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

Form 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (date of earliest event reported): August 19, 2018

DAVITA INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

1-14106
(Commission
File Number)

No. 51-0354549
(IRS Employer
Identification No.)

2000 16th Street
Denver, CO 80202
(Address of principal executive offices including Zip Code)

(303) 405-2100
(Registrant's telephone number, including area code)

Not applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers;
Compensatory Arrangements of Certain Officers.**

Amendment to Employment Agreement

DaVita Inc. (the “Company”) entered into an amendment (the “Amendment”) to the employment agreement with Kent J. Thiry, the Company’s Chairman and Chief Executive Officer and the Chief Executive Officer of DaVita Medical Group, effective as of August 20, 2018. The Amendment removes the additional payment that Mr. Thiry would be eligible to receive for excise taxes incurred under Section 4999 of the Internal Revenue Code of 1986, as amended (the “Code”), and replaces such provision with a provision that automatically reduces any payments or benefits related to a change in control of the Company to the extent necessary to avoid the imposition of excise taxes under Section 4999 of the Code, provided that such reduction would result in a better after-tax result for Mr. Thiry. The foregoing summary description of the Amendment does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Amendment, which is filed as Exhibit 10.1 hereto and incorporated by reference herein.

Rule of 65 Policy

On August 19, 2018, the Company adopted a Rule of 65 Policy (the “Policy”) that establishes administrative guidelines for the post-retirement treatment of outstanding equity awards granted prior to the effective date of the Policy and which otherwise do not contemplate retirement vesting. Under the Policy, a qualifying retirement occurs upon an eligible employee’s termination of employment other than a termination by the Company for “cause” (as defined in the applicable underlying award agreement) on or after the date on which the sum of the eligible employee’s age and years of service equals or exceeds 65, with a minimum age of 55 and a minimum of five years of continuous service. Under the terms of the Policy, an eligible employee is generally defined as an “officer” subject to Section 16 of the Securities Exchange Act of 1934, as amended, as of the date of such employee’s termination of employment. In the event of a qualifying retirement, the Policy provides for outstanding equity awards to be treated as follows, subject to the employee's timely execution of a release of claims:

- *Stock-Settled Stock Appreciation Rights (“SSARs”).* SSARs will become exercisable in accordance with their normal vesting schedules as if the employee had remained employed with the Company and will remain outstanding until their normal expiration dates, in each case, as set forth in the underlying award agreements, subject to accelerated exercisability in the event of a change in control of the Company in which the SSARs are not assumed or continued.
- *Time-Based Restricted Stock Units (“RSUs”).* RSUs will become fully vested and will be settled within 60 days following an eligible employee’s qualifying retirement.
- *Performance-Based Restricted Stock Units (“PSUs”).* PSUs will vest as if the employee had remained employed with the Company, based on actual performance during the applicable performance period, with any vested PSUs to be settled no later than 60 days following the end of the applicable performance period, subject to accelerated settlement in the event of a change in control of the Company in which the PSUs are not assumed or continued.
- *Pro-rata Vesting.* If the qualifying retirement occurs prior to the first anniversary of the grant date of an eligible award, then the portion of the award eligible for vesting will be prorated based on the number of full months from the grant date to the employee’s qualifying retirement divided by 12.

The foregoing summary description of the Policy does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Policy, which is filed as Exhibit 10.2 hereto and incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
10.1	Amendment Number Two to Employment Agreement, effective as of August 20, 2018, by and between DaVita Inc. and Kent J. Thiry.
10.2	DaVita Inc. Rule of 65 Policy, adopted on August 19, 2018.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

DAVITA INC.

Date: August 23, 2018

/s/ Kathleen A. Waters

Kathleen A. Waters
Chief Legal Officer

INDEX TO EXHIBITS

**Exhibit
Number**

- [10.1](#) Amendment Number Two to Employment Agreement, effective as of August 20, 2018, by and between DaVita Inc. and Kent J. Thiry.
- [10.2](#) DaVita Inc. Rule of 65 Policy, adopted on August 19, 2018.

AMENDMENT NUMBER TWO TO EMPLOYMENT AGREEMENT

This Amendment Number Two to Employment Agreement (“Amendment”) is made and entered into as of August 20, 2018, by and between DaVita Inc. (the “Company”) and Kent J. Thiry (“Employee”).

WHEREAS, Employee and the Company are parties to that certain Employment Agreement, entered into as of July 25, 2008 and amended effective as of December 31, 2014 (collectively, the “Employment Agreement”); and

WHEREAS, the parties desire to amend the Employment Agreement.

NOW THEREFORE, in consideration of the mutual promises made herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereby agree as follows:

1. Section 16 is deleted in its entirety and replaced with the following:

16. Section 280G of the Code.

- (a) In the event it shall be determined that any payment or distribution by the Company or its affiliated companies to or for the benefit of the Executive (whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise) (collectively, the “Payments”) would be subject to the excise tax imposed by Section 4999 of the Code, or any interest or penalties are incurred by the Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the “Excise Tax”), then the Payments shall be either (i) reduced (but not below zero) so that the present value of the Payments will be one dollar (\$1.00) less than three times the Executive’s “base amount” (as defined in Section 280G(b)(3) of the Code) and so that no portion of the Payments received by the Executive shall be subject to the excise tax imposed by Section 4999 of the Code or (ii) paid in full, whichever produces the better net after-tax position to the Executive. The reduction of Payments, if any, shall be made by reducing first any Payments that are exempt from Section 409A of the Code and then reducing any Payments subject to Section 409A of the Code on a pro rata basis. If, notwithstanding clause (i), a reduced Payment is made or provided and, through error or otherwise, that Payment, when aggregated with other payments and benefits from the Company (or its affiliates) used in determining if a “parachute payment” exists, exceeds one dollar (\$1.00) less than three times the Executive’s base amount, then the Executive shall immediately repay such excess to the Company.
 - (b) All determinations required to be made under this Section 16, including whether and when the reductions contemplated by Section 16(a) are required and the assumptions to be utilized in arriving at such determination, shall be
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made by the Company's public accounting firm (the "Accounting Firm") which shall provide detailed supporting calculations both to the Company and the Executive. In the event that the Accounting Firm is serving as accountant or auditor for the individual, entity or group effecting the Change in Control, the Company shall appoint another nationally recognized public accounting firm to make the determinations required hereunder (which accounting firm shall then be referred to as the Accounting Firm hereunder). All fees and expenses of the Accounting Firm shall be borne solely by the Company. Any determination by the Accounting Firm shall be binding upon the Company and the Executive.

2. Unless expressly amended by this Amendment, all other provisions of the Employment Agreement (including all previous amendments) shall remain in legal force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first above stated, and to be effective upon such date.

DAVITA INC.

EMPLOYEE

By: /s/ Kathleen A. Waters
 Kathleen A. Waters

 /s/ Kent J. Thiry
 Kent J. Thiry

Approved as to Form

 /s/ Caitlin Moughon
 Caitlin Moughon

DAVITA INC.
RULE OF 65 POLICY
(Effective August 19, 2018)

This DaVita Inc. Rule of 65 Policy (this “Policy”) sets forth administrative guidelines to be used by the Compensation Committee of the Board of Directors (the “Compensation Committee”) of DaVita Inc., a Delaware corporation (“DaVita”), with respect to the treatment of outstanding equity awards held by Eligible Employees (as described herein) of DaVita and its subsidiaries (collectively, the “Company”) whose employment terminates pursuant to a Qualifying Retirement (as described herein).

1. **Eligible Awards.** Stock-settled stock appreciation rights (“SSARs”), time-based restricted stock units (“RSUs”) and performance-based restricted stock units (“PSUs”) that were granted under DaVita’s 2011 Incentive Awards Plan (the “2011 Plan”) on or prior to the effective date of this Policy and which do not otherwise contemplate “Rule of 65” treatment shall receive the treatment set forth in this Policy, subject to the conditions set forth in this Policy (collectively, the “Eligible Awards”).
 2. **Eligible Employees.** For purposes of administering this Policy, an Eligible Employee is an “officer” subject to Section 16 of the Securities Exchange Act of 1934, as amended, as of the date of such employee’s termination of employment. Notwithstanding the foregoing, this Policy shall not apply to any Business Employees (as defined in the Equity Purchase Agreement by and among DaVita, Collaborative Care Holdings, LLC and UnitedHealth Group Incorporated, dated as of December 5, 2017).
 3. **Qualifying Retirement.** For purposes of administering this Policy, a Qualifying Retirement means a termination of employment for any reason other than by the Company for “cause” (as defined in the applicable underlying award agreement) on or after the date on which the sum of the Eligible Employee’s age and years of service equals or exceeds 65, with a minimum age of 55 and a minimum of five years of continuous service.
 4. **Treatment of Equity Awards Upon a Qualifying Retirement.** If an Eligible Employee experiences a Qualifying Retirement and timely executes and does not revoke a release of claims, in a form customarily required of officers by the Company from time to time (the “Release”), the vesting and exercise period with respect to the Eligible Employee’s outstanding Eligible Awards shall be treated as follows, subject to the remaining terms of this Policy:
 - a. **SSARs.** SSARs shall (i) become exercisable in accordance with the normal vesting schedules set forth in the underlying award agreements, as if the Eligible Employee had not separated from service, and (ii) remain exercisable until the normal expiration dates set forth in the underlying award agreements.
 - b. **RSUs.** RSUs shall become fully vested and shall be settled within 60 days following such Qualifying Retirement.
 - c. **PSUs.** PSUs shall remain eligible to vest, as if the Eligible Employee had not separated from service, based on actual performance during the applicable performance period as determined in accordance with the underlying award agreements, with any vested PSUs
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to be settled within 60 days following the expiration of the applicable performance period (or, if earlier, within 60 days following the lapse of the substantial risk of forfeiture with respect to such PSUs).

- d. **Treatment of Awards Upon Certain Corporate Events.** Notwithstanding the preceding, this Section 4 shall not limit (i) the right of DaVita to modify, adjust or terminate awards in connection with changes in the common stock or assets of the Company, certain acquisitions or liquidations of the Company and other corporate events, as contemplated by Section 14.2 of the 2011 Plan or (ii) following a Qualifying Retirement, the accelerated vesting of SSARs and PSUs that are not effectively assumed, converted or replaced in connection with a “change of control” to the extent provided in the applicable award agreement and, in the case of the PSUs, to the extent permitted by Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”).
 - e. **Pro-rata Vesting.** Notwithstanding anything herein to the contrary, if the Eligible Employee experiences a Qualifying Retirement but the Qualifying Retirement occurs prior to the first anniversary of the grant date with respect to an Eligible Award, then the portion of such Eligible Award eligible for vesting shall be prorated based on the number of full months from the grant date to the Eligible Employee’s Qualifying Retirement divided by 12.
 - f. **Other Agreements.** To the extent that an Eligible Employee is subject to another agreement or arrangement that provides for less favorable benefits as compared to the benefits set forth in this Policy with respect to the subject matter hereof, it is the intent that such Eligible Employee shall receive the more favorable benefits set forth herein to the extent permitted by Section 409A of the Code.
5. **Administration of this Policy.** The Compensation Committee shall interpret this Policy and the application thereof, and all such interpretations shall be conclusive and binding on all parties.
 6. **No Right to Employment.** Neither the adoption of this Policy, nor any amendment hereof, nor the creation of any fund, trust or account, nor the payment of any benefits, shall be construed as giving any employee the right to be retained in the service of the Company, and all employees shall remain subject to discharge to the same extent as if this Policy had not been adopted.
 7. **Section 409A.** This Policy and the awards subject to this Policy are intended to be exempt from or comply with Section 409A of the Code, and shall be interpreted, construed and administered accordingly. Notwithstanding any other provision in this Policy or an award agreement, to the extent any payments under an award agreement constitute nonqualified deferred compensation (within the meaning of Section 409A of the Code), then (A) each such payment which is conditioned upon the Eligible Employee’s execution of the Release and which is to be paid or provided during a designated period that begins in one taxable year and ends in a second taxable year, shall be paid or provided in the later of the two taxable years, (B) if the Eligible Employee is a specified employee (within the meaning of Section 409A of the Code) as of the date of the Eligible Employee’s separation from service, each such payment that is payable upon the Eligible Employee’s separation from service and would have been paid prior to the six-month anniversary of the Eligible Employee’s separation from service, shall be delayed in accordance with the terms of the underlying award agreements to comply with Section 409A of the Code, and (C) if the Eligible Employee is subject to an employment or other agreement that specifies a time and form
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of payment that differs from the time and form of payment set forth in this Policy, then the impacted awards shall be settled in accordance with such employment or other agreement to the extent required to comply with Section 409A of the Code. For purposes of this Policy, the term "termination of employment" means a "separation from service" within the meaning of Section 409A of the Code.