

**Department of Justice Activities
Under the
Civil Rights of Institutionalized Persons Act
Fiscal Year 2021**



Table of Contents

I.	Introduction and Overview	2
II.	Filing of CRIPA Complaints and Resolution of Investigations and Lawsuits	3
III.	Prison Litigation Reform Act	5
IV.	Compliance Evaluations	5
V.	Termination of CRIPA Cases	7
VI.	New CRIPA Investigations	7
VII.	CRIPA Notice Letters, Pursuant to 42 U.S.C. § 1997b(a)(1)	8
VIII.	Investigation Closures	10
IX.	Technical Assistance	10
X.	Responsiveness to Allegations of Illegal Conditions	11
XI.	Conclusion	11

I. Introduction and Overview

The Civil Rights of Institutionalized Persons Act (CRIPA), enacted in 1980, protects the constitutional and federal statutory rights of people confined to residential institutions, including facilities for persons with mental illness or intellectual and developmental disabilities, nursing facilities, prisons, jails, and juvenile facilities, run by or on behalf of state or local governmental entities. The Department of Justice's Civil Rights Division (Division) Special Litigation Section is charged with CRIPA enforcement.

The Division is authorized to open an investigation upon reasonable belief that individuals confined in a covered residential institution may be subjected to a pattern or practice that deprives them of their constitutional or federal statutory rights.¹ When the investigation has concluded, the Division informs the jurisdiction, in writing, of the results of its investigation. If an investigation reveals evidence of a pattern or practice that deprives individuals of their constitutional or federal statutory rights, the Division will identify the conditions that cause the deprivations, the facts that support its assessment, and the minimum remedial measures that may remedy the deprivations. The Division then engages in negotiation and conciliation efforts and provides technical assistance to help jurisdictions correct the identified conditions. Only if these efforts fail may the Division institute a civil action for equitable relief necessary to correct the violations of rights.

The Division achieved important successes pursuant to its CRIPA authority to protect the rights of vulnerable people in residential institutions during Fiscal Year 2021. Four new CRIPA investigations opened. In addition, one CRIPA agreement was successfully terminated. At the end of Fiscal Year 2021, the Department had active CRIPA

¹ CRIPA protects only constitutional rights in jails and prisons.

matters and cases involving 156 facilities in 17 states, the Commonwealth of Puerto Rico, and the Virgin Islands.

The Division is also charged with providing information regarding the progress made by the Bureau of Prisons and the Department of Veterans Affairs toward meeting existing standards and constitutionally guaranteed minimums for such institutions pursuant to Section f(5) of CRIPA. Statements from both of these federal agencies are attached.

II. Filing of CRIPA Complaints and Resolution of Investigations and Lawsuits

The Division filed one CRIPA complaint and consent decree to resolve a CRIPA investigation in Fiscal Year 2021. In August 2021, the Division, together with the U.S. Attorney's Office in New Jersey, filed a Complaint and Consent Decree to resolve the Division's investigation of conditions in the Edna Mahan Correctional Facility for Women in Clinton, New Jersey. The Division had found reasonable cause to believe that the Jail engaged in a pattern or practice of constitutional rights violations involving staff sexual abuse of prisoners. The court entered the consent decree on August 24, 2021. United States v. New Jersey, 3:21-cv-15031, ECF No. 12 (D.N.J. Aug. 24, 2021).

The Division, together with the U.S. Attorney's Offices in Alabama, filed contested litigation in one case in Fiscal Year 2021. In December 2020, the Division filed a complaint against the State of Alabama and the Alabama Department of Corrections, pursuant to CRIPA. United States v. Alabama, 2:20-cv-01971-RDP (N.D. Ala. Dec. 9, 2020). The complaint alleges that the conditions at Alabama's prisons for men violate the Eighth Amendment of the Constitution by failing to provide adequate protection from prisoner-on-prisoner violence and prisoner-on-prisoner sexual abuse; failing to provide safe and sanitary conditions; and subjecting prisoners to excessive force at the hands of prison staff. The Division filed an Amended

Complaint in May 2021, United States v. Alabama, 2:20-cv-01971-RDP, ECF No. 37 (N.D. Ala. May 19, 2021), and a Second Amended Complaint in November 2021, United States v. Alabama, 2:20-cv-01971-RDP, ECF No. 71 (N.D. Ala. Nov. 19, 2021), and the litigation is ongoing.²

The Division also filed two Statements of Interest in Fiscal Year 2021.³ In April 2021, the Division filed a Statement of Interest in Diamond v. Ward, Case No. 5:20-cv-00453-MTT (M.D. Ga.), a case regarding protection and treatment of a transgender prisoner in Georgia's prison system. This Statement of Interest describes the legal requirements for transgender prisoners, including the need to conduct individualized assessments for housing assignments and for medical treatment related to gender dysphoria.

In May 2021, the Division filed a Statement of Interest in Charles H. v. D.C., Case No. 1:21-cv-00997 (D.D.C.). The litigation involves the provision of special education and related services for students ages 18 to 21 in the DC Jail during the COVID-19 pandemic. The Statement of Interest asserted that students with disabilities ages 18 to 21 in adult correctional facilities are entitled to special education services under the IDEA and that the responsibility to provide special education and related services still exists during the COVID-19 pandemic. The Statement emphasized that federal funds are available to support remote-based education during the pandemic, that special education and related services must be designed to meet a student's individual needs, and that compensatory education may be required when a school district denies special education services during the pandemic.

² On April 1, 2022, the Court denied the Defendants' motion to dismiss the Second Amended Complaint. United States v. Alabama, 2:20-cv-01971-RDP, ECF No. 81 (N.D. Ala. April 1, 2022).

³ The Division files Statements of Interest pursuant to 28 U.S.C. § 517, which states: "The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States."

III. Prison Litigation Reform Act

The Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3626, enacted in 1996, covers prospective relief in prisons, jails, and juvenile justice facilities. The Division has incorporated the PLRA’s requirements in the remedies it seeks regarding improvements in correctional and juvenile justice facilities.

IV. Compliance Evaluations

At the end of Fiscal Year 2021, the Division was monitoring compliance with CRIPA consent decrees, settlement agreements, and court orders designed to remedy unlawful conditions in numerous facilities throughout the United States. These facilities are:

A. Facilities for persons with developmental disabilities:

Facility or Facilities	Case or Agreement	Court/Date
Centro de Servicios Múltiples Rosario Bellber	<u>United States v. Puerto Rico</u> , 99-1435	D.P.R. 1999
Abilene State Supported Living Center; Austin State Supported Living Center; Brenham State Supported Living Center; Corpus Christi State Supported Living Center; Denton State Supported Living Center; El Paso State Supported Living Center; Lubbock State Supported Living Center; Lufkin State Supported Living Center; Mexia State Supported Living Center; Richmond State Supported Living Center; Rio Grande State Supported Living Center; San Angelo State Supported Living Center; and San Antonio State Supported Living Center	<u>United States v. Texas</u> , A-09-CA-490	E.D. Tex. 2009

B. Juvenile justice facilities:

Facility or Facilities	Case or Agreement	Court/Date
Centro Tratamiento Social Villalba; and CTS Ponce	<u>United States v. Puerto Rico</u> , 94-2080 CCC	D.P.R. 1994
Leflore County Juvenile Detention Center	<u>United States v. Leflore County, Mississippi</u> , 4:15-cv-00059	N.D. Miss. 2015

C. Jails:

Facility or Facilities	Case or Agreement	Court/Date
Orleans Parish Jail	<u>Jones & United States v. Gusman</u> , 2:12-cv-00859	E.D. La. 2012
Grant County Detention Center, Kentucky	2009 Settlement Agreement	N/A
Oklahoma County Jail and Jail Annex, Oklahoma	2009 Settlement Agreement	N/A
Erie County Detention Center and Holding Facility	<u>United States v. Erie County, New York</u> , 09-CV-0849	W.D.N.Y. 2009
Miami-Dade County Detention	<u>United States v. Miami-Dade County, Florida</u> , 1:13-CV-21570	S.D. Fla. 2013
Miami-Dade County Detention	2013 Settlement Agreement	N/A
New York City Jails	<u>Nunez & United States v. City of New York</u> , 1:11-cv-05845	S.D.N.Y 2015
Los Angeles County Jails	<u>United States v. County of Los Angeles, California and Los Angeles County Sheriff</u> , 2:15-cv-05903	C.D. Cal. 2015
Westchester County Jail	2015 Settlement Agreement	N/A
Hinds County Adult Detention Center; Jackson City Detention Center; the Work Center; Henley-Young Juvenile Justice Center	<u>United States v. Hinds County, Mississippi Board of Supervisors</u> , 3:16-cv-00489	S.D. Miss. 2016
Hampton Roads Regional Jail	<u>United States v. Hampton Roads Regional Jail Authority</u> , 2:20-cv-410	E.D. Va. 2020

D. Prisons:

Facility or Facilities	Case or Agreement	Court/Date
Golden Grove Correctional and Adult Detention Facility	<u>United States v. Virgin Islands</u> , 86-265	D.V.I. 1986
Julia Tutwiler Prison for Women Correctional Facility	<u>United States v. Alabama</u> , 2:15cv368	M.D. Ala. 2015
Edna Mahan Correctional Facility for Women	<u>United State v. New Jersey</u> , 3:21-cv-15031	D.N.J. 2021

In addition to regular court status conferences regarding compliance with consent decrees, the Division was also involved in contested litigation. In Jones v. Gusman, 12-cv-00859 (E.D. La.), the Division opposed and litigated the City of New Orleans’ motion for relief from certain court orders pertaining to conditions in the Orleans Parish Jail. After holding a multi-

week evidentiary hearing, the magistrate judge entered a report and recommendation recommending denial of the City's motion on December 7, 2020. ECF No. 1385. That recommendation was adopted in full by the district court on January 25, 2021. ECF No. 1396. The City of New Orleans appealed the district court's order, and that appeal is pending. (5th Cir. No. 21-30072).

V. Termination of CRIPA Cases and Matters

In Fiscal Year 2021, one CRIPA settlement agreement successfully terminated. On October 15, 2020, the United States Attorney's Office for the Southern District of New York notified Westchester County that the Department was terminating its November 2015 settlement agreement with the County involving conditions in the Westchester County Jail because the County had successfully achieved and maintained substantial compliance with the requirements of the agreement. That agreement included provisions regarding (1) protection of jail detainees from harm, including physical harm from use of excessive force by staff, and (2) provision of adequate medical and mental health care.

VI. New CRIPA Investigations

Four CRIPA investigations opened during Fiscal Year 2021.

In October 2020, the Division and the New Jersey United States Attorney's Office opened an investigation into whether the New Jersey Veterans Home at Menlo Park and the New Jersey Veterans Home in Paramus engage in a pattern or practice of violating the rights of veteran residents under the Constitution or other federal law by failing to provide them adequate medical care generally, and during the coronavirus pandemic in particular.

In December 2020, the Division and all three Louisiana United States Attorney's Offices opened an investigation into whether the State is engaging in a pattern or practice of violating the

constitutional rights of convicted prisoners by detaining them at State and local correctional facilities past their release dates, including detaining prisoners who are eligible for immediate release.

On January 7, 2021, the Division opened an investigation into the use of pepper spray on children incarcerated at the Summit View Youth Center in Las Vegas, NV, and the Nevada Youth Training Center in Elko, NV, juvenile correctional facilities run by Nevada.

In September 2021, the Division and all three Georgia United States Attorney's Offices opened an investigation into whether the State of Georgia is engaging in a pattern or practice of violating prisoners' constitutional rights by failing to provide reasonable protection from harm by other prisoners at all of the State's prisons housing close and medium security prisoners.

“Our country was founded on high ideals. Under the Eight Amendment of our Constitution, those who have been convicted of crimes and sentenced to serve time in prison, must never be subjected to ‘cruel and unusual punishments.’ We must ensure the inherent human dignity and worth of everyone – including people who are incarcerated.”

Kristen Clarke, Assistant Attorney General, Civil Rights Division

“Assistant Attorney General Kristen Clarke Delivers Remarks Announcing a Civil Rights Investigation into Conditions in Georgia Prisons” September 14, 2021

VII. CRIPA Findings Reports Pursuant to 42 U.S.C. § 1997b(a)(1)

The Division issued CRIPA findings reports in six investigations during Fiscal Year 2021.

In November 2020, the Division and the United States Attorney's Office for the District of Massachusetts issued a CRIPA findings report about conditions in Massachusetts' prisons.

The report found reasonable cause to believe that the State fails to provide constitutionally

adequate mental health care and supervision to prisoners in mental health crisis. The report further concluded there was reasonable cause to believe that the State prisons' use of prolonged mental health watch under restrictive housing conditions, including its failure to provide adequate mental health care, violates the constitutional rights of prisoners in mental health crisis.

In December 2020, the Division and the United States Attorney's Office for the Middle District of Florida issued a CRIPA findings report about conditions of confinement at the Lowell Correctional Institution and the Lowell Annex (Lowell) in Ocala, FL. The report found reasonable cause to believe that the Florida Department of Corrections fails to keep women prisoners at Lowell safe from sexual abuse by staff. Women have suffered actual harm from sexual abuse and are at substantial risk of serious harm because the systems in place at Lowell discourage prisoners from reporting sexual abuse and allow sexual abuse to occur undetected and undeterred.

In December 2020, the Division and the United States Attorney's Office for the Southern District of Iowa issued a CRIPA findings report about conditions at Glenwood Resource Center ("Glenwood"). That report found reasonable cause to believe that Iowa violates the federal rights of the people living at Glenwood by exposing them to uncontrolled and unsupervised physical and behavioral experimentation, inadequate physical and behavioral health care, and inadequate protections from harm.

In January 2021, the Division and the United States Attorney's Office for the District of New Jersey issued a CRIPA findings report regarding conditions in the Cumberland County Jail in Bridgeton, New Jersey. The report concluded there was reasonable cause to believe that the County fails to take constitutionally adequate measures to prevent inmate suicides and provide adequate mental health care.

In April 2021, the Division issued a CRIPA findings report about the Santa Rita Jail in Alameda County, California. The Division concluded there is reasonable cause to believe Santa Rita Jail fails to provide constitutionally adequate mental health care to prisoners with serious mental health needs, including those at risk of suicide. The report also concluded that the Santa Rita Jail violates the Eighth and Fourteenth Amendment rights of prisoners with serious mental illness through its use of prolonged restrictive housing. The report further concluded that Alameda County fails to provide adults with mental health disabilities services in the most integrated, community-based, settings appropriate to their needs in violation of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

In September 2021, the Division issued a CRIPA findings report about the San Luis Obispo County Jail in San Luis Obispo, California. The Division concluded there is reasonable cause to believe that the Jail violates the constitutional and statutory rights of prisoners by its: (1) failure to provide constitutionally adequate medical care to prisoners; (2) failure to provide constitutionally adequate mental health care to prisoners; (3) use of prolonged restrictive housing under conditions that violate the constitutional rights of prisoners with serious mental illness; and (4) failure to prevent, detect, or correct use of excessive force that violates the constitutional rights of prisoners.

VIII. Investigation Closures

In Fiscal Year 2021, the Division did not close any CRIPA investigations.

IX. Technical Assistance

Where federal financial, technical, or other assistance is available to help jurisdictions correct deficiencies, the Division advises responsible public officials of the availability of such aid and arranges for assistance when appropriate. The Division also provides technical

assistance through the information provided to jurisdictions by the Division's expert consultants at no cost to state or local governments. During the course (and at the conclusion) of investigatory tours, the Division's expert consultants often meet with officials from the subject jurisdiction and provide helpful information regarding specific aspects of their programs. These oral reports permit early intervention by local jurisdictions to remedy highlighted issues before the conclusion of the investigation.

To ensure timely and efficient compliance with settlement agreements, the Division has also issued post-tour compliance assessment letters to apprise jurisdictions of their compliance status. These letters also routinely contain technical assistance and remedial recommendations.

X. Responsiveness to Allegations of Illegal Conditions

During Fiscal Year 2021, the Division reviewed allegations of unlawful conditions of confinement in public residential facilities from a number of sources, including individuals who live in the facilities, relatives of persons living in facilities, former staff of facilities, advocates, concerned citizens, media reports, and referrals from within the Division and other federal agencies. The Division responded to 2,720 CRIPA-related citizen complaint letters and electronic communications, including 1,262 communications made through the Division-wide electronic complaint portal. The Division responded to 243 CRIPA-related inquiries from Congress and from writers directing their inquiries to the President, an increase of 115 from the prior fiscal year.

XI. Conclusion

In Fiscal Year 2021 and beyond, the Division intends to continue to enforce CRIPA to identify and remedy unlawful conditions that harm individuals in residential institutions run by or on behalf of state or local governmental entities.



U.S. Department of Justice

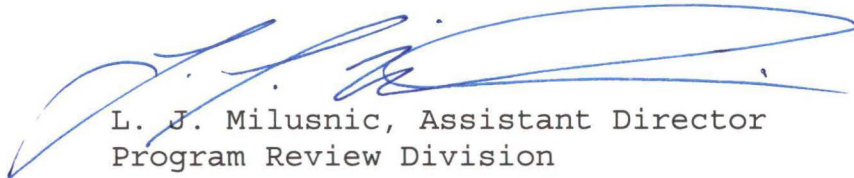
Federal Bureau of Prisons

Washington, DC 20534

September 13, 2021

MEMORANDUM FOR STEVEN ROSENBAUM, CHIEF
SPECIAL LITIGATION SECTION
CIVIL RIGHTS DIVISION, DOJ

FROM:

A handwritten signature in blue ink, appearing to read "L. J. Milusnic", is written over the printed name and title.

L. J. Milusnic, Assistant Director
Program Review Division

SUBJECT:

Response for the Attorney General's Report to
Congress for FY 2021 Pursuant to the Civil Rights of
Institutionalized Persons Act of 1997

The Bureau of Prisons appreciates the opportunity to report our actions during FY 2021 as related to the Attorney General's Report to Congress for FY 2017 Pursuant to the Civil Rights of Institutionalized Persons Act of 1997.

The following is provided for insertion into the report:

FEDERAL BUREAU OF PRISONS

The Federal Bureau of Prisons (Bureau) adheres to the correctional standards developed by the American Correctional Association (ACA), the Prison Rape Elimination Act (PREA) of 2003 (Public Law 108-79; September 4, 2003), and 28 CFR Part 115, Prison Rape Elimination Act National Standards. These standards cover all facets of correctional management and operation, including the basic requirements related to life/safety and constitutional minima, which includes provisions for an adequate inmate grievance procedure, and a zero tolerance toward all forms of sexual activity, including sexual abuse and sexual harassment.

ACA standards have been incorporated into the Bureau's national policy, as well as the program review guidelines. Currently, the

Bureau's 122 institutions, the agency's two training centers (Staff Training Academy and Management and Specialty Training Center), and the Bureau's Headquarters are accredited by the Commission on Accreditation for Corrections.

ACA accredited institutions are subject to interim audits by the ACA Commission to monitor standards compliance. Particular attention is given in the vital areas of inmate rights, healthcare, security, safety, and sanitation. The standards are reviewed at least 10-14 months for continued compliance, by institutional staff, through the operational review process. In addition to operational reviews, program reviews are conducted at all federal prisons in each discipline at least once every three years to monitor policy compliance. In FY 2021, there were 54 program reviews conducted by Bureau examiners which included a review of ACA standards. The decrease in program reviews is a result of COVID-19.

PREA audits for federal institutions began on August 20, 2013. As such, the PREA requirement to ensure at least 1/3 of the Bureau's federal institutions were audited at least once each year for the first 3-year PREA cycle (August 20, 2013, to August 19, 2016) and the second 3-year PREA cycle (August 20, 2016, to August 19, 2019) were met. The third 3-year PREA cycle began on August 20, 2019, and will end on August 19, 2022. For PREA Year 2021, 54 audits were conducted, which includes rescheduled PREA audits from PREA year 2020, postponed due to COVID-19. Despite the delays due to the COVID-19 pandemic, all PREA audits will be completed during the three-year time frame.

The Bureau utilizes a medical classification system that identifies each inmate's medical and mental health needs, along with the forensic needs of the court. Additionally, the Bureau assigns inmates to facilities (identified as Care Levels 1 through 4) with appropriate in-house and community health care resources. Effective June 2017, Accreditation Association Ambulatory Health Care (AAAHC) initiated surveying all Care Level 2 & 3 institutions. The accreditation process is a thorough, organization specific, on-site review by surveyors experienced in healthcare provided in a correctional setting. Currently, 114 institutions have been accredited utilizing AAAHC. Marianna's accreditation was delayed due to hurricane damage and is now delayed due to travel restrictions of COVID-19. Estill's accreditation survey has been delayed due to tornado damage and will be delayed until the population returns.

If you require additional information, please contact the Program Review Division's Special Assistant, Christopher Rivers, who may be reached at (202)307-2583.



U.S. Department of Veterans Affairs
Office of General Counsel

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In Reply Refer To: 023

February 7, 2022

Steve Rosenbaum
Chief, Special Litigation Section Civil Rights Branch
U.S. Department of Justice
4 Constitution Square
150 M St. N.E.
Washington, D.C. 20530

RE: Information for inclusion in the Attorney General's Report to Congress
on the Civil Rights of Institutional Persons Act (42 U.S.C. § 1997f)

Dear Mr. Rosenbaum:

Thank you for the opportunity to submit a contribution to the Attorney General's Report to Congress pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA). The Department of Veterans Affairs believes we meet all existing promulgated standards for CRIPA and, in so doing, ensure the constitutionally guaranteed rights of our patients and residents. The enclosed information is provided for inclusion in your report.

Sincerely yours,

Richard J. Hipolit
Deputy General Counsel, Veterans Programs

Enclosure

DEPARTMENT OF VETERANS AFFAIRS

The Department of Veterans Affairs (VA) has multiple ongoing programs to protect the civil rights of patients in its facilities. VA regulations published at 38 C.F.R. 17.33 identify the rights of patients including patients and residents in VA hospitals, domiciliaries, and nursing homes. All patients or their representatives are advised of these rights on their admission to a facility and provided a copy of a statement of those rights. Id. at § 17.33(h). The statement of patients' rights is required to be posted at each nursing station, and all VA staff working with patients receive training regarding these rights. Id.

The applicable regulations establish that the specified patients' rights "are in addition to and not in derogation of any statutory, constitutional or other legal rights." Id. at § 17.33(i). The regulations set forth specific procedures for VA to follow when restricting any rights. Id. at § 17.33(c). The regulation also establishes grievance procedures for patients to follow for any perceived infringement of patients' rights described therein or concerning any other matter on behalf of the patient or others. Id. at 17.33(g). In addition to the regulations, the Veterans Health Administration (VHA) has issued a directive prohibiting discrimination in any and all VHA programs, programs receiving VA funding or any VA jurisdictions based on race, color, religion, national origin, Limited English Proficiency (LEP), age, sex (includes gender identity and transgender status), sexual orientation, pregnancy, marital and parental status, political affiliation, disability, genetic information. VHA policy also prohibits harassment of any person or retaliation against any person who filed a charge of discrimination based on any of these criteria. VHA Directive 1019, *Nondiscrimination in Federally Conducted and Federally-Assisted (External) Programs* (May 23, 2013).

VA further protects patients' civil rights through its program of hiring individuals to serve as Patient Advocates. The Patient Advocacy Program promotes a positive Veteran experience. "Needs, preferences, priorities, and values of Veterans are considered in a proactive, convenient, and timely manner consistent with law, professional standards, and VA policy." VHA Directive 1003.04, *VHA Patient Advocacy Program*, paragraph 4 (February 7, 2018). The advocates assist patients in understanding their rights and by presenting the patient's perspective of the problem and desired resolution. VA also facilitates the representation of patients by external stakeholders, including, but not limited to, Veterans Service Organizations and state protection and advocacy systems, which seek to represent patients in VA facilities. Id. at paragraph 5d (7).

In addition, patients are also protected by VA regulations requiring the voluntary informed consent of patients or, where applicable, their surrogates before any medical treatment or procedure recommended to them is undertaken. 38 C.F.R. § 17.32.

VA believes the receipt of high-quality medical care is the right of all patients and takes action to achieve its provision through a number of internal mechanisms. VA operates ongoing active peer review programs designed to discover and correct

problems in the provision of care. Additionally, pursuant to Presidential Executive Order 12862 (1993), which requires patient surveys and use of the resultant feedback to manage agency operations, patients are periodically surveyed to determine their satisfaction with the health care provided to them. Also, the VA Office of the Inspector General and the VA Office of the Medical Inspector conduct investigations of complaints concerning the quality of health care. All of these mechanisms serve to protect the civil rights of patients in facilities operated by VA.

(VA participates in two grant-in-aid programs with the states to provide construction and renovation funds and to provide per diem payments for care of eligible Veterans in State homes; however, these homes are not Federal facilities).