

## Vaccine passports: Benefits, challenges and ethical concerns

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### Featured topic and speakers

In today's COVID-19 Update, Jana Shaw, MD, MPH, professor of pediatrics at SUNY Upstate Medical University; Glenn Cohen, JD, deputy dean and professor at Harvard Law School; and Lawrence O. Gostin, JD, university professor at Georgetown University discuss the challenges of vaccine passports, the use of the term "digital health pass" and the future role of the private sector in the development of such passes.

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### Speakers

- Jana Shaw, MD, MPH, professor of pediatrics, SUNY Upstate Medical University
- Glenn Cohen, JD, deputy dean and professor, Harvard Law School
- Lawrence O. Gostin, JD, university professor, Georgetown University

### Transcript

**Unger:** Hello. This is the American Medical Association's COVID-19 Update. Today, we're discussing the benefits and challenges of "vaccine passports" and the ethical considerations that we'll need to address in the months ahead. I'm joined today by Dr. Jana Shaw, professor of pediatrics and clinical associate professor of public health and preventive medicine at SUNY Upstate Medical University in Syracuse, New York. Lawrence Gostin, university professor at Georgetown University in Washington, D.C. He is also faculty director of the O'Neill Institute for National and Global Health Law and director of the World Health Organization Collaborating Center on National and Global Health Law. And Glenn Cohen, Harvard Law School deputy dean, professor and director of the Petrie-Flom Center for Health Law Policy Biotechnology and Bioethics and he's calling in from Miami. I'm Todd Unger AMA's chief

experience officer in Chicago.

Vaccine passports already a controversial term. Mr. Gostin, can you talk first? What does a vaccine passport mean? A lot of people think about those little white cards that they're getting when they get their vaccines. Tell us more about it.

**Gostin:** Well, you know, really all it is, is a simple concept that you have to show prove that you've been fully vaccinated in order to attend some particular high risk events, whether it might be a movie theater, or fly, or something like that. You would have to show that you've got a proof of vaccination and that can be just your card, or it can be in digital form on your smartphone.

**Unger:** We're starting to see evidence of the use of that term, not terminology, but that activity in different places all over the world. What are you seeing?

**Gostin:** Well, you know, there are places around the world who've implemented it quite successfully. Israel's green pass, of course, is the most successful and it seems to have really expedited a return of the Israeli population to a much more normal life than before. The European Union is considering it, as are other countries. In the United States, New York state is the only state that has a pilot excelsior program, which is voluntary. But most of the action in the U.S. is probably, at least in the short and medium term, going to be in the private sector and particularly at employers, colleges, universities and places like that.

**Unger:** Mr. Cohen, we were talking before the segment about just the naming of this, which is probably one of the problems, at least. What was your perspective on that?

**Cohen:** We like to use the term digital health passes because I think it's the most accurate. Passports, while there is an international dimension of this, we're also being ... using them to regulate within a country. In some ways, I think licensing might be the better word, in the idea that to drive a car you have to show that you're not going to pose a danger to yourself or others. When these are used properly, it's to make sure you're not going to pose a danger to yourself or others because of COVID-19.

**Unger:** And that concept of the digital health pass, obviously, addresses one of the concerns that we're already seeing about counterfeiting of these little low-tech white cards. Is that the case?

**Cohen:** The United States is, in some ways, behind many of our peer countries in our ability to track vaccinations to be perfectly honest. We are currently giving these little white cards and there's already been online auctions for blank ones and forgeries. The hope would be that with a better digital infrastructure we'd be able to guard a little bit against that. But, so far, the White House hasn't taken leadership on trying to build that infrastructure. So I think, for the time being, those white cards are going to act as, at least, the first order prove of vaccination.

**Unger:** I always wonder whoever designed that probably never thought they would eventually see so many uses of that across the board. Dr. Shaw, obviously, there are some benefits of having digital health passes. Can you talk about what those would be?

**Dr. Shaw:** Of course. There are numerous benefits that digital health passes provide to the vaccinees, and to the community and society. They certainly offer health and economic benefits until we reach herd immunity. The herd immunity is really important to all to end pandemic, as it provides an indirect protection for people who cannot be vaccinated. For example, for medical reasons, or children who are too young to be vaccinated. And some people argue we can get infected just naturally and contribute to the herd immunity. Although that is true, the natural infection doesn't provide or contribute to the herd immunity consistently. So it's really important that we promote and incentivize vaccination, and a digital health passes will certainly encourage people to get vaccinated.

**Unger:** How about on the flip side, in terms of certain scientific challenges that we would have, that would come with the creation of a digital health pass? How do we address that?

**Dr. Shaw:** Of course. There are several scientific challenges. For example, so far we have somewhat limited knowledge in terms of how well the vaccines will protect against transmission. Thankfully, emerging research suggests that vaccination will reduce the risk of SARS-CoV-2 transmission to others just as we've seen with other vaccines. There are also different vaccine effectiveness reported for different types of vaccine. And depending on which vaccine you receive, you might be protected 65 to 90% against severe COVID-19. One of the commonly noted limitation of the digital health pass is the fact that the data on durability of immunity is limited to six months, as of now. Although we don't have some more data for information on length of protection past that period, we can circumvent or address those limitations. For example, we could just document the dates of vaccine series completions to determine expirations once longevity of vaccine protection is better defined.

**Unger:** I guess we still have a lot to learn. Mr. Gostin, Mr. Cohen, let's talk a little bit about the legal concerns around digital health passes. Who has the legal authority to require vaccines?

**Gostin:** Basically, in our *JAMA* article, we separate the private sector from the public sector. In the public sector, the public health powers traditionally reside in state and local governments, not the federal government. It would be a little bit of a stretch and it would probably require Congress to have a federal requirement. We're not really anticipating that. And as Glenn said earlier, President Biden has said that the federal government has no plans in this regard, not even to provide technical assistance, which I think they should provide scientific guidance and technical assistance. Because, in the past, we've seen without federal guidance, it's a hodgepodge.

States are one possibility. They have the power undoubtedly, but are reluctant politically to do it. As I said earlier, the big game in town is going to be in the private sector. We anticipate more and more private sector businesses, particularly for employees, maybe also for customers to trying to require

proof of vaccination. We're already seeing a lot of colleges and universities announcing the need to prove you're vaccinated for the fall term.

**Unger:** That's pretty typical and for other things, I think, meningitis. I'm thinking of one right off the top of my head, for my junior, in college requirement.

**Gostin:** Absolutely. And also remember all of us have some kind of vaccine passport, as it was, I do prefer Glenn's term, when we go to school. There has to be proof of vaccination against a number of childhood diseases. This is not foreign to the United States.

**Unger:** Mr. Cohen, let's talk a little bit more about private employers and this responsibility falling to them, for lack of a better words. What do you see as the trends here?

**Cohen:** As Professor Gostin says, this is going to be the main place where we're going to see the action we think. I think it's a little bit of a domino effect. Nobody wants to be the first mover. We saw this with universities. Rutgers was the first mover, then a bunch more universities. And as more do it, more feel empowered to do it. There will be lawsuits. There's already been at least one lawsuit, I'm aware, of in New Mexico against an employer. The main argument they're offering, as you've said, MMR and these other vaccines very well established that they can require this, but they say this one is different because it's under an emergency use authorization rather than a full approval.

My own view is that distinction is irrelevant for the power to impose these mandates. But if you do think it's relevant, even so, at least one of these vaccines, I'm hopeful, will move to full approval by September, maybe, October, so that argument will go away.

**Unger:** Do you see ethical concerns, particularly, around in the equity space as being an obstacle here, or something we, at least, need to seriously consider, Mr. Cohen?

**Cohen:** I want to emphasize the idea that these passports mandates are the least restrictive alternative. The alternative is stay at your home, or don't come to college or don't come to the employer at all. There's a way in which this is liberty enhancing for those that are willing to get vaccinated. But that depends on our view that everybody has access. In the United States, we're going to be in a position relatively soon where we'll have enough doses per arms, but two problems. The first has to do with racial minorities and other vulnerable populations. They may, given the history of the way in which race and medicine has interacted in this country, be much more reluctant. We may not be reaching them, so we need to make sure that access is real access, not theoretical access.

The deeper problem is actually outside of the United States, where we have more than 70 countries where there have been no vaccinations whatsoever thus far. And barring our doors to those people from across the world, because they happen to live somewhere else, seems manifestly unfair and difficult. And that's why, in our *JAMA* article, we say any move to require these passports has to be

married to the idea of making good on our commitments to share vaccines and build up manufacturing capacities elsewhere in the world.

**Unger:** Mr. Gostin, any thoughts from your end?

**Gostin:** I mean, I just want to ... Professor Cohen really just said it all, I thought. The important thing here is that equity can't be an afterthought. Equity has to come front and center and that's, certainly, globally we're in an unconscionable level of inequity globally. But even in the United States, we have to make sure that everyone who wants a vaccine can get one and that we encourage and make it accessible, particularly, to our vulnerable and minority populations. The last thing we want to do is give privilege, more privilege, to the already privileged and leave other people behind.

**Unger:** Indeed. Dr. Shaw, any final thoughts on how physicians should be thinking about this particular issue?

**Dr. Shaw:** I think it's important we remind physicians that the digital health passes could become an important vehicle for rapid return to commerce, and recreation and travel, and do so safely. We have summer coming up and people will be eager to travel and see their loved ones, but they have to be founded in the scientific and best knowledge foundation to be successful. As I mentioned earlier, they have to, above all, be administered equitably to ensure that everyone has a fair chance to return to a normal life. I think it's important we remember that the digital health passes allow vaccinated individuals to return to their pre-COVID lives and do so safely. And they also signal to the community that I am safe and you are safe around me.

**Unger:** We are all looking forward to that return. I want to thank you, Dr. Shaw, Mr. Gostin, Mr. Cohen, for being here today and sharing your perspectives. We'll be back soon with another COVID-19 Update. In the meantime, for resources on COVID-19, visit [ama-assn.org/COVID-19](https://ama-assn.org/COVID-19). Thanks for joining us and please take care.

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