

Addus HomeCare Corp
Form S-8
August 14, 2017

As filed with the Securities and Exchange Commission on August 14, 2017

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

ADDUS HOMECARE CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

20-5340172
(I.R.S. Employer
Identification No.)

6801 Gaylord Parkway, Suite 110

Frisco, TX
(Address of principal executive offices)

75034
(Zip Code)

ADDUS HOMECARE CORPORATION 2017 OMNIBUS INCENTIVE PLAN

(Full title of the plan)

R. Dirk Allison

President and Chief Executive Officer

Addus HomeCare Corporation

6801 Gaylord Parkway, Suite 110

Frisco, TX 75034

(Name and address of agent for service)

(469) 535-8200

(Telephone number, including area code, of agent for service)

Copies to:

Jonathan Stanley, Esq.

Bass, Berry & Sims PLC

150 Third Avenue South, Suite 2800

Nashville, Tennessee 37201

(615) 742-6200

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth 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

Accelerated filer

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Non-accelerated filer (Do not check if a smaller reporting company) 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 pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee
Common Stock, par value \$0.001 per share (Common Stock), to be issued pursuant to the terms of the Addus HomeCare Corporation 2017 Omnibus Incentive Plan (the Plan)	1,170,126	\$33.825	\$39,579,511.95	\$4,587.27

(1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), this registration statement also covers an indeterminate number of additional shares of Common Stock which may be offered and issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.

(2) Pursuant to Rule 457(c) and Rule 457(h)(1) under the Securities Act, the proposed maximum offering price per share and the proposed maximum aggregate offering price are estimated solely for the purpose of calculating the registration fee and are based on the average of the high and low sales prices of shares of the Common Stock of the Registrant on The Nasdaq Global Market on August 8, 2017.

EXPLANATORY NOTE

On April 27, 2017, we adopted, subject to stockholder approval, the Addus HomeCare Corporation 2017 Omnibus Incentive Plan (the Plan) pursuant to which a maximum of 1,170,126 shares of Common Stock may be issued. This Registration Statement on Form S-8 is being filed to register 1,170,126 shares of Common Stock that may be issued under the Plan.

References to us, our, we, the Company, the Registrant and Addus shall mean Addus HomeCare Corporation

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Holders of awards granted under the Plan will be provided with the documents containing information specified by Part I of this Registration Statement in accordance with Rule 428(b)(1) promulgated by the Securities and Exchange Commission (the Commission) under the Securities Act. Such documents need not be filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424. These documents constitute, along with the documents incorporated by reference into this Registration Statement pursuant to Item 3 of Part II, a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Commission allows us to incorporate by reference information into this Registration Statement, which means that we can disclose important information to you by referring you to another document filed separately with the Commission. The information incorporated by reference is considered to be part of this Registration Statement, and later information that we file with the Commission will automatically update this Registration Statement. We incorporate by reference:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2016, filed on March 15, 2017;
- (b) The Registrant's Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2017 and June 30, 2017, filed on May 9, 2017 and August 8, 2017, respectively;
- (c) The Registrant's Current Reports on Form 8-K filed on January 4, 2017, January 18, 2017, March 6, 2017, April 26, 2017, May 4, 2017, May 10, 2017, June 16, 2017 and July 31, 2017;
- (d) The information specifically incorporated by reference into the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2016 from the Registrant's Definitive Proxy Statement on Schedule 14A, filed on April 28, 2017; and
- (e) The description of the Registrant's common stock contained in our Registration Statement on Form 8-A, filed on October 23, 2009 pursuant to Section 12(b) of the Exchange Act, including any amendments or reports filed for the purpose of updating such description;

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other than the portions of such documents, which by statute, by designation in such document or otherwise (including but not limited to information disclosed by the Registrant under Items 2.02 or 7.01 of any Current Report on Form 8-K, including any exhibits included with such information), are not deemed filed with the Commission, which are not regarded to be incorporated herein by reference.

All documents filed by us pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, subsequent to the effective date of this Registration Statement, prior to the filing of a post-effective amendment to this Registration Statement indicating that all securities offered hereby have been sold or deregistering all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be part hereof from the date of filing of such documents. In no event, however, will any information that we disclose under Item 2.02 or Item 7.01 (and any related exhibits) of any Current Report on Form 8-K that we may from time to time furnish to the Commission be incorporated by reference into, or otherwise become a part of, this Registration Statement. Any statement contained in any 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 so modified or superseded shall not be deemed to constitute a part of this Registration Statement, except as so modified or superseded.

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(a) of the General Corporation Law of the State of Delaware (the "DGCL") grants each corporation organized thereunder the power to indemnify any person who was or is a party or is threatened to be made a party to 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 the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person 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 the person's conduct was unlawful.

Section 145(b) of the DGCL grants each corporation organized thereunder the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made pursuant to Section 145(b) of the DGCL 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 or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

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Section 145(c) of the DGCL provides that to the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 145(a) and (b) of the DGCL, as described in the preceding paragraphs, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Section 145(d) of the DGCL provides that any indemnification under subsections (a) and (b) of Section 145 (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in subsections (a) and (b) of Section 145. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (4) by the stockholders.

Section 145(g) of the DGCL provides, in general, that a corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation against any liability asserted against the person in any such capacity, or arising out of the person's status as such, regardless of whether the corporation would have the power to indemnify the person against such liability under the provisions of the DGCL.

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 for monetary damages for breach of the director's fiduciary duty of care 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 which 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.

Pursuant to authority conferred by Section 102 of the DGCL, Article VI of the Company's amended and restated certificate of incorporation (the Charter) eliminates the personal liability of the Company's directors to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that such exemption from liability is not permitted under Delaware law as then in effect or as it may be amended; for any breach of the director's duty of loyalty to us or our stockholders; for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; under Section 174 of the DGCL, which concerns the unlawful payment of dividends or an unlawful stock purchase or redemption; or for any transaction from which the director derived an improper personal benefit.

Our Charter and Amended and Restated Bylaws (the Bylaws) each grant our directors and officers a right to indemnification to the fullest extent authorized or permitted by the DGCL (as now or hereafter in effect, but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than said law permitted the Company to provide prior to such amendment) any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a Proceeding), by reason of the fact that he or she or a person for whom he or she is the legal representative, is or was a director of the Company or is or was serving at the request of the Company as a director, officer, employee, member, trustee, partner, representative or agent of another corporation, partnership, limited liability company, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans maintained or sponsored by the Company (an Indemnitee), against all expense, liability and loss (including attorneys' fees, judgments, fines, excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by the Indemnitee. Notwithstanding the foregoing, except for proceedings to enforce rights to indemnification, we are not obligated to indemnify any director or officer or advance any expenses in connection with any Proceeding (or part thereof) initiated by such persons unless such Proceeding (or part thereof) was authorized or consented to by our board of directors. The right to indemnification in our Bylaws includes the right to have expenses incurred by an Indemnitee in defending any Proceeding in advance of its final disposition upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it should ultimately be determined that

he or she is not entitled to be indemnified by us as authorized under our Bylaws or otherwise.

Our Charter and Bylaws provide each person who was, is or becomes a director will be deemed to have served or to have continued to serve in such capacity in reliance upon the indemnity provided for in our Charter and Bylaws. All rights to indemnification under our Charter and Bylaws will be deemed to have vested at the time such person becomes or became a director of the Company, and such rights shall continue as to an Indemnitee who has ceased to be a director and shall inure to the benefit of the Indemnitee's heirs, executors and administrators.

We are parties to indemnification agreements between us and our directors and executive officers. These indemnification agreements are intended to complement the indemnification protection under the DGCL and our Charter and Bylaws and to provide for indemnification of these directors to the fullest extent permitted by applicable law.

We maintain insurance on behalf of any person who is or was a director or officer of the Company, or is now or was serving at our request as a director, officer, employee, or agent of the Company or another corporation, partnership, joint venture, trust, or other enterprise, against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The exhibits to this Registration Statement are listed in the Exhibit Index that immediately follows the signatures to the Power of Attorney section of this Registration Statement.

Item 9. Undertakings.

(a) The undersigned 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 percent 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;

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provided, however, that the undertakings set forth in paragraphs (a)(1)(i) and (a)(1)(ii) of this section do 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 in 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 those securities at that time will be deemed to be the initial *bona fide* offering.

- (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 undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of our annual report pursuant to Section 13(a) or Section 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 this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of those securities at that time will be deemed to be the initial *bona fide* offering.
- (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 provisions described in Item 6 of this Registration Statement, or otherwise, the Registrant has been advised that in the opinion of the Commission 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.

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 Form S-8 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Frisco, State of Texas, on this 14th day of August 2017.

ADDUS HOMECARE CORPORATION

By: /s/ R. Dirk Allison

Name: R. Dirk Allison

Title: President, Chief Executive Officer and
Director

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints R. Dirk Allison and Brian Poff (with full power to each of them to act alone) as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead in any and all capacities to sign any and all amendments or post-effective amendments to this Registration Statement, and to file the same with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, to sign any and all applications, registration statements, notices or other document necessary or advisable to comply with the applicable state securities laws, and to file the same, together with all other documents in connection therewith, with the appropriate state securities authorities, granting unto said attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, thereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

Signature	Capacity	Date
/s/ R. Dirk Allison	President, Chief Executive Officer and Director	August 14, 2017
R. Dirk Allison	(Principal Executive Officer)	
/s/ Brian Poff	Chief Financial Officer	August 14, 2017
Brian Poff	(Principal Financial and Accounting Officer)	
/s/ Mark L. First	Director	August 14, 2017
Mark L. First		
/s/ Simon A. Bachleda	Director	August 14, 2017
Simon A. Bachleda		
/s/ Steven I. Geringer	Director	August 14, 2017
Steven I. Geringer		
/s/ Michael Earley	Director	August 14, 2017
Michael Earley		
/s/ Darin J. Gordon	Director	August 14, 2017
Darin J. Gordon		

/s/ Susan T. Weaver, M.D., FACP

Director

August 14, 2017

Susan T. Weaver, M.D., FACP

EXHIBIT INDEX

Exhibit

Number	Description
4.1	Amended and Restated Certificate of Incorporation of Addus HomeCare Corporation dated as of October 27, 2009 (filed on November 20, 2009 as Exhibit 3.1 to Addus HomeCare Corporation's Quarterly Report on Form 10-Q (File No. 001-34504) and incorporated by reference herein).
4.2	Amended and Restated Bylaws of Addus HomeCare Corporation, as amended by the First Amendment to Amended and Restated Bylaws (filed on May 9, 2013 as Exhibit 3.2 to the Company's Quarterly Report on Form 10-Q (File No. 001-34504) and incorporated by reference herein).
4.3	Form of Common Stock Certificate (filed on October 2, 2009 as Exhibit 4.1 to Amendment No. 4 to the Addus HomeCare Corporation's Registration Statement on Form S-1 (File No. 333-160634) and incorporated by reference herein).
4.4	Registration Rights Agreement, dated September 19, 2006, by and among Addus Holding Corporation, Eos Capital Partners III, L.P., Eos Partners SBIC III, L.P., Freeport Loan Fund LLC, W. Andrew Wright, III, Addus Term Trust, W. Andrew Wright Grantor Retained Annuity Trust, Mark S. Heaney, James A. Wright and Courtney E. Panzer (filed on July 17, 2009 as Exhibit 4.3 to Addus HomeCare Corporation's Registration Statement on Form S-1 (File No. 333-160634) and incorporated by reference herein).
4.5	Addus HomeCare Corporation 2017 Omnibus Incentive Plan, as amended (previously filed as Exhibit 10.1 to the Current Report on Form 8-K (File No. 001-34504), filed on June 16, 2017 and incorporated herein by reference).
5.1	Opinion of Bass, Berry & Sims PLC*
23.1	Consent of BDO USA, LLP, Independent Registered Public Accounting Firm*
23.2	Consent of Bass, Berry & Sims PLC (included in Exhibit 5.1 hereto)*
24.1	Power of Attorney (included on signature page of this Registration Statement)*

* Filed herewith