

Section 1: 8-K (8-K)

**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

May 24, 2019
Date of Report (Date of earliest event reported)

Evolut Health, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-37415
(Commission File Number)

32-0454912
(IRS Employer
Identification No.)

800 N. Glebe Road, Suite 500, Arlington, Virginia 22203
(Address of principal executive offices)(zip code)

(571) 389-6000
(Registrant's telephone number, including area code)

Not Applicable
(Former name, former address and former fiscal year, 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))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A Common Stock of Evolut Health, Inc., par value \$0.01 per share	EVH	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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 13 (a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

In connection with the Closing (defined below), Evolent Health, Inc. (the “Company”) entered into a Registration Rights Agreement with Momentum Health Group, LLC (“MHG”), dated as of May 24, 2019 (the “Registration Rights Agreement”), which granted certain registration rights to MHG as a holder of shares of the Company’s Class A common stock.

The Registration Rights Agreement is filed herewith as Exhibit 4.1.

Item 3.02. Unregistered Sales of Equity Securities.

As previously disclosed on a Form 8-K filed on March 28, 2019 by the Company, the Company entered into a Stock Purchase Agreement (the “Purchase Agreement”), by and between the Company, Momentum Health Acquisition, Inc. (“MHA”) and Momentum Health Holdings, LLC, dated March 22, 2019, pursuant to which it was contemplated that the Company would acquire an approximately 45% ownership interest in MHA, the sole owner of GlobalHealth Holdings, LLC, which is the sole owner of GlobalHealth, Inc., a health maintenance organization based in the State of Oklahoma that offers, amongst other things, Medicare Advantage products in the State of Oklahoma. Prior to the closing of the transactions contemplated by the Purchase Agreement, which occurred on May 24, 2019 (the “Closing”), the parties to the Purchase Agreement amended the Purchase Agreement (as amended, the “Amended Purchase Agreement”) to, amongst other things, add MHG, a newly formed limited liability company, as a party to the Purchase Agreement. Pursuant to the terms of the Amended Purchase Agreement, the Company and a subsidiary of the Company, EH Holding Company, Inc., acquired, in the aggregate, an approximately 45% ownership interest in MHG, the sole owner of MHA.

The consideration for the investment in MHG and its subsidiaries remained unchanged from the amounts previously disclosed on the Form 8-K filed on March 28, 2019, and, at Closing, the Company issued MHG 1,577,841 shares of the Company’s Class A common stock (the “Equity Consideration”).

The issuance and contribution of the Equity Consideration was exempt from registration under the Securities Act of 1933, as amended (the “Securities Act”), by Section 4(a)(2) thereof as a transaction not involving any public offering. The shares of Class A common stock issued as Equity Consideration are restricted securities for purposes of Rule 144 under the Securities Act. The Company did not engage in a general solicitation or advertising with regard to the issuance and contribution of the Class A common stock issued in connection with the Closing.

Item 8.01. Other Events.

On May 28, 2019, the Company filed a prospectus supplement to its Registration Statement on Form S-3 filed with the U.S. Securities and Exchange Commission (the “Commission”) on August 7, 2017 (No. 333-219755) (the “Registration Statement”), under the Securities Act with respect to the resale by MHG, of up to 1,577,841 shares of the Company’s Class A common stock, par value \$0.01 per share, that were issued by the Company to such selling stockholder as share consideration in connection with the Company’s acquisition of an interest in MHG. In connection with filing of such prospectus supplement, the Company is filing a legal opinion as Exhibit No. 5.1 to this current report on Form 8-K, which is incorporated by reference into the Registration Statement.

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits.*

<u>Exhibit</u> <u>Number</u>	<u>Description</u>
4.1	Registration Rights Agreement, dated May 24, 2019, by and between Evolent Health, Inc. and Momentum Health Group, LLC.
5.1	Opinion of King & Spalding LLP
23.1	Consent of King & Spalding LLP (included in Exhibit 5.1)

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.

EVOLENT HEALTH, INC.

By: /s/ Jonathan D. Weinberg
Name: **Jonathan D. Weinberg**
Title: *General Counsel and Secretary*
(Duly Authorized Officer)

Date: May 28, 2019

[\(Back To Top\)](#)

Section 2: EX-4.1 (EXHIBIT 4.1)

Exhibit 4.1

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "Agreement"), is dated as of May 24, 2019, by and between Evolent Health, Inc., a Delaware corporation (the "Company"), and Momentum Health Group, LLC, a Delaware limited liability company ("Holder").

WHEREAS, the Company, Holder, Momentum Health Acquisition, Inc. and Momentum Health Holdings, LLC are parties to that certain Stock Purchase Agreement, dated March 22, 2019 (as amended, the "Purchase Agreement"; capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Purchase Agreement); and

WHEREAS, in connection with the consummation of the transaction contemplated by the Purchase Agreement, the parties desire to enter into this Agreement to grant certain registration rights to Holder as set forth in this Agreement.

NOW THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the parties agree as follows:

Section 1. Registration Rights.

1A. For purposes of this Agreement, the "Shelf Registration Statement" means the Automatic Shelf Registration Statement of the Company filed with the SEC on Form S-3 on August 7, 2017 (or another registration statement of Buyer filed with the SEC on Form S-3 (or any similar form) that replaces such statement and which will be an Automatic Shelf Registration Statement, if available) for an offering to be made on a continuous basis pursuant to Rule 415 under the Securities Act and which will cover the resale of Evolent Contributed Shares. The Company will use its reasonable best efforts (i) to maintain the effectiveness of a Shelf Registration Statement in accordance with the terms thereof and (ii) upon the request of Holder, which shall be made no earlier than two (2) Business following the date hereof, to file such amendments, including post-effective amendments, and prospectus supplements as may be necessary to provide for the resale of Evolent Contributed Shares by Holder from time to time, and pursuant to any method or combination of methods legally available to, and reasonably requested by, Holder, and shall include a plan of distribution that provides Holder with a reasonably appropriate opportunity to sell Evolent Contributed Shares pursuant to such Shelf Registration Statement. The Company shall use its reasonable best efforts to prepare and file with the SEC such amendments, including post-effective amendments and supplements as may be necessary to keep such Shelf Registration Statement effective and in compliance with the provisions of the Securities Act until the earlier of (i) the second anniversary of the date of this Agreement and (ii) such time as all Holders no longer own any Evolent Contributed Shares. The Company will provide any necessary assistance as may be reasonably requested by Holder in order for Holder to be able to sell any Evolent Contributed Shares pursuant to such Shelf Registration Statement, and Holder will provide any necessary assistance and information as may be reasonably requested by the Company in order for the Company to comply with its obligations under this Section 1. The Company will pay all costs and expenses (other than any underwriting discounts or commissions) in connection with such Shelf Registration Statement as well as any amendments or supplements thereto,

including any such amendments or supplements that may be necessary to reflect any particular Holder that may, from time to time, be a holder of Evolent Contributed Shares as a potential seller of such Evolent Contributed Shares pursuant to such Shelf Registration Statement.

1B. If the continued use of the Shelf Registration Statement at any time would require the Company to make an Adverse Disclosure or if in the good faith judgment of the Board of Directors of the Company the use of the Shelf Registration Shelf Statement as set forth herein would be materially detrimental to the Company and the Board of Directors concludes, as a result, that it is in the best interests of the Company to suspend use of the Shelf Registration Statement, the Company may, upon giving prompt written notice of such action to Holder, suspend use of the Shelf Registration Statement (a “Shelf Suspension”); provided, however, that the Company shall not be permitted to exercise a Shelf Suspension (i) more than one time during any 12-month period, or (ii) for a period exceeding 60 days on any one occasion. In the case of a Shelf Suspension, Holder agrees to suspend use of the applicable prospectus and in connection with any sale or purchase of, or offer to sell or purchase, Evolent Contributed Shares, upon receipt of the notice referred to above. The Company shall immediately notify Holder in writing upon the termination of any Shelf Suspension, and upon such termination, promptly amend or supplement any prospectus, if necessary, so, it does not contain any untrue statement or omission and furnish to Holder such numbers of copies of the prospectus as so amended or supplemented as Holder may reasonably request. Notwithstanding the provisions of this Section 1 (b), the Company may not postpone the filing or effectiveness of, or suspend use of, the Shelf Registration Statement past the date upon which the applicable Adverse Disclosure is disclosed to the public or ceases to be material. During a Shelf Suspension, the Company shall be prohibited from filing a registration statement for its own account or for the account of any other Holder or holder of its securities. “Adverse Disclosure” means public disclosure of material non-public information that, in the good faith judgment of the Board of Directors of the Company, after consultation with outside legal counsel to the Company: (i) would be required to be made in any registration statement filed with the SEC by the Company so that such registration statement, from and after its effective date, does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; (ii) would not be required to be made at such time but for the filing, effectiveness or continued use of such registration statement; and (iii) the Company has a bona fide business purpose for not disclosing publicly.

Section 2. Miscellaneous.

2A. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

2B. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

2C. Amendments. This Agreement may be amended only upon the written consent of all of the parties hereto.

2D. Counterparts; Facsimile and Email. This Agreement may be executed simultaneously in two or more counterparts (each of which may be transmitted via facsimile or email), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same agreement.

2E. Descriptive Headings; Interpretation. Section headings used in this Agreement are for convenience only and are not to affect the construction of, or to be taken into consideration in interpreting, such agreement. The use of the word “including” or any variation or derivative thereof in this Agreement is by way of example rather than by limitation.

2F. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any rules, principles or provisions of choice of law or conflict of laws.

2G. Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY LITIGATION IN ANY COURT WITH RESPECT TO, IN CONNECTION WITH, OR ARISING OUT OF THIS AGREEMENT OR THE VALIDITY, PROTECTION, INTERPRETATION, COLLECTION OR ENFORCEMENT THEREOF.

2H. No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

2I. Entire Agreement. This Agreement and the other documents referred to herein contain the entire agreement between the parties hereto and supersede any prior understandings, agreements or representations by or between the parties hereto, written or oral, which may have related to the subject matter hereof in any way.

2J. Termination. This Agreement will terminate on the earlier of (i) the second anniversary of the date of this Agreement and (ii) such time as all Holders no longer own any Evolent Contributed Shares.

* * * * *

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

EVOLENT HEALTH, INC.

By: /s/ Jonathan Weinberg
Name: Jonathan Weinberg
Title: General Counsel

MOMENTUM HEALTH GROUP, LLC

By: /s/ R. Scott Vaughn
Name: R. Scott Vaughn
Title: President and Chief Executive Officer

[\(Back To Top\)](#)

Section 3: EX-5.1 (EXHIBIT 5.1)

Exhibit 5.1

KING & SPALDING

King & Spalding LLP
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Atlanta, GA 30309-3521
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May 28, 2019

Evolent Health, Inc.
800 N. Glebe Road, Suite 500
Arlington, VA 22203

Ladies and Gentlemen,

We have acted as counsel to Evolent Health, Inc., a Delaware corporation (the “Company”), in connection with the registration under the Securities Act of 1933 (the “Act”) of 1,577,841 shares of the Company’s Class A Common Stock, par value \$0.01 per share (the “Shares”). This opinion is being rendered in connection with the Company’s Registration Statement on Form S-3ASR (File No. 333-219755) (the “Registration Statement”) filed by the Company with the Securities and Exchange Commission under the Act, the prospectus included in the Registration Statement, and the prospectus supplement, dated May 28, 2019 relating to the Shares (the “Prospectus Supplement”). The Shares may be offered and sold from time to time by the selling stockholder named in the Prospectus Supplement.

In so acting, we have examined and relied upon the accuracy of original, certified, conformed or photographic copies of such records, agreements, certificates and other documents as we have deemed necessary or appropriate to enable us to render the opinions set forth below. In all such examinations, we have assumed the genuineness of signatures on original documents and the conformity to such original documents of all documents submitted to us as certified, conformed or photographic copies and, as to certificates of public officials, we have assumed the same to have been properly given and to be accurate. As to matters of fact material to this opinion, we have relied, without independent verification, upon statements and representations of representatives of the Company and public officials.

Based on the foregoing, and subject to the assumptions, qualifications and limitations set forth herein, we are of the opinion that the Shares have been validly issued and are fully paid and non-assessable.

This opinion is limited in all respects to the federal laws of the United States of America and the Delaware General Corporation Law, 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.

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, which could affect the opinions contained herein. This opinion is being rendered for the benefit of the Company in connection with the matters addressed herein.

We consent to the filing of this opinion as an exhibit to the current report on Form 8-K filed on May 28, 2019 and to the reference to us under the caption "Legal matters" in the prospectus supplement dated as of May 28, 2019. In giving such consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours,

/s/ King & Spalding LLP

[\(Back To Top\)](#)