OHRSA Ontario Home Respiratory Services Association

July 8, 2024

The Honourable Sylvia Jones
Minister of Health, & Deputy Premier
Ontario Ministry of Health
777 Bay St. floor 5
Toronto, ON M5G 2C8

Dear Minister Jones,

RE: <u>Home Oxygen Therapy Joint Ventures - Assistive Devices Program</u>

The Ontario Home Respiratory Services Association wishes to bring to your attention concerns regarding the government's recent decision to lift the moratorium on the creation of new joint venture Vendors to provide home oxygen services funded by the Assistive Devices Program.

The Ontario Home Respiratory Services Association (OHRSA) serves as the provincial voice of private sector home and community respiratory services providers across the province, representing ~90% of the service locations delivering home oxygen therapy under the Ministry of Health's Assistive Devices Program (ADP). Many of these Vendors are locally owned, family small businesses that provide essential health services in all regions of Ontario.

There are about 36 active Vendors registered within ADP's Home Oxygen Therapy program. 13 of these Vendors are joint ventures, defined by the ADP as *a business undertaking between a Vendor and a Hospital or Long-Term Care Home to provide Home Oxygen Therapy to Clients in which profits, losses and control are shared between the Vendor and the Hospital or Long-Term Care Home*[1]. In fiscal 2022/23, these joint ventures billed ADP $28,902,700, representing 24.7% of ADP's home oxygen therapy budget. From these funds, an estimated $3,000,000 was redirected to the participating hospitals as direct coverage of staff wages, management fees, and shares of retained earnings.

In response to market concerns, in 2017 the Ministry of Health instructed ADP to cease approval of new joint ventures for home oxygen therapy. In 2018, the auditor general of Ontario raised serious concerns over the existing joint ventures (JV) and stated "*the Ministry allows joint ventures and preferred Vendor agreements between hospitals or long-term care homes and home oxygen Vendors that result in the inequitable treatment of home oxygen Vendors and*

[1] Section 110.21, Home Oxygen Therapy Policy and Administration Manual, April 1, 2024

could result in clients receiving a different quality or level of service than they might otherwise have received".

The Ministry reopened the market to the formation of new joint ventures through ADP's April 1, 2024 Home Oxygen Therapy Policy and Administration Manual, seemingly absent consultation with Ontario's physicians to assess the risks, if any, towards patient care, and without addressing the Auditor General's recommendations through policy reform.

Collectively, we have four areas of concern relative to these joint ventures.

1. **Conflicts of Interest**. ADP policy prohibits conflicts of interest, be they "actual, potential, or perceived"[2]. In the case of joint venture home oxygen Vendors, ADP policy specifically waives financial conflict of interest[3], but does nothing to address the following actual, potential, or perceived conflicts:

    a. The absence of fully informed patient choice;

    b. Hospital budget pressures may lead to inappropriate patient discharge in order to increase the hospital's profit sharing. In fact, at least one joint venture advertises that it discharges patients early when they choose the joint venture Vendor.[4]

    c. Preferential access to Independent Exercise Assessments (IEAs). An IEA is prerequisite to sustained ADP funding, and most of these assessments take place in publicly funded acute care hospitals. Where the joint venture hospital offers IEAs, there are actual and perceived conflicts whereby timely access is reserved for patients of the joint venture Vendor.

    d. Inappropriate Change of Vendor requests. Cases have been documented whereby patients submit a Vendor change request immediately following an IEA performed at a joint venture hospital, or following admission to a joint venture hospital. Whether perceived or actual, both cases present a conflict of interest, and suggest joint ventures are violating ADP's prohibition on advertising to pursue a patient served by another Vendor.[5]

    e. Regulated health professionals employed by some joint venture Vendors routinely work inside the joint venture hospital, and in some cases hospital personnel salaries are paid in whole or part by the joint venture. These scenarios potentially conflict with collective bargaining agreements signed by the hospital.

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[2] Section 405.03, Policies and Procedures Manual for the Assistive Devices Program, July 2023

[3] Section 405.04, Policies and Procedures Manual for the Assistive Devices Program, July 2023 and definition of "Joint Venture" within ADP's Home Oxygen Therapy Policy and Administration Manual, April 1, 2024

[4] stjosephsproresp.ca

[5] Section 415, Policies and Procedures Manual for the Assistive Devices Program, July 2023

As an example, the Markham Stouffville hospital's annual report states the hospital provides respiratory therapy services and charges the joint venture.[6]

2. **Lack of governance and transparency**. The Ministry prohibited formation of new JVs for seven years, ostensibly for one or more reasons. ADP's new home oxygen therapy policy manual does not clearly identify governance relative to JVs that would address the underlying reasons for the freeze. As such, it is unclear why the freeze has been lifted, and how the reasons for the freeze were resolved.

   In terms of transparency, in the fiscal year 2022/23, only 11 of the 13 hospitals involved in a joint venture noted proceeds in their annual report, and little to no other salient details were shared. For example, no reports declared the purpose of the joint venture, if the purpose was being met, and if patients were satisfied with the care they received.

3. **Equitable access, patient choice, and standard of care**. Equitable access and patient choice have long been hallmarks of ADP policy and are an important pillar of patient autonomy. We feel joint ventures erode equitable access to home oxygen therapy. This is in opposition to the spirit of ADP's patient choice mandate.

   In Ontario, acute care hospitals discharge the majority of home oxygen patients, and typically serve a very large surrounding catchment area. Joint ventures operate from a single location, often within the discharging hospital. Frequently, it is only when the patient arrives back at their home that they realize there are one or more ADP approved Vendors within their community. Being served by a Vendor close to home can provide patients with an elevated sense of safety and well being through superior access to their caregivers and the replenishable elements of their care regimen. Hospitals engaged in a JV are financially disincentivized to provide patients all available options for their home oxygen needs, thus substantially eroding equitable access to care.

   ADP policy requires Vendors ensure patients "have access to full information about their choice of Authorizers, Vendors and Devices"[7], and the Home Oxygen Program Policy explicitly requires joint venture Vendors provide each Applicant "a list of Vendors located in the Applicant's community"[8]. Contrarily, JV's do not consistently provide the patient with this information, and when they do it is generally a static and non comprehensive list of Vendors operating near the JV location. As noted by the OHA in their February 21, 2013 Bulletin, it is more appropriate to require the hospitals discharging the patient to provide a list of ADP approved Vendors in the patient's community.

[6] Note 6, Financial Statements, Oak Valley Health, March 31, 2023
[7] Section 405.01, Policies and Procedures Manual for the Assistive Devices Program, July 2023
[8] Section 805, Home Oxygen Therapy Policy and Administration Manual, April 1, 2024

Concerning standards of care, where patients truly exercise choice , non JV Vendors routinely attract new clients by investing in the latest, lightest weight and/or quietest oxygen delivery systems, operating multiple locations to better serve travelling patients, and employing regulated health professionals that can serve the patient in their preferred language. Together with the aforementioned benefits of proximity to the patient's residence, these Vendors often deliver a higher standard of care than the JV Vendor whose reason for existence is the generation of profit for hospital funding needs.

4. **Perpetuity**. The first joint venture was established in 1990, and only 9 of the 13 operating today were developed in response to an open competitive procurement initiative. These joint ventures are essentially sole source service agreements operating in perpetuity, and any service agreement without an end date and absent the fundamentals of free market competition leaves the service provider highly susceptible to complacency, putting patients at risk of inferior service levels.

   Service agreements without a defined length of term is contrary to the Broader Public Sector Accountability Act, 2010 (BPSAA). While it may be argued that these joint ventures are private, for profit companies and therefore exempt from this legislation, in reality they operate as extensions of the hospital. For example, St. Joseph's Proresp Inc. advertises "*This partnership gives you access to integrated care*", and the Markham Stouffville Hospital declares within their annual report that their joint venture directly pays for respiratory therapist services provided by the hospital.[9] Each of the 13 joint ventures in question is in fact a *corporation controlled by one or more designated broader public sector organizations that exists solely or primarily for the purpose of purchasing goods or services for the designated broader public sector organization or organizations*[10], and therefore must be formed and operate in compliance with BPSAA.

OHRSA has socialized its concerns with representatives of the Ontario Medical Association, the Ontario Hospital Association, various patient associations, and with the Auditor General's office, inviting feedback and patient centric policy improvement suggestions. Given the seriousness of the issues outlined above, **OHRSA is asking the Ministry of Health to reinstate the moratorium on new joint ventures** until meaningful policy change is enacted to mitigate the current problems.

OHRSA highly recommends the Ministry of Health convene a comprehensive stakeholder review to inform the needed amendments to ADP's Home Oxygen Therapy Policy & Administration Manual, and equip ADP with the ability to audit and enforce its policy. OHRSA members believe improved patient health outcomes, quality of life, and overall satisfaction should remain the home oxygen therapy program's primary focus, and with this spirit in mind, OHRSA proposes the following:

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[9] Financial Statements of Oak Valley Health, March 31, 2023: https://www.oakvalleyhealth.ca/wp-content/uploads/2023/06/Oak-Valley-Health-03312023-Final-FS.pdf.

[10] Broader Public Sector Accountability Act, 2010, section 1(f).

A. Mitigate non-financial conflicts of interest to ensure a level playing field. This includes a framework for equitable and unbiased access for all patients requiring testing for oxygen (IEAs or otherwise). One example to address this would be having a policy that personnel working for the joint venture must be prohibited from participating in the provision of IEAs, and advertising of the joint venture to patients served by another Vendor must be eliminated.

B. Mandatory inclusion within Hospital annual reports, declaring the stated purpose for having a JV, Key Business Metrics relative to achieving the purpose and objectives, financial and other important JV agreement terms (eg term), total number of patients discharged to the joint venture and to non joint venture companies, ADP billings and financial proceeds to both partners for the year, full declaration of taxes paid by the joint venture entity, staffing disclosure complete with declaration of regulated health professionals working for the JV and other employers, rental rates for space within the hospital occupied by the joint venture entity, and for those joint venture hospitals offering independent exercise assessments, the total number of IEAs performed split between JV and non JV patients.

C. Ensure fully informed patient choice and equitable access by:

   a. making it mandatory that all patients discharged from a joint venture hospital are provided, by the hospital, with a listing of all ADP registered home oxygen Vendors operating within a reasonable distance of the patient's residence, complete with contact telephone numbers, languages of service, and website addresses. Provision of this list must occur in a setting other than the premises a joint venture operates from.

   b. mandating patients be apprised of the percentage of the patient's home oxygen funding the joint venture Vendor redirects to the hospital for uses other than the patient's direct care, and forewarn patients that travel to carefully consider the service capabilities of the Vendor they select.

   c. prohibit employees of the joint venture, or its private partner, from discharging patients on the hospitals behalf.

D. Mandate joint venture agreements operate in compliance with the Broader Public Sector Accountability Act and the Broader Public Sector Procurement Directive. All existing joint ventures billed ADP in excess of $1,000,000 in fiscal 2023, and therefore must be subject to Agreements with a contract term stated within an open competitive process.

OHRSA Ontario Home Respiratory Services Association

On behalf of our members and the 40,000+ patients they serve annually, we respectfully request the opportunity to discuss this matter with you in further detail, and to participate in a collaborative approach to achieving patient centric policy improvement.

Sincerely,

Ontario Home Respiratory Services Association

Paul Edwards
Executive Director

cc: **<u>Ministry of Health</u>**

Vijay Chauhan, Chief of Staff, Office of the Minister of Health
Chris Dacunha, Executive Director of Policy, Office of the Minister of Health
Alex Millier, Director of Stakeholder and Member Relations, Office of the Minister of Health
Abby Hourigan, Stakeholder Relations Advisor, Office of the Minister of Health
Patrick Dicerni, Assistant Deputy Minister and Executive Officer, Health Programs and Delivery Division
David Schachow, Director, Delivery and Eligibility Review Branch

Office of the Auditor General of Ontario
Shelley Spence, Ontario Auditor General