

**ANALYSIS OF AGREEMENT CONTAINING
CONSENT ORDERS TO AID PUBLIC COMMENT**
In the Matter of DaVita, Inc. and Total Renal Care, Inc.
File No. 2110013

four hours. According to the United States Renal Data System, there were over 555,000 ESRD dialysis patients in the United States in 2018.

The Commission's Complaint also alleges that the relevant geographic market in which to assess the competitive effects of the Proposed Acquisition is the greater Provo, Utah area. Specifically, the market is centered on Provo, Utah and extends north to Orem, Utah and south to Payson, Utah. The market is defined by the distance ESRD patients will travel to receive reoccurring treatments. Because ESRD patients are often suffering from multiple health problems and may require assistance traveling to and from the dialysis clinic, patients cannot travel long distances to receive treatment. Accordingly, most patients are unwilling or unable to travel more than 30 minutes or 30 miles for treatment, although travel times and distances may vary by location.

Dialysis providers seek to attract patients by competing on quality of services. To some extent, the providers also compete on price. Although Medicare eventually will cover all ESRD patients' dialysis costs, there is a 30-month transition period where commercially insured patients' costs are covered by their insurers, which compensate the providers at competitively negotiated rates.

In the greater Provo market, there are only three providers: The University (which has three clinics), DaVita (four clinics) and Fresenius Medical Care (one clinic). Therefore, the University and DaVita directly and substantially compete in the relevant market as the two largest providers, and DaVita would own seven of the eight clinics in the region. The Proposed Acquisition would eliminate competition between DaVita and The University in the relevant market for outpatient dialysis services, increasing the ability to unilaterally raise prices to third-party payers and decreasing the incentive to improve the quality of services provided to patients.

III. Entry

Entry into the outpatient dialysis services market in the greater Provo, Utah area would not be likely, timely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Proposed Acquisition. The most significant barrier to entry is contracting a nephrologist with an established referral base to serve as the clinic's medical director. The Department of Health and Human Services requires that each dialysis clinic must have a nephrologist as a medical director. Locating a nephrologist is difficult because clinics typically enter into exclusive contractual arrangements with a nephrologist who is paid a medical director fee. Finding patients may also b

for real property, all medical director contracts, and a license for each clinics' policies and procedures.

Section IV