

VISTACARE, INC.
Form 8-K
August 20, 2004

Table of Contents

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) August 18, 2004

VISTACARE, INC.

(Exact name of registrant as specified in its charter)

Delaware

000-50118

06-1521534

(State or other jurisdiction
of incorporation)

(Commission
File Number)

(IRS Employer
Identification No.)

4800 North Scottsdale Road, Suite 5000, Scottsdale,
Arizona

85251

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code: (480) 648-4545

None

(Former name or former address, if changed since last report)

TABLE OF CONTENTS

Item 5. Other Events and Regulation FD Disclosure

Item 7. Financial Statements and Exhibits

Item 8. Change in Fiscal Year

SIGNATURES

EXHIBIT INDEX

EXHIBIT 3.2

EXHIBIT 99.1

Table of Contents

Item 5. Other Events and Regulation FD Disclosure.

On August 18, 2004, the Board of Directors of VistaCare, Inc. (the Company) declared a dividend of one preferred share purchase right (a Right) for each outstanding share of Class A Common Stock, par value \$0.01 per share, of the Company (the Common Stock). The dividend distribution is payable on August 30, 2004 (the Record Date) to the stockholders of record at the close of business on that date. Each Right entitles the registered holder to purchase from the Company one one-thousandth of a share of Series A Junior Participating Preferred Stock, par value \$0.01 per share (the Preferred Stock) of the Company at a price of \$225.00 per one one-thousandth of a share of Preferred Stock (the Purchase Price), subject to adjustment. The description and terms of the Rights are set forth in a Rights Agreement dated as of August 18, 2004, as the same may be amended from time to time (the Rights Agreement), between the Company and EquiServe Trust Company, N.A., as Rights Agent (the Rights Agent).

Until the earlier to occur of (i) the close of business on the tenth business day following the date of public announcement or the date on which the Company first has notice or determines that a person or group of affiliated or associated persons (other than the Company, any subsidiary of the Company or any employee benefit plan of the Company, or certain grandfathered persons described below) (an Acquiring Person) has acquired, or obtained the right to acquire, 15% or more of the outstanding shares of voting stock of the Company without the prior written consent of the Company executed on behalf of the Company by a duly authorized officer of the Company following express approval by action of at least a majority of the members of the Board of Directors then in office (the Stock Acquisition Date) or (ii) the close of business on the tenth business day (or such later date as may be determined by action of the Board of Directors but not later than the Stock Acquisition Date) following the commencement of a tender offer or exchange offer, without the prior written consent of the Company, by a person (other than the Company, any subsidiary of the Company or an employee benefit plan of the Company) which, upon consummation, would result in such party's control of 15% or more of the Company's voting stock (the earlier of the dates in clause (i) or (ii) above being called the Distribution Date), the Rights will be evidenced, with respect to any of the Common Stock certificates outstanding as of the Record Date, by such Common Stock certificates. For purposes of the Rights Agreement, a grandfathered person is a person who, as of August 18, 2004, together with all affiliates and associates, was the beneficial owner of more than 15% of the outstanding shares of voting stock of the Company; provided, that such person together with all affiliates and associates does not increase its or their percentage ownership of the outstanding shares of voting stock of the Company by more than one (1) percentage point without the prior written consent of the Company.

The Rights Agreement provides that, until the Distribution Date (or earlier redemption or expiration of the Rights), the Rights will be transferred with and only with the Company's Common Stock. Until the Distribution Date (or earlier redemption, exchange or expiration of the Rights), new Common Stock certificates issued after the Record Date upon transfer or new issuances of Common Stock will contain a notation incorporating the Rights Agreement by reference. Until the Distribution Date (or earlier redemption, exchange or expiration of the Rights), the surrender for transfer of any certificates for shares of Common Stock outstanding as of the Record Date, even without such notation or a copy of this Summary of Rights, will also constitute the transfer of the Rights associated with the Common Stock represented by such certificate. As soon as practicable following the Distribution Date, separate certificates evidencing the Rights (Right Certificates) will be mailed to holders of record of the Common Stock as of the close of business on the Distribution Date and such separate certificates alone will then evidence the Rights.

Table of Contents

The Rights are not exercisable until the Distribution Date. The Rights will expire, if not previously exercised, on August 30, 2014 (the Final Expiration Date), unless the Final Expiration Date is extended or unless the Rights are earlier redeemed or exchanged by the Company.

The Purchase Price payable, and the number of shares of Preferred Stock or other securities or property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of the Preferred Stock, (ii) upon the grant to holders of the Preferred Stock of certain rights or warrants to subscribe for or purchase Preferred Stock at a price, or securities convertible into Preferred Stock with a conversion price, less than the then-current market price of the Preferred Stock or (iii) upon the distribution to holders of the Preferred Stock of evidences of indebtedness or assets (excluding regular periodic cash dividends or dividends payable in Preferred Stock) or of subscription rights or warrants (other than those referred to above).

The number of outstanding Rights and the number of one one-thousandths of a share of Preferred Stock issuable upon exercise of each Right are also subject to adjustment in the event of a stock split of the Common Stock or a stock dividend on the Common Stock payable in shares of Common Stock or subdivisions, consolidations or combinations of the Common Stock occurring, in any such case, prior to the Distribution Date.

Shares of Preferred Stock purchasable upon exercise of the Rights will not be redeemable and will be junior to any other series of preferred stock the Company may issue (unless otherwise provided in the terms of such stock). Each share of Preferred Stock will have a preferential dividend in an amount equal to 1,000 times any dividend declared on each share of Common Stock. In the event of liquidation, the holders of the Preferred Stock will receive a preferred liquidation payment of equal to the greater of \$1,000 and 1,000 times the payment made per share of Common Stock. Each share of Preferred Stock will have 1,000 votes, voting together with the Common Stock. In the event of any merger, consolidation or other transaction in which shares of Common Stock are converted or exchanged, each share of Preferred Stock will be entitled to receive 1,000 times the amount and type of consideration received per share of Common Stock. The rights of the Preferred Stock as to dividends, liquidation and voting, and in the event of mergers and consolidations, are protected by customary antidilution provisions.

Because of the nature of the Preferred Stock's dividend, liquidation and voting rights, the value of the one one-thousandth interest in a share of Preferred Stock purchasable upon exercise of each Right should approximate the value of one share of Common Stock.

If any person or group (other than the Company, any subsidiary of the Company or any employee benefit plan of the Company or certain grandfathered persons) acquires 15% or more of the Company's outstanding voting stock without the prior written consent of the Board of Directors, each Right, except those held by such persons, would entitle each holder of a Right to acquire such number of shares of the Company's Common Stock as shall equal the result obtained by multiplying the then current Purchase Price by the number of one one-thousandths of a share of Preferred Stock for which a Right is then exercisable and dividing that product by 50% of the then current per share market price of Company Common Stock.

If any person or group (other than the Company, any subsidiary of the Company or any employee benefit plan of the Company or certain grandfathered persons) acquires more than 15% but

Table of Contents

less than 50% of the outstanding Company Common Stock without prior written consent of the Board of Directors, each Right, except those held by such persons, may be exchanged by the Board of Directors for one share of Company Common Stock.

If the Company were acquired in a merger or other business combination transaction where the Company is not the surviving corporation or where Company Common Stock is exchanged or changed or 50% or more of the Company's assets or earnings power is sold in one or several transactions without the prior written consent of the Board of Directors, each Right would entitle the holders thereof (except for the Acquiring Person) to receive such number of shares of the acquiring company's common stock as shall be equal to the result obtained by multiplying the then current Purchase Price by the number one one-thousandths of a share of Preferred Stock for which a Right is then exercisable and dividing that product by 50% of the then current market price per share of the common stock of the acquiring company on the date of such merger or other business combination transaction.

With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments require an adjustment of at least 1% in such Purchase Price. No fractional shares of Preferred Stock will be issued (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock, which may, at the election of the Company, be evidenced by depositary receipts), and in lieu thereof an adjustment in cash will be made based on the market price of the Preferred Stock on the last trading day prior to the date of exercise.

At any time prior to the time an Acquiring Person becomes such, the Board of Directors of the Company may redeem the Rights in whole, but not in part, at a price of \$0.01 per Right (the Redemption Price). The redemption of the Rights may be made effective at such time, on such basis and with such conditions as the Board of Directors in its sole discretion may establish. Immediately upon any redemption of the Rights, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

The terms of the Rights may be amended by the Board of Directors of the Company without the consent of the holders of the Rights, including, but not limited to, an amendment to lower certain thresholds described above to not less than the greater of (i) any percentage greater than the largest percentage of the voting power of all securities of the Company then known to the Company to be beneficially owned by any person or group of affiliated or associated persons (other than an excepted person) and (ii) 10%, except that from and after such time as any person or group of affiliated or associated persons becomes an Acquiring Person no such amendment may adversely affect the interests of the holders of the Rights.

A committee of independent directors will review the Rights Agreement at least every three years and, if a majority of the members of the committee deems it appropriate, may recommend a modification or termination of the Rights Agreement.

Until a Right is exercised, the holder thereof, as such, will have no rights as a stockholder of the Company, including, without limitation, the right to vote or to receive dividends.

The form of Rights Agreement has been filed with the Securities and Exchange Commission as an Exhibit to a Registration Statement on Form 8-A. A copy of the Rights Agreement is available free of charge from the Company. This summary description of the Rights does not purport to be complete

Table of Contents

and is qualified in its entirety by reference to the form of Rights Agreement, as the same may be amended from time to time, which is hereby incorporated herein by reference.

On August 18, 2004, the Company's Board of Directors adopted the Company's Amended and Restated Bylaws. A copy of the Amended and Restated Bylaws is provided as an exhibit hereto.

On August 18, 2004, the Company's Board of Directors adopted a new fiscal year for the Company effective for the current 2004 fiscal year, which would otherwise have ended December 31, 2004. As a result of this change, the current fiscal year will end on September 30, 2004. On August 19, 2004, the Company issued a press release announcing the change in its fiscal year, and indicating that the Company does not intend to issue formal guidance for the nine month fiscal year ending September 30, 2004 and is confirming that the general business trends reflected in the guidance previously given for calendar year 2004 remain essentially unchanged. The Company indicated that it intends to issue guidance for the 2005 fiscal year shortly after that year commences. A copy of the press release is filed as an exhibit hereto.

Item 7. Financial Statements and Exhibits.

| Exhibit No. | Description of Exhibit |
|--------------------|---|
| 3.2 | Amended and Restated Bylaws of VistaCare, Inc. |
| 4.1 | Form of Rights Agreement, dated as of August 18, 2004 between VistaCare, Inc. and EquiServe Trust Company, N.A., as Rights Agent, which includes the form of Certificate of Designation, setting forth the terms of the Series A Junior Participating Preferred Stock, par value \$.01 per share, as Exhibit A, the form of Right Certificate as Exhibit B and the Summary of Preferred Stock Purchase Rights as Exhibit C. Pursuant to the Rights Agreement, printed Right Certificates will not be mailed until as soon as practicable after the earlier of the tenth day after public announcement that a person or group (except for certain exempted persons or groups) has acquired beneficial ownership of 15% or more of the outstanding shares of Common Stock or the tenth business day (or such later date as may be determined by action of the Board of Directors) after a person commences, or announces its intention to commence, a tender offer or exchange offer the consummation of which would result in the beneficial ownership by a person or group of 15% or more of the outstanding shares of Common Stock (incorporated by reference to Exhibit 1 to the Form 8-A filed by VistaCare, Inc. on August 20, 2004). |
| 99.1 | Press release dated August 19, 2004. |

Item 8. Change in Fiscal Year.

On August 18, 2004, the Company's Board of Directors adopted a new fiscal year for the Company effective for the current 2004 fiscal year, which would otherwise have ended December 31, 2004. As a result of this change, the current fiscal year will end on September 30, 2004. The Company changed its fiscal year for the reasons set forth in the press release filed as an exhibit hereto.

The Company will file a transition report on Form 10-K for the nine-month period that will end on September 30, 2004.

Table of Contents

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 hereunto duly authorized.

VISTACARE, INC.

Date: August 20, 2004

/s/ Richard R. Slager

Name: Richard R. Slager

Title: President and Chief Executive Officer

Table of Contents

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