

**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): **November 1, 2023**

AXCELLA HEALTH INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-38901
(Commission
File Number)

26-3321056
(IRS Employer
Identification No.)

P.O. Box 1270
Littleton, Massachusetts
(Address of principal executive offices)

01460
(Zip Code)

Registrant's telephone number, including area code: **(857) 320-2200**

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))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 Par Value	AXLA	Nasdaq Global Market

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 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Resignation of Directors

On November 1, 2023, in connection with the Assignment (as defined below), Torben Straight Nissen, Ph.D., Michael Rosenblatt, M.D., William D. “Chip” Baird, Gary P. Pisano, Ph.D., Cristina M. Rondonone, Ph.D., Paul J. Sekhri, William R. Hinshaw, Jr., Martin Hendrix, Robert Rosiello and Catherine Angell Sohn, Pharm.D. each notified Axcella Health Inc. (the “Company,” “we,” “us,” “our,” and “Axcella”) of their respective resignations as members of the Company’s board of directors (the “Board”) and all committees thereof, effective immediately. None of these resignations resulted from any disagreement with the Company on any matter relating to the Company’s operations, policies or practices.

Termination of Officers

On November 1, 2023, in connection with the Assignment (as defined below), William R. Hinshaw, Jr. and Paul Fehlner were each notified by the Company of termination of their positions as President and Chief Executive Officer and Senior Vice President, Chief Legal Officer and Corporate Secretary, respectively, effective as of 11:59 p.m. on November 1, 2023. As previously disclosed in a Current Report on [Form 8-K filed by the Company on February 17, 2023](#), each of Mr. Hinshaw and Dr. Fehlner agreed to waive their rights to severance payments provided under their respective employment agreements in the event of a Terminations Without Cause or for Good Reason (as such terms are currently defined in their respective employment agreements).

Election of Director and Officer

On November 1, 2023, the Board appointed Craig R. Jalbert, age 61, as the Company’s President, Treasurer, Corporate Secretary, effective as of 12:00 a.m. on November 2, 2023, and sole member of the Board, effective immediately. Mr. Jalbert will also serve as the Company’s principal executive officer, and as its principal financial officer and principal accounting officer. Mr. Jalbert’s term as director shall expire upon the election and qualification of his successor. Mr. Jalbert has not been appointed to any committee of the Board and as of the date hereof is not expected to be appointed to any committee of the Board.

Mr. Jalbert has served as a principal of the Foxborough, Massachusetts accounting firm of Verdolino & Lowey, P.C. since 1987. For over 30 years he has focused his practice in distressed businesses and has served, and continues to serve, in the capacities of officer and director for numerous firms in their wind-down phases.

In connection with his appointment, Mr. Jalbert will be compensated in the amount of \$10,000 per month. If the stockholders approve the Assignment Proposal (as defined below), Mr. Jalbert will be compensated in the amount of \$50,000 for his first year of service, and thereafter \$25,000 per year for a period of three years total. There is no arrangement or understanding pursuant to which Mr. Jalbert was appointed to the Board. There are no family relationships between Mr. Jalbert and any director or executive officer of the Company, and Mr. Jalbert has no direct or indirect material interest in any transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K.

Item 8.01. Other Matters.

Assignment for the Benefit of Creditors and Plan of Dissolution

On November 1, 2023 (the “Effective Date”), the Board of Axcella (i) determined that it is in the best interests of Axcella and its stakeholders to effect a transfer and assignment of substantially all of Axcella’s assets to an assignee (the “Assignee”) for the benefit of creditors (the “Assignment”); (ii) determined that it is in the best interests of Axcella and its stakeholders that, following the Assignment, the Company be dissolved in accordance with Delaware General Corporation Law pursuant to a Plan of Dissolution (the “Dissolution”); (iii) approved seeking stockholder approval to proceed with the Assignment and the Dissolution pursuant to Delaware law (the “Assignment and Dissolution Proposals”) at a special meeting of stockholders (the “Special Meeting of Stockholders”) to be held as soon as reasonably practicable following the Effective Date.

After seeking potential funding sources and other ways to continue to operate Axcella's business, Axcella has been unable to find a viable alternative to the Assignment. The Board believes that the Assignment and Dissolution present the best opportunity for the best recovery for creditors and also may provide an opportunity for future payments to stockholders.

Upon the completion of the Assignment, the Assignee will have sole control over Axcella's assets and Axcella will no longer operate its business or control the liquidation or distribution of its assets or the resolution of claims. The Board will determine the Assignee.

The Assignment is a judicial insolvency procedure, which, if approved by Axcella's stockholders, is commenced by Axcella entering a contractual assignment for the benefit of creditors that effectuates the assignment, grant, conveyance, transfer, and setting over to the Assignee, in trust, of all of Axcella's currently existing right, title, and interest in all real or personal property and all other assets, whatsoever and wheresoever situated. The Assignee will then file an application in the Delaware Court of Chancery, which commences a judicial proceeding for recognition of the Assignment (the "ABC Proceeding" and, together with the Assignment and all other transactions or actions contemplated by the ABC Proceeding or the Assignment, the "ABC Transactions"). The Assignee will then liquidate the assets for the general benefit of all of Axcella's creditors according to their respective priorities at law to satisfy Axcella's obligations. If any proceeds remain after all of Axcella's obligations to creditors have been satisfied in full, those remaining proceeds will be distributed to stockholders. Because Axcella does not know the final amount that the Assignee will recover from a liquidation of Axcella's assets, Axcella does not know whether any amounts will be available for distribution to the stockholders.

Axcella expects that, in connection with the proposed Assignment and Dissolution and seeking shareholder approval of the Assignment and Dissolution Proposal, the Company's common stock will be delisted from Nasdaq.

A copy of the Plan of Dissolution is filed as Exhibit 2.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Additional Information and Where to Find It

Axcella will file with the Securities and Exchange Commission ("SEC") a proxy statement in connection with the planned Assignment. The definitive proxy statement will be sent to the Company's stockholders and will contain important information about the planned Assignment. **INVESTORS AND STOCKHOLDERS ARE URGED TO READ CAREFULLY AND IN THEIR ENTIRETY THE PROXY STATEMENT AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SEC WHEN THEY BECOME AVAILABLE.** Investors and stockholders may obtain a free copy of the proxy statement (when it is available) and other documents filed with the SEC at the SEC's website at www.sec.gov.

Certain Information Concerning Participants

Axcella and its directors and executive officers may be deemed to be participants in the solicitation of proxies from stockholders of Axcella in connection with the proposed Assignment and Dissolution. Information about the persons who may be considered to be participants in the solicitation of Axcella's stockholders in connection with its proposed Assignment and Dissolution, and any interest they have in the proposed Assignment and Dissolution, will be set forth in the definitive proxy statement when it is filed with the SEC. Further information about Axcella's directors and executive officers is set forth in its proxy statement for its 2023 Annual Meeting of Stockholders and its most recent annual report on Form 10-K. Copies of these documents may be obtained for free at the SEC's website at www.sec.gov.

Forward Looking Statements

Certain statements in this report constitute “forward-looking statements” of Axcella within the meaning of applicable laws and regulations and constitute “forward-looking information” within the meaning of applicable securities laws. Any statements contained herein which do not describe historical facts, including statements regarding the proposed Assignment and Dissolution and the related Special Meeting as well as our Nasdaq listing status are forward-looking statements which involve risks and uncertainties that could cause actual results to differ materially from those discussed in such forward-looking statements. Such risks and uncertainties include, among others, the possibility that Axcella’s stockholders will not realize any value in Axcella’s shares, as well as those risks identified in the Company’s filings with the Commission, including under the heading “Risk Factors” in the Company’s Annual Report on Form 10-K for the year-ended December 31, 2022, and subsequent filings, with the Commission, including the Company’s Quarterly Report on Form 10-Q for the quarters ended March 30, 2023 and June 30, 2023. Copies of these documents may be obtained for free at the SEC’s website at www.sec.gov. Axcella cautions investors not to place undue reliance on any forward-looking statements, which speak only as of the date they are made. Except as required by law, Axcella undertakes no obligation to update or revise the information contained in this Current Report on Form 8-K, whether as a result of new information, future events or circumstances or otherwise.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
2.1	Plan of Dissolution of Axcella Health Inc.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURE

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.

Axcella Health Inc.

Date: November 1, 2023

By: /s/ William R. Hinshaw, Jr.

Name: William R. Hinshaw, Jr.

Title: President, Chief Executive Officer and Director

**PLAN OF LIQUIDATION AND DISSOLUTION
OF
AXCELLA HEALTH INC.**

This Plan of Liquidation and Dissolution (the “Plan”) is intended to accomplish the complete liquidation and dissolution of AXCELLA HEALTH INC., a Delaware corporation (such corporation or a successor entity, the “Company”), in accordance with Section 281(b) of the General Corporation Law of the State of Delaware (the “DGCL”).

1. **Approval of Plan.** The Board of Directors of the Company (the “Board”) has adopted this Plan and presented the Plan to the Company’s stockholders to take action on the Plan. If the Plan is adopted by the requisite vote of the Company’s stockholders, the Plan shall constitute the adopted Plan of the Company.

2. **Certificate of Dissolution.** Subject to Section 14 hereof, after the stockholders of the Company approve the dissolution of the Company, the Company shall file with the Secretary of State of the State of Delaware a certificate of dissolution (the “Certificate of Dissolution”) in accordance with the DGCL at such time as determined by the Board in its sole discretion (the time of such filing, or such later time as stated therein, the “Effective Time”).

3. **Cessation of Business Activities.** After the Effective Time, the Company shall not engage in any business activities except to the extent necessary to preserve the value of its assets, wind up its business affairs and distribute its assets in accordance with this Plan.

4. **Continuing Employees and Consultants.** For the purpose of effecting the dissolution of the Company, the Company may hire or retain such employees, consultants and advisors as the Company deems necessary or desirable to supervise or facilitate the dissolution and winding up of the Company.

5. **Dissolution Process.**

From and after the Effective Time, the Company (or any successor entity of the Company) shall complete the following corporate actions:

(i) The Company (a) shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured contractual claims known to the Company, (b) shall make such provision as will be reasonably likely to be sufficient to provide compensation for any claim against the Company which is the subject of a pending action, suit or proceeding to which the Company is a party, and (c) shall make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the Company or that have not arisen but that, based on facts known to the Company, are likely to arise or to become known to the Company within 10 years after the date of dissolution. All such claims shall be paid in full and any such provision for payment made shall be made in full if there are sufficient assets. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets legally available therefor.

(ii) After the payments are made pursuant to clause (i) above, if there are any assets remaining, the Company shall distribute to its stockholders, in accordance with the Company's certificate of incorporation, as amended and/or restated through the Effective Time, all remaining assets, including all available cash, including the cash proceeds of any sale, exchange or disposition, except such cash, property or assets as are required for paying or making reasonable provision for the claims and obligations of the Company. Such distribution may occur all at once or in a series of distributions and shall be in cash or assets, in such amounts, and at such time or times, as the Board in its absolute discretion, may determine. If and to the extent deemed necessary, appropriate or desirable by the Board, in its absolute discretion, the Company may establish and set aside a reasonable amount of cash and/or property to satisfy claims against the Company, including, without limitation, tax obligations, all expenses related to the sale of the Company's property and assets, all expenses related to the collection and defense of the Company's property and assets, and the liquidation and dissolution provided for in this Plan.

Notwithstanding anything contained herein to the contrary, the Company, at the discretion of the Board, may opt to dissolve and wind-up the Company in accordance with the procedures set forth in Sections 280 and 281(a) of the DGCL.

6. **Cancellation of Stock.** The distributions to the Company's stockholders pursuant to Section 5 hereof shall be deemed to be in complete cancellation of all of the outstanding shares of capital stock of the Company as of the date that the continuation of the Company's legal existence terminates in accordance with Section 278 of the DGCL. From and after the Effective Time, and subject to applicable law, the holder of all outstanding shares of capital stock of the Company shall cease to have any rights in respect thereof, except the right to receive distributions, if any, pursuant to and in accordance with Section 5 hereof. As a condition to receipt of any distribution to the Company's stockholders, the Company may require the Company's stockholders to (i) surrender their certificates evidencing its shares of capital stock to the Company, or (ii) furnish the Company with evidence satisfactory to the Company of the loss, theft or destruction of such certificates, together with such surety bond or other security or indemnity as may be required by and satisfactory to the Company. The Company will close its stock transfer books and discontinue recording transfers of shares of capital stock of the Company at the Effective Time, and thereafter any certificate representing shares of capital stock of the Company will not be assignable or transferable on the books of the Company except by will, intestate succession, operation of law or upon the dissolution of the stockholders or their successors.

7. **Conduct of the Company Following Approval of the Plan.** Under Delaware law, dissolution is effective upon the filing of a certificate of dissolution with the Secretary of State of the State of Delaware or upon such future effective date as may be set forth in the certificate of dissolution. Section 278 of the DGCL provides that a dissolved corporation shall be continued for the term of 3 years from such dissolution or for such longer period as the Court of Chancery shall in its discretion direct, bodies corporate for the purpose of prosecuting and defending suits, whether civil, criminal or administrative, by or against it, and of enabling it gradually to settle and close its business, to dispose of and convey its property, to discharge its liabilities and to distribute to its stockholders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized. With respect to any action, suit or proceeding begun by or against the corporation either prior to or within 3 years after the date of its dissolution, the action shall not abate by reason of the dissolution of the corporation; the corporation shall, solely for the purpose of such action, suit or proceeding, be continued as a body corporate beyond the 3-year period and until any judgments, orders or decrees therein shall be fully executed, without the necessity for any special direction to that effect by the Court of Chancery. The powers of the officers and directors of the corporation shall continue during this time period in order to allow them to take the necessary steps to wind up the affairs of the corporation.

8. **Absence of Appraisal Rights.** Under Delaware law, the Company's stockholders are not entitled to appraisal rights for shares of capital stock of the Company in connection with the transactions contemplated by the Plan.

9. **Abandoned Property.** If any distribution to the stockholders of the Company cannot be made, whether because such stockholder cannot be located, has not surrendered its certificate evidencing the capital stock as required hereunder or for any other reason, the distribution to which such stockholder is entitled shall be transferred, at such time as the final liquidating distribution is made by the Company, to the official of such state or other jurisdiction authorized by applicable law to receive the proceeds of such distribution. The proceeds of such distribution shall thereafter be held solely for the benefit of and for ultimate distribution to such stockholders as the sole equitable owner thereof and shall be treated as abandoned property and escheat to the applicable state or other jurisdiction in accordance with applicable law. In no event shall the proceeds of any such distribution revert to or become the property of the Company.

10. **Stockholder Consent to Sale of Assets.** Adoption of this Plan by the stockholders of the Company shall constitute the approval of such stockholders of the sale, exchange or other disposition in liquidation of all of the property and assets of the Company, whether such sale, exchange or other disposition occurs in one transaction or a series of transactions, and shall constitute ratification of all contracts for sale, exchange or other disposition that are conditioned on adoption of this Plan.

11. **Expenses of Dissolution.** In connection with and for the purposes of implementing and assuring completion of this Plan, the Company may pay any brokerage, agency, professional and other fees and expenses of persons rendering services to the Company in connection with the collection, sale, exchange or other disposition of the Company's property and assets and the implementation of this Plan.

12. **Compensation.** In connection with and for the purpose of implementing and assuring the completion of this Plan, the Company may pay the Company's officers, directors, employees, agents and representatives, or any of them, compensation or additional compensation above their regular compensation, including pursuant to severance and retention agreements, in money or other property, in recognition of the extraordinary efforts they, or any of them, will be required to undertake, or actually undertake, in connection with the implementation of this Plan. Adoption of this Plan by the requisite vote of the outstanding capital stock of the Company shall constitute the approval of the Company's stockholders of the payment of any such compensation.

13. **Indemnification.** The Company shall continue to indemnify its officers, directors, employees, agents and trustee in accordance with its Certificate of Incorporation, Bylaws, and contractual arrangements as therein or elsewhere provided, the Company's existing directors' and officers' liability insurance policy and applicable law, and such indemnification shall apply to acts or omissions of such persons in connection with the implementation of this Plan and the winding up of the affairs of the Company. The Company is authorized to obtain and maintain insurance as may be necessary to cover the Company's indemnification obligations.

14. **Modification or Abandonment of the Plan.** Notwithstanding adoption of this Plan by the stockholders of the Company, the Board may modify, amend or abandon this Plan and the transactions contemplated hereby without further action by such stockholders to the extent permitted by the DGCL.

15. **Authorization.** The Board is hereby authorized, without further action by the stockholders of the Company, to do and perform or cause the officers of the Company to do and perform, any and all acts, and to make, execute, deliver or adopt any and all agreements, resolutions, conveyances, certificates and other documents of every kind that are deemed necessary, appropriate or desirable, to implement this Plan and the transactions contemplated hereby, including, without limiting the foregoing, all filings or acts required by any state or federal law or regulation to wind up the affairs of the Company.