

**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 22, 2021**

**dexcom**

**DEXCOM, INC.**

(Exact Name of the Registrant as Specified in Its Charter)

**Delaware**

(State or Other Jurisdiction of Incorporation)

**000-51222**

(Commission File Number)

**33-0857544**

(IRS Employer Identification No.)

**6340 Sequence Drive, San Diego, CA**  
(Address of Principal Executive Offices)

**92121**  
(Zip Code)

**(858) 200-0200**

(Registrant's Telephone Number, Including Area Code)

(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
<b>Common Stock, \$0.001 Par Value Per Share</b>	<b>DXCM</b>	<b>Nasdaq Global Select Market</b>

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 8.01 OTHER EVENTS.

On November 22, 2021, DexCom, Inc. (“**DexCom**”) filed an automatic shelf Registration Statement on Form S-3 (File No. 333-261265) with the Securities and Exchange Commission (the “**Commission**”) under the Securities Act of 1933, as amended (the “**Securities Act**”), which automatically became effective upon filing (the “**Registration Statement**”), a prospectus dated November 22, 2021 included therein (the “**Base Prospectus**”) and a final prospectus supplement, filed with the Commission pursuant to Rule 424(b) under the Securities Act (the “**Prospectus Supplement**”) and together with the Base Prospectus, the “**Prospectus**”) to register 2,025,036 shares of DexCom’s common stock, par value \$0.001 per share (the “**Shares**”), to be issued pursuant to that certain Amended and Restated Collaboration and License Agreement, dated as of November 20, 2018, by and among DexCom, Verily Life Sciences LLC (an Alphabet Company) and Verily Ireland Limited (the “**Collaboration and License Agreement**”) and that certain Common Stock Purchase Agreement, dated as of November 20, 2018, by and among DexCom, Verily Life Sciences LLC and Onduo, LLC, a joint venture partially owned by Verily (the “**Purchase Agreement**”) and together with the Collaboration and License Agreement, the “**Agreements**”). The Shares were previously registered pursuant to an automatic shelf Registration Statement on Form S-3 (File No. 333-228495) filed by DexCom with the Commission on November 20, 2018 under the Securities Act, which automatically became effective upon filing (the “**Prior Registration Statement**”), a prospectus dated November 20, 2018 included therein (the “**Prior Base Prospectus**”) and a final prospectus supplement dated November 20, 2018, filed with the Commission pursuant to Rule 424(b) under the Securities Act (the “**Prior Prospectus Supplement**”) and together with the Prior Base Prospectus, the “**Prior Prospectus**”). The Prior Registration Statement expired on or about November 20, 2021.

A copy of the Purchase Agreement was previously filed by DexCom on a Current Report on Form 8-K filed with the Commission on November 20, 2018 and a copy of the Collaboration and License Agreement was filed by DexCom on its annual report on Form 10-K for the year ending December 31, 2018 filed with the Commission on February 21, 2019. A copy of the opinion of Fenwick & West LLP, relating to the validity of the Shares to be issued pursuant to the Agreements and Prospectus, is filed with this Current Report on Form 8-K as Exhibit 5.1.

## Item 9.01 Financial Statements and Exhibits

### (d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
5.1	<a href="#">Opinion of Fenwick &amp; West LLP</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL Document)

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**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 thereunto duly authorized.

**DEXCOM, INC.**

By: /s/ Patrick M. Murphy  
Patrick M. Murphy  
Executive Vice President and Chief Legal Officer

Date: November 22, 2021



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12th Floor  
San Francisco, CA 94104

415.875.2300  
Fenwick.com

November 22, 2021

DexCom, Inc.  
6340 Sequence Drive  
San Diego, CA 92121

Gentlemen and Ladies:

We deliver this opinion with respect to certain matters in connection with the offering by DexCom, Inc., a Delaware corporation (the “**Company**”), of up to an aggregate of 2,025,036 shares of the Company’s common stock, par value \$0.001 per share (the “**Shares**”), to be issued pursuant to that certain Amended and Restated Collaboration and License Agreement, dated as of November 20, 2018, by and among the Company, Verily Life Sciences LLC (an Alphabet Company) and Verily Ireland Limited (the “**Collaboration and License Agreement**”) and that certain Common Stock Purchase Agreement, dated as of November 20, 2018, by and among the Company, Verily Life Sciences LLC and Onduo, LLC, a joint venture partially owned by Verily (the “**Purchase Agreement**” and together with the Collaboration and License Agreement, the “**Agreements**”). The Shares were previously registered pursuant to an automatic shelf Registration Statement on Form S-3 (File No. 333-228495) filed by the Company with the Securities and Exchange Commission (the “**Commission**”) on November 20, 2018 under the Securities Act of 1933, as amended (the “**Securities Act**”), which automatically became effective upon filing (the “**Prior Registration Statement**”), a prospectus dated November 20, 2018 included therein (the “**Prior Base Prospectus**”) and a final prospectus supplement dated November 20, 2018, filed with the Commission pursuant to Rule 424(b) under the Securities Act (the “**Prior Prospectus Supplement**” and together with the Prior Base Prospectus, the “**Prior Prospectus**”). The Prior Registration Statement expired on or about November 20, 2021 and the Company re-registered the Shares pursuant to an automatic shelf Registration Statement on Form S-3 (File No. 333-261265) filed by the Company with the Commission on November 22, 2021 under the Securities Act, which automatically became effective upon filing (the “**Registration Statement**”), a prospectus dated November 22, 2021 included therein (the “**Base Prospectus**”) and a final prospectus supplement dated November 22, 2021, filed with the Commission pursuant to Rule 424(b) under the Securities Act (the “**Prospectus Supplement**” and together with the Base Prospectus, the “**Prospectus**”). The offering of the Shares by the Company pursuant to the Registration Statement, the Prospectus and the Agreements is referred to herein as the “**Offering**.”

In connection with our opinion expressed below we have examined originals or copies of the Agreements, the Company’s Amended and Restated Certificate of Incorporation, as amended to date, filed with, and certified by, the Delaware Secretary of State (the “**Restated Certificate**”) and the Company’s Amended & Restated Bylaws (the “**Bylaws**”), certain corporate proceedings of the Company’s board of directors (the “**Board**”) or an authorized committee or committees thereof the Board and the Company’s stockholders relating to the Registration Statement, the Restated Certificate and the Bylaws, and such other agreements, documents, certificates and statements of the Company, its transfer agent and public or government officials, as we have deemed advisable, and have examined such questions of law as we have considered necessary.

We have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures on documents submitted to us, the conformity to originals and completeness of all documents submitted to us as copies, the legal capacity of all persons or entities executing the same, the absence of any undisclosed termination, modification, waiver or amendment to any document reviewed by us, the absence of any other extrinsic agreements or documents that might change or affect the interpretation or terms of documents we have reviewed, and the due authorization, execution and delivery of all such documents where due authorization, execution and delivery are prerequisites to the effectiveness thereof. In giving our opinion, we have also relied upon a good standing certificate regarding the Company issued by the Delaware Secretary of State dated November 19, 2021 and a management certificate addressed to us and dated of even date herewith executed by the Company containing certain factual representations by the Company (the “**Management Certificate**”).

We render this opinion only with respect to, and express no opinion herein concerning the application or effect of any laws other than, the existing Delaware General Corporation Law.

In connection with our opinions expressed below, we have assumed that, (i) at or prior to the time of the issuance and delivery of any of the Shares, there will not have occurred any change in the law or the facts affecting the validity of the Shares, any change in actions of the Board or the Company's stockholders, or any amendments to the Restated Certificate or the Bylaws, and (ii) at the time of the offer, issuance and sale of any Shares, no stop order suspending the Registration Statement's effectiveness will have been issued and remain in effect, and that the Registration Statement will not have been modified or rescinded. We also have assumed that the issuance and delivery of the Shares subsequent to the date hereof and the compliance by the Company with the terms of such Shares will not result in a violation of the Restated Certificate or any provision of any instrument or agreement then binding upon the Company or any restriction imposed by any court or governmental body then having jurisdiction over the Company.

Based upon the foregoing, we are of the opinion that when the Shares are issued, sold and delivered in the manner and for the consideration stated in the Registration Statement, the Prospectus and the Agreements and the resolutions adopted by the Board referenced above, such Shares will be validly issued, fully paid and nonassessable.

We consent to the use of this opinion as an exhibit to the Current Report on Form 8-K to be filed by the Company with the Commission in connection with the Offering and further consent to all references to us, if any, in the Registration Statement, the Prospectus and any amendments or supplements thereto. We do not thereby admit that we are within the category of persons whose consent is required under the Securities Act or the rules and regulations of the Commission promulgated thereunder.

*[Concluding Paragraph and Signature Follows on Next Page]*

This opinion is intended solely for use in connection with the issuance and sale of the Shares subject to the Registration Statement and is not to be relied upon for any other purpose. We opine only as to the specific legal issues expressly set forth above and no opinion shall be inferred as to any other matter or matters. This opinion is rendered, and speaks, only as of the date first written above and is based solely on our understanding of facts in existence as of such date after the date of this opinion letter. We assume no obligation to advise you of any fact, circumstance, event or change in the law or the facts that may hereafter be brought to our attention whether or not such occurrence would affect or modify the opinion expressed herein.

Very truly yours,

/s/ Fenwick & West LLP

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**FENWICK & WEST LLP**