

KINDRED HEALTHCARE, INC
Form 8-K
October 30, 2006

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): October 25, 2006

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)

61-1323993
(IRS Employer
Identification No.)

680 South Fourth Street

Louisville, Kentucky

(Address of principal executive offices)

40202-2412

(Zip Code)

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

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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))
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Item 1.01 Entry into a Material Definitive Agreement.

On October 25, 2006, Kindred Healthcare, Inc. (Kindred or the Company) and AmerisourceBergen Corporation (ABC) entered into a definitive agreement (the Master Transaction Agreement), a copy of which is attached as Exhibit 10.1, to combine their respective institutional pharmacy businesses, Kindred Pharmacy Services (KPS) and PharMerica Long-Term Care (PharMerica LTC), into a new, independent, publicly-traded company (Safari Holding Corporation). As previously announced in August 2006, the transaction is intended to be tax-free to shareholders of both the Company and ABC and is expected to be completed in the first calendar quarter of 2007. Also on October 25, 2006, in connection with the entry into the Master Transaction Agreement, the Company, ABC and certain of the other parties to the Master Transaction Agreement entered into a Tax Matters Agreement, a copy of which is attached as Exhibit 10.2, which sets forth the parties' rights and obligations with respect to the allocation of taxes and related matters.

A copy of the joint press release, dated October 26, 2006, announcing the entry into the Master Transaction Agreement and the Tax Matters Agreement is attached as Exhibit 99.1.

Cautionary Statements

The Master Transaction Agreement and the Tax Matters Agreement (together, the Agreements) have been included to provide investors with information about their terms. Except for their status as contractual arrangements governing the legal relation of the parties thereto, the Agreements are not intended to be a source of factual, business or operational information about any of those parties.

The representations, warranties and covenants made by the parties in the Agreements are qualified, including by information in the schedules referenced in the Agreements that the parties delivered in connection with the execution of the Agreements. Representations and warranties may be used to allocate risk between the respective parties to the Agreements, including in cases in which the parties may not have complete knowledge of all relevant facts. Furthermore, the representations and warranties in the Agreements may be subject to standards of materiality that may differ from those applicable under the federal securities laws. These representations and warranties may or may not have been accurate as of any specific date and do not purport to be accurate as of the date of this filing. Accordingly, they should not be relied upon as statements of fact.

This Current Report on Form 8-K (including the exhibits hereto) includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements regarding Kindred's expected future financial position, results of operations, cash flows, financing plans, business strategy, budgets, capital expenditures, competitive positions, growth opportunities, plans and objectives of management and statements containing the words such as anticipate, approximate, believe, plan, estimate, expect, project, could, should, will, intend, may and other similar expressions, are forward-looking statements. Forward-looking statements are inherently uncertain, and stockholders and other potential investors must recognize that actual results may differ materially from Kindred's expectations as a result of a variety of factors, including, without limitation, those discussed below. Such forward-looking statements are based upon management's current expectations and include known and unknown risks, uncertainties and other factors, many of which Kindred is unable to predict or control, that may cause Kindred's or Safari Holding Corporation's actual results or performance to differ materially from any future results or performance expressed or implied by such forward-looking statements. These statements involve risks, uncertainties and other factors discussed below and detailed from time to time in Kindred's filings with the Securities and Exchange Commission. Kindred undertakes no obligation to update or revise any forward-looking statements. Factors that could cause actual results to differ materially from these forward-looking statements include, but are not limited to, (i) changes in or the failure to achieve the underlying assumptions and expectations related to the spin-off of KPS and its merger with PharMerica LTC's institutional pharmacy business, including, among other matters, assumptions about the likelihood of and expected timing for completion of the spin-offs and mergers, the expected date the shares of Kindred and Safari Holding Corporation will trade as separate issues, the timing and development of a when issued trading market for Safari Holding Corporation common stock, the timing of the New York Stock Exchange's approval for listing of the Safari Holding Corporation common stock and the timing of the mailing of the information statement to Kindred stockholders; (ii) the tax treatment of the proposed spin-offs and mergers; (iii) costs and challenges related to the pre-closing integration activities that could delay the closing or affect the operations of Safari Holding Corporation; and (iv) closing conditions not being satisfied at all or in a timely manner, including the availability of financing for each of KPS, PharMerica LTC and Safari Holding Corporation, the absence of adverse changes as specified in the Agreements and receipt of third party and governmental approvals with respect to the spin-offs and mergers and the continued operation by Safari Holding Corporation of the spun-off businesses.

Item 9.01.

(d) Exhibits

- Exhibit 10.1 Master Transaction Agreement, dated as of October 25, 2006, by and among AmerisourceBergen Corporation, PharMerica, Inc., Kindred Healthcare, Inc., Kindred Healthcare Operating, Inc., Kindred Pharmacy Services, Inc., Safari Holding Corporation, Hippo Merger Corporation and Rhino Merger Corporation.
- Exhibit 10.2 Tax Matters Agreement, by and among AmerisourceBergen Corporation, PharMerica, Inc., Kindred Healthcare, Inc., Kindred Pharmacy Services, Inc. and Safari Holding Corporation, in each case on behalf of itself and its Affiliates.
- Exhibit 99.1 Press release dated October 26, 2006.

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: October 30, 2006

By: /s/ Richard A. Lechleiter
Richard A. Lechleiter

Executive Vice President and Chief Financial Officer