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A Way Forward for Vaccination Passports

Private Sector Should Take the Lead with a Limited Role for Government

By Joel M. Zinberg*

Countries around the world have announced plans to implement vaccine passports—electronic or paper credentials that show the person has immunity to COVID-19 either through vaccination against the SARS-CoV-2 virus that causes COVID-19 or through recovery from the disease. Should the U.S. follow suit? Answering that question requires an examination of the possible uses of vaccine passports, the need for them as the pandemic and vaccination efforts evolve, and the proper role of government, if any, in requiring and regulating such documents.

The most obvious role for vaccine passports—perhaps, more accurately called immunity passports—is in facilitating travel. Other countries and international bodies are already moving forward with passport proposals, which Americans traveling internationally will need to account for.

The European Union (EU) has announced plans to have digital and paper passports—so called “green certificates”—ready by June so that travelers entering EU countries can avoid quarantine requirements.¹ Countries across the continent, with the notable exception of France, are pushing the certificates to jump start tourism.² Japan and China also plan on issuing digital health certificates to facilitate travel.³ Britain is considering similar plans.⁴ The International Air Transport Association (IATA) is working on the IATA Travel Pass, a digital platform to inform travelers what tests, vaccines and other measures they need, and give them the ability to share their test and vaccination results.⁵

Immunity passports can also be used by businesses that want to ensure a safe workplace and minimize employee absences due to COVID-19 illness. Businesses may also seek a competitive advantage by reassuring their patrons and workers that their establishment is a safe place to shop and work.

There is no federal statutory, regulatory or constitutional barrier to private entities requiring proof of immunity as long as it is done in a non-discriminatory way that accommodates medical contraindications to vaccination and genuine religious beliefs.⁶ Yet nothing bars states from regulating passports. Two governors recently issued executive orders limiting passports—Texas prohibits government organizations from requiring them and Florida bars both government and private entities from doing so.⁷

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Some countries are utilizing passports internally. For instance, Israel, which leads the world in vaccinations, instituted a digital “green pass” program in February that enables holders to enter theaters, gyms, and indoor dining. Israeli researchers believe the program has incentivized people to be vaccinated so that they can resume normal activities and that the widespread, public use of the passes will reassure people who are hesitant about being vaccinated that the shot is safe.⁸

The Immunity Rate Will Influence the Need for Passports. Ultimately, the goal of a passport system is to safely resume business, normal activities, and travel for those who are immune instead of maintaining uniform restrictions on everyone, regardless of their risk for infection. Yet, if enough people are immune so that additional disease transmission becomes unlikely, then passports will no longer be needed to distinguish between those who are susceptible to infection and those who are not. Given the number of people vaccinated, the pace of vaccinations, the now-ample supply of vaccine doses, and the number of people who have natural immunity because they had COVID-19 and are now recovered, we may soon reach herd immunity—roughly 70-75 percent of the population. That would allow resumption of normal activities without continued, general precautions, thereby obviating the need for passports.

At this time, the U.S. has fully vaccinated 19 percent of the population and provided at least one dose to 32 percent.⁹ A new study from the Centers for Disease Control and Prevention shows that both the Pfizer-BioNTech and Moderna mRNA vaccines, which account for the lion’s share of vaccines administered in the U.S., reduce the risk of infection with SARS-CoV-2 by 80 percent following a single vaccine dose (the full two dose regimen reduced the risk by 90 percent).¹⁰ Hence, a third of the population has good vaccine immunity.

Perhaps even more important is who has been immunized. COVID-19 presents minimal risk to people under 18. Only 246 people under 18 have died—0.05 percent of total COVID-19 deaths.¹¹ Twenty-three percent of the population 18 and older has been fully vaccinated and 40 percent have received at least one dose.¹² That means that two out of five adults have vaccine protection. Moreover, in the especially vulnerable population of 65 and older that accounts for 81 percent of COVID-19 deaths,¹³ 55 percent are fully vaccinated and 75 percent have received at least one dose.¹⁴

As of this writing, there are nearly 31 million confirmed COVID-19 cases in the U.S.¹⁵ Since the true number of infections may be eight times higher than that, there could be over 200 million recovered people—about two thirds of the total population—with natural immunity.¹⁶ A March 2021 Danish study found that recovery from COVID-19 was 81 percent effective in preventing reinfection and that the protection lasted at least six months.¹⁷ While the study suggested that protection for people 65 and older may be lower, at 47 percent, a February 2021 English study of care homes with elderly populations found previous infection conferred 96 percent protection.¹⁸ And, as noted, there are high vaccination rates in the 65 and older population.

It is possible that COVID-19, like influenza, will become a disease that recurs annually as the responsible virus mutates. Thus far, the vaccines have been effective against the known

SARS-CoV-2 variants, so COVID-19 may die out. If it recurs in subsequent years, new vaccines will have to be developed and the need for vaccine passports will have to be reassessed.

The Private Sector Should take the Lead. The White House has indicated that there will be no federal mandate for vaccine passports. Commendably, the administration has said that the private sector should take the lead in any such initiative. Press secretary Jen Psaki told reporters, “we want to encourage an open marketplace with a variety of private sector companies and nonprofit coalitions developing solutions.”¹⁹ This is welcome news, since a government mandate raises the specter of government-administered identity cards and medical records with all the attendant concerns about individual privacy. In addition, private entities are better situated than the government to determine when and where passports might be useful and are better equipped to create passport solutions and applications.

As noted above, businesses have economic and reputational incentives to ensure safe workplaces and establishments. But conditions vary between different types of business, from region to region, and even between similar businesses in the same city. Enterprises like meat packing plants, where workers are in close proximity, present different worker safety concerns than white-collar offices where workers can easily distance. Medical facilities that provide care for vulnerable patients, and where workers are exposed to illness, present unique challenges.

Each business is best positioned to determine its particular situation and whether immunity passports are right for its circumstances. If its clientele demands the reassurance that passports provide, a business should be free to utilize them. And if customers resent being forced to be vaccinated and show a credential, a business will choose to forego passports.

The Federal Government’s Role. Nevertheless, deferring to the private sector does not completely foreclose the possibility of a government role. Should the demand for passports be widespread, the U.S. government could facilitate the adoption of standards that maximize interoperability, accommodate a wide variety of software solutions, provide data security and privacy protections, and meet international standards to expedite travel and commerce. This is particularly the case with international travel, since so many countries appear to be contemplating requiring proof of immunity. Both historically and under the Constitution, the federal government has the job of regulating the country’s borders, so only the federal government can coordinate standards with other nations.

The federal government could also play a role domestically by promulgating common software standards. At least 17 private vaccine credential initiatives are already underway.²⁰ Some, like the Vaccination Credential Initiative, involve over 200 companies and non-profit organizations, including such heavyweights as Microsoft, Oracle, and the Mayo Clinic. New York State has launched the Excelsior Pass, which will allow New Yorkers to prove they have been vaccinated or have recently tested negative by showing a machine readable QR, or Quick Response, code.²¹ The program is built on the IBM Digital Health Pass,

which utilizes blockchain technology to keep IBM or businesses from accessing private medical records.²²

There is no guarantee that any one system will work with other systems or be universally accepted. For example, other states may choose not to accept New York's Excelsior Pass or may utilize alternate and incompatible technology. And businesses that elect to utilize a vaccination verification solution will need to have an application that all their employees and patrons can use and provide trustworthy results. Physicians who suffered through the early, nationwide adoption of electronic medical records experienced a profusion of incompatible programs so that one hospital was unable to read records from another hospital, thereby defeating the reason why electronic records were originally proposed.

The federal government need not—and should not—attempt to develop and set its own common standard. Multiple technology companies with far more expertise than the government are already hard at work on developing solutions and standards. But the government can accept and promulgate a common standard from the best of these developers that will be universally accepted and that multiple developers can utilize to ensure compatibility of their solutions and data trustworthiness. Any such standard would likely be structured so that applications could utilize QR codes, which are already familiar to most people.

Conclusion. The private sector can best determine the need for vaccine passports and the forms they should take. Private entities are already well along in developing passport solutions. The government can provide an important service by endorsing a privately developed standard for passports should it be needed domestically or for international travel.

Notes

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- ¹² Center for Disease Control and Prevention, COVID Data Tracker.
- ¹³ Center for Disease Control and Prevention, National Center for Health Statistics, Weekly Updates by Select Demographic and Geographic Characteristics, Provisional Death Counts for Coronavirus Disease 2019 (COVID-19), Sex and Age.
- ¹⁴ Center for Disease Control and Prevention, COVID Data Tracker.
- ¹⁵ Ibid.
- ¹⁶ Jason Hanna and Christina Maxouris, “Coronavirus hospitalizations hit another record as experts warn Thanksgiving gatherings could worsen the pandemic,” CNN, November 26, 2020, <https://www.cnn.com/2020/11/26/health/us-coronavirus-thursday/index.html>.
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