

HCA INC/TN  
Form S-8  
May 07, 2008

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As Filed With the Securities and Exchange Commission  
on May 7, 2008

Registration No. 333-\_\_\_\_\_

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
FORM S-8  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**HCA INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**75-2497104**  
(I.R.S. Employer Identification No.)

**One Park Plaza  
Nashville, Tennessee**

**37203**  
(Zip Code)

(Address of Principal Executive Offices)

**2006 Stock Incentive Plan for Key Employees of HCA Inc. and its Affiliates**  
(Full title of the plan)

**John M. Franck II  
Vice President    Legal and Corporate Secretary  
HCA Inc.**

**One Park Plaza  
Nashville, Tennessee 37203  
(615) 344-9551**

(Name, Address, and Telephone Number of Registrant's agent for service)

Copy to:

**J. Page Davidson  
Bass, Berry & Sims PLC  
315 Deaderick Street, Suite 2700  
Nashville, Tennessee 37238  
(615) 742-6200**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting company)

Accelerated filer   
Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

	Proposed	Proposed	Amount of registration
Title of securities			

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to be registered	Amount to be registered <sup>(1)</sup>	maximum offering price per share <sup>(2)</sup>	maximum aggregate offering price	fee <sup>(3)</sup>
Common Stock, \$0.01 par value	10,654,521	\$51.44-\$60.25	\$563,741,849.78	\$22,156

<sup>(1)</sup> Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act ), includes an indeterminate number of additional shares which may be offered and issued to prevent dilution resulting from stock splits, stock dividends or similar transactions. Pursuant to Rule 416(c), also includes an indeterminate number of participation interests to be offered or sold pursuant to the plan described herein.

<sup>(2)</sup> Pursuant to Rule 457(h) under the Securities Act, the offering price is estimated solely for the purpose of calculating the registration fee on the basis of (a) the exercise prices for the 8,875,487 shares subject to outstanding options granted pursuant to the 2006 Stock Incentive Plan for Key Employees of HCA Inc. and its Affiliates (the 2006 Plan ), and (b) the Registrant s good faith estimate of value for the other 1,779,034 shares registered pursuant hereto for future issuance under the 2006 Plan.

<sup>(3)</sup>Determined by multiplying \$563,741,849.78 by 0.0000393.

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EX-5.1 OPINION OF BASS, BERRY & SIMS PLC

EX-23.1 CONSENT OF ERNST & YOUNG LLP

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**PART I**

**Information Required in the Section 10(a) Prospectus**

HCA Inc. (the Registrant ) has sent or given or will send or give documents containing the information specified by Part I of this Form S-8 Registration Statement (the Registration Statement ) to participants in the plan to which this Registration Statement relates, as specified in Rule 428(b)(1) promulgated by the Securities and Exchange Commission (the SEC ) under the Securities Act. The Registrant is not filing such documents with the SEC, but these documents constitute (along with the documents incorporated by reference into the Registration Statement pursuant to Item 3 of Part II hereof) a prospectus that meets the requirements of Section 10(a) of the Securities Act.

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**PART II**  
**Information Required in the Registration Statement**

**Item 3. Incorporation of Documents by Reference.**

The following documents filed by the Registrant with the SEC, pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act ), are hereby incorporated by reference and shall be deemed to be a part hereof from the date of filing of such document:

- (1) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2007; and
- (2) The description of the Registrant's Common Stock, par value \$0.01 per share, contained in the Registrant's Registration Statement on Form 8-A, filed with the SEC on April 29, 2008, and including all other amendments and reports filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Section 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date hereof and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents. Any statements contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or replaced for purposes hereof to the extent that a statement contained herein (or in any other subsequently filed document which also is incorporated or deemed to be incorporated by reference herein) modifies or replaces such statement. Any statement so modified or replaced shall not be deemed, except as so modified or replaced, to constitute a part hereof.

Notwithstanding the foregoing, information furnished under Items 2.02 and 7.01 of any Current Report on Form 8-K, including the related exhibits, is not incorporated by reference in this Registration Statement or the related prospectus.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

Section 145 of the Delaware General Corporation Law (which we will refer to as the DGCL), grants each corporation organized thereunder the power to indemnify any person who is or was a director, officer, employee or agent of a corporation or enterprise against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of being or having been in any such capacity, if he acted in good faith in a manner reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. A similar standard of care is applicable in the case of expenses, including attorneys' fees, in actions by or in the right of the corporation, except that no indemnification may be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action was brought determines that, despite adjudication of liability but in view of all of the circumstances of the case, the person is fairly and reasonably entitled to indemnity for expenses that the Delaware Court of Chancery or other court shall deem proper.

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Section 102(b)(7) of the DGCL enables a corporation in its certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director to the corporation or its stockholders of monetary damages for violations of the directors' fiduciary duty as a director, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions) or (iv) for any transaction from which a director derived an improper personal benefit.

Our bylaws indemnify the directors and officers to the full extent of the DGCL and also allow the board of directors to indemnify all other employees. Such indemnification extends to the payment of judgments against such officers and directors and to reimbursement of amounts paid in settlement of such claims or actions and may apply to judgments in favor of the corporation or amounts paid in settlement to the corporation. Such indemnification also extends to the payment of counsel fees and expenses of such officers and directors in suits against them where successfully defended by them or where unsuccessfully defended, if there is no finding or judgment that the claim or action arose from the gross negligence or willful misconduct of such officers or directors. Such right of indemnification is not exclusive of any right to which such officer or director may be entitled as a matter of law and shall extend and apply to the estates of deceased officers and directors.

We maintain a directors' and officers' insurance policy. The policy insures directors and officers against unindemnified losses arising from certain wrongful acts in their capacities as directors and officers and reimburses us for those losses for which we have lawfully indemnified the directors and officers. The policy contains various exclusions that are normal and customary for policies of this type.

The foregoing summaries are subject to the complete text of the amended and restated certificate of incorporation and amended and restated bylaws and the DGCL and are qualified in their entirety by reference thereto.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

- 4.1 Amended and Restated Certificate of Incorporation of the Company (filed as Exhibit 3.1 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2007, and incorporated herein by reference).
- 4.2 Amended and Restated Bylaws of the Company (filed as Exhibit 3.2 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2007, and incorporated herein by reference).
- 5.1 Opinion of Bass, Berry & Sims PLC.
- 23.1 Consent of Ernst & Young LLP, independent registered public accounting firm.
- 23.2 Consent of Bass, Berry & Sims PLC (included in Exhibit 5.1).
- 24.1 Power of Attorney (included on the signature pages hereof).
- 99.1 2006 Stock Incentive Plan for Key Employees of HCA Inc. and its Affiliates (filed as Exhibit 10.11 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2006, and incorporated herein by reference).

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Item 9. Undertakings.

A. The 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 the 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 the 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% 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 the registration statement or any material change to such information in the registration statement; *provided, however*, that clauses (A)(1)(i) and (A)(1)(ii) shall 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 into the 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 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 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 SEC 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.



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Pursuant to the requirements of the Securities Act, 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 Nashville, State of Tennessee, on this 7<sup>th</sup> day of May, 2008.

**HCA INC.**

By: /s/ R. Milton Johnson  
 R. Milton Johnson  
 Executive Vice President and  
 Chief Financial Officer

**KNOW ALL MEN BY THESE PRESENTS**, each person whose signature appears below hereby constitutes and appoints John M. Franck II, R. Milton Johnson and David G. Anderson and each of them, his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place, and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, 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, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Jack O. Bovender, Jr. Jack O. Bovender, Jr.	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	May 7, 2008
/s/ Richard M. Bracken Richard M. Bracken	President, Chief Operating Officer and Director	May 7, 2008
/s/ R. Milton Johnson R. Milton Johnson	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	May 7, 2008
/s/ Christopher J. Birosak Christopher J. Birosak	Director	May 7, 2008
/s/ George A. Bitar George A. Bitar	Director	May 7, 2008
/s/ John P. Connaughton John P. Connaughton	Director	May 7, 2008

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<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Thomas F. Frist, Jr., M.D.	Director	May 7, 2008
Thomas F. Frist, Jr., M.D. /s/ Thomas F. Frist, III	Director	May 7, 2008
Thomas F. Frist, III /s/ Christopher R. Gordon	Director	May 7, 2008
Christopher R. Gordon /s/ Michael W. Michelson	Director	May 7, 2008
Michael W. Michelson /s/ James C. Momtazee	Director	May 7, 2008
James C. Momtazee /s/ Stephen G. Pagliuca	Director	May 7, 2008
Stephen G. Pagliuca /s/ Peter M. Stavros	Director	May 7, 2008
Peter M. Stavros /s/ Nathan C. Thorne	Director	May 7, 2008
Nathan C. Thorne		

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