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Willy Wonka and WISeR: Did You Get a Golden Ticket?

Key Takeaways

- CMS is set to launch the WISeR gold-carding exemption program on **July 6** in Washington state, with quarterly rollouts to the other five WISeR states to follow. Providers who qualify would be exempt from prior authorization and pre-payment review for WISeR-covered services.
- To achieve gold-card status, providers must hit a 90% affirmation rate on a minimum of 10 prior authorization requests during the assessment period. Given early Texas data showing a 62% initial approval rate under the AI model, that threshold will be difficult for many providers to meet in the near term.
- Providers should build their exemption records and examine other areas to challenge now. WISeR faces challenges on multiple fronts — legislative, regulatory and judicial — but none have stopped the program.

Updates Since Our Prior Publication

In our June 10 alert, we reported that the House Appropriations Committee had approved a rider that would block all FY 2027 funding for WISeR. As of today, that rider has not yet been enacted. The full House has not yet voted on the FY 2027 HHS spending bill, and Senate negotiations have not begun in earnest. The three scenarios we outlined on June 10 remain in play: the rider could survive into law and halt WISeR through FY 2027; the rider could be stripped in Senate negotiations; or there could be no enacted bill by Oct. 1, 2026. A legislative fix is generally not anticipated at this juncture, and the more likely outcome is that the rider dies in the Senate.

Providers should not stand down on compliance. WISeR is the law of the land today, and the Oct. 1 deadline is the earliest that changes.

The Broader Picture: HHS/CMS AI-Driven and Algorithmic Tools

Congressional pressure remains one front in a multi-front challenge to WISeR. The May Government Accountability Office (GAO) ruling — that WISeR qualifies as a “rule” under the Congressional Review Act (CRA), meaning the Centers for Medicare & Medicaid Services (CMS) failed to submit it to Congress before launch — has amplified both the

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CRA resolutions pending in both chambers and the APA-based litigation targeting WISeR's AI outputs, due process deficiencies and the structural conflict created by contingency-fee vendor compensation. The Electronic Frontier Foundation's FOIA litigation seeking disclosure of AI methodology and vendor contracts is also ongoing. None of these challenges has resulted in a court order staying the program.

The U.S. Department of Health and Human Services' (HHS) use of AI-driven enforcement tools extends beyond WISeR. On May 21, HHS launched the Audit Enforcement and Risk Oversight Initiative (AERO), which uses AI to retroactively re-score at least five years of Single Audit Act compliance data for every entity receiving $1 million or more in annual federal funding. Hospitals receiving Medicaid DSH payments, GME funding, NIH or HRSA grants, or COVID and ARPA relief funds are squarely in scope, and AERO findings can trigger payment withholding, cost disallowances, award suspensions and department proceedings. Like WISeR, AERO raises serious procedural concerns: it was rolled out via a press release rather than notice-and-comment rulemaking, and the underlying AI methodology has not been publicly disclosed or validated.

The Gold-Carding Exemption: What It Is and How It Works

The most significant WISeR development since our June 10 article is one CMS has been building toward since the model launched: the "gold-carding" exemption program that would allow high-performing providers to bypass WISeR's prior authorization and pre-payment review requirements entirely.

CMS is set to roll out gold-carding on **July 6,** beginning in Washington state under Virtix Health, the WISeR model participant for that jurisdiction. Remaining states are expected to follow on a quarterly basis. Providers in Washington who qualify should be receiving notification from Virtix Health now, and exemption notifications are going out this month, effective July 6.

To earn gold-card status, a provider or supplier must:

- Submit a minimum of 10 prior authorization requests for WISeR-covered services during the assessment period;
- Achieve at least a 90% affirmation rate on those requests; and
- Be in good standing and not appear on any Medicare exclusion list.

WISeR participants have limited flexibility to set the affirmation threshold below 90%, but CMS has fixed the ceiling: no participant may require a rate higher than 90% to earn exemption status. Exemptions last at least one year and are re-evaluated quarterly, with participants transmitting updated exemption lists to Medicare Administrative Contractors (MACs) each quarter.

A gold-carded provider or supplier is exempt from prior authorization and pre-payment review for the specific WISeR-covered services for which they demonstrated compliance. It is not a blanket exemption from all Medicare oversight. If a provider's affirmation rate drops below the threshold during a re-evaluation cycle, exemption status can be removed.

Early data from Texas shows that WISeR participants are affirming only 62% of prior authorization requests at initial review, compared to a 92% national average under traditional Medicare. For providers in high-denial specialties like pain management, wound care and orthopedics, the 90% affirmation threshold will be out of reach in the near term. The gold card is designed to reward demonstrated compliance, but the AI model's current denial patterns make it a high bar.

Action Items for Providers

A few practical steps now can help providers preserve options and prepare for whichever path WISeR takes in the months ahead, including continued rollout of gold-card exemptions:

- **Washington providers should check for a gold-card exemption notice** from Virtix Health immediately. If you believe you qualify but have not received notice, contact your WISeR participant and your MAC. Document every affirmed request.
- **File a FOIA request** demanding disclosure of WISeR's AI methodology, training data, validation studies and bias assessments. FOIA disclosures populate the administrative record for APA litigation, may reveal methodological flaws that undermine specific findings, and establish a record of CMS's transparency obligations and failures.
- **Track your affirmation rate** now. Every affirmed request is part of the record that determines gold-card eligibility in your jurisdiction.
- **Continue documenting** non-affirmations, appeal outcomes and operational burdens. That record matters for compliance, litigation and legislative advocacy regardless of which scenario unfolds.
- **Evaluate your appeal posture.** Legal challenges to WISeR remain viable independent of the legislative outcome.
- **Contact counsel** with questions about gold-card eligibility, WISeR compliance, appeal strategy, or advocacy options, including but not limited to APA litigation challenges.

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