

BEVERLY ENTERPRISES INC

Form DEFA14A

December 29, 2005

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**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) December 23, 2005  
BEVERLY ENTERPRISES, INC.  
(Exact Name of Registrant as Specified in Charter)**

Delaware	1-9550	62-1691861
<b>(State or Other Jurisdiction of Incorporation)</b>	<b>(Commission File Number)</b>	<b>(I.R.S. Employer Identification No.)</b>
One Thousand Beverly Way Fort Smith, Arkansas		72919
<b>(Address of Principal Executive Offices)</b>		<b>(Zip Code)</b>
<b>Registrant's telephone number including area code</b>		(479) 201-2000

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:

- o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- þ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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**Item 1.01 Entry into a Material Definitive Agreement**

On December 23, 2005, following approval by the Board of Directors of Beverly Enterprises, Inc. ( BEI ) in connection with the approval of the Fourth Amendment to that certain Agreement and Plan of Merger by and among BEI, Pearl Senior Care, Inc., PSC Sub, Inc. and Geary Property Holdings, LLC (the Merger Agreement ), and as required by the Fourth Amendment to eliminate, to the extent possible, certain potential tax and reimbursement liabilities in connection with the merger, BEI took the following actions with respect to certain employee benefit plans:

terminated the Executive Deferred Compensation Plan (the EDC Plan ), with all amounts deferred thereunder to be paid on or before December 31, 2005;

terminated the Supplemental Executive Retirement Plan (the SERP ), with all benefits that would be due at closing of the transactions contemplated by the Merger Agreement (the Closing ) to be distributed to active participants on or before December 31, 2005 and to inactive participants at the Closing;

terminated the Enhanced Supplemental Executive Retirement Plan (the ESERP ), with all benefits that would be due at the Closing to be distributed on or before December 31, 2005;

accelerated to 2005 the vesting and payment of certain stock and cash awards under the 2003 Long-Term Program otherwise payable in early 2006;

accelerated to 2005 the vesting and payment of certain stock and cash awards under the 1997 Long-Term Incentive Plan otherwise payable at Closing; and

accelerated to 2005 the payment of certain cash severance payments that would become due to certain employees if their employment is terminated under certain circumstances following a change of control of the Company.

The form of amendments terminating the EDC Plan, the SERP and the ESERP are attached hereto as Exhibits 2.1, 2.2 and 2.3, respectively, and are incorporated herein by reference in their entirety. A list of accelerated payments and benefits received by BEI's named executive officers with respect to the actions described above is set forth on Exhibit 2.4, and is incorporated herein by reference in its entirety.

**IMPORTANT INFORMATION**

On December 13, 2005, BEI filed a preliminary proxy statement relating to BEI's solicitation of proxies with respect to its special meeting of stockholders to be held in 2006. Prior to the special meeting, BEI will furnish a definitive proxy statement to its stockholders. **BEI URGES INVESTORS AND SECURITY HOLDERS TO READ THE PROXY STATEMENT BECAUSE IT CONTAINS IMPORTANT INFORMATION.** BEI and its officers and directors may be deemed to be participants in the solicitation of proxies with respect to any proposed

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transaction. Information regarding such individuals is included in the Company's proxy statements and Annual Reports on Form 10-K previously filed with the Securities and Exchange Commission and will be included in the definitive proxy statement relating to the proposed transaction when it becomes available. You may obtain BEI's proxy statement, when it becomes available, any amendments or supplements to the proxy statement and other relevant documents free of charge at [www.sec.gov](http://www.sec.gov). You may also obtain a free copy of BEI's definitive proxy statement, when it becomes available, any amendments and supplements to the definitive proxy statement and other relevant documents by writing to BEI at 1000 Beverly Way, Fort Smith, Arkansas 72919, Attn: Investor Relations or at [www.beverlycorp.com](http://www.beverlycorp.com) under the tab "Investor Information" and then under the heading "SEC Filings".

**FORWARD LOOKING STATEMENTS**

The statements in this document relating to matters that are not historical facts are forward-looking statements based on management's beliefs and assumptions using currently available information and expectations as of the date hereof. Forward-looking statements are not guarantees of future performance and involve certain risks and uncertainties, including the risks and uncertainties detailed from time to time in BEI's filings with the Securities and Exchange Commission. In particular, statements regarding the consummation of the merger with Pearl Senior Care are subject to risks that the conditions to the transaction will not be satisfied, including the risk that regulatory approvals will not be obtained.

In addition, BEI's results of operations, financial condition and cash flows may be adversely impacted by the pendency of the proposed transaction with Pearl Senior Care, which may impact our ability to attract and retain customers, management and employees. BEI has incurred and will continue to incur significant advisory fees and other expenses relating to the proposed transaction. Although BEI believes that the expectations reflected in such forward-looking statements are reasonable, it cannot give any assurances that these expectations will prove to be correct.

BEI assumes no duty to publicly update or revise such statements, whether as a result of new information, future events or otherwise.

**Item 9.01 Financial Statements and Exhibits**

(a) Exhibits

Exhibit No.	Exhibit
2.1	Form of Second Amendment to the Beverly Enterprises, Inc. Executive Deferred Compensation Plan
2.2	Form of Amendment Number Two to the Beverly Enterprises, Inc. Supplemental Executive Retirement Plan
2.3	Form of First Amendment to the Beverly Enterprises, Inc. Enhanced Supplemental Executive Retirement Plan

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Exhibit No.	Exhibit
2.4	List of accelerated payments and benefits received by the Named Executive Officers of Beverly Enterprises, Inc. in connection with the termination of the EDC Plan, the SERP and the ESERP, acceleration of benefits under the 2003 Long Term Program and 1997 Long-Term Incentive Plan and acceleration of certain cash severance payments

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**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.

Dated: December 29, 2005

**BEVERLY ENTERPRISES, INC.**

By: /s/ JEFFREY P. FREIMARK

Name Jeffrey P. Freimark

Title: Executive Vice President, Chief  
Financial and Information Officer

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