

ENSIGN GROUP, INC

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 08/03/17

Address	27101 PUERTA REAL, SUITE 450 MISSION VIEJO, CA 92691
Telephone	(949) 487-9500
CIK	0001125376
Symbol	ENSG
SIC Code	8051 - Skilled Nursing Care Facilities
Industry	Healthcare Facilities & Services
Sector	Healthcare
Fiscal Year	12/31

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

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

The Ensign Group, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation or organization)

33-0861263

(IRS Employer Identification No.)

27101 Puerta Real, Suite 450, Mission Viejo, CA

(Address of principal executive offices)

92691

(Zip code)

The Ensign Group, Inc. 2017 Omnibus Incentive Plan
(Full title of the plan)

Chad A. Keetch, Esq.

Executive Vice President and Secretary
The Ensign Group, Inc.
27101 Puerta Real, Suite 450
Mission Viejo, CA 92691

(Name and Address of agent for service)

(949) 487-9500

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

With a copy to:

Craig S. Mordock
Sheppard Mullin Richter & Hampton LLP
650 Town Center Drive, 4th Floor
Costa Mesa, CA 92626-1993
(714) 513-5100

Indicate by check mark 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" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer
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)(2)	Proposed maximum offering price per share (3)	Proposed maximum aggregate offering price (3)	Amount of registration fee
Common Stock, \$.001 par value	6,881,269	\$22.20	\$152,764,172	\$17,705

(1) This Registration Statement shall also cover any additional shares of the Registrant's common stock that become issuable by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the Registrant's receipt of consideration which results in an increase in the number of outstanding shares of the Registrant's common stock.

(2) This registration statement covers the following shares authorized under the 2017 Omnibus Incentive Plan: 3,800,000 shares of common stock plus 3,081,269 shares of common stock that were available under the Registrant's 2007 Omnibus Incentive Plan immediately prior to stockholder approval of the 2017 Plan and which are rolled over to the 2017 Plan.

(3) Estimated solely for calculating the registration fee in accordance with Rules 457(c) and 457(h) under the Securities Act of 1933, on the basis of the average of the high and low sales prices per share of the Registrant's common stock on July 31, 2017, as reported by The NASDAQ Stock Market.

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PART I
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.*

Item 2. Registrant Information and Employee Plan Annual Information.*

* The documents containing the information specified in Part I will be sent or given to participants as specified by Rule 428(b) (1) under the Securities Act. In accordance with the rules and regulations of the U.S. Securities and Exchange Commission (the "Commission") and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant hereby incorporates by reference into this registration statement the following documents, which have been filed with the Securities and Exchange Commission:

- (a) the Registrant's Annual Report on Form 10-K for the year ended December 31, 2016 filed with the Commission on February 8, 2016 (including the portions of the Registrant's Definitive Proxy Statement for the Registrant's 2017 Annual Meeting of Stockholders incorporated by reference therein);
- (b) the Registrant's Quarterly Reports on Form 10-Q for the three months ended March 31, 2017 and June 30, 2017;
- (c) the Registrant's Current Report on Form 8-K filed on May 30, 2017; and
- (d) the description of the Registrant's common stock, par value \$0.001 per share, contained in the Registrant's Registration Statement on Form 8-A (File No. 001-33757) filed on October 19, 2007, including any amendment or report filed for the purpose of updating such description.

All reports and definitive proxy or information statements filed pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended after the date of this registration statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference into this registration statement and to be a part hereof from the date of filing of such documents. The Registrant expressly excludes from such incorporation information furnished pursuant to Item 2.02 or Item 7.01 of any Current Report on Form 8-K. Any document or any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a subsequently filed document or a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated herein by reference modifies or supersedes such document or such statement. Any such document or statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Item 4. Description of Securities.

Not Applicable.

Item 5. Interests of Named Experts and Counsel.

Not Applicable.

Item 6. Indemnification of Directors and Officers.

Under Section 145 of the Delaware General Corporation Law, we can indemnify our directors and officers against liabilities they may incur in such capacities, including liabilities under the Securities Act. Our bylaws provide that we will indemnify our directors and officers to the fullest extent permitted by law and require us to advance litigation expenses upon our receipt of an undertaking by the director or officer to repay such advances if it is ultimately determined that the director or officer is not entitled to indemnification. Our bylaws further provide that rights conferred under such bylaws do not exclude any other right such persons may have or acquire under any bylaw, agreement, vote of stockholders or disinterested directors, insurance policy or otherwise.

Our certificate of incorporation provides that we shall indemnify our directors and officers to the fullest extent permitted by law. Our certificate of incorporation also provides that, pursuant to Delaware law, our directors shall not be liable for monetary damages for breach of the directors' fiduciary duty of care to us and our stockholders. This provision in our certificate of incorporation does not eliminate the duty of care, and in appropriate circumstances equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware law. In addition, each director is subject to liability for breach of the director's duty of loyalty to us for acts or omissions not in good faith or involving intentional misconduct, for knowing violations of law, for actions leading to improper personal benefit to the director, and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under Delaware law. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws. Our certificate of incorporation further provides that we are authorized to indemnify our directors and officers to the fullest extent permitted by law through the bylaws, agreement, vote of stockholders or disinterested directors, or otherwise.

We have entered into agreements to indemnify our directors, officers and other key employees in addition to the indemnification provided for in our certificate of incorporation and bylaws. These agreements, among other things, indemnify these persons for certain expenses (including attorneys' fees), judgments, fines and settlement amounts incurred by such person in any action or proceeding, including any action by or in our right, on account of services by that person as a director or officer or as a director or officer of any of our subsidiaries, or as a director or officer of any other company or enterprise that the person provides services to at our request.

We maintain directors' and officers' liability insurance for our officers and directors.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

Exhibit No.	Description	Where Located
4.1	Fifth Amended and Restated Certificate of Incorporation of The Ensign Group, Inc. filed with the Delaware Secretary of State on November 15, 2007	Incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q filed on December 21, 2007
4.2	Amended and Restated Bylaws of The Ensign Group, Inc.	Incorporated by reference to Exhibit 3.2 to the Registrant's Quarterly Report on Form 10-Q filed on December 21, 2007
4.3	Amendment to the Amended and Restated Bylaws of The Ensign Group, Inc.	Incorporated by reference to Exhibit 3.2 to the Registrant's Current Report on Form 8-K filed on August 8, 2014
4.4	The Ensign Group, Inc. 2017 Omnibus Incentive Plan	Incorporated by reference to Appendix A to the Definitive Proxy Statement for the Registrant's 2017 Annual Meeting of Stockholders, filed on April 13, 2017
5.1	Opinion of Sheppard Mullin Richter & Hampton LLP	Filed herewith
23.1	Consent of Deloitte & Touche LLP	Filed herewith
23.2	Consent of Sheppard Mullin Richter & Hampton LLP (contained in Exhibit 5.1 to this registration statement)	Filed herewith
24.1	Power of Attorney (included in the signature page to this registration statement)	Filed herewith

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 SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% 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;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) 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 SEC 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 such securities at that time shall be deemed to be the initial *bona fide* offering thereof; and

(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 the registrant's 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 such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(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 foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC 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, as amended, 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 Mission Viejo, State of California on August 3, 2017 .

THE ENSIGN GROUP, INC.

By: /s/ Christopher R. Christensen
Christopher R. Christensen
Chief Executive Officer and President

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that each of the undersigned officers and directors does hereby constitute and appoint Christopher R. Christensen and Chad A. Keetch, and each of them, or their substitute or substitutes, as his or her true and lawful attorneys-in-fact and agents, with full power and authority to do any and all acts and things and to execute and file or cause to be filed any and all instruments, documents or exhibits which said attorneys and agents, or either one of them, determine may be necessary or advisable or required to enable said corporation to comply with the Securities Act of 1933, as amended, and any rules or regulations or requirements of the Securities and Exchange Commission in connection with this registration statement. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this registration statement, to any and all amendments, both pre-effective and post-effective, and supplements to this registration statement and to any and all instruments, documents or exhibits filed as part of or in conjunction with this registration statement or amendments or supplements thereof, with the powers of substitution and revocation, and each of the undersigned hereby ratifies and confirms all that said attorneys and agents, or either one of them, or their substitute or substitutes, shall lawfully do or cause to be done by virtue hereof. In witness whereof, each of the undersigned has executed this Power of Attorney as of the dates indicated below.

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

Signature	Title	Date
<u>/s/ Christopher R. Christensen</u> Christopher R. Christensen	Chief Executive Officer, President and Director (principal executive officer)	August 3, 2017
<u>/s/ Suzanne D. Snapper</u> Suzanne D. Snapper	Chief Financial Officer (principal financial and accounting officer)	August 3, 2017
<u>/s/ Roy E. Christensen</u> Roy E. Christensen	Director	August 3, 2017
<u>/s/ Antoinette T. Hubenette</u> Antoinette T. Hubenette	Director	August 3, 2017
<u>/s/ Lee A. Daniels</u> Lee A. Daniels	Director	August 3, 2017
<u>/s/ Daren J. Shaw</u> Daren J. Shaw	Director	August 3, 2017
<u>/s/ John G. Nackel</u> John G. Nackel	Director	August 3, 2017
<u>/s/ Barry M. Smith</u> Barry M. Smith	Director	August 3, 2017

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Sheppard, Mullin, Richter & Hampton LLP
650 Town Center Drive, 4th Floor
Costa Mesa, California 92626
714.513.5100 main
714.513.5130 fax
www.sheppardmullin.com



August 3, 2017

The Ensign Group, Inc.
27101 Puerta Real, Suite 450
Mission Viejo, CA 92691

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as special counsel to The Ensign Group, Inc., a Delaware corporation (the "Company"), in connection with the filing of a Registration Statement on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), with respect to 6,881,269 shares of the Company's common stock, \$0.001 par value per share (the "Shares"), reserved for issuance pursuant to the Company's 2017 Omnibus Incentive Plan (the "Plan"). This opinion is being furnished in accordance with the requirements of Item 8 of Form S-8 and Item 601(b)(5)(i) of Regulation S-K.

We have reviewed the Company's charter documents and the records of the corporate proceedings taken by the Company with respect to the establishment and subsequent amendments of the Plan. With respect to the foregoing documents, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity to originals of all documents submitted to us as certified or reproduced copies. We also have relied upon certificates of officers of the Company and government officials as to certain factual matters in connection with this opinion and, insofar as this opinion is based on such matters of fact, we have relied on such certificates without independent investigation.

Based upon and subject to the foregoing, and the qualifications and limitations set forth below, it is our opinion that, if, as and when the Shares are issued and sold (and proper and sufficient consideration therefor received and appropriate stock certificates therefor properly executed and delivered or, in the case of uncertificated shares, an appropriate notation made by the transfer agent in the Company's stock transfer books and records) pursuant to the provisions of the Plan and the relevant award agreements duly authorized in accordance with the Plan, such Shares will be validly issued, fully paid and non-assessable.

We consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement. In giving such consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

We express no opinion as to matters governed by any laws other than the Delaware General Corporation Law and reported decisions of the Delaware courts interpreting such law.

This opinion letter is rendered as of the date first written above, and we disclaim any obligation to advise you of facts, circumstances, events or developments which hereafter may be brought to our attention and which may alter, affect or modify the opinion expressed herein. Our opinion is expressly limited to the matters set forth above, and we render no opinion, whether by implication or otherwise, as to any other matters relating to the Company, the Plan, or the Shares issuable under the Plan.

Very truly yours,

/s/ Sheppard, Mullin, Richter & Hampton LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our reports dated February 8, 2017, relating to the consolidated financial statements and financial statement schedule of The Ensign Group, Inc. and subsidiaries (the “Company”), and the effectiveness of the Company’s internal control over financial reporting, appearing in the Annual Report on Form 10-K of the Company for the year ended December 31, 2016.

/s/ DELOITTE & TOUCHE LLP

Costa Mesa, California
August 3, 2017