

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Tracking #: _____

Date Mailed: July 14, 2022

**STATE OF OREGON
OREGON HEALTH AUTHORITY
HEALTH POLICY AND ANALYTICS DIVISION**

In the Matter of the Proposed)	Findings of Fact, Conclusions of Law, and
Material Change Transaction of)	Final Order
Falcon Hospice, L.P.)	
)	Transaction ID: 002

The Oregon Health Authority (OHA) is the state agency charged with operating the Health Care Market Oversight Program under Oregon Revised Statutes (ORS) 415.500 through 415.900 and Oregon Administrative Rules (OAR) 409-070-0000 through 409-070-0085.

On June 14, 2022, OHA confirmed receipt of a complete Notice of Material Change Transaction in compliance with OAR 409-070-0030 and 0045. Pursuant to ORS 415.501(5) and OAR 409-070-0055, OHA timely conducted a preliminary review of the proposed transaction. OHA’s review analyzed the potential impact of the transaction in four domains: cost, access, quality, and equity. The analysis followed guidelines and methods set out in the Health Care Market Oversight Analytic Framework (see <https://www.oregon.gov/oha/HPA/HP/HCMOPageDocs/OHA-HCMO-Analytic-Framework-FINAL.pdf>), which is grounded in the goals, standards, and criteria for transaction review and approval outlined in OAR 409-070-000 through OAR 409-070-0085. OHA’s analysis has been posted to the HCMO website at <https://www.oregon.gov/oha/HPA/HP/HCMOPageDocs/2022-07-14-002-Falcon-Hospice-30-Day-Report.pdf>. A public comment period was open from June 14, 2022, through June 28, 2022.

Now, therefore, upon due consideration of the Notice of Material Change Transaction, documentation filed in support of the Notice of Material Change Transaction, public comments, medical claims and enrollment databases maintained by OHA, databases maintained by federal agencies, press reports, websites of the entities involved in the transaction, academic research articles, and other publicly available reports, OHA enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

OHA finds that:

1. On or about June 9, 2022, Falcon Hospice, L.P (“Falcon Hospice” or “Entity”) filed with OHA, Health Care Market Oversight (“HCMO”) Program, a Notice of Material Change Transaction regarding the Acquisition of Control by Falcon Holdings of a 60% ownership interest in Kindred at Home Hospice Company, Inc. (“KAH Hospice”) from Gentiva Health Services, Inc. (“Gentiva”), a wholly owned subsidiary of Humana, Inc. (“Humana”).
2. On or about June 10, 2022, OHA notified Entity of an incomplete Notice submission.
3. On or about June 14, 2022, Falcon Hospice submitted a complete Notice.
4. On June 14, 2022, OHA commenced a preliminary 30-day review of the transaction pursuant to OAR 409-070-0055 and accepted public comments on the transaction between June 14 and June 28, 2022.
5. The general partner of Falcon Hospice is Falcon Hospice GP, LLC (“Falcon Hospice GP”).

6. The sole limited partner of Falcon Hospice is CD&R Falcon Holdings, L.P. (“Falcon Holdings”), a Cayman exempted limited partnership, whose limited partners include investment fund entities of Clayton, Dubilier & Rice (“CD&R”), a private equity firm. As of December 2020, CD&R had 34 companies in its investment portfolio with a total revenue of \$60 billion.
7. KAH Hospice is a publicly owned Delaware corporation headquartered in Atlanta, GA.
8. KAH Hospice includes the hospice and personal care divisions of Kindred at Home, a national provider of home health, hospice, and personal care services. KAH Hospice has 441 subsidiary hospice, community care, and palliative care agencies operating in 36 states and is valued at \$3.4 billion.
9. KAH Hospice owns Odyssey Healthcare, Inc., which operates two hospice agencies in Oregon (“the Kindred Hospices”): Kindred Hospice Lake Oswego located at 4500 Kruse Way Suite 100, Lake Oswego, OR 97035 (“Kindred Lake Oswego”) and Kindred Hospice Salem located at 698 12th Street SE Suite 230, Salem OR 97301 (“Kindred Salem”).
10. According to the Entity, over the last two years, Kindred Lake Oswego had an average daily census of 52 patients, and Kindred Salem had an average daily census of 34 patients. On average between 2017 and 2019, Kindred Lake Oswego served 420 patients per year, whereas Kindred Salem served 212 patients annually. Combined, the two hospice agencies accounted for 1,920 (or 3%) of approximately 66,800 hospice episodes identified in Oregon’s All Payer All Claims database (“APAC”) from 2017 to 2019.
11. The corporate structure of the parties is more clearly described in the Notice provided and posted to the HCMO website.
12. On or about April 20, 2022, Falcon Holdings and Gentiva, together with other affiliated entities, entered into a Stock Purchase Agreement and Plan of Merger (“Agreement”), the terms of which state that Falcon Holdings will purchase 60% of the shares of KAH Hospice from Gentiva and Gentiva will receive approximately \$2.8 billion from the sale of its 60% interest.
13. The stated purpose of the proposed acquisition is to allow partnership with the CD&R entities to maintain patient care at the Kindred Hospices while optimizing the efficiency of shared operations.
14. The stated outcome of the proposed transaction is a corporate ownership structure and investments that ensure adequate resources are necessary for the Kindred Hospices to continue to operate with the same high-quality staffing and services, without change of hospice locations, number of staff or services offered, quality of care, service areas, or type of insurance coverage accepted at either Oregon hospice location.
15. Medicare pays for nearly all services provided by KAH Hospice to Oregon residents, and provider payment rates and patient coinsurance amounts for hospice services are set annually by the federal government.
16. According to claims data for 2017-2019, Kindred Hospice Salem accounted for a 14% “market share” of care episodes provided by licensed hospice agencies in its service area. Kindred Hospice Lake Oswego provided 9% of care episodes in its service area in 2017-2019. These data suggest that most patients seeking care at the two Kindred locations have several alternative options for accessing hospice services.
17. Falcon Holdings and CD&R do not own any other providers of hospice services in Oregon or the Kindred Lake Oswego or Kindred Salem primary service areas.
18. The Entity states the transaction will not involve any changes to the Kindred Hospices’ names, federal tax ID numbers, direct ownership, direct governance, management/leadership, contracts with Coordinated Care Organizations, or operations generally.
19. Upon completion of the actions and upon closing of the transaction, Falcon Hospice will own 100% of KAH Hospice, Falcon Holdings will own 60% of Falcon Hospice, and Gentiva will own a 40% stake in Falcon Hospice.
20. The Entity states that it does not expect the transaction to have any negative impact on patient costs, access to services, equity, or the quality of health care in Oregon.

CONCLUSIONS OF LAW

OHA concludes that:

1. The Notice is supported by the required documentation and meets the requirements of the Health Care Market Oversight Program rules for approval with respect to acquisitions of health care entities pursuant to ORS 415.500 through 415.900 and Oregon Administrative Rules (OAR) 409-070-0000 through 409-070-0085
2. OHA finds that:
 - a. The transaction is unlikely to substantially reduce access to affordable health care in Oregon.
 - b. The transaction is not likely to substantially alter the delivery of health care in Oregon.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law it is hereby ORDERED that:

1. The proposed transaction is hereby **APPROVED** upon the basis of the information contained in the Notice to date.
2. The Entity shall notify OHA upon completion of the transaction by email at hcmo.info@odhsoha.oregon.gov.

This Order is effective immediately and will be posted to the Health Care Market Oversight Program website at <https://www.oregon.gov/oha/HPA/HP/Pages/health-care-market-oversight.aspx>.

OHA will conduct follow-up reviews to assess the impact of the transaction in accordance with ORS 415.501 (19). OHA will publish findings from follow-up reviews in July 2023, July 2024, and July 2027. Per OAR 409-070-0080, OHA may require the Entity to provide any information, reports, analyses, and documentation needed to monitor and assess the impact of the transaction.

NOTICE OF RIGHT TO REQUEST A HEARING

You are entitled to a hearing as provided by the Administrative Procedures Act (chapter 183, Oregon Revised Statutes), ORS 415.019, and OAR 137-070-0075. You are entitled to be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited resources. The Oregon Health Authority will be represented by an Assistant Attorney General from the Oregon Department of Justice.

To request a contested case hearing, your request must be in writing and must be received within fifteen (15) days from the date this Final Order was personally served, mailed, or electronically transmitted to you, based on the date at the top of this document.

A request sent by U.S. mail is “received” on the date it is postmarked. Your request may also be emailed. Your request should be sent to:

hcmo.info@odhsoha.oregon.gov

or

Health Care Market Oversight Program

421 SW Oak St
Suite 850
Portland, OR 97204

If you submit a request for a contested case hearing, you will be notified of the time place of the hearing. Information on the hearing process will be provided to you in accordance with ORS 183.413(2). Any hearing will be conducted by an administrative law judge from the Office of Administrative Hearings, assigned as required by ORS 183.635.

If you fail to request a hearing within the time allowed, if you request a hearing and subsequently withdraw your request for a hearing, if you request a hearing and fail to appear for the hearing, or if a hearing is scheduled and you later notify OHA that you will not appear at the specified time and place, you will have waived your right to a hearing.

Dated this 14th day of July, 2022



Sarah Bartelmann, MPH
Health Care Market Oversight Program Manager
Oregon Health Authority

NOTICE TO ACTIVE DUTY SERVICEMEMBERS. Active-duty service members have a right to stay these proceedings under the federal service members Civil Relief Act. For more information contact the Oregon State Bar at 00-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll-free telephone number.