

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

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

**BioScrip, Inc.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation or organization)

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

1600 Broadway, Suite 700,  
Denver, Colorado 80202  
(720) 697-5200

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**BioScrip, Inc. Employee Stock Purchase Plan**  
(Full title of the plan)

**Kathryn M. Stalmack, Esq.**  
**Senior Vice President, Secretary and General Counsel**  
**BioScrip, Inc.**  
**1600 Broadway, Suite 700**  
**Denver, Colorado 80202**  
**(720) 697-5200**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

**Susan V. Sidwell, Esq.**  
**Bass, Berry & Sims PLC**  
**150 Third Avenue South**  
**Suite 2800**  
**Nashville, Tennessee 37201**  
**Tel: (615) 742-6264**

Indicate by checkmark 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," "smaller reporting company" and "emerging growth 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

Emerging Growth Company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be Registered <sup>(1)</sup>	Proposed maximum offering price per share <sup>(2)</sup>	Proposed maximum aggregate offering price <sup>(2)</sup>	Amount of registration fee
Common Stock, par value \$.0001 per share	1,500,000 shares <sup>(3)</sup>	\$ 2.80	\$ 4,200,000	\$ 509

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended, this Registration Statement also covers any additional shares of BioScrip, Inc. common stock, \$0.0001 per share ("Common Stock"), that become issuable under the BioScrip, Inc. Employee Stock Purchase Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction. In addition, pursuant to Rule 416(c) under the Securities Act, this Registration Statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan described herein.
- (2) This estimation is solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and (h) and is based on 1,500,000 shares of Common Stock being offered at an exercise price of \$2.80 based upon the average of the high and low prices of the Common Stock on November 5, 2018, as reported on the Nasdaq Global Market.
- (3) Represents shares of Common Stock reserved for future grant under the Employee Stock Purchase Plan.



## EXPLANATORY NOTE

This Registration Statement on Form S-8 (the “**Registration Statement**”) is being filed solely for the purpose of registering 1,500,000 additional shares of common stock, par value \$0.0001 per share (“**Common Stock**”), of BioScrip, Inc., a Delaware corporation (the “**Company**”) to be offered to participants under the Company’s Employee Stock Purchase Plan (the “**Plan**”). The Company previously registered 750,000 shares of its Common Stock, available for grant of awards under the Plan. The registration of such shares of Common Stock was filed on a Form S-8 Registration Statement filed with the Securities and Exchange Commission (“**SEC**”) on April 2, 2013 (Registration Number 333-187679), in accordance with the Securities Act of 1933, as amended (the “**Securities Act**”). Pursuant to General Instruction E of Form S-8, the contents of the Form S-8 Registration Statement filed with the SEC on April 2, 2013 (File Number 333-187679) are incorporated herein by reference. On May 3, 2018, the Company’s stockholders approved an amendment to the Plan, to increase the number of shares of Common Stock reserved and available for grant of awards by 1,500,000 shares.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

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

The documents listed below filed by BioScrip, Inc. are incorporated by reference in this Registration Statement. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

- (a) The Company’s Registration Statement on Form S-8 filed April 2, 2013 (File Number 333-187679);
- (b) The Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2017 as filed with the SEC on March 26, 2018;
- (c) The Company’s definitive proxy statement on Schedule 14A as filed with the SEC on April 4, 2018;
- (d) The Company’s Quarterly Reports on Forms 10-Q for the fiscal quarter ended March 31, 2018 as filed with the SEC on May 10, 2018, the fiscal quarter ended June 30, 2018 as filed with the SEC on August 7, 2018, and the fiscal quarter ended September 30, 2018 as filed with the SEC on November 6, 2018;
- (e) The Company’s Current Reports on Form 8-K as filed with the SEC on February 15, 2018, March 2, 2018, March 8, 2018, May 4, 2018, May 10, 2018, May 16, 2018, June 4, 2018, August 7, 2018, October 22, 2018, November 1, 2018 and November 6, 2018; and
- (f) The description of the Common Stock included in our registration statements on Form 8-A/A filed with the SEC on August 1, 1996, December 4, 2002, December 14, 2006, March 4, 2009 and August 12, 2016 and any amendment or report we may file with the SEC for the purpose of updating such description.

Notwithstanding the foregoing, information that we elect to furnish, but not file, or have furnished, but not filed, with the SEC in accordance with SEC rules and regulations is not incorporated into this Registration Statement and does not constitute a part hereof.

The Company is also incorporating by reference all documents filed by us pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (excluding any information that we elect to furnish, but not file, or furnish, but do not file, with the SEC in accordance with SEC rules and regulations) subsequent to the date of this filing and prior to the termination of this offering shall be deemed to be incorporated in this prospectus and to be a part hereof from the date of the filing of such document. Any statement contained in a document incorporated by reference herein shall be deemed to be modified or superseded for all purposes to the extent that a statement contained in this Registration Statement or in any other subsequently filed document which is also incorporated or deemed to be incorporated by reference, modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

#### Item 8. Exhibits.

The Exhibits to this Registration Statement are listed in the Exhibit Index immediately following the signature page, which Exhibit Index is incorporated herein by reference.

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## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 Denver, State of Colorado, on November 8, 2018.

### BIOSCRIP, INC.

By: /s/ Kathryn M. Stalmack  
Name: Kathryn M. Stalmack  
Title: Senior Vice President, Secretary and General Counsel

Date: November 8, 2018

## POWER OF ATTORNEY

Each person whose signature to this Registration Statement appears below hereby appoints Daniel Greenleaf and Kathryn M. Stalmack and each of them, any one of whom may act as his attorney-in-fact to execute in the name and behalf of any such person, individually and in the capacity stated below, and to file all amendments and post-effective amendments to this Registration Statement, which amendment or amendments may make such changes and additions in this Registration Statement as such attorney-in-fact may deem necessary or appropriate.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

<u>Signature</u>	<u>Title(s)</u>	<u>Date</u>
<u>/s/ Daniel E. Greenleaf</u> Daniel E. Greenleaf	Chief Executive Officer, President and Director (Principal Executive Officer)	November 8, 2018
<u>/s/ Stephen Deitsch</u> Stephen Deitsch	Chief Financial Officer and Treasurer (Principal Financial Officer)	November 8, 2018
<u>/s/ R. Carter Pate</u> R. Carter Pate	Non-Executive Chairman of the Board	November 8, 2018
<u>/s/ David Golding</u> David Golding	Director	November 8, 2018
<u>/s/ Michael Goldstein</u> Michael Goldstein	Director	November 8, 2018
<u>/s/ Christopher Shackelton</u> Christopher Shackelton	Director	November 8, 2018
<u>/s/ Michael G. Bronfein</u> Michael G. Bronfein	Director	November 8, 2018
<u>/s/ Steven Neumann</u> Steven Neumann	Director	November 8, 2018

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## Exhibit Index

<b>Exhibit No.</b>	<b>Description</b>
<a href="#">4.1</a>	<a href="#">Second Amended and Restated Certificate of Incorporation. (Incorporated by reference to Exhibit 4.1 to the Company's Form 8-K filed on March 17, 2005)</a>
<a href="#">4.2</a>	<a href="#">Amendment to the Second Amended and Restated Certificate of Incorporation. (Incorporated by reference to Exhibit 3.1 to the Company's Form 8-K filed on June 10, 2010)</a>
<a href="#">4.3</a>	<a href="#">Certificate of Amendment of the Second Amended and Restated Certificate of Incorporation of Bioscrip, Inc. dated November 30, 2016. (Incorporated by reference to Exhibit 3.1 to the Company's Form 8-K filed on December 2, 2016)</a>
<a href="#">4.4</a>	<a href="#">Amended and Restated By-Laws. (Incorporated by reference to Exhibit 3.2 to the Company's Form 8-K filed on April 28, 2011)</a>
<a href="#">4.5</a>	<a href="#">Employee Stock Purchase Plan. (Incorporated by reference to the definitive proxy statement filed on April 2, 2013)</a>
<a href="#">4.6</a>	<a href="#">First Amendment to Employee Stock Purchase Plan. (Incorporated by reference to Exhibit 10.5 to the Company's Form 10-Q filed on August 10, 2015)</a>
<a href="#">4.6</a>	<a href="#">Second Amendment to Employee Stock Purchase Plan. (Incorporated by reference to Appendix B to the definitive proxy statement filed on April 4, 2018)</a>
<a href="#">5.1*</a>	<a href="#">Opinion of Bass, Berry &amp; Sims, PLC</a>
<a href="#">23.1*</a>	<a href="#">Consent of KPMG LLP.</a>
<a href="#">23.2*</a>	<a href="#">Consent of Bass, Berry &amp; Sims, PLC (included in Exhibit 5.1).</a>
<a href="#">24*</a>	<a href="#">Power of Attorney (included on signature pages).</a>

\* Filed herewith

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**BASS BERRY + SIMS**

150 Third Avenue South, Suite 2800  
Nashville, TN 37201 (615) 742-6200

November 9, 2018

Board of Directors  
BioScrip, Inc.  
1600 Broadway, Suite 700  
Denver, Colorado 80202

Re: BioScrip, Inc. Employee Stock Purchase Plan

Ladies and Gentlemen:

We have acted as special counsel to BioScrip, Inc., a Delaware corporation (the "Company") in connection with the Registration Statement on Form S-8 (the "Registration Statement") being filed with the Securities and Exchange Commission (the "Commission") on the date hereof for the purpose of registering under the Securities Act of 1933, as amended (the "Securities Act"), an additional 1,500,000 shares (the "Shares") of the Company's common stock, par value \$.0001 per share ("Common Stock"), issuable under the Company's Employee Stock Purchase Plan, as amended (the "Plan").

We have examined originals, or certified or photostatic copies of such statutes, records, regulations, certificates of the officers of the Company and of public officials, and such other information as we have deemed necessary for purposes of rendering this opinion.

In stating our opinion, we have assumed: (i) that all signatures are genuine, all documents submitted to us as originals are authentic, and all documents submitted to us as copies conform to authentic original documents; (ii) that the parties to such documents have the legal right and power under all applicable laws, regulations and agreements to enter into, execute, deliver and perform their respective obligations thereunder; (iii) that upon issuance of the Shares, the total number of shares of Common Stock issued and outstanding will not exceed the total number of shares of Common Stock that the Company is then authorized to issue and (iv) that the Shares will be issued in accordance with the terms of the Plan.

On the basis of such review, but subject to the limitations expressed herein, we are of the opinion, as of the date hereof, that the Shares being registered by the Registration Statement will, when issued in compliance with the Plan and sold as contemplated under the Registration Statement, be legally issued, fully paid and non-assessable.

Our opinion herein is limited solely to the laws of the United States of America and the corporate laws of the State of Delaware, and no opinion is expressed with respect to the laws of any other jurisdiction or any effect that such laws may have on the opinions expressed herein. This opinion is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated herein. In rendering the opinion set forth herein, we have relied upon the documents provided by the Company as referenced above and have made no independent verification or investigation of factual matters pertaining thereto or to the Company.

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This opinion is given as of the date hereof, and we assume no obligation to advise you after the date hereof of facts or circumstances that come to our attention or changes in law that occur that could affect the opinions contained herein. This opinion is for your benefit in connection with the Registration Statement.

This firm hereby consents to the filing of this opinion as an exhibit to the Registration Statement. This consent is not to be construed as an admission that we are a party whose consent is required to be filed with the Registration Statement under the provisions of the Securities Act or the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

Very truly yours,

/s/ Bass, Berry & Sims PLC

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors  
BioScrip, Inc.:

We consent to the use of our reports dated March 26, 2018, with respect to the consolidated balance sheets of BioScrip, Inc. and subsidiaries as of December 31, 2017 and 2016, and the related consolidated statements of operations, stockholders' (deficit) equity, and cash flows, for each of the years in the three-year period ended December 31, 2017, and the related notes and financial statement schedule (collectively, the "consolidated financials statements"), and the effectiveness of internal control over financial reporting as of December 31, 2017, incorporated herein by reference.

Our report dated March 26, 2018, on the effectiveness of internal control over financial reporting as of December 31, 2017, expresses our opinion that BioScrip, Inc. did not maintain effective internal control over financial reporting as of December 31, 2017 because of the effect of material weaknesses on the achievement of the objectives of the control criteria and contains an explanatory paragraph that states material weaknesses related to ineffective continuous risk assessment process and monitoring activities; and ineffective process level controls regarding the accuracy of certain spreadsheet formulas and data inputs, the accuracy of certain suspense accounts, the accuracy of physical inventory count differences, the accuracy of fixed asset CIP transfers, and the completeness and accuracy of fixed asset disposals.

/s/ KPMG LLP  
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Denver Colorado  
November 6, 2018

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