

BioScrip, Inc.
Form 10-K/A
July 14, 2011

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

Form 10-K/A
(Amendment No. 1)

(Mark One)

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

For the fiscal year ended December 31, 2010

OR

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

For the transition period from to

Commission file number: 0-28740

BioScrip, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State of incorporation)

05-0489664
(I.R.S. Employer
Identification No.)

100 Clearbrook Road, Elmsford NY
(Address of principal executive offices)

10523
(Zip Code)

Registrant's telephone number, including area code:

914-460-1600

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

None

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

Common Stock, \$.0001 par value

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was

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required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted to its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 1-K or any amendment to this Form 10-K.

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

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

The aggregate market value of the registrant's Common Stock held by non-affiliates of the registrant as of June 30, 2010, the last business day of the registrant's most recently completed second fiscal quarter, was approximately \$150,795,138 based on the closing price of the Common Stock on the Nasdaq Global Market on such date.

On March 10, 2011, there were outstanding 54,139,194 shares of the registrant's Common Stock.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement for its 2011 Annual Meeting of Stockholders filed with the SEC within 120 days after the close of the registrant's fiscal year are incorporated by reference into Part III of the Annual Report.

Explanatory Note

We are filing this Amendment No. 1 (the "Amendment") on Form 10-K/A to our Annual Report on Form 10-K for the fiscal year ended December 31, 2010 (the "Original Form 10-K"), which was filed with the Securities and Exchange Commission on March 16, 2011. This Amendment is being filed to replace the exhibit index to the Original Form 10-K with the exhibit index included herein.

Except as described above, no other amendments have been made to the Original 10-K. All other Items of the Original 10-K are unaffected by this Amendment. This Amendment does not reflect events occurring after March 16, 2011 or modify or update the disclosure contained in the Original 10-K in any way other than as required to reflect the revision discussed above.

EXHIBIT INDEX

Exhibit Number	Description	Location
2.1	Agreement and Plan of Merger, dated as of January 24, 2010,(1) by and among BioScrip, Inc., Camelot Acquisition Corp., Critical Homecare Solutions Holdings, Inc., Kohlberg Investors V, L.P., Kohlberg Partners V, L.P., Kohlberg Offshore Investors V, L.P., Kohlberg TE Investors V, L.P., KOCO Investors V, L.P., Robert Cucuel, Mary Jane Graves, Nitin Patel, Joey Ryan, Blackstone Mezzanine Partners II L.P., Blackstone Mezzanine Holdings II L.P., and S.A.C. Domestic Capital Funding, Ltd.	(1) (Exhibit 2.1)
3.1	Second Amended and Restated Certificate of Incorporation.	(2) (Exhibit 4.1)
3.2	Amended and Restated By-Laws.	(3) (Exhibit 3.1)
3.3	Amendment to the Second Amended and Restated Certificate of Incorporation.	(4) (Exhibit 3.1)
4.1	Specimen Common Stock Certificate.	(5) (Exhibit 4.1)
4.2	Amended and Restated Rights Agreement, dated as of December 3, 2002 between the Company and American Stock Transfer and Trust Company, as Rights Agent.	(6) (Exhibit 4.1)
4.3	First Amendment, dated December 13, 2006, to the Amended and Restated Rights Agreement, dated as of December 3, 2002 (the "Rights Agreement"), between the Company and American Stock Transfer & Trust Company, as Rights Agent.	(7) (Exhibit 10.1)
4.4	Second Amendment, dated March 4, 2009, to the Rights Agreement, as amended on December 13, 2006, between the Company and American Stock Transfer & Trust Company, as Rights Agent.	(8) (Exhibit 10.1)
4.5	Third Amendment, dated as of January 24, 2010, to the Rights Agreement, as amended on December 13, 2006 and March 4, 2009, between the Company and American Stock Transfer & Trust Company LLC, as Rights Agent, as amended on December 13, 2006 and March 4, 2009.	(1) (Exhibit 4.1)
4.6	Indenture, dated as of March 25, 2010, by and among BioScrip, Inc., the guarantors party thereto and U.S. Bank National Association, as trustee (including Form of 101/4% Senior Note due 2015).	(26) (Exhibit 4.1)
4.7	Warrant Agreement, dated as of March 25, 2010, by and among BioScrip, Inc., Kohlberg Investors V, L.P., Kohlberg Partners V, L.P., Kohlberg Offshore Investors V, L.P., Kohlberg TE Investors V, L.P., KOCO Investors V, L.P., Robert Cucuel, Mary Jane Graves, Nitin Patel, Joey Ryan, Colleen Lederer, Blackstone Mezzanine Partners II L.P., Blackstone Mezzanine Holdings II L.P. and S.A.C. Domestic Capital Funding, Ltd.	(26) (Exhibit 4.2)
10.1	Amended and Restated 1996 Incentive Stock Plan**	(9)
10.2	Amended and Restated 1996 Non-Employee Director's Stock Incentive Plan**	(10)

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10.3	Amended and Restated 2001 Incentive Stock Plan**	(11)
10.4	2008 Amended and Restated Equity Incentive Plan**	(12)
10.5	Employment Letter, dated October 15, 2001, between the(1 3) Company and Russell J. Corvese**	(Exhibit 10.51)
10.6	Amendment, dated September 19, 2003, to Employment Letter(1 4) Agreement between the Company and Russel J. Corvese**	(Exhibit 10.46)
10.7	Amendment, dated December 1, 2004, to Employment Letter(15) Agreement between the Company and Russel J. Corvese**	(Exhibit 10.1)
10.8	KCHS Holdings, Inc. 2006 Equity Incentive Plan **	(28) (Exhibit 10.9)
10.9	Amendment to the KCHS Holdings, Inc. 2006 Equity Incentive(2 8) Plan **	(Ex h i b i t 10.10)
10.10	Second Amendment to the KCHS Holdings, Inc. 2006 Equity(2 8) Incentive Plan **	(Ex h i b i t 10.11)
10.11	Third Amendment to Critical Homecare Solutions Holdings(29) Inc. 2006 Equity Incentive Plan.**	(Exhibit 10.4)
10.12	Fourth Amendment to BioScrip/CHS 2006 Equity Incentive(29) Plan**	(Exhibit 10.5)
10.13	Severance Agreement, dated August 24, 2006, by and between(16) BioScrip, Inc. and Barry A. Posner**	(Exhibit 10.1)
10.14	Severance Agreement, dated August 2, 2007 between BioScrip,(17) Inc. and Stanley G. Rosenbaum.**	(Exhibit 10.1)
10.15	Amendment No. 1 to Severance Agreement between BioScrip,(18) Inc. and Stanley G. Rosenbaum.**	(Exhibit 10.1)
10.16	Amendment No. 1 to Severance Agreement between BioScrip,(18) Inc. and Barry A. Posner.**	(Exhibit 10.2)
10.17	Letter of Credit Agreement dated July 8, 2009.	(19) (Exhibit 10.1)
10.18	Cash Collateral Agreement dated July 8, 2009.	(19) (Exhibit 10.2)
10.19	Employment Letter Agreement, dated August 21, 2003,(20) between MIM Corporation (now BioScrip, Inc.) and Scott Friedman.**	(Exhibit 10.1)
10.20	Amendment, dated October 14, 2004, to Employment Letter(20) Agreement between MIM Corporation (now BioScrip, Inc.) and Scott Friedman.**	(Exhibit 10.2)
10.21	Stockholders' Agreement, dated as of January 24, 2010, by and(1) among BioScrip, Inc., Kohlberg Investors V, L.P., Kohlberg Partners V, L.P., Kohlberg Offshore Investors V, L.P., Kohlberg TE Investors V, L.P., KOCO Investors V, L.P., Robert Cucuel, Mary Jane Graves, Nitin Patel, Joey Ryan, Colleen Lederer, Blackstone Mezzanine Partners II L.P., Blackstone Mezzanine Holdings II L.P., and S.A.C. Domestic Capital Funding, Ltd.	(Exhibit 10.1)
10.22	Engagement Letter, dated as of January 31, 2011, by and(21) between the Company and Mary Jane Graves.**	(Exhibit 10.1)
10.23	Employment Agreement, dated as of December 23, 2010, by(22) and between BioScrip, Inc. and Richard M. Smith. **	(Exhibit 10.1)
10.24	Amended and Restated Credit Agreement, dated as of(23) December 28, 2010, by and among BioScrip, Inc., as borrower, all of its subsidiaries as subsidiary guarantors thereto, the lenders party thereto, Healthcare Finance Group, LLC, as administrative agent for the lenders, as collateral agent and as collateral manager for the secured parties, and the other entities	(Exhibit 10.1)

- party thereto.
- 10.25 Amended and Restated Security Agreement, dated as of(23) (Exhibit 10.2) December 28, 2010, by and among BioScrip, Inc., as borrower, the other guarantors from time to time party thereto, as pledgors, assignors and debtors, and Healthcare Finance Group, LLC, in its capacity as collateral agent, as pledgee, assignee and secured party.
- 10.26 Amended and Restated Collateral Management Agreement,(23) (Exhibit 10.3) dated as of December 28, 2010, by and among BioScrip, Inc., as borrower, the other loan parties from time to time party thereto and Healthcare Finance Group, LLC, in its capacity as collateral manager, as administrative agent.
- 10.27 Employment Offer Letter, dated as of November 29, 2010, by(24) (Exhibit 10.1) and between the Company and David W. Froesel, Jr. **
- 10.28 Severance Agreement, dated as of November 30, 2010, by and(24) (Exhibit 10.2) between the Company and David W. Froesel, Jr. **
- 10.29 Restrictive Covenant Agreement, dated as of November 29,(24) (Exhibit 10.3) 2010, by and between the Company and David W. Froesel, Jr. **
- 10.30 Separation Agreement dated as of November 1, 2010, by and(25) (Exhibit 10.1) between the Company and Richard H. Friedman. **
- 10.31 Credit Agreement, dated as of March 25, 2010, by and among(26) (Exhibit 10.1) BioScrip, Inc., as borrower, the subsidiary guarantors party thereto, the lenders party thereto, Jefferies Finance LLC, as lead arranger, as book manager, as administrative agent for the lenders, as collateral agent for the secured parties and as syndication agent, Compass Bank, as a co-documentation agent, GE Capital Corporation, a co-documentation agent, Healthcare Finance Group, LLC, as collateral manager, HFG Healthco-4, LLC, as swingline lender for the lenders, and Healthcare Finance Group, LLC, as issuing bank for the lenders.
- 10.32 Security Agreement, dated as of March 25, 2010, by and among(26) (Exhibit 10.2) BioScrip, Inc., the other guarantors from time to time party thereto, and Jefferies Finance LLC, as collateral agent pursuant to the Credit Agreement.
- 10.33 Amended and Restated Collateral Management Agreement,(26) (Exhibit 10.3) dated as of December 28, 2010, by and among BioScrip, Inc., as borrower, the other loan parties from time to time party thereto and Healthcare Finance Group, LLC, in its capacity as collateral manager, as administrative agent.
- 10.34 Prime Vendor Agreement dated as of July 1, 2009 between(30) (Exhibit 10.1) AmerisourceBergen Drug Corporation and BioScrip, Inc.***
- 10.35 First Amendment, dated as of March 25, 2010, to Prime Vender(26) (Exhibit 10.4) Agreement, dated as of July 1, 2009, by and among AmerisourceBergen Drug Corporation, BioScrip, Inc., BioScrip Infusion Services, Inc., Chronimed, LLC, Los Feliz Drugs Inc., BioScrip Pharmacy Inc., Bradhurst Specialty Pharmacy, Inc., BioScrip Pharmacy (NY), Inc., BioScrip PBM Services, LLC, Natural Living, Inc., BioScrip Infusion Services, LLC, Bioscrip Nursing Services, LLC, BioScrip Infusion Management, LLC

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- and BioScrip Pharmacy Services, Inc.
- 10.36 Intercreditor Agreement, dated as of March 25, 2010, by and(26) (Exhibit 10.5) between Jefferies Finance LLC, as agent for the first priority secured parties, and AmerisourceBergen Drug Corporation.
- 10.37 Registration Rights Agreement, dated as of March 25, 2010, by(26) (Exhibit 10.6) and among BioScrip, Inc., the guarantors party thereto and Jefferies & Company, Inc.
- 10.38 SECOND AMENDMENT, dated as of June 1, 2010 to the(27) (Exhibit 10.1) Prime Vendor Agreement made as of July 1, 2009 and amended as of March 2010 among AmerisourceBergen Drug Corporation, Bioscrip, Inc., BioScrip Infusion Services, Inc., Chronimed LLC, Los Feliz Inc., Bioscrip Pharmacy Inc., Bradhurst Specialty Pharmacy, Inc., Bioscrip Pharmacy (NY), Inc., Bioscrip PMB Services, LLC, Natural Living Inc., Bioscrip Infusion Services, LLC, Bioscrip Nursing Services, LLC, Bioscrip Infusion Management, LLC, Bioscrip Pharmacy Services, Inc., Critical Homecare Solutions, Inc., Specialty Pharma, Inc, New England Home Therapies, Inc., Deaconess Enterprises, LLC, Infusion Solutions, Inc, Professional Home Care Services, Inc., Wilcox Medical, Inc., Deaconess Homecare, LLC, South Mississippi Home Health, Inc., Regional Ambulatory Diagnostics, Inc., Elk Valley Professional Affiliates, Inc., Infusion Partners, LLC, Knoxville Home Therapies, LLC, South Mississippi Home Health, Inc. - Region I, South Mississippi Home Health, Inc. - Region II, Applied Health Care, LLC, East Goshen Pharmacy, Inc., Infusion Partners of Brunswick, LLC, Scott Wilson, Inc., Infusion Partners of Melbourne, LLC, Elk Valley Home Health Care Agency, Inc., Gericare, Inc., Cedar Creek Home Health Care Agency, Inc., Elk Valley Health Services, Inc., National Health Infusion, Inc., and Option Health, Ltd. ***
- 10.39 Form of Cash-only Stock Appreciation Right Agreement. *
- 21.1 List of Subsidiaries. *
- 23.1 Consent of Ernst and Young LLP. *
- 31.1 Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*****
- 31.2 Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*****
- 32.1 Certification of Chief Executive Officer pursuant to 18 U.S. C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. *
- 32.2 Certification of Chief Financial Officer pursuant to 18 U.S. C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. *
- (1) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on January 27, 2010, SEC Accession No. 0000950123-10-005446.
- (2) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on March 17, 2005, SEC Accession No. 0000950123-05-003294.

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- (3) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on July 30, 2009, SEC Accession no. 0001014739-09-000029.
- (4) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on June 10, 2010, SEC Accession no. 0000950123-10-057214
- (5) Incorporated by reference to the indicated exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2005 filed with the SEC on March 31, 2006, SEC Accession no. 0000950123-06-004022.
- (6) Incorporated by reference to Post-Effective Amendment No. 3 to the Company's form 8-A/A dated December 4, 2002.
- (7) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on December 14, 2006, SEC Accession No. 0000950123-06-015184.
- (8) Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on March 4, 2009, Accession No. 0001014739-09-000006.
- (9) Incorporated by reference from the Company's definitive proxy statement for its 1999 annual meeting of stockholders filed with the Commission July 7, 1999.
- (10) Incorporated by reference from the Company's definitive proxy statement for its 2002 annual meeting of stockholders filed with the Commission April 30, 2002.
- (11) Incorporated by reference from the Company's definitive proxy statement for its 2003 annual meeting of stockholders filed with the Commission April 30, 2003.
- (12) Incorporated by reference from the Company's definitive proxy statement for its 2010 annual meeting of stockholders filed with the Commission May 10, 2010.
- (13) Incorporated by reference to the indicated exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2001, SEC Accession No. 0001089355-02-000248.
- (14) Incorporated by reference to the indicated exhibit to the Company's Annual Report on Form 10-K filed on for the fiscal year ended December 31, 2003, filed March 15, 2004, SEC Accession No. 001014739-04-000021.
- (15) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on December 1, 2004, SEC Accession No. 0001014739-04-000082.
- (16) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on August 25, 2006, SEC Accession No. 0000950123-06-010723.
- (17) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on August 3, 2007, SEC Accession No. 0000950123-07-010803.
- (18) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on January 20, 2009 SEC Accession No. 0000950123-09-000854.
- (19) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on July 9, 2009 SEC Accession No. 0001014739-09-000023.
- (20) Incorporated by reference to the indicated exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2009

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- SEC Accession No. 0001014739-09-000031.
- (21) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on February 3, 2011 SEC Accession No. 0001014739-11-000004.
- (22) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K/A filed on December 30, 2010 SEC Accession No. 0000950123-10-117687.
- (23) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on December 30, 2010 SEC Accession No. 0000950123-10-117583.
- (24) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on December 3, 2010 SEC Accession No. 0000950123-10-110784.
- (25) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on November 2, 2010 SEC Accession No. 0000950123-10-099147.
- (26) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on March 31, 2010 SEC Accession No. 0000950123-10-030906.
- (27) Incorporated by reference to the indicated exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2010, SEC Accession No. 0001014739-10-000025.
- (28) Incorporated by reference to the indicated exhibit to Critical Homecare Solutions Holdings Inc.'s Registration Statement on Form S-1 dated October 10, 2007, SEC Accession No. 0001193125-07-216293
- (29) Incorporated by reference to the indicated exhibit to the Company's Registration Statement on Form S-8 filed on March 26, 2010, SEC Accession No. 0000950123-10-028930.
- (30) Incorporated by reference to the indicated exhibit to BioScrip, Inc.'s Amended Quarterly Report on Form 10-Q/A for the quarter ended September 30, 2009, SEC Accession No. 0001014739-09-000048.
- * Filed previously with the Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 16, 2011.
- ** Designates BioScrip, Inc.'s management contracts or compensatory plan or arrangement to be filed herewith.
- *** The Securities and Exchange Commission has granted confidential treatment of certain provisions of these exhibits. Omitted material for which confidential treatment has been granted has been filed separately with the Securities and Exchange Commission.
- **** Filed herewith.
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SIGNATURE

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Amendment No. 1 to its Annual Report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized.

BIOSCRIP, INC.

By: /s/ Barry A. Posner

Barry A. Posner,
Executive Vice President and General Counsel

Date: July 14, 2011