Washington State Department of Social and Health Services

Transforming Lives

REPORT TO THE LEGISLATURE

Department of Social and Health Services
Electronic Health Records Contract 2014-2022

as required by
Engrossed Second House Bill 5092, Section 208, proviso 3:
By October 1, 2021, the department must submit a report to the fiscal committees of the legislature detailing shortcomings of the previously funded electronic health records systems and contract

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The Electronic Health Records Contract

In May 2014, following completion of a competitive solicitation process (Request for Proposals or RFP), DSHS entered into a contract (the EHR Contract) with Cerner Corporation for an integrated electronic medical record and revenue cycle system (an electronic health records or EHR System).

As described in the RFP, DSHS had sought an integrated patient information system with integrated revenue cycle functionality and electronic health records to replace its existing hybrid system that is reliant on both paper and electronic systems to document and manage patient care, services, billing and claims management at the psychiatric hospitals – Eastern State Hospital, Western State Hospital and the Child Study and Treatment Center.

The RFP specified that the EHR System was expected to be functionally complete and highly configurable. The EHR System was expected to integrate patient account, billing and revenue cycle management to accurately track services provided to patients and, importantly, to meet Centers for Medicaid and Medicare Services (CMS) requirements, including the requirement to implement medical coding contained in the International Classification of Diseases, Tenth Revision (ICD-10) by October 2015. Implementation of the ICD-10 requirement was needed for DSHS to continue to bill Medicare, Medicaid and other insurance payers for medical services pursuant to 45 CFR Part 162, and it could not be supported through the mix of manual and automated processes and systems on which DSHS had been relying.

The EHR Contract set forth the terms under which Cerner was to provide DSHS with the Cerner EHR System. Services to be provided by Cerner included professional services to design, configure, and implement the solution for DSHS and to remotely host the EHR system in Cerner's hosting environment.

The initial EHR Contract specified that the overall project duration would be a total of twelve months, with go-live for all DSHS facilities to have occurred by June 1, 2015. Almost immediately after signing the EHR Contract, it became apparent that the parties would not be able to meet the June 1, 2015 target for go-live. As a result, the parties amended the contract and moved the go-live date from June 1, 2015 to October 1, 2015.

Revenue Cycle Functionality

Following execution of the first amendment to the EHR Contract, an additional gap analysis was conducted to determine whether the EHR System met the revenue cycle requirements for DSHS. This analysis concluded that the revenue cycle functionality of the EHR System was not adequate to meet DSHS's requirements. Revenue cycle refers to the process of accounting for and tracking all the administrative and clinical functions that contribute to the capture, management, billing and collection of revenue for patient services. These functions include provision of service, documentation of service, establishing charges, preparing claims/bills, submitting claims, and receiving payments.

At that time, DSHS and Cerner identified over thirty significant functionality gaps related to the revenue cycle that required remediation before DSHS could go live with the EHR System. Because Cerner needed time to develop and code new revenue cycle functionality to fill in these gaps, the parties agreed to further delay of the planned go-live date.

The parties continued to work toward implementation during 2015 and 2016.

Ultimately, project work stalled. Despite numerous attempts by the parties to realign the work in 2017 and 2018, the parties were not in alignment regarding performance obligations and whether those obligations were being met as the contract required.

One of the major obstacles Cerner and DSHS encountered was in implementing the interdisciplinary plan of care (IPOC) design in the EHR System. The IPOC consists of a comprehensive treatment plan tailored to a particular patient. It includes diagnosis, goals, treatments to be used, and defines the individual responsibilities of various care providers to reach the goals identified for the patient. DSHS did not believe the Cerner IPOC design fulfilled its requirements. Cerner did attempt to modify the IPOC design but those modification attempts created other issues in the implementation of the EHR. Cerner eventually recommended reverting to their old design, which DSHS had previously determined did not meet its requirements.

Non-binding Dispute Resolution Process

Pursuant to the EHR Contract, the parties entered into a non-binding dispute resolution process in early 2018. The details of this process are confidential pursuant to the contract between the parties, and protected against disclosure under RCW 42.56.600 and RCW 7.07.070. A large number of issues were presented to the dispute resolution panel. The panel issued a partial decision in July, and the remainder of their non-binding decision in September. Despite this decision from a third-party, DSHS and Cerner were unable to reach a mutual understanding of how to move the project forward.

Cerner ceased working on the electronic medical records (EMR) portion of the project in 2018. DSHS continued work on the EMR portion of the project until July 2019. DSHS focused its work during this time on gaining workflow approvals for the Child Study and Treatment Center from leadership, updating training materials, and conducting additional testing and issue logging.

In June 2019, Cerner informed DSHS that all Cerner resources were fully disengaging and ceasing project work, and that, as of September 2019, Cerner would shut down the remote hosting operations because the EHR Contract was expiring. At that time, some of the work that had been identified as required under the second amendment of the Contract remained incomplete.

Settlement Agreement

In late 2019, the parties entered into structured mediation in an attempt to reach an acceptable resolution to the impasse. As a result of the mediation process, the parties were able to reach agreement in principle about the basic parameters of a negotiated settlement. Working through the various details and finalizing the settlement agreement language was ultimately accomplished by January 2022. The parties entered into a Settlement and Contract Amendment Agreement on January 31, 2022.

Under the terms of the Settlement and Contract Amendment Agreement:

1. Neither DSHS nor Cerner has any obligation to pay any additional fees or costs to the other party.
2. The parties bilaterally release each other from all claims, demands, and causes of action of any kind seeking recovery related to damages allegedly sustained by the other party prior to January 31, 2022.
3. The EHR Contract was amended and restated in its entirety to reflect the terms of the settlement.
4. Cerner grants DSHS a non-exclusive, non-transferable, fully-paid, perpetual, enterprise-wide license to use the Cerner-owned software and subscriptions that had been previously successfully configured for DSHS and that are necessary (but not necessarily sufficient on their own) for DSHS to implement the Cerner EHR solution.
5. DSHS may purchase certain Cerner support services required for ongoing use of the Cerner-owned software and subscriptions for as long as Cerner provides such services to other client-hosted customers.
6. DSHS may purchase additional solutions and subscriptions, other sublicensed software, and third party subscriptions at prices set forth in the settlement agreement until December 31, 2025. Thereafter, DSHS may purchase such sublicensed software and third party subscriptions at the same prices as Cerner's similarly situated clients.
7. DSHS may purchase a perpetual license to the Cerner Revenue Cycle licensed software for the fees set forth in the settlement agreement.
8. Cerner would deliver the licensed software covered by the settlement agreement and all associated configuration files and documentation created for DSHS within 30 days of January 31, 2022.

The Clinical Validity of Existing Software

In February 2022, DSHS received the promised electronic media from Cerner, certified by Cerner to contain all the required deliverables under the settlement agreement. The media consist of a series of files and instructions, some of which are proprietary to Cerner.

These files will require a specialized system environment to be stood up before they can be opened and read. Because the Cerner EHR solution was originally intended to be hosted by Cerner, the files now in DSHS's possession cannot be loaded and run without a system environment consisting of the underlying third party software and hosting solutions that would mimic the environment Cerner uses to host and run its software.

Furthermore, once the files can be accessed, only someone with specialized Cerner experience will be capable of understanding what the files do and do not contain. This is not unexpected. However, given these constraints, DSHS is unable to assess the clinical validity of the existing software at this time. DSHS considered other options for immediately reviewing and validating the delivery from Cerner. These options included contracting for access to environments where non-Cerner entities are hosting Cerner software, but those options proved to be cost-prohibitive due to the constraints identified above.
In order to determine whether the software received can be implemented by DSHS, and, if so, how much such an implementation effort is likely to cost, we would need to engage a consultant with extensive experience working with Cerner's solution.

This would require us to issue a Request for Proposal and conduct a competitive solicitation process. The consultant would need to become familiar with the negotiated settlement with Cerner and the associated pricing and SKU (stock keeping unit, a number assigned by Cerner to its products) for updates and add-on functionality.

In addition, the consultant could help us determine:

- What EHR functionality is now in the department's possession;
- What actions and additional investments would be needed to make the material a minimally viable product (MVP);
- The estimated cost of purchasing updates to bring the Cerner material to current (2022) functionality;
- Whether cost and functionality comparisons with other products in the marketplace are possible; and
- What the longer-term requirements and costs would be, including staff and resource support, for ongoing maintenance and support.

We are now in the process of drafting an RFP for the purpose of finding and engaging such a consultant should the legislature choose to fund and direct us to pursue such an analysis.

Approaches to Mitigate the Shortcomings of Previously Funded Approach

Engaging a consultant with Cerner expertise could help us mitigate the shortcomings of the previously funded approach. In 2014, the department lacked expertise in electronic health records and the marketplace offerings for EHR specifically for long-term psychiatric hospitals were slim to non-existent.

Since that time, the EHR marketplace has evolved in the direction of psychiatric functionality. DSHS still does not have deep expertise in this area but is aware of various IT and legal consultants who can be engaged on our behalf and provide the needed expertise and expert advice.

In addition, DSHS and HCA have begun discussions about the potential for a shared approach. Neither department is far along in development, however, so it is an opportune time to see if coordination of some kind would be beneficial.

Recommended Approach to Establishing a Comprehensive Electronic Health Records System at State Facilities in the Future

With the construction of a new forensic hospital and the development of community residential treatment facilities, the scope of an EHR is now potentially much broader than it was in 2014. DSHS will look to the legislature to determine whether further exploration of the Cerner product is desirable. DSHS is also interested in working with HCA to estimate the feasibility, timeframes, and potential costs of connecting the efforts of the two departments while accommodating the need for electronic records at DSHS Residential Habilitation Centers, State Hospitals, and Residential Treatment Facilities. This analysis would be separate from the Cerner-related work and would require significant staff time and collaboration between the two departments in order to develop a recommendation.

The pandemic and post-pandemic conditions, including the current staffing crisis, introduce a heightened level of urgency for innovative and near-term technology solutions. DSHS is highly dependent on paper and paper based processes, and staffing shortages continue. To serve our most vulnerable populations with equity, we must take early steps, to move from paper to digital, to improve patient and resident care in the state institutions, behavioral health hospitals and smaller health care settings. DSHS is leveraging existing technologies and interim solutions to build an environment and an organizational culture that is in alignment with electronic patient centered care, while searching for longer term solutions.