

BioScrip, Inc.
Form 10-Q/A
December 02, 2009

United States
Securities and Exchange Commission
Washington, D.C. 20549

Form 10-Q/A

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2009

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number: 0-28740

BioScrip, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction
of Incorporation or Organization)

05-0489664
(I.R.S. Employer Identification No.)

100 Clearbrook Road, Elmsford, NY
(Address of Principal Executive Offices)

10523
(Zip Code)

(914) 460-1600
(Registrant's telephone number, including area code)

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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted to its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

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. (Check one):

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).
Yes No

On October 30, 2009, there were 39,316,399 outstanding shares of the registrant’s common stock, \$.0001 par value per share.

EXPLANATORY NOTE

We are filing this Amendment No. 1 (the “Amendment”) on Form 10-Q/A to our Quarterly Report on Form 10-Q for the three month period ended September 30, 2009 (the “Original Form 10-Q”), which was filed with the Securities Exchange Commission on November 2, 2009. This Amendment is being filed to replace the Prime Vendor Agreement (the “Agreement”) dated as of July 1, 2009 between AmerisourceBergen Drug Corporation and BioScrip, Inc. (the “Company”) that was attached as Exhibit 10.1 to the Original Form 10-Q with the version of the Agreement attached to this Amendment as Exhibit 10.1. The attached version of the Agreement has been revised to disclose additional information previously omitted in accordance with a request for confidential treatment submitted to the Securities and Exchange Commission. Certain portions of the Agreement remain omitted in accordance with a request for confidential treatment that the Company has submitted to the Securities and Exchange Commission.

Except as described above, no other amendments have been made to the Original 10-Q. All other Items of the Original 10-Q are unaffected by this Amendment. This Amendment does not reflect events occurring after November 2, 2009 or modify or update the disclosure contained in the Original 10-Q in any way other than as required to reflect the revisions discussed above.

Item 6. Exhibits

(a) Exhibits.

Exhibit 3.1 Second Amended and Restated Certificate of Incorporation of BioScrip, Inc. (Incorporated by reference to Exhibit 3.2 to the Company’s Registration Statement on Form S-4 (File No. 333-119098), as amended, which became effective on January 26, 2005)

Exhibit 3.2 Amended and Restated By-Laws of BioScrip, Inc. (Incorporated by reference to Exhibit 3.1 to the Company’s Current Report on Form 8-K filed with the SEC on July 30, 2009, accession No. 0001014739-09-000029)

Exhibit 10.1 Prime Vendor Agreement dated as of July 1, 2009 between AmerisourceBergen Drug Corporation and the Company*

Exhibit 31.1 Certification of Richard H. Friedman pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

Exhibit 31.2 Certification of Stanley G. Rosenbaum pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

Exhibit 32.1 Certification of Richard H. Friedman pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002†

Exhibit 32.2 Certification of Stanley G. Rosenbaum pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002†

*The Registrant has requested confidential treatment with respect to certain information contained in this exhibit. In the event that the Commission should deny such request in whole or in part, the Company shall file the exhibit by amendment to this Quarterly Report on Form 10-Q (which shall include those portions of the exhibit not deemed Confidential by the Commission).

† Previously filed.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

BIOSCRIP, INC.

Date: December 2, 2009

/s/ Stanley G. Rosenbaum
Stanley G. Rosenbaum, Chief
Financial Officer,
Treasurer and Principal Accounting
Officer

