



DIVISION OF  
CORPORATION FINANCE

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



Received SEC  
  
FEB 05 2015  
  
Washington, DC 20549

February 5, 2015

No Act  
PE 1/16/15

Nicolas Grabar  
Cleary Gottlieb Steen & Hamilton LLP  
ngrabar@cgsh.com

Act: 1934  
Section: \_\_\_\_\_  
Rule: 14a-8 (ODS)  
Public \_\_\_\_\_  
Availability: 2-5-15

Re: Kindred Healthcare, Inc.  
Incoming letter dated January 16, 2015

Dear Mr. Grabar:

This is in response to your letter dated January 16, 2015 concerning the shareholder proposal submitted to Kindred by the UAW Retiree Medical Benefits Trust. Pursuant to rule 14a-8(j) under the Securities Exchange Act of 1934, your letter indicated Kindred's intention to exclude the proposal from Kindred's proxy materials solely under rule 14a-8(i)(9).

On January 16, 2015, Chair White directed the Division to review the rule 14a-8(i)(9) basis for exclusion. The Division subsequently announced, on January 16, 2015, that in light of this direction the Division would not express any views under rule 14a-8(i)(9) for the current proxy season. Accordingly, we express no view on whether Kindred may exclude the proposal under rule 14a-8(i)(9).

Copies of all of the correspondence related to this matter will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Adam F. Turk  
Attorney-Adviser

cc: Meredith Miller  
UAW Retiree Medical Benefits Trust  
mamiller@rhac.com

# CLEARY GOTTlieb STEEN & HAMILTON LLP

ONE LIBERTY PLAZA  
NEW YORK, NY 10006-1470  
(212) 225-2000  
FACSIMILE (212) 225-3999  
WWW.CLEARYGOTTLIEB.COM

WASHINGTON, DC • PARIS • BRUSSELS • LONDON • MOSCOW  
FRANKFURT • COLOGNE • ROME • MILAN • HONG KONG  
BEIJING • BUENOS AIRES • SÃO PAULO • ABU DHABI • SEOUL

Writer's Direct Dial. +1-212-225-2414  
E-Mail: ngrabar@cgsh.com

LAURENT ALPERT  
VICTOR I. LEFKOW  
LESLIE N. SILVERMAN  
ROBERT L. TORTORIELLO  
LEE C. SUCHHEIT  
JAMES M. FRASER  
THOMAS J. HOLONEY  
JONATHAN I. BLACKMAN  
MICHAEL L. RYAN  
ROBERT P. DAVIS  
YARON Z. REICH  
RICHARD B. LINCER  
STEVEN G. HOROWITZ  
JAMES A. DUNCAN  
STEVEN M. LOEB  
CRAIG B. BROD  
MITCHELL A. LOWENTHAL  
EDWARD J. ROSEN  
LAWRENCE B. FRIEDMAN  
NICOLAS GRABAR  
CHRISTOPHER E. AUSTIN  
BETH GROSHANDLER  
WILLIAM A. GROLL  
HOWARD S. ZELBO  
DAVID E. BRODSKY  
ARTHUR H. KOHN  
RICHARD J. COOPER  
JEFFREY S. LEWIS  
PAUL J. SHIM  
STEVEN L. WILNER  
ERIKA W. NUENHUIS  
LINDSEY P. GRANFIELD  
ANDRES DE LA CRUZ  
DAVID C. LOPEZ  
CARMEN A. CORRALES  
JAMES L. BROMLEY  
MICHAEL A. GERSTENZANG  
LEWIS J. LIMAN  
LEV L. DABBIN

NEIL G. WHORISKEY  
JORGE U. JUANTORRENA  
MICHAEL D. WEINBERGER  
DAVID LEINWAND  
JEFFREY A. ROSENTHAL  
ETHAN A. KLINGBERG  
MICHAEL J. VOLKOVITZ  
MICHAEL D. DAYAN  
CARMINE D. BOCCUZZI, JR.  
JEFFREY D. KARPFF  
KIMBERLY BROWN BLACKLOW  
ROBERT J. RAYMOND  
LEONARD C. JACOBY  
SANDRA L. FLOW  
FRANCISCO L. CRISTERO  
FRANCESCA L. ODELL  
WILLIAM L. MCRAE  
JASON FACTOR  
MARGARET S. PEPONIS  
LEA M. SCHWETZER  
JUAN G. GIRÁLDEZ  
DUANE McLAUGHLIN  
BREGON S. PEACE  
MEREDITH E. KOTLER  
CHAYTAL E. KORDULA  
BENET J. O'BRIEN  
DAVID AMAN  
ADAM E. FLEISHER  
SEAN A. O'NEAL  
GLENN P. HOGRODY  
MATTHEW P. SALLERNO  
MICHAEL J. ALBANO  
VICTOR L. HOU  
ROGER A. COOPER  
AMY R. SHAPIRO  
JENNIFER KENNEDY PARK  
ELIZABETH LENAS  
LUKE A. BAREFOOT  
PAMELA L. MARCOGLIESKI

PAUL M. TIGER  
JONATHAN B. HOLODNER  
DANIEL RAN  
MEYER H. FEDIDA  
ADRIAN R. LOPEZ  
ELIZABETH VICENS  
ADAM BRENNEMAN  
ARI MACGINNON  
JAMES C. LANGSTON  
RESIDENT PARTNERS

SANDRA M. ROCKE  
S. DOUGLAS BORISKY  
JUDITH KASSEL  
DAVID E. WEBB  
FENELDPE L. CHRISTOPHORO  
BOAZ S. MORAS  
MARY E. ALCOCK  
DAVID H. HERRINGTON  
HEIDI H. ILSENFRITZ  
HUGH C. CONROY, JR.  
KATHLEEN M. EMBERGER  
WALLACE L. LARSON, JR.  
JAMES D. SMALL  
AYRAM E. LUTT  
ANDREW WEAVER  
HELENA K. GRANNIS  
GRANT M. BINDER  
JOHN V. HARRISON  
CAROLINE F. HAYDAY  
DAVID FLEISHER  
RESIDENT COUNSEL

LOUISE M. PARENT  
OF COUNSEL

January 16, 2015

VIA E-MAIL (shareholderproposals@sec.gov)

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: Kindred Healthcare, Inc. –  
Shareholder Proposal of the UAW Retiree Medical Benefits Trust

Ladies and Gentlemen:

We are writing on behalf of our client, Kindred Healthcare, Inc., a Delaware corporation (the “Company”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, to inform the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) that the Company plans to omit from its proxy statement and form of proxy (collectively, the “2015 Proxy Materials”) the shareholder proposal and the statements in support thereof (the “Trust Proposal”) submitted by the UAW Retiree Medical Benefits Trust (the “Trust”) to the Company on December 2, 2014. A copy of the Trust Proposal is attached hereto as Exhibit A. The Company respectfully requests that the Staff concur with the Company’s view that the Trust Proposal may properly be excluded from the Company’s 2015 Proxy Materials pursuant to Rule 14a-8(i)(9).

Pursuant to Staff Legal Bulletin No. 14D (“SLB 14D”), we are submitting this request for no-action relief under Rule 14a-8 using the Commission email address, [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov) (in lieu of providing six copies of this letter pursuant to Rule 14a-8(j)). We are simultaneously forwarding a copy of this letter to the Trust as notice of the Company’s intent to omit the Trust Proposal from the 2015 Proxy Materials.

### **The Trust Proposal**

The Trust Proposal seeks a non-binding shareholder resolution to request that the Company’s Board of Directors (the “Board”) adopt, and present to the Company’s shareholders for approval, amendments to the Company’s by-laws to implement proxy access for director nominations. Under the Trust Proposal, the Company would be required to include in its proxy materials any person nominated for election to the board of directors by a shareholder or group of shareholders that collectively hold at least 3% of the Company’s shares continuously for three years. Shareholder-nominated candidates appearing in the Company’s proxy materials would not exceed one quarter of the directors then serving. The full text of the Trust Proposal is set forth in Exhibit A.

### **The Company Proposal**

For the 2015 Annual Meeting, the Board plans to submit to shareholders and include in the 2015 Proxy Materials a Company-sponsored proposal (the “Company Proposal”) seeking shareholder approval of a proxy access framework, under which the Company would be required to include in its proxy materials any person nominated for election to the board of directors by a shareholder owning 5% or more of the Company’s common stock for at least three years. Under the framework in the Company Proposal, the Company would not be required to include in its proxy materials a number of shareholder nominees exceeding the greater of (a) one or (b) 10% of the Board, rounding down to the nearest whole number of Board seats. If shareholders approve the Company Proposal, the Company would then implement bylaws implementing the proxy access framework contemplated by the Company Proposal.

### **Basis for Exclusion**

We believe that the Trust Proposal may properly be excluded from the 2015 Proxy Materials pursuant to Rule 14a-8(i)(9), because the Trust Proposal directly conflicts with the Company Proposal.

### **Analysis**

The Company may exclude the Trust Proposal under Rule 14a-8(i)(9) because the Proposal directly conflicts with a proposal to be submitted by the Company in the 2015 Proxy Materials. A shareholder proposal may be excluded under Rule 14a-8(i)(9) if “the proposal directly conflicts with one of the company’s own proposals to be submitted to shareholders at the

same meeting.” The Commission has stated that a company’s proposal need not be “identical in scope or focus for the exclusion to be available.” See Exchange Act Release No. 40018, at n. 27 (May 21, 1998). Accordingly, a company may exclude a shareholder-sponsored proposal where it seeks to address a similar right or matter as a company-sponsored proposal even if the terms of the two proposals are different or conflicting.

The Company Proposal, like the Trust Proposal, addresses the inclusion of shareholder nominees in the Company’s proxy statement. The Company Proposal provides for inclusion of a nominee of any shareholder (rather than a shareholder or a group of shareholders, under the Trust Proposal) owning 5% or more of the Company’s shares for three years (rather than 3% of the Company’s shares for three years, under the Trust Proposal), with a cap on the number of shareholder-nominated candidates that would be included in the Company’s proxy statement equal to the greater of (a) one or (b) 10% of the Board, rounding down to the nearest whole number of Board seats (rather than a cap of 25% of the Board, under the Trust Proposal). The elements of the Company Proposal and the Trust Proposal conflict with respect to (i) whether a nominee of a group of shareholders must be included, (ii) the required share ownership percentage, and (iii) the cap on the total number of shareholder nominees who must be included. The conflicting proposals cannot be implemented simultaneously, so submitting the Trust Proposal and the Company Proposal at the 2015 Annual Meeting would present alternative and conflicting decisions for the Company’s shareholders that could produce inconsistent and ambiguous results.

The Staff has recently granted no-action relief under Rule 14a-8(i)(9) with respect to a shareholder-sponsored proxy access proposal that conflicted with a company-sponsored proxy access proposal. See *Whole Foods Market, Inc.* (December 1, 2014) (concurring with the exclusion of a shareholder proposal seeking the right for one or more holders of 3% of the company’s outstanding common stock for three years to make board nominations for up to 20% of the company’s board seats or not less than two directors in the company’s proxy materials when a company-sponsored proposal would permit a single shareholder owning 9% of the company’s common stock for five years to make board nominations for the greater of one director or 10% of the company’s board seats in the company’s proxy materials).


**Conclusion**

For the foregoing reasons, the Company believes it may exclude the Trust Proposal from the 2015 Proxy Materials under Rule 14a-8(i)(9) and respectfully requests that the Staff not recommend enforcement action if the Company does so. If the Staff does not concur with the Company's position, the Company requests an opportunity to confer with the Staff concerning the Trust Proposal prior to the issuance of a response.

The Company asks the Trust to copy the undersigned on any response it may choose to make to the Staff.

If you have any questions or need any further information, please call me at (212) 225-2414 or e-mail me at [ngrabar@cgsh.com](mailto:ngrabar@cgsh.com).

Very truly yours,

A handwritten signature in black ink, appearing to read 'N. Grabar', with a long horizontal flourish extending to the right.

Nicolas Grabar

Enclosure

cc: Meredith Miller  
Chief Corporate Governance Officer  
UAW Retiree Medical Benefits Trust  
by e-mail: [mamiller@rhac.com](mailto:mamiller@rhac.com)

UAW RETIREE  
Medical Benefits Trust

Exhibit A

December 5, 2014

Stephen Farber  
Executive Vice President, Chief Financial Officer  
Kindred Healthcare, Inc.  
680 South Fourth Street,  
Louisville, Kentucky 40202-2412

Dear Mr. Farber:

The purpose of this letter is to submit the attached shareholder resolution sponsored by the UAW Retiree Medical Benefits Trust ("Trust") for inclusion in Kindred Healthcare, Inc.'s (the "Company") proxy statement for the 2015 Annual Meeting of Stockholders.

The Trust is the beneficial owner of more than \$2,000 in market value of the Company's stock and has held such stock continuously for over one year. Furthermore, the Trust intends to continue to hold the requisite number of shares through the date of the 2015 annual meeting. Proof of ownership will be sent by the Trust's custodian, State Street Bank and Trust Company, under separate cover.

Please contact me at (734) 887-4964 or via email at [mamiller@rhac.com](mailto:mamiller@rhac.com) if you have any questions or would like to further discuss the issues raised herein.

Sincerely,



Meredith Miller  
Chief Corporate Governance Officer  
UAW Retiree Medical Benefits Trust

Resolved: Shareholders of Kindred Healthcare, Inc. (the "Company") ask the board of directors (the "Board") to adopt, and present for shareholder approval, a "proxy access" bylaw. Such a bylaw shall require the Company to include in proxy materials prepared for a shareholder meeting at which directors are to be elected the name, Disclosure and Statement (as defined herein) of any person nominated for election to the board by a shareholder or group (the "Nominator") that meets the criteria established below. The Company shall allow shareholders to vote on such nominee on the Company's proxy card.

The number of shareholder-nomined candidates appearing in proxy materials shall not exceed one quarter of the directors then serving. This bylaw, which shall supplement existing rights under Company bylaws, should provide that a Nominator must:

- a) have beneficially owned 3% or more of the Company's outstanding common stock continuously for at least three years before submitting the nomination;
- b) given the Company, within the time period identified in its bylaws, written notice of the information required by the bylaws and any Securities and Exchange Commission rules about (i) the nominee, including consent to being named in the proxy materials and to serving as director if elected; and (ii) the Nominator, including proof it owns the required shares (the "Disclosure"); and
- c) certify that (i) it will assume liability stemming from any legal or regulatory violation arising out of the Nominator's communications with the Company shareholders, including the Disclosure and Statement; (ii) it will comply with all applicable laws and regulations if it uses soliciting material other than the Company's proxy materials; and (c) to the best of its knowledge, the required shares were acquired in the ordinary course of business and not to change or influence control at the Company.

The Nominator may submit with the Disclosure a statement not exceeding 500 words in support of the nominee (the "Statement"). The Board shall adopt procedures for promptly resolving disputes over whether notice of a nomination was timely, whether the Disclosure and Statement satisfy the bylaw and applicable federal regulations, and the priority to be given to multiple nominations exceeding the one-quarter limit.

#### SUPPORTING STATEMENT

We believe proxy access is a fundamental shareholder right that will make directors more accountable and contribute to increased shareholder value. The CFA Institute's 2014 assessment of pertinent academic studies and the use of proxy access in other markets similarly concluded that proxy access:

- Would "benefit both the markets and corporate boardrooms, with little cost or disruption."
- Has the potential to raise overall US market capitalization by up to \$140.3 billion if adopted market-wide. (<http://www.cfapubs.org/dio/pdf/10.2469/ccb.v2014.n9.1>)

The proposed bylaw terms enjoy strong investor support – votes for similar shareholder proposals averaged 55% from 2012 through September 2014 – and similar bylaws have been adopted by companies of various sizes across industries, including Chesapeake Energy, Hewlett-Packard, Western Union and Verizon.

We urge shareholders to vote FOR this proposal.



Dan Sacramone

Client Service Officer  
STATE STREET BANK  
State Street Global Services/11S  
Crown Colony Office Park  
1200 Crown Colony Drive  
Mail Stop CCI-5S  
Quincy, Massachusetts 02169  
[DNSacramone@statestreet.com](mailto:DNSacramone@statestreet.com)

TEL 1-617-537-0151  
FAX 1-617-769-6695

DATE: December 8, 2014

Stephen Farber  
Executive Vice President, Chief Financial Officer  
Kindred Healthcare, Inc.  
680 South Fourth Street,  
Louisville, Kentucky 40202-2412

**Re: Shareholder Proposal Record Letter for Kindred Healthcare (cusip  
494580103)**

Dear Mr. Farber:

State Street Bank and Trust Company is custodian for **19,534 shares of Kindred Healthcare** common stock held for the benefit of the UAW Retiree Medical Benefits Trust (the "Trust"). The Trust has continuously owned at least 1% or \$2,000 in market value of the Company's common stock for at least one year through December 5, 2014. The Trust continues to hold the requisite number of shares of the Company's stock.

As custodian for the Trust, State Street holds these shares at its Participant Account at the Depository Trust Company ("DTC"). CEDE + CO., the nominee name at DTC, is the record holder of these shares.

If there are any questions concerning this matter, please do not hesitate to contact me at 617-985-9509.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Sacramone".

Dan Sacramone