

ASSIGNOR:

TOTAL RENAL CARE, INC.

By:
Its:

Schedule 1.0

TABLE OF DEFINITIONS

“Acute Programs” has the meaning set forth in the Recitals of this Agreement.

“Affiliates” has the meaning set forth in Rule 501 of Regulation D under the Securities Act of 1933, as amended.

“Agreement” has the meaning set forth in the first sentence of this Agreement.

“Asset Value” has the meaning set forth in Section 1.4.

“Assets” has the meaning set forth in Section 1.1.

“Assumed Liabilities” has the meaning set forth in Section 1.1(c).

“Assumed PTO” has the meaning set forth in Section 1.5.

“Company” has the meaning set forth in the first sentence of this Agreement.

“Centers” has the meaning set forth in the Recitals of this Agreement.

“Center Employee” has the meaning set forth in Section 1.5.

“Center Payment Programs” has the meaning set forth in Section 3.12.

“Closing” has the meaning set forth in the first sentence of Article II of this Agreement.

“Closing Date” has the meaning set forth in Article II of this Agreement.

“CMS” has the meaning set forth in Section 6.3(b).

“Code” means the Internal Revenue Code of 1986, as amended.

“Confidential Information” has the meaning set forth in Section 7.1.

“Contract,” “Assigned Contract” and “Retained Contract” have the meanings set forth in Section 3.18.

“Deductible” has the meaning set forth in Section 9.5(a).

“Dialysis Business” has the meaning set forth in the Recitals of this Agreement.

“Effective Date” has the meaning set forth in the first paragraph of this Agreement.

“Employee Benefit Plans” means any “employee benefit plan” as defined in Section 3(3) of ERISA and all bonus, stock or other security option, stock or other security purchase, stock or other security appreciation rights, incentive, deferred compensation, retirement or supplemental

retirement, severance, golden parachute, vacation, cafeteria, dependent care, medical care, employee assistance program, education or tuition assistance programs, insurance and other similar fringe or employee benefit plans, programs or arrangements, and any current or former employment or executive compensation or severance agreements or any other plan or arrangement to provide compensation or benefits to any individual, written or otherwise, which has ever been sponsored or maintained or entered into for the benefit of, or relating to, any present or former employee or director of TRC or any ERISA Affiliate, without regard to whether such individual is a Center Employee.

“Environmental Laws” means all Laws relating to hazardous waste, infectious medical and radioactive waste, and other environmental matters, including, without limitation, the Resource Conservation and Recovery Act, the Clean Air Act and the Comprehensive Environmental Response Compensation and Liability Act, and any regulations issued thereunder.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any entity (whether or not incorporated) that together with TRC is a member of: (i) a controlled group of corporations within the meaning of Section 414(b) of the Code; (ii) a group of trades or business under common control within the meaning of Section 414(c) of the Code; (iii) an affiliated service group within the meaning of Section 414(m) of the Code; or (iv) any other person or entity treated as an Affiliate of TRC under Section 414(o) of the Code.

“Excluded Assets” has the meaning set forth in Section 1.1(b).

“Excluded Liabilities” has the meaning set forth in Section 1.1(d).

“Existing Centers” has the meaning set forth in the Recitals of this Agreement.

“GAAP” means accounting principles generally accepted in the United States of America, consistently applied.

“Governmental Approval” has the meaning set forth in Section 3.3(a).

“Group” has the meaning set forth in the first sentence of this Agreement.

“Group Capital Contribution” has the meaning set forth in Section 1.3.

“Hazardous Material” means (i) petroleum and petroleum products, by-products or breakdown products, radioactive materials, asbestos-containing materials and polychlorinated biphenyls; (ii) infectious medical waste; and (iii) any other chemical, material or substance, all of which are defined or regulated as toxic or hazardous or as a pollutant, contaminant or waste under any applicable Environmental Law.

“HIPAA” has the meaning set forth in Section 3.13(j).

“Indemnified Party” has the meaning set forth in Section 9.6.

“Indemnifying Party” has the meaning set forth in Section 9.6.

“Intellectual Property” means all recipes, patents, inventions, know-how, show-how, designs, trade secrets, copyrights, trademarks, trade names, service marks, fictitious and assumed business names, Internet domain names, manufacturing processes, software, formulae, trade secrets, technology or the like, and all applications for any of the foregoing.

“Labor Contract” has the meaning set forth in Section 3.14(c).

“Law” or “Laws” means any and all federal, state, and local statutes, codes, licensing requirements, ordinances, laws, rules, regulations, decrees or orders of any foreign, federal, state or local government and any other governmental department or agency, and any judgment, decision, decree or order of any court or governmental agency, department or authority.

“Lease Assignment” has the meaning set forth in Section 9.1(j).

“Licenses” means licenses, permits, consents, approvals, authorizations, registrations, qualifications and certifications of any governmental or administrative agency or authority (whether federal, state or local), including without limitation any Medicare, Medicaid and other provider numbers, certificates or determinations of need, CLIA and DEA certifications.

“Liens” means any lien, claim, security interest, mortgage, pledge, restriction, covenant, charge or encumbrance of any kind or character, direct or indirect, whether accrued, absolute, contingent or otherwise.

“Losses” means damages, liabilities, actions, suits, proceedings, claims, demands, taxes, sanctions, deficiencies, assessments, judgments, costs, interest, penalties and expenses (including without limitation reasonable attorneys’ fees, which shall include a reasonable estimate of the allocable costs of in-house legal counsel and staff, and the reasonable travel and living expenses away from home of the officers, employees, agents and representatives of the aggrieved party).

“Medicare CHOW Approval” has the meaning set forth in Section 6.3(b).

“Mountain West Centers” has the meaning set forth in the Recitals of this Agreement.

“Operating Statements” has the meaning set forth in Section 3.8.

“Payment Programs” means Medicare, TRICARE, Medicaid, Worker’s Compensation, Blue Cross/Blue Shield programs, and all other health maintenance organizations, preferred provider organizations, health benefit plans, health insurance plans, and other third party reimbursement and payment programs including without limitation the Center Payment Programs.

“Personal Property Leases,” “Assigned Personal Property Leases” and “Terminated Personal Property Leases” have the meanings set forth in Section 3.7.

“Post-Closing Date Services” has the meaning set forth in Section 6.3(e).

“Preliminary PTO Amount” has the meaning set forth in Section 1.7.

“Premises” means all real property used by TRC in connection with the Dialysis Business, as described on Schedule 3.20 hereto.

“PTO” means accrued vacation and other payable time off.

“Release” means disposing, discharging, injecting, spilling, leaking, leaching, dumping, emitting, escaping, emptying, seeping, placing and the like into or upon any land, water or air, or otherwise entering into the environment.

“Remedial Action” means all action to (i) clean up, remove or treat Hazardous Materials in the environment; (ii) restore or reclaim the environment or natural resources; (iii) prevent the Release of Hazardous Materials so that they do not migrate or endanger or threaten to endanger public health or the environment; or (iv) perform remedial investigations, feasibility studies, corrective actions, closures and post-remedial or post-closure studies, investigations, operations, maintenance and monitoring on, about or in the Premises.

“Stock Purchase Agreement” means the Stock Purchase Agreement, dated May 30, 2008, by and among Total Renal Care of Colorado, Inc., TRC and Group.

“Stock Purchase Documents” has the meaning set forth in Section 9.5(a).

“Taxes” means all taxes of any type or nature whatsoever, including without limitation, income, gross receipts, excise, franchise, property, value added, import duties, employment, payroll, sales and use taxes and any additions to tax and any interest or penalties thereon, and any liability for the taxes of others arising from Treasury Regulations 1.1502-6 or otherwise by reason of being a member of a consolidated, combined or unitary group for Tax Return purposes.

“Tax Returns” means any and all returns, declarations, reports, claims for refunds and information returns or statements relating to Taxes, required to be filed by TRC for itself and for the Employee Benefit Plans of TRC, including all schedules or attachments thereto and including any amendment thereof (collectively, “Tax Returns”).

“Third Party Consent” has the meaning set forth in Section 3.3(b).

“Third Party Claims” has the meaning set forth in Section 9.6.

“Transaction Agreements” means this Agreement, the Assignment and Assumption and Bill of Transfer and all other agreements executed in connection with this Agreement and in connection with Closing.

“TRC” has the meaning set forth in the first sentence of this Agreement.

“TRC Asset Contribution” has the meaning set forth in Section 1.1.

“TRC Capital Contribution” has the meaning set forth in Section 1.2.

“TRC Cash Contribution” has the meaning set forth in Section 1.2.

“TRC Licenses” has the meaning set forth in Section 3.5.

“TRC Lock-box Account” has the meaning set forth in Section 6.3(e).

“TRC Material Adverse Effect” means any event, circumstance, change or effect that individually or in the aggregate with all other events, circumstances, changes or effects, is reasonably expected to be materially adverse to the condition (financial or otherwise), properties, assets, liabilities, businesses, operations, results of operations or prospects of the Dialysis Business or the Assets or to TRC’s ability to perform its obligations as contemplated in this Agreement, except for any such changes or effects resulting directly or indirectly from: (i) changes in the industry in which TRC operates, which changes do not disproportionately affect TRC relative to other participants in such industry in any material respect; (ii) changes in general economic conditions; or (iii) (A) the announcement or pendency of any of the transactions contemplated by this Agreement; (B) the taking of any action reasonably required to cause compliance with the terms of, or the taking of any action required by, this Agreement; (C) the taking of any action approved or consented to in writing by Group; or (D) any change in accounting requirements or principles or any change in applicable laws, rules or regulations or the interpretation thereof, provided such changes do not disproportionately affect TRC relative to the other participants in TRC’s industry in any material respect.

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Exhibit 23

INTERCOMPANY DISTRIBUTION AGREEMENT

This INTERCOMPANY DISTRIBUTION AGREEMENT (the "Agreement"), is made and entered into as of May 30, 2008, by and between Total Renal Care, Inc., a California corporation ("Parent"), and Total Renal Care of Colorado, Inc., a Colorado corporation and wholly-owned subsidiary of Parent ("Subsidiary").

RECITALS

WHEREAS, Subsidiary is the owner of six (6) renal dialysis centers and programs listed on Exhibit A hereto (the "Dialysis Centers"); and

WHEREAS, in connection with a series of transactions described in that certain Stock Purchase Agreement by and among Parent, Subsidiary and DNPC LLLP (the "Stock Purchase Agreement"), Parent and Subsidiary desire to distribute certain assets of Subsidiary to Parent immediately prior to the Effective Time, all as more fully set forth therein.

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises, covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

- 1. Definitions.** Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Stock Purchase Agreement.
- 2. Distribution of Assets.** Subsidiary will retain Six Hundred Thousand Dollars (\$600,000) (the "Retained Amount"). Subsidiary hereby distributes, assigns and transfers to Parent, and Parent hereby accepts from Subsidiary, all of Subsidiary's rights, title, obligations and interests in and to the cash, accounts receivables, intercompany receivables in excess of the Retained Amount, current and long-term notes receivable and sublease receivable owned by Subsidiary at and as of the Distribution Effective Date, a complete list of which is attached hereto as Exhibit B (the "Assets"). The parties acknowledge and agree that the Retained Amount is based upon the estimated tax liability Subsidiary will incur after the Distribution Effective Date. In the event that the actual tax liability is greater than the Retained Amount, Parent will pay to Mountain West Dialysis Services, LLC, the successor to Subsidiary ("Mountain West"), the value of the difference no later than ten (10) business days after the actual tax liability is known. In the event that the actual tax liability is less than the Retained Amount, Mountain West will pay to Parent the value of the difference no later than ten (10) business days after the actual tax liability is known.
- 3. Effective Date.** This Agreement shall be deemed effective as of the close of business Mountain Time on May 30, 2008 (the "Distribution Effective Date").

4. **Further Assurances.** After the Distribution Effective Date, each party will from time to time, at the other party's request and without further cost to the party receiving the request, execute and deliver to the requesting party such other instruments and take such other action as the requesting party may reasonably request so as to enable it to exercise and enforce its rights under and fully enjoy the benefits and privileges with respect to this Agreement and to carry out the provisions and purposes hereof.

5. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

6. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado applicable to agreements made and to be performed in that state without giving effect to conflicts of law principles.

7. **Counterparts.** This Agreement may be signed in any number of counterparts and all such counterparts shall be read together and construed as one and the same document.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Distribution Effective Date.

PARENT:

TOTAL RENAL CARE, INC.,
a California corporation

By: _____
Name:
Title:

SUBSIDIARY:

TOTAL RENAL CARE OF COLORADO, INC.,
a Colorado corporation

By: _____
Name:
Title:

EXHIBIT A

DIALYSIS CENTERS

Center Name	Address
Arvada Dialysis	9950 W 80 th Avenue Arvada, Colorado 80005
Boulder Dialysis	2880 Fulsom Drive Boulder, Colorado 80304
Lakewood Dialysis	1750 Pierce Street Lakewood, Colorado 80214
Lakewood At Home (HHD Program)	1750 Pierce Street Lakewood, Colorado 80214
Western Home PD	1750 Pierce Street Lakewood, Colorado 80214
Thornton Dialysis	8800 Fox Drive Thornton, Colorado 80260

EXHIBIT B

ASSETS

Cash

Accounts Receivables

Intercompany Receivables in Excess of Six Hundred Thousand Dollars (\$600,000)

Current and Long-term Notes Receivable

Sublease Receivable

Exhibit 24

STOCK PURCHASE AGREEMENT

BY AND AMONG

Total Renal Care, Inc.

AND

Total Renal Care of Colorado, Inc.

AND

DNPC LLLP

Effective Date: May 30, 2008

Closing Date: May 31, 2008

Effective Time: 11:59 p.m. Mountain Time May 31, 2008

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STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the 30th day of May, 2008 (the "Effective Date"), by and among Total Renal Care, Inc., a California corporation (the "Seller"), Total Renal Care of Colorado, Inc., a Colorado corporation (the "Company"), and DNPC LLLP, a Colorado limited liability limited partnership (the "Buyer").

RECITALS

A. Company is engaged in the business of providing dialysis and related services at those locations set forth on Exhibit A (collectively, the "Centers"). The business of providing dialysis and related services at the Centers by Company is referred to as the "Dialysis Business" herein.

B. Seller owns all of the issued and outstanding capital stock of Company (the "Company Stock").

C. Buyer desires to purchase from Seller and Seller desires to sell to Buyer 49% of the Company Stock (the "Transferred Shares") on the terms and conditions hereinafter set forth.

D. As additional consideration, and as a material inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Seller and Company desire to make certain representations, warranties, indemnities, covenants and agreements relating to the sale of Transferred Shares.

E. Capitalized terms used herein shall have the meaning set forth in the Table of Definitions attached hereto as Schedule 1.0.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, agreements, representations and warranties contained herein, the parties hereto hereby agree as follows:

ARTICLE I SALE OF STOCK; ASSETS AND LIABILITIES; ACQUISITION AGREEMENTS; RELATED AGREEMENTS

1.1. Sale and Purchase of Transferred Shares. Subject to the terms and the conditions set forth in this Agreement and on the basis of the representations and warranties herein, Seller agrees to sell, convey, transfer, assign and deliver to Buyer and Buyer agrees to purchase, receive and accept from Seller all right, title and interest in and to Transferred Shares.

1.2. Included Assets; Excluded Assets.

(a) As of the Closing, the assets of Company will include all assets and properties of every kind, character and description (other than property and rights specifically excluded in this

Agreement) owned by Company and used in or for the benefit of the Dialysis Business, whether tangible, intangible, real, personal or mixed, and wherever located (collectively referred to hereinafter as the "Included Assets"), including but not limited to the assets set forth at Schedule 1.2(a) hereto. Without limiting the foregoing, the Included Assets shall include all real property leasehold rights, improvements, furniture, fixtures, equipment, supplies, inventory, leased equipment, claims and rights under contracts and leases, non-exclusive licenses to use trade names, trademarks and service marks, patient lists, copies of patient files and records, telephone numbers, trade secrets, other proprietary rights or intellectual property, goodwill, Medicare and Medicaid provider numbers and agreements, and, to the extent permitted by law, all permits, licenses and other rights held by Seller and Company with respect to the ownership or operation of the Dialysis Business, and all of Seller's and Company's books and records to the extent relating to the foregoing.

(b) As of the Closing, the assets of Company will not include cash, cash equivalents, inter-company receivables, and the Effective Time Receivables, which will be distributed to Seller pursuant to Section 2.2, below, or properties expressly set forth at Schedule 1.2(b) (collectively referred to hereafter as the "Excluded Assets").

1.3. Retained Liabilities. At the Closing, Company will retain or assume the following liabilities, and no other liabilities: (a) salaries, wages, benefits and accrued paid time off applicable to the Retained Employees arising on and after the Effective Time; (b) the Assumed PTO; and (c) all obligations of the Dialysis Business arising on and after the Effective Time (collectively, the "Retained Liabilities"). At the Closing, Seller shall assume all liabilities of Company other than the Retained Liabilities pursuant to an Assumption Agreement in the form attached hereto as Exhibit B (the "Assumption Agreement"). The intent and objective of Seller, Buyer and Company is that, except for the Retained Liabilities, Company shall have no liabilities as of the Effective Time.

1.4. Employees. Company shall retain or assume, as of the Effective Time, each employee of Company or a Company Affiliate who is principally employed in the Dialysis Business immediately prior to Closing and who continues in the service of Company on and after the Effective Time (collectively, the "Retained Employees"). With respect to each Retained Employee, the parties agree that Company shall retain, following the Effective Time, up to a maximum of forty (40) hours of PTO per employee (the "Retained PTO"). Any PTO in excess of Retained PTO shall be paid by Seller to each Retained Employee on or prior to Effective Date or Seller shall reduce the amount of cash or cash equivalents payable to Seller pursuant to the Distribution Agreement by an amount equal to the dollar value of such excess. Schedule 1.4 sets forth with respect to each Retained Employee such person's position, date of hire, current salary, accrued PTO and amount of any other accrued benefits to which such person may be entitled or for which such person has made either written or oral claim to Company through the pay period ending immediately prior to the Closing. Company shall provide an updated Schedule 1.4 at Closing. From and after the Effective Time, all Retained Employees shall be employees of Company, subject to Company's employment policies. Nothing herein shall obligate Company to employ the Retained Employees for any specific time period following the Closing Date. All Retained Employees shall be credited with their years of service with Company for the purpose of determining their eligibility and participation under Company's employee benefit plans. Nothing in this Section shall be construed to grant any employee any rights as a third party beneficiary. Seller shall retain all liabilities with respect to any and all of employees who are not Retained Employees. The parties acknowledge and agree that the accrued PTO amount set forth next

to each Retained Employee on Schedule 1.4 is as of May 17, 2008 (the "Preliminary PTO Amount"). Within thirty (30) business days following the Closing Date, the parties shall calculate the actual amount of accrued PTO assumed by Company as of the Effective Time. In the event that the actual accrued PTO amount in excess of forty (40) hours is greater than the Preliminary PTO Amount, Seller will pay to Company the value of the difference no later than ten (10) business days after such determination is made. In the event that the actual accrued PTO amount in excess of forty (40) hours is less than the Preliminary PTO Amount, Company will pay to Seller the value of the difference no later than ten (10) business days after such determination is made.

1.5. Instruments of Transfer. The sale of the Transferred Shares as herein provided shall be effected at Closing by the Transfer Agreement (the "Transfer Agreement") in the form attached hereto as Exhibit C.

1.6. Payment of Stock Transfer Taxes. Seller covenants and agrees to pay any and all documentary or stock transfer taxes payable by reason of the transfer of Transferred Shares hereunder. Seller will prepare and file at or before Closing all stock transfer tax returns and other filings required in connection therewith.

1.7. Acquisition Agreements and Transactions; Related Agreements.

(a) Medical Director Agreements. The parties acknowledge that, with respect to each Center, Company has entered into Medical Director Agreements dated May 15, 2008 with Denver Nephrologists, P.C. and certain named physicians (the "Medical Director Agreements").

(b) Management Agreement. At or prior to Closing, DaVita and Company shall enter into the dialysis management services agreement in the form attached hereto as Exhibit D (the "Management Agreement").

(c) Distribution Agreement. Immediately prior to the Effective Time, Seller and Company shall close the transactions contemplated by the Distribution Agreement in the form attached hereto as Exhibit E (the "Distribution Agreement").

(d) Contribution Agreement. Immediately subsequent to the Company Conversion, Seller, Buyer and New JV Company shall close the transactions contemplated by the Contribution Agreement in the form attached hereto as Exhibit F (the "Contribution Agreement").

(e) Acutes Purchase Agreement. Immediately subsequent to the Company Conversion, New JV Company and Rocky Mountain Dialysis Services, LLC shall close the transactions contemplated by the Acutes Purchase Agreement in the form attached hereto as Exhibit G (the "Acutes Purchase Agreement").

(f) Existing JV Purchase Agreement. Immediately at the Effective Time, Seller and DNPC Investments, LLC shall close the transactions contemplated by the Existing JV Purchase Agreement in the form attached hereto as Exhibit H (the "Existing JV Purchase Agreement").

(g) Company Conversion. Immediately subsequent to the Effective Time, Company, Seller and Buyer shall take all actions that are necessary to merge Company with and into New JV

Company (the “Company Conversion”) including (i) adoption by Seller of a Plan of Merger in the form attached hereto as Exhibit I, (ii) filing of a Statement of Merger in the form attached hereto as Exhibit J with the Secretary of State of Colorado, (iii) filing of a Certificate of Merger in the form attached hereto as Exhibit K with the Secretary of State of Delaware, (iv) entering into a limited liability company operating agreement in the form attached hereto as Exhibit L (the “Operating Agreement”), and (v) adoption of director and shareholder resolutions approving such actions (collectively, the “LLC Conversion Documents” and together with the Assumption Agreement, the Management Agreement, the Distribution Agreement, the Contribution Agreement, the Acutes Purchase Agreement, and the Existing JV Purchase Agreement, the “Related Agreements”).

ARTICLE II PURCHASE PRICE

2.1. Purchase Price. Subject to any adjustments which may be set forth herein and in reliance on Seller’s and Company’s representations, warranties and covenants, the purchase price to be paid by Buyer to Seller for Transferred Shares shall be an amount (hereinafter referred to as the “Purchase Price”) equal to the sum of One Million Four Hundred Twenty Eight Thousand Three Hundred Fifty Dollars (\$1,428,350.00). The Purchase Price shall be paid to Seller.

2.2. Cash and Accounts Receivable. At the Closing, Company shall assign to Seller all rights and obligations of Company in and to Company’s cash, cash equivalents, inter-company receivables, and accounts receivable as of the Closing Date (the “Effective Time Receivables”) pursuant to the Distribution Agreement. Following the Closing, Company shall pay to Seller all collected proceeds of the Effective Time Receivables as and when received by Company, in accordance with the procedures set forth in Section 6.4.

2.3. Pro-Rations. Other than the Retained Liabilities, all ordinary course of business expenses incurred, such as utilities, will be pro-rated as of the Effective Time, such that Company is responsible for amounts incurred after the Effective Time and Seller is responsible for amounts incurred prior to the Effective Time.

2.4. Negotiated Value. The parties agree that the Purchase Price reflects the fair value of Transferred Shares and Dialysis Business agreed to by the parties hereto as a result of arms’-length negotiations. The parties agree that no consideration is or will be paid for the value of any patient referrals (direct or indirect) to or from Buyer, Seller, Company, or any of their respective Affiliates.

ARTICLE III CLOSING

The closing of the sale and purchase of Transferred Shares (the “Closing”) shall take place on May 31, 2008, or on such other date as the parties may mutually agree (the “Closing Date”), at the offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, Massachusetts, or at some other location as the parties may mutually agree, or by facsimile transmission and overnight mail. Buyer and Seller shall use their respective good faith efforts to close this transaction as promptly as possible after the Effective Date. Closing shall be deemed to have occurred at 11:59 p.m. Mountain Time on the Closing Date (the “Effective Time”).

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLER AND COMPANY

Company and Seller hereby jointly and severally represent and warrant to Buyer, as of the Effective Date and as of the Closing Date (except for those representations and warranties that are made as of the Closing Date only, which are true and correct as of the Closing Date) as follows:

4.1. Organization, Good Standing and Qualification. Company is a corporation duly organized, validly existing and in good standing under the provisions of the laws of the State of Colorado. Company has all requisite power and authority to own and operate its properties and to carry on its business as now conducted. Company has all power and authority to enter into all of the Related Agreements to which Company is a party and to carry out and perform its obligations under such Related Agreements.

4.2. Authorization; Binding Obligation. Company and Seller have full legal and corporate right, power, and authority to execute and deliver the Related Agreements to which Company and Seller are parties, and to carry out the transactions contemplated thereby. The execution and delivery by Company and Seller of the Related Agreements and all of the documents and instruments required thereby and the consummation of the transactions contemplated thereby have been duly authorized by all requisite action on the part of Company. The Related Agreements to which Company and Seller are parties and each of the other documents and instruments required thereby or delivered in connection therewith have been duly executed and delivered by Company and Seller, and constitute the legal, valid and binding obligations of Company and Seller, enforceable against them in accordance with their respective terms.

4.3. Consents and Approvals.

(a) Governmental Consents and Approvals. Except as set forth on Schedule 4.3(a), no registration or filing with, or consent or approval of, or other action by, any federal, state or other governmental agency or instrumentality is or will be necessary for the valid execution, delivery and performance of this Agreement by Company and Seller, the transfer of Transferred Shares to Buyer, or the operation of the Dialysis Business by Company after Closing (each, a “Governmental Approval”).

(b) Third Party Consents. Except as set forth on Schedule 4.3(b), no consent, approval or authorization of any non-governmental third party is required in order to consummate the transactions or perform the related covenants and agreements contemplated hereby or to vest full right, title and interest in Transferred Shares free and clear of any Lien upon Buyer (each, a “Third Party Consent”).

4.4. No Violation. The execution, delivery, compliance with and performance by Company and Seller of the Related Agreements and each of the other documents and instruments delivered in connection therewith do not and will not (a) violate or contravene the organizational certificates, documents and agreements, as amended to date, of Company, (b) violate or contravene any law, statute, rule, regulation, order, judgment or decree to which Company or Seller is subject, (c) conflict with or result in a breach of or constitute a default by any party under any contract,

agreement, instrument or other document to which Company or Seller is a party or by which Company or Seller or any of their assets or properties are bound or subject or to which any entity in which Company or Seller has an interest, is a party, or by which any such entity is bound, or (d) result in the creation of any Lien upon Transferred Shares, the Included Assets or the Dialysis Business or any interest of Seller therein.

4.5. Licenses and Permits. Schedule 4.5 attached hereto contains a true, correct and complete list and summary description of all Licenses which currently are issued to Company in connection with the Dialysis Business (the "Company Licenses"). Each Company License is valid and in full force and effect as of the date hereof, no Company License is subject to any Lien, limitation, restriction, probation or other qualification and there is no default under any Company License or any basis for the assertion of any default thereunder. There is no pending or, to the knowledge of Company and Seller, threatened, investigation or proceeding that would reasonably be expected to result in the termination, revocation, limitation, suspension, restriction or impairment of any Company License or the imposition of any fine, penalty or other sanctions for violation of any legal or regulatory requirements relating to any Company License. Company and Seller have, and have had at all relevant times, all Licenses that are or were necessary in order to enable Company to own the Included Assets and conduct and be reimbursed for the Dialysis Business.

4.6. No Subsidiaries. Company does not own and has not owned, either directly or indirectly, any interest or investment (whether debt or equity) in or been a member of any corporation, partnership, joint venture, business trust or other entity, except as set forth on Schedule 4.6 hereto. Company does not own or engage in, and has not owned or engaged in, any business other than the Dialysis Business.

4.7. Included Assets. Company is the sole and exclusive legal and equitable owner of all right, title and interest in, and has good, clear, indefeasible, insurable and marketable title to, all of the Included Assets free of all Liens other than Liens that will be satisfied by Seller on or prior to the Closing Date. All of the Included Assets have been maintained in accordance with normal industry practice, and are in good operating condition and repair. During the past three (3) years, there has not been any interruption of the operations of the Dialysis Business due to the condition of any of the Included Assets. The Included Assets include all assets, properties and rights used by Company in connection with the Dialysis Business and which are necessary in order for Company to continue the Dialysis Business as historically and currently conducted following Closing.

4.8. Leases of Personal Property. For the purposes of this Agreement, "Personal Property Leases" means any lease, conditional or installment sale contract, Lien or similar arrangement to which Company is a party and to which any tangible personal property used by Company in connection with the operation of the Dialysis Business is subject. Except as set forth on Schedule 4.8, none of the tangible personal property used by Company in connection with the operation of the Dialysis Business is subject to a Personal Property Lease. Company has delivered to Buyer a complete and correct copy of each Personal Property Lease listed on Schedule 4.8. All of such Personal Property Leases are valid, binding and enforceable in accordance with their respective terms and are in full force and effect. Company is not in default under any of such Personal Property Leases and there has not been asserted, either by or against Company under any of such Personal Property Leases, any notice of default, set-off or claim of default. To Company's knowledge, the

parties to such Personal Property Leases other than Company are not in default of their respective obligations under any of such Personal Property Leases. There has not occurred any event which, with the passage of time or giving of notice (or both), would constitute such a default or breach under any of such Personal Property Leases by any party thereto.

4.9. Operating Statements. Set forth on Schedule 4.9 are the balance sheet of the Dialysis Business as of December 31, 2007 and the related statement of income for the 12-month period then ended (the "Operating Statements"). The Operating Statements are true and accurately present the financial condition and the results of operations of the Dialysis Business as of December 31, 2007. Any disclosure omitted due to the nonconformity of the Operating Statements to GAAP, or the absence of footnotes in the Operating Statements, does not either individually or in the aggregate have a Company Material Adverse Effect. The Operating Statements reflect the application of consistent accounting principles throughout the period involved.

4.10. Absence of Certain Events. Except as noted on Schedule 4.10 or as contemplated by this Agreement or any Related Agreement, since the date of the Operating Statements, the Dialysis Business has been conducted only in the ordinary course and in a manner consistent with past practices. As amplification and not in limitation of the foregoing, since the date of the Operating Statements, with respect to the Dialysis Business, other than with respect to the replacement of the medical directors at the Centers, there has not been:

- (a) any decrease in the value of the Included Assets other than ordinary depreciation consistent with past practices;
- (b) any voluntary or involuntary sale, assignment, license or other disposition, of any kind, of any property or right included in the Included Assets except for the utilization of supplies and drugs in the ordinary course of business;
- (c) any Lien imposed or created on the Included Assets;
- (d) any Company Material Adverse Effect;
- (e) any damage to or destruction of any of the assets utilized in the Dialysis Business by fire or other casualty, whether or not covered by insurance;
- (f) any termination of any material provider agreement or other contract pursuant to which Company receives compensation or reimbursement for patient care services in connection with the Dialysis Business;
- (g) any sale, transfer, assignment, termination, modification or amendment of any Contract, except for terminations, modifications and amendments of Contracts made in the ordinary course of business consistent with past practice and which would not have a Company Material Adverse Effect;
- (h) any notice (written or oral) to Company that any Contract has been breached or repudiated or will be breached or repudiated;

(i) except in the ordinary course of business, or otherwise as necessary to comply with any applicable minimum wage law, any increase in the salary or other compensation of any Retained Employee, or any increase in or any addition to other benefits to which any such Retained Employee may be entitled;

(j) any failure to pay or discharge when due any liabilities which arose out of the ownership or operation of the Dialysis Business;

(k) any change in any of the accounting principles adopted by Company, or any change in Company's policies, procedures, or methods with respect to applying such principles;

(l) any transaction or Contract outside the ordinary course of business or involving an amount in excess of \$25,000;

(m) any termination of key personnel such as facility administrators, registered nurses, social workers, or dieticians; or

(n) any action that if taken after the Effective Date would constitute a breach of any of the covenants in Section 6.1 hereof.

4.11. Legal Proceedings. Except as noted on Schedule 4.11, there is no action, suit, litigation, proceeding or investigation pending, or to Company's or Seller's knowledge, threatened by or against Company or Seller (but in the case of Seller, relating to Company, the Dialysis Business or the Included Assets), and neither Company nor Seller has received any written or oral claim, complaint, incident, report, threat or notice of any such proceeding or claim. There are no outstanding orders, writs, judgments, injunctions or decrees of any court, governmental agency or arbitration tribunal against, involving or affecting Company or the Included Assets, and, to Company's and Seller's knowledge, there are no facts or circumstances which may result in the institution of any such action, suit, claim or legal, administrative or arbitration proceeding or investigation against, involving or affecting Company, the Included Assets or the transactions contemplated hereby. Company is not in default with respect to any order, writ, injunction or decree known to or served upon it from any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

4.12. Solvency and Value of Transfer. There is no bankruptcy or insolvency proceeding of any character including without limitation, bankruptcy, receivership, reorganization, dissolution or arrangement with creditors, voluntary or involuntary, affecting Company or Seller, and neither Company nor Seller has taken any action in contemplation of, or which would constitute the basis for, the institution of any such proceedings. Neither Company nor Seller is insolvent under any bankruptcy, receivership or insolvency law. Seller's sale of Transferred Shares has not been undertaken with the intention to hinder, delay or defraud Seller's current or future creditors.

4.13. Company Payment Programs.

(a) All Payment Programs in which Company currently participates are listed on Schedule 4.13 (the "Company Payment Programs"). Company is a participating provider, in good standing, in each Company Payment Program. There is no pending, concluded or, to the knowledge

of Company or Seller, threatened, investigation, or civil, administrative or criminal proceeding relating to Company's or Seller's participation in any Company Payment Program. Company is not subject to, nor has it been subjected to, any pre-payment utilization review or other utilization review by any Company Payment Program. No Company Payment Program has requested or, to the knowledge of Company or Seller, threatened, any recoupment, refund, or set-off from Company. No Company Payment Program has imposed a fine, penalty or other sanction on Company or Seller. Company has not been excluded from participation in any Company Payment Program. Company has not submitted to any Company Payment Program any false or fraudulent claim for payment or at any time violated in any material respect any condition for participation, or any rule, regulation, policy or standard of, any Company Payment Program. All Medicare Cost Reports for the Centers for all periods prior to the Closing Date have been accurately completed in all material respects and timely filed.

(b) Neither Company nor, with respect to the Dialysis Business, any of Company's Affiliates, directors, stockholders or corporate members, officers, employees, or agents has, directly or indirectly: (i) offered to pay to or solicited any remuneration from, in cash, property or in kind, or made any financial arrangements with, any past or present patient or customer, past or present medical director, physician, other health care provider, supplier, contractor, third party, or Company Payment Program in order to induce or directly or indirectly obtain business or payments from such person, including without limitation any item or service for which payment may be made in whole or in part under any federal, state or private health care program, or for purchasing, leasing, ordering or arranging for or recommending, purchasing leasing, or ordering any good, facility, service or item for which payment may be made in whole or in part under any federal, state or private health care program; (ii) given or received, or agreed to give or receive, or is aware that there has been made or that there is any agreement to make or receive, any gift or gratuitous payment or benefit of any kind, nature or description (including without limitation in money, property or services), other than gifts of minimal value, to any past, present or potential patient or customer, medical director, physician, other health care provider supplier or potential supplier, contractor, Company Payment Program or any other person in violation of any applicable Law; (iii) made or agreed to make, or is aware that there has been made or that there is any agreement to make, any contribution, payment or gift of funds or property to, or for the private use of, any governmental official, employee or agent where either the contribution, payment or gift or the purpose of such contribution, payment or gift is or was illegal under the laws of the United States or under the laws of any state thereof or any other jurisdiction in which such payment, contribution or gift was made; (iv) established or maintained any unrecorded fund or asset for any purpose or made any false or artificial entries on any of its books or records for any reason; or (v) made or received or agreed to make or receive, or is aware that there has been made or received or that there has been any intention to make or receive, any payment to any person with the intention or understanding that any part of such payment would be used for any purpose other than that described in the documents supporting such payment. All billing practices of Company and all predecessors in interest thereof with respect to all Company Payment Programs have been true, fair and correct and in compliance in all material respects with all applicable Laws and all regulations and policies of all such Company Payment Programs. Except for receipt of overpayments in the ordinary course of business and that are consistent with customary industry practice, Company has not billed for or received any payment or reimbursement in excess of amounts permitted by law or the rules and regulations of Company Payment Programs or contracts therewith.

4.14. Compliance with Laws.

(a) Schedule 4.14 lists all claims occurring during the three (3) year period immediately preceding the Closing Date (or carrying over into such period from any prior period) concerning or relating to any federal or state government funded health care program that involves, relates to or alleges, with respect to any Center, the Dialysis Business or Company: (i) any violation of any applicable rule, regulation, policy or requirement of any such program or any irregularity with respect to any activity, practice or policy of Company or the Dialysis Business; or (ii) any violation of any applicable rule, regulation, policy or requirement of any such program or any irregularity with respect to any claim for payment or reimbursement made by Company or any payment or reimbursement paid to Company. To the knowledge of Company and Seller, Company is not currently subject to any outstanding audit by any such government agency, intermediary or carrier, and, to the knowledge of Company and Seller, there are no grounds to anticipate any such audit in the foreseeable future.

(b) To the knowledge of Company and Seller, Company has not violated and is in compliance in all material respects with all applicable Laws. Company has not received any notice to the effect that, or otherwise been advised that, it is not in compliance with any Laws, and Company has no reasonable basis to anticipate that any existing circumstances are likely to result in a violation of any Law.

(c) Company has not submitted any claim to any Company Payment Program in connection with any referrals that violated any applicable self-referral Law, including without limitation the Federal Ethics in Patient Referrals Act, 42 U.S.C. § 1395nn (known as the “Stark Law”), or any applicable state self-referral Law.

(d) Company has complied with all disclosure requirements of all applicable self-referral Laws, including without limitation the Stark Law and any applicable state self-referral Law.

(e) With respect to the Dialysis Business, neither Company nor any Affiliate of Company has knowingly or willfully solicited, received, paid or offered to pay any remuneration, directly or indirectly, overtly or covertly, in cash or kind for the purpose of making or receiving any referral or arranging for services which violated any applicable anti-kickback Law, including without limitation the Federal Health Care Program Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) (known as the “Anti-Kickback Statute”), or any applicable state anti-kickback Law.

(f) Company has not submitted any claim for payment to any Company Payment Program in violation of any Laws relating to false claim or fraud, including without limitation the Federal False Claim Act, 31 U.S.C. § 3729, or any applicable state false claim or fraud Law.

(g) Company has delivered to Buyer copies of the most recent Medicare or Medicaid survey reports (which detail, at a minimum, all outstanding deficiencies) relating to the Dialysis Business, copies of which are attached to Schedule 4.14(g). Except as set forth on Schedule 4.14(g), there is no Medicare or Medicaid survey in progress with respect to Company or the Dialysis Business.

(h) Company has complied in all material respects with all Environmental Laws and Company has not received any notice alleging any violation of any Environmental Laws with respect to Company or the Dialysis Business or the Included Assets. Any past noncompliance with Environmental Laws by or with respect to Company or the Dialysis Business is identified by Company on Schedule 4.14(h), and has been resolved without any pending, ongoing or future obligation, cost or liability. There has been no Release of Hazardous Materials in violation of any Environmental Law on the Premises. There is no asbestos or asbestos-containing material on the Premises. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will require any Remedial Action or notice to or consent of any governmental authority or third party pursuant to any applicable Environmental Law.

(i) Company has complied in all material respects with all applicable requirements of the Occupational Safety and Health Act and all applicable state equivalents, and with all applicable regulations promulgated under any such legislation, and with all orders, judgments, and decrees of any tribunal under such legislation, that apply to Company or the Dialysis Business, the Included Assets or the Premises, and, except as set forth on Schedule 4.14(i), Company has not received any notice alleging any violation thereof.

(j) Company has complied in all material respects with all applicable security and privacy standards regarding protected health information under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and all applicable state privacy Laws.

(k) Company has maintained and complied with a compliance plan regarding dialysis services, and such compliance plan includes appropriate training and a comprehensive ethical code of conduct.

4.15. Employment Matters.

(a) Schedule 1.4 hereto contains a true and accurate list of each Retained Employee, together with such person’s position, date of hire, current salary, and accrued PTO as of the last pay period prior to the Closing Date.

(b) Except as indicated on Schedule 1.4 no Retained Employee (i) has a written employment agreement with Company, or (ii) has indicated that he or she intends to terminate his or her employment with Company or seek a material change in his or her duties or status. Each Retained Employee who is required to be licensed by applicable law is so licensed, and copies of such Licenses are attached to Schedule 1.4 hereto.

(c) Except as listed on Schedule 4.15(c), (i) Company is not a party to any collective bargaining contracts or any other contracts, agreements or understandings with any labor unions or other representatives of Retained Employees (a “Labor Contract”); (ii) Company is not subject to any union organizing activities; (iii) Company has not breached or otherwise failed to comply with any provision of any Labor Contract, and there are no grievances outstanding against Company under any Labor Contract; (iv) there are no unfair labor practice complaints pending against Company with respect to Retained Employees before the National Labor Relations Board or any current union representation questions involving Retained Employees; and (v) there is no strike, slowdown, work

stoppage or lockout or, to Company's knowledge, threat thereof, by or with respect to Retained Employees. The consent of any labor union which is a party to any Labor Contract is not required to consummate the transactions contemplated by this Agreement.

(d) No person employed by or affiliated with Company has employed or, to the knowledge of Company or Seller, proposes to employ any trade secret or any information or documentation proprietary to any former employer and, no person employed by or affiliated with Company in connection with the Dialysis Business has violated any confidential relationship which such person may have had with any third party while working on behalf of Company.

4.16. Benefit Plan Compliance with Provisions of Applicable Law. The Employee Benefit Plans maintained by Company for the benefit of any Retained Employees are listed in Schedule 4.16. Company has not incurred any liability (other than normal claims for benefits under its welfare plans) under any provision of ERISA or other applicable Law relating to any Employee Benefit Plan. Each Employee Benefit Plan has been established, maintained and administered in compliance with its terms and complies, in all material respects, with the applicable provisions of ERISA (including without limitation the funding and prohibited transactions provisions thereof), the Code, and all other state and federal applicable Laws. No Employee Benefit Plan is funded through a trust intended to be exempt from tax pursuant to Section 501 of the Code. Neither Company nor any ERISA Affiliate has ever maintained or contributed to any plan or arrangement subject to Title IV of ERISA or Section 412 of the Code, a multiemployer plan as described in Section 3(37) of ERISA or a "multiple employer plan" as described in Section 3(40) of ERISA or Section 413(c) of the Code, and to the knowledge of Company and Seller, Company has never had any liability with respect to any such plan sponsored or maintained by an ERISA Affiliate. No Employee Benefit Plan provides benefits, including, without limitation, death or medical benefits (through insurance or otherwise) with respect to employees or former employees beyond their retirement or other termination of service other than coverage mandated by applicable Law. No Employee Benefit Plan which is a group health plan, as described in Section 5000(b)(1) of the Code is self-insured. No Employee Benefit Plan liability, contingent or otherwise, shall subject Company or any Included Assets to attachment, forfeiture, seizure liquidation or use as collateral.

4.17. No Undisclosed Liability. Except as and to the extent of the amounts specifically accrued or disclosed in the Operating Statements, Company does not have any liabilities or obligations of any nature whatsoever, due or to become due, accrued, absolute, contingent or otherwise, whether or not required by GAAP to be reflected on a balance sheet, except for liabilities and obligations incurred in the ordinary course of business and consistent with past practice since the date of the Operating Statements, none of which individually or in the aggregate has a Company Material Adverse Effect. To the knowledge of Company and Seller, there is no basis for the assertion against Company of any liability or obligation not fully and expressly accrued or disclosed in the Operating Statements. Company has not incurred any liabilities to customers or suppliers for discounts, returns, promotional allowances or otherwise in connection with the operations of Company or the Dialysis Business, or any liability for rebates, refunds, allowances or returns for goods or services provided to, by or for the account of Company which have not been accrued or disclosed in the Operating Statements, (a) other than in the ordinary course of the Dialysis Business consistent with past practice, provided that no such liability, either individually or in the aggregate,

shall result in a Company Material Adverse Effect, and (b) provided that no such liability shall be included among the Retained Liabilities.

4.18. No Brokers. Neither Company, Seller, nor any Affiliate of Company has employed, either directly or indirectly, or incurred any liability to, any broker, finder or other agent in connection with the transactions contemplated by this Agreement. Company and Seller agree to indemnify and hold harmless Buyer for any claims brought by any broker, finder or other agent claiming to have acted on behalf of Company, Seller, or an Affiliate of Company in connection with the purchase and sale of Transferred Shares.

4.19. Taxes. Company has filed, or has caused to be filed, on a timely basis and subject to all permitted extensions, all material Tax Returns with the appropriate governmental agencies in all jurisdictions in which such Tax Returns are required to be filed, and all such Tax Returns were correct and complete in all material respects. All Taxes that are shown as due on such Tax Returns have been timely paid, or delinquencies cured with payment of any applicable penalties and interest, as of the Closing Date. There are no Liens for Taxes on any Included Assets other than Liens for Taxes not yet due and payable. No adjustment of or deficiency of any Tax or claim for additional Taxes has been proposed, asserted, assessed or, to the knowledge of Company or Seller, threatened, in writing, against Company or any member of any affiliated or combined group of which Company is or was a member or for which Company could be liable. There are no audits or other examinations being conducted or, to the knowledge of Company or Seller, threatened, in writing, and there is no deficiency or refund litigation or controversy in progress or, to the knowledge of Company or Seller, threatened, in writing, with respect to any Taxes previously paid by Company or with respect to any Tax Return previously filed by Company or on behalf of Company. Company has not made any extension or waiver of any statute of limitations relating to the assessment or collection of Taxes. There are in effect no powers of attorney or other authorizations to any persons or representatives of Company with respect to any Tax. Buyer shall have no liability for any Taxes related to the ownership or operation of Company, the Included Assets or the Dialysis Business for the periods prior to the Effective Time.

4.20. List of Contracts.

(a) For purposes of this Agreement, "Contracts" means all agreements, contracts and commitments, written or oral, to which Company is a party or by which Company or any of the Included Assets is bound including, without limitation: (i) notes, loans, credit agreements, mortgages, indentures, security agreements, operating leases, capital leases and other agreements and instruments relating to the borrowing of money or extension of credit and any contract of suretyship or guaranty; (ii) all employment and consulting agreements and arrangements (including but not limited to agreements for medical director services), and all bonus, compensation, pension, insurance, retirement, deferred compensation and other plans, agreements, trusts, funds and other arrangements for the benefit of employees; (iii) agreements with health care providers, including without limitation, visiting nurses associations, health maintenance organizations, hospitals and long-term care facilities; (iv) agreements, orders or commitments for the purchase by Company of inventories and supplies which involve annual purchases exceeding \$25,000; (v) agreements, orders or commitments for the sale or lease to customers of goods or services which involve annual sales exceeding \$25,000 (including without limitation agreements to provide dialysis services); (vi)

licenses of patents, copyrights, trademarks and other intangible property rights; (vii) agreements or commitments for capital expenditures in excess of \$25,000 for any single project; (viii) provider and supplier agreements with Company Payment Programs; (ix) any joint venture, partnership or other agreement involving a share of profits or losses; (x) any contract, agreement or arrangements with any Affiliate; (xi) any agreement restricting competition or the business activities of any person or entity; (xii) any agreement for the purchase or sale of any Included Asset; (xiii) all leases of real property; and (xiv) any other agreements or obligations material to Company, the Dialysis Business or the Included Assets.

(b) Company is not in default under the terms of any Contract. No event has occurred that would constitute a default by Company under any Contract, nor has Company received any notice of any default under any Contract. To Company's knowledge, the counterparties to the Contracts are not in default under the terms thereof, nor has any event occurred that would constitute a default by any such counterparty under any Contract, nor has Company received any notice of any such counterparty's default under any Contract.

(c) Company has made no prepayments or deposits under any Contract except as set forth on Schedule 4.20.

(d) The Contracts are valid and binding obligations and in full force and effect and have been entered into in the ordinary course of business, consistent with past practice. Company has not received any notice from any other party to a Contract of the termination or threatened termination thereof, nor any claim, dispute or controversy thereon, nor has Company received notice of any asserted claim of default, breach or violation of, any Contract.

(e) Except as set forth on Schedule 4.20, consummation of the transactions contemplated by this Agreement will not constitute a default under any Contract nor will it trigger any other provision in a Contract that would result in a change in such Contract, including without limitation the requirement for a transfer fee or new deposit, or termination thereof.

4.21. Real Properties. Schedule 4.21 sets forth a true and complete description of all real property used in connection with the Centers (the "Premises"). Company has the right to use the Premises, which it leases from third parties, and to conduct the Dialysis Business as currently conducted. Company holds the Premises free and clear of all claims or rights of any third parties and, except as set forth on Schedule 4.21, the possession of the Premises by Company has not been disturbed and no claim has been asserted against Company adverse to its rights in such Premises. All improvements, fixtures and all structures on the Premises and the current uses of the Premises conform to all applicable federal, state and local laws, building, health and safety and other ordinances, laws, rules and regulations, except to the extent that such nonconformance could not have a Company Material Adverse Effect. Applicable zoning laws permit the presently existing improvements and the conduct and continuation of the Dialysis Business as being conducted on the Premises.

4.22. Financing Statements. There are no financing statements under the Uniform Commercial Code which name Company as debtor or lessee filed in any state, except as set forth on Schedule 4.22. Except for those no longer in effect as of the Effective Time, Company has not

signed any financing statement or any security agreement under which a secured party thereunder may file any such financing statement.

4.23. Insurance. Company is, and will through the Closing Date be, insured with responsible insurers or through a program of self-insurance (including without limitation general liability insurance coverage of Company, the Included Assets and Premises, and professional liability coverage) against risks normally insured against by similar businesses under similar circumstances. Company has not failed to give any notice or present any claim under any such policy or binder in due and timely fashion, has not received notice of cancellation or non-renewal of any such policy or binder and is not aware of any threatened or proposed cancellation or non-renewal of any such policy or binder. There are no outstanding claims under any such policy which have gone unpaid for more than thirty (30) days, or as to which the insurer has disclaimed liability. Coverage of the Centers will continue under all such policies and programs following the Effective Time.

4.24. Inventory. Company has maintained sufficient medical and office inventory at the Centers consisting of items of a quality and quantity usable or saleable in the ordinary course of business at levels consistent with those maintained by businesses of similar size and providing similar services as the Dialysis Business.

4.25. Intellectual Property. Schedule 4.25 sets forth a list of Intellectual Property owned, controlled or used by Company which relate solely to Company and the Dialysis Business and not to any other business of Seller or its Affiliates, together in each case with a brief description of the nature of such right. All Company-owned fictitious or assumed business names, patents, copyrights and trademarks listed in Schedule 4.25 are valid and in full force and all applications listed therein as pending have been prosecuted in good faith as required by law and are in good standing. There has been no infringement by Company or any of its Affiliates with respect to any Intellectual Property rights of others related to the Intellectual Property listed in Schedule 4.25. Company owns or possesses adequate licenses or other rights to use all Intellectual Property necessary or desirable to conduct the Dialysis Business consistent with past practices, none of which rights will be impaired by the consummation of the transactions contemplated by this Agreement, and all of the rights of Company thereunder will be enforceable by Company immediately after Closing without the consent or agreement of any other party. None of the Intellectual Property listed in Schedule 4.25 is involved in any interference or opposition proceeding, and there has been no written notice received by Company or any other indication that any such proceeding will hereafter be commenced. Company has not granted any person or entity any right to use any of the Intellectual Property listed in Schedule 4.25 for any purpose.

4.26. Company Stock. Schedule 4.26 sets forth a complete list and description of the authorized capital stock of Company, the number of shares issued and outstanding of each class or series of such capital stock, and the identity of each shareholder of Company, in each case indicating the class and number of shares held. No shares of Company Stock are held in the treasury of Company. Seller is the record owner of all of Company Stock and all of such stock is duly authorized, validly issued, and fully paid and non-assessable. There are no preemptive or first refusal rights to purchase or otherwise acquire shares of capital stock of Company pursuant to any provision of law or the Articles of Incorporation or By-Laws of Company or by agreement or otherwise. There are no outstanding warrants, options, or other rights to subscribe for or purchase

from Company or any of Seller any shares of capital stock of Company, nor are there outstanding any securities convertible into or exchangeable for such shares.

4.27. Ownership of Company Stock. Seller is the lawful record and beneficial owner of all of Company Stock, with good and marketable title thereto, free and clear of all liens and encumbrances, claims and other charges thereon of any kind. Seller has the full legal power to transfer and deliver the Transferred Shares in accordance with this Agreement, and delivery of such Transferred Shares to Buyer pursuant hereto will convey good and marketable title thereto, free and clear of all liens and encumbrances, claims and other charges thereon of any kind. The shares of Company Stock owned by Seller constitute all of the issued and outstanding shares of the capital stock of Company.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents, warrants and covenants to Company and Seller, as of the Effective Date and as of the Closing Date, as follows:

5.1. Organization, Good Standing and Qualification. Buyer is a limited liability limited partnership duly organized, validly existing and in good standing under the laws of the State of Colorado. Buyer has all requisite power and authority to own and operate its properties and to carry on its business as now conducted, to enter into this Agreement and to carry out and perform its obligations under the Related Agreements to which Buyer is a party.

5.2. Authorization; Binding Agreement. Buyer has the power and authority to execute and deliver this Agreement, and to carry out the transactions contemplated hereby. The execution and delivery by Buyer of the Related Agreements to which Buyer is a party and all of the documents and instruments required thereby and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. The Related Agreements to which Buyer is a party and each of the other documents and instruments required hereby have been duly executed and delivered by Buyer and constitute the valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms.

5.3. Legal Proceedings. There are no actions, suits, litigation, or proceedings pending or, to the knowledge of Buyer, threatened against Buyer which could materially adversely affect Buyer's ability to perform its obligations under this Agreement or the consummation of the transactions contemplated by this Agreement.

5.4. Solvency. There is no bankruptcy or insolvency proceeding of any character including without limitation, bankruptcy, receivership, reorganization, dissolution or arrangement with creditors, voluntary or involuntary, affecting Buyer, and Buyer has not taken any action in contemplation of, or which would constitute the basis for, the institution of any such proceedings. Buyer is not insolvent under any bankruptcy, receivership or insolvency law.

5.5. No Brokers. Buyer has not employed, either directly or indirectly, or incurred any liability to, any broker, finder or other agent in connection with the transactions contemplated by this

Agreement. Buyer agrees to indemnify Seller and Company for any claims brought by any broker, finder or other agent claiming to have acted on behalf of Buyer in connection with this sale.

5.6. No Violation. The execution, delivery, compliance with and performance by Buyer of the Related Agreements to which Buyer is a party and each of the other documents and instruments delivered in connection therewith do not and will not (a) violate or contravene the organizational certificates, documents and agreements, as amended to date, of Buyer; (b) violate or contravene any law, statute, rule, regulation, order, judgment or decree to which Buyer is subject; or (c) conflict with or result in a breach of or constitute a default by any party under any contract, agreement, instrument or other document or contract to which Buyer is a party or by which Buyer or any of its assets or properties are bound or to which Buyer or any of its assets or properties are subject.

5.7. Investment Intention. Buyer is acquiring the Transferred Shares for its own account, for investment purposes only and not with a view to the distribution (as such term is used in Section 2(11) of the Securities Act of 1933, as amended, (the "Securities Act")) thereof. Buyer is an accredited investor (as defined in Rule 501(a) of Regulation D of the Securities Act), with sufficient knowledge and experience in transactions of this type to evaluate the merits and risks of this transaction. Buyer understands that the Transferred Shares have not been registered under the Securities Act and cannot be sold unless subsequently registered under the Securities Act or an exemption from such registration is available. Buyer acknowledges Seller's reliance on Buyer's representations made in this Section 5.7 as a condition to entering into this Agreement.

ARTICLE VI COVENANTS

6.1. Conduct of Company and Dialysis Business Pending Closing. Company agrees that, between the Effective Date and the Closing Date, unless Buyer shall consent in writing or as otherwise contemplated by this Agreement or any Related Agreement, the operations of Company shall be conducted only in, and Company shall not take any action except in, the ordinary course of business consistent with past practice. By way of amplification and not limitation, between the Effective Date and the Closing Date, Seller shall not and Company shall not, and shall neither cause nor permit any of Company's Affiliates, officers, directors, employees and agents to, directly or indirectly, do, or agree to do, any of the following with respect to Company, the Dialysis Business or the Included Assets, without the prior written consent of Buyer or as otherwise contemplated by this Agreement or any Related Agreement:

(a) Sell, pledge, dispose of, grant, transfer, lease, license, guarantee, encumber, or authorize the sale, pledge, disposition, grant, transfer, lease, license, guarantee or encumbrance of the Dialysis Business, or any capital stock of Company, or any of the Included Assets except in the ordinary course of business and in a manner consistent with past practice; provided that the aggregate amount of any such sale or disposition (other than a sale or disposition of products or other inventory in the ordinary course of business consistent with past practice, as to which there shall be no restriction on the aggregate amount), or pledge, grant, transfer, lease, license, guarantee or encumbrance of such property or assets shall not exceed \$25,000;

(b) Acquire (including, without limitation, by merger, consolidation or acquisition of stock or assets) for or in connection with the Dialysis Business any interest in any corporation, partnership, other business organization, person or any division thereof or any assets, other than (i) acquisitions of any assets in the ordinary course of business consistent with past practice that are not, in the aggregate, in excess of \$25,000, or (ii) purchases of inventory for resale (whether for cash or pursuant to an exchange) in the ordinary course of business and consistent with past practice;

(c) Incur any indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any person for borrowed money;

(d) Enter into, amend, terminate, cancel or make any material change in any Contract or Personal Property Lease;

(e) Make or authorize any capital expenditure, dividends or distributions;

(f) Increase the compensation payable or to become payable to any Retained Employee, except for increases in the ordinary course of business in accordance with past practices in salaries or wages of such employees, or grant any rights to severance or termination pay to, or enter into any employment or severance agreement with, any Retained Employee, or establish, adopt, enter into or amend any collective bargaining, bonus, profit sharing, thrift, compensation, pension, retirement, deferred compensation, employment, termination, severance or other plan, agreement, trust, fund, policy or arrangement for the benefit of any Retained Employee;

(g) Modify any material accounting policies, procedures or methods;

(h) Waive, release, assign, settle or compromise any claims or litigation involving amounts in excess of \$25,000 or any agreements as to or limiting in any way the operations of Company or the Dialysis Business;

(i) Take any action or fail to take any action that would reasonably be expected to result in a Company Material Adverse Effect; or

(j) Authorize or enter into any formal or informal agreement or otherwise make any commitment to do any of the foregoing.

6.2. Notice by Company of Certain Events. Company shall give prompt written notice to Buyer of (a) any notice or other communication from any person alleging that the consent of such person is or may be required in connection with the consummation of the transactions contemplated by this Agreement; (b) any notice or other communication from any governmental entity in connection with the transactions contemplated by this Agreement; (c) any actions, suits, claims, investigations or proceedings commenced or, to Company's knowledge, threatened against, relating to or involving or otherwise affecting Company, the Dialysis Business or the Included Assets or the transactions contemplated by this Agreement; (d) the occurrence of a breach or default or event that, with notice or lapse of time or both, would reasonably be expected to become a breach or default under this Agreement or any Contract or Personal Property Lease; and (e) any Company Material Adverse Effect or change, event or circumstance which is likely to delay or impede the ability of

Company to consummate the transactions contemplated by this Agreement or to fulfill its obligations set forth herein.

6.3. Consents and Approvals.

(a) Third Party Consents. Unless otherwise agreed to in writing by Buyer, Company shall obtain prior to the Closing Date all Third Party Consents. If a Third Party Consent is not obtained and delivered at Closing and Buyer waives in writing such requirement, (i) neither this Agreement nor any action taken hereunder shall be deemed to constitute an assignment of any Acquired Asset or any Contract if such assignment or attempted assignment would constitute a breach of any Contract or result in the loss or diminution of any rights thereunder or acceleration of any obligations thereunder, and (ii) Company shall cooperate with Buyer in any reasonable arrangement proposed by Buyer designed to provide Buyer with the benefits of the Included Asset or Contract as to which such Third Party Consent relates, including enforcement by Company, for the account and benefit of Buyer, of any and all rights of Company against any other person arising out of the breach or cancellation of any such Contract by such other person or otherwise.

(b) Governmental Approvals. Within ten (10) days of the Closing Date, Company shall file with the Medicare and Medicaid authorities documentation notifying same of a change of information or, if applicable as a result of the Company Conversion, a change of ownership of Company effective as of the Closing Date. If a Medicare change of ownership application is required, Buyer will cooperate as necessary with Company and Seller in the filing of the documents necessary to obtain approval from CMS of Company's change of ownership application (the "Medicare CHOW Approval"). Buyer shall cooperate with Company and Seller to take all actions necessary to transfer or reissue to Company Licenses as a result of the sale of Company Stock and the Company Conversion.

(c) Cooperation. Buyer, Seller and Company shall continue after the Closing Date to pursue the Third Party Consents and Governmental Approvals to the extent not previously obtained in connection with the consummation of the transactions contemplated hereunder. Each of the parties hereto shall, from time to time after the Closing Date, upon the request of any other party hereto and at the expense of such requesting party, duly execute, acknowledge and deliver all such further instruments and documents reasonably required to further effectuate the interests and purposes of this Agreement.

6.4. Payments; Collections.

(a) Seller shall pay to Company all cash received from any source relating to services provided by Company at or with respect to the operations of Company or the Dialysis Business subsequent to the Effective Time. Such payments shall be made within forty five (45) days after receipt of such payments by any of Seller, and a copy of the remittance advice shall accompany such payments.

(b) Company shall, and Buyer and Seller shall cause Company to, pay to Seller all cash received after the Closing Date from any source relating to services provided at or with respect to the operations of Company or the Dialysis Business prior to the Effective Time. Such payments shall be

made within forty five (45) days after receipt of such payments by Company, and a copy of the remittance advice shall accompany such payments.

(c) If and to the extent that, after the Effective Time, Medicare or any other payor withholds funds from Company or Company is required to refund any payments due on claims which are attributable to any period prior to the Effective Time, and which payment Company did not receive and retain after the Effective Time, Seller shall promptly compensate and reimburse Company and take any such action as may be required to satisfy Medicare or any other payor as the case may be.

(d) Seller shall be solely responsible for the billing of all services performed by Company prior to the Effective Time, and for the collection of all accounts receivable of Company existing as of the Effective Time (subject to Company, Buyer's and Seller's obligations under paragraph (b), above).

6.5. Maintenance of Insurance Coverage. The parties acknowledge and agree that from and after the Effective Time, Company will continue its existing professional and general liability insurance coverages of the Centers, and such policies will cover any and all claims arising from incidents that occurred prior to the Effective Time in connection with the Dialysis Business.

6.6. Post-Company Conversion Actions. Immediately subsequent to the Company Conversion, Buyer and Seller shall cause New JV Company to execute and deliver the Contribution Agreement and the Acutes Purchase Agreement, in the forms attached hereto as Exhibits F and G, respectively.

ARTICLE VII CONFIDENTIALITY

7.1. Confidential Information. The parties agree that (a) all information not disclosed to the public by Company regarding Company, the Dialysis Business, and the medical information of any patient currently receiving treatment or having previously received treatment at the Centers, which is compiled by, obtained by, or furnished to Buyer or any of its agents or employees in the course of its due diligence review of Company and the Dialysis Business is acknowledged to be confidential information, trade secrets and the exclusive property of Company through the Closing Date, and of Buyer thereafter; (b) all information not disclosed to the public by Buyer regarding Buyer's business or operations is acknowledged to be confidential information, trade secrets and the exclusive property of Buyer; and (c) all information not disclosed to the public by Seller regarding Seller's business or operations is acknowledged to be confidential information, trade secrets and the exclusive property of Seller (collectively, "Confidential Information"). The term "Confidential Information" shall include the terms of this Agreement and the transactions contemplated hereby. The term "Confidential Information" does not include information that (i) is at the time of disclosure or later becomes generally known to the public or within the industry or segment of the industry to which such information relates without violation by a party of any of its obligations hereunder and not through any action by any of its directors, officers, employees and agents which, if committed by such party, would have constituted a violation by it of any of its obligations hereunder; (ii) at the time of disclosure to the other party was already known by such other party; or (iii) after the time of

the disclosure to the other party, is received by such party from a third party which, to such party's knowledge, is under no confidentiality obligation with respect thereto.

7.2. Obligations of the Parties. Each of the parties hereto agrees not to divulge, directly or indirectly, any Confidential Information of any other party in any manner contrary to the interests of such party, use or cause or suffer to be used any Confidential Information in competition with such party, or use Confidential Information in violation of the patients' confidentiality rights under HIPAA or any applicable state Law. Each of the parties acknowledges that the breach or threatened breach of the provisions of this Section would cause irreparable injury to the other parties that could not be adequately compensated by money damages. Accordingly, a party may obtain a restraining order and/or injunction prohibiting a breach or threatened breach of the provisions of this Section, in addition to any other legal or equitable remedies that may be available. If requested by legal process to disclose any Confidential Information of another party, the party in receipt of such request shall promptly give notice thereof to the other party so that such party may, at its own cost and expense, seek an appropriate protective order or, in the alternative, waive compliance to the extent necessary to comply with such request if a protective order is not obtained. If a protective order or waiver is granted, the party subject to such legal process may disclose the Confidential Information to the extent required by such court order or as may be permitted by such waiver. Notwithstanding any part of the foregoing, each party shall be permitted to disclose Confidential Information, including without limitation a copy of this Agreement and the Transfer Agreement, for the purpose of complying with government filing requirements and for the purpose of issuing a press release about the transaction following the Closing Date.

ARTICLE VIII CONDITIONS PRECEDENT TO BUYER'S PERFORMANCE AND TO SELLER'S PERFORMANCE

8.1. Conditions to Buyer's Obligations. The obligations of Buyer under this Agreement are subject to the satisfaction of the following conditions on or prior to the Closing Date, all or any of which may be waived in writing by Buyer:

(a) Each representation and warranty made by Company and Seller in this Agreement that is qualified by "materiality," "Material Adverse Effect" or a similar qualifier shall be true and correct in all respects, and each such representation and warranty that is not so qualified shall be true and correct in all material respects, in each case, as of the Effective Date and as of the Closing Date as though made on such dates (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date).

(b) Company and Seller shall have performed, satisfied and complied with all obligations and covenants required by this Agreement to be performed or complied with by them on or prior to the Closing Date.

(c) As of the Closing Date, there shall not have occurred any Company Material Adverse Effect since the date of the Operating Statements.

(d) Company and Seller shall have delivered to Buyer all documents required to be delivered by them, and all such documents shall have been properly executed by each of them, if applicable. Such documents shall include, without limitation:

(i) A corporate good standing certificate for Company from the State of Colorado, dated no more than ten (10) days prior to the Closing Date;

(ii) A certificate signed by the secretary or other authorized officer of Company and dated immediately prior to the Effective Date, certifying (A) that the Board of Directors and Seller have adopted resolutions to authorize the transactions contemplated by this Agreement, (B) a specimen signature of an officer duly authorized thereby to execute the Related Agreements and such other documents to be delivered in connection with Closing on behalf of Company, and (C) copy of the by-laws of Company; and

(iii) Such other documents and instruments, each in a form reasonably satisfactory to Buyer and its counsel, as may be reasonably requested by Buyer in order to carry out the transaction contemplated by this Agreement and to vest good and marketable title in the Transferred Shares in Buyer, free and clear of all Liens.

(e) Seller shall have executed and delivered to Buyer the Transfer Agreement in the form attached hereto as Exhibit C effective as of the Closing Date.

(f) Seller and Company shall each shall have executed the Distribution Agreement in the form attached hereto as Exhibit E.

(g) Seller shall have executed and delivered the Contribution Agreement in the form attached hereto as Exhibit F.

(h) Company shall have received all Third Party Consents in form and substance satisfactory to Buyer, effective as of the Closing Date.

(i) Company shall have received all Governmental Approvals and consents by necessary governmental authorities with respect to all Licenses for the Centers in form and substance satisfactory to Buyer.

(j) Company shall have received payment and release letters, together with UCC-3 amendments to terminate all financing statements from all parties having such financing statements filed against the Included Assets or Company Stock in form and substance satisfactory to Buyer.

(k) Buyer shall have received certificates of authorized officers of Company and Seller certifying (i) as of the Effective Date and as of the Closing Date, the accuracy of Company's and Seller's representations and warranties as set forth in Article IV hereof, and (ii) as of the Effective Date and as of the Closing Date, compliance with Company's and Seller's covenants as set forth in this Agreement.

(l) Seller shall have executed and delivered to Buyer the Assumption Agreement in the Form of Exhibit B hereto.

(m) The closings shall have occurred under each of the Distribution Agreement and the Existing JV Purchase Agreement.

(n) All of the LLC Conversion Documents shall have been executed and delivered by the signatories thereto other than Buyer and its Affiliates.

8.2. Conditions to Seller's Obligations. The obligations of Seller under this Agreement are subject to the satisfaction of the following conditions, on or prior to the Closing Date, all or any of which may be waived in writing by Seller:

(a) Each representation and warranty made by Buyer in this Agreement that is qualified by "materiality," "Material Adverse Effect" or a similar qualifier shall be true and correct in all respects, and each such representation and warranty that is not so qualified shall be true and correct in all material respects, in each case, as of the Effective Date and as of the Closing Date as though made on such dates (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date).

(b) Buyer shall have performed, satisfied and complied with all obligations and covenants of Buyer required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) Buyer shall have delivered to Seller all documents required to be delivered by Buyer, and all such documents shall have been properly executed by Buyer, if applicable.

(d) Buyer shall have delivered to Seller a good standing certificate from the State of Colorado dated no more than ten (10) days prior to the Closing Date.

(e) Buyer shall have delivered to Seller certificates signed by an authorized officer of Buyer certifying, as of the Effective Date and as of the Closing Date, (i) the accuracy of Buyer's representations and warranties as set forth in Article V hereof, and (ii) compliance with Buyer's covenants as set forth in this Agreement.

(f) Company shall have received all Third Party Consents in form and substance satisfactory to Buyer, effective as of the Closing Date.

(g) Company shall have received all Governmental Approvals and consents by necessary governmental authorities with respect to all Licenses for the Centers in form and substance satisfactory to Buyer.

(h) Company shall have entered into the Management Agreement with DaVita, in the form of Exhibit D effective as of the Closing Date.

(i) Buyer shall have executed and delivered the Contribution Agreement in the form attached hereto as Exhibit F.

(j) The closings shall have occurred under each of the Distribution Agreement and the Existing JV Purchase Agreement.

(k) All of the LLC Conversion Documents shall have been executed and delivered by the signatories thereto other than Seller and its Affiliates.

8.3. No Injunction or Action. The obligations of Buyer and Seller under this Agreement are conditioned upon there being, as of the Effective Date and as of the Closing Date, no preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or by a governmental agency concerning this Agreement which would make illegal or otherwise prevent consummation of this Agreement in accordance with its terms, and no proceeding or action brought by any governmental authority seeking the foregoing shall be pending.

ARTICLE IX SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

9.1. Survival of Representations and Warranties. All Buyer, Company and Seller representations and warranties contained in this Agreement or any other agreement, schedule, certificate, instrument or other writing delivered by Buyer, Company or Seller in connection with this transaction shall survive for one (1) year after the Closing Date. If a party hereto determines that there has been a breach by any other party hereto of any such representation or warranty and notifies the breaching party in writing reasonably promptly after learning of such breach, such representation or warranty and liability therefor shall survive with respect to the specified breach until such breach has been resolved, but no party shall have any liability after such one (1) year period for any matters not specified in a writing delivered within such one (1) year period.

9.2. Indemnification by Company. Subject to the provisions of Sections 9.5 and 9.6 below, Company agrees:

(a) To indemnify, defend and hold Buyer harmless from and against any and all Losses arising out of (i) any breach of a representation or warranty made by Company in this Agreement (including the Exhibits and Schedules hereto); or (ii) any failure by Company to perform, comply with or observe any one or more of its covenants, agreements or obligations contained in this Agreement or in any other agreement, instrument or document delivered to Buyer in connection with this Agreement or any of the transactions contemplated by this Agreement; and

(b) Jointly with Seller, to indemnify, defend and hold Buyer harmless from and against any and all Losses arising out of: (i) the operation of the Centers prior to the Closing Date; and (ii) all Pre-Closing Taxes and Company Conversion Taxes.

9.3. Indemnification by Seller. Subject to the provisions of Sections 9.5 and 9.6 below, Seller agrees:

(a) To indemnify, defend and hold Buyer harmless from and against any and all Losses arising out of (i) any breach of a representation or warranty made by Seller in this Agreement (including the Exhibits and Schedules hereto); or (ii) any failure by Seller to perform, comply with or observe any one or more of its covenants, agreements or obligations contained in this Agreement or in any other agreement, instrument or document delivered to Buyer in connection with this Agreement or any of the transactions contemplated by this Agreement; and

(b) Jointly with Company, to indemnify, defend and hold Buyer harmless from and against any and all Losses that arise out of: (i) the operation of the Centers prior to the Closing Date; and (ii) all Pre-Closing Taxes and Company Conversion Taxes.

9.4. Indemnification by Buyer. Subject to the provisions of Sections 9.5 and 9.6 below, Buyer agrees to indemnify, defend and hold Seller and the Company harmless from and against any and all Losses arising out of (a) breach of any representation or warranty made by Buyer in this Agreement (including the Exhibits and Schedules hereto); or (b) any failure by Buyer to perform, comply with or observe any one or more of its covenants, agreements, or obligations contained in this Agreement or in any other agreement, instrument or document delivered to Seller or Company in connection with this Agreement or any of the transactions contemplated by this Agreement.

9.5. Limitations on Indemnification.

(a) Except for Losses that arise out of Pre-Closing Taxes or Company Conversion Taxes, no indemnification shall be payable to an Indemnified Party hereunder or under the Contribution Agreement until the aggregate amount of all Losses (excluding Losses arising out of Pre-Closing Taxes or Company Conversion Taxes) incurred by such Indemnified Party exceeds Fifty Thousand Dollars (\$50,000), whereupon such Indemnified Party shall be entitled, subject to 9.5(b) below, to receive the full amount of all such Losses.

(b) The maximum aggregate liability of Seller and Company (in the aggregate) to Buyer as a result of all Losses arising under this Agreement and under the Contribution Agreement shall not exceed One Million Eight Hundred Ninety-Three Thousand Eight Hundred Fifty Dollars (\$1,893,850); provided, however, that this cap on the aggregate liability of Seller and Company shall not apply to Losses that arise out of any Pre-Closing Taxes or Company Conversion Taxes. The maximum aggregate liability of Buyer to Seller and Company (in the aggregate) as a result of all Losses arising under this Agreement and under the Contribution Agreement shall not exceed One Million Eight Hundred Ninety-Three Thousand Eight Hundred Fifty Dollars (\$1,893,850).

(c) In no event shall Buyer, Seller or Company be liable for indirect, punitive, special or consequential damage or loss (including but not limited to lost profits) pursuant to this ARTICLE IX.

(d) After the Closing, the sole and exclusive remedy for any breach or inaccuracy, or alleged breach or inaccuracy, of any representation or warranty in this Agreement, or any breach of any covenant or agreement in this Agreement shall be indemnification in accordance with this ARTICLE IX.

9.6. Indemnification Process. Any party seeking indemnification under this Article IX (an “Indemnified Party”) shall give each party from whom indemnification is being sought (each, an “Indemnifying Party”) notice of any matter which such Indemnified Party has determined has given rise to or could give rise to a right of indemnification under this Agreement, stating the amount of the loss, if known, and method of computation thereof, and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises. The obligations and liabilities of an Indemnifying Party under this Article IX with respect to Losses arising from claims of any third party which are subject to the indemnification provided for in this

Article IX (“Third Party Claims”) shall be governed by and contingent upon the following additional terms and conditions:

(a) If any Indemnified Party shall receive notice of any Third Party Claim, the Indemnified Party shall give the Indemnifying Party notice of such Third Party Claim within thirty (30) days of the receipt by the Indemnified Party of such notice; provided, however, that the failure to provide such notice shall not release the Indemnifying Party from any of its obligations under this Article IX except to the extent the Indemnifying Party is materially prejudiced by such failure.

(b) If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party hereunder against any losses that may result from such Third Party Claim, then the Indemnifying Party shall be entitled to assume and control the defense of such Third Party Claim at its expense and through counsel of its choice if it gives notice of its intention to do so to the Indemnified Party within thirty (30) days of the receipt of such notice from the Indemnified Party; provided, further however, that if it would be detrimental to the defense of the Indemnified Party for the same counsel to represent both the Indemnified Party and the Indemnifying Party, then the Indemnified Party shall be entitled to retain its own counsel, in each jurisdiction for which the Indemnified Party determines counsel is required, at the expense of the Indemnifying Party.

(c) In the event the Indemnifying Party exercises the right to undertake any such defense against any such Third Party Claim as provided above, the Indemnified Party shall cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party, at the Indemnifying Party’s expense, all witnesses, pertinent records, materials and information in the Indemnified Party’s possession or under the Indemnified Party’s control relating thereto as is reasonably required by the Indemnifying Party. Similarly, in the event the Indemnifying Party declines to take such defense and the Indemnified Party is, directly or indirectly, conducting the defense against any such Third Party Claim, the Indemnifying Party shall cooperate with the Indemnified Party in such defense and make available to the Indemnified Party, at the Indemnifying Party’s expense, all such witnesses, records, materials and information in the Indemnifying Party’s possession or under the Indemnifying Party’s control relating thereto as is reasonably required by the Indemnified Party.

(d) If the Indemnifying Party shall have failed to assume the defense of any claim in accordance with the provisions of this Article, then the Indemnified Party shall have the absolute right to control the defense of such claim and, if and when it is finally determined that the Indemnified Party is entitled to indemnification from the Indemnifying Party hereunder, the fees and expenses of the Indemnified Party’s counsel shall be borne by the Indemnifying Party and paid by the Indemnifying Party to the Indemnified Party within five (5) business days of written demand therefor, but the Indemnifying Party shall be entitled, at its own expense, to participate in (but not control) such defense.

(e) So long as the Indemnifying Party has assumed and is conducting the defense of the Third Party Claim in accordance with Section 9.6(b) above, (i) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (not to be withheld unreasonably provided that the Indemnified Party is completely released from all claims) unless the judgment or

proposed settlement involves only the payment of money damages by the Indemnifying Party and does not impose an injunction or other equitable relief upon the Indemnified Party and (ii) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnifying Party (not to be withheld unreasonably).

ARTICLE X MISCELLANEOUS

10.1. Termination. This Agreement may be terminated and the transaction contemplated hereby may be abandoned at any time prior to the Closing Date as follows:

- (a) By mutual written consent of Buyer, Seller and Company;
- (b) By either Buyer, Seller or Company, if Closing shall not have occurred on or before July 1, 2008; provided, however, that the right to terminate this Agreement under this Section 10.1(b) shall not be available to the party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or resulted in, the failure of Closing to occur on or before such date;
- (c) By either Buyer, Seller or Company, if any final and nonappealable order or other legal restraint or prohibition preventing the consummation of the transaction contemplated by this Agreement shall have been issued by any governmental authority or any Law shall have been enacted or adopted that enjoins, prohibits or makes illegal consummation of the transaction;
- (d) By Buyer, upon a breach of, or failure to perform in any material respect (which breach or failure cannot be or has not been cured within thirty (30) days after the giving of notice of such breach or failure), any representation, warranty, covenant or agreement on the part of Company or Seller set forth in this Agreement, such that a condition set forth in Section 8.1 would not be satisfied; or
- (e) By Company or Seller, upon a breach of, or failure to perform in any material respect (which breach or failure cannot be or has not been cured within thirty (30) days after the giving of notice of such breach or failure), any representation, warranty, covenant or agreement on the part of Buyer set forth in this Agreement, such that a condition set forth in Section 8.2 would not be satisfied.

10.2. Notice of Termination; Effect of Termination. In the event of termination of this Agreement by either Buyer or Company pursuant to Sections 10.1(b), 10.1(c), 10.1(d) or 10.1(e) hereof, the terminating party shall give prompt written notice thereof to the nonterminating party. In the event of termination of this Agreement pursuant to Section 10.1, this Agreement shall be of no further effect, there shall be no liability under this Agreement on the part of Buyer, Company or Seller and all rights and obligations of each party hereto shall cease, provided, however, that nothing herein shall relieve any party from liability for the breach of any of its representations and warranties or the breach of any of its covenants or agreements set forth in this Agreement.

10.3. Expenses. Each of the parties hereto shall pay its own fees, costs and expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement

and the consummation of the transactions contemplated hereby; provided that none of such expenses shall be an obligation of Company following the Effective Time.

10.4. Entire Subject Matter; Amendment. This Agreement, together with its Schedules and Exhibits and all ancillary agreements and exhibits and schedules thereto to be delivered at Closing, contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, either oral or written. The Agreement may not be amended, or any term or condition waived, unless signed by the party to be charged or making the waiver. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by other party(ies), or by anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

10.5. Assignment. No party hereto shall assign or otherwise transfer this Agreement or any of its rights hereunder, or delegate any of its obligations hereunder, without the prior written consent of the other party; provided, however, that Seller shall be permitted, without the consent of Buyer or Company, to assign or otherwise transfer this Agreement or any of its rights hereunder to any Affiliate of Seller capable of carrying out Seller's obligations hereunder. Subject to the foregoing, this Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon the parties hereto, and each of their respective successors, heirs and assigns.

10.6. Counterparts. This Agreement may be executed in two or more counterparts, any one of which need not contain the signatures of all parties, but all of which counterparts when taken together will constitute one and the same agreement.

10.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado applicable to contracts made and to be performed in that State.

10.8. Schedules and Exhibits. The Schedules and Exhibits attached hereto are an integral part of this Agreement. All exhibits and schedules attached to this Agreement are incorporated herein by this reference and all references herein to this "Agreement" shall mean this Stock Purchase Agreement together with all such exhibits and schedules, and all ancillary agreements and exhibits and schedules thereto to be delivered at Closing.

10.9. Severability. Any provision hereof which is held to be prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be adjusted rather than avoided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible without in any manner invalidating the remaining provisions hereof.

10.10. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed properly given three (3) business days after being sent by registered or certified mail, postage prepaid, to the parties at the address listed below:

If to Buyer:

DNPC LLLP
1601 East 19th Avenue

Suite 4300
Denver, Colorado 80218
Attention: Michael Shapiro, M.D.

With a copy to: Robinson, Diss and Clowdus, P.C.
1660 Lincoln Street
Suite 2500
Denver, Colorado 80264
Attention: Fred J. Diss, Esq.

If to Seller: Total Renal Care, Inc.
c/o DaVita Inc.
601 Hawaii Street
El Segundo, California 90245
Attention: Chief Operating Officer

With copies to: DaVita Inc.
601 Hawaii Street
El Segundo, California 90245
Attention: General Counsel

DaVita Inc.
601 Hawaii Street
El Segundo, California 90245
Attention: Vice President for Corporate Development

10.11. Representation by Counsel. Each party hereto acknowledges that it has been advised by legal and any other counsel retained by such party in its sole discretion. Each party acknowledges that such party has had a full opportunity to review this Agreement and all related exhibits, schedules and ancillary agreements and to negotiate any and all such documents in its sole discretion, without any undue influence by any other party hereto or any third party.

10.12. Construction. The parties have participated jointly in the negotiations and drafting of this Agreement and in the event of any ambiguity or question of intent or interpretation, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

10.13. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

10.14. Waivers. No waiver by any party, whether express or implied, of its rights under any provision of this Agreement shall constitute a waiver of the party's rights under such provisions at any other time or a waiver of the party's rights under any other provision of this Agreement. No failure by any party to take any action against any breach of this Agreement or default by another party shall constitute a waiver of the former party's right to enforce any provision of this Agreement

or to take action against such breach or default or any subsequent breach or default by the other party. To be effective any waiver must be in writing and signed by the waiving party.

[Signatures on Following Pages]

THEREFORE, the parties hereto have executed, or caused this Stock Purchase Agreement to be executed by their duly authorized representatives, as of the date first written above.

SELLER:

TOTAL RENAL CARE, INC.

By: _____
Name:
Title:

BUYER:

DNPC LLLP

By its General Partner, Denver Nephrologists, P.C.

By: _____
Name: Michael Shapiro, M.D.
Title: President

COMPANY:

TOTAL RENAL CARE OF COLORADO,
INC.

By: _____
Name:
Title:

TABLE OF EXHIBITS AND SCHEDULES

Exhibit A - Centers
Exhibit B – Form of Assumption Agreement
Exhibit C – Form of Transfer Agreement
Exhibit D – Form of Management Agreement
Exhibit E – Form of Distribution Agreement
Exhibit F – Form of Contribution Agreement
Exhibit G – Form of Acutes Purchase Agreement
Exhibit H – Form of Existing JV Purchase Agreement
Exhibit I – Form of Plan of Merger
Exhibit J – Form of Statement of Merger
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Exhibit L – Form of Operating Agreement
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Schedule 1.0 – Table of Definitions
Schedule 1.2(a) – Included Assets
Schedule 1.2(b) – Excluded Assets
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Schedule 4.22 – Financing Statements
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Schedule 4.26 – Company Stock

EXHIBIT A

CENTERS

Center Name	Address
Arvada Dialysis	9950 W 80 th Avenue Arvada, Colorado 80005
Boulder Dialysis	2880 Fulsom Drive Boulder, Colorado 80304
Lakewood Dialysis	1750 Pierce Street Lakewood, Colorado 80214
Lakewood At Home (HHD Program)	1750 Pierce Street Lakewood, Colorado 80214
Western Home PD	1750 Pierce Street Lakewood, Colorado 80214
Thornton Dialysis	8800 Fox Drive Thornton, Colorado 80260

EXHIBIT B

ASSUMPTION AGREEMENT

This Assumption Agreement, effective as of the Effective Time, is made by Total Renal Care, Inc., a California corporation (the "Seller"), for the benefit of Total Renal Care of Colorado, Inc., a Colorado corporation (the "Company").

1. Seller, Company, and DNPC LLLP are parties to that certain Stock Purchase Agreement, dated as of May 30, 2008 (the "Purchase Agreement").

2. Pursuant to the Purchase Agreement, Seller hereby assumes and agrees to pay, as and when due, all of the liabilities of Company as of the Effective Time, other than the Retained Liabilities which are to be retained by Company pursuant to the Purchase Agreement.

3. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Purchase Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Assumption Agreement as of the day and date first above written.

SELLER:

TOTAL RENAL CARE, INC.

By: _____
Name:
Title:

EXHIBIT C

TRANSFER AGREEMENT

This Transfer Agreement (this "Agreement"), is made and entered into this 30th day of May, 2008 by and among Total Renal Care, Inc., a California corporation (the "Seller"), Total Renal Care of Colorado, Inc., a Colorado corporation (the "Company"), and DNPC LLLP, a Colorado limited liability limited partnership (the "Buyer").

RECITALS

WHEREAS, Seller owns all of the issued and outstanding capital stock of Company (the "Company Stock");

WHEREAS, Seller, Company, and Buyer are parties to an Stock Purchase Agreement dated as of May 30, 2008 (the "Purchase Agreement"), whereby Seller has agreed to sell, convey, transfer, assign and deliver to Buyer 49% of the Company Stock (the "Transferred Interest"); and

WHEREAS, all capitalized terms not defined herein shall have the meanings ascribed to such terms in the Purchase Agreement.

NOW, THEREFORE, pursuant to the Purchase Agreement and in consideration of the mutual promises, covenants and agreements therein and hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

1. Transfer of Ownership.

(a) Seller hereby conveys, transfers, assigns and delivers to Buyer, its successors and assigns, free and clear of any pledge, lien, option, security interest, mortgage or other encumbrance all right, title and interest in, to and under the Transferred Interest. The Transferred Interest shall include all rights, privileges, hereditaments and appurtenances belonging, incident or appertaining to the Transferred Interest.

(b) It is understood by Seller and Buyer that, contemporaneously with the execution and delivery of this Agreement, Seller may be executing and delivering to Buyer certain further assignments and other instruments of transfer which in particular cover certain of the property and assets described herein or in the Purchase Agreement, the purpose of which is to supplement, facilitate and otherwise implement the transfer intended hereby.

2. Effective Date. This Agreement shall be deemed effective as of the Effective Time of the Purchase Agreement.

3. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, including all matters of construction, validity, performance and enforcement and without giving effect to contrary principles of conflict of laws.

5. Counterparts. This Agreement may be signed in any number of counterparts and all such counterparts shall be read together and construed as one and the same document.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has caused this Transfer Agreement to be duly executed on their behalf on the day and year first above written.

SELLER:

TOTAL RENAL CARE, INC.

By: _____
Name:
Title:

BUYER:

DNPC LLLP

By its General Partner, Denver Nephrologists, P.C.

By: _____
Name: Michael Shapiro, M.D.
Title: President

COMPANY:

TOTAL RENAL CARE OF COLORADO,
INC.

By: _____
Name:
Title:

EXHIBIT D

FORM OF MANAGEMENT AGREEMENT

EXHIBIT E

FORM OF DISTRIBUTION AGREEMENT

EXHIBIT F

FORM OF CONTRIBUTION AGREEMENT

EXHIBIT G

FORM OF ACUTES PURCHASE AGREEMENT

EXHIBIT H

FORM OF EXISTING JV PURCHASE AGREEMENT

EXHIBIT I

FORM OF PLAN OF MERGER

EXHIBIT J

FORM OF STATEMENT OF MERGER

EXHIBIT K

FORM OF CERTIFICATE OF MERGER

EXHIBIT L

FORM OF OPERATING AGREEMENT

EXHIBIT M
FORM OF NOTE

Schedule 1.0

TABLE OF DEFINITIONS

“Acutes Purchase Agreement” has the meaning set forth in Section 1.7(e).

“Affiliates” has the meaning set forth in Rule 501 of Regulation D under the Securities Act of 1933, as amended and includes Seller.

“Agreement” has the meaning set forth in the first sentence of this Agreement.

“Anti-Kickback Statute” has the meaning set forth in Section 4.14(e).

“Assumption Agreement” has the meaning set forth in Section 1.3.

“Buyer” has the meaning set forth in the first sentence of this Agreement.

“Centers” has the meaning set forth in the Recitals of this Agreement.

“Closing” has the meaning set forth in the first sentence of Article III of this Agreement.

“Closing Date” has the meaning set forth in Article III of this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended.

“Company” has the meaning set forth in the first sentence of this Agreement.

“Company Conversion” has the meaning set forth in Section 1.7(g).

“Company Conversion Taxes” means Taxes of Seller or Company arising out of the Company Conversion.

“Company Licenses” has the meaning set forth in Section 4.5.

“Company Material Adverse Effect” means any event, circumstance, change or effect that individually or in the aggregate with all other events, circumstances, changes or effects, is reasonably expected to be materially adverse to the condition (financial or otherwise), properties, assets, liabilities, businesses, operations, results of operations or prospects of Company, the Dialysis Business or the Included Assets or to Company’s ability to perform its obligations as contemplated in this Agreement, except for any such changes or effects resulting directly or indirectly from: (i) changes in the industry in which Company operates, which changes do not disproportionately affect Company relative to other participants in such industry in any material respect; (ii) changes in general economic conditions; or (iii) (A) the announcement or pendency of any of the transactions contemplated by this Agreement, (B) the taking of any action reasonably required to cause compliance with the terms of, or the taking of any action required by, this Agreement, (C) the taking of any action approved or consented to in writing by Buyer, or (D) any change in accounting requirements or principles or any change in applicable laws, rules or regulations or the interpretation

thereof, provided such changes do not disproportionately affect Company relative to the other participants in Company's industry in any material respect.

"Company Payment Programs" has the meaning set forth in Section 4.13(a).

"Company Stock" has the meaning set forth in the Recitals of this Agreement.

"Confidential Information" has the meaning set forth in Section 7.1.

"Contract" has the meaning set forth in Section 4.20(a).

"Contribution Agreement" has the meaning set forth in Section 1.7(d).

"DaVita" means DaVita, Inc., a Delaware corporation and the ultimate parent entity of Seller.

"Dialysis Business" has the meaning set forth in the Recitals of this Agreement.

"Distribution Agreement" has the meaning set forth in Section 1.7(c).

"Effective Date" has the meaning set forth in the first sentence of this Agreement.

"Effective Time" has the meaning set forth in Article III hereof.

"Effective Time Receivables" has the meaning set forth in Section 2.2.

"Employee Benefit Plans" means any "employee benefit plan" as defined in Section 3(3) of ERISA and all bonus, stock or other security option, stock or other security purchase, stock or other security appreciation rights, incentive, deferred compensation, retirement or supplemental retirement, severance, golden parachute, vacation, cafeteria, dependent care, medical care, employee assistance program, education or tuition assistance programs, insurance and other similar fringe or employee benefit plans, programs or arrangements, and any current or former employment or executive compensation or severance agreements or any other plan or arrangement to provide compensation or benefits to any individual, written or otherwise, which has ever been sponsored or maintained or entered into for the benefit of, or relating to, any present or former employee or director of Company or any ERISA Affiliate, without regard to whether such individual is a Retained Employee.

"Environmental Laws" means all Laws relating to hazardous waste, infectious medical and radioactive waste, and other environmental matters, including, without limitation, the Resource Conservation and Recovery Act, the Clean Air Act and the Comprehensive Environmental Response Compensation and Liability Act, and any regulations issued thereunder.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any entity (whether or not incorporated) that together with Company is a member of: (i) a controlled group of corporations within the meaning of Section 414(b) of the Code; (ii) a group of trades or business under common control within the meaning of Section 414(c) of the Code; (iii) an affiliated service group within the meaning of Section 414(m) of the Code; or (iv) any other person or entity treated as an Affiliate of Company under Section 414(o) of the Code.

“GAAP” means accounting principles generally accepted in the United States of America, consistently applied.

“Governmental Approval” has the meaning set forth in Section 4.3(a).

“Hazardous Material” means (i) petroleum and petroleum products, by-products or breakdown products, radioactive materials, asbestos-containing materials and polychlorinated biphenyls; (ii) infectious medical waste; and (iii) any other chemical, material or substance, all of which are defined or regulated as toxic or hazardous or as a pollutant, contaminant or waste under any applicable Environmental Law.

“HIPAA” has the meaning set forth in Section 4.14(j).

“Included Assets” has the meaning set forth in Section 1.2.

“Indemnified Party” has the meaning set forth in Section 9.6.

“Indemnifying Party” has the meaning set forth in Section 9.6.

“Intellectual Property” means all recipes, patents, inventions, know-how, show-how, designs, trade secrets, copyrights, trademarks, trade names, service marks, fictitious and assumed business names, Internet domain names, manufacturing processes, software, formulae, trade secrets, technology or the like, and all applications for any of the foregoing.

“Labor Contract” has the meaning set forth in Section 4.15(c).

“Law” or “Laws” means any and all federal, state, and local statutes, codes, licensing requirements, ordinances, laws, rules, regulations, decrees or orders of any foreign, federal, state or local government and any other governmental department or agency, and any judgment, decision, decree or order of any court or governmental agency, department or authority.

“Licenses” means licenses, permits, consents, approvals, authorizations, registrations, qualifications and certifications of any governmental or administrative agency or authority (whether federal, state or local), including without limitation any Medicare, Medicaid and other provider numbers, certificates or determinations of need, CLIA and DEA certifications.

“Liens” means any lien, claim, security interest, mortgage, pledge, restriction, covenant, charge or encumbrance of any kind or character, direct or indirect, whether accrued, absolute, contingent or otherwise.

“LLC Conversion Documents” has the meaning set forth in Section 1.7(g).

“Losses” means damages, liabilities, actions, suits, proceedings, claims, demands, taxes, sanctions, deficiencies, assessments, judgments, costs, interest, penalties and expenses (including without limitation reasonable attorneys’ fees, which shall include a reasonable estimate of the allocable costs of in-house legal counsel and staff).

“Management Agreement” has the meaning set forth in Section 1.7(b).

“Medical Director Agreement” has the meaning set forth in Section 1.7(a).

“New JV Company” means Mountain West Dialysis Services, LLC, a Delaware limited liability company.

“Note” has the meaning set forth in Section 2.1.

“Note Maturity Date” has the meaning given to that term in the Note.

“Operating Agreement” has the meaning set forth in Section 1.7(g).

“Operating Statements” has the meaning set forth in Section 4.9.

“Payment Programs” means Medicare, TRICARE, Medicaid, Worker’s Compensation, Blue Cross/Blue Shield programs, and all other health maintenance organizations, preferred provider organizations, health benefit plans, health insurance plans, and other third party reimbursement and payment programs including without limitation Company Payment Programs.

“Personal Property Leases” has the meaning set forth in Section 4.8.

“Pre-Closing Taxes” means any Tax of Company attributable to any taxable period, or portion thereof, ending on or before the Closing Date. In the case of a taxable period beginning before and ending after the Closing Date, Pre-Closing Taxes shall include: (i) in the case of Taxes imposed on or calculated by reference to income, gain, receipts, sales, use, payment of wages, or other identifiable transactions or events, all such Taxes that would be payable if the taxable period ended on and included the Closing Date; and (ii) in the case of all other Taxes (including but not limited to real, personal, or intangible property taxes, franchise taxes, or capital stock or net worth taxes), all such Taxes for the entire taxable period multiplied by a fraction, the numerator of which is the number of days in the taxable period ending on and including the Closing Date, and the denominator of which is the number of days in the entire taxable period.

“Preliminary PTO Amount” has the meaning set forth in Section 1.4.

“Premises” means all real property used by Company in connection with the Dialysis Business, as described on Schedule 4.21 hereto.

“PTO” means accrued vacation and other payable time off.

“Purchase Price” has the meaning set forth in Section 2.1.

“Related Agreements” has the meaning set forth in Section 1.7(g).

“Release” means disposing, discharging, injecting, spilling, leaking, leaching, dumping, emitting, escaping, emptying, seeping, placing and the like into or upon any land, water or air, or otherwise entering into the environment.

“Remedial Action” means all action to (i) clean up, remove or treat Hazardous Materials in the environment; (ii) restore or reclaim the environment or natural resources; (iii) prevent the Release of Hazardous Materials so that they do not migrate or endanger or threaten to endanger public health or the environment; or (iv) perform remedial investigations, feasibility studies, corrective actions, closures and post-remedial or post-closure studies, investigations, operations, maintenance and monitoring on, about or in the Premises.

“Retained Employees” has the meaning set forth in Section 1.4.

“Retained Liabilities” has the meaning set forth in Section 1.3.

“Retained PTO” has the meaning set forth in Section 1.4.

“Securities Act” has the meaning set forth in Section 5.7.

“Seller” has the meaning set forth in the first sentence of this Agreement.

“Stark Law” has the meaning set forth in Section 4.14(c).

“Taxes” means all taxes of any type or nature whatsoever, including without limitation, income, gross receipts, excise, franchise, property, value added, import duties, employment, payroll, sales and use taxes and any additions to tax and any interest or penalties thereon, and any liability for the taxes of others arising from Treasury Regulations 1.1502-6 or otherwise by reason of being a member of a consolidated, combined or unitary group for Tax Return purposes.

“Tax Returns” means any and all returns, declarations, reports, claims for refunds and information returns or statements relating to Taxes, required to be filed by or on behalf of Company or for the Employee Benefit Plans of Company, including all schedules or attachments thereto and including any amendment thereof.

“Third Party Claims” has the meaning set forth in Section 9.6.

“Third Party Consent” has the meaning set forth in Section 4.3(b).

“Transfer Agreement” has the meaning set forth in Section 1.5.

“Transferred Shares” has the meaning set forth in the Recitals of this Agreement.

Exhibit 25

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

ROCKY MOUNTAIN DIALYSIS SERVICES, LLC

AND

MOUNTAIN WEST DIALYSIS SERVICES, LLC

Effective Date: May 30, 2008

Closing Date: June 1, 2008

Effective Time: 12:03 a.m. Mountain Time June 1, 2008

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the 30th day of May, 2008 (the "Effective Date"), by and between Rocky Mountain Dialysis Services, LLC, a Delaware limited liability company ("Seller"), and Mountain West Dialysis Services, LLC, a Delaware limited liability company ("Buyer").

RECITALS

A. Seller is engaged in the business of providing acute inpatient dialysis and related services at Sky Ridge Medical Center, 10101 RidgeGate Parkway, LoneTree, Colorado ("Sky Ridge"), pursuant to an Acute Services Agreement by and between HCA-HealthOne, LLC, d/b/a Sky Ridge Medical Center, and Seller, dated as of November 1, 2006 and amended as of June 14, 2007 (as amended, the "Sky Ridge Acute Agreement").

B. Seller is engaged in the business of providing acute inpatient dialysis and related services at Parker Adventist Hospital, 9395 Crown Crest Boulevard, Parker, Colorado ("Parker"), pursuant to an Acute Services Agreement by and between PorterCare Adventist Health System, d/b/a Parker Adventist Hospital, and Seller, dated as of February 1, 2004, as amended as of July 1, 2005, and as further amended as of September 1, 2005 (as amended, the "Parker Acute Agreement").

C. Seller is engaged in the business of providing acute inpatient dialysis and related services at Saint Joseph Hospital, 1835 Franklin Street, Denver, Colorado ("St. Joseph" and, together with Sky Ridge and Parker, the "Hospitals"), pursuant to an Acute Services Agreement by and between St. Joseph Hospital, Inc. and Seller, dated as of February 29, 2008 (the "St. Joseph Acute Agreement" and, together with the Sky Ridge Acute Agreement and the Parker Acute Agreement, the "Acute Contracts"). The business of providing acute dialysis and related services at the Hospitals by Seller is referred to as the "Programs" herein.

D. Buyer desires to purchase from Seller and Seller desires to sell to Buyer all of the assets, properties and rights of Seller relating to the Programs (except for the Excluded Assets) on the terms and conditions hereinafter set forth.

E. As additional consideration, and as a material inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Seller desires to make certain representations, warranties, indemnities, covenants and agreements relating to the sale of the Programs

F. Capitalized terms used herein shall have the meaning set forth in the Table of Definitions attached hereto as Schedule 1.0.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, agreements, representations and warranties contained herein, the parties hereto hereby agree as follows:

ARTICLE I
ASSETS AND LIABILITIES

1.1. Acquired Assets.

(a) At Buyer's option, and subject to the terms and the conditions set forth in this Agreement and on the basis of the representations and warranties herein, Seller agrees to sell, convey, transfer, assign and deliver to Buyer and Buyer agrees to purchase, receive and accept from Seller all right, title and interest in and to certain of the assets and properties of every kind, character and description (other than property and rights specifically excluded in this Agreement), used in or for the benefit of the Programs, whether tangible, intangible, real, personal or mixed, and wherever located, including any assets of any of Seller's Affiliates which are actually used or useful in or necessary for the conduct of the Programs or otherwise owned by Seller (collectively referred to hereinafter as the "Acquired Assets"), including but not limited to the assets set forth at Schedule 1.1 hereto.

(b) Without limiting the foregoing, the Acquired Assets shall include all tangible and intangible property owned and used by Seller in providing services under the Programs, including without limitation, furniture, fixtures, improvements, equipment, supplies, inventory, leased equipment, claims and rights under the Acute Contracts, trade names, trademarks and service marks, patient lists, copies of patient files and records, telephone numbers, trade secrets, other proprietary rights or intellectual property, goodwill, and, to the extent permitted by law, permits, licenses and other rights held by Seller with respect to the ownership or operation of all of the Programs, and all of Seller's books and records to the extent relating to the foregoing.

1.2. Excluded Assets. Notwithstanding anything contained in Section 1.1, Buyer is not purchasing Seller's cash, cash equivalents, accounts receivable, inter-company receivables, or any assets or properties expressly set forth on Schedule 1.2 (such assets being referred to as the "Excluded Assets" and such Schedule 1.2 being referred to herein as the "Excluded Assets Schedule").

1.3. Assumed Liabilities. As of the Closing Date, Seller shall assign to Buyer and Buyer shall assume Seller's obligations arising from events occurring on or after the Effective Time under the Acute Contracts, except to the extent that any such executory obligations result from, arise out of, relate to, or are caused by, any one or more of the following: (a) a breach of any of the Acute Contracts occurring prior to the Effective Time; (b) a breach of warranty, infringement or violation of law occurring prior to the Effective Time; or (c) an event or condition occurring or existing prior to the Effective Time which, through the passage of time or the giving of notice or both, would constitute a breach or default by Seller under any of the Acute Contracts (collectively, the "Assumed Liabilities").

1.4. Excluded Liabilities. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER DOES NOT ASSUME AND SHALL NOT BE LIABLE FOR ANY OF THE DEBTS, OBLIGATIONS OR LIABILITIES OF SELLER OR THE PROGRAMS, WHENEVER ARISING AND OF WHATEVER TYPE OR NATURE. In particular, but without limiting the foregoing, Buyer shall not assume, and shall not be deemed by anything contained in this

Agreement (other than to the extent expressly provided in Section 1.3 Assumed Liabilities) to have assumed and shall not be liable for any debts, obligations or liabilities of Seller, any Affiliate of Seller, or the Programs whether known or unknown, contingent, absolute or otherwise and whether or not they would be included or disclosed in financial statements (the “Excluded Liabilities”). Without limitation of the foregoing, the Excluded Liabilities shall include debts, liabilities and obligations whether know or unknown, arising from or relating to the operation of the Programs prior to the Closing regardless of when such claim is made. The intent and objective of Buyer and Seller is that, except for liabilities explicitly assumed by Buyer hereunder, Buyer does not assume, and no transferee liability shall attach to Buyer pertaining to, any of the Excluded Liabilities.

1.5. Employees. Effective as of the Effective Time, Buyer shall assume, or Buyer’s Affiliate shall retain, as applicable, each employee of Seller or Seller’s Affiliate who is principally employed in support of the Programs (collectively, the “Program Employees”) immediately prior to Closing and who continues in the service of Buyer on and after the Effective Time (collectively, the “Transferring Employees”). With respect to each Transferring Employee, the parties agree that Seller shall transfer and Buyer shall assume, following the Effective Time, up to a maximum of forty (40) hours of PTO per employee (the “Assumed PTO”). Any PTO in excess of Assumed PTO shall be paid by Seller to each Transferring Employee on or prior to Effective Date or Buyer shall reduce the amount of cash or cash equivalents payable to Seller pursuant to this Agreement by an amount equal to the dollar value of such excess. Schedule 1.5 sets forth with respect to each Transferring Employee such person’s position, date of hire, current salary, accrued PTO and amount of any other accrued benefits to which such person may be entitled or for which such person has made either written or oral claim to Seller through the pay period ending immediately prior to the Closing. Seller shall provide an updated Schedule 1.5 at Closing. From and after the Effective Time, all Transferring Employees shall be employees of Buyer or Buyer’s Affiliate, subject to Buyer’s or its Affiliate’s employment policies. Nothing herein shall obligate Buyer to employ the Transferring Employees for any specific time period following the Closing Date. All Transferring Employees shall be credited with their years of service with Seller for the purpose of determining their eligibility and participation under Buyer’s or its Affiliate’s employee benefit plans. Nothing in this Section shall be construed to grant any employee any rights as a third party beneficiary. Seller shall retain all liabilities with respect to any and all of Program Employees who are not Transferring Employees.

1.6. Instruments of Transfer. The sale of the Acquired Assets and the assumption of the Assumed Liabilities as herein provided shall be effected at Closing by the Assignment and Assumption and Bill of Sale in the form attached hereto as Exhibit A.

1.7. Payment of Sales Taxes. Seller covenants and agrees to pay any and all sales, use or other transfer taxes payable by reason of the transfer and conveyance of the Acquired Assets hereunder. The parties will prepare and deliver and if necessary file at or before Closing all transfer tax returns and other filings necessary to vest in Buyer full right, title and interest in the Acquired Assets.

1.8. Adjustments. The parties acknowledge and agree that the accrued PTO amount set forth next to each Transferring Employee on Schedule 1.5 is as of May 17, 2008 (the “Preliminary PTO Amount”). Within thirty (30) business days following the Closing Date, the parties shall calculate the actual amount of accrued PTO assumed by Company as of the Effective Time. In the

event that the actual accrued PTO amount in excess of forty (40) hours is greater than the Preliminary PTO Amount, TRC will pay to Company the value of the difference no later than ten (10) business days after such determination is made. In the event that the actual accrued PTO amount in excess of forty (40) hours is less than the Preliminary PTO Amount, Company will pay to TRC the value of the difference no later than ten (10) business days after such determination is made.

ARTICLE II PURCHASE PRICE

2.1. Purchase Price. Subject to any adjustments which may be set forth below and on Schedule 2.1 hereto, and in reliance on Seller's representations, warranties and covenants, the purchase price to be paid by Buyer to Seller for the Acquired Assets and the other rights set forth herein shall be Nine Hundred Twenty Five Thousand Two Hundred Seventy Dollars (\$925,270) (the "Purchase Price"), to be paid to Seller in immediately available funds via wire transfer on the Closing Date.

2.2. Pro-Rations. All ordinary course of business expenses incurred, such as utilities, will be pro-rated as of the Effective Time, such that Buyer is responsible for amounts incurred on or after the Effective time and Seller is responsible for amounts incurred prior to the Effective Time.

2.3. Allocation of Purchase Price. Within 30 days of the Closing Date, Seller and Buyer shall mutually agree to a schedule allocating the Purchase Price among the Acquired Assets in accordance with Section 1060 of the Code and the regulations thereunder (the "Allocation Schedule"). If Buyer and Seller are unable to agree on an Allocation Schedule in such time, Buyer and Seller shall engage an independent accounting firm (whose fees shall be borne equally by Buyer and Seller) to resolve any dispute. The determination of the independent accounting firm shall be final and binding. Buyer and Seller shall prepare and file all forms and returns, including IRS Form 8594, consistent with the finalized Allocation Schedule.

2.4. Negotiated Value. The parties agree that the Purchase Price and the Purchase Price allocation set forth on Schedule 2.3 reflect the fair value of the Programs and the fair values of the Acquired Assets, respectively, agreed to by the parties hereto as a result of arms'-length negotiations. The parties agree that no consideration is or will be paid for the value of any patient referrals (direct or indirect) to or from Buyer, Seller or any of their Affiliates.

ARTICLE III CLOSING

The closing of the sale and purchase of the Acquired Assets (the "Closing") shall take place on June 1, 2008, or on such other date as the parties may mutually agree (the "Closing Date") at the offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, Massachusetts, or at some other location as the parties may mutually agree, or by facsimile transmission and overnight mail. Buyer and Seller shall use their respective good faith efforts to close this transaction as promptly as possible after the Effective Date. Closing shall be deemed to have occurred at 12:03 a.m. Mountain Time on the Closing Date (the "Effective Time").

**ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer, as of the Effective Date and as of the Closing Date (except for those representations and warranties that are made as of the Closing Date only, which are true and correct as of the Closing Date) as follows:

4.1. Organization, Good Standing and Qualification. Seller is a limited liability company duly organized, validly existing and in good standing under the provisions of the laws of the State of Delaware, and is qualified and licensed to do business in the State of Colorado. Seller has all requisite power and authority to own and operate its properties and to carry on its business as now conducted. Seller has all power and authority to enter into all of the Acquisition Agreements to which Seller is a party and to carry out and perform its obligations under the Acquisition Agreements.

4.2. Authorization; Binding Obligation. Seller has full legal and limited liability company right, power, and authority to execute and deliver the Acquisition Agreements to which Seller is a party, and to carry out the transactions contemplated thereby. The execution and delivery by Seller of the Acquisition Agreements and all of the documents and instruments required thereby and the consummation of the transactions contemplated thereby have been duly authorized by all requisite action on the part of Seller. The Acquisition Agreements to which Seller is a party and each of the other documents and instruments required thereby or delivered in connection therewith have been duly executed and delivered by Seller, and constitute the legal, valid and binding obligations of Seller, enforceable against it in accordance with their respective terms.

4.3. Consents and Approvals.

(a) Governmental Consents and Approvals. Except as set forth on Schedule 4.3(a), no registration or filing with, or consent or approval of, or other action by, any federal, state or other governmental agency or instrumentality is or will be necessary for the valid execution, delivery and performance of this Agreement by Seller, the transfer of the Acquired Assets to Buyer, the operation of the Programs by Buyer after Closing (each, a “Governmental Approval”).

(b) Third Party Consents. Except as set forth on Schedule 4.3(b), no consent, approval or authorization of any non-governmental third party is required in order to consummate the transactions or perform the related covenants and agreements contemplated hereby or to vest full right, title and interest in the Acquired Assets free and clear of any Lien upon Buyer (each, a “Third Party Consent”).

4.4. No Violation. The execution, delivery, compliance with and performance by Seller of the Acquisition Agreements and each of the other documents and instruments delivered in connection therewith do not and will not (a) violate or contravene the organizational certificates, documents and agreements, as amended to date, of Seller, (b) violate or contravene any law, statute, rule, regulation, order, judgment or decree to which Seller is subject, (c) conflict with or result in a breach of or constitute a default by any party under any contract, agreement, instrument or other document to which Seller is a party or by which Seller or any of its assets or properties are bound or

subject or to which any entity in which Seller has an interest, is a party, or by which any such entity is bound, or (d) result in the creation of any Lien upon the Acquired Assets or the Programs.

4.5. Licenses and Permits. Schedule 4.5 attached hereto contains a true, correct and complete list and summary description of all Licenses which currently are issued to Seller in connection with the Acquired Assets or the Programs (the "Seller Licenses"). Each Seller License is valid and in full force and effect as of the date hereof, no Seller License is subject to any Lien, limitation, restriction, probation or other qualification and there is no default under any Seller License or any basis for the assertion of any default thereunder. There is no pending or, to the knowledge of Seller, threatened, investigation or proceeding that would reasonably be expected to result in the termination, revocation, limitation, suspension, restriction or impairment of any Seller License or the imposition of any fine, penalty or other sanctions for violation of any legal or regulatory requirements relating to any Seller License. Seller has, and has had at all relevant times, all Licenses that are or were necessary in order to enable Seller to own the Acquired Assets and conduct and be reimbursed for the Programs.

4.6. Ownership; No Subsidiaries. Seller does not own and has not owned, either directly or indirectly, any interest or investment (whether debt or equity) in or been a member of any corporation, partnership, joint venture, business trust or other entity, except as set forth on Schedule 4.6 hereto.

4.7. Acquired Assets. Seller is the sole and exclusive legal and equitable owner of all right, title and interest in, and has good, clear, indefeasible, insurable and marketable title to, all of the Acquired Assets free of all Liens other than Liens that will be satisfied by Seller on or prior to the Closing Date. All of the Acquired Assets have been maintained in accordance with normal industry practice, and are in good operating condition and repair. During the past three (3) years, there has not been any interruption of the operations of the Programs due to the condition of any of the Acquired Assets. The Acquired Assets include all assets, properties and rights used or found useful by Seller in connection with the Programs and which are necessary or desirable in order for Buyer to continue the Programs as historically and currently conducted following Closing.

4.8. Legal Proceedings. With respect to the Programs, there is no action, suit, litigation, proceeding or investigation pending or, to Seller's knowledge, threatened by or against Seller, and Seller has not received any written or oral claim, complaint, incident, report, threat or notice of any such proceeding or claim. There are no outstanding orders, writs, judgments, injunctions or decrees of any court, governmental agency or arbitration tribunal against, involving or affecting Seller with respect to the Programs or the Acquired Assets, and, to Seller's knowledge, there are no facts or circumstances which may result in the institution of any such action, suit, claim or legal, administrative or arbitration proceeding or investigation against, involving or affecting Seller, the Acquired Assets or the transactions contemplated hereby. With respect to the Programs, Seller is not in default with respect to any order, writ, injunction or decree known to or served upon it from any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

4.9. Solvency and Value of Transfer. There is no bankruptcy or insolvency proceeding of any character including without limitation, bankruptcy, receivership, reorganization, dissolution or

arrangement with creditors, voluntary or involuntary, affecting Seller, and Seller has not taken any action in contemplation of, or which would constitute the basis for, the institution of any such proceedings. Seller is not insolvent under any bankruptcy, receivership or insolvency law. Seller's sale of the Acquired Assets has not been undertaken with the intention to hinder, delay or defraud Seller's current or future creditors.

4.10. Compliance with Laws.

(a) Schedule 4.10 lists all claims occurring during the three (3) year period immediately preceding the Closing Date (or carrying over into such period from any prior period) concerning or relating to any federal or state government funded health care program that involves, relates to or alleges, in each case with respect to the Programs or the Acute Contracts: (i) any violation of any applicable rule, regulation, policy or requirement of any such program or any irregularity with respect to any activity, practice or policy of the Programs or the Acquired Assets; or (ii) any violation of any applicable rule, regulation, policy or requirement of any such program or any irregularity with respect to any claim for payment or reimbursement made by Seller or any payment or reimbursement paid to Seller. To the knowledge of Seller, Seller is not currently subject to any outstanding audit by any such government agency, intermediary or carrier with respect to the Programs, and, to the knowledge of Seller, there are no grounds to anticipate any such audit in the foreseeable future.

(b) To the knowledge of Seller, Seller has not violated and is in compliance in all material respects with all applicable Laws with respect to the Programs. Seller has not received any notice to the effect that, or otherwise been advised that, it is not in compliance with any Laws with respect to the Programs, and Seller has no reasonable basis to anticipate that any existing circumstances are likely to result in a violation of any Law with respect to the Programs.

(c) With respect to the Programs, Seller has not submitted any claim to any Payment Program with respect to the Programs in connection with any referrals that violated any applicable self-referral Law, including without limitation the Federal Ethics in Patient Referrals Act, 42 U.S.C. § 1395nn (known as the "Stark Law"), or any applicable state self-referral Law.

(d) With respect to the Programs, Seller has complied in all material respects with all disclosure requirements of all applicable self-referral Laws, including without limitation the Stark Law and any applicable state self-referral Law.

(e) With respect to the Programs, neither Seller nor any Affiliate of Seller has knowingly or willfully solicited, received, paid or offered to pay any remuneration, directly or indirectly, overtly or covertly, in cash or kind for the purpose of making or receiving any referral or arranging for services which violated any applicable anti-kickback Law, including without limitation the Federal Health Care Program Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) (known as the "Anti-Kickback Statute"), or any applicable state anti-kickback Law.

(f) With respect to the Programs, Seller has complied in all material respects with all applicable requirements of the Occupational Safety and Health Act and all applicable state equivalents, and with all applicable regulations promulgated under any such legislation, and with all orders, judgments, and decrees of any tribunal under such legislation, that apply to the Programs or

the Acquired Assets, and, except as set forth on Schedule 4.10, Seller has not received any notice alleging any violation thereof.

(g) With respect to the Programs, Seller has complied in all material respects with all applicable security and privacy standards regarding protected health information under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and all applicable state privacy Laws.

4.11. Employment Matters.

(a) Schedule 1.5 hereto contains a true and accurate list of each Program Employee, together with such person’s position, date of hire, current salary, and accrued PTO as of the last pay period prior to the Closing Date.

(b) Except as indicated on Schedule 1.5, no Transferring Employee (i) has a written employment agreement with Seller, or (ii) has indicated that he or she intends to terminate his or her employment with Seller or seek a material change in his or her duties or status. Each Transferring Employee who is required to be licensed by applicable law is so licensed, and copies of such Licenses are attached to Schedule 1.5 hereto.

(c) Except as listed on Schedule 4.11(c), with respect to the Programs, (i) Seller is not a party to any collective bargaining contracts or any other contracts, agreements or understandings with any labor unions or other representatives of the Program Employees (a “Labor Contract”); (ii) Seller is not subject to any union organizing activities; (iii) Seller has not breached or otherwise failed to comply with any provision of any Labor Contract, and there are no grievances outstanding against Seller under any Labor Contract; (iv) there are no unfair labor practice complaints pending against Seller with respect to the Program Employees before the National Labor Relations Board or any current union representation questions involving the Program Employees; and (v) there is no strike, slowdown, work stoppage or lockout or, to the best of Seller’s knowledge, threat thereof, by or with respect to the Program Employees. The consent of any labor union which is a party to any Labor Contract is not required to consummate the transactions contemplated by this Agreement.

(d) With respect to the Programs, no person employed by or affiliated with Seller has employed or, to the knowledge of Seller, proposes to employ any trade secret or any information or documentation proprietary to any former employer and, no person employed by or affiliated with Seller has violated any confidential relationship which such person may have had with any third party while working on behalf of Seller, and Seller has no reason to believe that any such event could occur.

4.12. Benefit Plan Compliance with Provisions of Applicable Law. The Employee Benefit Plans maintained by Seller for the benefit of any Transferring Employees are listed in Schedule 4.12. Seller has not incurred any liability (other than normal claims for benefits under its welfare plans) under any provision of ERISA or other applicable Law relating to any Employee Benefit Plan. Each Employee Benefit Plan has been established, maintained and administered in compliance with its terms and complies, in all material respects, with the applicable provisions of ERISA (including without limitation the funding and prohibited transactions provisions thereof), the Code, and all other

state and federal applicable Laws. No Employee Benefit Plan is funded through a trust intended to be exempt from tax pursuant to Section 501 of the Code. Neither Seller nor any ERISA Affiliate has ever maintained or contributed to any plan or arrangement subject to Title IV of ERISA or Section 412 of the Code, a multiemployer plan as described in Section 3(37) of ERISA or a “multiple employer plan” as described in Section 3(40) of ERISA or Section 413(c) of the Code, and, to the knowledge of Seller, Seller has never had any liability with respect to any such plan sponsored or maintained by an ERISA Affiliate. No Employee Benefit Plan provides benefits, including, without limitation, death or medical benefits (through insurance or otherwise) with respect to employees or former employees beyond their retirement or other termination of service other than coverage mandated by applicable Law. No Employee Benefit Plan which is a group health plan, as described in Section 5000(b)(1) of the Code is self-insured. No Employee Benefit Plan liability, contingent or otherwise, shall affect any of the Acquired Assets, including but not limited to subjecting such Acquired Assets to attachment, forfeiture, seizure liquidation or use as collateral.

4.13. No Brokers. Neither Seller nor any Affiliate of Seller has employed, either directly or indirectly, or incurred any liability to, any broker, finder or other agent in connection with the transactions contemplated by this Agreement. Seller and its Affiliates agree to indemnify and hold harmless Buyer for any claims brought by any broker, finder or other agent claiming to have acted on behalf of Seller or an Affiliate of Seller in connection with the purchase and sale of the Acquired Assets or the Programs.

4.14. Taxes. With respect to the Programs, Seller has filed, or has caused to be filed, on a timely basis and subject to all permitted extensions, all material Tax Returns with the appropriate governmental agencies in all jurisdictions in which such Tax Returns are required to be filed, and all such Tax Returns were correct and complete in all material respects. With respect to the Programs, all Taxes that are shown as due on such Tax Returns have been timely paid, or delinquencies cured with payment of any applicable penalties and interest, as of the Closing Date. There are no Liens for Taxes on any Acquired Assets other than Liens for Taxes not yet due and payable. No adjustment of or deficiency of any Tax or claim for additional Taxes with respect to the Programs has been proposed, asserted, assessed or, to the knowledge of Seller, threatened in writing, against Seller or any member of any affiliated or combined group of which Seller is or was a member or for which Seller could be liable. There are no audits or other examinations being conducted or, to the knowledge of Seller, threatened, and there is no deficiency or refund litigation or controversy in progress or, to the knowledge of Seller, threatened with respect to any Taxes previously paid by Seller or with respect to any Tax Returns previously filed by Seller or on behalf of Seller with respect to the Programs. Seller has not made any extension or waiver of any statute of limitations relating to the assessment or collection of Taxes with respect to the Programs. There are in effect no powers of attorney or other authorizations to any persons or representatives of Seller with respect to any Tax. Buyer shall have no liability for any Taxes related to the ownership or operation of the Acquired Assets or the Programs for the periods prior to the Effective Time.

4.15. Acute Contracts.

(a) Seller is not in default under the terms of any Acute Contract. No event has occurred that would constitute a default by Seller under any Acute Contract, nor has Seller received any notice of any default under any Acute Contract. To Seller’s knowledge, the counterparties to the Acute

Contracts are not in default under the terms thereof, nor has any event occurred that would constitute a default by any such counterparty under any Acute Contract, nor has Seller received any notice of any such counterparty's default under any Acute Contract.

(b) Seller has made no prepayments or deposits under any Acute Contract except as set forth on Schedule 4.15.

(c) The Acute Contracts are valid and binding obligations and in full force and effect and have been entered into in the ordinary course of business, consistent with past practice. Seller has not received any notice from any other party to any Acute Contract of the termination or threatened termination thereof, nor any claim, dispute or controversy thereon, nor has Seller received notice of any asserted claim of default, breach or violation of, any Acute Contract.

(d) Except as set forth on Schedule 4.15, consummation of the transactions contemplated by this Agreement will not constitute a default under any Acute Contract nor will it trigger any other provision in a Contract that would result in a change in such Acute Contract, including without limitation the requirement for a transfer fee or new deposit, or termination thereof.

4.16. Financing Statements. There are no financing statements under the Uniform Commercial Code with respect to the Programs or the Acquired Assets which name Seller as debtor or lessee filed in any state, except as set forth on Schedule 4.16. Except for those no longer in effect as of the Effective Time, Seller has not signed any financing statement or any security agreement under which a secured party thereunder may file any such financing statement with respect to the Programs or the Acquired Assets.

4.17. Insurance. Seller is, and will through the Closing Date be, insured with responsible insurers or through a program of self-insurance (including without limitation general liability insurance coverage of the Acquired Assets and professional liability coverage) against risks normally insured against by similar businesses under similar circumstances. Seller has not failed to give any notice or present any claim under any such policy or binder in due and timely fashion, has not received notice of cancellation or non-renewal of any such policy or binder and is not aware of any threatened or proposed cancellation or non-renewal of any such policy or binder. There are no outstanding claims under any such policy which have gone unpaid for more than thirty (30) days, or as to which the insurer has disclaimed liability.

4.18. Intellectual Property. Schedule 4.18 sets forth a list of Intellectual Property owned, controlled or used by Seller with respect to the Programs, together in each case with a brief description of the nature of such right. All Seller-owned fictitious or assumed business names, patents, copyrights and trademarks with respect to the Programs listed in Schedule 4.18 are valid and in full force and all applications listed therein as pending have been prosecuted in good faith as required by law and are in good standing. There has been no infringement by Seller or any of its Affiliates with respect to any Intellectual Property rights of others with respect to the Programs. Seller owns or possesses adequate licenses or other rights to use all Intellectual Property necessary or desirable to conduct the Programs consistent with past practices, none of which rights will be impaired by the consummation of the transactions contemplated by this Agreement, and all of the rights of Seller thereunder will be enforceable by Buyer immediately after Closing without the

consent or agreement of any other party. None of the Intellectual Property listed in Schedule 4.18 is involved in any interference or opposition proceeding with respect to the Programs, and there has been no written notice received by Seller or any other indication that any such proceeding will hereafter be commenced. With respect to the Programs, Seller has not granted any person or entity any right to use any of the Intellectual Property listed in Schedule 4.18 for any purpose.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents, warrants and covenants to Seller, as of the Effective Date and as of the Closing Date, as follows:

5.1. Organization, Good Standing and Qualification. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified and licensed as a foreign corporation in the State of Colorado. Buyer has all requisite corporate power and authority to own and operate its properties and to carry on its business as now conducted, to enter into this Agreement and to carry out and perform its obligations under the Acquisition Agreements to which Buyer is a party.

5.2. Authorization; Binding Agreement. Buyer has the limited liability company power and authority to execute and deliver this Agreement, and to carry out the transactions contemplated hereby. The execution and delivery by Buyer of the Acquisition Agreements to which Buyer is a party and all of the documents and instruments required thereby and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. The Acquisition Agreements to which Buyer is a party and each of the other documents and instruments required hereby have been duly executed and delivered by Buyer and constitute the valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms.

5.3. Legal Proceedings. There are no actions, suits, litigation, or proceedings pending or, to the knowledge of Buyer, threatened against Buyer which could materially adversely affect Buyer's ability to perform its obligations under this Agreement or the consummation of the transactions contemplated by this Agreement.

5.4. Solvency. There is no bankruptcy or insolvency proceeding of any character including without limitation, bankruptcy, receivership, reorganization, dissolution or arrangement with creditors, voluntary or involuntary, affecting Buyer, and Buyer has not taken any action in contemplation of, or which would constitute the basis for, the institution of any such proceedings. Buyer is not insolvent under any bankruptcy, receivership or insolvency law.

5.5. No Brokers. Buyer has not employed, either directly or indirectly, or incurred any liability to, any broker, finder or other agent in connection with the transactions contemplated by this Agreement. Buyer agrees to indemnify Seller for any claims brought by any broker, finder or other agent claiming to have acted on behalf of Buyer in connection with this sale.

5.6. No Violation. The execution, delivery, compliance with and performance by Buyer of the Acquisition Agreements to which Buyer is a party and each of the other documents and instruments delivered in connection therewith do not and will not (a) violate or contravene the organizational certificates, documents and agreements, as amended to date, of Buyer; (b) violate or contravene any law, statute, rule, regulation, order, judgment or decree to which Buyer is subject; or (c) conflict with or result in a breach of or constitute a default by any party under any contract, agreement, instrument or other document or contract to which Buyer is a party or by which Buyer or any of its assets or properties are bound or to which Buyer or any of its assets or properties are subject.

ARTICLE VI COVENANTS

6.1. Conduct of the Programs Pending Closing. Seller agrees that, between the Effective Date and the Closing Date, unless Buyer shall consent in writing or as otherwise contemplated by this Agreement or any Acquisition Agreement, (a) the Programs shall be conducted only in, and Seller shall not take any action except in, the ordinary course of business consistent with past practice; (b) Seller shall use its best efforts to keep available the services of Program Employees and to preserve the current relationships with such of the patients, suppliers, physicians and other persons with which Seller has significant business relations in order to preserve substantially intact the Programs; (c) Seller shall preserve intact the Acute Contracts, the Programs and the Acquired Assets; and (d) Seller shall not enter into, amend, terminate, cancel or make any material change in any Acute Contract.

6.2. Notice by Seller of Certain Events. Seller shall give prompt written notice to Buyer of (a) any notice or other communication from any person alleging that the consent of such person is or may be required in connection with the consummation of the transactions contemplated by this Agreement; (b) any notice or other communication from any governmental entity in connection with the transactions contemplated by this Agreement; (c) any actions, suits, claims, investigations or proceedings commenced or, to Seller's knowledge, threatened against, relating to or involving or otherwise affecting Seller, the Programs or the Acquired Assets or the transactions contemplated by this Agreement; (d) the occurrence of a breach or default or event that, with notice or lapse of time or both, would reasonably be expected to become a breach or default under this Agreement or any Acute Contract; and (e) any Seller Material Adverse Effect or change, event or circumstance which is likely to delay or impede the ability of Seller to consummate the transactions contemplated by this Agreement or to fulfill its obligations set forth herein.

6.3. Consents and Approvals.

(a) Third Party Consents. Unless otherwise agreed to in writing by Buyer, Seller shall obtain prior to the Closing Date all Third Party Consents. If a Third Party Consent is not obtained and delivered at Closing and Buyer waives in writing such requirement, (i) neither this Agreement nor any action taken hereunder shall be deemed to constitute an assignment of any Acquired Asset or any Acute Contract if such assignment or attempted assignment would constitute a breach of any Acute Contract or result in the loss or diminution of any rights thereunder or acceleration of any obligations thereunder, and (ii) Seller shall cooperate with Buyer in any reasonable arrangement

proposed by Buyer designed to provide Buyer with the benefits of the Acquired Asset and the Acute Contract as to which such Third Party Consent relates, including enforcement by Seller, for the account and benefit of Buyer, of any and all rights of Seller against any other person arising out of the breach or cancellation of any such Acute Contract by such other person or otherwise.

(b) Governmental Approvals. Seller shall cooperate with Buyer to take all actions necessary to transfer or reissue to Buyer any Licenses for the Programs, if any, as of the Closing Date.

(c) Right to Revenues. Buyer shall have the right to receive all revenues from any source relating to services provided at or with respect to the Programs on and following the Closing Date (the "Post-Closing Date Services") and Seller shall pay to Buyer all cash received relating thereto within thirty (30) days of receipt thereof. Seller shall have the right to retain all revenues received from any source relating to services provided at or with respect to the Programs prior to the Closing Date, and Buyer shall pay to Seller all cash received relating thereto.

(d) Cooperation. Buyer and Seller shall continue after the Closing Date to pursue the Third Party Consents and Governmental Approvals to the extent not previously obtained in connection with the consummation of the transactions contemplated hereunder. Each of the parties hereto shall, from time to time after the Closing Date, upon the request of any other party hereto and at the expense of such requesting party, duly execute, acknowledge and deliver all such further instruments and documents reasonably required to further effectuate the interests and purposes of this Agreement.

6.4. Preservation of and Access to Certain Records.

(a) After Closing, Buyer shall, in the ordinary course of business and to the extent required by Law, keep and preserve all medical records and other records of the Programs existing as of the Closing and which are delivered to Buyer by Seller; provided that, notwithstanding any other provision of this Agreement, if and to the extent Buyer desires at any time following the Closing Date to dispose of any such records, Buyer shall first notify Seller of its intent and Seller shall have thirty (30) days following its receipt of such notice to notify Buyer of its intent to reclaim any such records in whole or in part. Seller shall reclaim such records no later than ten (10) days following Seller's delivery of such notice of intent. In addition to Buyer's obligations set forth herein, upon reasonable notice, subject to patient confidentiality and during regular business hours and at mutually agreeable times, Buyer will afford the representatives of Seller, including its counsel and accountants, full and complete access to, and copies of (at the sole cost and expense of Seller), the patient medical records transferred to Buyer at Closing; provided, however, that Seller shall indemnify Buyer and its Affiliates from any loss, liability or expense that may arise therefrom.

(b) After Closing, Seller shall keep and preserve all medical records and other records of the Programs as of Closing which are not delivered to Buyer by Seller and which are required to be kept and preserved by applicable Law or in connection with any claim or controversy pending at Closing involving the Programs. For such period as is required by Law from and after the Closing Date, Seller shall retain and make available to representatives of Buyer, including its counsel and accountants, upon reasonable notice, subject to patient confidentiality and during regular business

hours and at mutually agreeable times, full and complete access to, and copies of (at sole cost of Buyer), any such records of the Programs prior to the Closing Date and access to such of Seller's personnel as may be reasonably necessary for Buyer to comply with applicable Law or to resolve any such pending dispute. Notwithstanding the foregoing, should Seller wish to destroy such records or any portion thereof, Seller shall first notify Buyer of its intent and Buyer shall have thirty (30) days following its receipt of such notice to notify Seller of its intent to reclaim any such records in whole or in part. Buyer shall take possession of such records no later than ten (10) days following Buyer's delivery of such notice of intent.

6.5. Maintenance of Insurance Coverage. From and after the Effective Time, Seller shall continue its existing professional and general liability insurance coverages at its own expense, and such policies will cover any and all claims arising from incidents that occurred prior to the Effective Time in connection with the Programs.

ARTICLE VII CONFIDENTIALITY

7.1. Confidential Information. The parties agree that (a) all information not disclosed to the public by Seller regarding the Programs and the medical information of any patient currently receiving treatment or having previously received treatment at the Hospitals, which is compiled by, obtained by, or furnished to Buyer or any of its agents or employees in the course of its due diligence review of the Programs is acknowledged to be confidential information, trade secrets and the exclusive property of Seller through the Closing Date, and of Buyer thereafter; (b) all information not disclosed to the public by Buyer regarding Buyer's business or operations is acknowledged to be confidential information, trade secrets and the exclusive property of Buyer; and (c) all information not disclosed to the public by Seller regarding Seller's business or operations is acknowledged to be confidential information, trade secrets and the exclusive property of Seller (collectively, "Confidential Information"). The term "Confidential Information" shall include the terms of this Agreement and the transactions contemplated hereby. The term "Confidential Information" does not include information that (i) is at the time of disclosure or later becomes generally known to the public or within the industry or segment of the industry to which such information relates without violation by a party of any of its obligations hereunder and not through any action by any of its directors, officers, employees and agents which, if committed by such party, would have constituted a violation by it of any of its obligations hereunder; (ii) at the time of disclosure to the other party was already known by such other party; or (iii) after the time of the disclosure to the other party, is received by such party from a third party which, to such party's knowledge, is under no confidentiality obligation with respect thereto.

7.2. Obligations of the Parties. Each of the parties hereto agrees not to divulge, directly or indirectly, any Confidential Information of the other party in any manner contrary to the interests of such party, use or cause or suffer to be used any Confidential Information in competition with such party, or use Confidential Information in violation of the patients' confidentiality rights under HIPAA or any applicable state Law. Each of the parties acknowledges that the breach or threatened breach of the provisions of this Section would cause irreparable injury to the other party that could not be adequately compensated by money damages. Accordingly, a party may obtain a restraining order and/or injunction prohibiting a breach or threatened breach of the provisions of this Section, in

addition to any other legal or equitable remedies that may be available. If requested by legal process to disclose any Confidential Information of another party, the party in receipt of such request shall promptly give notice thereof to the other party so that such party may, at its own cost and expense, seek an appropriate protective order or, in the alternative, waive compliance to the extent necessary to comply with such request if a protective order is not obtained. If a protective order or waiver is granted, the party subject to such legal process may disclose the Confidential Information to the extent required by such court order or as may be permitted by such waiver. Notwithstanding any part of the foregoing, each party shall be permitted to disclose Confidential Information, including without limitation a copy of this Agreement and the Assignment and Assumption and Bill of Sale, for the purpose of complying with government filing requirements and for the purpose of issuing a press release about the transaction following the Closing Date.

ARTICLE VIII CONDITIONS PRECEDENT TO BUYER'S PERFORMANCE AND TO SELLER'S PERFORMANCE

8.1. Conditions to Buyer's Obligations. The obligations of Buyer under this Agreement are subject to the satisfaction of the following conditions on or prior to the Closing Date, all or any of which may be waived in writing by Buyer:

(a) Each representation and warranty made by Seller in this Agreement that is qualified by "materiality," "Material Adverse Effect" or a similar qualifier shall be true and correct in all respects, and each such representation and warranty that is not so qualified shall be true and correct in all material respects, in each case, as of the Effective Date and as of the Closing Date as though made on such dates (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date).

(b) Seller shall have performed, satisfied and complied with all obligations and covenants required by this Agreement to be performed or complied with by them on or prior to the Closing Date.

(c) As of the Closing Date, there shall not have occurred any Seller Material Adverse Effect since the Effective Date.

(d) Seller shall have delivered to Buyer all documents required to be delivered by them, and all such documents shall have been properly executed by each of them, if applicable. Such documents shall include, without limitation:

(i) A certificate of good standing for Seller from the State of Delaware, dated no more than ten (10) days prior to the Closing Date;

(ii) A certificate signed by the secretary or other authorized officer of Seller and dated immediately prior to the Effective Date, certifying that the Members of Seller have adopted resolutions to authorize the transactions contemplated by this Agreement; and

(iii) Such other documents and instruments, each in a form reasonably satisfactory to Buyer and its counsel, as may be reasonably requested by Buyer in order to carry out the

transaction contemplated by this Agreement and to vest good and marketable title in the Acquired Assets in Buyer, free and clear of all Liens.

(e) Seller shall have executed and delivered to Buyer the Assignment and Assumption and Bill of Sale in the form attached hereto as Exhibit A, effective as of the Closing Date.

(f) Seller shall have delivered to Buyer an affidavit meeting the requirements of Section 1445(b)(2) of the Code certifying that Seller is not a foreign person.

(g) Buyer shall have received all Third Party Consents in form and substance satisfactory to Buyer, effective as of the Closing Date.

(h) Buyer shall have received all Governmental Approvals and consents by necessary governmental authorities to the transfer or reissuance to Buyer of all Licenses for the Programs in form and substance satisfactory to Buyer.

(i) Buyer shall have received payment and release letters, together with UCC-3 amendments to terminate all financing statements, from all parties having such financing statements filed against the Acquired Assets in form and substance satisfactory to Buyer.

(j) Buyer shall have received certificates from Seller certifying: (i) as of the Effective Date and as of the Closing Date, the accuracy of Seller's representations and warranties as set forth in Article IV hereof, and (ii) as of the Effective Date and as of the Closing Date, compliance with Seller's covenants as set forth in this Agreement.

(k) Buyer shall have received for each Acute Contract an Assignment and Assumption Agreement executed by Seller, assigning to Buyer the Acute Contracts, in form and substance satisfactory to Buyer, dated and effective as of the Closing Date, and there shall be no default under any Acute Contract.

(l) The closing shall have occurred under the Stock Purchase Agreement and all conditions to closing thereunder shall have been satisfied.

8.2. Conditions to Seller's Obligations. The obligations of Seller under this Agreement are subject to the satisfaction of the following conditions, on or prior to the Closing Date, all or any of which may be waived in writing by Seller:

(a) Each representation and warranty made by Buyer in this Agreement that is qualified by "materiality," "Material Adverse Effect" or a similar qualifier shall be true and correct in all respects, and each such representation and warranty that is not so qualified shall be true and correct in all material respects, in each case, as of the Effective Date and as of the Closing Date as though made on such dates (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date).

(b) Buyer shall have performed, satisfied and complied with all obligations and covenants of Buyer required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) Buyer shall have delivered to Seller all documents required to be delivered by Buyer, and all such documents shall have been properly executed by Buyer, if applicable.

(d) Buyer shall have delivered to Seller a good standing certificate from the State of Delaware dated no more than ten (10) days prior to the Closing Date.

(e) Buyer shall have delivered to Seller certificates signed by an authorized officer of Buyer certifying, as of the Effective Date and as of the Closing Date, (i) the accuracy of Buyer's representations and warranties as set forth in Article V hereof, and (ii) compliance with Buyer's covenants as set forth in this Agreement.

(f) Buyer shall have executed and delivered to Seller the Assignment and Assumption and Bill of Sale referenced in Section 8.1(e) above, dated and effective as of the Closing Date.

(g) The closing shall have occurred under the Stock Purchase Agreement and all conditions to closing thereunder shall have been satisfied.

8.3. No Injunction or Action. The obligations of Buyer and Seller under this Agreement are conditioned upon there being, as of the Effective Date and as of the Closing Date, no preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or by a governmental agency concerning this Agreement which would make illegal or otherwise prevent consummation of this Agreement in accordance with its terms, and no proceeding or action brought by any governmental authority seeking the foregoing shall be pending.

ARTICLE IX SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

9.1. Survival of Representations and Warranties. All Buyer and Seller representations and warranties contained in this Agreement or any other agreement, schedule, certificate, instrument or other writing delivered by Buyer or Seller in connection with this transaction shall survive for one (1) year after the Closing Date. If a party hereto determines that there has been a breach by any other party hereto of any such representation or warranty and notifies the breaching party in writing reasonably promptly after learning of such breach, such representation or warranty and liability therefor shall survive with respect to the specified breach until such breach has been resolved, but no party shall have any liability after such one (1) year period for any matters not specified in a writing delivered within such one (1) year period.

9.2. Indemnification by Seller. Subject to the provisions of Sections 9.4 and 9.5 below, Seller agrees to indemnify, defend and hold Buyer harmless from and against any and all Losses arising out of (a) any breach of a representation or warranty made by Seller in this Agreement (including the Exhibits and Schedules hereto); (b) any failure by Seller to perform, comply with or observe any one or more of its covenants, agreements or obligations contained in this Agreement or in any other agreement, instrument or document delivered to Buyer in connection with this Agreement or any of the transactions contemplated by this Agreement; or (c) any and all Losses that arise out of Seller's operation of the Programs prior to the Closing Date.

9.3. Indemnification by Buyer. Subject to the provisions of Sections 9.4 and 9.5 below, Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all Losses arising out of (a) breach of any representation or warranty made by Buyer in this Agreement (including the Exhibits and Schedules hereto); (b) any failure by Buyer to perform, comply with or observe any one or more of its covenants, agreements, or obligations contained in this Agreement or in any other agreement, instrument or document delivered to Seller in connection with this Agreement or any of the transactions contemplated by this Agreement; or (c) any and all Losses that arise out of Buyer's operation of the Programs on and following the Closing Date.

9.4. Limitations on Indemnification.

(a) No indemnification shall be payable to an Indemnified Party hereunder until the aggregate amount of all Losses incurred by such Indemnified Party exceeds Fifty Thousand Dollars (\$50,000), whereupon such Indemnified Party shall be entitled, subject to 9.4(b) below, to receive the full amount of all such Losses.

(b) The maximum aggregate liability of Seller (in the aggregate) to Buyer as a result of all Losses arising under this Agreement and the Acquisition Agreements shall not exceed the Purchase Price. The maximum aggregate liability of Buyer to Seller (in the aggregate) as a result of all Losses arising under this Agreement and the Acquisition Agreements shall not exceed the Purchase Price.

(c) In no event shall Buyer or Seller be liable for indirect, punitive, special or consequential damage or loss (including but not limited to lost profits) pursuant to this Article IX.

(d) After the Closing, the sole and exclusive remedy for any breach or inaccuracy, or alleged breach or inaccuracy, of any representation or warranty in this Agreement, or any breach of any covenant or agreement in this Agreement shall be indemnification in accordance with this Article IX.

9.5. Indemnification Process. Any party seeking indemnification under this Article IX (an "Indemnified Party") shall give each party from whom indemnification is being sought (each, an "Indemnifying Party") notice of any matter which such Indemnified Party has determined has given rise to or could give rise to a right of indemnification under this Agreement, stating the amount of the loss, if known, and method of computation thereof, and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises. The obligations and liabilities of an Indemnifying Party under this Article IX with respect to Losses arising from claims of any third party which are subject to the indemnification provided for in this Article IX ("Third Party Claims") shall be governed by and contingent upon the following additional terms and conditions:

(a) If any Indemnified Party shall receive notice of any Third Party Claim, the Indemnified Party shall give the Indemnifying Party notice of such Third Party Claim within thirty (30) days of the receipt by the Indemnified Party of such notice; provided, however, that the failure to provide such notice shall not release the Indemnifying Party from any of its obligations under this Article IX except to the extent the Indemnifying Party is materially prejudiced by such failure.

(b) If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party hereunder against any losses that may result from such Third Party Claim, then the Indemnifying Party shall be entitled to assume and control the defense of such Third Party Claim at its expense and through counsel of its choice if it gives notice of its intention to do so to the Indemnified Party within thirty (30) days of the receipt of such notice from the Indemnified Party; provided, further however, that if it would be detrimental to the defense of the Indemnified Party for the same counsel to represent both the Indemnified Party and the Indemnifying Party, then the Indemnified Party shall be entitled to retain its own counsel, in each jurisdiction for which the Indemnified Party determines counsel is required, at the expense of the Indemnifying Party.

(c) In the event the Indemnifying Party exercises the right to undertake any such defense against any such Third Party Claim as provided above, the Indemnified Party shall cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party, at the Indemnifying Party's expense, all witnesses, pertinent records, materials and information in the Indemnified Party's possession or under the Indemnified Party's control relating thereto as is reasonably required by the Indemnifying Party. Similarly, in the event the Indemnifying Party declines to take such defense and the Indemnified Party is, directly or indirectly, conducting the defense against any such Third Party Claim, the Indemnifying Party shall cooperate with the Indemnified Party in such defense and make available to the Indemnified Party, at the Indemnifying Party's expense, all such witnesses, records, materials and information in the Indemnifying Party's possession or under the Indemnifying Party's control relating thereto as is reasonably required by the Indemnified Party.

(d) If the Indemnifying Party shall have failed to assume the defense of any claim in accordance with the provisions of this Article, then the Indemnified Party shall have the absolute right to control the defense of such claim and, if and when it is finally determined that the Indemnified Party is entitled to indemnification from the Indemnifying Party hereunder, the fees and expenses of the Indemnified Party's counsel shall be borne by the Indemnifying Party and paid by the Indemnifying Party to the Indemnified Party within five (5) business days of written demand therefor, but the Indemnifying Party shall be entitled, at its own expense, to participate in (but not control) such defense.

(e) So long as the Indemnifying Party has assumed and is conducting the defense of the Third Party Claim in accordance with Section 9.5(b) above, (i) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (not to be withheld unreasonably provided that the Indemnified Party is completely released from all claims) unless the judgment or proposed settlement involves only the payment of money damages by the Indemnifying Party and does not impose an injunction or other equitable relief upon the Indemnified Party, and (ii) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnifying Party (not to be withheld unreasonably).

**ARTICLE X
MISCELLANEOUS**

10.1. Termination. This Agreement may be terminated and the transaction contemplated hereby may be abandoned at any time prior to the Closing Date as follows:

- (a) By mutual written consent of Buyer and Seller;
- (b) By either Buyer or Seller, if Closing shall not have occurred on or before July 1, 2008; provided, however, that the right to terminate this Agreement under this Section 10.1(b) shall not be available to the party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or resulted in, the failure of Closing to occur on or before such date;
- (c) By either Buyer or Seller, if any final and nonappealable order or other legal restraint or prohibition preventing the consummation of the transaction contemplated by this Agreement shall have been issued by any governmental authority or any Law shall have been enacted or adopted that enjoins, prohibits or makes illegal consummation of the transaction;
- (d) By Buyer, upon a breach of, or failure to perform in any material respect (which breach or failure cannot be or has not been cured within thirty (30) days after the giving of notice of such breach or failure), any representation, warranty, covenant or agreement on the part of Seller set forth in this Agreement, such that a condition set forth in Section 8.1 would not be satisfied; or
- (e) By Seller, upon a breach of, or failure to perform in any material respect (which breach or failure cannot be or has not been cured within thirty (30) days after the giving of notice of such breach or failure), any representation, warranty, covenant or agreement on the part of Buyer set forth in this Agreement, such that a condition set forth in Section 8.2 would not be satisfied.

10.2. Notice of Termination; Effect of Termination. In the event of termination of this Agreement by either Buyer or Seller pursuant to Sections 10.1(b), 10.1(c), 10.1(d) or 10.1(e) hereof, the terminating party shall give prompt written notice thereof to the nonterminating party. In the event of termination of this Agreement pursuant to Section 10.1, this Agreement shall be of no further effect, there shall be no liability under this Agreement on the part of either Buyer or Seller and all rights and obligations of each party hereto shall cease, provided, however, that nothing herein shall relieve any party from liability for the breach of any of its representations and warranties or the breach of any of its covenants or agreements set forth in this Agreement.

10.3. Expenses. Each of the parties hereto shall pay its own fees, costs and expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

10.4. Entire Subject Matter; Amendment. This Agreement, together with its Schedules and Exhibits and all ancillary agreements and exhibits and schedules thereto to be delivered at Closing, contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, either oral or written. The Agreement may not be amended, or any term or condition waived, unless signed by the party to be charged or making the waiver. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements,

orally or otherwise, have been made by other party(ies), or by anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

10.5. Assignment. No party hereto shall assign or otherwise transfer this Agreement or any of its rights hereunder, or delegate any of its obligations hereunder, without the prior written consent of the other party; provided, however, that each party shall be permitted, without the consent of the other party, to assign or otherwise transfer this Agreement or any of its rights hereunder to any Affiliate of such party capable of carrying out such party's obligations hereunder. Subject to the foregoing, this Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon the parties hereto, and each of their respective successors, heirs and assigns.

10.6. Counterparts. This Agreement may be executed in two or more counterparts, any one of which need not contain the signatures of all parties, but all of which counterparts when taken together will constitute one and the same agreement.

10.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado applicable to contracts made and to be performed in that State.

10.8. Schedules and Exhibits. The Schedules and Exhibits attached hereto are an integral part of this Agreement. All exhibits and schedules attached to this Agreement are incorporated herein by this reference and all references herein to this "Agreement" shall mean this Asset Purchase Agreement together with all such exhibits and schedules, and all ancillary agreements and exhibits and schedules thereto to be delivered at Closing.

10.9. Severability. Any provision hereof which is held to be prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be adjusted rather than avoided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible without in any manner invalidating the remaining provisions hereof.

10.10. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed properly given three (3) business days after being sent by registered or certified mail, postage prepaid, to the parties at the address listed below:

If to Seller: Rocky Mountain Dialysis Services, LLC
c/o Renal Treatment Centers - West, Inc.
c/o DaVita Inc.
601 Hawaii Street
El Segundo, California 90245
Attention: Chief Operating Officer

With a copy to: DaVita Inc.
601 Hawaii Street
El Segundo, California 90245
Attention: General Counsel

and to: Robinson, Diss and Clowdus, P.C.
1660 Lincoln Street
Suite 2500
Denver, Colorado 80264
Attention: Fred J. Diss, Esq.

If to Buyer: Mountain West Dialysis Services, LLC
c/o DaVita Inc.
601 Hawaii Street
El Segundo, California 90245
Attention: Chief Operating Officer

With copy to: DaVita Inc.
601 Hawaii Street
El Segundo, California 90245
Attention: General Counsel

and to: Robinson, Diss and Clowdus, P.C.
1660 Lincoln Street
Suite 2500
Denver, Colorado 80264
Attention: Fred J. Diss, Esq.

10.11. Representation by Counsel. Each party hereto acknowledges that it has been advised by legal and any other counsel retained by such party in its sole discretion. Each party acknowledges that such party has had a full opportunity to review this Agreement and all related exhibits, schedules and ancillary agreements and to negotiate any and all such documents in its sole discretion, without any undue influence by any other party hereto or any third party.

10.12. Construction. The parties have participated jointly in the negotiations and drafting of this Agreement and in the event of any ambiguity or question of intent or interpretation, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

10.13. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

10.14. Waivers. No waiver by any party, whether express or implied, of its rights under any provision of this Agreement shall constitute a waiver of the party's rights under such provisions at any other time or a waiver of the party's rights under any other provision of this Agreement. No failure by any party to take any action against any breach of this Agreement or default by another party shall constitute a waiver of the former party's right to enforce any provision of this Agreement or to take action against such breach or default or any subsequent breach or default by the other party. To be effective any waiver must be in writing and signed by the waiving party.

[Signature page follows]

THEREFORE, the parties hereto have executed, or caused this Asset Purchase Agreement to be executed by their duly authorized representatives, as of the date first written above.

BUYER:

MOUNTAIN WEST DIALYSIS SERVICES, LLC

By its LLC Manager,
Total Renal Care, Inc.

By:
Its:

SELLER:

ROCKY MOUNTAIN DIALYSIS SERVICES, LLC

By its LLC Manager,
Renal Treatment Centers - West, Inc.

By:
Its:

TABLE OF EXHIBITS AND SCHEDULES

Exhibit A – Form of Assignment and Assumption and Bill of Sale

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Schedule 1.2	– Excluded Assets
Schedule 1.5	– Program Employees/Transferring Employees
Schedule 2.1	– Payment to Seller/Adjustments to Purchase Price
Schedule 2.3	– Allocation of Purchase Price
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Schedule 4.18	– Intellectual Property

EXHIBIT A

ASSIGNMENT AND ASSUMPTION AND BILL OF SALE

This Assignment and Assumption and Bill of Sale (the "Agreement"), is made and entered into this 30th day of May, 2008 by and between Rocky Mountain Dialysis Services, LLC, a Delaware limited liability company ("Seller"), and Mountain West Dialysis Services, LLC, a Delaware limited liability company ("Buyer").

RECITALS

WHEREAS, Seller and Buyer are parties to an Asset Purchase Agreement dated as of May 30, 2008 (the "Purchase Agreement"), whereby (a) Seller has agreed to sell, convey, transfer, assign and deliver to Buyer the Acquired Assets (as defined in the Purchase Agreement), and (b) Seller has agreed to assign and Buyer has agreed to assume, the Assumed Liabilities (as defined in the Purchase Agreement); and

WHEREAS, all capitalized terms not defined herein shall have the meanings ascribed to such terms in the Purchase Agreement.

NOW, THEREFORE, pursuant to the Purchase Agreement and in consideration of the mutual promises, covenants and agreements therein and hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Bill of Sale.

(a) Seller hereby sells, conveys, transfers, assigns and delivers to Buyer, its successors and assigns, free and clear of any pledge, lien, option, security interest, mortgage or other encumbrance, and Buyer does hereby acquire from Seller, all right, title and interest in, to and under the Acquired Assets. The Acquired Assets shall include all rights, privileges, hereditaments and appurtenances belonging, incident or appertaining to the Acquired Assets.

(b) Notwithstanding anything contained herein, Buyer is not purchasing from Seller any Excluded Assets.

(c) It is understood by Seller and Buyer that, contemporaneously with the execution and delivery of this Agreement, Seller may be executing and delivering to Buyer certain further assignments and other instruments of transfer which in particular cover certain of the property and assets described herein or in the Purchase Agreement, the purpose of which is to supplement, facilitate and otherwise implement the transfer intended hereby.

(d) Seller does hereby irrevocably constitute and appoint Buyer, its successors and assigns, its true and lawful attorney, with full power of substitution, in its name or otherwise, and on behalf of Seller, or for its own use, to claim, demand, collect and receive at any time and from time to time any and all Acquired Assets, properties, claims, accounts and other rights, tangible or

intangible, hereby sold, transferred, conveyed, assigned and delivered, or intended so to be, and to prosecute the same at law or in equity and, upon discharge thereof, to complete, execute and deliver any and all necessary instruments of satisfaction and release.

2. Assignment and Assumption of Assumed Liabilities.

(a) Seller hereby assigns to Buyer, its successors and assigns, and Buyer hereby assumes, in accordance with the terms and conditions of the Purchase Agreement, the Assumed Liabilities. Notwithstanding anything in this Agreement to the contrary, except as specifically set forth in the Purchase Agreement, Buyer shall not assume nor be deemed to have assumed any debt, claim, obligation or other liability of Seller or any Affiliate of Seller, whether known or unknown, accrued or unaccrued, fixed or contingent, natural or unnatural, whether arising out of occurrences, events or actions prior to, at or after the Effective Time.

(b) In the event that Seller and/or Buyer determines after execution of this Agreement that one or more contracts or agreements between Seller and any third party necessary to operate the Acquired Assets needs to be assigned to Buyer (each an "Omitted Agreement"), and the parties consent in writing to the assignment and assumption of such Omitted Agreement, which consent shall not be unreasonably withheld, then, such Omitted Agreement shall be deemed assigned by Seller to Buyer as of the Effective Time.

(c) Seller hereby authorizes and directs all obligors under any Acute Contract included in the Assumed Liabilities, to deliver any warrants, checks, drafts or payments to be issued or paid to Seller pursuant to the Acute Contract to Buyer; and Seller further authorizes Buyer to receive such warrants, checks, drafts or payments from such obligors and to endorse Seller's name on them and to collect all funds due or to become due under the Acute Contracts.

(d) Any payment that may be received by Seller to which Buyer is entitled by reason of this Agreement or the Purchase Agreement shall be received by Seller as trustee for Buyer, and will be immediately delivered to Buyer without commingling with any other funds of Seller.

(e) Notice of the assignment under this Agreement may be given at the option of either party to all parties to the Acute Contracts (other than Seller) or to such parties' duly authorized agents.

(f) The assumption by Buyer of any Assumed Liabilities shall not enlarge the rights of any third party with respect to any Assumed Liabilities, nor shall it prevent Buyer, with respect to any party other than Seller, from contesting or disputing any Assumed Liability.

(g) Seller hereby appoints Buyer, its successors and assigns, as the true and lawful attorney-in-fact of Seller, with full power of substitution, having full right and authority, in the name of Seller, to collect or enforce for the account of Buyer, liabilities and obligations of third parties under the Assumed Liabilities; to institute and prosecute all proceedings they may deem proper in order to enforce any claim to obligations owed under the Assumed Liabilities, to defend and compromise any and all actions, suits or proceedings in respect of the Assumed Liabilities, and to do

all such acts in relation to the Assumed Liabilities that Buyer may deem advisable. Seller agrees that the above-stated powers are coupled with an interest and shall be irrevocable by Seller.

3. Effective Date. This Agreement shall be deemed effective as of the Effective Time of the Purchase Agreement.

4. Consummation of Purchase Agreement. This Agreement is intended to evidence the consummation of the assignment by Seller and assumption by Buyer of the Assumed Liabilities and the sale by Seller and the purchase by Buyer of the Acquired Assets contemplated by the Purchase Agreement. Buyer and Seller by their execution of this Agreement each hereby acknowledges and agrees that neither the representations and warranties nor the rights and remedies of any party under the Purchase Agreement shall be deemed to be enlarged, modified or altered in any way by this Agreement. Any inconsistencies or ambiguities between this Agreement and the Purchase Agreement shall be resolved in favor of the Purchase Agreement.

5. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

6. Further Assurances. After the Closing Date, each party will from time to time, at the other party's request and without further cost to the party receiving the request, execute and deliver to the requesting party such other instruments and take such other action as the requesting party may reasonably request so as to enable it to exercise and enforce its rights under and fully enjoy the benefits and privileges with respect to this Agreement and to carry out the provisions and purposes hereof.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, including all matters of construction, validity, performance and enforcement and without giving effect to contrary principles of conflict of laws.

8. Counterparts. This Agreement may be signed in any number of counterparts and all such counterparts shall be read together and construed as one and the same document.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Assignment and Assumption and Bill of Sale to be duly executed on their behalf on the day and year first above written.

BUYER:

MOUNTAIN WEST DIALYSIS SERVICES, LLC

By its LLC Manager,
Total Renal Care, Inc.

By:

Its:

SELLER:

ROCKY MOUNTAIN DIALYSIS SERVICES, LLC

By its LLC Manager,
Renal Treatment Centers - West, Inc.

By:

Its:

Schedule 1.0

TABLE OF DEFINITIONS

“Acquired Assets” has the meaning set forth in Section 1.1.

“Acquisition Agreements” means this Agreement, the Assignment and Assumption and Bill of Sale and all other agreements executed in connection with this Agreement and in connection with Closing.

“Acute Contracts” has the meaning set forth in the Recitals of this Agreement.

“Affiliates” has the meaning set forth in Rule 501 of Regulation D under the Securities Act of 1933, as amended.

“Agreement” has the meaning set forth in the first sentence of this Agreement.

“Assumed Liabilities” has the meaning set forth in Section 1.3.

“Assumed PTO” has the meaning set forth in Section 1.5.

“Buyer” has the meaning set forth in the first sentence of this Agreement.

“Closing” has the meaning set forth in the first sentence of Article III of this Agreement.

“Closing Date” has the meaning set forth in Article III of this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended.

“Confidential Information” has the meaning set forth in Section 7.1(a).

“Effective Date” has the meaning set forth in the first sentence of this Agreement.

“Effective Time” has the meaning set forth in Article III of this Agreement.

“Employee Benefit Plans” means any “employee benefit plan” as defined in Section 3(3) of ERISA and all bonus, stock or other security option, stock or other security purchase, stock or other security appreciation rights, incentive, deferred compensation, retirement or supplemental retirement, severance, golden parachute, vacation, cafeteria, dependent care, medical care, employee assistance program, education or tuition assistance programs, insurance and other similar fringe or employee benefit plans, programs or arrangements, and any current or former employment or executive compensation or severance agreements or any other plan or arrangement to provide compensation or benefits to any individual, written or otherwise, which has ever been sponsored or maintained or entered into for the benefit of, or relating to, any present or former employee or director of Seller or any ERISA Affiliate, without regard to whether such individual is a Program Employee or a Transferring Employee.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any entity (whether or not incorporated) that together with Seller is a member of: (i) a controlled group of corporations within the meaning of Section 414(b) of the Code; (ii) a group of trades or business under common control within the meaning of Section 414(c) of the Code; (iii) an affiliated service group within the meaning of Section 414(m) of the Code; or (iv) any other person or entity treated as an Affiliate of Seller under Section 414(o) of the Code.

“Excluded Assets” has the meaning set forth in Section 1.2 hereof.

“Excluded Liabilities” has the meaning set forth in Section 1.4 hereof.

“Governmental Approval” has the meaning set forth in Section 4.3(a) hereof.

“HIPAA” has the meaning set forth in Section 4.10(h).

“Hospitals” has the meaning set forth in the Recitals of this Agreement.

“Indemnified Party” has the meaning set forth in Section 9.5.

“Indemnifying Party” has the meaning set forth in Section 9.5.

“Intellectual Property” means all recipes, patents, inventions, know-how, show-how, designs, trade secrets, copyrights, trademarks, trade names, service marks, fictitious and assumed business names, Internet domain names, manufacturing processes, software, formulae, trade secrets, technology or the like, and all applications for any of the foregoing.

“Labor Contract” has the meaning set forth in Section 4.11(c).

“Law” or “Laws” means any and all federal, state, and local statutes, codes, licensing requirements, ordinances, laws, rules, regulations, decrees or orders of any foreign, federal, state or local government and any other governmental department or agency, and any judgment, decision, decree or order of any court or governmental agency, department or authority.

“Licenses” means licenses, permits, consents, approvals, authorizations, registrations, qualifications and certifications of any governmental or administrative agency or authority (whether federal, state or local), including without limitation any Medicare, Medicaid and other provider numbers, certificates or determinations of need, CLIA and DEA certifications.

“Liens” means any lien, claim, security interest, mortgage, pledge, restriction, covenant, charge or encumbrance of any kind or character, direct or indirect, whether accrued, absolute, contingent or otherwise.

“Losses” means damages, liabilities, actions, suits, proceedings, claims, demands, taxes, sanctions, deficiencies, assessments, judgments, costs, interest, penalties and expenses (including without limitation reasonable attorneys’ fees, which shall include a reasonable estimate of the allocable costs of in-house legal counsel and staff).

“Parker” has the meaning set forth in the Recitals of this Agreement.

“Parker Acute Agreement” has the meaning set forth in the Recitals of this Agreement.

“Payment Programs” means Medicare, TRICARE, Medicaid, Worker’s Compensation, Blue Cross/Blue Shield programs, and all other health maintenance organizations, preferred provider organizations, health benefit plans, health insurance plans, and other third party reimbursement and payment programs.

“Preliminary PTO Amount” has the meaning set forth in Section 1.8.

“Program Employees” has the meaning set forth in Section 1.5.

“Programs” has the meaning set forth in the Recitals of this Agreement.

“PTO” means accrued vacation and other payable time off.

“Purchase Price” has the meaning set forth in Section 2.1.

“Seller” has the meaning set forth in the first sentence of this Agreement.

“Seller Licenses” has the meaning set forth in Section 4.5.

“Seller Material Adverse Effect” means any event, circumstance, change or effect that individually or in the aggregate with all other events, circumstances, changes or effects, is reasonably expected to be materially adverse to the condition (financial or otherwise), properties, assets, liabilities, businesses, operations, results of operations or prospects of the Programs or the Acquired Assets or to Seller’s ability to perform its obligations as contemplated in this Agreement, except for any such changes or effects resulting directly or indirectly from: (i) changes in the industry in which Seller operates, which changes do not disproportionately affect Seller relative to other participants in such industry in any material respect; (ii) changes in general economic conditions; or (iii) (A) the announcement or pendency of any of the transactions contemplated by this Agreement; (B) the taking of any action reasonably required to cause compliance with the terms of, or the taking of any action required by, this Agreement; (C) the taking of any action approved or consented to in writing by Buyer; or (D) any change in accounting requirements or principles or any change in applicable laws, rules or regulations or the interpretation thereof, provided such changes do not disproportionately affect Seller relative to the other participants in Seller’s industry in any material respect.

“Sky Ridge” has the meaning set forth in the Recitals of this Agreement.

“Sky Ridge Acute Agreement” has the meaning set forth in the Recitals of this Agreement.

“St. Joseph” has the meaning set forth in the Recitals of this Agreement.

“St. Joseph Acute Agreement” has the meaning set forth in the Recitals of this Agreement.

“Stock Purchase Agreement” means the stock purchase agreement dated May 30, 2008 by and among Total Renal Care, Inc., a California corporation, Total Renal Care of Colorado, Inc., a Colorado corporation, and DNPC LLLP, a Colorado limited liability limited partnership.

“Taxes” means all taxes of any type or nature whatsoever, including without limitation, income, gross receipts, excise, franchise, property, value added, import duties, employment, payroll, sales and use taxes and any additions to tax and any interest or penalties thereon, and any liability for the taxes of others arising from Treasury Regulations 1.1502-6 or otherwise by reason of being a member of a consolidated, combined or unitary group for Tax Return purposes.

“Tax Returns” means any and all returns, declarations, reports, claims for refunds and information returns or statements relating to Taxes, required to be filed by Seller for itself and for the Employee Benefit Plans of Seller, including all schedules or attachments thereto and including any amendment thereof.

“Third Party Claim” has the meaning set forth in Section 9.5.

“Third Party Consent” has the meaning set forth in Section 4.3(b).

“Transferring Employees” has the meaning set forth in Section 1.5.

Exhibit 26

St. Cloud Transaction Summary

	Valuation	Revenue (1)	EBITDA (1)	EBITDA Multiple	Patients	Price per Patient
Shares DaVita Purchased from Doctors:						
St. Cloud	\$5,975,000	\$5,036,808	\$1,015,306	5.9x	126	\$47,421
Shares DaVita Sold to Doctors:						
Celebration Dialysis	\$1,025,000	N/A	N/A		N/A	
Orlando Dialysis	\$1,025,000	N/A	N/A		N/A	
Kissimmee	\$1,025,000	\$6,014,645	\$1,162,639	0.9x	154	\$6,656

Notes:

(1) Revenue & EBITDA figures are either Projected Year 1 or Historical (depending on availability of data).

(2) Valuation for the centers under "Shares DaVita Sold to Doctors" is a per-center average.

Exhibit 27

Exhibit 28

Assumption	Description	Purchase Price	IRR if DaVita paid \$48.1M
Beginning Value	What the KCI Inc centers would be worth to DaVita given Deal Depot's standard assumptions	\$21.8M	(4.3%)
Hipper Compression	Hipper Compression was removed per Tom Usilton. Valuation pickup: \$7.0M	\$28.8M	0.7%
Terminal Multiple	WACC reduced from 12% to 9%, g increased from 0% to 1%. Valuation pickup from aggressive terminal value: \$12.4M	\$41.2M	8.0%
Increase projected rev/tx at KCSO by \$29, other centers	This was done by David Finn for the stated purpose of increasing the purchase price for the KCSO center from ~\$1M to ~\$3.5M. Valuation pickup: \$2.4M	\$43.6M	9.2%
Decrease G&A from \$13.50 to \$10 per tx.	Valuation pickup: \$3.2M	\$46.8M	10.7%
Decrease Year 1 SWB Buffer from 10% to 5%	Valuation pickup: \$0.5M	\$47.1M	10.8%
Decrease recurring capex to \$1,000 per station	Valuation pickup: \$1.0M	\$48.1M	11.2%
Final Value	For an apples-to-apples comparison to returns Deal Depot has reported in the past, the projected return for this transaction at a \$48.1M purchase price is NEGATIVE 4.3% (not +11.2%.	\$48.1M	11.2%*

* Return is 13.1% if incremental EBITDA from DaVita Lab is included.

Exhibit 29

Centers of Interest

Center #	Center Name	Address	City	State	Zip	NPI #	Tax ID #	Transaction	Amount billed government (2008)
Denver, CO:									
LOC_0419	EAST AURORA DIALYSIS	482 S CHAMBERS RD	AURORA	CO	80017-2092	1316914146	32-0000322	JV buyout	\$1,356,026
LOC_2054	LONETREE DIALYSIS CENTER	9777 MOUNT PYRAMID CT, SUITE 140	ENGLEWOOD	CO	80112-6017	1255308433	32-0000322	JV buyout	\$948,296
LOC_2063	BELCARO DIALYSIS CENTER	755 S COLORADO BLVD	DENVER	CO	80246-8005	1447227947	32-0000322	JV buyout	\$722,326
LOC_0427	LAKESWOOD CROSSING DIALYSIS CENTER	1057 S WADSWORTH BLVD, SUITE 100	LAKESWOOD	CO	80226-4361	1437310109	26-2728849	JV divestiture	\$1,599,421
LOC_0538	LONGMONT DIALYSIS CENTER	1715 IRON HORSE DR, SUITE 170	LONGMONT	CO	80501-9617	1336301860	26-2728849	JV divestiture	\$982,100
LOC_0541	LAKESWOOD DIALYSIS CENTER	1750 PIERCE ST	LAKESWOOD	CO	80214-1434	1063673739	26-2728849	JV divestiture	\$1,529,650
LOC_0542	THORNTON DIALYSIS CENTER	8800 FOX DR	THORNTON	CO	80260-6880	1154582831	26-2728849	JV divestiture	\$2,315,190
LOC_0543	BOULDER DIALYSIS CENTER	2880 FOLSOM ST, SUITE 110	BOULDER	CO	80304-3769	1154582823	26-2728849	JV divestiture	\$1,221,907
LOC_0544	ARVADA DIALYSIS CENTER	9950 W 80TH AVE, SUITE 25	ARVADA	CO	80005-3914	1609037373	26-2728849	JV divestiture	\$1,070,434
LOC_1506	MILE HIGH HOME DIALYSIS PD	1750 PIERCE ST, SUITE A	LAKESWOOD	CO	80214-1434	1508026436	26-2728849	JV divestiture	\$558,838
LOC_6012	LAKESWOOD AT HOME	1750 PIERCE ST	LAKESWOOD	CO	80214-1434	1063673739	26-2728849	JV divestiture	\$222,851
St. Cloud, FL:									
LOC_1906	ST CLOUD DIALYSIS	4750 OLD CANOE CREEK RD	SAINT CLOUD	FL	34769-1430	1245410091	20-8930468	JV acquisition	\$2,663,646
LOC_0170	CELEBRATION DIALYSIS	1154 CELEBRATION BLVD	CELEBRATION	FL	34747-4605	1043287550	20-8930468	JV divestiture	\$1,003,158
LOC_0178	ORLANDO DIALYSIS	14050 TOWN LOOP BLVD	ORLANDO	FL	32837-6190	1801864459	20-8930468	JV divestiture	\$1,500,748
LOC_4013	KISSIMMEE	802 N JOHN YOUNG PKWY	KISSIMMEE	FL	34741-4912	1609843010	20-8930468	JV divestiture	\$2,691,516

Centers of Interest

Center #	Center Name	Address	City	State	Zip	NPI #	Tax ID #	Transaction	Amount billed government (2008)
Columbus, OH:									
LOC_2318	COLUMBUS WEST	1395 GEORGESVILLE RD	COLUMBUS	OH	43228-3611	1891986428	20-8658239	JV divestiture	\$343,674
LOC_3354	COLUMBUS DIALYSIS	3830 OLENTANGY RIVER RD	COLUMBUS	OH	43214-5404	1073787248	26-1928637	JV divestiture	\$2,698,216
LOC_3454	COLUMBUS EAST	299 OUTERBELT ST	COLUMBUS	OH	43213-1529	1952575128	26-1928637	JV divestiture	\$1,427,066
LOC_3566	COLUMBUS DOWNTOWN	415 E MOUND ST	COLUMBUS	OH	43215-5512	1528232790	26-1928637	JV divestiture	\$1,457,560
Los Angeles, CA:									
N/A	CARABELLO DIALYSIS CENTER	757 E. WAHINGTON BLVD	LOS ANGELES	CA	90021	N/A	N/A	JV acquisition	N/A
East Bay, CA:									
LOC_3849	EL CERRITO DIALYSIS CENTER	10690 SAN PABLO AVE	EL CERRITO	CA	94530-2620	1801860176	95-2977916	JV divestiture	\$2,528,925
LOC_0344	OAKLAND PERITONEAL DIALYSIS CENTER	2633 TELEGRAPH AVE	OAKLAND	CA	94612-1744	1952364101	94-3249677	JV divestiture	\$374,899
LOC_3840	SAN PABLO DIALYSIS	14020 SAN PABLO AVE	SAN PABLO	CA	94806-3604	1942275953	95-2977916	JV divestiture	\$3,927,092
LOC_3806	VALLEJO DIALYSIS CENTER	121 HOSPITAL DR	VALLEJO	CA	94589-2562	1053386912	95-2977916	JV divestiture	\$1,353,105
Las Vegas, NV:									
LOC_0540	SOUTH LAS VEGAS DIALYSIS CENTER	2250 S RANCHO DR	LAS VEGAS	NV	89102-4456	1346203825	20-3344216	JV divestiture	\$1,712,386
LOC_0845	LAS VEGAS DIALYSIS CENTER	3100 W CHARLESTON BLVD	LAS VEGAS	NV	89102-1992	1538121793	20-3344216	JV divestiture	\$5,679,658
LOC_0846	NORTH LAS VEGAS DIALYSIS CENTER	2300 MCDANIEL ST	NORTH LAS VEGAS	NV	89030-6318	1902868169	20-3344216	JV divestiture	\$3,095,862
LOC_0984	SUMMERLIN DIALYSIS CENTER	653 N TOWN CENTER DR	LAS VEGAS	NV	89144-0503	1669577037	20-3344216	JV acquisition	\$2,430,480

Centers of Interest

Center #	Center Name	Address	City	State	Zip	NPI #	Tax ID #	Transaction	Amount billed government (2008)
Medford, OR:									
N/A	ROGUE VALLEY DIALYSIS SERVICES	760 GOLF VIEW DR STE 100	MEDFORD	OR	97504	N/A	N/A	JV acquisition	N/A
N/A	REDWOOD DIALYSIS SERVICES	201 SW "L" STREET	GRANTS PASS	OR	97526	N/A	N/A	JV acquisition	N/A
Other Centers:									
N/A	SAKDC	N/A	N/A	TX	N/A	N/A	N/A	JV divestiture	N/A
LOC_3443	SILVERTON DIALYSIS	6929 SILVERTON AVE	CINCINNATI	OH	45236-3701	1255395497	20-5673780	JV divestiture	\$1,457,586
LOC_1864	NORTH LITTLE ROCK DIALYSIS CENTER	4505 E MCCAIN BLVD	NORTH LITTLE ROCK	AR	72117-2902	1497977714	20-8659726	JV divestiture	\$940,217
LOC_3615	CENTRAL LITTLE ROCK	5800 W 10TH ST	LITTLE ROCK	AR	72204-1760	1376516039	62-1323090	JV divestiture	\$2,461,388
LOC_0555	WOODLAND DIALYSIS CENTER	912 WOODLAND DR	ELIZABETHTOWN	KY	42701-2795	1861452302	20-1557876	JV divestiture	\$2,807,039
LOC_2055	BARDSTOWN DIALYSIS CENTER	210 W JOHN FITCH AVE	BARDSTOWN	KY	40004-1115	1982664306	20-1557876	JV divestiture	\$410,097
LOC_2252	IONIA DIALYSIS	2622 HEARTLAND BLVD	IONIA	MI	48846-8757	1578684452	20-5513576	JV divestiture	\$875,912
LOC_0878	HEMET DIALYSIS CENTER	1330 S STATE ST	SAN JACINTO	CA	92583-4916	1174791883	03-0400051	JV divestiture	\$2,610,324
LOC_6016	MANZANITA AT HOME	4005 MANZANITA AVE	CARMICHAEL	CA	95608-1779	1134182561	95-3372911	JV divestiture	\$470,582
LOC_1930	ANTELOPE VALLEY DIALYSIS	1759 W AVENUE J	LANCASTER	CA	93534-2703	1083898001	95-3372911	JV divestiture	\$4,574,296
LOC_2254	WAUSEON OH	721 S SHOOP AVE	WAUSEON	OH	43567-1729	1306010228	26-1928603	JV divestiture	\$596,000
LOC_0884	MAINPLACE DIALYSIS CENTER	972 W TOWN AND COUNTRY RD	ORANGE	CA	92868-4714	1679718225	26-3390599	JV divestiture	\$2,651,000
LOC_2541	EAST LA PLAZA DIALYSIS	1700 E CESAR E CHAVEZ AVE	LOS ANGELES	CA	90033-2424	1235104159	95-2977916	JV divestiture	\$4,877,545

Centers of Interest

Center #	Center Name	Address	City	State	Zip	NPI #	Tax ID #	Transaction	Amount billed government (2008)
LOC_4068	ZEPHYRHILLS	6610 STADIUM DR	ZEPHYRHILLS	FL	33542-7510	1255579629	26-2663372	JV divestiture	\$2,017,448
N/A	New Springs	N/A	N/A	IN	N/A	N/A	N/A	JV divestiture	N/A
LOC_2148	LAGRANGE DIALYSIS	240 PARKER DR	LA GRANGE	KY	40031-1200	1477794642	26-3917376	JV divestiture	\$257,672
LOC_2325	NORTHWEST TUCSON	2945 W INA RD	TUCSON	AZ	85741-2366	1972791424	26-0775546	JV divestiture	\$426,640
LOC_0844	SPARKS DIALYSIS CENTER	4860 VISTA BLVD	SPARKS	NV	89436-2817	1629218185	26-3558729	JV divestiture	\$1,832,558
LOC_2015	SIERRA ROSE DIALYSIS CENTER	685 SIERRA ROSE DR	RENO	NV	89511-2060	1679713036	26-3558729	JV divestiture	\$1,135,200
LOC_1966	AMERY DIALYSIS	970 ELDEN AVE	AMERY	WI	54001-1448	1750554333	26-2123887	JV divestiture	\$50,000
LOC_2343	WEST ELK GROVE	2208 KAUSEN DR	ELK GROVE	CA	95758-7115	1427242080	26-0689726	JV divestiture	\$170,905
								Total	<u><u>\$78,037,441</u></u>

Notes:

N/A = Not Available

Exhibit 30



FEDERAL REGISTER

VOL. 59, No. 242

Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Office of the Secretary of Health and Human Services

Office of the Inspector General - HHS

Publication of OIG Special Fraud Alerts

59 FR 65372

[*EXCERPT*]

DATE: Monday, December 19, 1994

ACTION: Notice.

To view the next page, type .np* TRANSMIT.
To view a specific page, transmit p* and the page number, e.g. p*1

[*65372]

SUMMARY: This **Federal Register** notice sets forth the 5 previously-developed Special Fraud Alerts issued directly to the health care provider community by the HHS Office of Inspector General (OIG). In keeping with the OIG's goal and intent of publicizing its concern about possible widespread and abusive health care industry practices, and seeking wider dissemination of this information to the general public, we are republishing the main content of these Special Fraud Alerts in the **Federal Register**. This notice also serves to alert the general public of our intention to publish all future OIG Special Fraud Alerts in this same manner, in addition to the current method used to distribute this material to Medicare and State health care program providers. [*65373]

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, Legislation, Regulations and Public Affairs Staff, (202) 619-0089.

SUPPLEMENTARY INFORMATION:

I. Background

The Use of Fraud Alerts by the OIG

Over the years, the OIG has used fraud alerts as a vehicle to identify fraudulent and abusive practices within the health care industry. The majority of these fraud alerts are disseminated internally to the OIG's Office of Investigations and other agencies within the Department. However, the OIG has also developed and issued Special Fraud Alerts intended for extensive distribution directly to the health care provider community.

Special Fraud Alerts

Since 1988, the OIG has issued 5 "Special Fraud Alerts" addressing specific trends of health care fraud and certain practices of an industry-wide character. Specifically, the OIG Special Fraud Alerts have served to provide general guidance to the health care industry on violations of Federal law (including various aspects of the anti-kickback statute), as well as to provide additional insight to the Medicare carrier fraud units in identifying health care fraud schemes.

In developing these Special Fraud Alerts, the OIG relies on a number of sources, such as studies or management and program evaluations conducted by the OIG's Office of Evaluation and Inspections. In addition, the OIG may consult with experts in the subject field, including those within the OIG, other agencies of the Department, other Federal and State agencies, and from those in the health care industry.

The Nature of Past Special Fraud Alerts

For the most part, the OIG Special Fraud Alerts have been reserved for national trends in health care fraud and have addressed potential violations of the Medicare and State health care programs' anti-kickback statute. The Special Fraud Alerts have addressed the following topic areas that could violate the anti-kickback statute:

- .Joint venture arrangements;
- .Routine waiver of Medicare Part B copayments and deductibles;
- .Hospital incentives to referring physicians;
- .Prescription drug marketing practices;
- .Arrangements for the provision of clinical laboratory services.

II. Federal Register Publication of Special Fraud Alerts

In the past, the OIG has always printed and distributed copies of these Special Fraud Alerts directly to all Medicare program providers. While the OIG Special Fraud Alerts have been designed to be available to all affected program providers, we believe it is useful to publicize these various issues and concerns involving potential abusive health care industry practices to a more widespread audience. For this reason, we are using this **Federal Register** notice as a vehicle to reprint the substance of the 5 previously-issued Special Fraud Alerts cited above. It is our intention to use this same **Federal Register** form for publishing future Special Fraud Alerts developed by the OIG.

Because each of the previously-developed Special Fraud Alerts contained a similar brief narrative as to the nature of the OIG and a description of the Medicare and Medicaid anti-kickback statute, we will first summarize and set out this material in one section, as it is germane to all 5 subject issuances. Following that will be the main body and content of each of the Special Fraud Alerts. Lastly, we have provided the general information set forth in each of these Special Fraud Alerts addressing information on how to report information on suspected violations.

The OIG Special Fraud Alerts

A. General Background

The Office of Inspector General was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, abuse and waste in Health and Human Services programs and to promote efficiency and economy in departmental operations. The OIG carries out this mission through a nationwide program of audits, investigations and inspections. To help reduce fraud in the Medicare and Medicaid programs, the OIG is actively investigating violations of the Medicare and Medicaid anti-kickback statute, 42 U.S.C. Section 1320a-7b(b).

What Is the Medicare and Medicaid Anti-Kickback Law?

Among its provisions, the anti-kickback statute penalizes anyone who knowingly and willfully solicits, receives, offers or pays remuneration in cash or in kind to induce, or in return for:

A. Referring an individual to a person for the furnishing, or arranging for the furnishing, of any item or service payable under the Medicare or Medicaid program; or

B. Purchasing, leasing or ordering , or arranging for or recommending purchasing, leasing or ordering, any goods, facility, service or item payable under the Medicare or Medicaid program.

Violators are subject to criminal penalties, or exclusion from participation in the Medicare and Medicaid programs, or both. In 1987, section 14 of the Medicare and Medicaid Patient and Program Protection Act, PL 100-93, directed this Department to promulgate "safe harbor" regulations, in order to provide health care providers a mechanism to assure them that they will not be prosecuted under the anti-kickback statute for engaging in particular practices. The Department published 11 final "safe harbor" regulations on July 29, 1991 (42 CFR 1001.952, 56 FR 35952), and two more on November 5, 1992 (42 CFR 1001.952, 57 FR 52723). The scope of the anti-kickback statute is not expanded by the "safe harbor" regulations; these regulations give those in good faith compliance with a "safe harbor" the assurance that they will not be prosecuted under the anti-kickback statute.

B. Special Fraud Alert: Joint Venture Arrangements

(Issued August 1989)

The Office of Inspector General has become aware of a proliferation of arrangements between those in a position to refer business, such as physicians, and those providing items or services for which Medicare or Medicaid pays. Some examples of the items or services provided in these arrangements include clinical diagnostic laboratory services, durable medical equipment (DME), and other diagnostic services. Sometimes these deals are called "joint ventures." A joint venture may take a variety of forms: it may be a contractual arrangement between two or more parties to cooperate in providing services, or it may involve the creation of a new legal entity by the parties, such as a limited partnership or closely held corporation, to provide such services. Of course, there may be legitimate reasons to form a joint venture, such as raising necessary investment capital. However, the Office of Inspector General believes that some of these joint ventures may violate the Medicare and Medicaid anti-kickback statute.

Under these suspect joint ventures, physicians may become investors in a newly formed joint venture entity. The [*65374] investors refer their patients to this new entity, and are paid by the entity in the form of "profit distributions." These subject joint ventures may be intended not so much to raise investment capital legitimately to start a business, but to lock up a stream of referrals from the physician investors and to compensate them indirectly for these referrals. Because physician investors can benefit financially from their referrals, unnecessary procedures and tests may be ordered or performed, resulting in unnecessary program expenditures.

The questionable features of these suspect joint ventures may be reflected in three areas:

- (1) The manner in which investors are selected and retained;
- (2) The nature of the business structure of the joint venture; and
- (3) The financing and profit distributions.

Suspect Joint Ventures: What To Look For

To help you identify these suspect joint ventures, the following are examples of questionable features, which separately or taken together may result in a business arrangement that violates the anti-kickback statute. Please note that this is not intended as an exhaustive list, but rather gives examples of indicators of potentially unlawful activity.

Investor

.Investors are chosen because they are in a position to make referrals.

.Physicians who are expected to make a large number of referrals may be offered a greater investment opportunity in the joint venture than those anticipated to make fewer referrals.

.Physician investors may be actively encouraged to make referrals to the joint venture, and may be encouraged to divest their ownership interest if they fail to sustain an "acceptable" level of referrals.

.The joint venture tracks its sources of referrals, and distributes this information to the investors.

.Investors may be required to divest their ownership interest if they cease to practice in the service area, for example, if they move, become disabled or retire.

.Investment interests may be nontransferable.

Business Structure

.The structure of some joint ventures may be suspect. For example, one of the parties may be an ongoing entity already engaged in a particular line of business. That party may act as the reference laboratory or DME supplier for the joint venture. In some of these cases, the joint venture can be best characterized as a "shell."

.In the case of a shell laboratory joint venture, for example:

-It conducts very little testing on the premises, even though it is Medicare certified.

-The reference laboratory may do the vast bulk of the testing at its central processing laboratory, even though it also serves as the "manager" of the shell laboratory.

-Despite the location of the actual testing, the local "shell" laboratory bills Medicare directly for these tests.

.In the case of a shell DME joint venture, for example:

-It owns very little of the DME or other capital equipment; rather the ongoing entity owns them.

-The ongoing entity is responsible for all day-to-day operations of the joint venture, such as delivery of the DME and billing.

Financing and Profit Distribution

.The amount of capital invested by the physician may be disproportionately small and the returns on investment may be disproportionately large when compared to a typical investment in a new business enterprise.

.Physician investors may invest only a nominal amount, such as \$ 500 to \$ 1500.

.Physician investors may be permitted to "borrow" the amount of the "investment" from the entity, and pay it back through deductions from profit distributions, thus eliminating even the need to contribute cash to the partnership.

.Investors may be paid extraordinary returns on the investment in comparison with the risk involved, often well over 50 to 100 percent per year.