

GENTIVA HEALTH SERVICES INC
Form SC TO-T/A
July 03, 2014

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

SCHEDULE TO
(RULE 14d-100)
Tender Offer Statement Pursuant to Section 14(d)(1) or 13(e)(1) of
the Securities Exchange Act of 1934
(Amendment No. 5)

Gentiva Health Services, Inc.
(Name of Subject Company)

Kindred Healthcare Development 2, Inc.
(Offeror)

Kindred Healthcare, Inc.
(Parent of Offeror)
(Names of Filing Persons)

COMMON STOCK, \$0.10 PAR VALUE

(Title of Class of Securities)

37247A102

(CUSIP Number of Class of Securities)

Joseph L. Landenwich, Esq.

Co-General Counsel and Corporate Secretary

680 South Fourth Street

Louisville, Kentucky 40202

502-596-7300

**(Name, Address and Telephone Number of Person Authorized to Receive Notices
and Communications on Behalf of Filing Persons)**

Copies to:

Ethan A. Klingsberg, Esq.

Benet J. O Reilly, Esq.

Cleary Gottlieb Steen & Hamilton LLP

One Liberty Plaza

New York, New York 10006

212-225-2000

CALCULATION OF FILING FEE

Transaction Valuation*

Amount of Filing Fee**

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\$573,388,275.50

\$73,852.41

- * Estimated for purposes of calculating the filing fee only. This amount assumes the purchase of: (1) 36,841,371 shares of common stock of Gentiva Health Services, Inc. (Gentiva) issued and outstanding as of May 7, 2014 as set forth in Gentiva s Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission (SEC) on May 12, 2014 (the Form 10-Q), less 100 shares of Gentiva common stock owned by Kindred Healthcare, Inc. (Kindred) and its affiliates and (2) 2,702,748 shares of common stock of Gentiva subject to issuance pursuant to exercisable options, per the Form 10-Q.
- ** The amount of the filing fee is calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended, by multiplying the transaction valuation by 0.0001288.

- x Check 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:	\$73,852.41	Filing Party:	Kindred Healthcare, Inc. and Kindred Healthcare Development 2, Inc.
Form or Registration No.:	Schedule TO	Date Filed:	June 17, 2014

- .. 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:

- x 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)
- .. Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

This Amendment No. 5 to the Tender Offer Statement on Schedule TO amends and supplements the Tender Offer Statement on Schedule TO filed with the Securities and Exchange Commission on June 17, 2014 (together with any amendments and supplements thereto, the Schedule TO) by Kindred Healthcare, Inc. (Kindred), a Delaware corporation, and Kindred Healthcare Development 2, Inc. (the Purchaser), a Delaware corporation and a wholly-owned subsidiary of Kindred. The Schedule TO relates to the offer by the Purchaser to purchase all outstanding shares of common stock, par value \$0.10 per share (together with the associated preferred share purchase rights, the Shares), of Gentiva Health Services, Inc., a Delaware corporation (Gentiva), at \$14.50 per Share, net to the seller in cash, without interest and less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated June 17, 2014, (as subsequently amended and supplemented from time to time, the Offer to Purchase), and in the related Letter of Transmittal (as subsequently amended and restated from time to time) (which, together with any amendments or supplements thereto, collectively constitute the Offer).

All capitalized terms used in this Amendment No. 5 and not otherwise defined have the respective meanings ascribed to them in the Schedule TO.

Items 1 through 9; Item 11.

The Offer to Purchase is hereby amended as follows:

1. The second paragraph under the caption *Antitrust* in Section 15 Certain Legal Matters; Regulatory Approvals is hereby amended and restated in its entirety to read as follows:

Pursuant to the requirements of the HSR Act, on June 18, 2014, Kindred filed a Notification and Report Form with respect to the Offer with the Antitrust Division and the FTC. Gentiva submitted a responsive Notification and Report Form with the Antitrust Division and the FTC on June 24, 2014. Based on consultation with the staff of the FTC, Kindred has notified the FTC that it will voluntarily withdraw the Notification and Report Form effective as of July 3, 2014, and that it will re-file on July 8, 2014. Kindred is taking this procedural step in order to ensure that the FTC has adequate time to review the Offer and Proposed Merger. As a result, the waiting period applicable to the purchase of Shares pursuant to the Offer will expire at 11:59 p.m., New York City time, on July 23, 2014, unless earlier terminated by the FTC and the Antitrust Division or Kindred receives a request for additional information or documentary material (a Second Request) prior to that time. If a Second Request is made, the waiting period will expire at 11:59 p.m., New York City time, on the tenth calendar day after Kindred has substantially complied with such request. The waiting period will not be affected either by the failure of Gentiva (as opposed to Kindred) to comply with any request for additional information or materials issued by the FTC or the Antitrust Division.

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.

Dated: July 3, 2014

KINDRED HEALTHCARE, INC.

By: /s/ Joseph L. Landenwich
Name: Joseph L. Landenwich
Title: Co-General Counsel and
Corporate

Secretary

**KINDRED HEALTHCARE
DEVELOPMENT 2, INC.**

By: /s/ Joseph L. Landenwich
Name: Joseph L. Landenwich
Title: Co-General Counsel and
Corporate

Secretary

EXHIBIT INDEX

Index

No.

- (a)(1)(A) Offer to Purchase dated June 17, 2014.
- (a)(1)(B) Form of Letter of Transmittal.
- (a)(1)(C) Form of Notice of Guaranteed Delivery.
- (a)(1)(D) Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
- (a)(1)(E) Form of Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
- (a)(1)(F) Form of summary advertisement dated June 17, 2014.
- (a)(5)(A) Text of press release issued by Kindred, dated June 16, 2014.(1)
- (a)(5)(B) Text of press release issued by Kindred, dated June 25, 2014.(2)
- (a)(5)(C) Text of press release issued by Kindred, dated June 27, 2014.
- (a)(5)(D) Text of press release issued by Kindred, dated July 1, 2014.
- (b) Not applicable.
- (d) Not applicable.
- (g) Not applicable.
- (h) Not applicable.

Previously filed

- (1) Incorporated by reference to the Schedule TO-C filed by Kindred Healthcare, Inc. on June 16, 2014
- (2) Incorporated by reference to the Current Report on Form 8-K filed by Kindred on June 25, 2014