

KINDRED HEALTHCARE, INC
Form S-8
June 11, 2008

As filed with the Securities and Exchange Commission on June 11, 2008

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

KINDRED HEALTHCARE, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

61-1323993
(I.R.S. Employer

Identification Number)

680 South Fourth Street

Louisville, KY 40202-2412

(Address of Registrant's Principal Executive Offices)

Kindred Healthcare, Inc. 2001 Stock Incentive Plan, Amended and Restated

(Full Title of the Plan)

Joseph L. Landenwich, Esq.

Senior Vice President of Corporate Legal Affairs and Corporate Secretary

Kindred Healthcare, Inc.

680 South Fourth Street

Louisville, KY 40202-2412

(502) 596-7300

(Name, Address, and Telephone Number, Including Area Code, of Agent for Service)

with copies of all correspondence to:

Arthur H. Kohn, Esq.

Cleary, Gottlieb, Steen & Hamilton

One Liberty Plaza

New York, NY 10006

(212) 225-2000

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

| Title of securities to be registered | Amount to be registered (1) | Proposed maximum offering price per share (2) | Proposed maximum aggregate offering price | Amount of registration fee |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|------------------------------------------------------|--------------------------------------------------|-----------------------------------|
| Common Stock of Kindred Healthcare, Inc., par value \$0.25 per share (the Shares), to be issued under the Kindred Healthcare, Inc. 2001 Stock Incentive Plan, Amended and Restated | 1,500,000 | \$29.09 | \$43,635,000 | \$1,714.86 |

- (1) Together with an indeterminate number of Shares that may be necessary to adjust the number of Shares reserved for issuance pursuant to the Kindred Healthcare, Inc. 2001 Stock Incentive Plan, Amended and Restated (the Stock Incentive Plan) as the result of a stock split, stock dividend or similar adjustment of outstanding Shares.
- (2) Estimated solely for the purposes of calculating the registration fee pursuant to Rule 457(h) under the Securities Act of 1933, as amended (the Securities Act), on the basis of the average of the high and low prices of Shares as reported on the New York Stock Exchange on June 6, 2008.

Explanatory Note

On March 26, 2008, the Board of Directors of Kindred Healthcare, Inc. (the Company) amended and restated the Stock Incentive Plan to increase the maximum number of Shares that may be issued pursuant to options or other awards granted under the Stock Incentive Plan by 1,500,000 Shares. The amendment was subject to the approval of the Company's shareholders. The Company's shareholders approved the amendments to the Stock Incentive Plan at the Company's Annual Meeting of Shareholders held on May 22, 2008.

The additional shares to be registered by this Registration Statement are of the same class as those securities covered by the Company's previously filed Registration Statements on Form S-8 filed on June 23, 2004 (Registration No. 333-116755), May 13, 2002 (Registration No. 333-88086), and May 31, 2001 (Registration No. 333-62022) with respect to the Stock Incentive Plan (the Prior Registration Statements). This Registration Statement on Form S-8 has been prepared and filed pursuant to and in accordance with the requirements of General Instruction E to Form S-8 for the purpose of effecting the registration under the Securities Act of an additional 1,500,000 Shares issuable pursuant to awards to be granted under the Stock Incentive Plan. Pursuant to General Instruction E to Form S-8, the contents of the Prior Registration Statements, made in connection with the Stock Incentive Plan, including the periodic reports that the Company filed after the Prior Registration Statements to maintain current information about the Company, are incorporated herein by reference.

Part II

Item 8. Exhibits.

In addition to the exhibits filed or incorporated by reference into the Prior Registration Statements, the following documents are filed as exhibits to this Registration Statement.

| Exhibit No. | Description | Method of Filing |
|--------------------|----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| 4.1 | Amended and Restated Certificate of Incorporation of the Company | Incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-3 filed on August 31, 2001 |
| 4.2 | Certificate of Amendment of Amended and Restated Certificate of Incorporation | Incorporated by reference to Exhibit 3.1 to the Company's Form 10-Q for the quarterly period ended March 31, 2002 |
| 4.3 | Amended and Restated Bylaws of the Company | Incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K dated February 19, 2008 |
| 4.4 | The Kindred Healthcare, Inc. 2001 Stock Incentive Plan, Amended and Restated | Incorporated by reference to Appendix A to the Company's Definitive Proxy Statement filed on April 1, 2008 |
| 5 | Opinion of Joseph L. Landenwisch as to the validity of the securities being registered | Filed herewith |
| 23.1 | Consent of PricewaterhouseCoopers LLP | Filed herewith |

23.2 Consent of Joseph L. Landenwich

Included in Exhibit 5

24 Power of Attorney

Included on signature page

SIGNATURES

Pursuant to the requirements of the Securities Act, the Company certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Louisville, Kentucky, on the 11th day of June, 2008.

KINDRED HEALTHCARE, INC.

By: /s/ Richard A. Lechleiter
Richard A. Lechleiter
Executive Vice President and

Chief Financial Officer

POWER OF ATTORNEY

Each person whose signature appears below on this Registration Statement hereby constitutes and appoints Richard A. Lechleiter and Joseph L. Landenwich, and each of them, with full power to act without the other, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities (unless revoked in writing) to sign any and all amendments (including post-effective amendments thereto) to this Registration Statement to which this power of attorney is attached, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting to such attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as full to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that such attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by each of the following persons in the capacities indicated, on the 11th day of June, 2008.

| Signature | Title |
|-----------------------------------|--------------------------------------------------|
| <i>/s/ Paul J. Diaz</i> | President, Chief Executive Officer, and Director |
| Paul J. Diaz | (Principal Executive Officer) |
| <i>/s/ Edward L. Kuntz</i> | Executive Chairman of the Board |
| Edward L. Kuntz | |
| <i>/s/ Ann C. Berzin</i> | Director |
| Ann C. Berzin | |
| <i>/s/ Thomas P. Cooper, M.D.</i> | Director |
| Thomas P. Cooper, M.D. | |
| <i>/s/ Garry N. Garrison</i> | Director |
| Garry N. Garrison | |
| <i>/s/ Isaac Kaufman</i> | Director |
| Isaac Kaufman | |
| <i>/s/ John H. Klein</i> | Director |
| John H. Klein | |
| <i>/s/ Eddy J. Rogers, Jr.</i> | Director |
| Eddy J. Rogers, Jr. | |

/s/ Richard A. Lechleiter

Executive Vice President and Chief Financial Officer

Richard A. Lechleiter

(Principal Financial Officer)

/s/ John J. Lucchese

Senior Vice President and Corporate Controller

John J. Lucchese

(Principal Accounting Officer)

EXHIBIT INDEX

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