

ADCARE HEALTH SYSTEMS INC

Form 8-K

April 06, 2011

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report: April 6, 2011

Date of Earliest Event Reported: March 31, 2011

AdCare Health Systems, Inc.

(Exact Name of Registrant as specified in its Charter)

Ohio

(State or other jurisdiction of

incorporation or organization)

31-1332119

(I.R.S. Employer Identification No.)

5057 Troy Rd, Springfield, OH

(Address of principal executive offices)

45502-9032

(Zip Code)

Registrant's Telephone Number, Including Area Code

(937) 964-8974

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Check the appropriate box below if the form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (See General Instruction A2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4 (c)).

Item 1.01. Entry into a Material Definitive Agreement.

On March 31, 2011, AdCare Health Systems, Inc. (the Company) entered into a Securities Purchase Agreement (the Purchase Agreement) with certain accredited investors (the Purchasers) to sell and issue to the Purchasers an aggregate of \$2,115,000 in principal amount of the Company's Subordinated Convertible Notes (the Notes), bearing 10.0% interest per annum payable quarterly in cash in arrears beginning June 30, 2011. The Company expects to issue up to \$3,385,000 principal amount of additional Notes of the same series on or before April 30, 2011. Additionally, the Company agreed to issue to the placement agent a warrant to purchase 250,000 shares of common stock at an exercise price per share equal to the conversion price per share of the Notes. The Notes and the warrant are being issued and sold solely to accredited investors in reliance on Section 4(2) of the Securities Act of 1933, as amended (the Securities Act) and Regulation D promulgated thereunder. Cantone Research, Inc. acted as sole placement agent in connection with the issuance of the Notes.

The Notes are convertible into shares of common stock of the Company at an initial conversion price equal to 115% of the lesser of the volume-weighted average price of Company's common stock for the ten trading day periods prior to and following the filing of the Company's Annual Report on Form 10-K for the year ended December 31, 2010, but in no event will the conversion price be less than \$4.13 per share. The initial conversion price is subject to adjustment for any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event. However, unless the Company first obtains the approval of its stockholders as required by the applicable rules of the NYSE Amex, in no event shall the Company be obligated to issue any shares of Common Stock upon conversion of the Notes if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which the Company may issue upon conversion of the Notes without breaching the Company's obligations under the rules and regulations of the NYSE Amex.

The Notes are unsecured and subordinated in right of payment to existing and future senior indebtedness.

The Notes mature on March 31, 2014. However, if after six (6) months from the closing of the transaction, the Common Stock trades at or above 200% of the conversion price for 20 out of 30 consecutive trading days, with an average daily trading volume of over 50,000 shares, then the Company may, subject to the satisfaction of certain other conditions, redeem the Notes in cash at a price equal to the sum of (i) 100% of the principal being redeemed plus (ii) any accrued and unpaid interest on the principal, plus late charges, if any (the principal amount being redeemed, plus any accrued and unpaid interest, plus any other charges, is collectively referred to in this Report as the Redemption Amount).

In addition, holders may require the Company to redeem all or a portion of their Notes upon a change of control transaction, as described in the Notes, at a redemption price in cash equal to the greater of (i) 110% of the Redemption Amount being redeemed and (ii) the product of (A) the Redemption Amount being redeemed multiplied by (B) the quotient determined by dividing (1) the greatest closing sale price of the shares of Common Stock during the period beginning on the date immediately preceding the earlier to occur of (x) the consummation of the change of control and (y) the public announcement of such change of control and ending on the date the holder delivers its redemption notice to the Company, by (2) the conversion price then in effect.

Additionally, the Notes may become immediately due and payable upon an event of default, which, with respect to each Note, generally includes, without limitation, each of the following:

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any registration failure under the terms of the Registration Rights Agreement;

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the suspension from trading or failure of the Common Stock to be listed on the NYSE Amex or any other national securities exchange for a period of five (5) consecutive trading days or for more than an aggregate of fifteen (15) trading days in any 365-day period;

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the Company's (A) failure to cure a conversion failure by delivery of the required number of shares of Common Stock within the time period specified in the Notes, or (B) notice of our intention not to comply with a request for conversion of any Notes into shares of Common Stock;

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failure to pay any amount of principal, interest or other amounts when and as due under the Notes (if such failure continues beyond the expiration of any applicable cure or grace periods);

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specific events of bankruptcy, insolvency, reorganization or liquidation;

the Company breaches any material warranty, covenant or other term or condition of any transaction document, except, in the case of a breach of a covenant or other term or condition of any transaction document which is curable, only if such breach continues for a period of at least ten (10) days; and

any event of default occurs with respect to any other Notes.

In connection with the issuance of the Notes, the Company entered into a Registration Rights Agreement with the Purchasers obligating the Company to register for resale the shares of the Common Stock issuable upon the conversion of the Notes on a registration statement on Form S-3 to be filed with the Securities and Exchange Commission within fifty (50) days after the closing of the sale of the Notes.

Additionally, in connection with the financing, the Company also entered into customary Lock-Up Agreements with each of its directors and officers. The Lock-Up Agreements expire on the 180th day following the closing date of the financing.

This announcement is not an offer to sell either the Notes or the Common Stock issuable upon conversion of the Notes. Neither the Notes nor the shares of Common Stock issuable upon conversion of the Notes have been registered under the Securities Act, and the foregoing may not be offered or sold in the United States absent registration or availability of an applicable exemption from registration.

Additionally, on March 31, 2011, the Company borrowed \$1,385,000 under a promissory note issued to Anthony Cantone, an affiliate of Cantone Research, Inc. The promissory note bears interest at the rate of 12%, due and payable through the maturity date, July 1, 2011. The Company paid a commitment fee of 4% or \$55,400 in connection with the promissory note. The promissory note is attached hereto as Exhibit 10.5 and is hereby incorporated herein by reference. The promissory note may be accelerated upon the occurrence of an event of default, which includes (a) failure of the Company to make a payment of interest or principal for a period of five days after receipt of notice that the same was not paid when due; (b) certain events of bankruptcy, insolvency, reorganization or liquidation; (c) default under other indebtedness of the Company and (d) failure of the Company to have timely filed required reports with the SEC. In the ordinary course of business, Cantone Research, Inc. and certain of its affiliates provide financial advisory and other services to the Company and have in the past and may in the future engage in transactions of a financial nature with the Company, including as a lender, for which services and transactions they receive customary compensation.

The foregoing description of the private placement and the promissory note does not purport to be complete and is qualified in its entirety by reference to the Purchase Agreement, Registration Rights Agreement, the form of Note, the form of Lock-Up Agreement entered into in connection with the private placement, and the promissory note, copies of which are filed herewith as Exhibits 10.1, 10.2, 10.3, 10.4 and 10.5, respectively. A copy of the press release announcing the initial closing of the private placement on March 31, 2011 is attached hereto as Exhibit 99.1 and is hereby incorporated by reference. The foregoing documents have been attached to provide investors with information regarding their terms. They are not intended to provide any other factual information about the Company or the Purchasers. In particular, the assertions embodied in the representations and warranties contained in the Purchase Agreement, as qualified by the Disclosure Schedule attached thereto, were used for the purpose of allocating risk between the Company and the Purchasers rather than establishing matters as facts. Accordingly, you should not rely on the representations and warranties in the Purchase Agreement as characterizations of the actual state of facts about the Company or the Purchasers.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The disclosure set forth above under Item 1.01 is hereby incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sale of Equity Securities.

The disclosure set forth above under Item 1.01 is hereby incorporated by reference into this Item 3.02. The issuance of the Notes and the grant of the warrant qualified for exemption from registration under Section 4(2) under the 1933 Act and Regulation D promulgated thereunder because, among other things, the transactions did not involve a public offering, each investor represented that is an accredited investor and that it took the securities for investment and not resale, each investor had access to information about the Company and such investor's investment, and the Company has taken appropriate measures to restrict the transfer of the securities.

Item 9.01. Financial Statements and Exhibits.

(d)

Exhibits

| <u>Exhibit Number</u> | <u>Description of Exhibit</u> |
|-----------------------|--|
| 10.1 | Securities Purchase Agreement dated March 31, 2010, by and among AdCare Health Systems, Inc. and the investors named therein. |
| 10.2 | Registration Rights Agreement dated March 31, 2011, by and among AdCare Health Systems, Inc. and the investors named therein. |
| 10.3 | Form of Subordinated Convertible Note. |
| 10.4 | Form of Lock-Up Agreement. Each of the directors and officers identified on Schedule 7(xii) of the Securities Purchase Agreement entered into a Lock-Up Agreement with AdCare Health Systems, Inc. |
| 10.5 | Promissory Note dated March 31, 2011, by and among AdCare Health Systems, Inc. and Anthony Cantone. |
| 99.1 | Press Release dated April 1, 2011. |

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 hereto duly authorized.

Date: April 6, 2011

ADCARE HEALTH SYSTEMS, INC.

By: /s/ Scott Cunningham

Name: Scott Cunningham

Title: Chief Financial Officer

EXHIBIT INDEX

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| 10.1 | Securities Purchase Agreement dated October 26, 2010, by and among AdCare Health Systems, Inc. and the investors named therein. |
| 10.2 | Registration Rights Agreement dated October 26, 2010, by and among AdCare Health Systems, Inc. and the investors named therein. |
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