

BEVERLY ENTERPRISES INC

Form DEFA14A

April 07, 2005

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**  
**SCHEDULE 14A**

**Proxy Statement Pursuant to Section 14(a) of the**  
**Securities Exchange Act of 1934**

Filed by the Registrant   
Filed by a Party other than the Registrant   
Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, For Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to Rule 14a-12

**BEVERLY ENTERPRISES, INC.**  
(Name of Registrant as Specified In Its Charter)

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(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

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(2) Aggregate number of securities to which transaction applies:

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(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

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(4) Proposed maximum aggregate value of transaction:

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(5) Total fee paid:

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- Fee paid previously with preliminary materials.

- o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

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(2) Form, Schedule or Registration Statement No.:

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(3) Filing Party:

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(4) Date Filed:

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AMENDMENT NO. 1 TO RIGHTS AGREEMENT

Amendment No. 1, dated as of April 7, 2005 (this Amendment No. 1 ), to the Rights Agreement, dated as of January 26, 2005 by and between Beverly Enterprises, Inc., a Delaware corporation (the Company ), and The Bank of New York, a New York banking corporation, as Rights Agent (the Rights Agent ).

WHEREAS, the Company and the Rights Agent entered into a Rights Agreement as of January 26, 2005 (the Rights Agreement ); and

WHEREAS, the Company, with the approval of the Board of Directors of the Company, and the Rights Agent, have mutually agreed to modify the terms of the Rights Agreement in certain respects.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein set forth, and intending to be legally bound hereby, the parties hereto agree that the Rights Agreement shall be and hereby is amended in the following manner:

Section 1. Amendment of Certain Definitions Section.

Section 1.3 of the Rights Agreement is hereby amended by adding at the end of the Section the following:

Notwithstanding anything to the contrary contained in this Agreement, no Person shall be deemed the Beneficial Owner of, or shall be deemed to beneficially own, any security solely by reason of the Person's solicitation or receipt of Special Meeting Notices, Special Meeting Demands and/or Nomination Notices (and any accompanying documents) from another Person, and no Person shall be deemed the Beneficial Owner of, or shall be deemed to beneficially own, any security solely by reason of such Person's execution, individually or together with other Persons, or such Person's delivery to another Person, of a Special Meeting Notice, Special Meeting Demand and/or Nomination Notice (and any accompanying documents). The terms "Special Meeting Notice," "Special Meeting Demand" and "Nomination Notice" shall have the meanings set forth in the Resolutions adopted by the Board of Directors of the Company on March 21, 2005 and included as Exhibit 99.1 to the Current Report on Form 8-K filed by the Company with the Securities and Exchange Commission on March 23, 2005 and in the resolutions adopted by the Board of Directors of the Company by unanimous written consent as of March 25, 2005 and included as Exhibit 99.1 to the Current Report on Form 8-K filed by the Company with the Securities and Exchange Commission on April 7, 2005.

Section 2. No Other Amendments.

Except as amended hereby, the Rights Agreement shall remain in full force and effect and is hereby ratified and confirmed in all respects.

Section 3. Counterparts.

This Amendment No. 1 may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute one and the same instrument.

Section 4. Descriptive Headings. The captions herein are included for convenience of reference only, do not constitute a part of this Amendment No. 1 and shall be ignored in the construction and interpretation hereof.

Section 5. Other Defined Terms. Capitalized terms used without other definition in this Amendment are used as defined in the Rights Agreement.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 1 to be duly executed as of the day and year first above written.

BEVERLY ENTERPRISES, INC.

By: /s/ John G. Arena  
Name: John G. Arena  
Title: General Counsel Corporate Law

THE BANK OF NEW YORK

By: /s/ Robert J. Rinaudo  
Name: Robert J. Rinaudo  
Title: Assistant Vice President

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