



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
*Olympia, Washington 98504*

April 27 2018

Barbara Lankford, Director, Market Planning  
Kindred Healthcare  
680 South Fourth Street  
Louisville, KY 40202

RE: DOR #18-17

Dear Ms. Lankford:

The Department of Health has completed the review of your request regarding Kindred's upcoming reorganization and the Agreement and Plan of Merger with TPG Capital, Welsh, Carlson, Anderson & Stowe, Humana, Inc., Port-aux-Choix Private Investments, Inc., and other minority investors. Below is the information considered and the facts relied upon by the Certificate of Need (CN) Program in reaching its conclusion regarding your request.

**SOURCE INFORMATION CONSIDERED**

- Kindred's exemption letter received (with fee) February 8, 2018
- Information from the March 26, 2018 meeting with Kindred representatives
- Kindred's supplemental information received March 27, 2018, making this a complete application
- Washington State Hospital Association v. Washington State Dept. of Health No. 90486-3
- Revised Code of Washington (RCW) 70.38
- Washington Administrative Code (WAC) 246-310
- Washington Secretary of State and Department of Revenue information obtained from the respective websites
- Department of Health Integrated Licensing and Regulatory System (ILRS)

**KINDRED FACILITIES IN WASHINGTON STATE**

The tables on the following page outline Kindred's existing facilities in Washington State along with their respective CN status.

<b>In-Home Service Agencies</b>			
<b>Credential Number</b>	<b>Name</b>	<b>CN Status<sup>1</sup></b>	<b>CN-Approved Service Area<sup>2</sup></b>
IHS.FS.00000291	Kindred at Home	CN Approved	Kitsap [HH]
IHS.FS.00000293	Kindred at Home	CN Approved	King [HH]
IHS.FS.00000295	Kindred at Home	CN Approved	King, Snohomish [HH]
IHS.FS.00000296	Kindred at Home	CN Approved	Spokane [HH]
IHS.FS.00000298	Kindred at Home	CN Approved	Pierce [HH]
IHS.FS.00000300	Kindred at Home	CN Approved	Clark [HH]
IHS.FS.60308060	Kindred Hospice	CN Approved	Spokane, Whitman [Hospice]
IHS.FS.60308064	Kindred at Home	CN Approved	Spokane, Whitman [HH]
IHS.FS.60330209	Kindred Hospice	CN Approved	King [Hospice]
IHS.FS.60378511	Kindred at Home	State Licensed Only	n/a
IHS.FS.60378522	Kindred at Home	State Licensed Only	n/a

<b>Hospitals</b>			
<b>Credential Number</b>	<b>Name</b>	<b>City</b>	<b># of Approved Beds</b>
HAC.FS.00000148	Kindred Hospital – First Hill	Seattle	50
HAC.FS.00000148	Kindred Hospital – Northgate	Seattle	30
HAC.FS.60833232	CHI Franciscan Rehabilitation Hospital <sup>3</sup>	Tacoma	60

### **ANALYSIS**

Presently, Kindred is a publically traded company. The shareholders have approved the sale of stock to a group of private equity firms and Humana, a health insurer. After the stock sale, the company will split into two companies, separating the hospital and in-home service operations. Most investors will have an interest in both companies, however Humana will have an interest only in the in-home service company. Organizational charts as well as the transaction steps provided with the application are attached to this determination as Appendix A and Appendix B.

This transaction is a substitution of investors. One set of investors controls the corporation before the transaction, while another set of investors will control the corporation after the transaction. The same corporate entity, however, will continue to own the hospitals to the same percentage as now owned. The “merger” in this transaction is only for the purpose of effectuating the exchange of stock.

### **In-Home Services**

The Certificate of Need program does not ordinarily review the change of ownership of CN-approved home health or hospice agencies. There are limited circumstances under which the department would review the sale of a CN-approved home health or hospice agency including the

<sup>1</sup> The establishment of many of the agencies below predate the existence of the Certificate of Need program, and were “grandfathered” into CN approval. Whether a facility received a physical Certificate of Need is not material to this review, so all agencies authorized to serve Medicare/Medicaid patients are labeled as “CN Approved.”

<sup>2</sup> [HH] = Home Health

<sup>3</sup> CHI Franciscan Rehabilitation Hospital is a joint venture with CHI Franciscan. The facility was approved under CN #1594. The facility is expected to be licensed and operating within the second or third quarter of 2018.

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sale of an HMO-controlled home health or hospice agency to a non-HMO, or the sale of a recently-approved agency prior to executing their Certificate of Need. Neither of those scenarios apply to this proposed transaction. Certificate of Need review is not required for the home health and hospice agencies listed above.

#### Hospitals

The existing hospital will maintain the same tax identification number and provider agreement with Medicare, and there are no anticipated changes to the hospital's current policies and procedures or quality of care.

This transaction does not meet the definition of the sale, purchase, or lease of a hospital under RCW 70.38.105, and is consistent with the Washington Supreme Court's decision in *WSHA v. Dep't. of Health*.

The ownership structure of the approved joint-venture – CHI Franciscan Rehabilitation Hospital – will not change as a result of this transaction. Kindred will continue to have 49% ownership and CHI Franciscan will continue to have 51% ownership, consistent with the application.

This transaction does not meet the definition of the sale, purchase, or lease of a hospital under RCW 70.38.105, and is consistent with the Washington Supreme Court's decision in *WSHA v. Dep't. of Health*.

#### APPEAL OPTION

This decision may be appealed. You or any person with standing may request an adjudicative proceeding to contest this decision within 28 calendar days from the date of this letter. The notice of appeal must be filed according to the provisions of Revised Code of Washington 34.05 and Washington Administrative Code 246-310-610. A request for an adjudicative proceeding must be received within the 28 days at one of the addresses listed on the following page.

#### Mailing Address:

Department of Health  
Adjudicative Service Unit  
Mail Stop 47879  
Olympia, WA 98504-7879

#### Physical Address

Department of Health  
Adjudicative Service Unit  
111 Israel Road SE  
Tumwater, WA 98501

If you have any questions or would like to arrange for a meeting to discuss this decision, please call me at (360) 236-2955.

Sincerely,

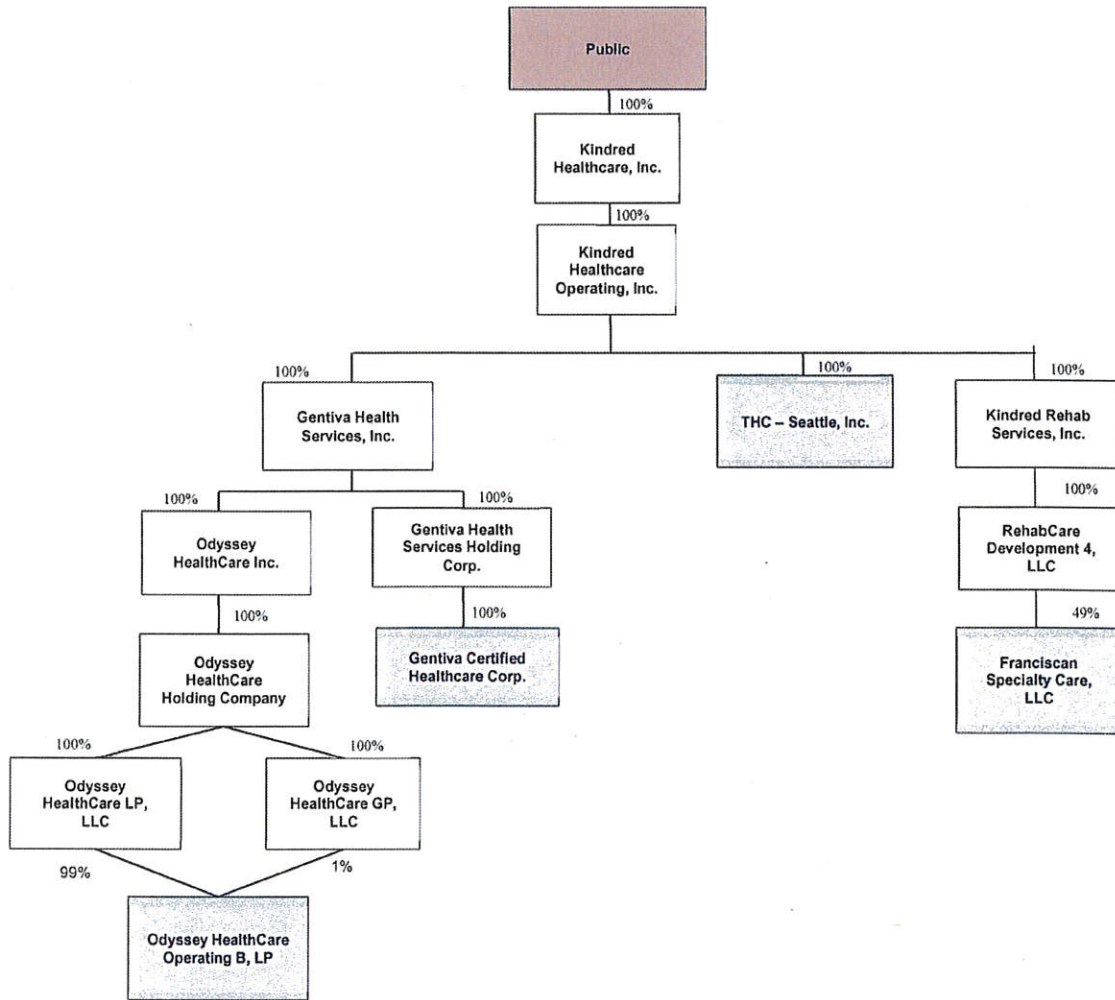



Nancy Tyson, Executive Director  
Health Facilities and Certificate of Need  
Community Health Systems

cc: Department of Health, Credentialing Office

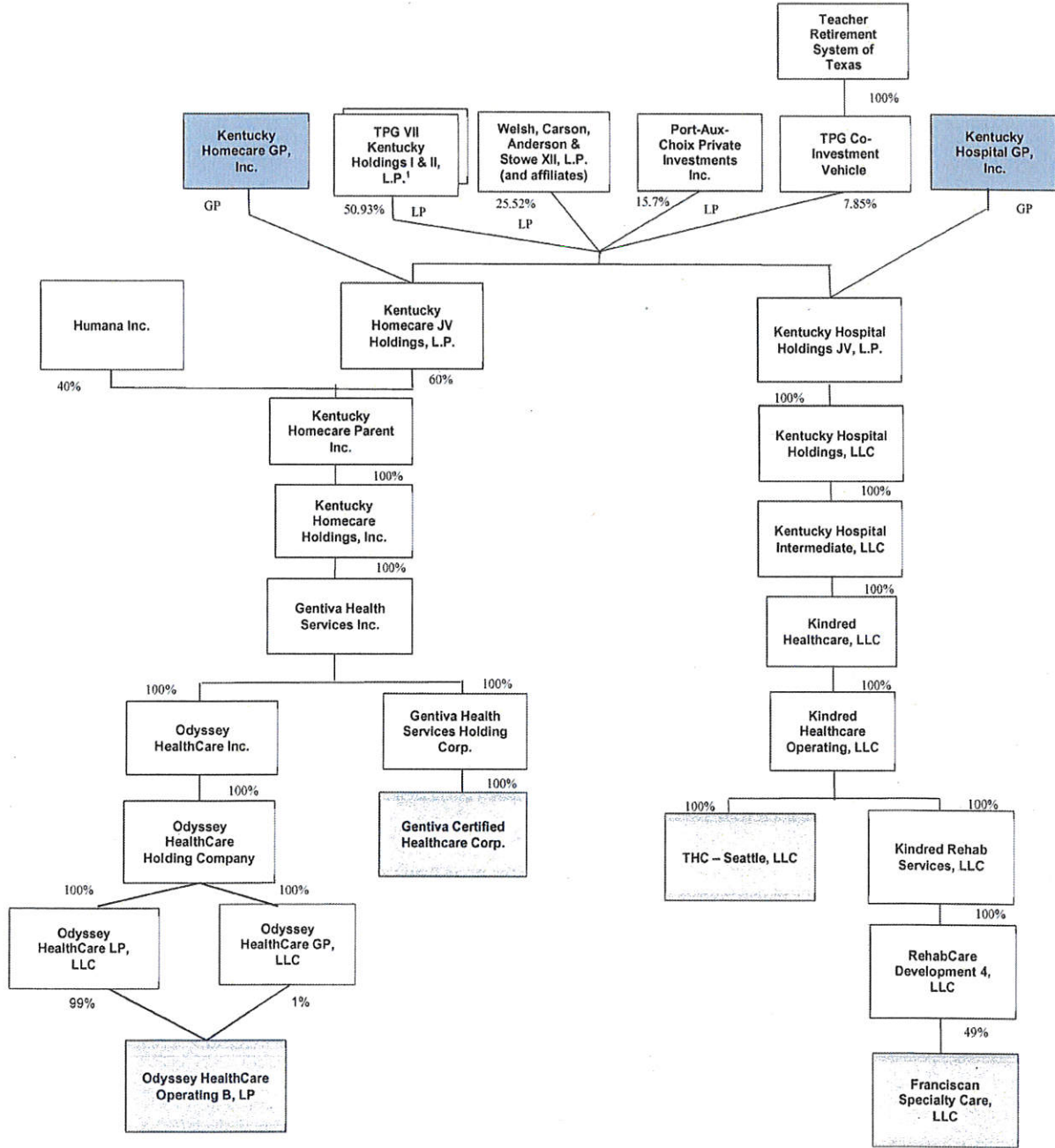
# APPENDIX A

**ATTACHMENT A  
KINDRED WASHINGTON FACILITIES  
(STRUCTURE PRIOR TO TRANSACTION)**



 Licensed Facility

## KINDRED WASHINGTON FACILITIES (STRUCTURE FOLLOWING TRANSACTION)



Licensed Entities



General Partners that manage the day-to-day operations of Kentucky Homecare JV Holdings, L.P. and Kentucky Hospital Holdings JV, L.P.

*1. These boxes include both TPG VII Kentucky Holdings I, L.P. and TPG VII Kentucky Holdings II, L.P. Of note, TPG VII Kentucky Holdings I, L.P. will own 50.93% of Kentucky Hospital Holdings JV, L.P., and TPG VII Kentucky Holdings II, L.P. will own 50.93% of Kentucky Homecare JV Holdings, L.P.*

# APPENDIX B

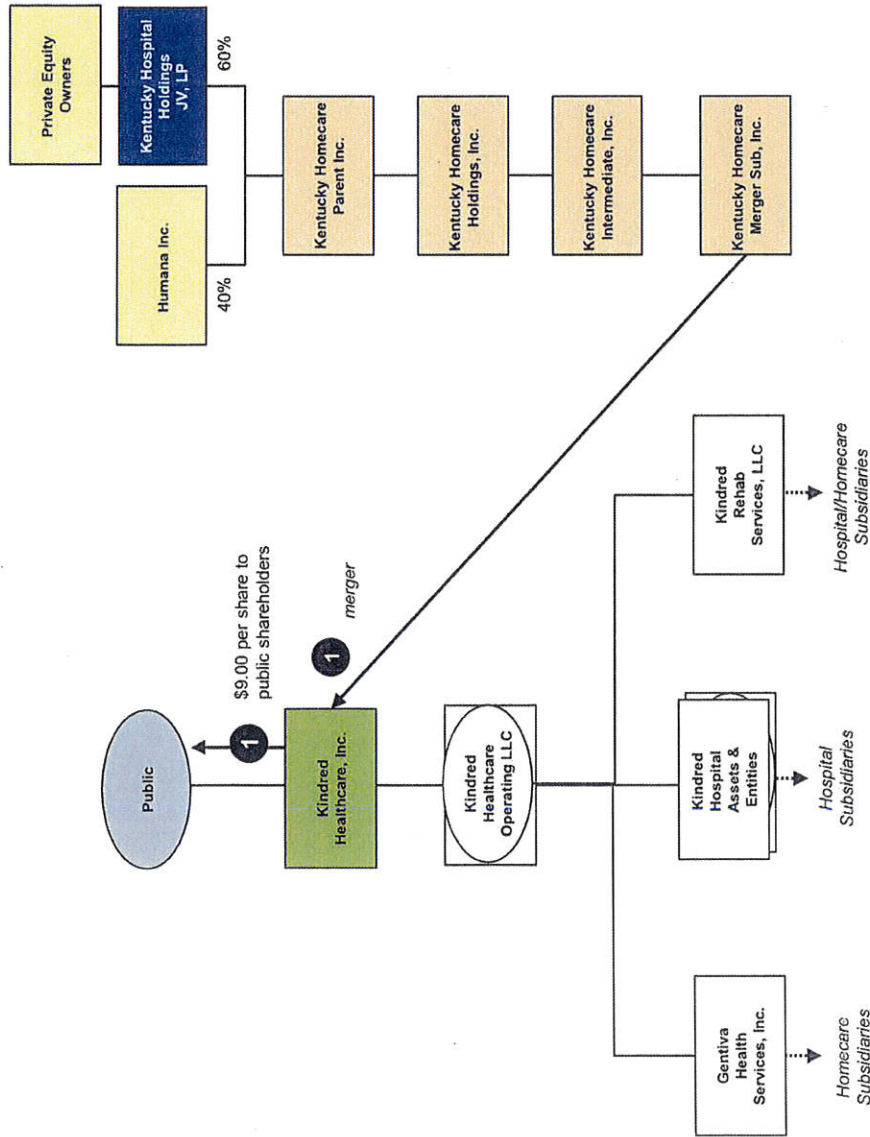
# Transaction Steps: Merger and Take Private of Kindred Healthcare, Inc.

## Steps – Take-Private Closing

1. Kentucky Homecare Merger Sub, Inc. merges with and into Kindred Healthcare, Inc. with Kindred Healthcare, Inc. surviving.

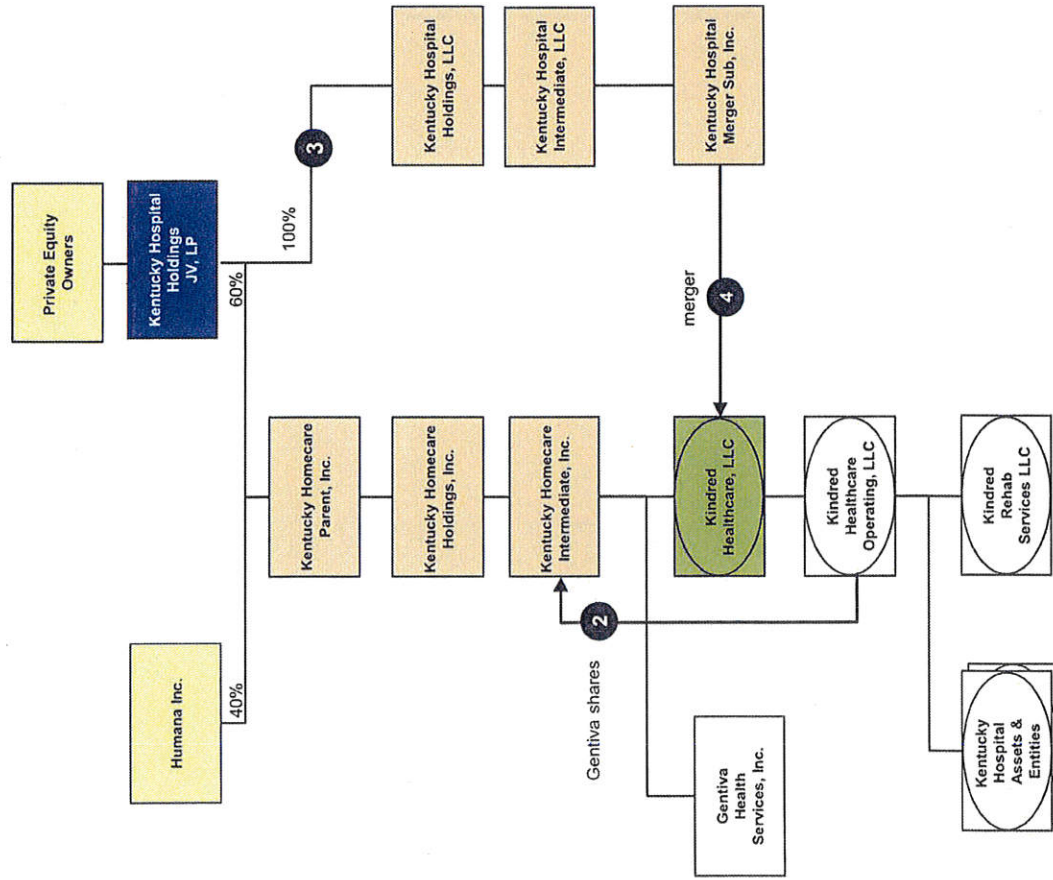
*Pursuant to the merger, public shareholders receive \$9.00 per share of Kindred Healthcare, Inc. Humana Inc. and Private Equity Owners obtain all outstanding Kindred Healthcare, Inc. stock.*

The merger is the mechanism to acquire the stock of Kindred Healthcare, Inc.; it is not the combination of two health systems.





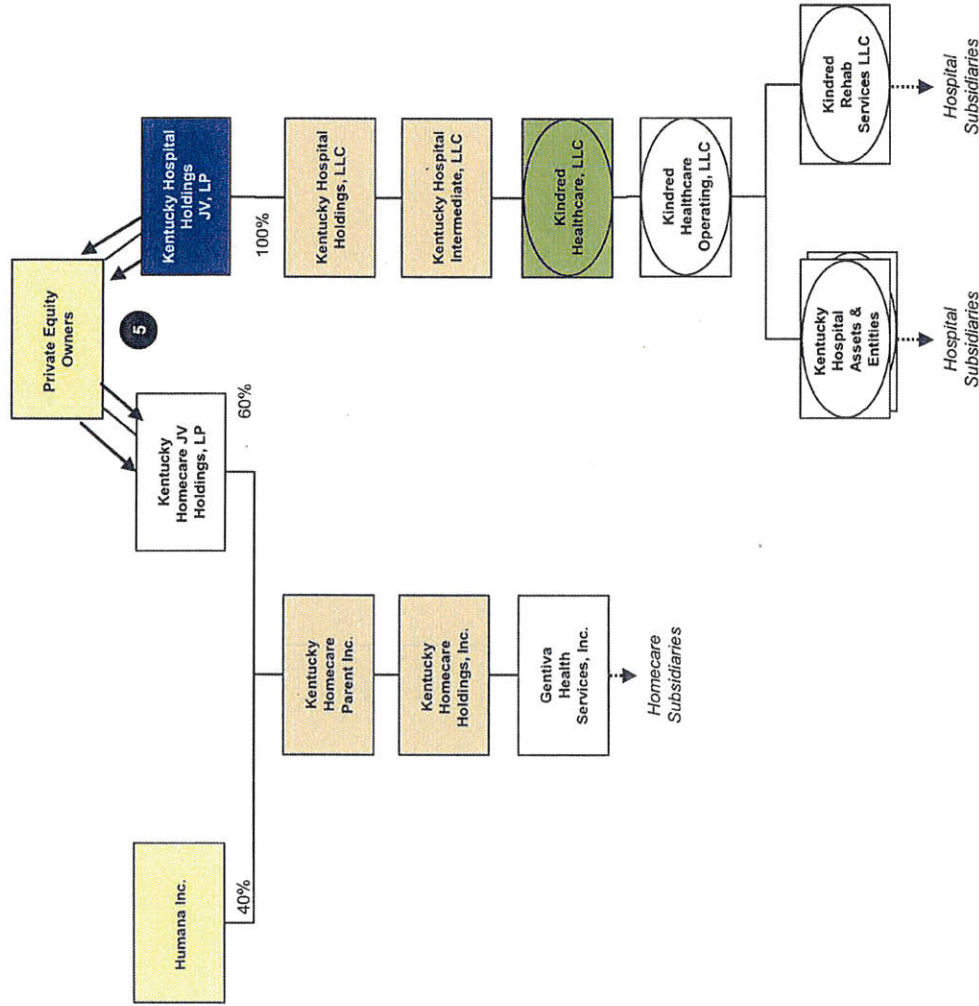
# Transaction Steps: Separation of Homecare Business from Hospital Business



## Steps – Separation

2. Kindred Healthcare Operating, LLC transfers the stock of Gentiva Health Services, Inc. to Kentucky Homecare Intermediate, Inc.
3. Kentucky Hospital Holdings JV, L.P. obtains 100% of the stock of Kentucky Hospital Holdings, LLC.
4. Kentucky Hospital Merger Sub merges with and into Kindred Healthcare LLC with Kindred Healthcare LLC surviving.

# Transaction Steps: Separation of Homecare Business from Hospital Business (cont.)



## Steps – Post-Separation

5. Kentucky Hospital Holdings JV, L.P. distributes its 60% interest in Kentucky Homecare Parent Inc. to the Private Equity Owners who then contribute that interest to Kentucky Homecare JV Holdings, L.P. As a result, Kentucky Hospital Holdings JV, L.P. will own 100% of Kentucky Hospital Holdings, LLC and Kentucky Homecare JV Holdings, L.P. will own 60% of Kentucky Homecare Parent Inc.