When dealing with issues of isolation and quarantine, legal considerations may be forgotten in the midst of clinical concerns. However, as there are numerous laws and regulations that apply to quarantine matters, these issues must be considered. Additionally, while holding an individual under quarantine, it is critical to ensure that their rights are maintained and respected. This chapter reviews the various laws that govern quarantine matters in the United States and outlines the rights of individuals being quarantined.

**Jurisdiction**

In the United States, issues of isolation and quarantine typically fall under a state's jurisdiction. However, state laws are not the only laws governing these types of issues. Federal laws and regulations have been issued that delineate the circumstances under which federal quarantine orders may be authorized. Additionally, as a member state of the World Health Organization (WHO), the United States must also follow the requirements of the International Health Regulations (IHRs). This section breaks down the requirements of each jurisdiction and when each set of laws and regulations applies.
WHO AND THE INTERNATIONAL HEALTH REGULATIONS

In 2005, in response to the 2003 severe acute respiratory syndrome (SARS) outbreak, the World Health Assembly approved the revised IHRs. The IHRs are an international treaty agreed upon by 196 countries, including all of the member states of the WHO. As one of these member states, the United States has agreed to follow these regulations. The goal of the IHRs is to prevent the international spread of disease and provide a public health response to such an event. Rather than being limited to any specific disease, the IHRs are general and apply to any “illness or medical condition, irrespective of origin or source, which presents, or could present, significant harm to humans.” In addition to establishing public health surveillance and response standards, the IHRs also contain a notice requirement. Under these regulations, if an event occurs that is determined to be a Public Health Emergency of International Concern (PHEIC), then the country involved must notify the WHO within 24 hours. In the United States, all PHEIC notifications are made by the US IHR National Focal Point (NFP), within the office of the Assistant Secretary for Preparedness and Response (ASPR) within the Department of Health and Human Services (HHS). State and local health departments are responsible for maintaining surveillance and reporting nationally notifiable diseases/conditions to the federal government. By notifying the state and local health departments of notifiable diseases, hospitals, health care facilities, and quarantine centers are helping ensure that any necessary reporting will occur.

FEDERAL QUARANTINE

The federal government has a significant interest in maintaining the health and well-being of US citizens. In furtherance of that interest, the federal government has the authority to take steps to prevent the transmission, introduction, or spread of communicable diseases through statutory and regulatory mandates. Additionally, executive orders are issued to specify those diseases that might be considered for quarantine. In carrying out these laws, regulations, and orders, different operational mechanisms are used, including federal quarantine stations.

The federal laws governing quarantine and isolation are found in the
Public Health Service (PHS) Act (42 United States Code 264). Enacted in 1944, this law created the federal government’s authority to isolate and quarantine individuals. The statute calls for the secretary of HHS to create regulations to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States, or from one state into another. These statutorily mandated regulations only apply to communicable diseases specified by the president through executive orders.

The statute also differentiates the requirements for detaining or examining foreign or interstate travelers. For interstate travelers, any individual who is reasonably believed to be infected with a communicable disease may be apprehended or examined if the following two conditions are met. First, the disease must be in a qualifying stage, which is defined as being either in a precommunicable (if the disease would be likely to cause a public health emergency if transmitted to other individuals) or communicable stage. Second, the individual believed to be infected must be either moving from one state to another, or be “a probable source of infection to individuals who, while infected with such disease in a qualifying stage, will be moving from a state to another state.” If those requirements are met, then the individual may be examined and, if found to be infected, detained for such a time and in such a manner as is reasonably necessary. For foreign travelers, the qualifying stage and interstate travel requirements do not need to be met in order to apprehend, detain, examine, or conditionally release an individual. This statute also states that while state law will generally govern matters of quarantine, if there is a conflict between state and federal law, the federal law will preempt the state law.

To help enforce the PHS Act, HHS created regulations that give the Centers for Disease Control and Prevention (CDC) the authority to carry out the federal government’s quarantine powers. These regulations apply only to federal quarantine orders, not state or local quarantine orders. The regulations were most recently updated in January 2017 to include revisions based on the response to the 2014 Ebola outbreak.

The CDC regulations are split into two parts: part 70 covers interstate introduction, transmission, and spread of communicable disease, and part 71 covers foreign introduction, transmission, and spread of commu-
nicable disease. Both parts contain regulations relating to the manner in which the CDC can monitor travelers for disease on airlines, in airports, and at other ports of entry. The regulations also require that an individual under a federal isolation or quarantine order may not be permitted to travel between states without a travel permit issued by the CDC. This requirement is of note because it can also apply to state and local quarantine orders, if the state or local authority with jurisdiction requests federal assistance. If an individual requests a travel permit and is denied, then he or she may appeal the decision to the CDC director.

According to the regulations, in order to isolate or quarantine someone, there must be a reasonable belief based on specific facts that would lead a public health officer to conclude that the individual has been exposed to a communicable disease and is, or may be, harboring the infectious agent of that disease in his or her body. In order to determine those facts, the individual in question must undergo a medical exam. On the issuance of a federal quarantine or isolation order, written notice must be given to the quarantined individual informing them of their rights. The individual must also be informed that an automatic reassessment of the quarantine order will occur within 72 hours of being served the order. If, as a result of the reassessment, a determination is made for more detention time, then the individual can request an additional review.

As referenced above, the CDC may apprehend, detain, and examine individuals to prevent the spread and transmission of certain communicable diseases. These diseases are specified by the president through executive orders. Since the passing of the PHS Act in 1944, seven such executive orders have been issued. According to Executive Order 13295 and its amendments, the following diseases justify the use of federal quarantine and isolation measures:

- Cholera;
- Diphtheria;
- Infectious tuberculosis;
- Plague;
- Smallpox;
- Yellow fever;
• Viral hemorrhagic fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named);

• Severe acute respiratory syndromes (e.g., SARS and Middle East respiratory syndrome [MERS]), diseases associated with fever and signs and symptoms of pneumonia or other respiratory illness, capable of being transmitted from person to person, and causing, or having the potential to cause, a pandemic, or, on infection, are highly likely to cause mortality or serious morbidity if not properly controlled; and

• Influenza caused by novel or reemergent influenza viruses that are causing, or have the potential to cause, a pandemic.

This list only applies to federal isolation and quarantine measures, not state measures. States are not limited by this list and can create their own list of diseases that call for isolation or quarantine.

As part of the CDC’s quarantine authority, federal quarantine stations were created across the United States to serve as barriers to the introduction of communicable diseases into the country. There are twenty such quarantine stations located at major ports of entry and land-border crossings where the majority of international travelers arrive. If an individual is reported to be ill on an international flight or other form of travel into the United States, then a CDC health officer at the quarantine station will determine whether that individual may enter the United States. Additionally, CDC health officers inspect cargo and animals/products at the quarantine stations to ensure that any threats or vectors of communicable diseases do not enter the country.

STATE AND LOCAL QUARANTINE

Since the passing of federal quarantine laws, federal quarantine powers have very rarely been invoked. As the federal rules apply only to communicable disease incidents crossing international or state borders, state and local laws govern most situations of isolation and/or quarantine. States have the power to govern quarantine through the broad police powers given to the states through the Tenth Amendment to the US Constitution. These police powers give states the authority to protect the
health and welfare of the public, including the authority to take precautions such as quarantine.

Quarantine laws vary significantly among states, particularly in regard to the specific rights that are enumerated for individuals being quarantined. For example, only 14 states allow quarantined individuals to choose their own health care provider. Additionally, states differ in whether they place quarantine powers with the state or local health departments. In the State of Nebraska, both the state department of health and human services and the local public health departments have the authority to issue quarantine orders.

Since state laws can vary considerably, please be sure to check with your state or local public health department to determine what the laws are in your jurisdiction.

Patient and Personal Rights

While both federal and state governments have broad authority to prevent the spread of communicable diseases, individuals’ constitutional rights must still be upheld and protected. One of the most critical of these rights is an individual’s right to due process. Under the Fifth and Fourteenth Amendments, federal and state governments are prohibited from depriving a citizen of “life, liberty, or property, without due process of law.” In order to justify depriving an individual’s liberty by placing them in quarantine, the government must show a compelling interest in protecting the public health by preventing the spread of disease. Also under these amendments, individuals are given equal protection rights that, for quarantine purposes, mean that any quarantine or isolation measures must be nondiscriminatory in their scope and application.

Right to Counsel

Under the CDC regulations, an individual who is subject to a federal order for quarantine, isolation, or conditional release may request a medical review of the order. This review is intended to determine whether the CDC has a reasonable belief that the individual is infected with quarantinable communicable disease. At this review, the quarantined
individual is entitled to be represented by an advocate, such as an attorney. In the event that the individual is indigent, meaning their annual family income is below 200% of the applicable poverty guidelines, then the government will appoint an attorney at its expense to represent the individual.

For state quarantine orders, an individual’s right to counsel varies by state. As of this writing, only 23 states have explicitly granted a right to counsel for quarantined individuals. As the right to counsel is considered a basic due process right under the Constitution, it is a best practice to ensure that quarantined individuals have a right to an attorney. If you are unsure as to what your local state laws may be regarding this issue, please consult with your state or local health department.

RIGHT TO A HABEAS PETITION

When an individual is detained by the government, a petition for a writ of habeas corpus may be granted so that the individual may seek relief from their detention. The right to a habeas petition is guaranteed through the due process clause of the Fifth Amendment. While these types of petitions are predominantly used in criminal detention situations, they are also relevant in matters of quarantine. If a petition for a writ of habeas corpus is granted, then a hearing is held to determine whether there is sufficient legal cause to justify the individual’s detention. The federal regulations explicitly state that nothing in the quarantine order can interfere with an individual’s constitutional right to judicial review, meaning the right to a habeas petition. However, there is no consistent procedure for individuals seeking a writ of habeas corpus for state quarantine orders. Processes vary across states, with some states specifically addressing habeas rights, and other states not addressing them at all. To determine the process for seeking a petition for a writ of habeas corpus in your state, consult your state laws and regulations.

RIGHT TO FOOD, MEDICINE, AND OTHER NECESSITIES

Under the CDC regulations, an individual who has been apprehended or held in quarantine or isolation will be provided adequate food and water, appropriate accommodation, appropriate medical treatment, and
means of necessary communication. These provisions apply only to federal quarantine orders.

As with the other personal rights of quarantined individuals, state law varies regarding these provisions. While some states provide all medical care, lodging, and food, some states require individuals to pay for their own food, accommodations, and medical care. If you are unsure as to how your state handles these provisions, please consult your state laws and regulations.

Additionally, there is no provision for a right to compensation under the regulations associated with federal quarantine orders. In the case of state and local quarantine orders, the laws vary. Only 20% of states provide employment protection for individuals who cannot work while under quarantine or isolation. Please check your local or state laws to determine whether quarantined individuals are compensated in your jurisdiction.

**Practical Guidance**

When dealing with an isolation or quarantine situation, it is important to keep in mind that every situation is different and that each state handles things differently. As federal quarantine orders have rarely been issued in the past, it is most likely that any quarantine order you face will be coming from a state or local level. With that in mind, ensure that you can readily access correct and up-to-date contact information for your local public health department and state health department. Those entities will be best able to give you clarifying information regarding your specific jurisdiction’s rules and processes. If it is determined that the situation has escalated to the point that it meets the CDC statutory standards for federal quarantine, contact the CDC quarantine station for your jurisdiction. A map of the quarantine stations and their contact information can be found at https://www.cdc.gov/quarantine/quarantinestationcontactlistfull.html.