

NEIGHBORCARE INC
Form SC TO-T/A
October 07, 2004

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

SCHEDULE TO

(Rule 14d-100)

TENDER OFFER STATEMENT

UNDER

SECTION 14(d)(1) OR SECTION 13(e)(1)

OF THE SECURITIES EXCHANGE ACT OF 1934

AMENDMENT NO. 13

NeighborCare, Inc.

(Name of Subject Company (Issuer))

Omnicare, Inc.

Nectarine Acquisition Corp.

(Names of Filing Persons (Offerors))

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Common Stock, par value \$0.02 per share

(Including the Associated Preferred Stock Purchase Rights)

(Title of Class of Securities)

64015Y104

(CUSIP Number of Common Stock)

Joel F. Gemunder

President and Chief Executive Officer

Omnicare, Inc.

100 East RiverCenter Boulevard

Covington, Kentucky 41011

(859) 392-3300

(Name, Address and Telephone Number of Person Authorized to Receive Notices and
Communications on Behalf of Filing Persons)

Copies to:

Morton A. Pierce, Esq.

Michael J. Aiello, Esq.

Dewey Ballantine LLP

1301 Avenue of the Americas

New York, New York 10019

(212) 259-8000

CALCULATION OF FILING FEE

<u>Transaction Valuation*</u>	<u>Amount of Filing Fee</u>
\$1,386,439,110	\$175,662

* Estimated for purposes of calculating the amount of the filing fee only. This amount assumes the purchase of (i) 43,672,753 shares of the common stock, par value \$0.02, including the associated preferred stock purchase rights, of NeighborCare, Inc. (Shares), representing all of the outstanding Shares as of May 11, 2004 (less 100 Shares owned by Omnicare, Inc.), (ii) 259,980 Shares to be issued in connection with NeighborCare's joint plan of reorganization confirmed by the Bankruptcy Court on September 20, 2001 and (iii) 2,281,904 Shares reserved for issuance upon the exercise of outstanding options to purchase Shares. The number of outstanding shares and shares reserved for issuance in connection with NeighborCare's joint plan of reorganization is contained in the Quarterly Report on Form 10-Q filed by NeighborCare on May 14, 2004. The number of outstanding shares reserved for issuance upon the exercise of options is as disclosed in the transcript of NeighborCare, Inc.'s Second Quarter 2004 earnings conference call on May 13, 2004.

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Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$175,662

Filing party: Omnicare, Inc.

Form or Registration No.: SC TO

Date Filed: June 4, 2004

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

third-party tender offer subject to Rule 14d-1

issuer tender offer subject to Rule 13e-4

going private transaction subject to Rule 13e-3

amendment to Schedule 13D under Rule 13d-2

Check the following box if the filing is a final amendment reporting the results of the tender offer

This Amendment No. 13 amends and supplements the Tender Offer Statement on Schedule TO filed with the Securities and Exchange Commission (the Commission) on June 4, 2004 (the Schedule TO) by Omnicare, Inc., a Delaware corporation (Omnicare), and Nectarine Acquisition Corp., a Delaware corporation (Purchaser) and a wholly owned subsidiary of Omnicare. The Schedule TO relates to a tender offer by Purchaser to purchase all of the outstanding shares of common stock, par value \$0.02 per share, including the associated preferred stock purchase rights, of NeighborCare, Inc. (the Company) for a purchase price of \$30.00 per share, net to the seller in cash, without interest thereon, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated June 4, 2004 (the Offer to Purchase), and in the related Letter of Transmittal (the Letter of Transmittal which, together with the Offer to Purchase, as hereby or hereafter amended or supplemented from time to time, constitute the Offer). Copies of the Offer to Purchase and the related Letter of Transmittal are filed with the Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively. Capitalized terms used and not defined herein shall have meanings assigned such terms in the Offer to Purchase and the Schedule TO.

Item 5. Past Contacts, Transactions, Negotiations and Agreements.

Section 11 of the Offer to Purchase is hereby amended by adding the following to the end of such section:

On October 7, 2004, Mr. Gemunder sent the following letter to the Company s board of directors:

[LETTERHEAD OF OMNICARE, INC.]

October 7, 2004

BY FACSIMILE AND FEDEX

Board of Directors

NeighborCare, Inc.

601 East Pratt Street, 3rd Floor

Baltimore, Maryland 21202

Dear NeighborCare Board Members:

We are writing to let you know that Omnicare remains committed to a combination of Omnicare and NeighborCare. We continue to believe that a combination of Omnicare and NeighborCare is compelling and will provide substantial benefits to both companies shareholders and other

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interested constituencies. For NeighborCare shareholders, the tender offer provides a unique opportunity to realize maximum value immediately for their shares. Judging by the response to our tender offer by your shareholders, they agree. We believe that the time has come for you to sit down and discuss our offer with us.

We wish to reiterate our willingness to discuss all aspects of our offer with you. We and our advisors are available to meet with you, your management and your advisors as soon as possible to discuss the terms of our offer and to negotiate a definitive agreement. We hope you will recognize the benefits of our offer and accept this invitation.

Sincerely,

/s/ JOEL F. GEMUNDER

Joel F. Gemunder

President and Chief Executive Officer

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: October 7, 2004

OMNICARE, INC.

By: /s/ Cheryl D. Hodges
Name: Cheryl D. Hodges
Title: Senior Vice President and Secretary

NECTARINE ACQUISITION CORP.

By: /s/ Cheryl D. Hodges
Name: Cheryl D. Hodges
Title: Secretary

EXHIBIT INDEX

- (a)(1)(A) Offer to Purchase dated June 4, 2004.*
- (a)(1)(B) Letter of Transmittal.*
- (a)(1)(C) Notice of Guaranteed Delivery.*
- (a)(1)(D) Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
- (a)(1)(E) Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
- (a)(1)(F) Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9.*
- (a)(1)(G) Summary Advertisement, published June 4, 2004.*
- (a)(1)(H) Press release issued by Omnicare on June 4, 2004.*
- (a)(1)(I) Selected material from a presentation of Omnicare, Inc. at the Goldman Sachs Healthcare Conference on June 9, 2004 at the Ritz-Carlton Laguna Niguel, Dana Point, California.*
- (a)(1)(J) Press release issued by Omnicare, Inc. on June 14, 2004.*
- (a)(1)(K) Press release issued by Omnicare, Inc. on June 15, 2004.*
- (a)(1)(L) Selected material from a presentation of Omnicare, Inc. at the Jeffries & Company, Inc. Specialty and Post-Acute Services Conference on June 15, 2004 at the St. Regis Hotel, New York, New York.*
- (a)(1)(M) Press release issued by Omnicare, Inc. on June 25, 2004.*
- (a)(1)(N) Press release issued by Omnicare, Inc. on July 13, 2004.*
- (a)(1)(O) Press release issued by Omnicare, Inc. on July 26, 2004.*
- (a)(1)(P) Excerpts from the Transcript of Omnicare, Inc. s Second Quarter 2004 Conference Call, dated July 26, 2004.*
- (a)(1)(Q) Press release issued by Omnicare, Inc. on July 30, 2004.*
- (a)(1)(R) Selected material from a presentation of Omnicare, Inc. at the Omnicare, Inc. Management Conference on August 14, 2004.*
- (a)(1)(S) Press release issued by Omnicare, Inc. on September 1, 2004.*
- (a)(1)(T) Press release issued by Omnicare, Inc. on October 1, 2004.*
- (b) Commitment Letter Agreement among JPMorgan Chase Bank, J.P. Morgan Securities Inc., Lehman Commercial Paper Inc., Lehman Brothers Inc., SunTrust Bank, SunTrust Capital Markets, Inc., Canadian Imperial Bank of Commerce, CIBC World Markets Corp., Merrill Lynch Bank USA, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Omnicare Inc., dated June 3, 2004.*
- (d) None.
- (g) None.
- (h) None.

* previously filed