

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

SCHEDULE TO

**Tender Offer Statement under Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934
(Amendment No. 4 – Final Amendment)**

DaVita Inc.

(Name of Subject Company (Issuer) and Filing Person (Offeror))

Common Stock, \$0.001 par value
(Title of Class of Securities)

23918K108
(CUSIP Number of Class of Securities)

**Kathleen A. Waters
Chief Legal Officer
DaVita Inc.
2000 16th Street
Denver, CO 80202
(720) 631-2100**

(Name, address and telephone number of person authorized to receive notices and communications on behalf of filing person)

Copy to:

**Sharon Flanagan, Esq.
Sidley Austin LLP
555 California Street
Suite 2000
San Francisco, CA 94104
(415) 772-1200**

CALCULATION OF FILING FEE

| Transaction valuation(1) | Amount of filing fee(2) |
|--------------------------|-------------------------|
| \$1,000,000,000 | \$129,800 |

- (1) The transaction value is estimated only for the purposes of calculating the filing fee. This amount is based on the offer to purchase for cash up to \$1,000,000,000 of shares of DaVita Inc. (the "Company") common stock, \$0.001 par value.
- (2) The amount of the filing fee, calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, equals \$129.80 per \$1,000,000 of the value of the transaction.

- Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$129,800
Form or Registration No.: Schedule TO

Filing Party: DaVita Inc.
Date Filed: August 17, 2020

- Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- third-party tender offer subject to Rule 14d-1.
 issuer tender offer subject to Rule 13e-4.
 going-private transaction subject to Rule 13e-3.
 amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer:

If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

- Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

This Amendment No. 4 – Final Amendment (this “*Amendment No. 4*”) amends and supplements the Tender Offer Statement on Schedule TO originally filed with the Securities and Exchange Commission (the “*Commission*”) on August 17, 2020, as amended and supplemented by Amendment No. 1 (“*Amendment No. 1*”), Amendment No. 2 (“*Amendment No. 2*”) and Amendment No. 3 (“*Amendment No. 3*”) to the Tender Offer Statement on Schedule TO filed with the Commission on August 27, 2020, September 8, 2020 and September 15, 2020, respectively (as it may be further amended or supplemented from time to time, the “*Schedule TO*”), related to the offer by DaVita Inc., a Delaware corporation (“*DVA*” or the “*Company*”), to purchase for cash up to \$1.0 billion of shares (the “*shares*”) of its common stock, \$0.001 par value per share (the “*common stock*”), pursuant to (i) auction tenders at prices specified by the tendering shareholders of not less than \$77.00 and not more than \$88.00 per share, or (ii) purchase price tenders, in either case, net to the seller in cash, less any applicable withholding taxes and without interest, upon the terms and subject to the conditions described in the Offer to Purchase, dated August 17, 2020 (as amended or supplemented, the “*Offer to Purchase*”), a copy of which was filed as Exhibit (a)(1)(A) to the Schedule TO, and in the related Letter of Transmittal (as amended or supplemented, the “*Letter of Transmittal*” and, together with the Offer to Purchase, the “*Offer*”), a copy of which was attached as Exhibit (a)(1)(B) to the Schedule TO.

Based on the final count by the Computershare Trust Company, N.A., the depositary for the Offer (the “*Depositary*”), a total of 7,981,679 shares of DVA’s common stock were validly tendered and not validly withdrawn at or below the price of \$88.00 per share. DVA accepted all of these shares for purchase at the purchase price of \$88.00 per share, for a total cost of \$702,387,752, excluding fees and expenses related to the Offer. The total of 7,981,679 shares accepted for payment represents approximately 6.5% of the Company’s total outstanding common stock as of September 16, 2020. The Depositary will promptly pay for the shares accepted for purchase pursuant to the Offer.

Payment for shares purchased will be made in cash, without interest, but subject to applicable withholding taxes. This Amendment No. 4 to the Schedule TO is intended to satisfy the reporting requirements of Rule 13e-4(c)(3) and Rule 13e-4(d) under the Exchange Act.

The information in the Offer to Purchase and the Letter of Transmittal is incorporated herein by reference in response to all of the items of Schedule TO, except that such information is hereby amended and supplemented to the extent specifically provided in this Amendment No. 4. You should read this Amendment No. 4 together with Amendment No. 1, Amendment No. 2, Amendment No. 3, the Schedule TO, the Offer to Purchase and the Letter of Transmittal.

The Offer to Purchase is hereby amended and supplemented as follows:

Item 11. Additional Information

Item 11 is hereby amended and supplemented by adding the following:

“On September 17, 2020, DVA issued a press release announcing the final results of the Offer, which expired at 12:00 midnight, New York City time, at the end of the day on September 14, 2020. A copy of the press release is filed as Exhibit (a)(5)(C) hereto and is incorporated by reference herein.”

Item 12. Exhibits

| <u>Exhibit Number</u> | <u>Description</u> |
|-----------------------|---|
| (a)(1)(A)✓ | Offer to Purchase, dated August 17, 2020. |
| (a)(1)(B)✓ | Letter of Transmittal. |
| (a)(1)(C)✓ | Notice of Guaranteed Delivery. |
| (a)(1)(D)✓ | Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees, dated August 17, 2020. |
| (a)(1)(E)✓ | Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees, dated August 17, 2020. |
| (a)(1)(F)✓ | Summary Advertisement, dated August 17, 2020. |
| (a)(1)(G)✓ | Email Communication to Employees of DaVita Inc. and its Subsidiaries |
| (a)(1)(H)✓ | Letter to SSAR Holders |
| (a)(2) | Not Applicable. |
| (a)(3) | Not applicable. |
| (a)(4) | Not applicable. |
| (a)(5)(A)✓ | Press release, dated August 17, 2020, announcing the commencement of the tender offer. |
| (a)(5)(B) ✓ | Press release, dated September 15, 2020, announcing the preliminary results of the tender offer. |
| (a)(5)(C) ✓ ✓ | Press release, dated September 17, 2020, announcing the final results of the tender offer. |
| (b)(1) | Credit Agreement, dated August 12, 2019, by and among DaVita Inc., certain subsidiary guarantors party thereto, the lenders party thereto, Credit Agricole Corporate and Investment Bank, JPMorgan Chase Bank, N.A. and MUFG Bank Ltd., as co-syndication agents, Bank of America, N.A., Barclays Bank PLC, Credit Suisse Loan Funding LLC, Goldman Sachs Bank USA, Morgan Stanley Senior Funding, Inc. and Suntrust Bank, as co-documentation agents, and Wells Fargo Bank, National Association, as administrative agent, collateral agent and swingline lender.(1) |
| (b)(2) | First Amendment, dated as of February 13, 2020, to that certain Credit Agreement, dated as of August 12, 2019, by and among DaVita Inc., certain subsidiary guarantors party thereto, the lenders party thereto, and Wells Fargo Bank, National Association, as administrative agent, collateral agent and swingline lender. (2) |
| (c) | None. |
| (d)(1)* | Employment Agreement, effective April 29, 2019, by and between Javier J. Rodriguez and DaVita Inc. (4) |
| (d)(2)* | Employment Agreement, effective February 21, 2017, by and between DaVita Inc. and Joel Ackerman. (5) |
| (d)(3)* | Employment Agreement, effective April 27, 2016, by and between DaVita HealthCare Partners Inc. and Kathleen A. Waters. (6) |
| (d)(4)* | Employment Agreement, effective April 29, 2015, by and between DaVita HealthCare Partners Inc. and Michael D. Staffieri. (6) |
| (d)(5)* | Executive Incentive Plan (as Amended and Restated effective January 1, 2009). (8) |

| <u>Exhibit Number</u> | <u>Description</u> |
|-----------------------|--|
| (d)(6)* | DaVita Inc. Severance Plan for Directors and Above. (3) |
| (d)(7)* | Amended and Restated DaVita Inc. 2011 Incentive Award Plan. (9) |
| (d)(8)* | Form of 2014 Long Term Incentive Program Stock Appreciation Rights Agreement under the DaVita Inc. 2011 Incentive Award Plan and Long-Term Incentive Program. (10) |
| (d)(9)* | Form of 2014 Long Term Incentive Program Restricted Stock Units Agreement under the DaVita Inc. 2011 Incentive Award Plan and Long-Term Incentive Program. (10) |
| (d)(10)* | Form of Stock Appreciation Rights Agreement-Board members (DaVita Inc. 2011 Incentive Award Plan). (11) |
| (d)(11)* | Form of Stock Appreciation Rights Agreement-Executives (DaVita Inc. 2011 Incentive Award Plan). (7) |
| (d)(12)* | Form of Restricted Stock Units Agreement-Executives (DaVita Inc. 2011 Incentive Award Plan) (11) |
| (d)(13)* | Form of Long-Term Incentive Program Award Agreement (For 162(m) designated teammates) (DaVita Inc. 2011 Incentive Award Plan). (7) |
| (d)(14)* | Form of Long-Term Incentive Program Award Agreement (DaVita Inc. 2011 Incentive Award Plan). (7) |
| (d)(15)* | Form of Stock Appreciation Rights Agreement-Board members (DaVita Inc. 2011 Incentive Award Plan). (12) |
| (d)(16)* | Form of Restricted Stock Units Agreement-Executives (DaVita Inc. 2011 Incentive Award Plan). (14) |
| (d)(17)* | Form of Performance Stock Units Agreement-Executives (DaVita Inc. 2011 Incentive Award Plan). (14) |
| (d)(18)* | Form of Stock Appreciation Rights Agreement-Executives (DaVita Inc. 2011 Incentive Award Plan). (14) |
| (d)(19)* | Form of Restricted Stock Units Agreement-Executives (DaVita Inc. 2011 Incentive Award Plan). (14) |
| (d)(20)* | Form of Performance Stock Units Agreement-Executives (DaVita Inc. 2011 Incentive Award Plan). (14) |
| (d)(21)* | Form of Stock Appreciation Rights Agreement-Executives (DaVita Inc. 2011 Incentive Award Plan). (14) |
| (d)(24)* | Non-Employee Director Compensation Policy. (15) |
| (d)(25)* | Form of 4.625% Senior Note due 2030 and related Guarantee. (16) |
| (d)(26)* | Indenture, dated as of June 9, 2020, by and among DaVita Inc., the subsidiary guarantors party thereto and The Bank of New York Mellon Trust Company, as Trustee. (16) |
| (d)(27)* | DaVita Inc. 2020 Incentive Award Plan (17) |

| <u>Exhibit Number</u> | <u>Description</u> |
|-----------------------|---|
| (d)(28)* | Amendment to Stock Appreciation Rights Agreements, effective June 11, 2020, by and between DaVita Inc. and William L. Roper, M.D. (18) |
| (d)(29) | Form of 3.750% Senior Note due 2031 and related Guarantee. (19) |
| (d)(30) | Indenture, dated as of August 11, 2020, by and among DaVita Inc., the subsidiary guarantors party thereto and The Bank of New York Mellon Trust Company, as Trustee. (19) |
| (d)(31)* ✓ | Form of Stock Appreciation Rights Agreement (DaVita Inc. 2020 Incentive Award Plan) |
| (d)(32)* ✓ | Form of Performance-Based Restricted Stock Unit Agreement (DaVita Inc. 2020 Incentive Award Plan) |
| (d)(33)* ✓ | Form of Restricted Stock Unit Agreement (DaVita Inc. 2020 Incentive Award Plan) |
| (g) | Not applicable. |
| (h) | Not applicable. |

* Management contract or executive compensation plan or arrangement

✓ Filed previously.

✓✓ Filed herewith.

- (1) Filed on August 14, 2019 as an exhibit to the Company's Current Report on Form 8-K.
- (2) Filed on February 21, 2020 as an exhibit to the Company's Annual Report on Form 10-K.
- (3) Filed on February 22, 2019 as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2018.
- (4) Filed on May 7, 2019 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2019.
- (5) Filed on February 24, 2017 as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2016.
- (6) Filed on May 2, 2017 as an exhibit to the Company's Quarterly Report on 10-Q for the quarter ended March 31, 2017.
- (7) Filed on March 1, 2013 as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2012.
- (8) Filed on June 18, 2009 as an exhibit to the Company's Current Report on Form 8-K.
- (9) Filed on April 28, 2014 as Appendix A to the Company's Definitive Proxy Statement on Schedule 14A.
- (10) Filed on November 6, 2014 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2014.
- (11) Filed on August 4, 2011 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2011.

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- (12)** Filed on August 1, 2018 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2018.
 - (14)** Filed on July 22, 2019 as an exhibit to the Company's Tender Offer Statement on Schedule TO-I.
 - (15)** Filed on May 4, 2020 as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2020.
 - (16)** Filed on June 9, 2020 as an exhibit to the Company's Current Report on Form 8-K.
 - (17)** Filed as Annex A to the Company's Definitive Proxy Statement on Schedule 14A, filed with the Commission on April 27, 2020
 - (18)** Filed on July 30, 2020 as an exhibit to the Company's Current Report on Form 8-K.
 - (19)** Filed on August 11, 2020 as an exhibit to the Company's Current Report on Form 8-K.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

DAVITA INC.

Date: September 17, 2020

By: /s/ Joel Ackerman

Name: Joel Ackerman

Title: Chief Financial Officer and Treasurer



DAVITA ANNOUNCES FINAL RESULTS OF SELF-TENDER OFFER

DENVER, CO, September 17, 2020 – DAVITA INC. (NYSE: DVA) (“DaVita”) a health care provider focused on transforming care delivery to improve quality of life for patients globally and one of the largest providers of kidney care services in the United States, announced today the final results of its modified “Dutch auction” tender offer for up to \$1.0 billion of its common stock at a price per share not less than \$77.00 and not more than \$88.00, which expired at 12:00 midnight, New York City time, at the end of the day on September 14, 2020.

Based on the final count by the depository for the tender offer, a total of 7,981,679 shares of DaVita’s common stock were validly tendered and not validly withdrawn at or below the price of \$88.00 per share. DaVita accepted all of these shares for purchase at a purchase price of \$88.00 per share, for a total cost of \$702,387,752, excluding fees and expenses related to the tender offer. The total of 7,981,679 shares accepted for payment represents approximately 6.5% of DaVita’s total outstanding common stock as of September 16, 2020. The depository for the tender offer will promptly pay for the shares accepted for purchase pursuant to the tender offer. Payment for shares purchased will be made in cash, without interest, but subject to applicable withholding taxes.

DaVita will finance the share purchases in the tender offer with cash on hand.

The dealer manager for the tender offer was BofA Securities, Inc. Georgeson LLC served as the information agent for the tender offer and Computershare served as the depository for the tender offer.

Investor Contact Information

Jim Gustafson
Vice President, Investor Relations
(310) 536-2585
jim.gustafson@davita.com

About DaVita Inc.

DaVita (NYSE: DVA) is a health care provider focused on transforming care delivery to improve quality of life for patients globally. The company is one of the largest providers of kidney care services in the United States and has been a leader in clinical quality and innovation for over 20 years. Through DaVita Kidney Care, the company treats patients with chronic kidney failure and end stage renal disease. DaVita is committed to bold, patient-centric care models, implementing the latest technologies and moving toward integrated care offerings for all.

All statements in this release, other than statements of historical fact, are forward-looking statements. Without limiting the foregoing, statements including the words “expect,” “intend,” “will,” “plan,” “anticipate,” “believe,” and similar expressions are intended to identify forward-looking statements. These forward-looking statements include but are not limited to statements related to our expectations regarding our purchase of shares in the tender offer and the source of financing for those purchases. Our actual results and other events could differ materially from any forward-looking statements due to numerous factors that involve substantial known and unknown risks and uncertainties. These risks and uncertainties include, among other things:

- our ability to complete the tender offer;
- our ability to achieve the benefits contemplated by the tender offer;

- *any adverse impact that the tender offer may have on us and the trading market for our common stock;*
- *the continuing impact of the dynamic and rapidly evolving COVID-19 pandemic, including, without limitation, on our patients, teammates, physician partners, suppliers, business, operations, reputation, financial condition and results of operations, the government's response to the COVID-19 pandemic, and the consequences of an extended economic downturn resulting from the impacts of COVID-19, including a potential negative impact on our commercial mix, any of which may also have the effect of heightening many of the other risks and uncertainties discussed below;*
- *the concentration of profits generated by higher-paying commercial payor plans for which there is continued downward pressure on average realized payment rates, and a reduction in the number or percentage of our patients under such plans, including, without limitation, as a result of restrictions or prohibitions on the use and/or availability of charitable premium assistance, which may result in the loss of revenues or patients, or our making incorrect assumptions about how our patients will respond to any change in financial assistance from charitable organizations;*
- *noncompliance by us or our business associates with any privacy or security laws or any security breach by us or a third party involving the misappropriation, loss or other unauthorized use or disclosure of confidential information;*
- *the extent to which the ongoing implementation of healthcare reform, or changes in or new legislation, regulations or guidance, enforcement thereof or related litigation, result in a reduction in coverage or reimbursement rates for our services, a reduction in the number of patients enrolled in higher-paying commercial plans or that are enrolled in or select Medicare Advantage plans, or other material impacts to our business; or our making incorrect assumptions about how our patients will respond to any such developments;*
- *a reduction in government payment rates under the Medicare program or other government-based programs and the impact of the Medicare Advantage benchmark structure;*
- *risks arising from potential and proposed federal and/or state legislation, regulation, ballot, executive action or other initiatives, including such initiatives related to healthcare and/or labor matters, such as AB290 and Proposition 23 in California;*
- *the impact of the upcoming election cycle, the political environment and related developments on the current healthcare marketplace and on our business, including with respect to the future of the Affordable Care Act, the exchanges and many other core aspects of the current healthcare marketplace;*
- *our ability to successfully implement our strategy with respect to home-based dialysis, including maintaining our existing business and further developing our capabilities in a complex and highly regulated environment;*
- *changes in pharmaceutical practice patterns, reimbursement and payment policies and processes, or pharmaceutical pricing, including with respect to calcimimetics;*
- *legal and compliance risks, such as our continued compliance with complex government regulations;*
- *continued increased competition from dialysis providers and others, and other potential marketplace changes;*

- *our ability to maintain contracts with physician medical directors, changing affiliation models for physicians, and the emergence of new models of care introduced by the government or private sector that may erode our patient base and reimbursement rates, such as accountable care organizations, independent practice associations and integrated delivery systems;*
- *our ability to complete acquisitions, mergers or dispositions that we might announce or be considering, on terms favorable to us or at all, or to integrate and successfully operate any business we may acquire or have acquired, or to successfully expand our operations and services in markets outside the United States, or to businesses outside of dialysis;*
- *uncertainties related to potential payments and/or adjustments under certain provisions of the equity purchase agreement for the sale of our DaVita Medical Group (DMG) business, such as post-closing adjustments and indemnification obligations;*
- *the variability of our cash flows, including without limitation any extended billing or collections cycles; the risk that we may not be able to generate or access sufficient cash in the future to service our indebtedness or to fund our other liquidity needs; and the risk that we may not be able to refinance our indebtedness as it becomes due, on terms favorable to us or at all;*
- *factors that may impact our ability to repurchase stock under our stock repurchase program (including the tender offer described above) and the timing of any such stock repurchases, as well as our use of a considerable amount of available funds to repurchase stock;*
- *risks arising from the use of accounting estimates, judgments and interpretations in our financial statements;*
- *impairment of our goodwill, investments or other assets; and*
- *uncertainties associated with the other risks described in Part I, Item 1A “Risk Factors” and Part II, Item 7 “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in our Annual Report on Form 10-K for the year ended December 31, 2019, Part I, Item 2 “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and Part II, Item 1A “Risk Factors” in each of our Quarterly Reports on Form 10-Q for the quarters ended March 31 and June 30, 2020 and the other risks and uncertainties discussed in any subsequent reports that we file or furnish with the Securities and Exchange Commission from time to time.*

The forward-looking statements should be considered in light of these risks and uncertainties. All forward-looking statements in this release are based solely on information available to us on the date of this release. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of changed circumstances, new information, future events or otherwise, except as may otherwise be required by law.