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CONSIDERHealth

Price Transparency Rules Set. Potential Disruption High!

What is Impacted? Who is impacted? How to Prepare?

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Overview – Price Transparency

The Executive Order "Improving Price and Quality Transparency in American Healthcare To Put Patients First" (EO)[1] signed in June of 2019 and the subsequent rule making[2,3] has huge implications to how healthcare could be purchased in the very near future. For the first time, these price transparency rules will make it widely public the actual negotiated rates between insurers and providers. This information will steer Consumers[i] to lower cost providers.

The new Price Transparency (PT) rules place new requirements on healthcare hospital providers (starting Jan. 2021) and health insurers (starting Jan. 2022). These new requirements center on openly providing the negotiated rates for services. Not gross charges which have limited utility, but rather the actual negotiated rate provider and insurer have contracted to (or cash price for self-pay). Further, disclosures include what the patient's actual out of pocket costs are expected to be for services. Lastly, the new rules will give health plans greater flexibility to entice consumers to shop, allowing plans to offer cash or non-cash incentives to the insured when they choose a lower cost care option to be counted as part of the plan's Medical Loss Ratio (MLR).

Why Is the Federal Government So Focused on Price Transparency?

U.S. health expenditures in 2019 were $3.8T[4]. Health and Human Services (HHS) believes some of this spend could be curbed if there was an easier way for the healthcare consumers to have price discovery prior to care purchase. HHS cites several studies that found without price transparency, market forces can't drive competition.[5] HHS highlights research showing how internet price discovery in the automobile and airline industries materially brought down price variation and overall prices for consumers.[6]

Historically, it has been incredibly difficult for Consumers to obtain real negotiated insurance service rates as well as Consumer's expected contribution towards services from a host of possible providers. The insurer/provider contracts with net service reimbursement rates have been deemed "trade secrets" and not shared. However, Consumers have never needed this price information more. The average family insurance deductible in 2019 was $3,655, up 85% from 2010.[7] With these higher deductibles, insured consumers are paying more for their healthcare in the form of cash, thus their motivation to find affordable care has grown. Coupled with interested consumers, are recent studies that have shown just how much difference hospital facilities in the same market receive in reimbursement for the same services to the commercially insured.[8] In short, consumers are motivated to save money and there are meaningful service net price differences among facilities. The PT rules will publish information where motivated Consumers can shop for services to take advantage of these net price differences. People will drive across town to save 10 cents on a gallon on gas, imagine the lengths they will go to save $400 on an MRI.

[i] Consumers in this context are individuals and plan sponsors. Anyone that fully or partially pays for healthcare.

Are These Price Transparency Rules Legal?

So far, Yes. To date the price transparency EO has been challenged twice by the American Hospital Association and survived.[ii] We expect these challenges from industry to continue.[iii] Also noteworthy, the Price Transparency Rule exists via EO only. EOs are in place until canceled by a president or struck down by judicial review. The Trump Administration signed the EO and set-in motion the rule making. The Biden Administration seems intent on moving forward with the rules. With the aggressive rollout timeline of PT rule requirements, and no clear indication for the EO to be canceled or judicially struck down, providers should plan that price transparency is here to stay.

How Will This Price Transparency Information Be Available?

The availability of this price information will come in two forms for both hospitals and providers. One, a front facing self-service tool to be used by end users on a hospital or insurer's website. Two, an expanded list of services via a machine-readable format. The front facing self-service tools will empower consumers to actively "shop" for some of their care by seeing the negotiated rates (or cash prices) and their expected out of pocket costs specific to their insurance plan. The machine-readable files will be used by industry and likely will be more disruptive to care utilization patterns. These machine-readable files will open the market for third parties to create applications that aggregate, supplement, and ease digestion of this price data to Consumers. Further, insurance and provider competitors will use this information as leverage in future rate negotiations or plan designs. In addition, researchers will use this new data to craft new policies and rules.

As far as accessing this data, neither providers nor insurers can have barriers (information blocking) for getting this information. No logins required. No fees to Consumers to access.

What Types of Services Will Price Data Be Available?

Hospital Price Transparency (HPT) requires disclosing information on fewer services as compared to insurers. For the hospital self-service tools, 300 total services would need to be available. These disclosed services are hospital services only and focus on Shoppable Services. HHS has defined a Shoppable Service as a service that can be scheduled by a healthcare consumer in advance. Such services are routinely provided in non-urgent situations that do not require immediate action or attention to the patient, thus allowing patients to price shop and schedule a service at a time that is convenient for them. To complement the definition, HHS outlines many Shoppable Services by CPT/HCPCS within the final rule. HPT machine readable requirements are for all services. Note – HPT does not require the disclosure of the actual client out of pocket costs specific to their plan and accumulated amounts.

The insurers have a much larger lift under Insurance Price Transparency (IPT). Starting in 2022 machine-readable files that display negotiated rates for **all covered services** including prescription drugs will have to be produced. Starting for 2023 plan years, 500 services are required to be displayed in a client self-service tool. Starting in plan year 2024, **all services** insurers have a contracted rate for would need to be displayed on the self-service tool. All services, means all services, including hospital, non-hospital, DME, drugs, ASCs, etc. Further, within these self-service tools, insurers have the added complexity of

[ii] The court has held up that HHS has legal standing to establish the rule, the government has a legitimate interest in promoting price transparency, and the information will help patients better understand their healthcare costs.

[iii] A contentious area around PT is around provider/insurance contracts as trade secrets. HHS contends these contracts are not, as EOBs contain negotiated rates and out of pocket costs. There is no obligation of insured to keep this information secret.

disclosing the expected out of pocket costs for services specific to each insured's plan and current accumulated amount.

In addition, both HPT and IPT require the disclosure of services typically done in conjunction with the main service searched such as supplies and professional services. This includes bundled payments.

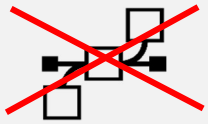
Services Subject to Price Transparency		
	Hospital Requirements:	**Self Service Tool.** 300 total Shoppable Services. 70 services defined by HHS. 230 defined by each hospital. **Machine Readable files.** All hospital services *Note – Do not have disclose services not done in a hospital setting*
	Insurer Requirements	**Self Service Tool.** 500 mostly Shoppable Services in 2023. IPT moves to all services in 2024. **Machine Readable Files.** All services starting in 2022

What Types of Services Are Most and Least Shoppable?

The most shoppable services are ones that are non-urgent, discrete, frequently done procedures. Examples of shoppable and non-shoppable services are below.

Service Types Most Shoppable		
Service Type		**Detail**
Evaluation and Management		• Office visits
Outpatient, Planned Services		• Orthopedics, Gastroenterology, Pathology, Radiology, Primary Care
Laboratory Services		• Easily shoppable unless part of a bundle • Lab low net price points may equate to low demand change
Radiology Services		• Easily shoppable unless part of a bundle. E.g., MRI, CT, X-Ray • Radiology high price point may see high demand change

Service Types Least Shoppable		
Service Type		**Detail**
Services Associated with Life Threatening Conditions		• Consumers priority likely quality vs. saving money when condition is life threatening

Service Types Least Shoppable		
Unexpected Care Needs		• Less time to shop • Speed to get care priority over price concerns • Most inpatient and emergency care
Bundled Services		• Comparison of services much more difficult • Consumers unlikely to spend time to get data points to compare among possible providers

Who is Subject to the Price Transparency Rules?

In short, a lot of providers and insurers are subject to PT rules. Some providers will get a reprieve under HPT but when the insurance transparency rules take hold, full disclosure on net pricing will be available.

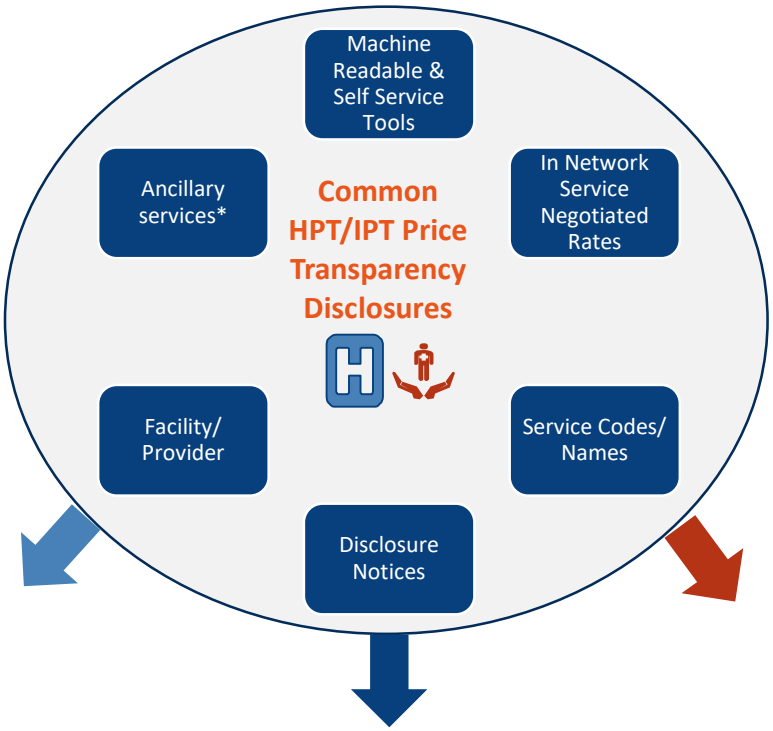
	Hospital Transparency	Insurer Transparency
Inclusion Detail	• **Facilities Included**. All that are licensed by a state as a hospital. • **Payer rates subject to disclose.** Any Third-Party Payer who is legally responsible for payment. • **Cash prices** • **Care Settings:** Hospital based svcs only	• **Plans Included.** Non grandfathered Self and Fully Insured plans. Individual and Group • **Service Rates to Disclose.** By 1/1/2022 negotiated rate file, by 1/1/2023 - 500 shoppable services. By 1/1/2023 all services • **Care Settings and Providers.** All care settings and providers. This includes hospital and non-hospital
Inclusion Examples	**Licensed Hospitals.** Includes Short Term Care, Critical Access, Long Term Care, Inpatient Psych, Rehab, etc.	• **Qualified Health plans** • **Self & Fully insured plans.** Self insured can leverage TPAs to provided
Excluded Examples	**Non-hospital facilities or providers**. E.g., Ambulatory Surgery Centers, independent physician practices	**Grandfathered plans** existing pre-ACA **Excepted plans.** Dental, Vision, health reimbursement plans **Other.** Short term coverage, healthcare sharing ministries
Notes	HPT will become secondary when IPT starts	IPT includes plans covered under ERISA.[iv]

[iv] ERISA = Employee Retirement Income Security Act. Most private sector group insurance health plans are covered under ERISA.[iv] State efforts at price transparency with All Payer Claims databases could not require ERISA plans to submit data., thus these databases are missing a sizable amount of the commercially insured market.

What Must Be Disclosed to Consumers?

Whether hospital transparency or insurer transparency the data requirements for disclosure to consumers are mostly similar with a few differences. These data disclosure requirements are outlined in the below chart.

Figure 1. HPT/IPT Price Transparency Disclosures



Hospital Only Disclosures	Combined Disclosures	Insurer Only Disclosures
• **Gross Service Charges** • **Discounted cash prices for services** • **Min and max service de-identified plans reimbursement.** Includes Medicare/Caid CMO • **Facilities/Providers.** Only hospital-based locations and providers are subject to HPT disclosure • **Self-service tool.** Shoppable Services: 300 in total • **Machine readable files.** All services provided by hospital, not just shoppable services • **Information updates.** Monthly	• **Search criteria.** CPT, HCPCS, DRG, NDC, service plain language • ***Ancillary Service.** Other services/ supplies typically billed together with the main service. Includes bundles	• **Out of Pocket Costs.** Include coinsurance, copays, factoring deductibles, accumulated amounts, and out of pocket limits, exchange subsidies • **Notice of prerequisites for coverage.** E.g., step therapy, prior authorizations • **Self-service tool.** 500 in 2023 only. Starting in 2024, all services must be displayed. Inc DME, Drugs • **Machine readable files**. In Network, Out of Network historical Allowed Amounts, Prescription Drug File • **Information updates.** Annual

What Will This Cost Hospitals and Insurers to Comply?[9,10]

HPT Costs. CMS estimates $12K per hospital in initial development costs to comply with the HPT rule and roughly a third of this for ongoing maintenance. Total estimated hospital initial costs are $71.4M and annual ongoing costs are estimated at $21.6 million. In our view, these hospital estimates are low.

IPT Costs. The costs for insurers to build out this capability will be much higher. HHS estimates $17B to $23.5B in total for insurers to develop and maintain IPT tools from 2022 to 2024 alone. IPT costs are significantly higher due to solutions needing to support Consumer responsibility (e.g., copays) as well as a complete list of insurance negotiated services.

What Are the Mechanisms to Ensure Compliance?

Hospital Price Transparency Compliance. The penalty for non-compliance is a civil monetary penalty of up to $300 a day or $109,500 per year per hospital. CMS may also publicly disclose which hospitals are not compliant to the HPT rules. As the industry is still laser focused on COVID 19 response, CMS seems to be taking a hands-off approach for now and not fining hospitals for partial or non-compliance. In May of 2021, CMS sent warning letters to hospitals for non-compliance. Time will tell if there is more bite to come for non-compliance.

Insurer Price Transparency Compliance. There is no penalty from CMS for insurer non-compliance outlined in the current rules. Further, there is a patchwork quilt of different groups that will monitor different plans subject to IPT. State regulators will be tasked as the primary enforcers of the IPT rule for those fully insured. The Department of Labor will enforce plans subject to ERISA, HHS for governmental plans, and OPM for Federal Health Benefits plans.

Current Compliance Commentary

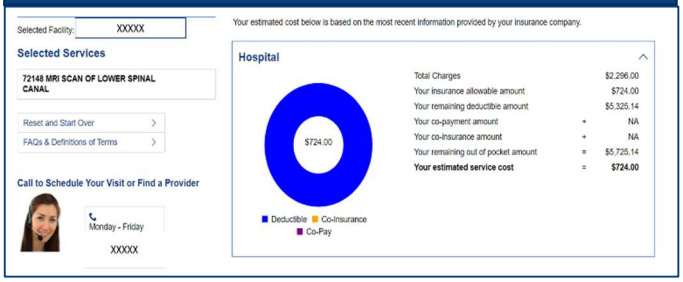
The hospital fine for non-compliance is so low compared to the potential demand changes that could arise from HPT, that it will be interesting to see how many facilities take the penalty and choose not to comply. Further action from CMS may be needed to increase the penalties to gain HPT adherence.

The insurers compliance may also be challenged when these rules become effective. There is no direct penalty from CMS to insurers for not complying. Further, it will be interesting to see if some of the regulatory groups are more aggressive than others in enforcement activities on plans.

Figure 2. Current HPT Compliance Examples

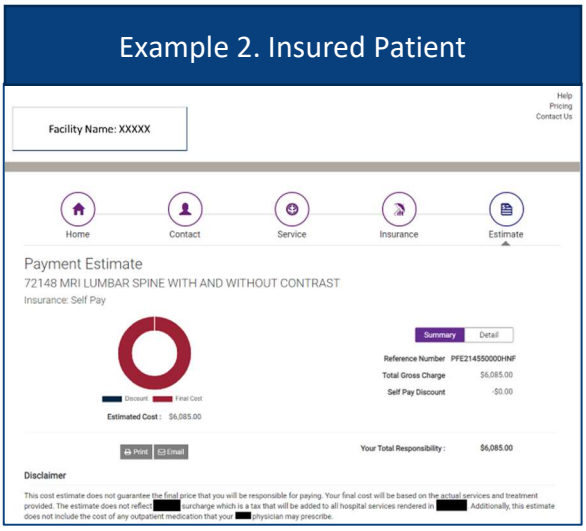
There is current high variability in the degree hospitals are complying with HPT rules that went into effect Jan 1, 2021. In a sample of 20 large hospitals by net revenues, below are a few examples of how the display of shoppable services looks.

Example 1. Insured Patient



Example 2. Insured Patient

Example 2. Insured Patient



Notes Current HPT Compliance

Hospital Noncompliance. ~25% of the hospitals surveyed were not displaying any HPT Shoppable Services.

Hospital Compliance.

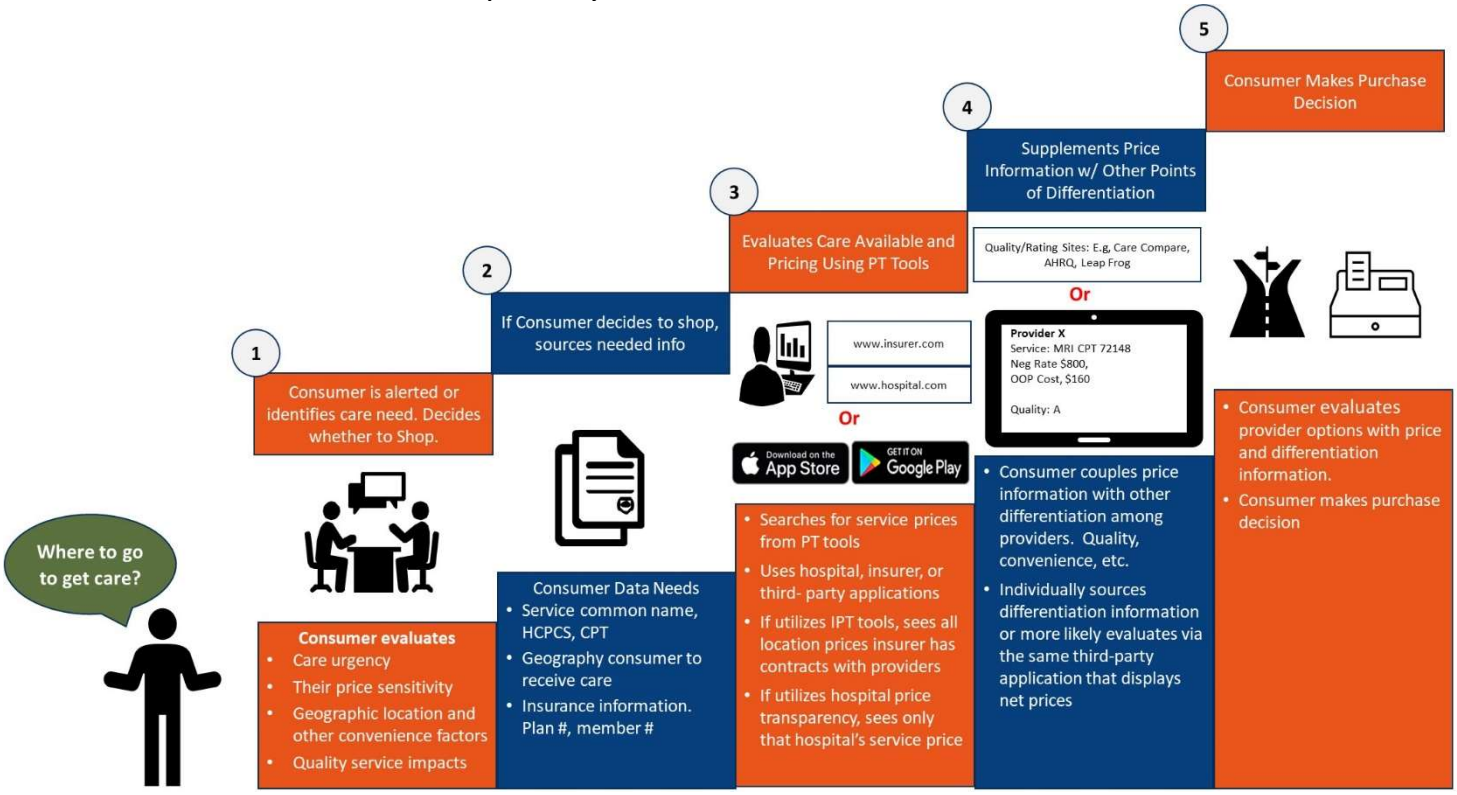
- Many organizations are leveraging price estimator tools from their EHR or revenue cycle products to show shoppable services. E.g., EPIC MyChart, nThrive
- HPT tools are not easy to find or well marketed on these hospital's websites
- HPT tools are rudimentary at best. Long way to go to be user friendly.
- Some hospitals are not showing cash discounts for services
- Few hospitals are showing minimum and maximum deidentified plan service negotiated rates.
- If a Consumer knows HPT tools are available, hospitals in a Consumer's market are displaying Shoppable Services, and Consumer has ample free time, it is possible to save money

Current HPT Verdict. It will take some time for the HPT offering to mature to be more useful to Consumers. We don't see the average Consumer leveraging HPT tools in their current form.

What Could the Future of Consumer Healthcare Purchases Look Like?

The stylized example below highlights how Consumer purchase decisions on healthcare could look like in the future. We are likely many years off from this being a reality, but it is helpful to start thinking through what the end result of price transparency could be.

Figure 3. Future Consumer Healthcare Decision Making w/ Price Transparency Tools



See the Appendix for an example of a Consumer researching a service using the HPT and IPT disclosures.

What Can Providers Do Now to Plan?

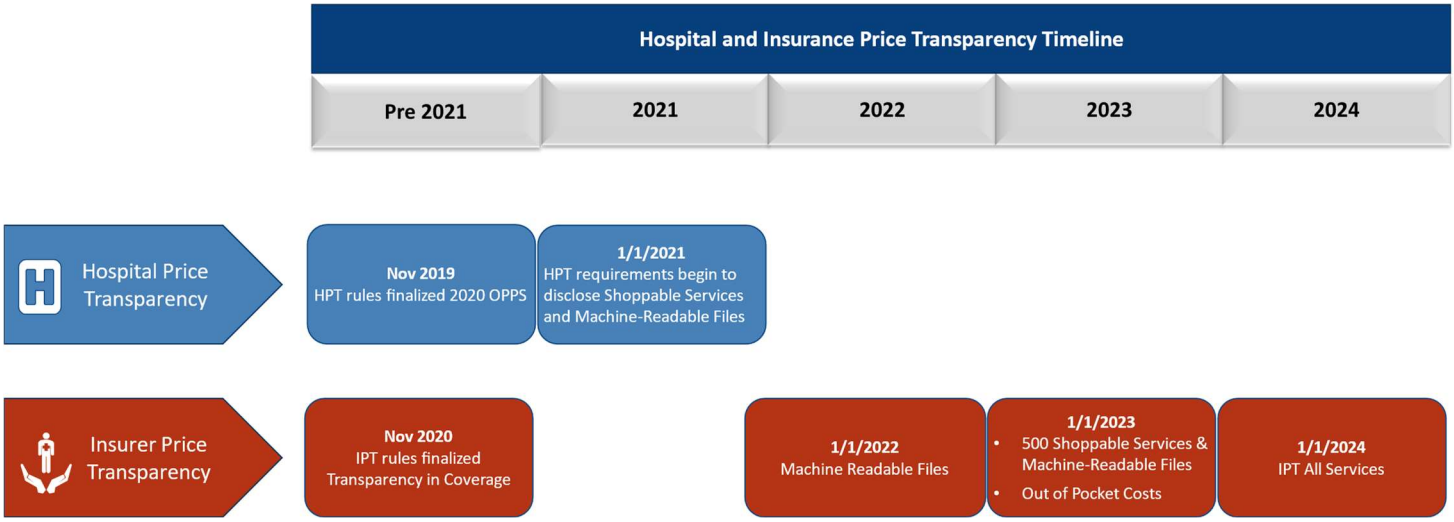
1. **Review existing provider/insurer contracts.** These may need updated between provider and insurer to comply with PT rules. E.g., gag clauses removed.
2. **Understand your Consumer behavior and the overall markets in which you compete.** How price conscious are your customers? How aware are they of these new price transparency tools? How do they perceive your organization from a non-price differentiation standpoint?
3. **Evaluate your current negotiated common service rates to other providers.** Are you a high reimbursement provider or a low reimbursement provider?
    - If a low reimbursement provider, define strategy on either embracing being a low-cost provider and market this and/or attempt to negotiate higher rates with insurers upon contract renewal.
    - If a high reimbursement provider, define other differentiation points you have e.g., high quality or convenient access. Craft talking points to combat pushback from only price comparisons. Potentially bring pricing in line for most Shoppable Services. Consider delaying adhering to HPT rules and thus being subject to penalties.
4. **Identify internal or external resources responsible for HPT program.** Resources responsible for evaluation, development, and maintenance of HPT tools. Aggregate needed data. Train staff. Answer Consumer questions.
    - Likely cross functional team consisting of strategy, clinical, IT, managed care
    - Observation from current HPT, EHRs (e.g., EPIC's MyChart) or clearing house tools are leveraged.
    - Analytic resources should also be identified to mine hospital and insurer disclosed PT info for market business intelligence.
5. **Model potential impacts of demand shifts to your financials.** Based on the types of services most shoppable, your market's consumer behavior, and if you are a high cost or low-cost provider, what types of business could shift to or away from your facilities? How much of this business could shift? Over what timeframes?
    - Predicted financial impact could spur changes in provider strategy.
    - If negative financial impacts predicted, plan for making up the difference. If positive impacts, ensure can scale to meet increased demand.
    - Frequently review any changes to Shoppable Service utilization. Create dashboards of shoppable service volumes. Update forecasts and strategy if needed.
6. **Review self-pay pricing.** Are self-pay service prices appropriate with insurance negotiated rates to encourage commercial insured?
7. **Monitor compliance and penalty enforcement.** Who in your market is complying with HPT and IPT? To what extent are they fully complying? Are non-compliance costs changing?

CONSIDERHealth Parting Thoughts

1. **Insurer price transparency and third-party applications will likely disrupt more than hospital price transparency.** We feel most consumers will want aggregated service price transparency information from a host of providers, all available in one place. Thus, they will prefer to go directly to their insurer's website or download a third-party app.
    - HPT still leaves a sizable amount of healthcare service locations and providers out of requirements. IPT includes many more service locations and types.
    - IPT. Free standing facilities that provide Shoppable Services could see demand improvements as Consumers flock for net price savings.
2. **Service steerage on price will became a big market.** Employee benefits departments are eager to save money. Plan designs or third parties that assist Consumers make lower cost care choices will take a cut of the difference. Slick interfaces from third party apps that gamify service location selection.
3. **The machine-readable format required by both hospitals and insurers is a gold mine for rate negotiations between provider and insurer.** Each party should understand this information as it is leverage for where negotiated agreements can be reached.
    - Competitors will be interested in the range of service rates other facilities receive. If on the low end of the range, providers will attempt to negotiate up but still keep competitive positioning. If providers are compensated on the top side of the range for a service, insurers will use this to attempt to negotiate service rates down for a provider.
4. **Quality and convenience matter and should be known along with net price.** Providers quality scores are not required to be displayed with PT rules.
    - Third Parties can supplement price information with quality info. High quality providers should push for rules to require quality disclosure too.
    - High quality, high-cost providers will need to market quality differentiator.
5. **Expect creative insurance plan designs**. Designs to entice consumers to shop based on new PT rules
6. **Consumers may start asking more price related questions to providers.** How will providers handle these new questions and situations?
7. **Technology will increasingly shape care decisions and referrals.** Providers should monitor revenue leakage to other facilities and understand if this is due to non-competitive pricing.

Appendix

Hospital and Insurance Price Transparency Timeline



Service Name: Service Name: MRI of the Lumbar, Spine w/o contrast Service CPT: 72148				
	Hospital Price Transparency		Insurance Price Transparency	
Disclosure	Hospital Name: Aladdin Sane Memorial Hospital	Hospital Name: The Starman Medical Centre	Free Standing Imaging: Mars Life Imaging	Free Standing Imaging: Heroes
Total Gross Charges	$3,000	$3,200	N/A	N/A
Insurance Allowed Amount (negotiated rate)	Facility : $725 Professional : $150 Ancillary : $0 Total : $875	Facility: $850 Professional $200 Ancillary : $0 Total : $1050	Facility : $650 Professional : $150 Ancillary : $0 Total : $800	Facility : $600 Professional : $125 Ancillary : $0 Total : $725
Remaining Deductible	N/A	N/A	$5,300	$5,300
Copayment Amount	N/A	N/A	$0	$0
Coinsurance Amount (after deductible met)	N/A	N/A	$0	$0
Remaining Out of Pocket	N/A	N/A	$5,300	$5,300
Service Estimated Out of Pocket	N/A	N/A	**$800**	**$725**
De-identified Max and Min Allowed Amount for Service	Max: $1250 Min: $800	Max: $1550 Min: $850	N/A	N/A
Out of Network Allowed Amount	N/A	N/A	$1,000	$1,000

[1] "Improving Price and Quality Transparency in American Healthcare To Put Patients First". *Federal Register Vol. 84, No. 124* June 24 2019.
[2] "Transparency in Coverage*". Federal Register Vol. 85, No. 219.* Nov. 12., 2020.
[3] "Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals To Make Standard Charges Public." *Federal Register Vol. 84 No. 229 Nov. 27, 2019.*
[4]"National Health Expenditure Data – Historical". *Centers for Medicare and Medicaid Services*. https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical. Accessed 4.17.2021
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[9] "Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals To Make Standard Charges Public." *Federal Register Vol. 84 No. 229. Nov. 27, 2019.*
[10] "Transparency in Coverage*". Federal Register Vol. 85, No. 219.* Nov. 12., 2020. pp. 72276 to 72290.
[10] "Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals To Make Standard Charges Public." Federal Register Vol. 84 No. 229 Nov. 27, 2019. pp. 65525.

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