

ASSISTED LIVING CONCEPTS INC

Form 8-A12G

October 05, 2004

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 8-A**

**For Registration of Certain Classes of Securities  
Pursuant to Section 12(b) or 12(g) of the  
Securities Exchange Act of 1934**

**ASSISTED LIVING CONCEPTS, INC.**

(Exact name of registrant as specified in its charter)

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**Nevada**  
(State of incorporation or  
organization)

**93-1148702**  
(I.R.S. Employer Identification  
No.)

**1394 Empire Central, Suite 900**  
**Dallas, Texas**  
(Address of principal executive  
offices)

**75247**  
(Zip Code)

**Securities to be registered pursuant to Section 12(b) of the Act:**

**Title of each class  
to be so registered**

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**Name of each exchange on  
which  
each class is to be registered**

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If this form relates to the registration of a class of securities pursuant to Section 12(b) of the Exchange Act and is effective pursuant to General Instruction A.(c), check the following box. [ ]

If this form relates to the registration of a class of securities pursuant to Section 12(g) of the Exchange Act and is effective pursuant to General Instruction A.(d), check the following box. [X]

Securities Act registration statement file number to which this form relates: None.

Securities to be registered pursuant to Section 12(g) of the Act:

**Rights to Purchase Series A Junior Participating Preferred Stock**

(Title of class)

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## ITEM 1. DESCRIPTION OF REGISTRANT'S SECURITIES TO BE REGISTERED.

On October 1, 2004 pursuant to a Rights Agreement (the Rights Agreement), effective as of October 1, 2004, between Assisted Living Concepts, Inc. (the Company) and American Stock Transfer & Trust Company, as Rights Agent (the Rights Agent), the Company's Board of Directors declared a dividend of one right (a Right) to purchase one Unit consisting of one one-thousandth share of the Company's Series A Junior Participating Preferred Stock ( Junior Preferred Stock) for each outstanding share of Common Stock, par value \$0.01 per share ( Common Stock), of the Company. The dividend is payable on October 1, 2004 to stockholders of record on September 30, 2004 (the Record Date). Each Right entitles the registered holder to purchase from the Company one Unit of Junior Preferred Stock at an exercise price of \$60 (the Purchase Price), subject to adjustment.

The following summary of the principal terms of the Rights Agreement is a general description only and is subject to the detailed terms and conditions of the Rights Agreement, which is incorporated herein by reference to Exhibit 4.1 to this Registration Statement.

### Rights Evidenced by Common Stock Certificates

The Rights will not be exercisable until the Distribution Date (defined below). Until then, certificates for the Rights ( Rights Certificates) will not be sent to stockholders, and the Rights will attach to and trade only together with the Common Stock. Accordingly, Common Stock certificates outstanding on the Record Date will evidence the Rights related thereto, and Common Stock certificates issued after the Record Date will contain a notation incorporating the Rights Agreement by reference. Until the Distribution Date (or earlier redemption or expiration of the Rights), the surrender or transfer of any certificates for Common Stock, outstanding as of the Record Date, even without such notation, will also constitute the transfer of the Rights associated with the Common Stock represented by such certificate.

### Distribution Date

The Rights will separate from the Common Stock, Rights Certificates will be issued and the Rights will become exercisable upon the earlier of: (i) the tenth day after a person or group of affiliated or associated persons (an Acquiring Person) publicly announces that it has acquired, or obtained the right to acquire, beneficial ownership of 20% or more of the outstanding Common Stock, or (ii) 10 business days (or such later date as may be determined by action of the Company's Board of Directors taken prior to a person or group becoming an Acquiring Person) following the commencement or announcement of a tender offer or exchange offer, the consummation of which would result in the beneficial ownership by a person or group of 20% or more of the outstanding Common Stock. The earlier of such dates is referred to as the Distribution Date.

### Issuance of Rights Certificates; Expiration of Rights

As soon as practicable following the Distribution Date, Rights Certificates will be mailed to holders of record of the Common Stock as of the close of business on the Distribution Date and such separate Rights Certificates alone will evidence the Rights from and after the Distribution Date. The Rights will expire on the earliest of (i) October 1, 2014 (the Final Expiration Date), or (ii) redemption or exchange of the Rights as described below.

### Initial Exercise of the Rights

Following the Distribution Date, and until the occurrence of one of the further events described below, holders of the Rights will be entitled to receive, upon exercise and the payment of the Purchase Price, one Unit of Junior Preferred Stock. In the event that the Company does not have sufficient Junior Preferred Stock available for all Rights

to be exercised, or the Board decides that such action is necessary and not contrary to the interests of Rights holders, the Company may instead substitute cash, assets or other securities for the Units of Junior Preferred Stock for which the Rights would have been exercisable under this provision or as described below.

#### Right to Buy Company Units of Junior Preferred Stock

Unless the Rights are earlier redeemed, in the event that a person or group becomes an Acquiring Person, then each holder of a Right that has not theretofore been exercised (other than Rights beneficially owned by the Acquiring Person, which will thereafter be void) will thereafter have the right to receive, upon exercise, Units of Junior Preferred Stock having a value equal to two times the Purchase Price. In such an event, Rights would not be exercisable until the Distribution Date.

#### Right to Buy Acquiring Company Stock

Similarly, unless the Rights are earlier exercised, exchanged or redeemed, in the event that, after a person or group becomes an Acquiring Person, (i) the Company is acquired in a merger or other business combination transaction, or (ii) 50% or more of the Company's consolidated assets or earning power are sold (other than in transactions in the ordinary course of business), proper provision must be made so that each holder of a Right that has not theretofore been exercised, exchanged or redeemed (other than Rights beneficially owned by the Acquiring Person, which will thereafter be void) will thereafter have the right to receive, upon exercise, shares of common stock of the acquiring company having a value equal to two times the Purchase Price.

#### Exchange Provision

At any time after a person or group becomes an Acquiring Person and prior to the acquisition by such Acquiring Person of 50% or more of the Company's outstanding Common Stock, the Board of Directors of the Company may exchange the Rights (other than Rights owned by the Acquiring Person), in whole or in part, at an exchange ratio calculated pursuant to the Rights Agreement.

#### Redemption

At any time on or prior to the earlier of (i) the time a person becomes an Acquiring Person and (ii) the Close of Business on the Final Expiration Date, the Company may redeem the Rights in whole, but not in part, at a price of \$0.01 per Right.

#### Adjustments to Prevent Dilution

The Purchase Price payable, the number of Rights and the number of Units of Junior Preferred Stock or other securities or property issuable upon exercise of the Rights are subject to adjustment from time to time in connection with the dilutive issuances by the Company as set forth in the Rights Agreement. With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments require an adjustment of at least 1% in such Purchase Price.

#### Cash Paid Instead of Issuing Fractional Shares

No fractional portion less than integral multiples of one one-thousandth of a share of Junior Preferred Stock will be issued upon exercise of a Right and, in lieu thereof, an adjustment in cash will be made based on the market price of the Junior Preferred Stock on the last trading date prior to the date of exercise.

#### No Stockholders' Rights Prior to Exercise

Until a Right is exercised, the holder thereof, as such, will have no rights as a stockholder of the Company (other than any rights resulting from such holder's ownership of Common Stock), including, without limitation, the right to

vote or to receive dividends.

Amendment of Rights Agreement

The terms of the Rights and the Rights Agreement may be amended in any respect without the consent of the Rights holders on or prior to the time a person becomes an Acquiring Person; thereafter, the terms of the Rights

and the Rights Agreement may be amended without the consent of the Rights holders in order to cure any ambiguities or to make changes that do not adversely affect the interests of Rights holders (other than the Acquiring Person).

#### Rights and Preferences of the Junior Preferred Stock

Each Unit of Junior Preferred Stock has rights and preferences substantially equivalent to those of one share of Common Stock.

#### No Voting Rights

Rights will not have any voting rights.

#### Certain Anti-Takeover Effects

The Rights approved by the Company's Board of Directors are designed to protect and maximize the value of the outstanding equity interests in the Company in the event of an unsolicited attempt by an acquiror to take over the Company in a manner or on terms not approved by the Company's Board of Directors. Takeover attempts frequently include coercive tactics to deprive the Company's Board of Directors and its stockholders of any real opportunity to determine the destiny of the Company. The Rights have been declared by the Company's Board of Directors in order to deter such tactics, including a gradual accumulation of shares in the open market of 20% or greater position to be followed by a merger or a partial or two-tier tender offer that does not treat all stockholders equally. These tactics unfairly pressure stockholders, squeeze them out of their investment without giving them any real choice and deprive them of the full value of their shares.

The Rights are not intended to prevent a takeover of the Company and will not do so. Subject to the restrictions described above, the Rights may be redeemed by the Company at \$0.01 per Right at any time prior to the time a person or group becomes an Acquiring Person. Accordingly, the Rights should not interfere with any merger or business combination approved by the Company's Board of Directors.

Issuance of the Rights does not in any way weaken the financial strength of the Company or interfere with its business plans. The issuance of the Rights themselves has no dilutive effect, will not affect reported earnings per share, should not be taxable to the Company or to its stockholders, and will not change the way in which the Company's shares are presently traded. The Company's Board of Directors believes that the Rights represent a sound and reasonable means of addressing the complex issues of corporate policy created by the current business environment. However, the Rights may have the effect of rendering more difficult or discouraging an acquisition of the Company that is deemed undesirable by the Company's Board of Directors. The Rights may cause substantial dilution to a person or group that attempts to acquire the Company on terms or in a manner not approved by the Company's Board of Directors, except pursuant to an offer conditioned upon the negotiation, purchase or redemption of the Rights.

#### **ITEM 2. EXHIBITS.**

The following exhibits to this Registration Statement on Form 8-A are either filed herewith or are incorporated by reference from the documents specified, which documents have been filed with the Securities and Exchange Commission.

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#### **Exhibit Number**

#### **Description of Exhibit**

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- 3.1 Articles of Incorporation of the Company (incorporated by reference to the same titled exhibit to the Company's Registration Statement on Form S-1, File No. 33-83938, and as amended by the Company's Certificate Pursuant to NRS78.207, filed on November 13, 2001 as Exhibit T3A-1 to

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
	the Company's Application for Qualification of Indentures on Form T-3).
3.2	Form of Amended and Restated Articles of Incorporation of the Company effective as of January 1, 2002 (incorporated by reference to Exhibit 3.2 to the Company's Application for Qualification of Indentures on Form T-3, filed on November 13, 2001).
3.3	Bylaws of the Company (incorporated by reference to Exhibit 3.7 to the Company's Registration Statement on Form S-1, File No. 33-83938).
3.4	Certificate of Designation of Series A Junior Participating Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, filed October 4, 2004).
4.1	Rights Agreement by and between Assisted Living Concepts, Inc. and American Stock Transfer & Trust Company, as Rights Agent, effective as of October 1, 2004, including the forms of Certificate of Designation, Rights Certificate and Summary of Stockholder Rights Plan attached thereto as Exhibits A, B and C, respectively (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K, filed October 4, 2004).

**Signature**

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized.

**ASSISTED LIVING CONCEPTS, INC.**

By: /s/ Edward A. Barnes  
Edward A. Barnes  
Senior Vice President, Chief Financial  
Officer, Chief Accounting Officer,  
Secretary and Treasurer

Date: October 5, 2004

## INDEX OF EXHIBITS

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