

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

FORM 8-K

CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): February 6, 2015

**BIOSCRIP, INC.**

(Exact name of Registrant as specified in its charter)

Delaware  
(State of Incorporation)

000-28740  
(Commission File Number)

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

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

10523  
(Zip Code)

Registrant's telephone number, including area code: (914) 460-1600

N/A  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## **Section 1 – Registrant’s Business and Operations**

### **Item 1.01 Entry into a Material Definitive Agreement**

On February 6, 2015, BioScrip, Inc. (the “Company”) entered into an Investor Agreement with Cloud Gate Capital LLC and DSC Advisors, LLC (each, an “Investor” and collectively, the “Investors”) (the “Agreement”). Pursuant to the Agreement, the Company agreed to nominate David Golding for election to the board of directors of the Company (the “Board”) at the Company’s 2015 annual meeting of stockholders (the “2015 Annual Meeting”) for a term expiring at the 2016 annual meeting of stockholders (the “2016 Annual Meeting”). The Company further agreed to appoint Mr. Golding as a member of the Governance, Compliance and Nominating Committee (the “Nominating Committee”) of the Board if he is elected at the 2015 Annual Meeting. Under the Agreement, from February 6, 2015 until the 2015 Annual Meeting Mr. Golding is permitted to attend Board meetings as an informal, non-voting observer. The Company also agreed to consult with the Investors to identify qualified candidates if a Board opening becomes available after the 2015 Annual Meeting, and will then consider those candidates along with other qualified candidates. If no opening becomes available before the 2016 Annual Meeting, the Company will consult with the Investors to identify qualified candidates, and consider those candidates with other qualified candidates, for nomination as a new director at the 2016 Annual Meeting.

Under the Agreement, each of the Investors agreed not to bring any other business or proposals before or at the 2015 Annual Meeting and are required to vote all of their shares in favor of the election of directors nominated by the Board.

The above description does not purport to be complete and is qualified in its entirety by reference to the Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated by reference herein.

## **Section 7 – Regulation FD**

### **Item 7.01. Regulation FD Disclosure.**

On February 9, 2015, the Company issued a press release announcing the Agreement and also announcing it will nominate three new independent directors, including Mr. Golding, for election to the Board at the 2015 Annual Meeting (the “Press Release”). A copy of the Press Release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

As provided in General Instruction B.2 to Form 8-K, the information furnished in this Item 7.01 shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities under that Section and shall not be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly provided by specific reference in such filing.

## **Section 9 – Financial Statements and Exhibits**

### **Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

See the Exhibit Index which is hereby incorporated by reference.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**BIOSCRIP, INC.**

Date: February 9, 2015

/s/ Kimberlee C. Seah  
By: Kimberlee C. Seah  
Senior Vice President and General Counsel

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**EXHIBIT INDEX**

<b><u>Exhibit Number</u></b>	<b><u>Description</u></b>
10.1	Agreement dated as of February 6, 2015, by and among the Company, Cloud Gate Capital LLC and DSC Advisors, LLC
99.1	Press Release issued by the Company dated February 9, 2015.

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## INVESTOR AGREEMENT

This AGREEMENT is made and entered into as of February 6, 2015 (this "Agreement") by and among BioScrip, Inc., a Delaware corporation (the "Company"), and each of the other parties listed on the signature pages hereto (each, an "Investor" and collectively, the "Investors"). The Company and the Investors are referred to herein as the "Parties."

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### Section 1. Settlement Covenants.

(a) David Golding. The Company agrees to nominate David Golding for election to the board of directors of the Company (the "Board") at the Company's 2015 annual meeting of stockholders (the "2015 Annual Meeting") for a term expiring at the 2016 annual meeting of stockholders (the "2016 Annual Meeting"). The Company agrees to permit Mr. Golding to attend meetings of the Board as an informal observer from the date of the Agreement until the 2015 Annual Meeting. The Company agrees to appoint Mr. Golding to the Governance, Compliance and Nominating Committee of the Board if he is elected at the 2015 Annual Meeting.

(b) Upcoming Vacancy. The Company agrees that the Board and the Governance, Compliance and Nominating Committee of the Board will consult with the Investors to identify qualified candidates for the next opening that becomes available on the Board after the 2015 Annual Meeting, and will then consider those candidates in good faith, along with other qualified candidates. If no such opening becomes available before the 2016 Annual Meeting, the Company further agrees that the Board and the Governance, Compliance and Nominating Committee of the Board will consult with the Investors to identify qualified candidates, and consider those candidates in good faith, along with considering other qualified candidates, for election to the Board as a new director at the 2016 Annual Meeting.

(c) Trading. The Investors agree not to buy or sell any shares of the Company's common stock, par value \$0.0001 per share (the "Common Stock"), from the date of this Agreement until the later of (i) the Company's issuance of a press release (the "Press Release") announcing this Agreement, substantially in the form attached hereto as Exhibit A, or (ii) February 9, 2015.

### Section 2. 2015 Annual Meeting.

(a) Each of the Investors agrees not to bring, or cause any other person to bring, any business or proposals before or at the 2015 Annual Meeting. Each of the Investors further agrees not to solicit proxies for any other nomination or proposal.

(b) At the 2015 Annual Meeting, each of the Investors agree to vote by proxy and vote all shares of Common Stock beneficially owned by each Investor and its affiliates in favor of the election of directors nominated by the Board.

Section 3. Public Announcements. Following the execution of this Agreement, the Company will issue the Press Release. Prior to the issuance of the Press Release, neither the Company nor any of the Investors shall issue any press release or public announcement regarding this Agreement or take any action that would require public disclosure thereof without the prior written consent of the other Party. No Party or any of its Affiliates shall make any public statement (including, without limitation, in any filing required under the Exchange Act) concerning the subject matter of this Agreement inconsistent with the Press Release.

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Section 4. Specific Performance. Each of the Investors, on the one hand, and the Company, on the other hand, acknowledges and agrees that irreparable injury to the other Party hereto may occur in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached and that such injury would not be adequately compensable in monetary damages. It is accordingly agreed that the Investors or any Investor, on the one hand, and the Company, on the other hand (the "Moving Party"), shall each be entitled to seek specific enforcement of, and injunctive or other equitable relief to prevent any violation of, the terms hereof, and the other party hereto will not take action, directly or indirectly, in opposition to the Moving Party seeking such relief on the grounds that any other remedy or relief is available.

Section 5. Notice. Any notices, consents, determinations, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one (1) business day after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

To the Company:

100 Clearbrook Road  
Elmsford, NY 10523  
Attention: Richard M. Smith

With a copy to:

Polsinelli PC  
1401 Eye Street, N.W., Suite 800  
Washington, DC 20005  
Attention: Philip G. Feigen

To DSC Advisors, L.L.C.

900 North Michigan Avenue, Suite 1600  
Chicago, IL 60611  
Attention: Andrew G. Bluhm

To Cloud Gate Capital, LLC:

900 North Michigan Avenue, Suite 1600  
Chicago, IL 60611  
Attention: David Heller

Section 6. Governing Law. This Agreement shall be governed by, and construed in accordance with, the Law of the State of Delaware, without regard to conflict of law principles thereof.

Section 7. Entire Agreement. This Agreement constitutes the full and entire understanding and agreement among the Parties with regard to the subject matter hereof, and supersedes all prior agreements with respect to the subject matter hereof.

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Section 8. Receipt of Adequate Information; No Reliance; Representation by Counsel. Each Party acknowledges that it has received adequate information to enter into this Agreement, that it has not relied on any promise, representation or warranty, express or implied not contained in this Agreement and that it has been represented by counsel in connection with this Agreement. Accordingly, any rule of law or any legal decision that would provide any party with a defense to the enforcement of the terms of this Agreement against such party shall have no application and is expressly waived. The provisions of the Agreement shall be interpreted in a reasonable manner to effect the intent of the Parties.

Section 9. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable. The Parties further agree to replace such invalid or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the purposes of such invalid or unenforceable provision.

Section 10. Amendment. This Agreement may be modified, amended or otherwise changed only in a writing signed by all of the Parties.

Section 11. Successors and Assigns; No Third Party Beneficiaries. This Agreement shall bind the successors and permitted assigns of the Parties, and inure to the benefit of any successor or permitted assign of any of the Parties; provided, however, that no party may assign this Agreement without the prior written consent of the other Parties. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any person other than the Parties hereto and their respective successors and assigns.

Section 12. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each Party hereto shall have received a counterpart hereof signed by the other Parties hereto. Counterparts delivered by electronic transmission shall be deemed to be originally signed counterparts.

*(Signature pages follow)*

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IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement as of the date first above written.

**BioScrip, Inc.**

By: /s/ Richard Smith  
Name: Richard Smith  
Title: Chief Executive Officer

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**INVESTORS:**

By: DSC ADVISORS, L.L.C.

By: /s/ Andrew G. Bluhm

Name: Andrew G. Bluhm  
Title: Managing Member

By: CLOUD GATE CAPITAL, LLC

By: /s/ David Heller

Name: David Heller  
Title: Managing Member

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**EXHIBIT A**

Press Release attached

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PRESS RELEASE

Contacts:  
Lisa Wilson  
In-Site Communications, Inc.  
T: 212-452-2793  
E: [lwilson@insitecony.com](mailto:lwilson@insitecony.com)

Sharon Stern / Nick Lamplough  
Joele Frank, Wilkinson Brimmer Katcher  
T: 212-355-4449

**FOR IMMEDIATE RELEASE**

**BioScrip Nominates Three New Independent Directors**

*Announces Agreement with Cloud Gate Capital and DSC Advisors*

**ELMSFORD, N.Y., February 9, 2015** – BioScrip, Inc. (NASDAQ: BIOS) (the “Company”) today announced that it will nominate David Golding, Michael Goldstein and R. Carter Pate for election to the BioScrip Board of Directors at the Company’s 2015 Annual Meeting of Shareholders (the “Annual Meeting”).

Messrs. Golding, Goldstein and Pate would replace Samuel P. Frieder, David R. Hubers and Gordon H. Woodward, who will not be standing for re-election at the Annual Meeting. Upon election the BioScrip Board will continue to be composed of nine directors, eight of whom are independent.

Richard M. Smith, President and Chief Executive Officer of BioScrip, said, “Our new independent director nominees each bring strong and relevant backgrounds, and will add valuable experience and perspective to the BioScrip Board. I would like to take the opportunity to thank Samuel, David, and Gordon for their service to BioScrip over the years and for their efforts in helping to position the Company as a leader in infusion services.”

In connection with the nomination of Mr. Golding, BioScrip has entered into an agreement with DSC Advisors, L.L.C. (“DSC”) and Cloud Gate Capital LLC (“Cloud Gate”), which collectively own approximately 7.2% of the outstanding shares of BioScrip, under which Mr. Golding is authorized to attend all Board meetings as a non-voting observer to the BioScrip Board, effective immediately, and will serve on the Governance, Compliance and Nominating Committee of the Board upon election at the Annual Meeting.

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Andrew Bluhm of DSC said, “We are pleased to have worked constructively with the Company to reach a mutually agreeable outcome. We believe Mr. Golding’s deep operational experience in this industry will further position BioScrip to use its strong infusion services platform to achieve its growth potential while improving margins. We look forward to the appointment of a new CFO. We also believe that the significant financial, healthcare, and prior board experience of Mr. Goldstein and Mr. Pate will serve the Company well.”

Under the agreement, DSC and Cloud Gate have withdrawn their nomination notice and agreed to vote their shares in favor of each of the BioScrip Board’s nominees at the Annual Meeting. The full agreement will be filed in a Form 8-K with the Securities and Exchange Commission later today.

Caldwell Partners assisted BioScrip’s Board in the director nominee search process. Polsinelli PC is serving as legal advisor to the Company.

#### **About David Golding**

David Golding has more than 30 years of healthcare industry experience within the home infusion and specialty pharmacy, hospital and retail sectors. He is the former Executive Vice President of Specialty Pharmacy at CVS/Caremark, where he was directly responsible for an \$8 billion P&L, business strategy and pharmacy operations for a network of 75 pharmacies, sales and clinical development, while also participating as a key stakeholder in manufacturer relations and managed care contracting initiatives. He began his 25 year career at Caremark in its home infusion business and was promoted to numerous positions while becoming an expert in the pharmacy benefit management (PBM) business through ongoing joint initiatives across the CVS/Caremark organization. Since retiring from CVS/Caremark in 2011, he has consulted with national managed care organizations, specialty pharmacy providers, PBMs and other healthcare companies.

Most recently, Mr. Golding was on the Board of Directors for Salveo Specialty Pharmacy, a private-equity backed specialty pharmacy company, until it was sold to Catamaran in January of 2015. He is a registered pharmacist.

#### **About Michael Goldstein**

Michael Goldstein has decades of boardroom experience for both public companies and other organizations. He is a member of the Board and Chair of the Audit Committee at Teladoc, a leading virtual doctor organization, Pacific Sunwear, MedExpress, Sleepy’s and Ri Happy. He also serves as a Board Member of Israel Discount Bank of New York and is an Advisory Board Member at Jefferies, Inc. He also acts as Chairman of the Northside Center for Child Development, is on the Board of Rosie’s Theatre Kids and was previously Chairman of the 92nd Street Y. Mr. Goldstein was also previously Lead Director, Chairman of the Nominating and Governance Committee, and a member of the Audit and Mergers & Acquisitions committees at Medco Health Solutions, where he served until the sale of Medco to Express Scripts in 2012. He has also served as Chairman and Chief Executive Officer of Toys “R” Us Inc. and as Senior Executive Vice President – Operations and Finance of Lerner Stores Corporation. He was formerly a Partner at EY.

Mr. Goldstein was appointed by President George W. Bush to serve on the Advisory Committee for Trade Policy and Negotiations from 2003-2004 and has been honored by the A.L.S. Foundation, The Federation of Jewish Philanthropies, the NAACP, the Genetic Disease Foundation, among his numerous recognitions.

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### **About R. Carter Pate**

R. Carter Pate has more than 38 years of consulting and executive leadership experience. He is currently a strategic advisor to the Board of Directors of MV Transportation, Inc., and previously served as chief executive officer of MV until September 2014. Prior to that, Mr. Pate was the US and Global Managing Partner for the Healthcare and Government practices at PricewaterhouseCoopers, LLP. He was also a Founding Partner of Pate, Winters & Stone, Inc. a management and consulting services firm and formerly served as Interim President, CEO, and a member of the board of directors of Sun TV and Appliance, Inc. and CEO and Director of Sun Coast Industries, Inc. (NYSE). Mr. Pate is currently on the Board of the Dallas Regional Chamber and a member of the National Association of Corporate Directors. He has previously served on other boards of directors, including as Lead Director of Carmel Worldwide, MV Transportation, Inc., Board of Baylor Healthcare in Plano, TX, George Mason University Board of Visitors and Hunt Liquidating Trust.

He has received numerous certifications including Certified Public Accountant (CPA), Texas, Forensic Certified Public Accountant (FCPA) and Certified Government Financial Manager (CGFM-Yellow Book).

### **About BioScrip, Inc.**

BioScrip, Inc. is a leading national provider of infusion and home care management solutions. BioScrip partners with physicians, hospital systems, facilities-based providers, healthcare payors, and pharmaceutical manufacturers to provide patients access to post-acute care services. BioScrip operates with a commitment to bring customer-focused pharmacy and related healthcare infusion therapy services into the home or alternate-site setting. By collaborating with the full spectrum of healthcare professionals and the patient, BioScrip provides cost-effective care that is driven by clinical excellence, customer service, and values that promote positive outcomes and an enhanced quality of life for those it serves. BioScrip provides its infusion and home care services from over 70 locations across 29 states.

**Forward-Looking Statements – Safe Harbor** This press release includes statements that may constitute "forward-looking statements," including projections of certain measures of the Company's results of operations, projections of certain charges and expenses, and other statements regarding the Company's goals, regulatory approvals and strategy. These statements are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. You can identify these statements by the fact that they do not relate strictly to historical or current facts. In some cases, forward-looking statements can be identified by words such as "may," "should," "could," "anticipate," "estimate," "expect," "project," "outlook," "aim," "intend," "plan," "believe," "predict," "potential," "continue" or comparable terms. Because such statements inherently involve risks and uncertainties, actual future results may differ materially from those expressed or implied by such forward-looking statements. Investors are cautioned that any such forward-looking statements are not guarantees of future performance and involve risks and uncertainties, and that actual results may differ materially from those in the forward-looking statements as a result of various factors. Important factors that could cause or contribute to such differences include but are not limited to risks associated with: the Company's ability to integrate any acquisitions; the Company's ability to grow its Infusion Services segment organically or through acquisitions and obtain financing in connection therewith; its ability to reduce operating costs while sustaining growth; reductions in federal, state and commercial reimbursement for the Company's products and services; increased government regulation related to the health care and insurance industries; as well as the risks described in the Company's periodic filings with the Securities and Exchange Commission, including the Company's annual report on Form 10-K for the year ended December 31, 2013. The Company does not undertake any duty to update these forward-looking statements after the date hereof, even though the Company's situation may change in the future. All of the forward-looking statements herein are qualified by these cautionary statements.

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