

OMEGA HEALTHCARE INVESTORS INC
Form S-8
June 13, 2018

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER

THE SECURITIES ACT OF 1933

OMEGA HEALTHCARE INVESTORS, INC.

(Exact name of registrant as specified in charter)

Maryland

1-11316

38-3041398

(State of incorporation) (Commission File Number)

(IRS Employer

Identification No.)

303 International Circle

Suite 200

Hunt Valley, Maryland 21030

(Address of principal executive offices / Zip Code)

Omega Healthcare Investors, Inc. 2018 Stock Incentive Plan

(f/k/a Omega Healthcare Investors, Inc. 2013 Stock Incentive Plan)

(Full title of the Plan)

Robert O. Stephenson

Chief Financial Officer

Omega Healthcare Investors, Inc.

303 International Circle

Suite 200

Hunt Valley, Maryland 21030

(410) 427-1700

Copy to:

Eliot Robinson

Terrence Childers

Bryan Cave Leighton Paisner 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, a smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act:

Large accelerated filer Accelerated filer

Non-accelerated filer Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1) (2)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.10 par value per share	4,500,000 shares	\$30.27 (3)	\$136,215,000 (3)	\$16,959.00 (4)

This Registration Statement covers 4,500,000 additional 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 Omega Healthcare Investors, Inc. 2018 Stock Incentive Plan, formerly known as the Omega Healthcare Investors, Inc. 2013 Stock Incentive Plan (the “Plan”). In addition, the Registrant has previously filed Form S-8 Registration Statements with the Securities and Exchange Commission registering 3,000,000 shares of Common Stock on July 26, 2004 (File no. 333-117656) and an additional 3,000,000 shares of Common Stock on June 6, 2013 (File No. 333-189144) issuable under the Plan.

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 Plan.

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 7, 2018, as reported on the New York Stock Exchange.

(4) Determined in accordance with Section 6(b) of the Securities Act at a rate equal to \$124.50 per \$1,000,000 of the proposed maximum aggregate offering price.

EXPLANATORY NOTE

Omega Healthcare Investors, Inc. (the “Registrant”) previously filed (i) a Form S-8 Registration Statement with the Securities and Exchange Commission (the “Commission”) on July 26, 2004 (File No. 333-117656) registering 3,000,000 shares of the Registrant’s common stock par value \$0.10 per share (“Common Stock”) issuable under the Registrant’s 2004 Stock Incentive Plan (the “Original Plan”) and (ii) a Form S-8 Registration Statement with the Commission on June 6, 2013 (File No. 333-189144) registering an additional 3,000,00 shares of Common Stock issuable under the Registrant’s 2013 Stock Incentive Plan (the “Prior Plan” and together with the Original Plan, the “Prior Plans”), which was an amendment and restatement of the Original Plan.

On June 8, 2018, the shareholders of the Registrant approved the Omega Healthcare Investors, Inc. 2018 Stock Incentive Plan (the “Plan”), which amended the Prior Plan by, among other things, increasing the number of shares of Common Stock that the Registrant is authorized to issue by 4,500,000 shares (the “Additional Shares”). The Plan is more completely described in the Registrant’s Definitive Proxy Statement on Schedule 14A filed on April 30, 2018.

This Registration Statement on Form S-8 is being filed for the purpose of registering the Additional Shares issuable under the Plan, which are of the same class as those securities covered by the Prior Registration Statements.

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, 2017;
2. The Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2018;
3. The Registrant's Definitive Proxy Statement on Schedule 14A filed with the Commission on April 30, 2018; and
4. The Registrant's Current Reports on Form 8-K filed with the Commission on February 13, May 1, May 7 and June 11, 2018.

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).

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 (i) committed in bad faith or (ii) 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 SEC 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 SEC 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.

<u>Exhibit No.</u>	<u>Description</u>
<u>5.1</u>	<u>Opinion of Shapiro Sher Guinot & Sandler, P.A.*</u>
<u>10.1</u>	<u>Omega Healthcare Investors, Inc. 2018 Stock Incentive Plan (incorporated by reference to Annex A to the Registrant's Proxy Statement on Schedule 14A filed on April 30, 2018).</u>
<u>23.1</u>	<u>Consent of Ernst & Young LLP*</u>
<u>23.2</u>	<u>Consent of Ernst & Young LLP*</u>
<u>23.3</u>	<u>Consent of Shapiro Sher Guinot & Sandler, P.A. (included in Exhibit 5.1).*</u>
<u>24.1</u>	<u>Power of Attorney (set forth on signature page hereto).*</u>

*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:

- (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. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective 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) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 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 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 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 Hunt Valley, State of Maryland, on June 13, 2018.

OMEGA HEALTHCARE
INVESTORS, INC.

By: /s/ Robert O. Stephenson
Robert O. Stephenson
Chief Financial 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 Securities and Exchange 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 of 1933, this Registration Statement has been signed by the following persons in the capacities indicated on June 13, 2018.

Signature	Position
/s/ C. Taylor Pickett C. Taylor Pickett	Chief Executive Officer and Director (Principal Executive Officer)
/s/ Robert O. Stephenson Robert O. Stephenson	Chief Financial Officer (Principal Financial Officer)
/s/ Michael D. Ritz Michael D. Ritz	Chief Accounting Officer (Principal Accounting Officer)
/s/ Kapila K. Anand Kapila K. Anand	Director
/s/ Craig M. Bernfield Craig M. Bernfield	Director
/s/ Norman R. Bobins Norman R. Bobins	Director
/s/ Craig R. Callen Craig R. Callen	Director

/s/ Barbara B. Hill Director
Barbara B. Hill

/s/ Edward Lowenthal Director
Edward Lowenthal

/s/ Ben W. Perks Director
Ben W. Perks

/s/ Stephen D. Plavin Director
Stephen D. Plavin

EXHIBIT INDEX

5.1 Opinion of Shapiro Sher Guinot & Sandler, P.A.

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