

AMERISOURCEBERGEN CORP
Form S-8
February 06, 2007

As filed with the Securities and Exchange Commission on February 6, 2007

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S-8
REGISTRATION STATEMENT

Under

THE SECURITIES ACT OF 1933

AMERISOURCEBERGEN CORPORATION

(Exact Name of Registrant as Specified in Charter)

DELAWARE
(State or Other Jurisdiction of

Incorporation or Organization)

23-3079390
(I.R.S. Employer

Identification Number)

1300 Morris Drive

Chesterbrook, Pennsylvania 19087-5594

(610) 727-7000

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

AMERISOURCEBERGEN CORPORATION 2002 MANAGEMENT STOCK INCENTIVE PLAN, AS AMENDED

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(Full title of the plan)

John G. Chou, Esquire

Senior Vice President, General Counsel

and Secretary

AmerisourceBergen Corporation

1300 Morris Drive

Chesterbrook, PA 19087-5594

(Name and address of agent for service)

(610) 727-7000

(Telephone number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

| | | Proposed | Proposed | |
|---|---------------------|-----------------------|--------------------------|-------------------------|
| | | maximum | maximum | |
| | | offering price | aggregate | Amount of |
| Title of shares to be registered | Amount to be | per share(3) | offering price(3) | registration fee |
| Common Stock (\$.01 par value) | 11,000,000 | \$ 52.12(3) | \$ 573,320,000.00 | \$ 61,345.24 |

- (1) This registration statement (the "Registration Statement") registers the issuance of 11,000,000 additional shares of Common Stock, par value \$0.01 per share (the "Common Stock"), of AmerisourceBergen Corporation (the "Registrant") which are available for issuance under the AmerisourceBergen Corporation 2002 Management Stock Incentive Plan, as amended and restated effective February 9, 2006 (the "Plan").
 - (2) Pursuant to Rule 416(a) under the Securities Act of 1933, this registration statement also covers an indeterminate number of additional shares which may be offered and issued in accordance with the terms of the Plan to prevent dilution from stock splits, stock dividends or similar transactions.
 - (3) Estimated solely for the purposes of calculating the registration fee in accordance with Rule 457(c) and (h)(1) under the Securities Act of 1933 on the basis of the average of the high and low prices reported for shares of Common Stock of the Registrant on the New York Stock Exchange on January 31, 2007.
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REGISTRATION OF ADDITIONAL SECURITIES

INCORPORATION OF EARLIER REGISTRATION STATEMENTS BY REFERENCE

AmerisourceBergen Corporation (the Registrant) is filing this Registration Statement on Form S-8 (the Registration Statement) to register an additional 11,000,000 shares of Common Stock, par value \$0.01 per share, for issuance under the AmerisourceBergen Corporation 2002 Management Stock Incentive Plan, as amended and restated effective February 9, 2006 (the Plan). Unless otherwise noted herein, this Registration Statement incorporates by reference the Registration Statements on Form S-8 (File No. 333-88230 and File No. 333-110431).

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents previously filed with the Securities and Exchange Commission (the Commission) by the Registrant pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act), are incorporated by reference in this Registration Statement:

- (a) Annual Report on Form 10-K for the fiscal year ended September 30, 2006;
- (b) Current Reports on Form 8-K, filed with the Commission on October 16, 2006, October 27, 2006, November 2, 2006, November 14, 2006, November 17, 2006, November 28, 2006, December 1, 2006, December 13, 2006, January 8, 2007, January 23, 2007, January 24, 2007 and February 6, 2007;
- (c) Definitive Proxy Statement with respect to Annual Meeting of Stockholders to be held on February 16, 2007, as filed with the Commission on January 16, 2007; and
- (d) The description of the Common Stock contained in the Registration Statement on Form S-4 (File No. 333-61440), filed with the Commission on May 23, 2001, as amended, and the prospectus filed pursuant to Rule 424(b)(3), filed with the Commission on August 1, 2001, including any amendments or reports filed for the purpose of updating such description, in which there is described the terms, rights and provisions applicable to our Common Stock.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference in this Registration Statement shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in this Registration Statement, or in any other subsequently filed document that also is or is deemed to be incorporated by reference in this Registration Statement, modifies or supersedes such prior statement. Any statement contained in this Registration Statement shall be deemed to be modified or superseded to the extent that a statement contained in a subsequently filed document that is or is deemed to be incorporated by reference in this Registration Statement modifies or supersedes such prior statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 5. Interests of Named Experts and Counsel.

John G. Chou, who is the Registrant's Senior Vice President, General Counsel and Secretary, has issued an opinion about the validity of the securities registered hereby, as well as other relevant legal matters. Mr. Chou beneficially owns, or has options to acquire, a number of shares of the Registrant's common stock, which amount constitutes less than 1% of the total outstanding common stock.

Item 8. Exhibits.

The following exhibits are filed herewith or incorporated by reference as part of this Registration Statement:

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| Exhibit No. | Description |
|--------------------|--|
| 5.1 | Opinion of Counsel |
| 10.1 | AmerisourceBergen Corporation 2002 Management Stock Incentive Plan, as amended and restated effective February 9, 2006 (incorporated by reference to Appendix B to the Registrant's Proxy Statement for the Annual Meeting of Stockholders held on February 9, 2006) |

- 23.1 Consent of Counsel (included in Exhibit 5.1)
- 23.2 Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm
- 24.1 Power of Attorney (see signature page at page 5)

Item 9. Undertakings.

The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made pursuant to this Registration Statement, a post-effective amendment to this Registration Statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933 (Securities Act);
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in aggregate, represent a fundamental change in the information set forth in this Registration Statement; and
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;
- provided, however, that paragraphs (i) and (ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with the Commission by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.
- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
 - (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions described under Item 6 Indemnification of Directors and Officers, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant 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 Chesterbrook, State of Pennsylvania, on February 6, 2007.

AMERISOURCEBERGEN CORPORATION

By: /s/ R. David Yost

Name: R. David Yost

Title: Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each individual whose signature appears below constitutes and appoints John G. Chou, 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, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitutes or substitute, 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 the following persons in the capacities and on the dates indicated.

| | |
|------------------------|---|
| Date: February 6, 2007 | /s/ R. David Yost R. David Yost, Chief Executive Officer and Director (Principal Executive Officer) |
| Date: February 6, 2007 | /s/ Michael D. DiCandilo Michael D. DiCandilo, Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer) |
| Date: February 6, 2007 | /s/ Kurt J. Hilzinger Kurt J. Hilzinger, President, Chief Operating Officer and Director |
| Date: February 6, 2007 | /s/ Richard C. Gozon Richard C. Gozon, Director and Chairman |
| Date: February 6, 2007 | /s/ Rodney H. Brady Rodney H. Brady, Director |
| Date: February 6, 2007 | /s/ Charles H. Cotros Charles H. Cotros, Director |
| Date: February 6, 2007 | /s/ Edward E. Hagenlocker Edward E. Hagenlocker, Director |
| Date: February 6, 2007 | /s/ Jane E. Henney, M.D. Jane E. Henney, M.D., Director |
| Date: February 6, 2007 | /s/ Michael J. Long Michael J. Long, Director |
| Date: February 6, 2007 | /s/ Henry W. McGee Henry W. McGee, Director |
| Date: February 6, 2007 | /s/ J. Lawrence Wilson J. Lawrence Wilson, Director |

ACKNOWLEDGMENT BY AGENT

I, John G. Chou, have read the above power of attorney and I am the person identified as the attorney-in-fact and agent for the principals whose signatures appear above. I hereby acknowledge that in the absence of a specific provision to the contrary in the power of attorney or in the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C.S.) when I act as attorney-in-fact and agent:

I shall exercise the power for the benefit of the principals.

I shall keep the assets of the principals separate from my assets.

I shall exercise reasonable caution and prudence.

I shall keep a full and accurate record of all actions, receipts and disbursements on behalf of the principals.

/s/ John G. Chou
John G. Chou

February 6, 2007
(Attorney-in-fact)

EXHIBIT INDEX

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