

KINDRED HEALTHCARE INC  
Form DEF 14A  
March 28, 2003

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

**SCHEDULE 14A INFORMATION**

**PROXY STATEMENT PURSUANT TO SECTION 14(a)**  
**OF THE SECURITIES EXCHANGE ACT OF 1934**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- |                                     |   |                          |  |
|-------------------------------------|---|--------------------------|--|
| <input type="checkbox"/>            | Preliminary Proxy Statement                                   | <input type="checkbox"/> | <b>CONFIDENTIAL, FOR USE OF THE COMMISSION ONLY (AS PERMITTED BY RULE 14A-6(E)(2))</b> |
| <input checked="" type="checkbox"/> | Definitive Proxy Statement                                    |                          |  |
| <input type="checkbox"/>            | Definitive Additional Materials                               |                          |  |
| <input type="checkbox"/>            | Soliciting Material Pursuant to Rule 14a-11(c) or Rule 14a-12 |                          |  |

**KINDRED HEALTHCARE, INC.**

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(Name of Registrant as Specified In Its Charter)

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(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

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x No fee required.

.. Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

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(2) Aggregate number of securities to which transaction applies:

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(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

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(4) Proposed maximum aggregate value of transaction:

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(5) Total fee paid:

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.. Fee paid previously with preliminary materials.

.. Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

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(2) Form, Schedule or Registration Statement No.:

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(3) Filing Party:

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(4) Date Filed:

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**KINDRED HEALTHCARE, INC.**

March 28, 2003

Dear Shareholder:

You are cordially invited to attend the Annual Meeting of Shareholders of Kindred Healthcare, Inc. ( Kindred ), to be held at 10:00 a.m. (EDT) on Thursday, May 22, 2003, at Kindred s offices at 680 South Fourth Street, Louisville, Kentucky 40202-2412.

Information concerning the business to be conducted at the meeting is included in the accompanying Notice of Annual Meeting of Shareholders and Proxy Statement. Please give all of the information contained in the Proxy Statement your careful attention.

**YOUR VOTE IS VERY IMPORTANT.** Whether or not you plan to attend the meeting, it is important that your shares be represented. Therefore, we urge you to sign, date and promptly return the enclosed proxy in the enclosed postage paid envelope. Please refer to the enclosed voting form for instructions. If you attend the meeting, you will, of course, have the right to vote in person.

I look forward to greeting you personally, and on behalf of the Board of Directors and management, I would like to express our appreciation for your interest in Kindred.

Sincerely,

Edward L. Kuntz

Chairman of the Board and Chief

Executive Officer

Kindred Healthcare, Inc.

680 South Fourth Street

Louisville, Kentucky 40202-2412

**KINDRED HEALTHCARE, INC.**  
**680 SOUTH FOURTH STREET**  
**LOUISVILLE, KENTUCKY 40202-2412**

**NOTICE OF ANNUAL MEETING OF SHAREHOLDERS**

**TO BE HELD ON MAY 22, 2003**

To the Shareholders of Kindred Healthcare, Inc.:

The Annual Meeting of Shareholders of Kindred Healthcare, Inc. ( Kindred ) will be held at 10:00 a.m. (EDT) on Thursday, May 22, 2003 at Kindred s offices at 680 South Fourth Street, Louisville, Kentucky 40202-2412 for the following purposes:

- (1) To elect a board of eight directors; and
- (2) To transact such other business as may properly come before the meeting.

Only shareholders of record at the close of business on March 26, 2003 will be entitled to vote at the meeting and any adjournments thereof.

IT IS IMPORTANT THAT YOU VOTE YOUR SHARES. WHETHER YOU PLAN TO ATTEND THE MEETING OR NOT, PLEASE SUBMIT YOUR PROXY AS SOON AS POSSIBLE IN THE ENCLOSED POSTAGE PAID ENVELOPE IN ORDER TO AVOID ADDITIONAL SOLICITING EXPENSES TO KINDRED. THE PROXY IS REVOCABLE AND WILL NOT AFFECT YOUR RIGHT TO VOTE IN PERSON IN THE EVENT YOU FIND IT CONVENIENT TO ATTEND THE MEETING.

*Edward L. Kuntz*

*Chairman of the Board and Chief*

*Executive Officer*

**PROXY STATEMENT**  
**FOR ANNUAL MEETING OF SHAREHOLDERS**  
**TO BE HELD ON MAY 22, 2003**

**GENERAL INFORMATION**

This Proxy Statement and the accompanying form of proxy are furnished in connection with the solicitation of proxies by the Board of Directors of Kindred Healthcare, Inc. ( Kindred or the Company ) for use at the Annual Meeting of Shareholders (the Annual Meeting ), to be held at 10:00 a.m. (EDT) on May 22, 2003, at the Company's offices at 680 South Fourth Street, Louisville, Kentucky 40202-2412, and at any adjournment or postponement thereof. Only shareholders of record on the books of the Company at the close of business on March 26, 2003 (the Record Date ) will be entitled to notice of, and to vote at, the Annual Meeting. This Proxy Statement is dated March 28, 2003 and was first mailed to shareholders on or about April 2, 2003.

Proxies are solicited by the Board of Directors in order to provide each shareholder an opportunity to vote on all matters scheduled to come before the meeting, whether or not he or she attends the meeting in person. When the enclosed proxy card is returned properly signed, the shares represented by the proxy card will be voted by the proxy holders named on the proxy card in accordance with the shareholder's directions. You are urged to specify your choice by marking the appropriate box on the proxy card. If the proxy card is signed and returned without specifying a choice, the shares will be voted as recommended by the Board of Directors.

The cost of preparing, assembling and mailing the notice of annual meeting, proxy statement and proxy card will be borne by the Company. In addition to the use of the mail, proxies may be solicited by directors, officers and regular employees of the Company, without additional compensation, in person or by telephone or other electronic means. Furthermore, the Company may retain an investor relations firm to solicit proxies by telephone or mail. Kindred will reimburse brokerage houses and other nominees for their expenses in forwarding proxy materials to beneficial owners of the Company's common stock.

**Revocability of Proxy**

Executing and returning the enclosed proxy card will not affect your right to attend the Annual Meeting and vote in person. If you do attend, you may, if you wish, vote by ballot at the meeting, thereby effectively canceling any proxies previously given. In addition, a shareholder giving a proxy may revoke it at any time before it is voted at the meeting by filing with the Corporate Secretary of the Company any instrument revoking it, or by filing with the Company a duly executed proxy bearing a later date.

**Voting Rights and Outstanding Shares**

Each share of common stock, \$0.25 par value ( Common Stock ), of the Company outstanding at the close of business on March 26, 2003 is entitled to one vote at the Annual Meeting. As of March 26, 2003, there were 17,648,857 shares of Common Stock outstanding.

The presence at the Annual Meeting in person or by proxy of holders of record of a majority of the outstanding shares of Common Stock is required to constitute a quorum for the transaction of all business at the Annual Meeting. The vote of a plurality of the outstanding shares of Common Stock present in person or by proxy will be necessary to elect the director-nominees listed in this Proxy Statement. The affirmative vote of a majority of the outstanding shares of Common Stock present in person or by proxy will be necessary to approve any other matters that may come before the Annual Meeting for shareholder consideration. Abstentions and proxies relating to street name shares for which brokers have not received voting instruction from the beneficial owner ( Broker Non-Votes ) are counted in determining whether a quorum is present. In the election of directors, the nominees receiving the highest number of votes will be elected. Therefore, abstentions or Broker Non-Votes for a director-nominee will have no effect. With respect to any matters submitted to the shareholders for their consideration other than the election of directors, abstentions will be counted as part of the total number of votes cast on such proposals in determining whether the proposals have received the requisite number of

favorable votes, whereas Broker Non-Votes will not be counted as part of the total number of votes cast on such proposals. Thus, abstentions will have the same effect as votes against any such proposal, whereas Broker Non-Votes will have no effect in determining whether any such proposal has been approved by the shareholders. Therefore, it is important that you complete and return your proxy early so that your vote may be recorded.

Votes cast by proxy or in person at the Annual Meeting will be tabulated by the inspectors of election appointed for the meeting, who also will determine whether or not a quorum is present.

### **BACKGROUND INFORMATION**

On May 1, 1998, Ventas, Inc. ( Ventas ) completed the spin-off of its healthcare operations to its stockholders through the distribution of the Company's former common stock (the Spin-off ). In anticipation of the Spin-off, the Company was incorporated on March 27, 1998 as a Delaware corporation.

On September 13, 1999, the Company filed voluntary petitions for protection under Chapter 11 of Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. From the date of the bankruptcy filing until it emerged from bankruptcy, the Company operated its businesses as a debtor-in-possession subject to the jurisdiction of the bankruptcy court. The bankruptcy court approved the Company's Fourth Amended Joint Plan of Reorganization (the Plan of Reorganization ) which became effective on April 20, 2001 (the Effective Date ).

Pursuant to the Plan of Reorganization, the Company issued to certain claimholders, including senior creditors and Ventas, in exchange for their claims: an aggregate of (1) \$300 million of senior secured notes, (2) 15,000,000 shares of Common Stock, (3) 2,000,000 Series A warrants to purchase Common Stock, and (4) 5,000,000 Series B warrants to purchase Common Stock. The Company also entered into amended and restated master lease agreements with Ventas covering 210 of the nursing centers and 44 of the hospitals that the Company operated. As part of the Plan of Reorganization, the Company's then existing senior indebtedness and debt and equity securities were canceled. As a result of the exchange described above, the holders of certain claims acquired control of the Company and the holders of the Company's former common stock relinquished control. In addition, the Company changed its name to Kindred Healthcare, Inc. and a new board of directors, including representatives of the principal security holders following the exchange, was appointed.

### **PROPOSAL TO ELECT DIRECTORS**

The Board of Directors of the Company (the Board or the Board of Directors ) currently consists of seven persons. The Board of Directors has nominated the eight persons listed below to be elected as directors at the Annual Meeting. Each director elected at the Annual Meeting will serve, subject to the provisions of the bylaws, until his successor is duly elected and qualified. The names and ages of the nominees proposed for election as directors, all of whom with the exception of Dr. Cooper and Mr. Diaz are presently directors of the Company, together with certain information concerning the nominees, are set forth below. Dr. Cooper and Mr. Diaz are being nominated to fill one vacancy on the Board and to fill a new Board position created by the adoption of a resolution expanding the Board from seven to eight members.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE ELECTION AS DIRECTORS OF EACH OF THE NOMINEES LISTED BELOW.





### Nominees For Director

**EDWARD L. KUNTZ** (57) has served as the Company's Chairman of the Board and Chief Executive Officer since January 1999. He served as the President, Chief Operating Officer and a director of the Company from November 1998 to January 1999. He served as President of the Company until January 2002. Mr. Kuntz was Chairman and Chief Executive Officer of Living Centers of America, Inc., a leading provider of long-term healthcare, from 1992 to 1997. After leaving Living Centers of America, Inc., he served as an advisor and consultant to a number of healthcare services and investment companies and was affiliated with Austin Ventures, a venture capital firm. In addition, Mr. Kuntz served as Associate General Counsel and later as Executive Vice President of ARA Living Centers, a long-term healthcare provider, until the formation of Living Centers of America, Inc. in 1992. Mr. Kuntz is a director of Rotech Healthcare, Inc., a provider of home medical equipment and related products and services and Castle Dental Centers, Inc., a manager and operator of integrated dental networks.

**JAMES BOLIN** (44) has served as a director of the Company since April 2001. Since October 2002, Mr. Bolin has served as a consultant to Appaloosa Management L.P. From 1995 through October 2002, Mr. Bolin served as Vice President and Secretary of Appaloosa Management L.P., a private investment partnership and an affiliate of the Company. Mr. Bolin serves as a director of Inamed Corporation, a global surgical and medical device company, and NTL Incorporated, a provider of a wide range of communication services in the United Kingdom and Ireland. (1)

**THOMAS P. COOPER, M.D.** (58) is the founder, Chairman and Chief Executive Officer of Vericare, Inc., a provider of mental health services to patients in long-term care facilities since 1991. Dr. Cooper also is an adjunct professor at the Columbia University School of Business. From November 2000 to December 2001, Dr. Cooper was the Chief Executive Officer of Oncall Healthcare, Inc., a start-up venture that provided nurse triage services. He also was the founder and Chief Executive Officer of Cove Healthcare, Inc., a provider of physician hospitalists to acute care hospitals from June 1997 to November 1999. Dr. Cooper serves as a director of UICI, a seller of health insurance to students and the self-employed, and Hanger Orthopedics Group, Inc., the largest operator of orthotic and prosthetic patient-care centers in the United States.

**PAUL J. DIAZ** (41) has served as the President and Chief Operating Officer of the Company since January 2002. From 1996 to July 1998, he served in various executive capacities with Mariner Health Group, Inc. ( Mariner Health ), a long-term healthcare provider, most recently as Executive Vice President and Chief Operating Officer. Prior to joining Mariner Health, Mr. Diaz was Chief Executive Officer of Allegis Health Services, Inc., a long-term healthcare provider, where he also previously served as Chief Financial Officer and General Counsel. Since leaving Mariner Health and prior to joining the Company, he served as the managing member of Falcon Capital Partners, LLC, a private investment and consulting firm specializing in healthcare restructurings and as Chairman and Chief Executive Officer of Capella Senior Living, LLC, a start-up venture to provide long-term healthcare services.

**MICHAEL J. EMBLER** (38) has served as a director of the Company since July 2001. Since July 2001, Mr. Emblar has been Vice President of Franklin Mutual Advisers, LLC, an investment advisory firm and an affiliate of the Company. From October 1992 to May 2001, he served in various positions with Nomura Holding America, Inc., most recently as Managing Director. (2)

**GARRY N. GARRISON** (56) has served as a director of the Company since April 2001. From 1997 to 2000, Mr. Garrison served as Senior Vice President of Dynamic Healthcare Solutions, Inc., a venture capital firm specializing in high-growth, health related businesses. From 1996 to 1997, he served as President and Chief Executive Officer, Specialty Services Division of the Foundation Health Systems, Inc., an integrated managed care organization, overseeing operations for various specialty services companies. Mr. Garrison also served as President and Chief Operating Officer of Integrated Pharmaceutical Services from 1994 to 1996. (1)(3)



**ISAAC KAUFMAN** (55), a certified public accountant, has served as a director of the Company since April 2001. Since September 1998, Mr. Kaufman has served as the Senior Vice President and Chief Financial Officer of Advanced Medical Management Inc., a manager of medical practices and an outpatient surgical center. From February 1998 to September 1998, he served as the Chief Financial Officer of Bio Science Contract Production Corp., a contract manufacturer of bulk pharmaceuticals and biologics. Mr. Kaufman also served as Chief Financial Officer of VSI Group, Inc. from October 1996 to February 1998. Mr. Kaufman serves as a director of TransWorld Entertainment Corporation, a leading specialty retailer of music and video products. (1)(2)

**JOHN H. KLEIN** (56) has served as a director of the Company since April 2001. Since 2001, Mr. Klein has served as Chairman and Managing Director of True North Capital, a private equity fund. He has been the Chairman and Chief Executive Officer of Strategic Business and Technology Solutions, LLC, a strategic business and technology advisory firm, since June 1998. Mr. Klein also has served as the Chairman and Chief Executive Officer of BI Logix, Inc., a business intelligence software solutions company, since May 1998. In addition, he has served as Chairman and Chief Executive Officer of DentalLine.com, a group benefit and internet company, since July 1999. From March 1998 to August 2000, he served as Director and Vice Chairman of Image Vision, a developer and marketer of imaging systems and products. Mr. Klein also served as Chairman and Chief Executive Officer of the MIM Corporation, a provider of pharmacy benefit services, from 1996 to May 1998. Mr. Klein is a director of Novadel Pharma Inc., a developer of novel application drug delivery systems. (1)(2)(3)

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- (1) Member of the Audit and Compliance Committee, of which Mr. Kaufman and Mr. Klein serve as Co-Chairmen.
  - (2) Member of the Nominating and Governance Committee, of which Mr. Klein is Chairman.
  - (3) Member of the Executive Compensation Committee, of which Mr. Klein is Chairman.

As noted above, Mr. Diaz served as Executive Vice President and Chief Operating Officer of Mariner Health until July 1998. On July 31, 1998, Paragon Health Network, Inc., the predecessor to Mariner Post-Acute Networks, Inc. ( Mariner Post-Acute ) acquired Mariner Health. Similar to the Company and several other long-term healthcare providers, Mariner Post-Acute and substantially all of its subsidiaries, including Mariner Health, filed voluntary petitions under Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware on January 18, 2000.

The information contained in this Proxy Statement concerning the nominees is based upon statements made or confirmed to the Company by or on behalf of such nominees, except to the extent certain information appears in its records. Directors' ages are given as of January 1, 2003.

**SHARES OF COMMON STOCK OF THE COMPANY COVERED BY PROXIES EXECUTED AND RECEIVED IN THE ACCOMPANYING FORM WILL BE VOTED FOR THE ELECTION AS DIRECTORS OF ALL OF THE NOMINEES, UNLESS OTHERWISE SPECIFIED ON THE PROXY.** The Board of Directors does not contemplate that any of the nominees will be unable to accept election as a director. However, in the event that one or more nominees are unable or unwilling to accept or are unavailable to serve, the persons named in the proxies or their substitutes will have the authority, according to their judgment, to vote or refrain from voting for other individuals as directors.

#### **CERTAIN INFORMATION CONCERNING THE BOARD OF DIRECTORS**

During 2002, the Board of Directors held 13 meetings, including five regular and eight special meetings. Each director attended more than 75% of the total number of meetings of the Board and the committees on which each served. The Board of Directors has established an Audit and Compliance Committee, an Executive Compensation Committee and a Nominating and Governance Committee. Each committee has a written charter.

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*Audit and Compliance Committee.* The Audit and Compliance Committee held eight meetings during 2002. The Audit and Compliance Committee assists the Board of Directors in monitoring (1) the adequacy of the Company's system of internal controls, accounting policies, financial reporting practices, and the quality and

integrity of the Company's financial reporting; (2) the independent auditor's qualifications and independence; (3) the performance of the Company's internal audit function and independent auditors; and (4) the Company's compliance with applicable laws, regulations and policies. The charter for the Audit and Compliance Committee, which has been adopted by the Board of Directors, is included as Appendix A to this Proxy Statement.

*Executive Compensation Committee.* The Executive Compensation Committee held six meetings in 2002. The Executive Compensation Committee assists the Board of Directors in fulfilling its responsibility to the shareholders, potential shareholders and investment community to ensure that the Company's key executives, officers and Board members are compensated in accordance with the Company's overall compensation policies and executive compensation policy. This Committee recommends and approves compensation policies, programs and pay levels that are necessary to support the Company's objectives and that are rational and reasonable to the value of the services rendered.

*Nominating and Governance Committee.* The Nominating and Governance Committee held one meeting in 2002. The Nominating and Governance Committee assists the Board of Directors by (1) identifying individuals qualified to become Board members, and to approve the director nominees for the Board of Directors; (2) recommending to the Board nominees for each committee; (3) leading the Board in its annual review of the Board's performance; and (4) recommending to the Board the corporate governance guidelines applicable to the Company. The Nominating and Governance Committee will consider nominees recommended by stockholders. Stockholders interested in making a recommendation should deliver a written recommendation to the Corporate Secretary of the Company at the Company's corporate office.

## COMPENSATION OF DIRECTORS

From January 1 through June 30, 2002, non-employee directors of the Company received \$2,000 for each Board meeting attended and \$1,000 for each committee meeting attended. Beginning in the third quarter of 2002, non-employee directors received \$1,500 for each Board meeting attended and \$1,000 for each committee meeting attended unless the meeting was held telephonically. Each non-employee director received \$500 for each telephonic meeting of the Board or any committee since July 1, 2002. In addition, non-employee directors received a \$2,500 retainer for each calendar quarter that they served as a director.

Pursuant to the Company's Stock Option Plan for Non-Employee Directors (the Directors Plan), the Company issues, on January 1 of each year during the term of the Directors Plan, an option to purchase 3,000 shares of Common Stock to each non-employee director. Accordingly, on January 1, 2002, each non-employee director received an option to purchase 3,000 shares of Common Stock having an exercise price of \$52.00 per share. All of these options are exercisable in four equal annual installments beginning on the first anniversary of their grant date and have a ten year term.

In addition, upon the appointment or election of a person as a non-employee director for the first time, such director will receive a one-time grant of an option to purchase 10,000 shares of Common Stock under the Directors Plan. These options will have an exercise price equal to the fair market value of the Common Stock on the date the option is granted and vest in equal annual installments over four years.

## SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information regarding beneficial ownership of Common Stock and the Company's Series A and Series B warrants, as of January 31, 2003, by (1) each shareholder known by the Company to be the beneficial owner of more than 5% of its outstanding shares of Common Stock, (2) each person who is a director or nominee for director, (3) each of the Company's Named Executive Officers (as defined herein), and (4) all of the persons who are directors and executive officers of the Company, as a group.

Name of Beneficial Owner	Amount and Nature of			Percent of Class		
	Beneficial Ownership (1)					
	Common Stock	Series A Warrants	Series B Warrants	Common Stock	Series A Warrants	Series B Warrants
<b>Directors, Nominees and Named Executive Officers</b>						
Edward L. Kuntz	170,000			*		
James Bolin						
Thomas P. Cooper, M.D.						
Michael J. Embler (2)	5,047,831	560,242	1,400,603	25.7	28.0	28.0
Garry N. Garrison	3,250			*		
Isaac Kaufman	3,250			*		
John H. Klein	3,250			*		
David A. Tepper (3)	5,001,821	720,398	1,800,996	24.8	36.0	36.0
Paul J. Diaz	25,000			*		
Frank J. Battafarano	42,205			*		
Richard A. Lechleiter	25,120			*		
Richard E. Chapman	43,895			*		
<b>All Directors and Executive Officers as a Group (17 persons) (4)</b>	10,337,460	1,280,640	3,201,599	46.3	64.1	64.1
<b>Other Security Holders with More than 5% Ownership</b>						
Appaloosa Management L.P., Appaloosa Partners, Inc. and David A. Tepper (3)	5,001,821	720,398	1,800,996	24.8	36.0	36.0
Stephen Feinberg (5)	1,355,621			7.7		
Franklin Mutual Advisers, LLC (6)	5,047,831	560,242	1,400,603	25.7	28.0	28.0
Ventas, Inc. and Ventas Realty, Limited Partnership (7)	920,814			5.2		

\* Denotes less than 1%.

- (1) Includes shares subject to options or warrants and which are exercisable within 60 days from January 31, 2003. Other than shares subject to warrants as expressly indicated in the table, the number of shares of Common Stock that may be acquired through exercise of options, which are exercisable as of, or within 60 days after, January 31, 2003, are as follows: Mr. Kuntz 45,000 shares; Mr. Embler 3,250 shares; Mr. Garrison 3,250 shares; Mr. Kaufman 3,250 shares; Mr. Klein 3,250 shares; Mr. Tepper 3,250 shares; Mr. Diaz 25,000 shares; Mr. Lechleiter 7,900 shares; Mr. Chapman 12,833 shares; and Mr. Battafarano 11,300 shares. Unless otherwise noted, the Company believes that all persons named in the table have sole voting and investment power with respect to all shares of Common Stock and/or warrants beneficially owned by them. Mr. Lechleiter's total includes 50 shares held jointly with his spouse.

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- (2) Mr. Embler disclaims beneficial ownership of shares held by Franklin Mutual Advisers, LLC ( FMA ). In addition, Mr. Embler disclaims beneficial ownership of shares underlying options issued by the Company. Mr. Embler is a Vice President of FMA and serves on the Board at the request of FMA. In accordance with FMA s internal policy, all cash and non-cash compensation issued to Mr. Embler in connection with his

service on the Board of Directors has or will be distributed directly to the advisory clients of FMA. See note 6 below.

- (3) Based on a Schedule 13D/A jointly filed by Appaloosa Management L.P., Appaloosa Partners, Inc. and David A. Tepper dated October 21, 2002 with the Securities and Exchange Commission (the SEC) and a Form 4 jointly filed with the SEC by Appaloosa Management L.P., Appaloosa Partners, Inc., and David A. Tepper. According to these filings, Mr. Tepper is the sole stockholder and President of Appaloosa Partners, Inc. Appaloosa Partners, Inc. is the general partner of Appaloosa Management L.P. Appaloosa Management L.P. is the general partner of Appaloosa Investment Limited Partnership I and acts as an investment advisor to Palomino Fund Ltd. According to the Schedule 13D/A, Appaloosa Management L.P., Appaloosa Partners, Inc. and Mr. Tepper may be deemed to have the sole voting and dispositive power with respect to 5,001,821 shares of Common Stock, of which 2,521,394 represent shares issuable upon exercise of the Series A and Series B warrants which are currently exercisable. The address of Appaloosa Management L.P., Appaloosa Partners, Inc., and Mr. Tepper is 26 Main Street, 1<sup>st</sup> Floor, Chatham, New Jersey 07928.
- (4) The number of shares of Common Stock shown in the table includes shares issuable upon the exercise of 1,280,640 Series A warrants and 3,201,599 Series B warrants. See notes 2, 3 and 6.
- (5) Based on a Schedule 13D/A filed by Stephen Feinberg dated November 19, 2002 with the SEC. The Schedule 13D/A indicates that Cerberus Partners, L.P. is the holder of 15,900 shares of Common Stock, Cerberus Institutional Partners, L.P. is the holder of 276,134 shares of Common Stock, Cerberus International, Ltd. is the holder of 710,536 shares of Common Stock and various other private investment funds own in the aggregate 353,051 shares of Common Stock. Based on the Schedule 13D/A, Stephen Feinberg possesses sole power to vote and direct the disposition of all securities described in the immediately preceding sentence. The address of Mr. Feinberg is 450 Park Avenue, 28<sup>th</sup> Floor, New York, New York 10022.
- (6) Based on a Schedule 13D/A filed by Franklin Mutual Advisers, LLC dated January 9, 2002 with the SEC. According to the Schedule 13D/A, the Common Stock is beneficially owned by one or more open-end investment companies or other management accounts of FMA. Under its advisory contracts, FMA has sole voting and investment discretion over these securities. The number of shares of Common Stock shown in the table includes shares issuable upon the exercise of 560,242 Series A warrants and 1,400,603 Series B warrants which are currently exercisable. Michael J. Embler is a Vice President of Franklin Mutual Advisers, LLC and disclaims beneficial ownership of shares held by FMA. See Note 2 above. The address of FMA is 51 John F. Kennedy Parkway, Short Hills, New Jersey 07078.
- (7) Based on a Schedule 13G/A jointly filed by Ventas, Inc. and Ventas Realty, Limited Partnership dated December 31, 2002 with the SEC. According to the Schedule 13G/A, each of Ventas, Inc. and Ventas Realty, Limited Partnership has shared ownership and voting dispositive power with respect to these securities. Ventas, Inc. is the sole general partner of Ventas Realty, Limited Partnership, and the sole member of the only limited partner of Ventas Realty, Limited Partnership. The address of each of Ventas, Inc. and Ventas Realty, Limited Partnership is 4360 Brownsboro Road, Suite 115, Louisville, Kentucky 40207-1642.

#### **SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE**

Section 16(a) of the Securities Exchange Act of 1934 requires the Company's directors and executive officers and persons who own more than 10% of the Common Stock to file initial stock ownership reports and reports of changes in ownership with the SEC. Based on a review of these reports and on written representations from the reporting persons that no other reports were required, the Company believes that the applicable Section 16(a) reporting requirements were complied with for all transactions which occurred in 2002.



**EXECUTIVE COMPENSATION AND OTHER INFORMATION**

The following Summary Compensation Table sets forth compensation earned during the three fiscal years ended December 31, 2002 by (1) the Chief Executive Officer of the Company and (2) the other four most highly compensated executive officers of the Company (collectively, the Named Executive Officers ).

**Summary Compensation Table**

Name and Principal Position	Year	Annual Compensation			Long-Term Compensation		
		Salary	Bonus(1)	Other Annual Compensation(2)	Restricted	Securities	All Other Compensation(4)
					Stock Awards(3)	Underlying Options	
Edward L. Kuntz Chairman of the Board and Chief Executive Officer	2002	\$ 819,600	\$ 573,720	\$ 65,391		40,000	\$ 6,000
	2001	795,700	1,392,475	123,902	\$ 5,197,500	135,000	2,630,100
	2000	771,630	1,120,125	113,695			5,100
Paul J. Diaz President and Chief Operating Officer	2002	\$ 555,616	\$ 405,000			117,500	\$ 162,245
Richard A. Lechleiter Senior Vice President, Chief Financial Officer and Treasurer	2002	\$ 283,224	\$ 191,176			24,800	\$ 25,865
	2001	180,335	297,555		\$ 912,450	23,700	291,051
	2000	175,100	241,638				