

REHABCARE GROUP INC  
Form 425  
February 08, 2011

**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): February 7, 2011

**KINDRED HEALTHCARE, INC.**

(Exact name of registrant as specified in its charter)

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

**001-14057**  
(Commission  
File Number)

**61-1323993**  
(I.R.S. Employer  
Identification No.)

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680 South Fourth Street

Louisville, KY 40202-2412

(Address of principal executive offices) (Zip Code)

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

(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))

**Item 1.01. Entry into a Material Definitive Agreement.**

On February 7, 2011, Kindred Healthcare, Inc., a Delaware corporation ( Kindred ), and Kindred Healthcare Development, Inc., a Delaware corporation and a wholly owned subsidiary of Kindred ( Merger Subsidiary ), entered into an Agreement and Plan of Merger (the Merger Agreement ) with RehabCare Group, Inc., a Delaware corporation ( RehabCare ), providing for the acquisition of RehabCare by Kindred. Subject to the terms and conditions of the Merger Agreement, which has been unanimously approved by the boards of directors of the respective parties, RehabCare will be merged with and into Kindred (the Merger ), with Kindred surviving the Merger, provided that either Kindred or RehabCare may prior to the effective time of the Merger elect to change the method of effecting the Merger by providing for a merger of Merger Subsidiary with and into RehabCare, with RehabCare surviving as a wholly owned subsidiary of Kindred.

At the effective time of the Merger, each share of RehabCare common stock outstanding immediately prior to the effective time (other than shares owned by (i) Kindred or RehabCare or their respective wholly-owned subsidiaries (which will be cancelled) or (ii) stockholders who have properly exercised and perfected appraisal rights under Delaware law) will be converted into the right to receive 0.471 of a share of Kindred common stock and \$26.00 in cash, without interest (the Merger Consideration ). No fractional shares of Kindred common stock will be issued in the Merger, and RehabCare s stockholders will receive cash in lieu of fractional shares, if any, of Kindred common stock. Each share of Kindred common stock outstanding immediately prior to the effective time will remain outstanding and will not be affected by the Merger. Upon completion of the transaction, RehabCare stockholders will own approximately 22% of Kindred s outstanding common stock.

All currently issued and outstanding options to purchase RehabCare common stock will vest and be converted into the right to receive an amount of cash equal to \$26.00 in cash plus the value of the stock portion of the Merger Consideration for the five trading day period prior to closing, less the exercise price, subject to withholding taxes. All currently issued and outstanding restricted shares of RehabCare common stock that are subject solely to time-based vesting conditions will vest and be converted into the right to receive the Merger Consideration. With respect to currently issued and outstanding restricted shares of RehabCare common stock that are subject to performance-based vesting conditions, the number of such restricted shares which would vest upon the attainment of target performance, as set out in the applicable award agreement, shall vest and be converted into the right to receive the Merger Consideration. RehabCare s employee stock purchase plan will be terminated, and the accumulated contributions of participants, to the extent not used to purchase shares of RehabCare Common Stock immediately prior to the effective time of the Merger shall be refunded to such participant.

The consummation of the Merger is subject to certain conditions, including the adoption by the RehabCare and Kindred stockholders of the Merger Agreement; clearance under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended; receipt of certain other licensure and regulatory approvals; receipt of the proceeds of the financing described below; and other customary closing conditions.

The Merger Agreement contains customary representations and warranties for a transaction of this type. The Merger Agreement also contains customary covenants, including covenants providing for each of the parties (i) to use reasonable best efforts to cause the transactions to be consummated and (ii) to call and hold a stockholders meeting and recommend adoption of the Merger Agreement, subject to applicable fiduciary duties. The Merger Agreement also requires RehabCare to conduct its operations in all material respects according to the ordinary course of business consistent with past practice during the period between the execution of the Merger Agreement and the closing of the Merger. RehabCare is subject to customary no-shop restrictions on its ability to solicit alternative acquisition proposals from third parties and to provide information to and engage in discussions with third parties regarding alternative acquisition proposals, subject to a fiduciary duty exception in certain circumstances prior to adoption of the Merger Agreement by RehabCare s stockholders.

The Merger Agreement also contains certain termination rights and provides that (i) upon termination of the Merger Agreement under specified circumstances, including, among others, a change in the recommendation of the board of directors of RehabCare or termination of the Merger Agreement to enter into a written definitive agreement for a superior proposal, RehabCare will be required to pay Kindred a termination fee of \$26 million and (ii) upon the termination of the Merger Agreement under specified circumstances, including, among others, a change in the recommendation of the board of directors of Kindred or Kindred's failure to receive the proceeds of the financing discussed below, after all of the other conditions to closing have been met, Kindred will be required to pay RehabCare a cash termination fee of \$62 million.

Kindred has obtained a financing commitment (the Commitment Letter) from JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC, Morgan Stanley Senior Funding, Inc. and Citigroup Global Markets Inc. in connection with the pending transaction. These funds, in addition to existing cash balances, will be sufficient to finance the cash consideration to RehabCare stockholders and to refinance certain existing Kindred and RehabCare debt. Subject to certain conditions, Kindred expects to have in place approximately \$1.9 billion of long-term financing, of which approximately \$1.6 billion is expected to be outstanding at the time of consummation of the pending transaction.

The foregoing summaries of the Merger Agreement and the Commitment Letter, and the transactions contemplated thereby do not purport to be complete and are subject to, and qualified in their entirety by, the full text of such agreements, which are filed herewith as Exhibits 2.1 and 10.1, respectively, and incorporated herein by reference.

Each of the Merger Agreement and the Commitment Letter has been included solely to provide investors and security holders with information regarding its terms. Neither is intended to be a source of financial, business or operational information about Kindred, RehabCare or their respective subsidiaries or affiliates. The representations, warranties and covenants contained in the Merger Agreement and the Commitment Letter, respectively, are made only for purposes of the agreement and are made as of specific dates; are solely for the benefit of the parties; may be subject to qualifications and limitations agreed upon by the parties in connection with negotiating the terms of the Merger Agreement and the Commitment Letter, respectively, including being qualified by confidential disclosures made for the purpose of allocating contractual risk between the parties instead of establishing matters as facts; and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors or security holders. Investors and security holders should not rely on the representations, warranties and covenants or any description thereof as characterizations of the actual state of facts or condition of Kindred, RehabCare or their respective subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the Merger Agreement or the Commitment Letter, which subsequent information may or may not be fully reflected in public disclosures.

**Item 8.01. Other Events.**

Kindred issued a joint press release with RehabCare on February 8, 2011 regarding the matter described in Item 1.01 of this Current Report on Form 8-K. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

### Forward Looking Statements

Information set forth herein contains forward-looking statements, which involve a number of risks and uncertainties. Kindred and RehabCare caution readers that any forward-looking information is not a guarantee of future performance and that actual results could differ materially from those contained in the forward-looking information. Such forward-looking statements include, but are not limited to, statements about the benefits of the business combination transaction involving Kindred and RehabCare, including future financial and operating results, the combined company's plans, objectives, expectations and intentions and other statements that are not historical facts.

The following factors, among others, could cause actual results to differ from those set forth in the forward-looking statements: (a) the receipt of all required licensure and regulatory approvals and the satisfaction of the closing conditions to the acquisition of RehabCare by Kindred, including approval of the pending transaction by the stockholders of the respective companies, and Kindred's ability to complete the required financing as contemplated by the financing commitment; (b) Kindred's ability to integrate the operations of the acquired hospitals and rehabilitation services operations and realize the anticipated revenues, economies of scale, cost synergies and productivity gains in connection with the RehabCare acquisition and any other acquisitions that may be undertaken during 2011, as and when planned, including the potential for unanticipated issues, expenses and liabilities associated with those acquisitions and the risk that RehabCare fails to meet its expected financial and operating targets; (c) the potential for diversion of management time and resources in seeking to complete the RehabCare acquisition and integrate its operations; (d) the potential failure to retain key employees of RehabCare; (e) the impact of Kindred's significantly increased levels of indebtedness as a result of the RehabCare acquisition on Kindred's funding costs, operating flexibility and ability to fund ongoing operations with additional borrowings, particularly in light of ongoing volatility in the credit and capital markets; (f) the potential for dilution to Kindred stockholders as a result of the RehabCare acquisition; and (g) the ability of Kindred to operate pursuant to the terms of its debt obligations, including Kindred's obligations under financings undertaken to complete the RehabCare acquisition, and the ability of Kindred to operate pursuant to its master lease agreements with Ventas, Inc. (NYSE:VTR). Additional factors that may affect future results are contained in Kindred's and RehabCare's filings with the Securities and Exchange Commission (the "SEC"), which are available at the SEC's web site at [www.sec.gov](http://www.sec.gov). Many of these factors are beyond the control of Kindred or RehabCare. Kindred disclaims any obligation to update and revise statements contained in these materials based on new information or otherwise.

**Important Additional Information and Where to Find It**

In connection with the proposed transaction with RehabCare, Kindred will file with the SEC a Registration Statement on Form S-4 that will include a joint proxy statement of Kindred and RehabCare that also constitutes a prospectus of Kindred. Kindred and RehabCare will mail the definitive proxy statement/prospectus to their respective stockholders. **WE URGE INVESTORS AND SECURITY HOLDERS TO READ THE JOINT PROXY STATEMENT/PROSPECTUS REGARDING THE PROPOSED TRANSACTION WHEN IT BECOMES AVAILABLE BECAUSE IT WILL CONTAIN IMPORTANT INFORMATION.** You may obtain a free copy of the joint proxy statement/prospectus (when available) and other related documents filed by Kindred and RehabCare with the SEC at the SEC's website at [www.sec.gov](http://www.sec.gov). The joint proxy statement/prospectus (when available) and the other documents filed by Kindred and RehabCare with the SEC may also be obtained for free by accessing Kindred's website at [www.kindredhealthcare.com](http://www.kindredhealthcare.com) and clicking on the Investors link and then clicking on the link for SEC Filings or by accessing RehabCare's website at [www.RehabCare.com](http://www.RehabCare.com) and clicking on the Investor Information link and then clicking on the link for SEC Filings.

**Participants in Solicitation**

Kindred, RehabCare and their respective directors, executive officers and certain other members of management and employees may be soliciting proxies from their respective stockholders in favor of the proposed transaction. Information regarding the persons who may, under the rules of the SEC, be considered participants in the solicitation of stockholders in connection with the proposed transaction will be set forth in the joint proxy statement/prospectus when it is filed with the SEC. You can find information about Kindred's executive officers and directors in Kindred's definitive proxy statement filed with the SEC on April 1, 2010. You can find information about RehabCare's executive officers and directors in its definitive proxy statement filed with the SEC on March 23, 2010. You can obtain free copies of these documents from Kindred or RehabCare, respectively, using the contact information above.

**Item 9.01. Financial Statements and Exhibits.**

(d) The following exhibit is filed as a part of this report.

| <b>Exhibit No.</b> | <b>Description</b>   |
|--------------------|--|
| 2.1                | Agreement and Plan of Merger, dated as of February 7, 2011, among Kindred Healthcare, Inc., Kindred Healthcare Development, Inc. and RehabCare Group, Inc.   |
| 10.1               | Commitment Letter, dated as of February 7, 2011, by and among JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC, Morgan Stanley Senior Funding, Inc., Citigroup Global Markets Inc. and Kindred Healthcare, Inc. |
| 99.1               | Joint Press Release issued by Kindred Healthcare, Inc. and RehabCare Group, Inc., dated February 8, 2011.  |



**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.

Kindred Healthcare, Inc.

February 8, 2011

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

**Exhibit Index**

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