

**Congress of the United States**  
Washington, DC 20510

June 07, 2022

The Honorable Denis R. McDonough  
Secretary  
U.S. Department of Veterans Affairs  
810 Vermont Avenue N.W.  
Washington, D.C. 20420

Dear Mr. Secretary:

We are concerned about the numerous unplanned degradations and system downtime experienced by the Cerner electronic health record (EHR) system.

Multiple media reports<sup>1</sup> as well as VA's testimony at the Subcommittee on Technology Modernization's most recent hearing on the Electronic Health Record Modernization (EHRM) program<sup>2</sup> have confirmed over 50 discrete incidents. One such outage even occurred during that hearing. These system difficulties have frequently necessitated the use of downtime procedures (e.g., reverting to paper records), causing disruptions at the impacted facilities and inhibiting providers from delivering the promised level of care to veterans.

VA's inability to ensure Cerner's system maintains consistent uptime for the new EHR system is unacceptable. Cerner's public website advertises a "goal" of 99.99% uptime for its systems<sup>3</sup>. VA's contract with Cerner includes escalating tiers of financial penalties, in the form of invoice credits, for uptime below 99.9%. Unfortunately, Cerner's implementation of the EHR at VA falls short of that goal. America's veterans and VA's employees deserve far better than what has been provided to-date. It is unreasonable to expect VA employees to perform their jobs when the EHR is unreliable or completely unavailable.

As part of Congress's continued oversight of the EHRM program, please answer the following questions no later than June 21, 2022:

---

<sup>1</sup> See <https://ehrintelligence.com/news/cerner-falls-short-of-va-ehr-system-uptime-obligation>; <https://ehrintelligence.com/news/va-cerner-ehr-has-gone-down-50-times-since-2020-implementation>; <https://www.nextgov.com/it-modernization/2022/04/va-dod-electronic-health-record-system-suffers-nationwide-outage/364164/>; <https://www.healthcareitnews.com/news/ehr-outage-takes-down-federal-cerner-systems>; <https://www.healthcareitnews.com/news/cerner-ehr-had-50-slowdowns-outages-va-go-live-says-report>

<sup>2</sup> House Committee on Veterans' Affairs, *Hearing on NEXT STEPS: Examining Plans for the Continuation of the Department of Veterans Affairs Electronic Health Record Modernization*, 117th Cong. (April 26, 2022).

<sup>3</sup> Cerner, Hosting & Monitoring (<https://www.cerner.com/solutions/hosting-monitoring>) (accessed May 16, 2022).

### **Contract Management:**

- Has VA signed off and/or paid an invoice for any task-order that has not been fully completed?
  - If so, please provide the Committee with a copy of the invoice or task order.
- Has Cerner submitted an invoice for any task-order that has not been fully completed?
  - If so, please provide the Committee with a copy of the invoice or task order.

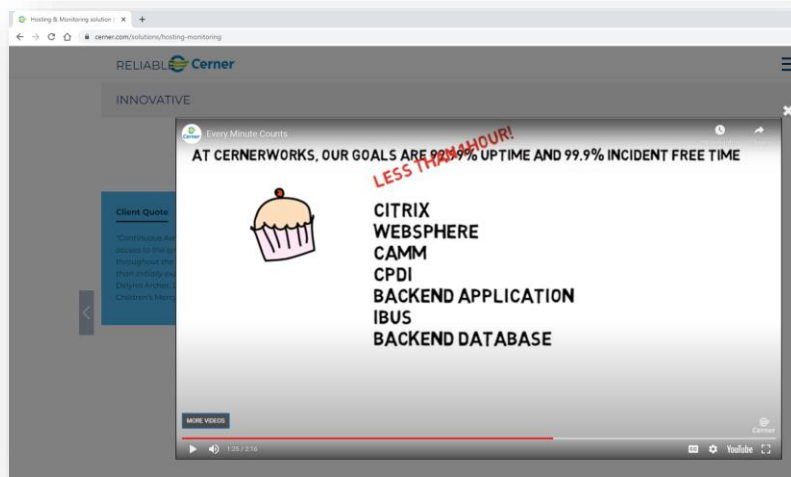
### **System Outages and Degradations:**

- Please provide a complete list of all unplanned and planned degradations and indicate the following for each:
  - How long was each episode?
  - When did the degradation occur?
  - What was the nature of the degradation? Specifically, which systems or functions were impacted?
  - Were the degradations limited to a single facility, or did it affect multiple facilities?
  - Has a root-cause analysis been completed?
    - If so, what was the root-cause and what is the expected resolution and timeframe for resolution?
    - If not, when will the root-cause analysis be completed?
  - What corrective actions have been taken for each instance?
- Please provide a complete list of all unplanned and planned outages and indicate the following for each:
  - How long was each episode?
  - When did the outage occur?
  - What was the specific nature of the outage? Which systems were impacted?
  - Were the outages limited to a single facility, or did it affect multiple facilities?
  - Has a root-cause analysis been completed?
    - If so, what was the root-cause and what is the expected resolution and timeframe for resolution?
    - If not, when will the root-cause analysis be completed?
  - What corrective actions have been taken for each outage?
- What is Cerner's current uptime?

### **Contractual Details**

According to an email received from VA's Office of Congressional and Legislative Affairs (OCLA) "SLAs are discussed in Attachment 16 to the IDIQ contract which is titled 'Cerner Hosting Document.'" The section of the document referenced is titled "Proposed Application Availability and Remedy (SLA) for Infrastructure" (page 46) and appears to only refer to the supportive infrastructure rather than the Millennium product itself.

- Please confirm this is the relevant section addressing uptime for the entire Cerner contract. If there are others, please provide them to the Committee.
- Is there a Service Level Agreement (SLA) or uptime requirement for the Millennium product separate from hosting infrastructure?
  - If yes, please provide all such SLAs or uptime requirements.
  - If not, what guarantees does VA have that Millennium will meet VA’s performance and stability requirements? How is the Cerner Hosting Document sufficiently comprehensive to meet VA’s performance and stability requirements?
- Cerner’s website advertises a “goal” of 99.99% uptime for its systems (<https://www.cerner.com/solutions/hosting-monitoring>; see screenshot below). Why has VA accepted a lower standard for its systems than Cerner’s goal for its commercial clients?



- What are the financial penalties to Cerner for poor performance and/or if the EHRM system fails to meet expectations?
- What financial penalties, including invoice credits, deductions, or rejections, has VA imposed in accordance with the Cerner Hosting Document, SLA, or any other relevant contract requirements?
- In the event of continued or further under- or non-performance, what are VA’s options under the existing contract or contracting law/regulations? What actions has VA already taken to hold Cerner accountable?
- Has VA issued a cure notice to Cerner for failure to meet the SLA or other uptime requirements? If so, please provide a copy of the cure notice.
- Has Cerner provided VA the outcome of their publicly announced technical review of system degradation? If so, please provide the Committees’ a copy of that review. If not, when is it expected?

- Has Cerner indicated to VA whether their system is capable of meeting required performance levels at the scale VA requires or whether Cerner requires significant changes to bolster their networks?

**SLA Calculation**

- How is uptime calculated?
- What does Cerner consider “downtime”? What does VA consider “downtime”?
- How are outages or degradations affecting single as opposed to multiple or all sites considered under the SLA? (e.g. If on a given day, Mann-Grandstaff is down for 2-hours, but Columbus is fully functional, does the 2-hour count against Cerner’s contractual SLA requirements?)
- What is Cerner’s current uptime?

Thank you for your attention to this important matter.

Sincerely,



Mark Takano  
Chairman  
House Committee on Veterans’ Affairs



Jon Tester  
Chairman  
Senate Committee on Veterans’ Affairs



Frank J. Mrvan  
Chairman  
Subcommittee on Technology Modernization



Patty Murray  
U.S. Senator  
Senate Committee on Veterans’ Affairs