Certificate of Need (CON) Reform H.96

Susan Ridzon, Executive Director
Vermont HealthFirst

HEALTH FIRST
Independent Practice Association

Who We Are

Dr. Visker, Georgia Pediatrics

140 MD/DOs, 75 APPs

from

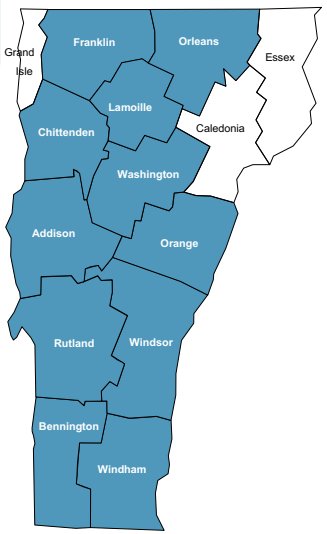
62 physician-owned primary & specialty care practices

124 primary care clinicians caring for ~88,000 pts

91 specialists offering 23+ specialty care services

Many specialist procedures done at Green Mountain Surgery Center

Practices in 11 counties



Richmond Family Medicine

Practice directory:

https://www.vermonthealthfirst.org/physician_directory.php

Why We Care About CON

Meaningful CON reform will help to:

- Decrease costs for patients
- Decrease costs for businesses, the state, lower property taxes
- Increase and broaden patient access to care options
- Broaden work options for healthcare professionals
- Improve competition and quality
- Level of the playing field

CON History

1974 National Health Planning and Resources Development Act

Federal lawmakers hoped CON would:

- Reduce spending by limiting number of hospital bed /patients filling those beds
- Restrain spending by encouraging "the use of appropriate alternative levels of healthcare, and for the substitution of ambulatory and intermediate care"
- Ensure an adequate supply, especially for underserved and rural populations
- Achieve needed quality improvements

https://doi.org/10.1002/soej.12698

Slide graphic from video by Matthew Mitchell, PhD https://www.mercatus.org/economic-insights/mercatus-original-videos/certificate-needs-laws-health-care-lessons-research

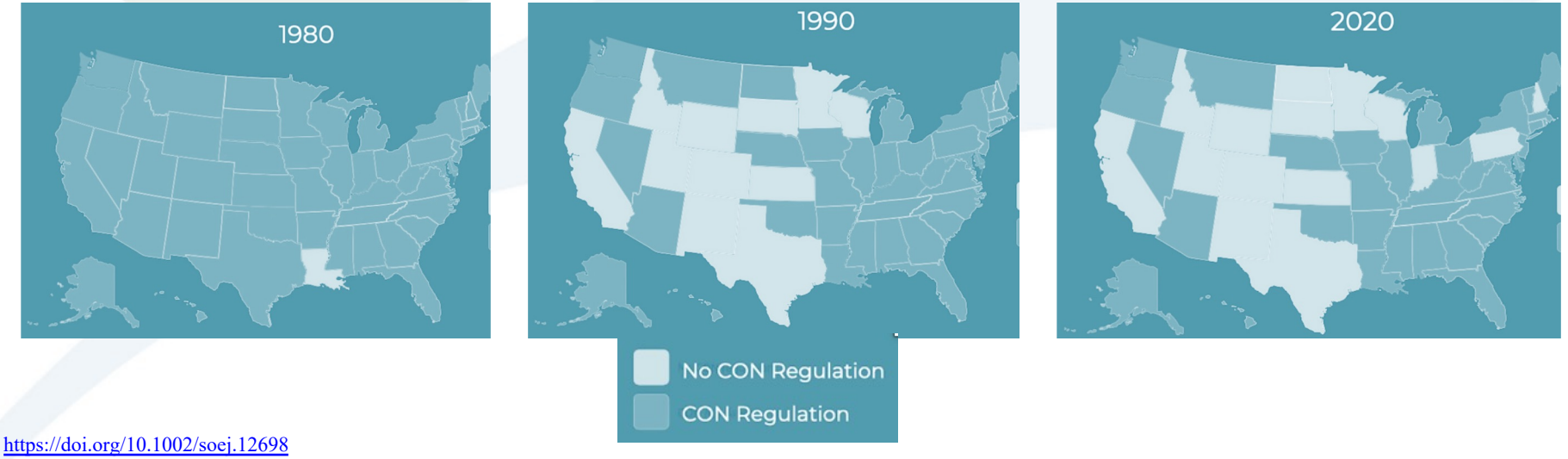
CON Timeline

1974 - Federal NHPRDA

1980 - 49 states with CON program

1986 – Congress concludes CON not effective, repeals mandate; 12 states immediately drop CON programs

Other states continue to either repeal or pare CON



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Maps from video by Matthew Mitchell, PhD https://www.mercatus.org/economic-insights/mercatus-original-videos/certificate-needs-laws-health-care-lessons-research

CON Basics

A permission slip to compete

Designed to assess "need"

Unusual in a market economy

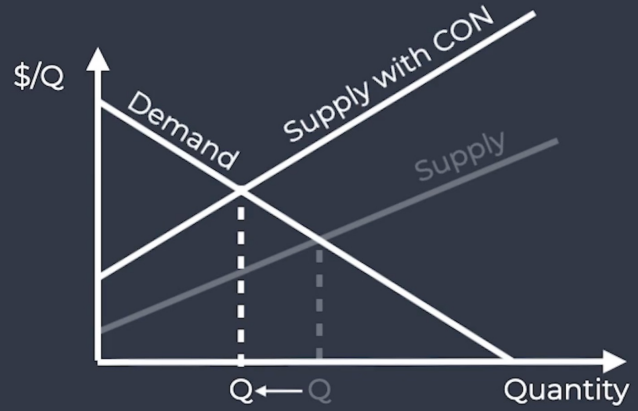
Barrier to entry

Anticompetitive

Slide adapted from video by Matthew Mitchell, PhD https://www.mercatus.org/economic-insights/mercatus-original-videos/certificate-needs-laws-health-care-lessons-research

Economics 101
CON's predictable effects on supply and cost

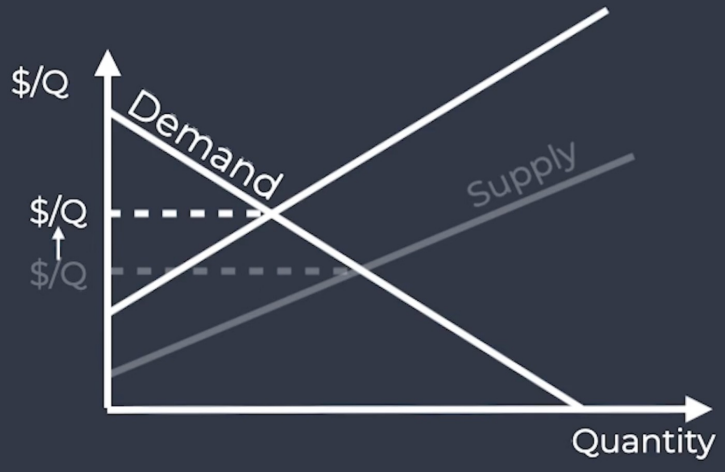
Ensure an adequate supply of HC?



CON is a barrier to entry that limits supply

Limited supply leads to higher costs

Restrain the cost of care?



Hear CON's impact on access and cost as predicted by basic economics and explained starting at 4:00 minutes into Dr. Matthew Mitchell's video at https://www.mercatus.org/economic-insights/mercatus-original-videos/certificate-needs-laws-health-care-lessons-research

CON is Anticompetitive

Every federal administration since Reagan has called for states to repeal CON

FEDERAL TRADE COMMISSION
Washington, DC 20580

Joint Statement of the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice on Certificate-of-Need Laws and South Carolina House Bill 3250
January 11, 2016

DEPARTMENT OF JUSTICE
Washington, DC 20530

"… the evidence to date does not suggest that CON laws have generally succeeded in controlling costs or improving quality."

"…the Agencies historically have suggested that states consider repeal or retrenchment of their CON laws…"

U.S. Department of Justice

Antitrust Division

RFK Main Justice Building

950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

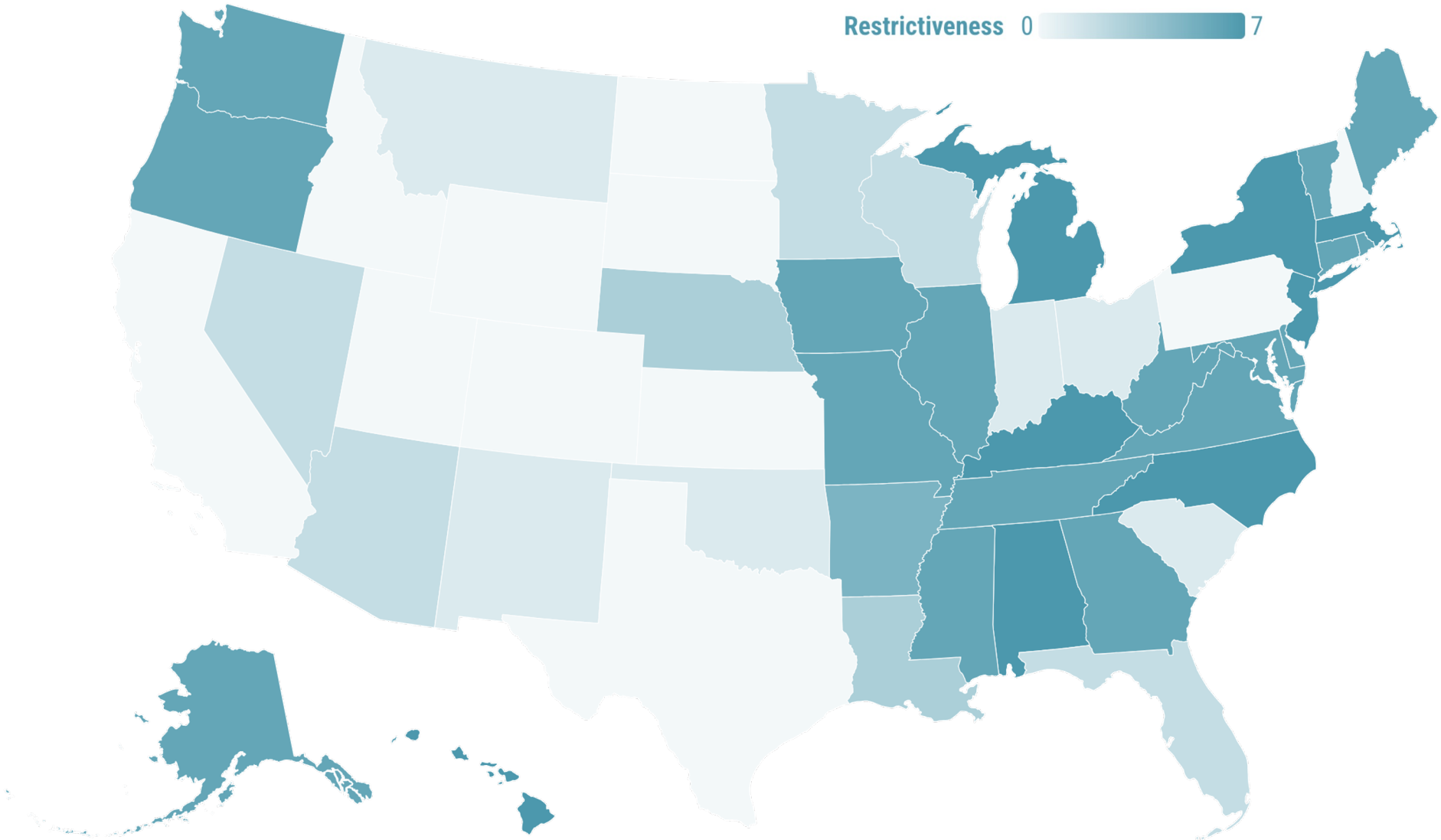
May 3, 2023

"…CON laws have:

- created barriers to entry and expansion, suppressing cost-effective, innovative, and higher-quality healthcare options;
- been exploited by existing firms to block or delay a potential competitor's CON application;
- facilitated anticompetitive agreements among competitors;
- denied consumers the benefits of an effective remedy following an anticompetitive merger; and
- failed to control costs, produce higher-quality care, or improve access to care."

1) https://www.ftc.gov/system/files/documents/advocacy_documents/joint-statement-federal-trade-commission-antitrust-division-u.s.department-justice-certificate-need-laws-south-carolina-house-bill-3250/160111ftc-doj-sclaw.pdf
2) https://www.justice.gov/atr/file/1302691/dl?inline

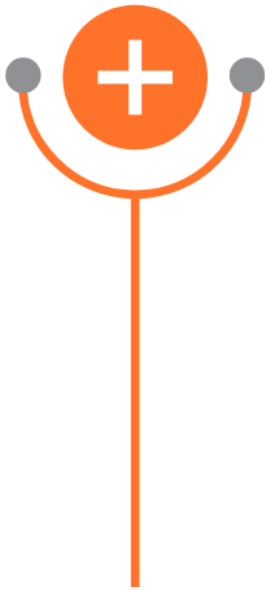
VT's CON among most restrictive in US



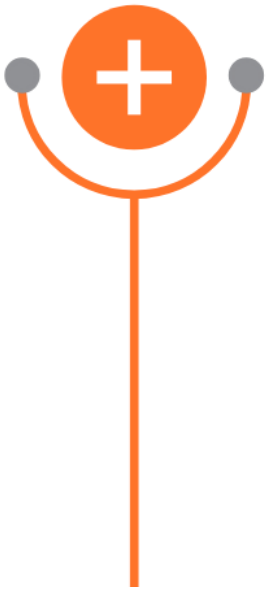
VT is tied for 3rd place for highest number of regulated services.

Map adapted from Pacific Legal Foundation website.

HEALTHCARE SERVICES THAT REQUIRE A CON IN VERMONT AS OF JANUARY 2020



- Air Ambulance
- Ambulatory Surgical Centers (ASCs)
- Assisted Living & Residential Care Facilities
- Burn Care
- Cardiac Catheterization
- Computed Tomography (CT) Scanners
- Home Health
- Hospital Beds (Acute, General Licensed, Med-Surg, etc.)
- Intermediate Care Facilities (ICFs) for Individuals with Intellectual Disabilities
- Linear Accelerator Radiology
- Magnetic Resonance Imaging (MRI) Scanners
- Mobile Hi Technology (CT/MRI/PET, etc.)
- Neonatal Intensive Care
- New Hospitals or Hospital-Sized Investments
- Nursing Home Beds/ Long-Term Care Beds
- Obstetrics Services
- Open-Heart Surgery
- Organ Transplants
- Positron Emission Tomography (PET) Scanners
- Psychiatric Services
- Radiation Therapy
- Rehabilitation
- Renal Failure/Dialysis
- Substance/Drug Abuse
- Swing Beds



Adapted from Mercatus Center George Mason University https://www.mercatus.org/media/73941/download?attachment

Stated Purpose of VT's CON Law

18 V.S.A. § 9431

New health care projects must be developed in a way that:

- avoids unnecessary duplication
- contains or reduces increases in the cost of delivery services
- while maintaining and improving quality and access
- promotes rational allocation of health care resources

Adapted from slide 38: https://legislature.vermont.gov/Documents/2026/Workgroups/House%20Health%20Care/Orientation/W~Owen%20Foster~Green%20Mountain%20Care%20Board%20Overview~1-30-2025.pdf

The Literature

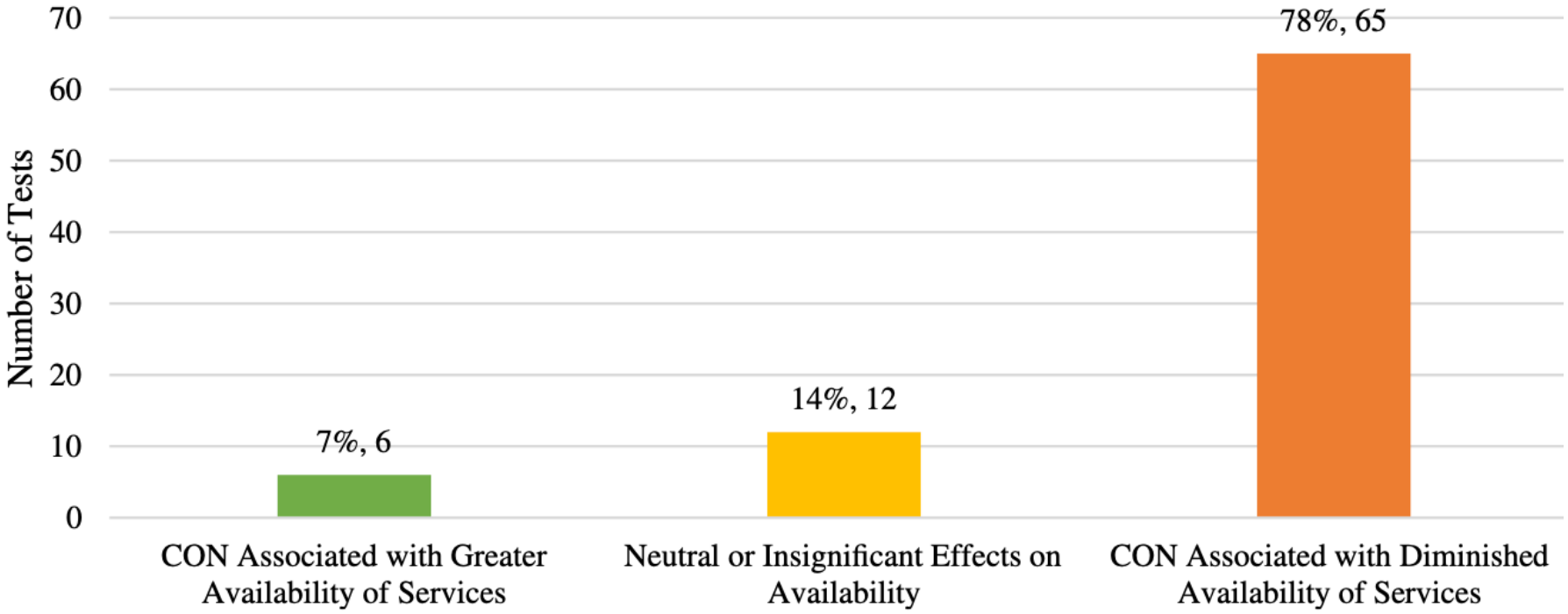
128

Peer-reviewed studies

433 tests

Tests assessing the effect of CON on availability of services (83 tests)

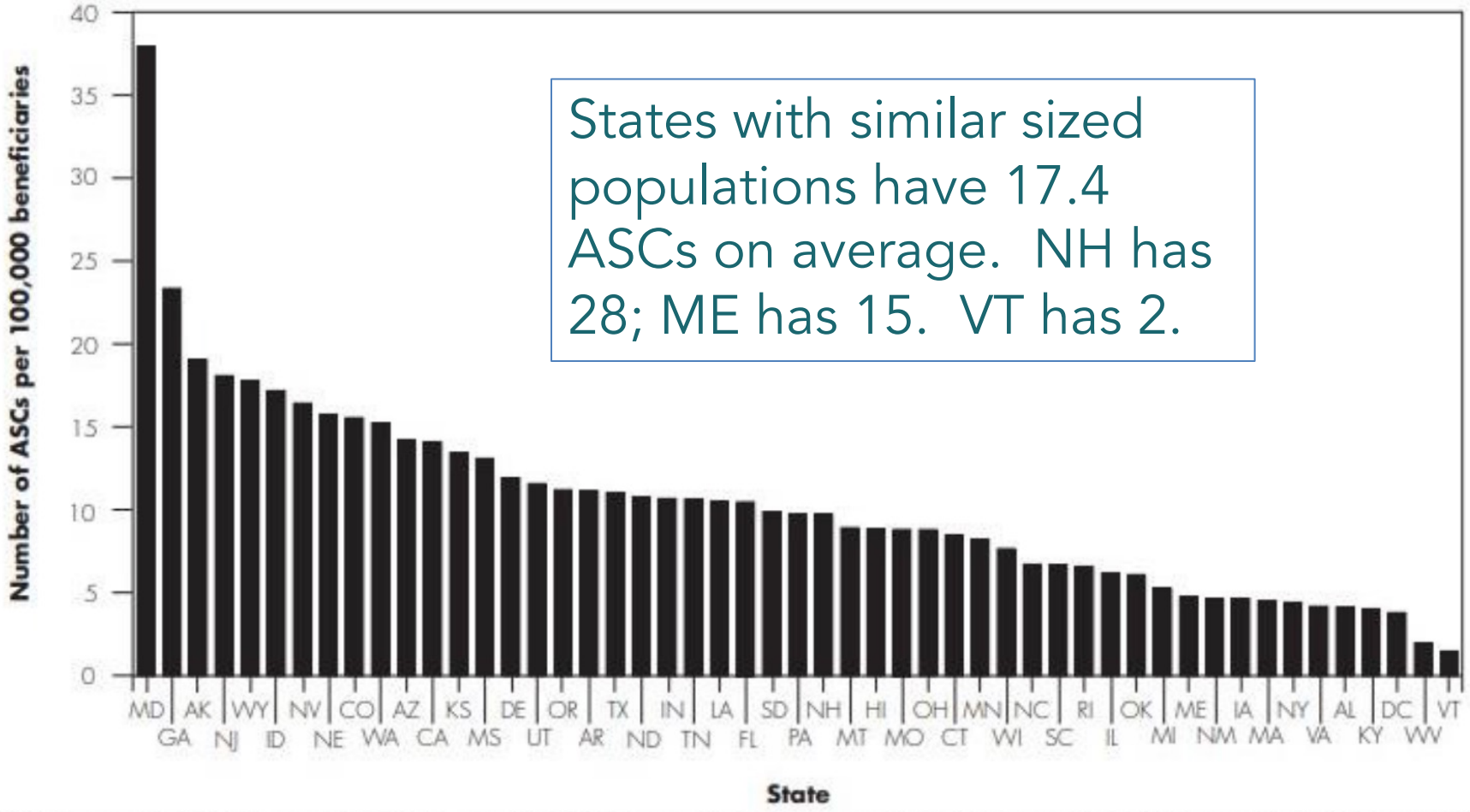
ACCESS



https://doi.org/10.1002/soej.12698

VT is 50th of 50 states for number of ASCs

Table 1: Number of ASCs per beneficiary varies widely by state, 2019



States with similar sized populations have 17.4 ASCs on average. NH has 28; ME has 15. VT has 2.

Note: ASC (ambulatory surgical center).

Source: MedPAC analysis of CMS Provider of Services file for 2020 and Medicare Common Medicare Environment file.

Access to Care is a Long-Standing Issue

NEWS

Patients struggle with long waits at UVM Medical Center

Dan D'Ambrosio Free Press Staff Writer

Published 12:04 p.m. ET Jan. 13, 2017 | **Updated 5:57 p.m. ET Jan. 13, 2017**

It can take months to see a VT doctor. Will two proposed surgery centers help?

Dan D'Ambrosio
Burlington Free Press

Published 6:30 a.m. ET Aug. 26, 2021 | **Updated 11:20 a.m. ET Aug. 27, 2021**

A Green Mountain Care Board report in 2017 found that 37 specialties weren't meeting access standards.

NEWS + OPINION › HEALTH CARE

SEPTEMBER 01, 2021

The Doctor Won't See You Now: Patients Wait Months for Treatment at Vermont's Biggest Hospital

By COLIN FLANDERS @CFLANDERSVT and CHELSEA EDGAR @CHEDGAR31

State Launches Investigation Into Long Wait Times for Medical Care

POSTED BY COLIN FLANDERS ON WED, SEP 1, 2021 AT 7:34 PM

"It will take 175 days to see an ear, nose and throat doctor for a problem with your ears, or 100 days for a problem with your sinuses." -UVMMC spokesperson Neal Goswami

Waiting Pains: Why it can take months to see a specialist at UVM

(WCAX)
By Cat Viglienzoni
Published: Apr. 17, 2019 at 2:12 PM EDT

Patients face 'frustrating' long waits to see hospital specialists

By **Xander Landen**
Jun 19 2019

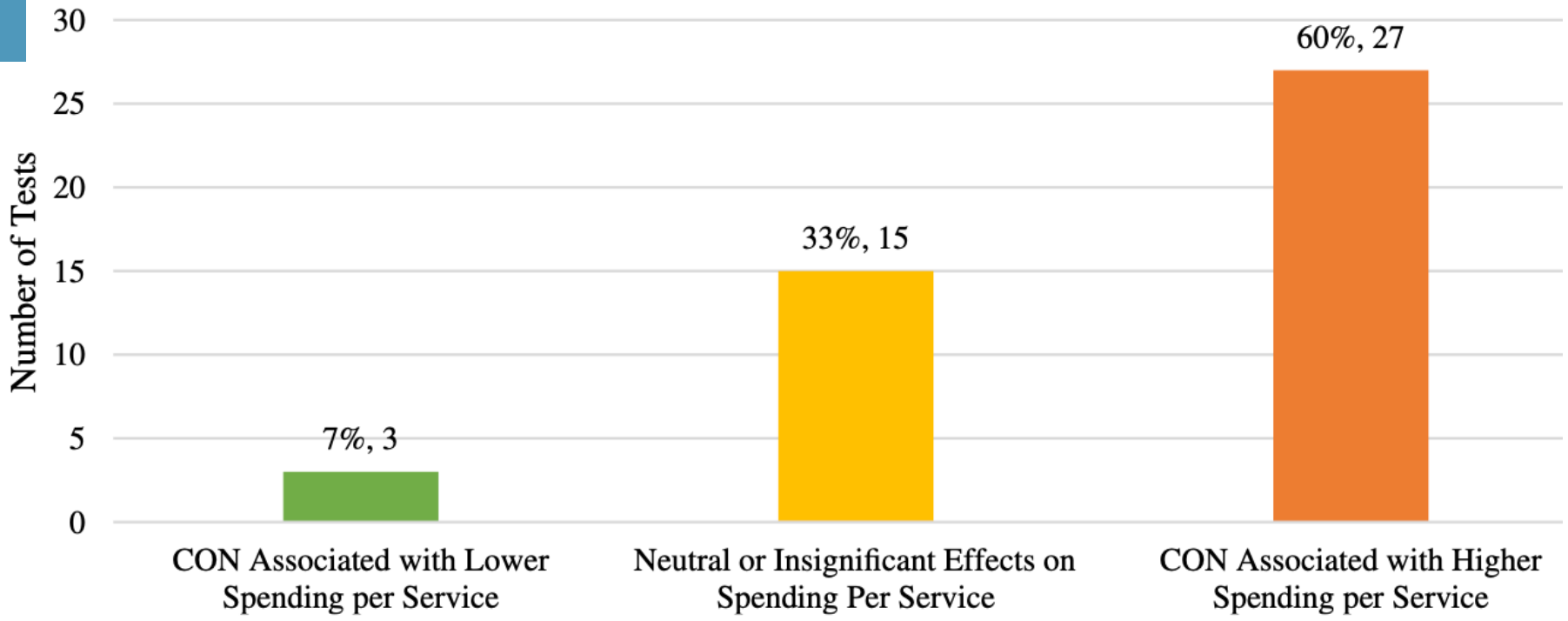
"Wait times for specialty care at the UVMMC are excessive, and the problem has existed for years." -Bruce from S. Burlington

Vermont to investigate wait times for medical appointments

By Rachel Mann
Published: Sep. 1, 2021 at 4:19 PM EDT | Updated: Sep. 2, 2021 at 5:05 AM EDT

Tests assessing the effect of CON on spending per service (45 tests)

COST



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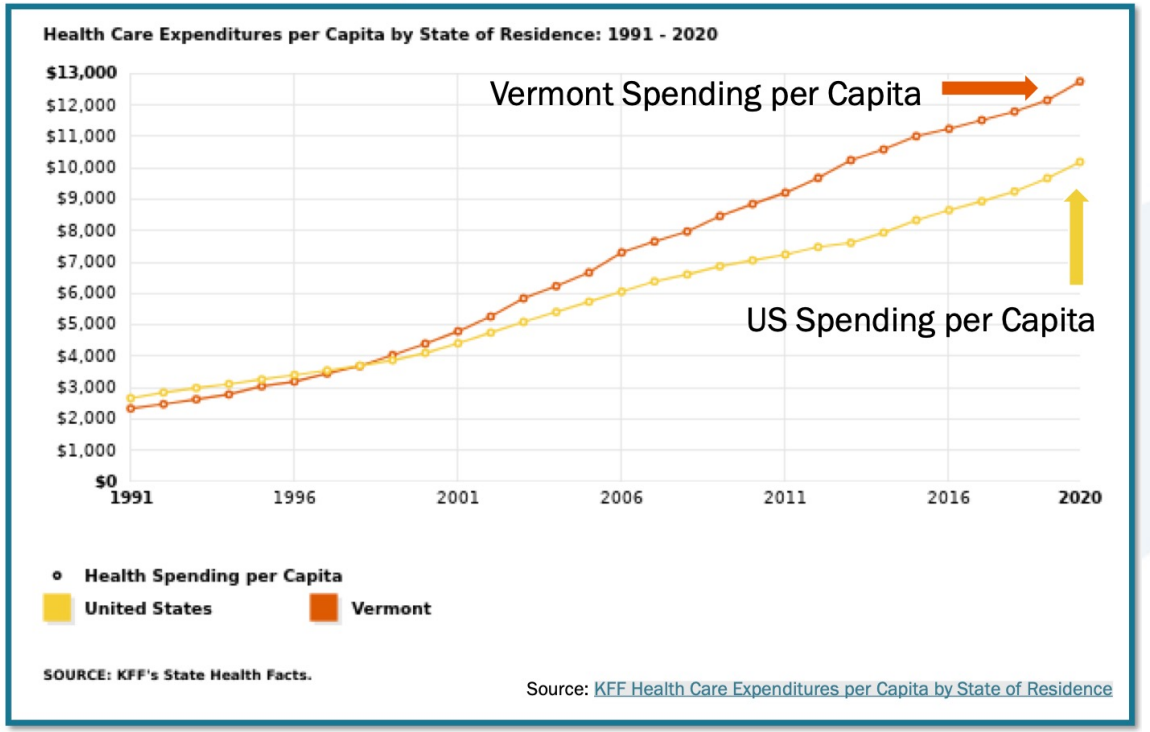
Health Care Spending per Capita

Vermont Outpaces National Trends



Source: KFF Health Care Expenditures per Capita by State of Residence

KFF Health News

In Vermont, Where Almost Everyone Has Insurance, Many Can't Find or Afford Care

November 20, 2024

"Vermont consistently ranks among the healthiest states, and its unemployment and uninsured rates are among the lowest. Yet Vermonters pay the highest prices nationwide for individual health coverage and state reports show its providers and insurers are in financial trouble. Nine of the state's 14 hospital are losing money, and the state's largest insurer is struggling to remain solvent. Long waits for care have become increasingly common, according to state reports and interviews with residents and industry officials."

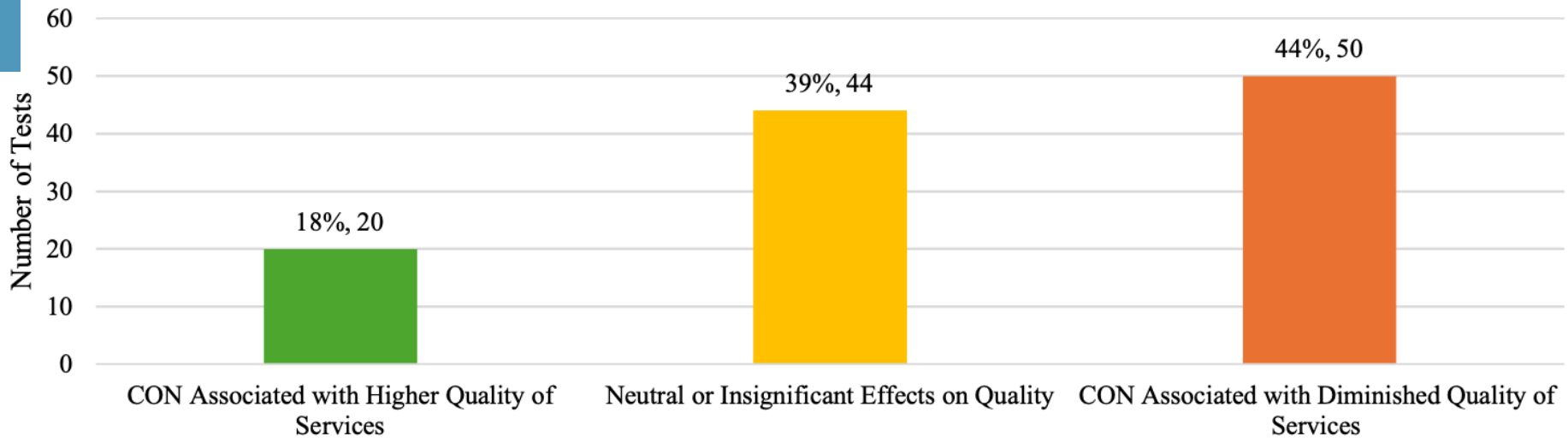
Care at independent free-standing centers is MORE AFFORDABLE

Code	Description	Local AMC Cost	Independent ASC or imaging center cost	Savings	Savings %
72148	MRI Lumbar Spine	$3,127	$1,099	$2,028	65%
73721	MRI Leg Joint	$2,925	$1,099	$1,826	62%
74178	CT Ab Pelvis	$5,625	$340	$5,285	94%
76641	US Breast Unilateral	$328	$100	$228	69%
71046	Chest X-Ray, 2 views	$354	$35	$319	90%
Diagnostic colonoscopy		$4,619	$1,827	$2,792	60%
Hysteroscopy w/ salpingo-oophorectomy		$11,117	$7,440	$3,677	33%

Sources:
-Local AMC patient estimates (self pay rate)
- Local Independent MRI facility website https://www.vtopenmri.com/cost
- Plattsburgh-based independent imaging facility self pay price list
- Median episode costs reflected for last 2 procedures as listed in GMCB Annual Report at:
https://gmcboard.vermont.gov/sites/gmcb/files/documents/Addendum_Annual_Report_ASCs_CY22_2_8_24.pdf

Tests assessing the effect of CON on quality of care (114 tests)

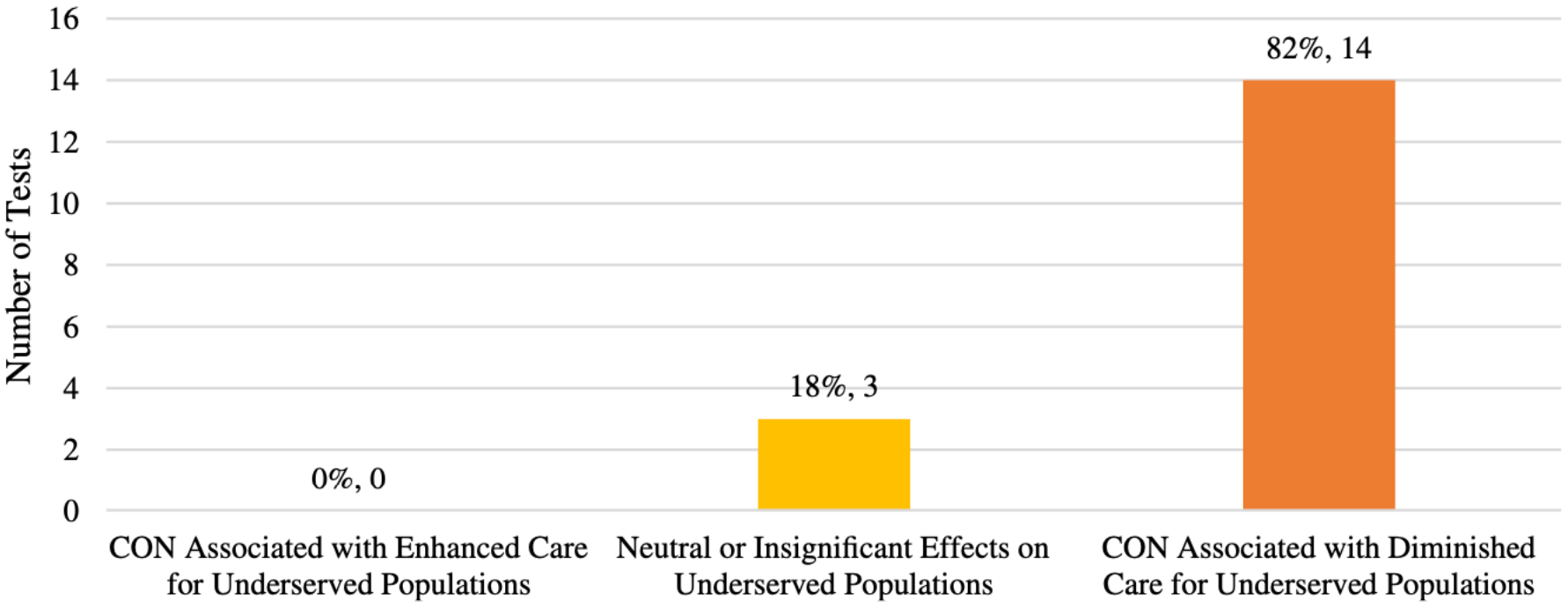
QUALITY



https://doi.org/10.1002/soej.12698

Tests assessing the effect of CON on rural / underserved populations (17 tests)

ALLOCATION



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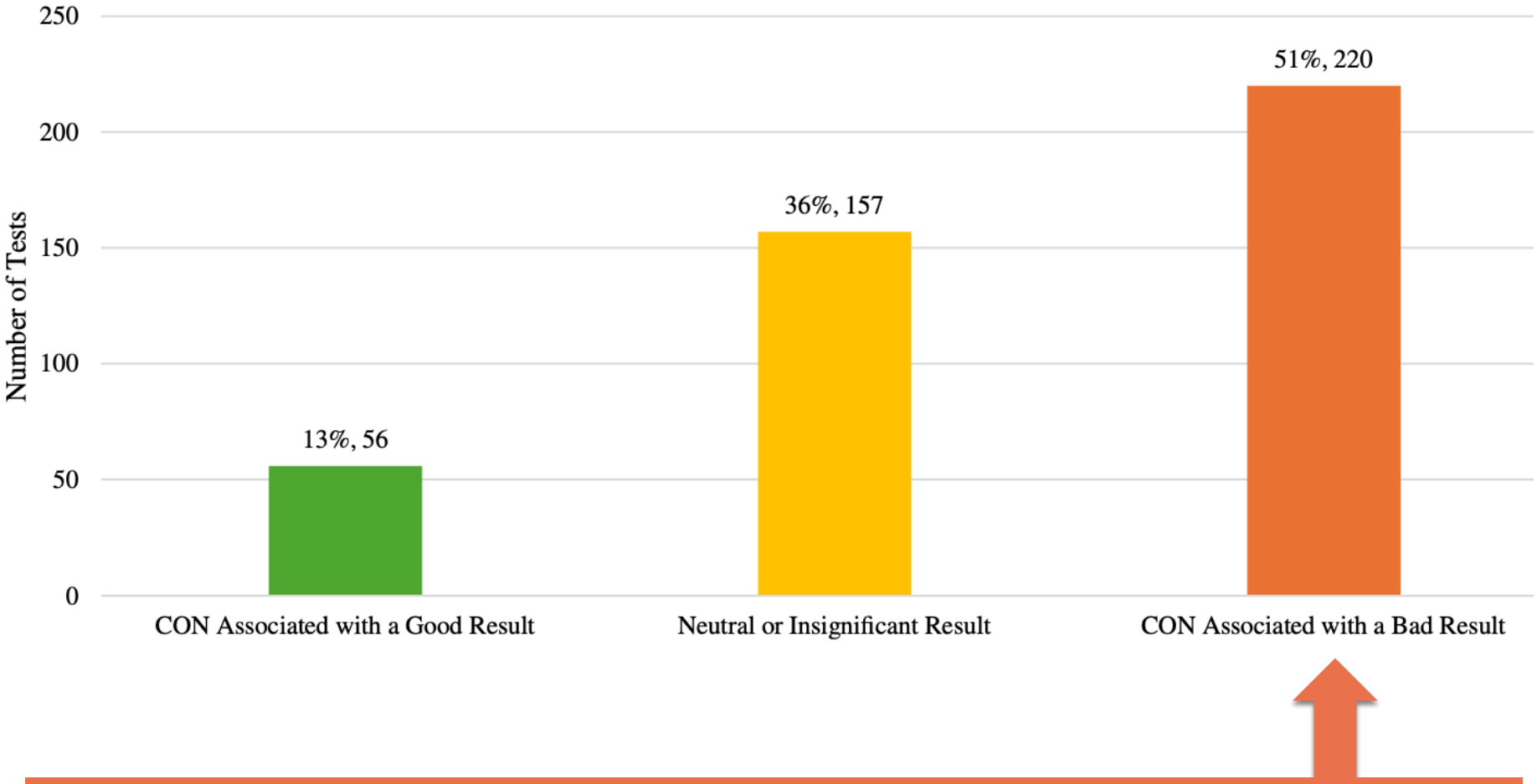
Overall Results of All Tests (433 tests)



"Bad Result" includes higher spending, less access, lower quality, diminished care for underserviced populations, or less competition.

https://doi.org/10.1002/soej.12698

H.96 Details

- Increases thresholds to $10M for new and existing facilities, for construction, equipment, & operating budget. Applies to both hospital and non-hospital.
  - Note that H.96 applies $10M threshold to ASCs. In current CON statute all ASCs subject to CON regardless of cost.

- Increases threshold to $50M for huge projects requiring conceptual CON and increases the allowed expenditures for the development phase of those projects to $10M.

- Exempts state-contracted projects

Goal: Make meaningful changes & keep it simple!

A Word About Process

VT's current CON process is onerous, confusing & costly

Agree it needs to be streamlined significantly

Recommend addressing that in a separate bill

Key Points

1) VT has serious access and cost issues

2) CON is associated with worse access and higher costs, lower quality

3) Passing H.96 is low hanging fruit that can help address VT's most pressing issues

Act 167 Report

Priority regulatory changes for GMCB to apply starting 2025
Simplify and shorten CON process
Encourage free-standing diagnostic, ASC, birthing centers

Page 12: https://gmcboard.vermont.gov/sites/gmcb/files/documents/20250127_Act%20167%20Community%20Engagement_OW%20Exec%20Summary%20Report_v03.pdf

Thoughts on Other CON Reform Suggestions

Who	Suggestion	Comments
GMCB	$10M/ $5M/ $3M for construction / equip /op budget. Same for non-hospital & hospital.	Highly support having same threshold for hospital & non-hospital; $5M & $3M threshold too low for equip & op budget but open to discussion.
S.10	$5M/ $3M/ $1.5M for non-hosp; $10M/ $5M/ $3M for hospitals	Thresholds too low, especially for non-hospital and do not support having different thresholds for hospital and non-hospital.
	ASCs subject to CON at any dollar amount	Recommend that $10M threshold also apply to ASCs as it does in H.96
	Conceptual CON limits of $100M & $5M / $10M for prep phase for non-hosp. & hospitals	Conceptual CON threshold quote high, do not support disparity between non-hosp. / hospital
	Exclude ground ambulance & depreciated equipment	Support exclusions
HCA	Review of projects between old & new thresholds	Do not support review for projects below $10M; ok with streamlined review of projects over $10M
	Strengthen affordability standards	Affordability important but issue is nuanced and needs more consideration before adding this requirement.
	Continue CON conditions after implementation period	Do not support; open to discussing alternative approaches

Thank You!

HEALTH FIRST
www.vermonthealthfirst.org

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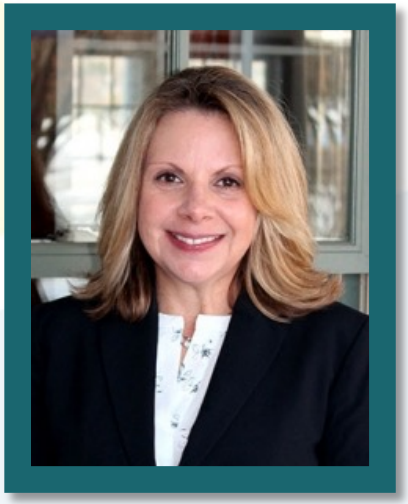

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