

Perspective

“Vaccine Passport” Certification — Policy and Ethical Considerations

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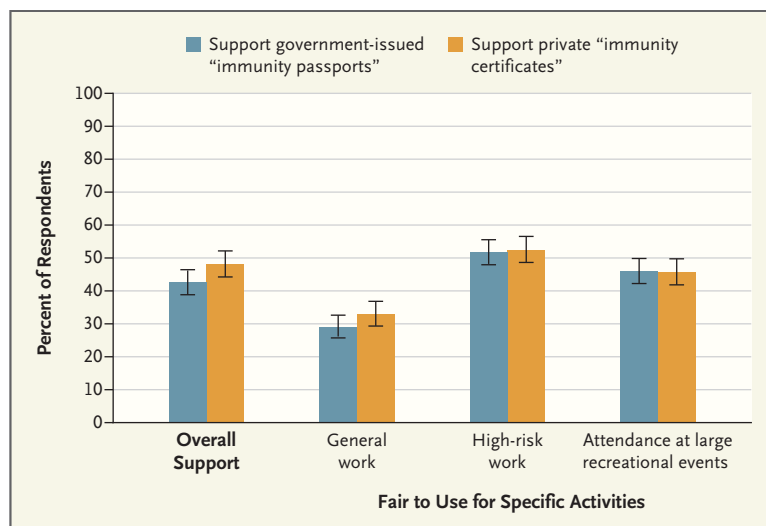
As the Covid-19 pandemic enters its next phase, fervent desires to return to normalcy coupled with the rollout of efficacious vaccines have intensified discussions of “vaccine pass-

ports” — certifications of vaccination that reduce public health restrictions for their bearers. The Biden administration, the British government, and the European Union are currently considering their feasibility; Australia, Denmark, and Sweden have committed to implementation; and Israel, which leads the world in per capita vaccination, is already issuing “green passes” to vaccinated residents. Although travel eligibility has been the primary focus to date, some use of passports to regulate access to social and recreational gatherings, workplaces, or schools appears imminent; Israel’s green passes, for instance, permit entry to otherwise restricted sites such as hotels, gyms, restaurants, theaters, and music

venues, and New York’s “Excelsior Pass” permits attendance at theaters, arenas, event venues, and large weddings.

The core rationale of these programs is that public health restrictions that limit freedoms and socially valuable activities should be tailored to verifiable risk. In general, such tailoring is not a controversial goal: it has long been a central principle of civil rights law and public health practice. The case for tailoring restrictions is especially compelling when the restrictions are harsh, when widespread public sentiment demands some relaxation, and when relaxing the restrictions would most likely be safe for some identifiable people but not for everyone.

Using Covid-19 vaccine passports to tailor restrictions, however, has drawn staunch opposition based on several weighty concerns.¹ First, while vaccine supply remains limited, privileging people who are fortunate enough to have gained early access is morally questionable. Second, even after supply constraints ease, rates of vaccination among racial minorities and low-income populations seem likely to remain disproportionately low; relatedly, if history is a guide, programs that confer social privilege on the basis of “fitness” can lead to invidious discrimination. Third, the extent of protection conferred by vaccination, particularly against new variants, is not yet well understood, nor is the potential for viral transmission by people who have been vaccinated. Fourth, privileging the vaccinated will penalize people with religious or philosophical objections to vaccination. Finally, we lack a consen-



Support for Immunity Privileges and Perceived Fairness of Their Use by Activity in a Nationally Representative Sample of 1315 People.

sus approach to accurately certifying vaccination.

The public appears to be deeply divided on the appropriateness of immunity privileges. Last summer, we elicited views from a nationally representative panel.² Support for certification programs based on positive tests for antibodies to Covid-19 was almost evenly split (see graph). Moreover, in contrast with views on many other pandemic-control policies, the division of opinion on immunity passports cut across ideological, racial, and socioeconomic lines. The survey was conducted during an earlier phase of the pandemic and did not address vaccination-acquired immunity explicitly, although more recent surveys that have done so have also revealed deeply divided views.³

The mixed views and range of competing arguments suggest that it would be precipitous — and extremely unlikely in the United States — to adopt an official government policy requiring widespread use of vaccine passports.

On the other hand, we believe the objections raised fall short of justifying a ban on any and all uses of vaccine certification (which some commentators have proposed). Access to vaccines is increasing rapidly, with special efforts being made to reach disadvantaged groups. Although better understanding is needed of the nature and degree of immunity that vaccination confers, it seems clear enough that risk — especially for severe disease — is dramatically reduced. Mechanisms for reliable and accurate certification are important. But development of such mechanisms is largely a technical issue — one that some leading technology companies are addressing — and it should not completely block an otherwise sensible policy. Finally, requiring people who decline vaccination to bear some consequence for their refusal seems only fair, especially if, collectively, such hesitancy puts herd immunity out of reach.

Thus, rejecting policy extremes — a broad mandatory public

scheme or a prohibition on all private uses of certification — is a relatively easy call. But how should policymakers navigate the large and complex space in between? What is either acceptable or optimal can vary substantially by context. Two features of this landscape are particularly important for evaluating the appropriateness of policy moves: the nature of privileged activities and the identity of the regulator.

An important starting point is distinguishing passports from mandates. When government conditions participation in essential activities such as work or education, certification essentially functions as a mandatory vaccination program. The legal and ethical perils of a government mandate for SARS-CoV-2 vaccines at this time have been well reviewed elsewhere.⁴ Therefore, we focus here on policy uses of vaccine certification other than having the government itself restrict physical access to essential settings such as workplaces, schools, and health care institutions.

The “passport” concept applies most obviously to travel. Federal and state authorities currently impose quarantine requirements on people who cross state or international borders. Most such policies do not make exceptions for vaccinated travelers. However, some states are considering doing so. The Centers for Disease Control and Prevention recognizes vaccination as grounds for lifting quarantine for people exposed to Covid-19 infection; and for travel from most countries, the agency has recommended lifting restrictions on entrants who have recovered from Covid-19.⁵ It seems only a matter of time before the same policies would apply to

travelers who can show proof of completed vaccination.

In taking the lead on vaccination-related travel policy, government can start by establishing standards for reliable documentation of vaccination. Such standards are likely to emerge relatively soon from public-private partnerships in the travel sector, and then spread to other settings.

Those other settings include social and recreational gatherings. Here, the case for government control is weaker, because frontline policy setting and implementation more naturally fall to private actors. Allowing sports leagues, concert and sporting venues, clubs, restaurants, and bars some latitude to set rules that determine access on the basis of customers' vaccination status would be reasonable; doing so may also serve wider efforts to encourage vaccine uptake. Although not in the driver's seat, government will have to help steer. Private actors need standards and bounds, including clear directives barring uses of vaccine certification that constitute unlawful discrimination. More generally, government can help to mitigate inequities arising from private certification by boosting the supply and distribution of vaccines and redoubling efforts to reach underserved populations.

Government guardrails are especially important when private policies affect employment oppor-

tunities. Federal law requires employers that mandate vaccination to reasonably accommodate workers who have sincerely held religious objections. Also, to avoid running afoul of disability discrimination laws, employers' vaccination policies must be based on actual risk to workers' or customers' health.¹ As certification programs proliferate, additional guidance will be needed, along with diligent enforcement of rules, including attentiveness to complaints and whistleblower reports.

Another key role for government is to ensure that architects of certification rules have ready access to the best and most current scientific information on vaccine effectiveness and limitations. In distilling this knowledge, government should recognize that its primary goal in guiding private actors is not complete elimination of risk; rather, the social complexity of Covid-19 requires guidance geared to gradations of risk that various actors might reasonably want to avoid.

Finally, flexible adaptation is key. The past year has taught us that pandemic policies that are sensible one month may need to be rethought a month later. Rational and ethical vaccine certification policy is likely to shift regularly as vaccine availability increases, herd immunity nears, and scientific evidence of effectiveness or limitations grows. Determining how long vaccines

work and how well they protect against new variants will be critical. But knowing that change is inevitable is not grounds for holding back guidance until circumstances become clear. Current circumstances demand immediate policies that offer reasonable leeway for balancing protection of public health with a return to prepandemic life.

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