COVID-19 Passport: Will We Need a Ticket to Ride?

Related Professionals

Jennifer J. Hollingsworth
803.540.2112
jhollingsworth@nexsenpruet.com

Shannon V. Lipham
803.540.2155
SVLipham@nexsenpruet.com

Practices

Health Law

Industries

Health Care

Article
03.29.2021

Finally, it's the dawn of a new day, and one that's been a long time coming. COVID-19 vaccinations are being administered in impressive numbers across the country. In South Carolina, vaccines will be available this week to everyone who so chooses. Are we getting back to where we once were?

Not surprisingly, the answer is probably not and probably never. Like other momentous turning points in time, we must hope for a more palatable but still different new world instead. While there are a multitude of reasons why, this article briefly touches on one: a COVID-19 Passport. Many institutions, both governmental and private, are contemplating a requirement of "proof" to an individual's COVID-19 status in order to travel, work, and attend live-audience events. This emerging concept of vaccine "passports" would allow for electronic documentation of one's COVID-19 status. It's not entirely a new concept, since the World Health Organization (WHO) already makes available the International Certificate of Vaccination or Prophylaxis (i.e., the "Yellow Card"), which can be annotated to reflect a particular vaccine has been received, including COVID-19.

With the possibility looming that these "COVID-19 Passports" might catch on and become requirements among public or private sectors, a group of technology companies including Microsoft, Oracle, and Salesforce have joined with The Mayo Clinic and the Commons Project Foundation to create the *Vaccination Credential Initiative*. The objective is "to enable individuals to access a trustworthy and verifiable copy of their vaccination records in digital or paper form." The group has since created the CommonPass, a smartphone application aimed to allow individuals to access their lab results and vaccination records, and use that information to validate their COVID-19 status digitally. The application aims to house individuals' COVID-19 related information and assess whether lab results or vaccination records come from a trusted source and satisfy health screening requirements. According to the CommonPass website, the application is currently in trial phases and not available yet to the public.

While "digital health passport" applications like CommonPass may have laudable intentions, the advent of such applications also raise privacy concerns. Centralized sensitive personal information, like health data and vaccination records, would be an obvious target of hackers and scams. There also may be concerns from a health privacy standpoint. The Health Insurance Portability and Accountability Act (HIPAA) sets rules that regulate the transmission of health information by covered entities, which include health plans, health care clearinghouses, and health care providers. These rules may limit the ability of private entities to implement the digital health passport concept.

Potential wrinkles exist beyond privacy and protection of personal information. Relevant to this concept of requiring immediate digital validation of COVID-19 status is that no single platform is universally accepted by countries and airlines. Indeed, the implementation of such a "requirement" in and of itself implicates certain constitutional freedoms and personal liberties, where "vaccination status" would conceivably become a barrier to fundamental rights such as the freedom of movement and to peacefully assemble. Consumer backlash may also result if mandating the use of digital health passports has a discriminatory effect for a myriad of reasons, such as that access to technology is not universal.

With all of these concerns in mind, there is much to do and address before there could be widespread readiness for a mandatory digital verification of health status as pre-requisite for otherwise routine activities of daily life.