AMERISOURCEBERGEN CORP
Form S-8
March 05, 2014

As filed with the Securities and Exchange Commission on March 5, 2014

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

AMERISOURCEBERGEN CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**23-3079390**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
1300 Morris Drive	
Chesterbrook, Pennsylvania	**19087-5594**
(Address of Principal Executive Offices)	(Zip Code)

AmerisourceBergen Corporation Omnibus Incentive Plan

(Full title of the plan)

Kathy H. Gaddes

Vice President, Group General Counsel and Secretary

AmerisourceBergen Corporation

1300 Morris Drive

Chesterbrook, Pennsylvania 19087-5594
(Name and address of agent for service)

(610) 727-7000
(Telephone number, including area code, of agent for service)

With a copy to:

James W. McKenzie, Jr.

Morgan, Lewis & Bockius LLP

1701 Market Street

Philadelphia, Pennsylvania 19103-2921

(215) 963-5000

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 definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer x	Accelerated filer o
Non-accelerated filer o	Smaller reporting company o

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered 1 2	Proposed Maximum Offering Price Per Share 3	Proposed Maximum Aggregate Offering Price 3	Amount of Registration Fee 3
Common Stock, par value $0.01 per share	28,000,000	$ 67.33	$ 1,885,240,000	$ 242,818.91

1 This registration statement (the Registration Statement) registers the issuance of 28,000,000 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 Omnibus Incentive Plan, effective as of March 6, 2014 (the Plan).

2 Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement covers any additional securities as may hereinafter be offered or issued to prevent dilution resulting from stock splits, stock dividends, recapitalizations, other capital adjustments or similar transactions.

3 Estimated pursuant to Rule 457(c) and 457(h) under the Securities Act solely for purposes of calculating the registration fee. The fee is computed based upon $67.33, which represents the average of the high and low prices per share of the Registrant s Common Stock on March 3, 2014, as reported on the New York Stock Exchange.

PART I
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.

The information required by Item 1 is included in documents sent or given to participants in the Plan covered by this Registration Statement pursuant to Rule 428(b)(1) of the Securities Act.

Item 2. Registrant Information and Employee Plan Annual Information.

The written statement required by Item 2 is included in documents sent or given to participants in the Plan covered by this Registration Statement pursuant to Rule 428(b)(1) of the Securities Act.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents previously filed by the Registrant with the Securities and Exchange Commission (the Commission) are incorporated by reference into this Registration Statement:

(1) The Registrant s Annual Report on Form 10-K for the fiscal year ended September 30, 2013, filed with the Commission on November 26, 2013;

(2) The Registrant s Quarterly Report on Form 10-Q for the quarterly period ended December 31, 2013, filed with the Commission on February 7, 2014;

(3) The Registrant s Current Reports on Form 8-K filed with the Commission on October 10, 2013, and December 5, 2013; and

(4) The description of the Registrant s 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 the Registrant s Common Stock.

All reports and other 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 to this Registration Statement that indicates that all of the shares of Common Stock offered have been sold or that deregisters all of such shares then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of the filing of such reports and documents. Unless expressly incorporated into this Registration Statement, a report furnished but not filed on Form 8-K shall not be incorporated by reference into this Registration Statement to the extent furnished but not filed.

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

Experts. The consolidated financial statements of AmerisourceBergen Corporation and subsidiaries included in AmerisourceBergen Corporation s Annual Report (Form 10-K) for the year ended September 30, 2013 (including the schedule appearing therein), and the effectiveness of AmerisourceBergen Corporation and subsidiaries internal control over financial reporting as of September 30, 2013 have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their reports thereon, included therein, and incorporated herein by reference. Such consolidated financial statements and AmerisourceBergen Corporation management s assessment of the effectiveness of

internal control over financial reporting as of September 30, 2013 are incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

None.

Item 6. Indemnification of Directors and Officers.

The following summary is qualified in its entirety by reference to the complete text of any statutes referred to below and the certificate of incorporation and bylaws of the Registrant.

As permitted by the Delaware General Corporation Law (DGCL), the Registrant s Amended and Restated Certificate of Incorporation, as amended, provides that the Registrant s directors shall not be personally liable to the Registrant or the Registrant s stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director s duty of loyalty to the Registrant or the Registrant s stockholders, (ii) for acts of omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, relating to prohibited dividends or distributions or the repurchase or redemption of stock, or (iv) for any transaction from which the director derives an improper personal benefit. In addition, the Registrant s Amended and Restated Certificate of Incorporation provides for indemnification of the Registrant s officers and directors to the fullest extent permitted under Delaware law. Section 145 of the DGCL provides that a corporation may indemnify any persons, including officers and directors, who were or are, or are threatened to be made, parties to any threatened, pending or completed legal action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person was an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as an officer, director, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The indemnity may include expenses (including attorneys fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation s best interests and, for criminal proceedings, had no reasonable cause to believe that his or her conduct was unlawful. A Delaware corporation may indemnify officers and directors in an action by or in the right of the corporation under the same conditions, except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him against the expenses that such officer or director actually and reasonably incurred. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, we have been informed that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

The Registrant maintains insurance policies under which its directors and officers are insured, within the limits and subject to the limitations of the policies, against expenses in connection with the defense of actions, suits or proceedings, and certain liabilities that might be imposed as a result of such actions, suits or proceedings, to which they are parties by reason of being or having been directors or officers of the Registrant.

In addition, we currently provide indemnification to the officers and other individuals that serve on the committee that administers the Registrant s employee benefit plans for liabilities that they may incur in such capacity.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

A list of exhibits filed herewith or incorporated by reference is contained in the Exhibit Index immediately following the signature pages and is incorporated herein by reference.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the 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 the 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 (a)(1)(i) and (a)(1)(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.

(b) 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.

(c) 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 of 1933, 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, Commonwealth of Pennsylvania, on this 5th day of March, 2014.

AMERISOURCEBERGEN CORPORATION

By: /s/ Steven H. Collis
Steven H. Collis
President and Chief Executive Officer

POWER OF ATTORNEY

That the undersigned officers and directors of AmerisourceBergen Corporation, a Delaware corporation, do hereby constitute and appoint Kathy H. Gaddes, Vice President, Group General Counsel and Secretary, the lawful attorney-in-fact and agent, each with full power and authority to do any and all acts and things and to execute any and all instruments which said attorney and agent determines may be necessary or advisable or required to enable said corporation to comply with the Securities Act, and any rules or regulation or requirements of the Commission in connection with this Registration Statement. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this Registration Statement, to any and all amendments, both pre-effective and post-effective, and supplements to this Registration Statement and to any and all instruments or documents filed as part of or in conjunction with this Registration Statement or amendments or supplements thereof, and each of the undersigned hereby ratifies and confirms all that said attorneys and agents, or any one of them, shall do or cause to be done by virtue hereof. This Power of Attorney may be signed in several counterparts.

IN WITNESS WHEREOF, each of the undersigned has executed this Power of Attorney as of the date indicated.

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.

Signature	Title	Date
/s/ Steven H. Collis Steven H. Collis	President, Chief Executive Officer and Director (Principal Executive Officer)	March 5, 2014
/s/ Tim G. Guttman Tim G. Guttman	Senior Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	March 5, 2014
/s/ Richard C. Gozon Richard C. Gozon	Director and Chairman	March 5, 2014

/s/ Douglas R. Conant Douglas R. Conant	Director	March 5, 2014

/s/ Richard W. Gochnauer Richard W. Gochnauer	Director	March 5, 2014
/s/ Lon R. Greenberg Lon R. Greenberg	Director	March 5, 2014
/s/ Edward E. Hagenlocker Edward E. Hagenlocker	Director	March 5, 2014
/s/ Jane E. Henney Jane E. Henney, M.D.	Director	March 5, 2014
/s/ Kathleen W. Hyle Kathleen W. Hyle	Director	March 5, 2014
/s/ Michael J. Long Michael J. Long	Director	March 5, 2014
/s/ Henry W. McGee Henry W. McGee	Director	March 5, 2014

EXHIBIT INDEX

Exhibit No.	Description
5.1	Opinion of Morgan, Lewis & Bockius LLP
23.1	Consent of Independent Registered Public Accounting Firm
23.2	Consent of Morgan, Lewis & Bockius LLP (included in Exhibit 5.1)
24.1	Power of Attorney (included on signature pages hereto)
99.1	AmerisourceBergen Corporation Omnibus Incentive Plan (filed as Appendix B to Registrant s Proxy Statement on Schedule 14A filed on January 24, 2014, and incorporated by reference herein)