HCA Healthcare, Inc. - HCA

Filed: May 02, 2019 (period: April 26, 2019)

Report of unscheduled material events or corporate changes.
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): May 2, 2019 (April 26, 2019)

HCA HEALTHCARE, INC.
(Exact name of registrant as specified in its charter)

Delaware 001-11239 27-3865930
(State or other jurisdiction
of incorporation) (Commission
File Number) (IRS Employer
Identification No.)

One Park Plaza, Nashville, Tennessee 37203
(Address of principal executive offices)

Registrant’s telephone number, including area code: (615) 344-9551

Not Applicable
(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 (see General Instruction A.2. below):
☐ 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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).
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. ☐

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

<table>
<thead>
<tr>
<th>Title of each Class</th>
<th>Trading Symbol(s)</th>
<th>Name of each exchange on which registered</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Stock, $.01 par value per share</td>
<td>HCA</td>
<td>New York Stock Exchange</td>
</tr>
</tbody>
</table>
Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On April 26, 2019, the Board of Directors (the “Board”) of HCA Healthcare, Inc. (the “Company”) approved the 2019 Board of Directors compensation program, effective immediately, pursuant to which each non-management director will receive quarterly payment of the following cash compensation, as applicable (prorated for partial years):

- $110,000 annual retainer for service as a Board member;
- $15,000 annual retainer for service as a member of the Audit and Compliance Committee;
- $10,000 annual retainer for service as a member on each of the Compensation Committee, Finance and Investments Committee, Nominating and Corporate Governance Committee or Patient Safety and Quality of Care Committee;
- $30,000 annual retainer for service as Chair of the Audit and Compliance Committee;
- $25,000 annual retainer for service as Chair of each of the Compensation Committee, Finance and Investments Committee, Nominating and Corporate Governance Committee or Patient Safety and Quality of Care Committee;
- $100,000 annual retainer for service as the Chairman of the Board; and
- $35,000 annual retainer for service as the independent presiding director.

In addition to the director compensation described above, each non-management director will receive an annual board equity award with a value of $175,000, awarded upon joining the Board (prorated for months of service) and at each annual meeting of the stockholders thereafter. These equity grants consist of restricted share units ultimately payable in shares of the Company’s common stock and vest as to 100% of the award on the sooner of the date of the Company’s next annual stockholders’ meeting or the first anniversary of the grant date, subject to the director’s continued service on the Board. The restricted share units will also immediately vest upon the occurrence of a Change in Control (as defined in the applicable grant agreement). The directors may elect to defer receipt of shares under the restricted share units. Directors will also be reimbursed for their reasonable expenses incurred in connection with their service. Each non-management director is expected to directly or indirectly acquire a number of shares of the Company’s common stock with a value of five times the value of the annual cash retainer for a director’s service on the Board within five years from the date on which they are elected to the Board.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On April 30, 2019, the Company filed with the Delaware Secretary of State an amendment to the Company’s Amended and Restated Certificate of Incorporation, to be effective May 1, 2019, eliminating the supermajority voting requirements therein. The Company’s Board of Directors has also adopted an amendment to the Company’s Amended and Restated Bylaws eliminating the supermajority voting requirements therein. Copies of the amendment to the Company’s Amended and Restated Certificate of Incorporation, as filed with the Delaware Secretary of State, and the amendment to the Company’s Amended and Restated Bylaws reflecting the removal of such provisions are attached hereto as Exhibit 3.1 and Exhibit 3.2, respectively, and are incorporated herein by reference.

Item 5.07. Submission of Matters to a Vote of Security Holders.

At the Company’s Annual Meeting of Stockholders (the “Annual Meeting”) held on April 26, 2019 at the Company’s corporate headquarters in Nashville, Tennessee, a total of 308,712,186 shares of our common stock, out of a total of 343,511,563 shares of common stock outstanding and entitled to vote, were present in person or represented by proxies. Voting results from the Annual Meeting were as follows:
1. The following eleven director nominees were elected to the Company’s Board of Directors for a one-year term, or until such director’s respective successor is duly elected and qualified or such director’s earlier death, resignation or removal, as follows:

<table>
<thead>
<tr>
<th>Director nominee</th>
<th>For</th>
<th>Against</th>
<th>Abstentions</th>
<th>Broker Non-Votes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thomas F. Frist III</td>
<td>285,441,923</td>
<td>2,064,324</td>
<td>76,387</td>
<td>21,129,552</td>
</tr>
<tr>
<td>Samuel N. Hazen</td>
<td>287,264,928</td>
<td>239,219</td>
<td>78,487</td>
<td>21,129,552</td>
</tr>
<tr>
<td>Meg G. Crofton</td>
<td>287,303,468</td>
<td>202,062</td>
<td>77,104</td>
<td>21,129,552</td>
</tr>
<tr>
<td>Robert J. Dennis</td>
<td>195,060,425</td>
<td>92,314,287</td>
<td>207,922</td>
<td>21,129,552</td>
</tr>
<tr>
<td>Nancy-Ann DeParle</td>
<td>281,858,524</td>
<td>5,643,637</td>
<td>80,473</td>
<td>21,129,552</td>
</tr>
<tr>
<td>William R. Frist</td>
<td>286,712,075</td>
<td>791,577</td>
<td>78,982</td>
<td>21,129,552</td>
</tr>
<tr>
<td>Charles O. Holliday, Jr.</td>
<td>285,235,341</td>
<td>2,266,420</td>
<td>80,873</td>
<td>21,129,552</td>
</tr>
<tr>
<td>Geoffrey G. Meyers</td>
<td>286,413,754</td>
<td>1,088,417</td>
<td>80,463</td>
<td>21,129,552</td>
</tr>
<tr>
<td>Michael W. Michelson</td>
<td>286,768,421</td>
<td>732,808</td>
<td>81,405</td>
<td>21,129,552</td>
</tr>
<tr>
<td>Wayne J. Riley, M.D.</td>
<td>284,076,964</td>
<td>3,423,393</td>
<td>82,277</td>
<td>21,129,552</td>
</tr>
<tr>
<td>John W. Rowe, M.D.</td>
<td>284,644,452</td>
<td>2,855,922</td>
<td>82,260</td>
<td>21,129,552</td>
</tr>
</tbody>
</table>

2. The selection of Ernst & Young LLP as the Company’s independent registered public accounting firm for the year ending December 31, 2019 was ratified as follows:

<table>
<thead>
<tr>
<th></th>
<th>For</th>
<th>Against</th>
<th>Abstentions</th>
<th>Broker Non-Votes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>297,311,119</td>
<td>11,296,419</td>
<td>104,648</td>
<td>0</td>
</tr>
</tbody>
</table>

3. The adoption of a non-binding advisory resolution on the Company’s named executive officer compensation as described in the Company’s 2019 proxy statement was approved as follows:

<table>
<thead>
<tr>
<th></th>
<th>For</th>
<th>Against</th>
<th>Abstentions</th>
<th>Broker Non-Votes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>264,558,552</td>
<td>22,844,894</td>
<td>179,188</td>
<td>21,129,552</td>
</tr>
</tbody>
</table>

4. The amendment to the Company’s amended and restated certificate of incorporation to eliminate supermajority voting requirements was approved as follows:

<table>
<thead>
<tr>
<th></th>
<th>For</th>
<th>Against</th>
<th>Abstentions</th>
<th>Broker Non-Votes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>287,394,978</td>
<td>99,918</td>
<td>87,738</td>
<td>21,129,552</td>
</tr>
</tbody>
</table>

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits:

<table>
<thead>
<tr>
<th>Exhibit No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>Certificate of Amendment to Amended and Restated Certificate of Incorporation of HCA Holdings, Inc., as filed with the Secretary of State of Delaware on April 30, 2019 with an effective date of May 1, 2019.</td>
</tr>
<tr>
<td>3.2</td>
<td>Amendment to the Amended and Restated Bylaws of HCA Holdings, Inc. effective May 1, 2019.</td>
</tr>
</tbody>
</table>
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.

HCA HEALTHCARE, INC.
(Registrant)

By: /s/ John M. Franck II
John M. Franck II
Vice President – Legal and Corporate Secretary

Date: May 2, 2019
CERTIFICATE OF AMENDMENT TO THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
HCA HEALTHCARE, INC.

Pursuant to the provisions of Section 242 of the General Corporation Law of the State of Delaware (the “DGCL”), the undersigned corporation does hereby certify as follows and adopts the following Certificate of Amendment to its Amended and Restated Certificate of Incorporation:

1. The name of the corporation is HCA Healthcare, Inc. (the “Corporation”).

2. The text of the amendment adopted is:

   (a) The second and third sentences of Article VI, Section 6 of the Corporation’s Amended and Restated Certificate of Incorporation are hereby deleted in their entirety and replaced with the following sentences:

      “The Board of Directors is expressly authorized to make, alter, amend, change, add to or repeal the Bylaws of the Corporation by the affirmative vote of a majority of the total number of directors then in office. Any amendment, alteration, change, addition or repeal of the Bylaws of the Corporation by the stockholders of the Corporation shall require the affirmative vote of the holders of a majority of the outstanding shares of the Corporation, voting together as a class, entitled to vote on such amendment, alteration, change, addition or repeal.”

   (b) Article XI of the Corporation’s Amended and Restated Certificate of Incorporation is hereby amended to read, in its entirety, as follows:

      “The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by the DGCL, and all rights conferred upon stockholders herein are granted subject to this reservation. Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage or separate class vote may be specified by law, this Amended and Restated Certificate of Incorporation, the Bylaws of the Corporation, or otherwise, but in addition to any affirmative vote of the holders of any particular class or series of the capital stock required by law, this Amended and Restated Certificate of Incorporation, the Bylaws of the Corporation, or otherwise, the affirmative vote of the holders of at least a majority of the voting power of all outstanding shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt any provision inconsistent with, or to amend or repeal any provision of this Amended and Restated Certificate of Incorporation.”

3. This Amendment to the Amended and Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Section 242 of the DGCL.

4. This Amendment to the Amended and Restated Certificate of Incorporation shall be effective at 12:01 a.m. Eastern Time on May 1, 2019.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be duly executed in its corporate name on April 30, 2019.

HCA HEALTHCARE, INC.

By: /s/ John M. Franck II
Name: John M. Franck II
AMENDMENT
TO THE
SECOND AMENDED AND RESTATED BYLAWS
OF
HCA HEALTHCARE, INC.
A Delaware Corporation

1. Article VII of the Second Amended and Restated Bylaws (the “Bylaws”) of HCA Healthcare, Inc., a Delaware corporation (the “Company”), is hereby amended to read, in its entirety, as follows:

“In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to make, alter, amend, change, add to or repeal these Bylaws by the affirmative vote of a majority of the total number of directors then in office. Any amendment, alteration, change, addition or repeal of these Bylaws by the stockholders of the Corporation shall require the affirmative vote of the holders of at least a majority of the outstanding shares of the Corporation, voting together as a class, entitled to vote on such amendment, alteration, change, addition or repeal.”

2. This Amendment shall be effective as of May 1, 2019.