



## Should you offer separate protocols for vaccinated patients? Experts advise wait-and-see

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### Practice management

With more Americans becoming vaccinated against COVID-19, you may be thinking about a change in patient infection protocols based on patient status. But it may be prudent to wait until you get more back-up from the law and government agencies.

From the beginning of the pandemic about a year ago, providers have struggled to keep their patients safe, with some closing down face-to-face encounters entirely and others putting in place strict social distancing and infection control requirements ([PBN 4/2/20](#), [5/11/20](#)). In many cases, practices have limited invasive procedures and required pre-procedure testing and quarantine.

But as of March 22, about a quarter of U.S. residents had received at least one COVID-19 vaccination shot, either from the Moderna or Pfizer two-shot regimen or the Johnson & Johnson single-shot treatment, according to the CDC. And 13.5% are considered "fully vaccinated."

The CDC estimates that the U.S. is receiving 2.5 million vaccinations every day, which suggests that some practices may find themselves with a substantial population of fully vaccinated patients - and an opportunity to reduce the impact of some infection control measures by having fewer controls on those patients.

In a public health report released March 8, the CDC recommended that while fully vaccinated people should continue to "take precautions," they can also "visit with other fully vaccinated people indoors without wearing masks or physical distancing" and "refrain from quarantine and testing following a known exposure if asymptomatic."

Based on the guidelines, you might think you could room fully vaccinated patients and staff without the masking and distancing protocols you've been living with for 12 months and eliminate the COVID quarantine requirement for pre-surgical patients.

It's not an unprecedented leap. Jayme R. Matchinski, a health care lawyer and officer of Greensfelder, Hemker & Gale PC in Chicago, points out that the Royal College of Surgeons of England has recommended "non-urgent elective surgery can also take place soon after vaccination" in the U.K.

That all sounds great — but not so fast, cautions Svetlana Ros, a partner with Pashman Stein Walder Hayden P.C. in Hackensack, N.J., and chair of the firm's health care practice: The CDC guidance is specifically meant to "apply to non-healthcare settings." In a separate health care-focused report, the CDC is less sanguine; it says that it's monitoring the situation and that all health care personnel "should continue to follow all current infection prevention and control recommendations."

### Is it discriminatory?

Is it legal to require different protocols based on vaccination status?

Daniel Hernandez, an attorney with Shutts & Bowen in Tampa, Fla., says that if you were treating patients differently on the basis of their COVID status — outside the context of appropriate infection control and protection of other patients — the situation might touch on federal anti-discrimination laws, such as the Americans with Disabilities Act, on the grounds that "a COVID-positive person could be considered disabled under any of those laws."

Further, Hernandez says, "under the [Affordable Care Act] and generally, the law not only protects people who are actually disabled, it also protects people who are regarded as disabled. So if a doctor looks at a patient and says, 'You haven't been vaccinated, so I'm assuming you're COVID-positive and I'm going to treat you as such,' a court might interpret that to mean that person is disabled under the law because they've been regarded as disabled and they would be protected from discrimination based upon that disability."

Hernandez sees no such issue with separation of non-vaccinated patients, however. "If we're talking about providing the same services but separately — maybe having separate waiting rooms for those who are not fully vaccinated and for those who have been fully vaccinated — that would not constitute discrimination if the physician or clinic provides the same services to both."

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But federal anti-discrimination laws aren't all you have to worry about. There are also state protocols that may not have changed with the vaccine waves, Ros says. For example, if a patient in New Jersey needs to have a procedure in an ambulatory surgery center, that state's Department of Health still requires a negative COVID test beforehand, shot or no shot.

"I anticipate as vaccination becomes more prevalent, the states will change some of their guidelines," Ros says. "But for now, I would encourage health care professionals and facilities to continue with the same precautionary measures they have been following."

Ros also suggests you weigh the potential liability if something goes wrong with your allegedly COVID-proof cohort. "I think the liability of the general public not wearing masks in small groups if everyone is vaccinated is different than if a physician's office allows it and that potentially results in a transmission of COVID," she says.

**Resources**

CDC, "Interim Public Health Recommendations for Fully Vaccinated People," March 8: [www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html#:~:text=Fully%20vaccinated%20people%20can%3A,wearing%20masks%20or%20physical%20distancing](http://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html#:~:text=Fully%20vaccinated%20people%20can%3A,wearing%20masks%20or%20physical%20distancing)

CDC, "Updated Healthcare Infection Prevention and Control Recommendations in Response to COVID-19 Vaccination," March 10: [www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-after-vaccination.html](http://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-after-vaccination.html)



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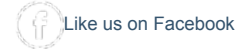
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