

KINDRED HEALTHCARE, INC  
Form 8-K  
December 19, 2008

**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): December 18, 2008

**KINDRED HEALTHCARE, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**001-14057**  
(Commission File Number)  
  
**680 South Fourth Street**

**61-1323993**  
(IRS Employer  
Identification No.)

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**Louisville, Kentucky**

**(Address of principal executive offices)**

**40202-2412**

**(Zip Code)**

**Registrant's telephone number, including area code: (502) 596-7300**

**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 to 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))

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

(e) On December 18, 2008, a subsidiary of Kindred Healthcare, Inc. (the Company ) entered into revised employment agreements (the Updated Employment Agreements ) and revised change-in-control severance agreements (the Updated Change-in-Control Agreements ) (collectively, the Updated Agreements ) to replace the previously disclosed employment agreements and change-in-control severance agreements (collectively, the Prior Agreements ) for the following officers of the Company (collectively, the Named Executive Officers ):

Edward L. Kuntz, Executive Chairman of the Board of Directors

Paul J. Diaz, President and Chief Executive Officer

Richard A. Lechleiter, Executive Vice President and Chief Financial Officer

Frank J. Battafarano, Chief Operating Officer

Lane M. Bowen, Executive Vice President and President, Health Services Division

The Updated Employment Agreements were revised primarily to comply with Section 409A of the Internal Revenue Code of 1986, as amended (the Code ), and related regulations, Section 83 of the Code and recent interpretations under Section 162(m) of the Code. Except for the changes adopted in order to comply with Section 409A, Section 83 and Section 162(m) of the Code, the Updated Agreements did not change the material financial and other terms contained in the Prior Agreements.

The Updated Employment Agreements adopt technical changes under Section 409A of the Code, including, among other things, specification of timing and form of payment for certain payments, benefits and releases, a six-month delay in payment (where required) for specified employees, and a Section 409A savings clause.

The Updated Employment Agreements other than for Mr. Kuntz also include changes related to Section 83 of the Code. These Updated Employment Agreements provide for the immediate vesting of restricted shares in the event of an involuntary termination that would otherwise continue to vest under the Prior Agreements over a designated post-termination period. The revised vesting provision does not expand the number of shares subject to post-termination vesting under the Prior Agreements but merely permits the vesting in order to facilitate the payment of tax obligations that may accelerate under Section 83 of the Code.

The Updated Employment Agreements other than for Mr. Kuntz also include changes related to compliance with recent interpretations under Section 162(m) of the Code. These Updated Employment Agreements clarify that performance-based bonuses payable upon an involuntary termination under the Prior Agreements are calculated based upon the performance objectives achieved by the Company.

The Updated Change-in-Control Agreements adopt technical changes under Section 409A of the Code, including specification of timing and form of payment for certain payments, benefits and releases, a six-month delay in payment (where required) for specified employees, and a Section 409A savings clause. These Updated Change-in-Control Agreements also clarify the treatment of certain severance payments to ensure compliance with recent guidance under Section 162(m) of the Code.

The Executive Compensation Committee of the Company's Board of Directors approved the Updated Agreements. The Updated Agreements for each of the Named Executive Officers are attached hereto as Exhibits 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, 10.8, 10.9, and 10.10.

**Item 9.01.**

(d) Exhibits

Exhibit 10.1 Employment Agreement dated as of December 18, 2008 by and between Kindred Healthcare Operating, Inc. and Edward L. Kuntz.

Exhibit 10.2 Change-in-Control Severance Agreement dated as of December 18, 2008 by and between Kindred Healthcare Operating, Inc. and Edward L. Kuntz.

Exhibit 10.3 Employment Agreement dated as of December 18, 2008 by and between Kindred Healthcare Operating, Inc. and Paul J. Diaz.

Exhibit 10.4 Change-in-Control Severance Agreement dated as of December 18, 2008 by and between Kindred Healthcare Operating, Inc. and Paul J. Diaz.

Exhibit 10.5 Employment Agreement dated as of December 18, 2008 by and between Kindred Healthcare Operating, Inc. and Richard A. Lechleiter.

Exhibit 10.6 Change-in-Control Severance Agreement dated as of December 18, 2008 by and between Kindred Healthcare Operating, Inc. and Richard A. Lechleiter.

Exhibit 10.7 Employment Agreement dated as of December 18, 2008 by and between Kindred Healthcare Operating, Inc. and Frank J. Battafarano.

Exhibit 10.8 Change-in-Control Severance Agreement dated as of December 18, 2008 by and between Kindred Healthcare Operating, Inc. and Frank J. Battafarano.

Exhibit 10.9 Employment Agreement dated as of December 18, 2008 by and between Kindred Healthcare Operating, Inc. and Lane M. Bowen.

Exhibit 10.10 Change-in-Control Severance Agreement dated as of December 18, 2008 by and between Kindred Healthcare Operating, Inc. and Lane M. Bowen.

**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 hereto duly authorized.

Date: December 19, 2008

By: /s/ Richard A. Lechleiter  
Richard A. Lechleiter  
Executive Vice President and  
Chief Financial Officer