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▲ ALSO ADMITTED IN NEW YORK

January 25, 2018

Ms. Donna Jerry, Senior Health Policy Analyst
State of Vermont
Green Mountain Care Board
89 Main Street
Montpelier, VT 05602-3101

Via E-mail & Fedex

RE: Kindred Healthcare, Inc. – Request for “No Jurisdiction” Determination

Dear Ms. Jerry:

We are local counsel for Kindred Healthcare, Inc.

Please find enclosed herewith a letter from Jeffrey P. Stodghill, Vice President and Corporate Counsel for Kindred Healthcare, Inc. (“Kindred”) requesting a “No Jurisdiction” Determination.

As counsel for Kindred has mentioned to you, Kindred is in the process of selling their interest in two (2) Licensed Skilled Nursing Homes (“SNFs”) in Vermont:

1. Kindred Transitional Care and Rehabilitation – Birchwood Terrace, located at 43 Starr Farm Road, Burlington, Vermont 05408 (“Birchwood Terrace”); and
2. Starr Farm Nursing Center (“Starr Farm”) located at 98 Starr Farm Road, Burlington, Vermont in which it has a fifty percent (50%) present interest.

A CON Request has been filed with the Green Mountain Care Board (“GMCB”) with respect to Birchwood Terrace. Kindred does not want to hold up or delay that CON process in connection with the sale of its interest in the two (2) facilities. However, at the same time, Kindred is going through a corporate restructuring whereby it is going from a public corporation to a private corporation. The SNF ownership interests will continue to be held by Kindred throughout the corporate reorganization but the structure will change as described in the letter attached.

Ms. Donna Jerry, Senior Health Policy Analyst
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Kindred is hopeful that the sale of the SNFs will go through before the corporate restructuring takes place. If it does not, then it needs to be sure that the revised corporate structure is in compliance with Vermont Law. Thus, the request for the "No Jurisdiction" letter.

If you have any questions, please call me.

Sincerely,



Thomas M. Dowling
TMD/ljm

Enclosure

Cc: Rahul Narula, Esq.
Jeffrey P. Stodghill, V.P. and General Counsel
Shireen T. Hart, Esq.



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January 24, 2018

VIA ELECTRONIC MAIL (donna.jerry@vermont.gov) AND OVERNIGHT MAIL

Ms. Donna Jerry
Senior Health Policy Analyst
Vermont Green Mountain Care Board
89 Main Street
Montpelier, VT 05620

Dear Ms. Jerry:

RE: Kindred Healthcare, Inc. - Request for "No Jurisdiction" Determination

On behalf of Kindred Healthcare, Inc. ("Kindred"), we are submitting this letter pursuant to 18 V.S.A. § 9440(c)(2) to the Green Mountain Care Board ("GMCB") seeking a "no jurisdiction" determination with respect to an internal corporate reorganization occurring in the summer of 2018 involving two licensed skilling nursing facilities ("SNFs") in Vermont – (1) Kindred Transitional Care and Rehabilitation – Birchwood Terrace located at 43 Starr Farm Road, Burlington, VT 05408 ("Birchwood Terrace") and (2) Starr Farm Nursing Center ("Starr Farm") located at 98 Starr Farm Road, Burlington, VT 05408 (collectively, the "SNF Facilities").

As described further below, this internal corporate reorganization is a minor restructuring step intended to achieve tax and other structuring objectives in connection with a larger stock transaction involving Kindred. Upon completion of the internal reorganization and stock transaction, there will be no change in the financial stability or legal liability of the SNF Facilities or any change of control at the operator level. Therefore, we respectfully request that a no jurisdiction determination be issued.

Notwithstanding this request for a no jurisdiction determination, we understand that Birchwood Terrace and Starr Farms are in the process of being sold to two different unrelated third parties. We further understand that GMCB has received a pending application for Birchwood Terrace (GMCB-014-17con). This request is not intended to impede, replace or alter any pending or forthcoming applications received by the GMCB with respect to the sale of these SNF Facilities. We have consulted with counsel for the unrelated third parties regarding this request. To the extent the SNF Facilities are sold before the effective date of the transaction, the corporate reorganization for tax purposes described herein would not be triggered, and this request would be moot.

A. Vermont Statute and Certificate of Need Regulations

Vermont statutes require a health care facility to seek the issuance of a certificate of need ("CON") when the facility is developing a new health care project. 18 V.S.A. § 9434. A new health care project

includes "the offering of any home health service, or the transfer or conveyance of more than 50 percent ownership interest in a health care facility other than a hospital." 18 V.S.A § 9434(a)(3). The Vermont statute is limited specifically in scope to "the transfer or conveyance of more than a 50 percent ownership interest."

Vermont CON regulations state that "a change in ownership, corporate structure or other organization modification such that a new license from the appropriate state or federal licensing entity is required, such action shall be a new health care project." GMCB Rule 4.203(1). The regulations also specify that a transfer or conveyance of ownership "that fundamentally changes the financial stability or legal liability of the facility shall be a new health care project." GMCB Rule 4.203(2) (emphasis added).

B. The Stock Transaction and Internal Corporate Reorganization Impacting the Owner of the SNF Facilities

By way of background, Kindred is currently a publicly-traded company. On December 19, 2017, Kindred announced that it had entered into an Agreement and Plan of Merger (the "Agreement") with a group of purchasers including TPG Capital ("TPG"), Welsh, Carson, Anderson & Stowe ("WCAS"), Humana Inc. ("Humana"), and certain other minority investors, pursuant to which a newly formed merger subsidiary will merge with and into Kindred, with Kindred surviving the merger, as a result of which the purchasers will acquire all of Kindred's issued and outstanding common stock (the "Transaction"). The Transaction is anticipated to close during the summer of 2018. On the closing date of the Transaction:

- TPG, WCAS and certain other minority investors will separate Kindred's home health, hospice and community care businesses (and related entities) (the "Homecare Business") from Kindred's businesses other than the Homecare Business, including Kindred's long term acute care hospital, inpatient rehabilitation facility, and contract rehabilitation service businesses (and related entities) (the "Hospital Business"), and form a joint venture with Humana to own the Homecare Business under a newly-formed entity ("Kentucky Homecare Parent Inc."); and
- TPG, WCAS and certain other minority investors will own 100% of Kindred's Hospital Business under a newly-formed entity ("Kentucky Hospital Holdings, LLC").
- Kindred does not operate any home health agencies, hospices, rehabilitation centers or hospitals in Vermont that would be impacted by the Transaction.

Kindred currently owns one hundred percent (100%) of Kindred Healthcare Operating, Inc. ("KHOI"). KHOI, in turn, owns one hundred percent (100%) of Kindred Nursing Centers East, LLC ("KNCE"). KNCE owns and operates Birchwood Terrace. KNCE also is a fifty percent (50%) General Partner in Starr Farm. University of Vermont Medical Center, Inc. ("UVMC") is the other fifty percent (50%) General Partner. In connection with the Transaction, Kindred also agreed to an internal corporate restructuring which involves KNCE, intended to achieve tax and other structuring objectives that are unrelated to the operations of Birchwood Terrace or Starr Farm.

Specifically, under the Agreement, on the closing date of the Transaction, Kindred is required to merge KNCE into a newly-created limited partnership ("New LP"), and designate KHOI, KNCE's current direct parent, as the limited partner of New LP. A newly-created limited liability company ("New LLC") will be the general partner of New LP. New LLC will be 100% owned by KHOI. KHOI will also convert from

a corporation to a limited liability company under the Delaware limited liability company act. As noted, this corporate internal reorganization is solely intended for tax and other restructuring purposes.

Following the merger of KNCE into New LP, the SNF Facilities will continue to operate as stand-alone licensed SNF Facilities as they do today, available to provide services to local residents. There will be no change in their management or financial structure as a result of the merger, nor will the merger affect Kindred's legal liability or responsibility. KHOI will continue to own one hundred (100%) of New LP (formerly KNCE) and New LP will be a fifty percent (50%) General Partner in Starr Farm.

Please see Attachments A and B which identify the following:

- The pre-closing and post-closing organizational charts of the SNF Facilities; and
- The SNF Facilities by dba business name, licensee name, NPI, Medicare Enrollment Number and EIN.

C. Certificate of Need Review Not Triggered

We respectfully request that the GMCB rule that the internal corporate restructuring of the SNF Facilities under the Transaction does not trigger certificate of need review because there is no new health care project. While we understand that the merger of KNCE into New LP will result in a change in the legal entity that is the licensee of Birchwood Terrace and 50% General Partner of Starr Farms, there will be no "transfer or conveyance" of ultimate ownership, as at the conclusion of the internal restructuring the direct parent company of the licensee of Birchwood Terrace and 50% General Partner of Starr Farms, KHOI, will remain the same.¹ Accordingly, while a new SNF license from the Vermont Department of Disabilities, Aging and Independent Living, Division of Licensing and Protection² may be required to modify the legal name on the licenses, we do not believe a "new health care project" is triggered where the direct parent owner ultimately remains the same. Furthermore, there will be no "fundamental" change in the "financial stability or legal liability" of the SNF Facilities to trigger a "new health care project." In sum, there will be no change in the management, operations, or services provided to patients at the SNF Facilities.

Kindred understands that the GMCB may confer with the Division of Licensing and Protection with regard to this request. Please do not hesitate to contact us by phone or email with questions. We greatly appreciate your consideration. If you have any questions or need any additional information, please let me know at your earliest convenience. Thanking you in advance for your prompt attention in this matter.

Best Regards,


Jeffrey P. Stodghill,
Vice President and Corporate Counsel

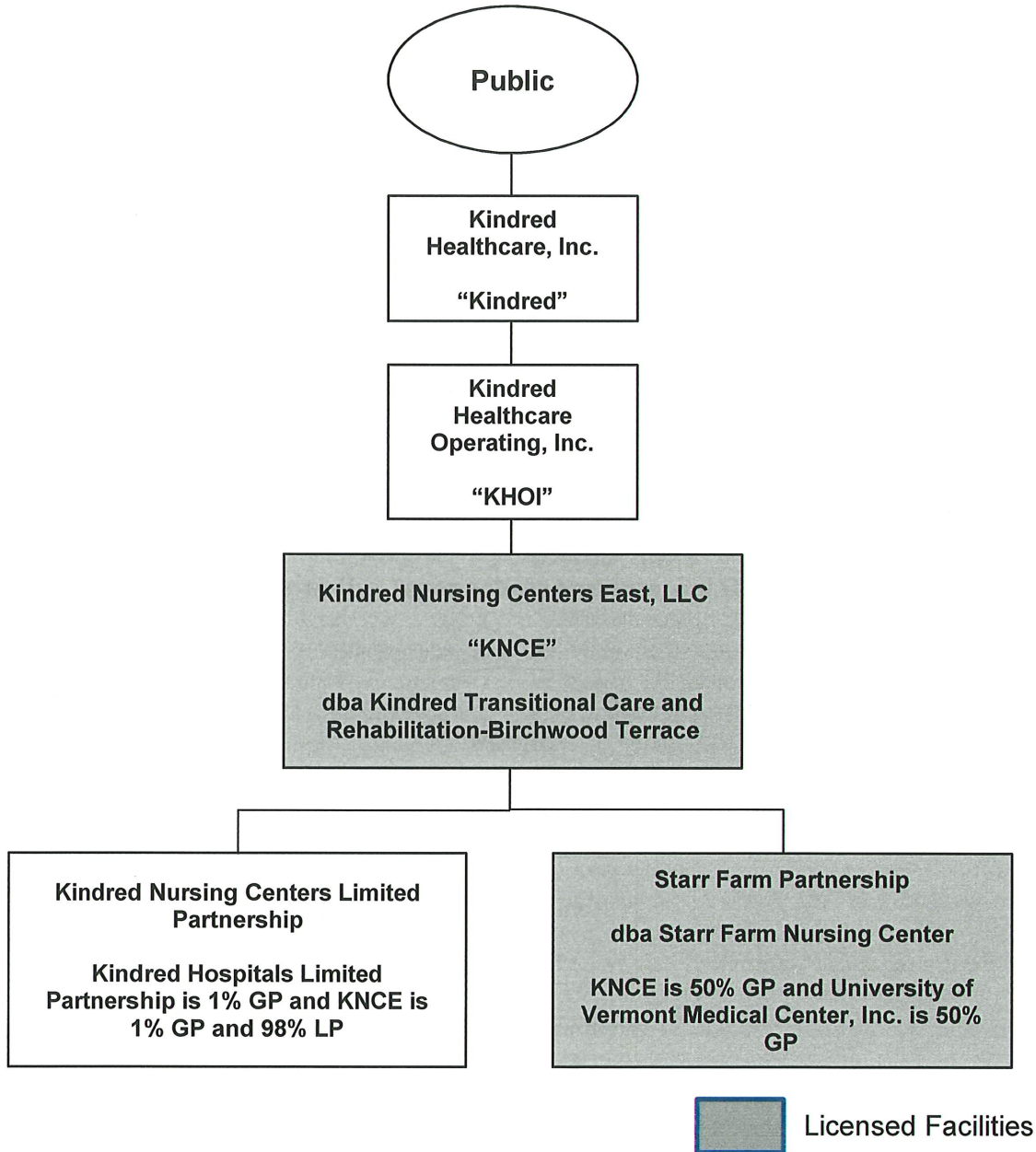
Enclosures: Attachments A and B

¹ As previously noted, KHOI will be converted from a corporation to an LLC but otherwise remain the same entity with the same tax identification number. It will continue to hold 100% of the equity of New LP through its ownership of the 1% general partner interest (through New LLC) and the 99% limited partnership interest of New LP. We further note that the restructuring under the Transaction is permissible to UVMC.

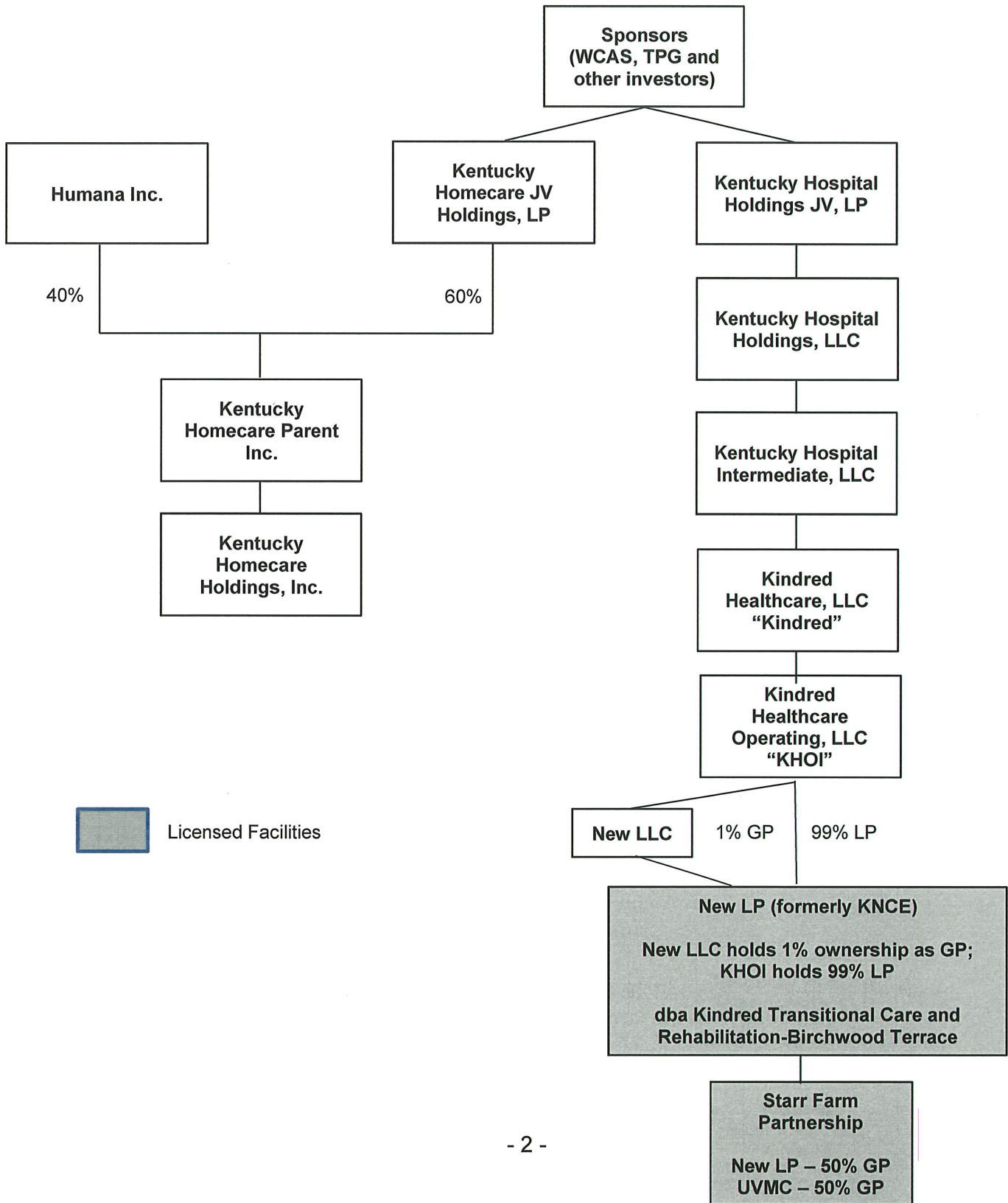
² In conjunction with this letter, we are also submitting written notice of the Transaction to the Division of Licensing and Protection.

ATTACHMENT A

**VERMONT – KINDRED SNFs
(Structure Prior to the Transaction and Internal Reorganization)**



VERMONT – KINDRED SNFs
 (Structure Following Transaction and Internal Reorganization)



ATTACHMENT B – VERMONT SNF FACILITIES

<u>Facility D/B/A Name</u>	<u>Licensee</u>	<u>Medicare Provider #</u>	<u>NPI #</u>	<u>EIN #</u>
Kindred Transitional Care and Rehabilitation- Birchwood Terrace	Kindred Nursing Centers East, LLC	47-5003	1659481943	52-2085557
Starr Farm Nursing Center	Starr Farm Partnership	47-5030	1407934334	52-2085557