

ASSISTED LIVING CONCEPTS INC

Form PREM14A

November 19, 2004

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

**SCHEDULE 14A**

Proxy Statement Pursuant to Section 14(a) of the Securities  
Exchange Act of 1934 (Amendment No. )

Filed by the Registrant    
Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

**Assisted Living Concepts, Inc.**

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

1) Title of each class of securities to which transaction applies: Common Stock, \$.01 par value

2) Aggregate number of securities to which transaction applies: (1)

3) Per unit price or other underlying value of transaction computed pursuant to Section 14(g) of the Exchange Act (set forth the amount on which the filing fee is calculated and state how it was determined):

Pursuant to the terms of the Plan of Merger and Acquisition Agreement, dated as of November 4, 2004, by and among Assisted Living Concepts, Inc., Alpha Acquisition, Inc. and Extencicare Health Services, Inc., each issued and outstanding share of Assisted Living, Inc. common stock, other than shares owned by stockholders who are entitled to and have exercised and perfected dissenter's rights, will be converted into the right to receive \$18.50 in cash. In addition, pursuant to the terms of the Plan of Merger and Acquisition Agreement, each outstanding stock option will be fully vested and canceled in exchange for (i) the excess, if any, of \$18.50 over the per share exercise price

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of the option multiplied by (ii) the number of shares of common stock subject to the option. The filing fee was calculated based upon (a) an estimated aggregate cash payment of \$121,145,493 based on the proposed per share cash payment of \$18.50 for outstanding shares of common stock, and (b) an estimated aggregate cash payment of \$7,958,658 to holders of outstanding options to purchase an aggregate of 574,887 shares of common stock with per share exercise prices of less than \$18.50. In accordance with Section 14(g) of the Securities Exchange Act of 1934, as amended, the filing fee was determined by multiplying 0.00012670 by the amount calculated pursuant to the preceding sentence.

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4) Proposed maximum aggregate value of transaction: \$129,104,151

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5) Total fee paid: \$16,357

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(1) Based on the sum of (a) 6,548,405, which represents 6,491,164 shares of Assisted Living Concepts, Inc. common stock, outstanding as of November 5, 2004, and 57,241 shares of Assisted Living Concepts, Inc. common stock to be issued upon settlement of pending claims pursuant to the first amended plan of reorganization of Assisted Living Concepts, Inc. and (b) 574,887 shares of common stock issuable pursuant to stock options with exercise prices less than the per share merger consideration of \$18.50.

o Fee paid previously with preliminary materials.

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

1) Amount Previously Paid:

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2) Form, Schedule or Registration Statement No.:

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3) Filing Party:

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4) Date Filed:

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**ASSISTED LIVING CONCEPTS, INC.**

1349 Empire Central, Suite 900  
Dallas, Texas 75247

**PROPOSED CASH MERGER YOUR VOTE IS VERY IMPORTANT**

, 200

To our Stockholders:

You are cordially invited to attend a special meeting of stockholders of Assisted Living Concepts, Inc., to be held on \_\_\_\_\_, 200 at \_\_\_\_\_ a.m., Central Time, at the Hyatt Regency DFW, International Parkway, Dallas, Texas 75261.

At the special meeting, you will be asked to consider and vote upon a proposal to approve and adopt the Plan of Merger and Acquisition Agreement, dated as of November 4, 2004, by and among Assisted Living Concepts, Alpha Acquisition, Inc. and Extencicare Health Services, Inc., and the merger contemplated by the merger agreement. Under the merger agreement, Alpha Acquisition, Inc., a wholly-owned subsidiary of Extencicare Health Services, Inc. will be merged with and into Assisted Living, with Assisted Living being the surviving corporation. Alpha Acquisition, Inc. is a Nevada corporation that was formed by Extencicare Health Services, Inc. for the purpose of completing the merger.

If the merger is completed, each issued and outstanding share of our common stock that you own will be converted into the right to receive \$18.50 in cash, without interest, unless you choose to be a dissenting stockholder and exercise and perfect your dissenter's rights under Nevada law. Each outstanding option for our common stock will be canceled in exchange for (1) the excess, if any, of \$18.50 over the per share exercise price of the option multiplied by (2) the number of shares of common stock subject to the option, net of any applicable withholding taxes. If the merger is completed, we will become a wholly-owned subsidiary of Extencicare and, thereby, will no longer be a publicly traded company.

Our board of directors formed a special committee (composed of disinterested and independent directors who are not our officers or employees, are independent of and have no economic interest or expectancy of an economic interest in Extencicare or its affiliates and do not have an economic interest or expectancy of an economic interest in the surviving corporation) to explore strategic alternatives and evaluate, negotiate and make a recommendation to our board of directors regarding the merger proposal and transactions related thereto, including the terms of the merger agreement. If the merger is completed, the two members of the special committee will, along with all other option holders, receive cash payments for all options. See Special Factors Interests of Our Directors and Executive Officers in the Merger beginning on page 33. Each member of the special committee has been paid a flat fee of \$75,000 for such member's service on the special committee, and, whether or not the merger is completed, will be paid \$10,000 per month after December 31, 2004 until the special committee is dissolved and will be reimbursed for out-of-pocket expenses incurred in connection with service on the special committee.

Our board of directors, acting on the unanimous recommendation of the special committee, has unanimously approved the merger agreement and the merger. The special committee and our board of directors each have determined that the terms of the merger agreement and the proposed merger are advisable, fair to and in the best interests of our company and our stockholders. In reaching its determination, our board of directors and the special committee considered a number of factors, including the opinion of our financial advisor, which is attached as Annex B to the accompanying proxy statement and which you are urged to read in its entirety. **Our board of directors unanimously recommends that you vote FOR the approval and adoption of the merger agreement and the merger. Our board of directors also unanimously recommends that you vote FOR the approval of any proposal to postpone or adjourn the special meeting to a later date for a reasonable business purpose, including to solicit additional proxies in favor of the approval and adoption of the merger agreement and the merger if there are not sufficient votes for approval and adoption of the merger agreement and the merger at the special meeting.**

The enclosed proxy statement provides information about the merger agreement, the proposed merger and the special meeting. You may obtain additional information about us from documents filed with the

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Securities and Exchange Commission. We urge you to read the entire proxy statement carefully, including the annexes, as it sets forth the details of the merger agreement and other important information related to the merger.

Your vote is very important. The merger cannot be completed unless the merger agreement and the merger are approved and adopted by the affirmative vote of the holders of a majority of the outstanding shares of our common stock entitled to vote. Regardless of whether you plan to attend the special meeting, it is important that your shares are represented at the special meeting. To ensure that your shares will be represented, please complete, sign, date and mail the enclosed proxy card at your first opportunity.

This solicitation for your proxy is being made by Assisted Living on behalf of our board of directors. If you fail to vote on the merger, the effect will be the same as a vote against the approval and adoption of the merger agreement and the merger for purposes of the vote referred to above. **If you complete, sign and submit your proxy card without indicating how you wish to vote, your proxy will be counted as a vote in favor of approval and adoption of the merger agreement, the merger and any postponement or adjournment of the special meeting referred to above. Returning the proxy card will not deprive you of your right to attend the special meeting, revoke your proxy and vote your shares in person.**

On behalf of your board of directors, thank you for your continued support.

Sincerely,

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STEVEN L. VICK  
*President and Chief Executive Officer*

, 200  
The accompanying proxy statement is dated , 200 and is first being mailed to stockholders of Assisted Living on or about , 200 .

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**ASSISTED LIVING CONCEPTS, INC.**

1349 Empire Central, Suite 900  
Dallas, Texas 75247

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**

To Be Held On \_\_\_\_\_, 200

To the stockholders of Assisted Living Concepts, Inc.:

Notice is hereby given that a special meeting of stockholders of Assisted Living Concepts, Inc., a Nevada corporation, will be held on \_\_\_\_\_, 200, at \_\_\_\_\_ a.m., Central time, at the Hyatt Regency DFW, International Parkway, Dallas, Texas 75261, for the following purposes:

To consider and vote upon a proposal to approve and adopt the Plan of Merger and Acquisition Agreement, dated as of November 4, 2004, by and among Assisted Living, Alpha Acquisition, Inc. and Extencicare Health Services, Inc., and the merger contemplated by the merger agreement.

To grant to the proxyholders the authority to vote in their discretion with respect to the approval of any proposal to postpone or adjourn the special meeting to a later date for a reasonable business purpose, including to solicit additional proxies in favor of the approval and adoption of the merger agreement and the merger if there are not sufficient votes for approval and adoption of the merger agreement and the merger at the special meeting.

To consider and vote upon such other matters as may properly come before the special meeting or any adjournment or postponement of the special meeting.

Our board of directors, acting on the unanimous recommendation of the special committee, has unanimously approved the terms of the merger agreement and the proposed merger. Our board of directors and the special committee have determined that the terms of the merger agreement and the proposed merger are advisable, fair to and in the best interests of our company and our stockholders. **Our board of directors recommends that you vote FOR the approval and adoption of the merger agreement and the merger. Our board of directors also recommends that you vote FOR the approval of any postponement or adjournment of the special meeting referred to above.**

Only holders of record of our common stock at the close of business on \_\_\_\_\_, 200, the record date of the special meeting, are entitled to notice of, and to vote at, the special meeting or any adjournments or postponements thereof.

Stockholders who do not vote in favor of approval and adoption of the merger agreement and the merger will have the right to assert dissenters' rights under Nevada Revised Statutes Sections 92A.300 to 92A.500, inclusive, if the merger is completed, but only if they submit to us a written notice of intent to demand payment before the vote is taken on the merger agreement and the merger, and they comply with Nevada law as explained in the accompanying proxy statement. A copy of Nevada Revised Statutes Sections 92A.300 to 92A.500, inclusive, have been attached to this proxy statement as Annex C.

**Your vote is very important, regardless of the number of shares you own.** The merger cannot be completed unless the merger agreement and the merger are approved and adopted by the affirmative vote of the holders of a majority of the outstanding shares of our common stock entitled to vote. Failure to vote on the merger has the same effect as a vote against the merger. Even if you plan to attend the special meeting in person, it is important that your shares are represented at the special meeting. To ensure that your shares will be represented at the special meeting, please complete, date, sign and mail the enclosed proxy card. A return envelope (which is postage prepaid if mailed in the United States) is enclosed for submissions by mail.

This solicitation for your proxy is being made by Assisted Living on behalf of our board of directors. If you do attend the special meeting and wish to vote in person, you may revoke your proxy in writing and vote in person. Please note, however, that if your shares are held of record by a broker, bank or other nominee and you wish to vote at the meeting, you must obtain from the record holder a proxy issued in your name.

If you have any questions or need assistance in voting your shares, please call Ed Barnes, our Corporate Secretary at (214) 424-4002.

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The merger agreement and the merger are described in the accompanying proxy statement, which we urge you to read carefully. A copy of the merger agreement is included as Annex A to the accompanying proxy statement.

By Order of the Board of Directors,

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EDWARD A. BARNES  
*Senior Vice President, Chief Financial  
Officer, Chief Accounting Officer,  
Secretary and Treasurer*

Dallas, Texas

, 200

**Please do not send your Assisted Living common stock certificates to us at this time. If the merger is completed, you will be sent instructions regarding surrender of your certificates.**

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**SUMMARY TERM SHEET**

This summary provides a brief description of the material terms of the merger agreement and the merger. This summary highlights selected information contained in this proxy statement and may not contain all of the information that is important to you. You are urged to read this entire proxy statement carefully, including the information in the Annexes.

**Purpose of the Merger and Timing**

The principal purpose of the merger is to provide you with an opportunity to receive an immediate cash payment for your Assisted Living shares at a price that is at a premium over recent market prices, and to enable Extencicare to acquire Assisted Living. See **Special Factors Purpose and Structure of the Merger** beginning on page 30.

The merger is being proposed at this time in direct response to the exploration of strategic alternatives by the special committee and the solicitation of indications of interest authorized by the special committee on July 16, 2004. See **Special Factors Background of the Merger** beginning on page 13.

**The Parties to the Merger**

**Assisted Living** Assisted Living Concepts, Inc. is a Nevada corporation that is headquartered in Dallas, Texas. Assisted Living operates owned and leased freestanding assisted living residences. See **The Participants** beginning on page 12.

**Extencicare** Extencicare Health Services, Inc. is a Delaware corporation that is headquartered in Milwaukee, Wisconsin. Extencicare is an indirect wholly-owned subsidiary of Extencicare, Inc., a publicly traded Canadian company. Extencicare operates long term care facilities in the United States. See **The Participants** beginning on page 12.

**Alpha Acquisition** Alpha Acquisition, Inc. is a Nevada corporation that is a wholly-owned subsidiary of Extencicare. Extencicare formed Alpha Acquisition for the purpose of completing the merger. See **The Participants** beginning on page 12.

**The Merger**

Alpha Acquisition will merge with and into Assisted Living, and Assisted Living will continue as the surviving corporation and as a wholly-owned subsidiary of Extencicare. We have attached the merger agreement as Annex A to this proxy statement. We encourage you to read the merger agreement in its entirety because it is the legal document that governs the merger. See **Special Factors** beginning on page 13 and **The Merger Agreement** beginning on page 41.

**Consideration; Effect of the Merger on Our Stockholders**

In the merger, each share of our common stock will be converted automatically into the right to receive \$18.50 in cash, without interest, except for:

treasury shares of our common stock and shares of our common stock held by any of our wholly-owned subsidiaries;

shares of our common stock owned by Extencicare or Alpha Acquisition or any of their wholly-owned subsidiaries; and

shares of our common stock held by stockholders who properly exercise and perfect dissenter's rights, which will be available in accordance with Sections 92A.300 through 92A.500, inclusive, of the Nevada Revised Statutes. See **Special Factors Dissenter's Rights** beginning on page 38.

At the effective time of the merger, each outstanding option under our stock option plan will become fully vested and exercisable and will be canceled in exchange for an amount in cash, if any, determined

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by multiplying (1) the excess, if any, of \$18.50 over the per share exercise price of the option and (2) the number of shares of our common stock subject to the option, net of any applicable withholding taxes. See The Merger Agreement beginning on page 42. The merger agreement requires that our board of directors or any committee administering the stock option plan take all actions necessary to cause all outstanding stock options granted under the stock option plan to become fully vested and exercisable at the effective time of the merger. See The Merger Agreement Treatment of Options beginning on page 41.

Upon completion of the merger, our current stockholders will cease to have ownership interests in Assisted Living or rights as Assisted Living stockholders, and Extencare will own all of the outstanding capital stock of Assisted Living, as the surviving corporation. Therefore, our current stockholders will not participate in any of our future earnings or growth and will not benefit from any appreciation in our value. See Special Factors Effects of the Merger beginning on page 30.

As a result of the merger, we will become a privately held corporation and there will be no public market for our common stock. After the merger, our common stock will no longer be listed on the OTC Bulletin Board and our registration under the Securities Exchange Act of 1934, as amended, referred to in this proxy statement as the Exchange Act, will be terminated. See Special Factors Effects of the Merger beginning on page 30.

### **Opinion of the Special Committee's Financial Advisor**

The special committee engaged Jefferies & Company, Inc. to assist it in connection with its evaluation of the proposed merger and to render an opinion as to whether the consideration to be received pursuant to the merger is fair, from a financial point of view, to our stockholders. See Special Factors Background of the Merger beginning on page 13.

On November 4, 2004, Jefferies delivered its written opinion to our board of directors that, as of that date, and based upon and subject to the assumptions made, matters considered, and the qualifications and limitations set forth in the written opinion, the consideration of \$18.50 per share in cash to be received pursuant to the merger is fair, from a financial point of view, to our stockholders. See Special Factors Opinion of the Special Committee's Financial Advisor beginning on page 23.

The full text of the written opinion of Jefferies, which sets forth assumptions made, matters considered and limits on the review undertaken by Jefferies, is attached to this proxy statement as Annex B and is incorporated into this proxy statement by reference. Stockholders are urged to read and should read the entire opinion carefully. See Special Factors Opinion of the Special Committee's Financial Advisor beginning on page 23.

### **Termination of the Merger Agreement**

The merger agreement may be terminated under several circumstances, including:

by Extencare and us by mutual written consent, authorized by such party's respective board of directors;

by Extencare or us if approval of the merger is not obtained from our stockholders;

by us, prior to stockholder approval, if our board of directors has approved, adopted or recommended, or we have executed or entered into a definitive agreement with respect to, a superior acquisition proposal;

by Extencare if we, or any of our representatives, violate in any material manner any of the no solicitation provisions of the merger agreement, we enter into an agreement relating to any alternative acquisition proposal, or our board of directors or any committee thereof modifies or withdraws its recommendation to approve the merger agreement and the merger;

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by us or Extencicare if there is a material breach of the other party's representations, warranties, covenants or agreements contained in the merger agreement which is not curable or, if curable, is not cured within thirty days after written notice of such breach is given;

by us or Extencicare if there has been a failure of satisfaction of one of such party's respective conditions to closing set forth in the merger agreement; and

by us or Extencicare if the closing of the merger has not occurred on or before February 28, 2005, as may be extended in accordance with the merger agreement.

See The Merger Agreement Termination beginning on page 52.

### **Termination Fee**

If the merger agreement is terminated under specified circumstances, including acceptance of a superior acquisition proposal, we will be required to pay to Extencicare a \$6,000,000 termination fee and up to \$2,000,000 in reimbursement of out-of-pocket fees and expenses. See The Merger Agreement Fees and Expenses; Termination Fee beginning on page 53.

### **Conditions of the Merger**

The merger agreement and the merger are subject to approval by the holders of a majority of the outstanding shares of our common stock entitled to vote, as well as other conditions. See The Merger Agreement Conditions to Completing the Merger beginning on page 50.

### **Merger Financing**

The total amount of funds necessary to complete the merger and the related transactions is anticipated to be approximately \$140.3 million, consisting of:

approximately \$129.1 million to pay our stockholders (other than Extencicare or Alpha Acquisition) and option holders, assuming that none of our stockholders exercise and perfect its dissenter's rights;

approximately \$4.2 million to make payments required under certain employment agreements as a result of a change in control of Assisted Living; and

approximately \$4.4 million to pay related fees and expenses. See Special Factors Merger Financing beginning on page 35.

Extencicare and Alpha Acquisition expect to finance the total amount of funds necessary to complete the merger and the related transactions by using available cash-on-hand and borrowings under Extencicare's existing line of credit. See Special Factors Merger Financing beginning on page 35.

### **Tax Consequences**

Generally, the merger will be taxable for U.S. federal income tax purposes to our stockholders. Each stockholder will recognize a taxable gain or loss in the amount of the difference between \$18.50 and the stockholder's adjusted tax basis for each share of our common stock that the stockholder surrenders. See Material U.S. Federal Income Tax Consequences beginning on page 36.

### **Stockholder Vote Required to Approve the Merger**

You are being asked to consider and vote upon a proposal to approve and adopt the merger agreement and the merger contemplated by the merger agreement. Approval and adoption of the merger agreement and the merger require the affirmative vote of the holders of a majority of our outstanding shares of common stock entitled to vote. Abstentions and broker non-votes will have the effect of a vote against the merger. On the record date, there were shares of common stock outstanding and entitled to be voted at the special meeting. See The Special Meeting beginning on page 9.

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**Recommendations of the Special Committee and Our Board of Directors**

The special committee is composed of disinterested and independent directors who are not our officers or employees, are independent of and have no economic interest or expectancy of an economic interest in Extencare or its affiliates, and do not have an economic interest or expectancy of an economic interest in the surviving corporation. If the merger is completed, the two members of the special committee will, along with all other option holders, receive cash payments for all options pursuant to the terms of the merger agreement. Each member of the special committee has been paid a flat fee of \$75,000 for such member's service on the special committee through December 31, 2004 and, whether or not the merger is completed, will be paid \$10,000 per month thereafter until the special committee is dissolved; and will be reimbursed for out-of-pocket expenses incurred in connection with service on the special committee. See Special Factors Interests of Our Directors and Executive Officers in the Merger beginning on page 32.

The special committee and our board of directors have determined that the terms of the merger agreement and the proposed merger are advisable, fair to and in the best interests of our company and our stockholders. For information about the reasons for the special committee and our board of directors reaching such conclusion, see Special Factors Recommendation of the Special Committee and Our Board of Directors and Reasons for the Merger beginning on page 20. **Our board of directors, acting on the unanimous recommendation of the special committee, has unanimously approved the merger agreement and the merger and unanimously recommends that you vote FOR the approval of the merger agreement and the merger and FOR the approval of any proposal to postpone or adjourn the special meeting to a later date for a reasonable business purpose, including to solicit additional proxies in favor of the approval and adoption of the merger agreement and the merger if there are not sufficient votes for approval of the merger agreement and the merger at the special meeting.**

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**QUESTIONS AND ANSWERS ABOUT THE MERGER**

*The following section provides brief answers to some of the more likely questions raised by the merger agreement and the merger. This section is not intended to contain all of the information that is important to you. You are urged to read the entire proxy statement carefully, including the information in the Annexes.*

**Q: What am I being asked to vote on?**

A: You are being asked to vote on a proposal to approve and adopt the merger agreement and the merger, which provides for the acquisition of Assisted Living by Extencicare, and to vote on a proposal to approve the postponement or adjournment of the special meeting to a later date for a reasonable business purpose, including to solicit additional proxies in favor of the approval and adoption of the merger agreement and the merger if there are not sufficient votes for approval and adoption of the merger agreement and the merger at the special meeting. After the merger, we will become a privately held company and a wholly-owned subsidiary of Extencicare.

Our board of directors, acting upon the unanimous recommendation of the special committee, unanimously approved the merger agreement and the merger. The special committee and our board of directors believe that the terms of the merger agreement and the proposed merger are advisable, fair to and in the best interests of our company and our stockholders. **Our board of directors recommends that you vote FOR the approval and adoption of the merger agreement and the merger, and FOR the approval of any proposal to postpone or adjourn the special meeting to a later date for a reasonable business purpose, including to solicit additional proxies in favor of the approval and adoption of the merger agreement and the merger if there are not sufficient votes for approval and adoption of the merger agreement and the merger at the special meeting.**

**Q: What are the consequences of the merger to present members of management and our board of directors?**

A: In considering the recommendations of our board of directors, our stockholders should be aware that some of our executive officers and members of our board of directors have interests in the transaction that may be different from, or in addition to, the interests of our stockholders generally. These interests include:

In connection with the merger, all outstanding options (including those held by our directors and executive officers) will become immediately exercisable and canceled in exchange for (1) the excess, if any, of \$18.50 over the per share exercise prices of the options multiplied by (2) the number of shares of common stock subject to the options, net of any applicable withholding taxes. The merger agreement provides for the accelerated vesting of all options at the effective time of the merger in order that the full amount of such options may be canceled in exchange for cash. Pursuant to this provision, our directors and executive officers will receive an aggregate of \$1,680,045 for their options that will be accelerated and have a per share exercise price below \$18.50. Members of our board of directors and our executive officers collectively hold options to purchase 278,500 shares of our common stock, or 48.4%, out of the 574,887 shares of our common stock subject to outstanding options (including those that are being accelerated) held by all option holders. Out of a total of \$7,958,658 to be paid in respect of options (including those that are being accelerated) in connection with the merger, \$3,897,810, or 49.0%, will be paid to our directors or executive officers.

Each of our chief executive officer and chief operating officer currently has an employment agreement with us with a three-year term. Our chief financial officer currently has an employment agreement for no fixed term, which is subject to termination upon thirty days notice. These employment agreements include a change of control provision whereby the executive officer is entitled to a transaction bonus payment upon consummation of the merger and a severance payment in the event that his or her employment is terminated within twelve months after the effective time of the merger.

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The merger agreement provides that all rights of indemnification and exculpation from liability for acts and omissions occurring prior to the effective time of the merger of our current and former directors, officers, employees and agents will continue for at least six years after the effective time of the merger and that the surviving corporation will maintain directors and officers insurance policies for a premium not to exceed \$1,050,000 annually.

These interests are more fully described under Special Factors Interests of Our Directors and Executive Officers in the Merger beginning on page 32.

The special committee and our board of directors were aware of these interests and considered them, among other factors, when approving the merger agreement and the merger.

**Q: What are the U.S. federal income tax consequences of the merger to me?**

A: The merger will be a taxable transaction for U.S. federal income tax purposes that will generally be treated as a sale of your shares of our common stock in exchange for the consideration you receive in the merger. Any gain or loss recognized by a stockholder in the merger will generally be capital gain or loss, depending on an individual stockholder's holding period and other factors. Tax matters can be complicated and the tax consequences of the merger to you will depend on the facts of your own situation. You are encouraged to consult your own tax advisor for a full understanding of the tax consequences of the merger to you, including the federal, state, local and foreign tax consequences of the merger. See Special Factors Material U.S. Federal Income Tax Consequences beginning on page 36 for a more complete discussion of the U.S. federal income tax consequences of the merger.

**Q: When and where is the special meeting?**

A: The special meeting of our stockholders will be held at a.m., Central Time, on , 200 at the Hyatt Regency DFW, International Parkway, Dallas, Texas 75261.

**Q: Who can vote on the merger agreement?**

A: Holders of our common stock at the close of business on , 200 , the record date for the special meeting, may vote on the merger agreement and the merger in person or by proxy at the special meeting.

**Q: How many votes do I have?**

A: You have one vote for each share of our common stock that you owned at the close of business on , 200 , the record date for the special meeting.

**Q: What do I need to do now?**

A: You should read this proxy statement carefully, including the information in the Annexes, and consider how the merger would affect you. Please complete, sign and date your proxy card or voting instructions and return it in the enclosed postage paid envelope as soon as possible so that your shares may be represented at the special meeting. If your shares are held in an account at a brokerage firm or bank, you will receive instructions on how to vote from your brokerage firm or bank.

**Q: What happens if I do not respond?**

A: The failure to respond by returning your proxy card will have the same effect as voting against the merger agreement and the merger unless you vote for the merger agreement and the merger in person at the special meeting.

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**Q: May I vote in person?**

A: Yes. You may attend the special meeting of our stockholders, revoke your proxy and vote your shares in person, regardless of whether you sign and return your proxy card prior to the special meeting. If your shares are held of record by a broker, bank or other nominee and you wish to vote at the meeting, you must obtain a proxy from the record holder.

**Q: May I change my vote after I have mailed my signed proxy card or otherwise submitted my vote?**

A: Yes. You may change your vote at any time before your proxy is voted at the special meeting. Regardless of the manner in which you vote, you can do this in one of three ways. First, you can send a written notice revoking your proxy or voting instructions. Second, you can complete and submit a new proxy card or voting instructions bearing a later date. Third, you can attend the special meeting, revoke your proxy and vote in person. Your attendance alone, however, will not revoke your proxy. If you have instructed a broker to vote your shares, you must follow directions received from your broker to change those instructions.

**Q: If my shares are held in street name by my broker, will my broker vote my shares for me?**

A: Your broker will not be able to vote your shares without instructions from you. You should instruct your broker to vote your shares, following the procedures provided to you by your broker.

**Q: When do you expect the merger to be completed?**

A: The parties to the merger agreement are working toward completing the merger as quickly as possible. If the merger agreement and the merger are approved by the stockholders and the other conditions to the merger are satisfied or waived, the merger is expected to be completed promptly after the special meeting.

**Q: Should I send in my stock certificates now?**

A: No. After the merger is completed, the paying agent for the merger will send a letter of transmittal and written instructions for exchanging your shares of our common stock for the merger consideration, without interest. You should not send in your Assisted Living stock certificates until you receive the letter of transmittal. See *The Merger Agreement – Payment for Shares* beginning on page 42.

**Q: How long after the effective date of the merger will I receive the cash payment for my shares?**

A: We expect the paying agent to distribute letters of transmittal within approximately five business days after the effective date of the merger. You should expect payment for your shares approximately seven to ten days after the paying agent receives your properly completed letter of transmittal and stock certificates.

**Q: Do I have dissenter's rights?**

A: Yes. You are entitled to assert dissenter's rights under Nevada law as a result of the merger. In order to assert dissenter's rights, you, among other things, must not vote in favor of the merger and must follow the procedures specified in Nevada Revised Statutes, Sections 92A.300 through 92A.500, inclusive, a copy of which is included as Annex C to this proxy statement. See *Special Factors – Dissenter's Rights* beginning on page 38.



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**Q: Who can help answer my questions?**

A: The information provided above in the question-and-answer format is for your convenience only and is merely a summary of some of the information contained in this proxy statement. You should carefully read the entire proxy statement, including the information in the Annexes. See *Where Stockholders Can Find More Information* beginning on page 58. If you would like additional copies of this proxy statement, without charge, or if you have questions about the merger, including the procedures for voting your shares, you should contact:

Assisted Living Concepts, Inc.  
1349 Empire Central, Suite 900  
Dallas, Texas 75247  
Attention: Ed Barnes  
(214) 424-4000

You are also urged to consult your own legal, tax and/or financial advisors with respect to any aspect of the merger, the merger agreement or other matters discussed in this proxy statement.

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**THE SPECIAL MEETING**

**General**

We are soliciting the enclosed proxy on behalf of our board of directors for use at a special meeting of stockholders to be held on \_\_\_\_\_, 200 , at \_\_\_\_\_ a.m., Central time, at the Hyatt Regency DFW, International Parkway, Dallas, Texas 75261, or at any adjournments or postponements thereof, for the purposes set forth in this proxy statement and in the accompanying notice of special meeting. We intend to mail this proxy statement and accompanying proxy card on or about \_\_\_\_\_, 200 to all stockholders entitled to vote at the special meeting.

At the special meeting, our stockholders will be asked to consider and vote upon a proposal to approve and adopt the merger agreement, dated as of November 4, 2004, by and among Extencicare, Alpha Acquisition and us, and the merger. You are also being asked to vote on any proposal to approve the adjournment or postponement of the special meeting to a later date for a reasonable business purpose, including to solicit additional proxies in favor of the approval and adoption of the merger agreement and the merger if there are not sufficient votes for approval and adoption of the merger agreement and the merger at the special meeting. Under the merger agreement, Alpha Acquisition will be merged with and into us, and each issued and outstanding share of our common stock will be converted into the right to receive \$18.50 in cash, without interest, except for:

treasury shares of our common stock, if any, all of which will be canceled without any payment;

shares of our common stock owned by Extencicare or Alpha Acquisition or any of their wholly-owned subsidiaries;

shares of our common stock held by any of our wholly-owned subsidiaries; and

shares of our common stock held by stockholders who validly assert and perfect dissenter s rights in accordance with Nevada law.

At the effective time of the merger, each of our outstanding stock options will be canceled in exchange for an amount in cash, if any, determined by multiplying (1) the excess, if any, of \$18.50 over the per share exercise price of the option and (2) the number of shares of our common stock subject to the option, net of any applicable withholding taxes. The merger agreement requires that our board of directors or any committee administering our stock option plan take all actions necessary to cause all of our outstanding stock options granted under our stock option plan to become fully vested and exercisable.

Our board of directors, following the unanimous recommendation of the special committee, unanimously approved the terms of the merger agreement and the proposed merger. **Our board of directors recommends that you vote FOR the approval and adoption of the merger agreement and the merger and FOR the approval of any postponement or adjournment of the special meeting referred to above.**

**Record Date, Quorum and Voting Information**

Only holders of record of our common stock at the close of business on \_\_\_\_\_, 200 , the record date for the special meeting, will be entitled to notice of and to vote at the special meeting. At the close of business on \_\_\_\_\_, 200 , there were outstanding and entitled to vote \_\_\_\_\_ shares of our common stock, none of which were held by Extencicare or Alpha Acquisition. Each holder of record of our common stock on the record date will be entitled to one vote for each share held. The presence, in person or by proxy, of the holders of a majority of the outstanding shares of common stock entitled to vote at the special meeting is necessary to constitute a quorum for the transaction of business at the special meeting. Stockholders may vote their shares by attending the special meeting and voting their shares of common stock in person, or by completing the enclosed proxy card, signing and dating it and mailing it in the enclosed postage-prepaid envelope.

All votes will be tabulated by the inspector of election appointed for the special meeting, who will separately tabulate affirmative and negative votes, abstentions and broker non-votes. Brokers who hold shares in street name for clients typically have the authority to vote on routine proposals when they have not

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received instructions from beneficial owners. However, absent specific instructions from the beneficial owner of the shares, brokers are not allowed to exercise their voting discretion with respect to the approval and adoption of non-routine matters, such as the merger agreement and the merger. Proxies submitted without a vote by the brokers on these matters are referred to as broker non-votes. Abstentions and broker non-votes are counted for purposes of determining whether a quorum exists at the special meeting.

The affirmative vote of the holders of a majority of the outstanding shares of common stock entitled to vote is required to approve and adopt the merger agreement and the merger. Accordingly, proxies that reflect abstentions and broker non-votes, as well as proxies that are not returned, will have the same effect as a vote against approval and adoption of the merger agreement and the merger. Accordingly, the special committee and our board of directors urge our stockholders to complete, sign, date and return the enclosed proxy card in the accompanying self-addressed postage prepaid envelope as soon as possible.

Stockholders who do not vote in favor of approval and adoption of the merger agreement and the merger, and who otherwise comply with the applicable statutory procedures and requirements of the Nevada Revised Statutes summarized elsewhere in this proxy statement, will be entitled to assert dissenters' rights under Sections 92A.300 through 92A.500, inclusive, of the Nevada Revised Statutes. See "Special Factors Dissenters' Rights" beginning on page 38 and see Annex C.

Because Nevada, the state in which we are incorporated, permits electronic submission of proxies by telephone or through the Internet, as an alternative to submitting proxies by mail on the enclosed proxy card or voting instructions, many stockholders whose banks or brokerage firms permit will have the choice to submit their proxies or voting instructions electronically by telephone or through the Internet. Please note that there are separate arrangements for using the Internet and telephone depending on the brokerage firm or bank in whose name your shares are registered. Stockholders should check their voting instructions forwarded by their broker, bank or other holder of record to see which choices are available.

## **Proxies; Revocation**

Any person giving a proxy pursuant to this solicitation has the power to revoke the proxy at any time before it is voted at the special meeting. A proxy may be revoked by filing with our Corporate Secretary at our executive offices located at 1349 Empire Central, Suite 900, Dallas, Texas 75247, a written notice of revocation or a duly executed proxy bearing a later date. Attendance at the special meeting will not, by itself, revoke a proxy. Furthermore, if a stockholder's shares are held of record by a broker, bank or other nominee and the stockholder wishes to vote at the meeting, the stockholder must obtain from the record holder a proxy issued in the stockholder's name. If a stockholder has instructed a broker to vote the stockholder's shares, the stockholder must follow such broker's directions to change such instructions.

## **Expenses of Proxy Solicitation**

Except as provided below, we will bear the entire cost of solicitation of proxies, including preparation, assembly, printing and mailing of this proxy statement, the proxy card and any additional information furnished to stockholders. Copies of solicitation materials will be furnished to banks, brokerage houses, fiduciaries and custodians holding in their names shares of common stock beneficially owned by others to forward to the beneficial owners. We may reimburse persons representing beneficial owners of our common stock for their costs of forwarding solicitation materials to the beneficial owners. Original solicitation of proxies by mail may be supplemented by telephone, telegram or other electronic means, or by personal solicitation by our directors, officers or other regular employees. No additional compensation will be paid to our directors, officers or other regular employees for their services in connection with the solicitation of proxies.

## **Adjournments and Postponements**

Our bylaws provide that if a quorum shall not be present or represented at any meeting of stockholders, a majority of the voting stock represented in person or by proxy may adjourn the meeting until a quorum shall be present or represented. If a quorum is not present or the requisite stockholder vote approving the merger proposal has not been received at the time of the special meeting, holders of our common stock may be asked

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to vote on a proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies in favor of the merger proposal. **Our board of directors unanimously recommends that you vote FOR the approval of any adjournment or postponement of the meeting, if necessary, whether for the reasons stated above or for any other reasonable business purpose.**

**Stock Certificates**

Please do not send in stock certificates at this time. In the event the merger is completed, the paying agent for the merger will distribute instructions regarding the procedures for exchanging existing Assisted Living stock certificates for the merger consideration. See The Merger Agreement Payment for Shares beginning on page 42.

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**THE PARTICIPANTS**

**Assisted Living Concepts, Inc.**

**1349 Empire Central, Suite 900  
Dallas, Texas 75247  
(214) 424-4000**

Assisted Living Concepts, Inc., referred to as Assisted Living, we, us, and our in this proxy statement, is a Nevada corporation headquartered in Dallas, Texas, and operates owned and leased freestanding assisted living residences. We provide personal care and support services and make available routine nursing services (as permitted by applicable law) designed to meet the personal and health care needs of our residents. We operate 177 assisted living residences (6,838 units) in 14 states, of which we own 122 residences (4,734 units) and lease 55 residences (2,104 units).

If the merger agreement and the merger are approved and adopted by our stockholders at the special meeting and the merger is completed as contemplated, we will continue our operations following the merger as a private company and wholly-owned subsidiary of Extencicare.

**Extencicare Health Services, Inc.**

**111 West Michigan Street  
Milwaukee, Wisconsin 53203  
(414) 908-8000**

Extencicare Health Services, Inc., referred to as Extencicare in this proxy statement, is a Delaware corporation headquartered in Milwaukee, Wisconsin, and operates long-term care facilities across in the United States. Extencicare is an indirect, wholly-owned subsidiary of Extencicare Inc., a Canadian publicly traded company. As of September 30, 2004, Extencicare operates or manages 185 long-term care facilities in 13 states with 16,607 beds, of which 148 are nursing facilities with 14,847 beds and 37 are assisted living and retirement facilities with 1,760 units. Extencicare also provides consulting services to 77 facilities with 9,446 beds in five states and operates 22 outpatient rehabilitation clinics in four states.

**Alpha Acquisition, Inc.**

**111 West Michigan Street  
Milwaukee, Wisconsin 53203  
(414) 908-8000**

Alpha Acquisition, Inc., referred to as Alpha Acquisition in this proxy statement, is a Nevada corporation organized by Extencicare for the purpose of engaging in the merger. Alpha Acquisition has not participated in any activities to date other than those incident to its formation and the transactions contemplated by the merger agreement. Alpha Acquisition is a wholly-owned subsidiary of Extencicare.

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**SPECIAL FACTORS**

**General**

At the special meeting, we will ask our stockholders to vote on a proposal to approve the merger agreement and the merger of Alpha Acquisition with and into Assisted Living. We have attached a copy of the merger agreement as Annex A to this proxy statement. We urge you to read the merger agreement in its entirety because it is the legal document governing the merger.

**Background of the Merger**

When we emerged from bankruptcy in January 2002, 96% of the new common stock of the reorganized Assisted Living was issued to a class of pre-bankruptcy unsecured creditors. Since large amounts of pre-bankruptcy claims were concentrated among a relatively small group of claimants, significant blocks of the new common stock were issued to a small number of holders. This, together with a tender offer commenced by MP Acquisition Co. LLC in May 2002 and accumulations of stock by other persons after Assisted Living's reorganization, resulted in an increased concentration of ownership and a relatively small public float for Assisted Living's common stock. Following Assisted Living's reorganization, our stock was not listed on an exchange or included on the Nasdaq National Market System, and it has typically traded only in small volumes on the Over-The-Counter Bulletin Board, referred to in this proxy statement as the OTC Bulletin Board. Among other mat