

OMEGA HEALTHCARE INVESTORS INC

Form S-8

June 06, 2013

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As filed with the Securities and Exchange Commission on June 6, 2013

Registration No. 333-

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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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FORM S-8  
REGISTRATION STATEMENT UNDER  
THE SECURITIES ACT OF 1933

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OMEGA HEALTHCARE INVESTORS, INC.  
(Exact name of Registrant as specified in its charter)

Maryland  
(State or other jurisdiction of incorporation or  
organization)

38-3041398  
(I.R.S. Employer Identification No.)

200 International Circle, Suite 3500  
Hunt Valley, Maryland 21030  
(Address of principal executive offices, including zip code)

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2013 Stock Incentive Plan  
(f/k/a the 2004 Stock Incentive Plan)  
(Full title of the Plan)

C. Taylor Pickett  
Chief Executive Officer  
Omega Healthcare Investors, Inc.  
200 International Circle, Suite 3500  
Hunt Valley, Maryland 21030  
(410) 427-1700

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Copy to:

Eliot Robinson

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Terrence Childers  
Bryan Cave LLP  
1201 West Peachtree Street, NW  
Atlanta, GA 30309  
(404) 572-6600

(Name, address and telephone number, including area code, of agent for service)

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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.

Large accelerated  
filer ☒

Non-accelerated  
filer ☐

Accelerated filer ☐

Smaller reporting  
company ☐

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CALCULATION OF REGISTRATION FEE

| Title of Securities<br>to be Registered     | Amount to be<br>Registered (1) (2) | Proposed Maximum<br>Offering Price Per<br>Share | Proposed Maximum<br>Aggregate Offering Price | Amount of<br>Registration<br>Fee |
|---------------------------------------------|------------------------------------|-------------------------------------------------|----------------------------------------------|----------------------------------|
| Common Stock, \$0.10 par<br>value per share | 3,000,000 shares                   | \$32.32 (3)                                     | \$96,960,000 (3)                             | \$13,225.35                      |

- (1) This Registration Statement covers 3,000,000 shares of common stock, par value \$0.10 per share (“Common Stock”), of Omega Healthcare Investors, Inc. (the “Registrant”), that are available for issuance under the 2013 Stock Incentive Plan (the “Current Plan”). In addition, a Registration Statement on Form S-8 filed by the Registrant with the Securities and Exchange Commission on July 26, 2004 (File No. 333-117656) covers approximately 579,976 additional shares of Common Stock available for issuance under the Current Plan.
- (2) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended, this Registration Statement also includes an indeterminate number of shares of Common Stock that may be offered and sold as a result of future stock splits, stock dividends or similar transactions under the Current Plan.
- (3) Pursuant to Securities Act Rule 457(c) and (h), the maximum offering price, per share and in the aggregate, was calculated upon the basis of the average of the high and low prices of the Common Stock on June 4, 2013, as reported on the New York Stock Exchange.
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## EXPLANATORY NOTE

Omega Healthcare Investors, Inc. (the “Registrant”) previously filed a Registration Statement on Form S-8 with the Securities and Exchange Commission (the “Commission”) on July 26, 2004 (File No. 333-117656) (the “Prior Registration Statement”) relating to its 2004 Stock Incentive Plan (the “Original Plan”). In that filing, the Registrant registered 3,000,000 shares of its common stock, par value \$0.10 per share (“Common Stock”), that were authorized for issuance under the Original Plan. As of June 6, 2013, approximately 579,976 shares of Common Stock remain available for issuance.

On June 6, 2013, the shareholders of the Registrant approved the 2013 Stock Incentive Plan (the “Current Plan”), which amended and restated the Original Plan by, among other things, increasing the number of shares of Common Stock that the Registrant is authorized to issue by 3,000,000 shares (the “Additional Shares”). The Current Plan is more completely described in the Registrant’s Proxy Statement on Schedule 14A filed on April 22, 2013.

This Registration Statement on Form S-8 is being filed for the purpose of registering the Additional Shares, which are of the same class as those securities covered by the Prior Registration Statement. As of June 6, 2013, a total of approximately 3,579,976 registered shares of Common Stock are available for issuance under the Current Plan.

## PART I

### INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

#### Item 1. Plan Information.

Information required by Part I of the Form S-8 to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act of 1933, as amended (the “Securities Act”), and the Note to the instructions to Part I of Form S-8.

#### Item 2. Registrant Information and Employee Plan Annual Information.

Information required by Part I of the Form S-8 to be contained in the Section 10(a) prospectus is omitted from this registration statement in accordance with Rule 428 under the Securities Act, and the Note to the instructions to Part I of Form S-8.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant pursuant to the Securities Exchange Act of 1934, as amended (the “Exchange Act”) are incorporated by reference into this Registration Statement and made a part hereof:

1. The Registrant’s Annual Report on Form 10-K for the year ended December 31, 2012;
2. The Registrant’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2013;
3. The Registrant’s Definitive Proxy Statement on Def 14A filed with the Commission on April 22, 2013;

4. The Registrant's Current Reports on Form 8-K filed with the Commission on March 19 and April 4, 2013; and
  5. The description of the Registrant's Common Stock as contained in its Initial Registration Statement on Form 8-A, filed under Section 12 of the Exchange Act, declared effective by the Commission on August 7, 1992, together with any amendment or report filed subsequent to the date hereof for the purpose of updating such description (SEC File No. 1-11316).
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All documents subsequently filed by Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to filing 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 a part hereof from the date of filing such documents, except for the documents, or portions thereof, that are “furnished” (e.g., the portions of those documents set forth under Items 2.02 or 7.01 of Form 8-K or other information “furnished” to the Commission) rather than filed with the Commission. Any statement contained in a document incorporated or deemed to be incorporated herein by reference 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 which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

None.

Item 6. Indemnification of Directors and Officers.

The charter and bylaws of the Registrant provide for indemnification of directors and officers to the full extent permitted by Maryland law.

Section 2-418 of the General Corporation Law of the State of Maryland generally permits indemnification of any director or officer with respect to any proceedings unless it is established that: (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and was either committed in bad faith or the result of active and deliberate dishonesty; (b) the director or officer actually received an improper personal benefit in money, property or services; or (c) in the case of a criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. The indemnity may include judgments, penalties, fines, settlements, and reasonable expenses actually incurred by the director or officer in connection with the proceedings. However, a corporation may not indemnify a director or officer who shall have been adjudged to be liable to the corporation, or who instituted a proceeding against the corporation (unless such proceeding was brought to enforce the indemnification provisions of Section 2-418, or the charter, bylaws, a resolution of the board of directors of the corporation or an agreement approved by the board of directors). In addition, a director may not be indemnified under Section 2-418 in respect of any proceeding charging improper personal benefit to the director, whether or not involving action in the director’s official capacity, in which the director was adjudged to be liable on the basis that personal benefit was improperly received. The termination of any proceeding by judgment, order or settlement does not create a presumption that the director or officer did not meet the requisite standard of conduct required for permitted indemnification. The termination of any proceeding by conviction, or plea of nolo contendere or its equivalent, or an entry of an order of probation prior to judgment, creates a rebuttable presumption that the director or officer did not meet that standard of conduct. A director or officer who has been successful on the merits or otherwise, in the defense of any proceeding referred to above shall be indemnified against any reasonable expenses incurred by the director or officer in connection with the proceeding. As noted below, the Commission may limit the corporation’s obligation to provide this indemnification.

The Registrant has also entered into indemnity agreements with the officers and directors of the Registrant that provide that the Registrant will, subject to certain conditions, pay on behalf of the indemnified party any amount which the indemnified party is or becomes legally obligated to pay because of any act or omission or neglect or breach

of duty, including any actual or alleged error or misstatement or misleading statement, which the indemnified party commits or suffers while acting in the capacity as an officer or director of the Registrant. Once an initial determination is made by the Registrant that a director or officer did not act in bad faith or for personal benefit, the indemnification provisions contained in the charter, bylaws, and indemnity agreements would require the Registrant to advance any reasonable expenses incurred by the director or officer, and to pay the costs, judgments, and penalties determined against a director or officer in a proceeding brought against them.

Insofar as indemnification for liabilities arising under the Securities Act is permitted to directors and officers of the Registrant pursuant to the above-described provisions, the Registrant understands that the Commission is of the opinion that such indemnification contravenes federal public policy as expressed in said act and therefore is unenforceable.

Item 7. Exemption from Registration Claimed.

None.

Item 8. Exhibits.

| Exhibit No. | Description                                                                                                                                                                    |
|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5.1         | Opinion of Bryan Cave LLP.*                                                                                                                                                    |
| 10.1        | Omega Healthcare Investors, Inc. 2013 Stock Incentive Plan (incorporated by reference to Annex A to the Registrant's Proxy Statement on Schedule 14A filed on April 22, 2013). |
| 23.1        | Consent of Ernst & Young LLP.*                                                                                                                                                 |
| 23.2        | Consent of Bryan Cave LLP (included in Exhibit 5.1).*                                                                                                                          |
| 24.1        | Power of Attorney (set forth on signature page hereto).*                                                                                                                       |

\*Filed herewith

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 to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the 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 foregoing provisions, 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 Hunt Valley, State of Maryland, on June 6, 2013.

OMEGA HEALTHCARE INVESTORS, INC.

By:           /s/ C. Taylor Pickett  
                                          C. Taylor Pickett  
                                          Chief Executive Officer

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints C. Taylor Pickett and Robert O. Stephenson, or either of them, his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any or all amendments to this Registration Statement and to file the same, with all exhibits thereto and other documents in connection therewith, with the Commission, granting unto either of said attorneys-in-fact and agents, 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 as to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that either of said attorneys-in-fact and agents, or his or her substitute or substitutes, 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 indicated on June 6, 2013.

| Signature                                          | Position                                                              |
|----------------------------------------------------|-----------------------------------------------------------------------|
| /s/ C. Taylor Pickett<br>C. Taylor Pickett         | Chief Executive Officer and Director<br>(Principal Executive Officer) |
| /s/ Robert O. Stephenson<br>Robert O. Stephenson   | Chief Financial Officer<br>(Principal Financial Officer)              |
| /s/ Michael D. Ritz<br>Michael D. Ritz             | Chief Accounting Officer<br>(Principal Accounting Officer)            |
| /s/ Bernard J. Korman<br>Bernard J. Korman         | Chairman of the Board of Directors                                    |
| /s/ Craig R. Callen<br>Craig R. Callen             | Director                                                              |
| /s/ Barbara B. Hill<br>Barbara B. Hill             | Director                                                              |
| /s/ Thomas S. Franke<br>Thomas S. Franke           | Director                                                              |
| /s/ Harold J. Kloosterman<br>Harold J. Kloosterman | Director                                                              |
| /s/ Edward Lowenthal<br>Edward Lowenthal           | Director                                                              |
| /s/ Stephen D. Plavin<br>Stephen D. Plavin         | Director                                                              |



EXHIBIT INDEX

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